

MOBILE HOMES

Whether you call them mobile homes, the more politically correct "manufactured homes" or trailers, if you are thinking of buying one you might as well have a nodding acquaintance with some of their unique features.

One question that causes confusion is when does a mobile home cease to be mobile and become part of the land - like a regular house. In short, when is a mobile home not a mobile home? The answer is that it is not a mobile home when it is attached to the land by more than its own weight. In that case, it forms part of the land.

While there are some gray areas in fixture law, suffice it to say that if the owner of the mobile home is the same as the owner of the land, if the wheels are off and it's on a foundation, and if it is attached to the land by something more than just gravity, it is probably a fixture and, therefore, to be considered a part of the land, much like a shed or a garage. That means that when you sell the land you cannot take the mobile home (which is no longer mobile, of course) with you any more than you can take the shed or garage.

Problems like this often crop up when a larger parcel of land ("with that old mobile home down by the creek") is sold and the mobile home is something of an afterthought, if it inspired any thought at all.

The question of whether or not the mobile home is part of the land makes a difference not only in the sale price, value, tax owing and financing, it also determines where the sale is registered. If the mobile home is part of the land then the change of ownership in the land is registered in the Land Titles Office for the district in which the land is located.

If the mobile home is not part of the land (that is, it is still mobile), the transfer of the mobile home is registered with the Mobile Home Registry. It is even possible to register a transaction in both registries, assuming the purchaser is buying both land and mobile home and will be later selling and moving the mobile home.

The differences in the two systems are considerable but the main one is indefeasibility of title. Under the land titles system there is a certification of title (with an assurance fund to back it up). Under the Mobile Home Registry there is no such guarantee and title to the property can be attacked.

There are some similarities in the two systems, however. Both have registrars to check to see all the t's are crossed, i's dotted and all documents are in order. Both also involve registration in a government run registry.

Failing to register also has similar effects in that third parties are not affected by unregistered interests and charges take priority according to when they were registered. Another similarity is that both types of purchases can be financed but, understandably, lenders are somewhat more reluctant to finance mobile homes than they are to finance realty, if only because mobile homes are, unlike land, capable of mobility as well as being prone to depreciation.

While most courts do not expect regular folks to be experts on the law of fixtures it is probably a good idea in questionable cases to add a clause to the Contract of Purchase and Sale indicating whether that old mobile home on the south 40 is considered by the parties to be a chattel (and, thus, not included in the sale) or part of the land (when it definitely is included).

If you are seriously concerned about the question (for whatever reason) you would be well advised to shift the problem into the lap of your lawyer. Make him or her look it up and sort it out. In addition to presumably knowing the answers, they have insurance if they don't.