# Sixty-first Legislative Assembly of North Dakota
# In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1301
(Representative Ruby)
(Senator Nodland)

AN ACT to create and enact sections 39-05-35 and 47-10-26 of the North Dakota Century Code, relating to the conversion of manufactured homes to real property and the affixation of manufactured homes to real property and the conveyance and encumbrance of manufactured homes as real property; and to amend and reenact sections 11-18-02.2, 35-01-05.1, 39-05-01, 39-05-02.2, 39-05-09, 39-05-09.2, 39-05-19, 39-05-20, 39-05-22, 47-01-03, 57-02-04, and 57-55-01 and subsection 2 of section 57-55-10 of the North Dakota Century Code, relating to manufactured homes.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**11-18-02.2. Statements of full consideration to be filed with state board of equalization or recorder - Procedure - Secrecy of information - Penalty.**

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed any one of the following:

   a. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization.

   b. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.

   c. A statement of the full consideration paid for the property conveyed.

   d. A statement designating one of the exemptions in subsection ~~6~~ 7 which the grantee believes applies to the transaction.

2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-26 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation any one of the following:

   a. A statement that the party has filed with the state board of equalization a report of the full consideration paid for the manufactured home before the affixation.

   b. A statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation.

   c. A statement of the full consideration paid by the party for the manufactured home before the affixation.

3. The recorder ~~shall~~ may not record any deed unless ~~it~~ the deed contains one of the statements required by subsection 1 or record any affidavit of affixation unless the affidavit contains or is accompanied by one of the statements required by subsection 2.

~~3.~~ 4. The recorder shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.

~~4.~~ 5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out ~~the purposes of~~ this section, and the forms ~~will~~ must contain a space for the explanation of special circumstances ~~which~~ that may have contributed to the amount of the consideration.

~~5.~~ 6. For purposes of ~~this section~~ subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein ~~shall be~~ is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing ~~which~~ that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.

~~6.~~ 7. ~~The provisions of this~~ This section ~~do~~ does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:

a. Property owned or used by public utilities.

b. Property classified as personal property.

c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.

d. A sale ~~which~~ that resulted as a settlement of an estate.

e. All sales to or from a government or governmental agency.

f. All forced sales, mortgage foreclosures, and tax sales.

g. All sales to or from religious, charitable, or nonprofit organizations.

h. All sales when there is an indicated change of use by the new owners.

i. All transfer of ownership of property for which is given a quitclaim deed.

j. Sales of property not assessable by law.

k. Agricultural lands of less than eighty acres [32.37 hectares].

l. A transfer that is pursuant to a judgment.

~~7.~~ 8. The state board of equalization shall guard the secrecy of information contained on statements filed with the board ~~pursuant to~~ under subsection 1 or subsection 2, and any information contained on statements and any information provided by local officials ~~shall~~ must be limited to ~~such~~ data ~~as is~~ necessary to perform ~~their~~ official duties and ~~shall~~ may not include the names of any grantors or grantees to deeds or of any parties to affidavits of affixation. Any reports made available to the public must be made in a manner that will not reveal the names of any grantors ~~or~~, grantees, or parties. The recorder shall guard the secrecy of information contained on reports filed in the recorder's office ~~pursuant to~~ under subdivision b of subsection 1 or subdivision b of subsection 2.

~~8.~~ 9. Any person ~~who~~ that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein or ~~who~~ that falsely certifies that the person has

filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor.

**SECTION 2. AMENDMENT.** Section 35-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**35-01-05.1. When security interest in vehicle valid.**

1. No security interest, including a security interest under chapter 41-09, in a vehicle, including a manufactured home, which is not inventory held for sale is valid as against subsequent purchasers and encumbrances of the property in good faith and for value unless the security interest is clearly indicated upon the certificate of title to the vehicle or unless such certificate of title is in the possession of the secured party, provided, however, that a purchase money security interest under chapter 41-09 in a manufactured home is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase money security interest attaches, and provided further the holder of a security interest in or a lien on a manufactured home may deliver lien release documents to a person to facilitate conveying or encumbering the manufactured home. A person receiving documents so delivered holds the documents in trust for the security interest holder or the lienholder.

2. Except as otherwise provided in section 47-10-26 and in subsections 1 and 2 of section 39-05-35, after a certificate of title has been issued for a manufactured home and as long as the manufactured home is subject to a security interest perfected under this section, the department may not file an affidavit of affixation, cancel the manufacturer's certificate of origin, or revoke the certificate of title, and the validity and priority of a security interest perfected under this section continues, notwithstanding any other provision of law.

3. The term "manufactured home" as used in subsections 1 and 2 is a manufactured home as defined in section 41-09-02, excluding a manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.

4. The term "vehicle" as used in this section includes any vehicle for which a certificate of title is required under title 39 or other statutes of this state.

5. With respect to a manufactured home that is or will be permanently affixed to real property, upon recordation of an affidavit of affixation under section 47-10-26 and satisfaction of the requirements of subsections 1 through 3 of section 39-05-35, as applicable, a perfection or termination of a security interest with respect to the permanently affixed property is governed by chapter 47-10.

**SECTION 3. AMENDMENT.** Section 39-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-01. ~~Definition~~ Definitions.** In this chapter, unless the context or subject matter otherwise requires, "motor vehicle" includes a housetrailer or mobile home and ~~any~~ a semitrailer designed to be towed by a truck tractor and "manufactured home" means a manufactured home as defined in section 41-09-02.

**SECTION 4. AMENDMENT.** Section 39-05-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-02.2. Exclusions from the certificate of title requirement.** No certificate of title need be obtained for:

1. A vehicle owned by the United States unless it is registered in this state.

2. A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing.

3. A vehicle owned by a nonresident of this state and not required by law to be registered in this state.

4. A vehicle regularly engaged in interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state.

5. A vehicle moved solely by human or animal power.

6. Implements of husbandry.

7. Special mobile equipment.

8. A self-propelled invalid wheelchair or invalid tricycle.

9. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The vehicle shall cross the highway at an angle of approximately ninety degrees to the direction of the highway.

10. Other vehicles not required to be registered in this state or not required to display distinctive plates.

11. A manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.

**SECTION 5. AMENDMENT.** Section 39-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-09. Issuance, contents, delivery, and term of certificate.**

1. After checking the application for a certificate as provided in section 39-05-08 and except as provided in subsection 4, the department, if it is satisfied that the applicant is the person entitled to the possession of the vehicle, shall issue a certificate of title which must contain:

   a. The name of the owner.

   b. The vehicle identification number.

   c. The signature of the director.

   d. The date issued.

   e. A description of the vehicle as determined by the department.

   f. A statement of the owner's title and of all liens or encumbrances upon the vehicle therein described and whether possession is held by the owner or lienholder.

2. Upon the reverse side of such certificate must be contained forms for the assignment of title or interest and warranty thereof by the owner with a space for the notation of liens and encumbrances upon such vehicle at the time of a transfer.

3. The amount of any lien or encumbrance upon the vehicle need not be shown anywhere on the certificate of title, only the fact of such lien or encumbrance, and the identity of the lienholder or encumbrancer. The department shall deliver the certificate of title to the owner or first lienholder. The certificate is good for the life of the vehicle as long as the vehicle is owned or held by the original holder of the certificate.

4. The department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-26.

5. The holder of a manufacturer's certificate of origin to a manufactured home may deliver it to a person to facilitate conveying or encumbering the manufactured home. A person receiving a manufacturer's certificate of origin so delivered holds the certificate in trust for the person delivering the certificate.

6. Notwithstanding any other provision of law, a certificate of title issued by the department for a manufactured home is prima facie evidence of the facts appearing on the certificate, notwithstanding that the manufactured home, at any time, becomes affixed in any manner to real property.

**SECTION 6. AMENDMENT.** Section 39-05-09.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-09.2. Suspension or revocation of certificates of title.**

1. The department shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with chapter 28-32, when authorized by any other provision of law or if it finds:

   a. The certificate of title was fraudulently procured or erroneously issued;

   b. The vehicle has been scrapped, dismantled, or destroyed; or

   c. A person has acquired a vehicle but has failed to transfer the ownership as required by this chapter.

2. For purposes of this section, the following apply:

   a. Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

   b. When the department suspends or revokes a certificate of title, the owner or person in possession of it shall immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department.

   c. The department may seize and impound any certificate of title which has been suspended or revoked.

3. Except as provided in subsection 2 of section 39-05-35, the department may not suspend or revoke a certificate of title to a manufactured home by reason of the fact that at any time the manufactured home becomes affixed in any manner to real property.

**SECTION 7. AMENDMENT.** Section 39-05-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-19. Obtaining certificate of title for vehicle when ownership obtained by other than voluntary means.** Whenever the ownership of any vehicle passes otherwise than by voluntary transfer, the transferee may obtain a certificate of title for the vehicle from the department upon application for the certificate and payment of a fee of five dollars. The application for the certificate must be accompanied by instruments or documents of authority, or copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto, provided that the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-26.

**SECTION 8. AMENDMENT.** Section 39-05-20 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-20. Transferee may obtain new certificate of title upon inability to obtain old certificate - Proof of ownership - Appeal.**

1. When the transferee of a vehicle is unable to obtain a properly assigned certificate of title for a vehicle, and makes application for a new certificate and presents satisfactory proof of ownership, the department may cancel the old certificate and issue a new certificate to the transferee, provided that the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-26. Satisfactory proof of ownership must include compliance by the transferee with the procedures outlined in title 35. The department may establish procedures for determining satisfactory proof of ownership of a vehicle in those cases when the department is unable to determine the legal owner of record. Any person aggrieved by a decision of the department as to ownership of a vehicle may appeal that decision to the district court under chapter 28-32.

2. A person holding a certificate of title whose interests in the vehicle have been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate. The action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of the owner or lienholder listed in the old certificate.

**SECTION 9. AMENDMENT.** Section 39-05-22 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-22. Department to maintain file of surrendered certificates of title - Purpose - Records.** The department shall retain and appropriately file every surrendered certificate of title, such file to be maintained to permit the tracing of title of vehicles designated therein.

1. The department shall file, upon receipt, each affidavit of affixation relating to a manufactured home that is delivered in accordance with section 47-10-26 when satisfied of the affidavit's genuineness and regularity.

2. The department shall maintain a record of each affidavit of affixation filed in accordance with subsection 1. The record must state the name of each owner of the related manufactured home, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.

3. The department shall file, upon receipt, each application for surrender of the manufacturer's certificate of origin relating to a manufactured home that is delivered in accordance with subsection 1 of section 39-05-35, when satisfied of the application's genuineness and regularity.

4. The department shall file, upon receipt, each application for surrender of the certificate of title relating to a manufactured home that is delivered in accordance with subsection 2 of section 39-05-35, when satisfied of the application's genuineness and regularity.

5. The department shall file, upon receipt, each application for confirmation of conversion relating to a manufactured home that is delivered in accordance with subsection 3 of section 39-05-35, when satisfied of the application's genuineness and regularity.

6. The department shall maintain a record of each manufacturer's certificate of origin accepted for surrender as provided in subsection 1 of section 39-05-35. The record must

state the name of each owner of the manufactured home, the date the manufacturer's certificate of origin was accepted for surrender, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.

7. The department shall maintain a record of each manufactured home certificate of title accepted for surrender as provided in subsection 2 of section 39-05-35. The record must state the name of each owner of the manufactured home, the date the certificate of title was accepted for surrender, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.

8. The department shall maintain a record of each application for confirmation of conversion accepted as provided in subsection 3 of section 39-05-35. The record must state the name of each owner of the manufactured home, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-26, and any other information the department prescribes.

9. Such file of surrendered certificates of title and the records referred to in subsections 6, 7, and 8 must be maintained for a period of five years or for such further time that the director may determine.

**SECTION 10.** Section 39-05-35 of the North Dakota Century Code is created and enacted as follows:

**39-05-35. Manufactured homes - Conversion to real property - Procedure - Rules.**

1. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is covered by a manufacturer's certificate of origin which the owner is able to produce and that is permanently affixed to real property as defined in subsection 1 of section 47-10-26, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-26, may surrender the manufacturer's certificate of origin to the manufactured home to the department by filing with the department an application for surrender of manufacturer's certificate of origin containing or accompanied by:

(1) The name, residence, and mailing address of the owner;

(2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;

(3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;

(4) A statement, signed by the owner, stating either:

(a) Any facts or information known to the owner that may affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or

(b) That no such facts or information are known to the owner;

(5) A copy of the recorded affidavit of affixation as provided in accordance with subsection 5 of section 47-10-26;

(6) The original manufacturer's certificate of origin;

(7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;

(8) The applicable fee for filing the application for surrender; and

(9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-26 and is entitled to surrender the manufacturer's certificate of origin and the existence or nonexistence of security interests in or liens on the manufactured home.

b. When satisfied of the genuineness and regularity of the surrender of a manufacturer's certificate of origin to a manufactured home and upon satisfaction of the requirements of subdivision a, the department shall:

(1) Cancel the manufacturer's certificate of origin and update the department's records in accordance with the provisions of section 39-05-22; and

(2) Provide written acknowledgment of compliance with the provisions of this section to each person identified on the application for surrender of a manufacturer's certificate of origin under paragraph 7 of subdivision a.

c. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application to surrender a manufacturer's certificate of origin is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.

d. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.

2. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is covered by a certificate of title which the owner is able to produce and that is permanently affixed to real property as defined in subsection 1 of section 47-10-26, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-26, may surrender the certificate of title to the manufactured home to the department by filing with the department an application for surrender of title containing or accompanied by:

(1) The name, residence, and mailing address of the owner;

(2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;

(3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;

(4) A statement, signed by the owner, stating either:

(a) Any facts or information known to the owner that may affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or

(b) That no such facts or information are known to the owner;

(5) A copy of the recorded affidavit of affixation provided in accordance with subsection 5 of section 47-10-26;

(6) The original certificate of title;

(7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;

(8) The applicable fee for filing the application for surrender; and

(9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-26 and is entitled to surrender the certificate of title and the existence or nonexistence of security interests in or liens on the manufactured home.

b. The department may not accept for surrender a certificate of title to a manufactured home unless and until all security interests or liens perfected under section 35-01-05.1 have been released.

c. When satisfied of the genuineness and regularity of the surrender of a certificate of title to a manufactured home and upon satisfaction of the requirements of subdivisions a and b, the department shall:

(1) Cancel the certificate of title and update the department's records in accordance with the provisions of section 39-05-22; and

(2) Provide written acknowledgment of compliance with the provisions of this section to each person identified on the application for surrender of title under paragraph 7 of subdivision a.

d. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application to surrender a certificate of title is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed, and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.

e. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.

3. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is not covered by a manufacturer's certificate of origin or a certificate of title, or of a manufactured home that is covered by a manufacturer's certificate of origin or certificate of title but which the owner of the manufactured home, after diligent search and inquiry, is unable to produce, and that is permanently affixed to real property as defined in subsection 1 of section 47-10-26, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-26, may

apply to the department by filing with the department an application for confirmation of conversion containing or accompanied by:

(1) The name, residence, and mailing address of the owner;

(2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;

(3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;

(4) A statement, signed by the owner, stating either:

(a) Any facts or information known to the owner that could affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or

(b) That no such facts or information are known to the owner;

(5) A recorded copy of the affidavit of affixation as provided in accordance with subsection 5 of section 47-10-26;

(6) A sworn declaration by an attorney duly admitted to practice in this state or an agent of a title insurance company duly licensed to issue policies of title insurance in this state that the manufactured home is free and clear of, or has been released from, all recorded security interests, liens, and encumbrances; and

(a) Any facts or information known to that person that could affect the validity of the title of the manufactured home or the existence or nonexistence of any security interest in or lien on the manufactured home; or

(b) That no such facts or information are known to that person;

(7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;

(8) The applicable fee for filing the application for surrender; and

(9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-26 and the existence or nonexistence of security interests in or liens on the manufactured home.

b. When satisfied of the genuineness and regularity of the application for confirmation of conversion of a manufactured home and upon satisfaction of the requirements of subdivision a, the department shall:

(1) Update its records in accordance with the provisions of section 39-05-22; and

(2) Provide written acknowledgment of compliance with the provisions of this subsection to each person identified on the application for confirmation of conversion under paragraph 7 of subdivision a.

c. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application for confirmation of conversion of a manufactured home is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.

d. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.

4. The department may adopt rules to implement the provisions of this section.

**SECTION 11. AMENDMENT.** Section 47-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-01-03. Real property defined.** Real or immovable property shall consist of:

1. Land;

2. That which is affixed to land, including manufactured homes as defined in section 41-09-02 with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied;

3. That which is incidental or appurtenant to land; and

4. That which is immovable by law.

**SECTION 12.** Section 47-10-26 of the North Dakota Century Code is created and enacted as follows:

**47-10-26. Manufactured homes - Affixation to real property - Conveyance or encumbrance as real property.**

1. For purposes of this section, "manufactured home" means a manufactured home as defined in section 41-09-02. Notwithstanding this definition, for purposes of 11 U.S.C. 1322(b)(2), a manufactured home is deemed real property. For purposes of this section, a manufactured home is permanently affixed if the manufactured home is anchored to real property by attachment to a permanent foundation; constructed in accordance with applicable state and local building codes and manufacturer's specifications as provided in title 24, Code of Federal Regulations, part 3285; and connected to residential utilities, such as water, gas, electricity, or sewer or septic service.

2. To convey or voluntarily encumber a manufactured home as real property, the following conditions must be met:

a. The manufactured home must be permanently affixed to real property;

b. The ownership interests in the manufactured home and the real property to which the manufactured home is or will be permanently affixed must be identical, provided, however, that the owner of the manufactured home, if not the owner of the real property, is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution and the consent of the lessor of the real property;

c. The person having an ownership interest in the manufactured home shall execute and record with the recorder of the county in which the real property is located an affidavit of affixation as provided in subsection 3 and satisfies the other applicable requirements of this section; and

d. Upon receipt of a recorded copy of the affidavit of affixation under subsection 5, a person designated in the affidavit for filing with the department of transportation shall file the recorded copy of the affidavit of affixation with the department of transportation, except that:

(1) In a circumstance described in item 1 of subparagraph a of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation and the original manufacturer's certificate of origin, each as recorded in the county in which the real property is located, must be filed with the department of transportation under subsection 1 of section 39-05-35;

(2) In a circumstance described in item 1 of subparagraph b of paragraph 4 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and the original certificate of title must be filed with the department of transportation under subsection 2 of section 39-05-35; and

(3) In a circumstance described in item 2 of subparagraph a of paragraph 4 of subdivision a of subsection 3, item 2 of subparagraph b of paragraph 4 of subdivision a of subsection 3, or paragraph 6 of subdivision a of subsection 3, the recorded copy of the affidavit of affixation, as recorded in the county in which the real property is located, and an application for confirmation of conversion must be filed with the department of transportation under subsection 3 of section 39-05-35.

3. a. An affidavit of affixation must contain or be accompanied by:

(1) The name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, and whether the manufactured home is new or used;

(2) (a) A statement that the party executing the affidavit is the owner of the real property described in the affidavit; or

(b) If not the owner of the real property:

[1] A statement that the party executing the affidavit is in possession of the real property under the terms of a lease in recordable form that has a term that continues for at least twenty years after the date of execution of the affidavit; and

[2] The consent of the lessor of the real property endorsed upon or attached to the affidavit and acknowledged or proved in the manner as to entitle a conveyance to be recorded;

(3) The street address and the legal description of the real property to which the manufactured home is or will be permanently affixed;

(4) (a) If the manufactured home is not covered by a certificate of title, a statement by the owner to that effect, and either:

[1] A statement by the owner of the manufactured home that the manufactured home is covered by a manufacturer's certificate of origin, the date the manufacturer's certificate of origin was issued, the manufacturer's serial number, and a statement that annexed to the affidavit of affixation is the original manufacturer's certificate of origin for the manufactured home, duly endorsed to the owner of the manufactured home, and that the owner of the manufactured

home will surrender the manufacturer's certificate of origin to the department of transportation; or

[2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the original manufacturer's certificate of origin for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home; or

(b) If the manufactured home is covered by a certificate of title, either:

[1] A statement by the owner of the manufactured home that the manufactured home is covered by a certificate of title, the date the title was issued, the title number, and that the owner of the manufactured home will surrender the title; or

[2] A statement that the owner of the manufactured home, after diligent search and inquiry, is unable to produce the certificate of title for the manufactured home and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;

(5) A statement whether the manufactured home is subject to one or more security interests or liens and:

(a) If the manufactured home is subject to one or more security interests or liens, the name and address of each party holding a security interest in or lien on the manufactured home, including each holder shown on any certificate of title issued by the department of transportation, the original principal amount secured by each security interest or lien, and a statement that the security interest or lien will be released; or

(b) A statement that each security interest in or lien on the manufactured home, if any, has been released, together with due proof of each release;

(6) If the manufactured home is not covered by a manufacturer's certificate of origin or a certificate of title, a statement by the owner of the manufactured home to that effect and that the owner of the manufactured home will apply to the department of transportation for a confirmation of conversion of the manufactured home;

(7) A statement that the manufactured home is or will be permanently affixed to the real property;

(8) If the party executing the affidavit acquired the manufactured home before the affixation of the manufactured home to the real property, that party shall complete one of the statements required by subsection 2 of section 11-18-02.2; and

(9) The name and address of a person designated for filing the recorded copy of the affidavit of affixation with the department of transportation to whom the recorder shall return the recorded copy of the affidavit of affixation after the affidavit has been duly recorded in the real property records as provided in subsection 5.

b. An affidavit of affixation must be duly acknowledged or proved in like manner as to entitle a conveyance to be recorded, and when so acknowledged or proved and upon

payment of the lawful recording fees, the recorder shall immediately cause the affidavit of affixation and any attachments to the affidavit to be duly recorded and indexed under chapter 47-19.

c. The affidavit of affixation must be accompanied by an applicable fee for recording and issuing a recorded copy of the affidavit.

4. The act of permanently affixing a manufactured home to real property or the recording of the affidavit of affixation does not impair the rights of a holder of a security interest in or lien on a manufactured home perfected as provided in section 35-01-05.1, unless and until the due filing with and acceptance by the department of transportation of an application to surrender the title as provided in subsection 1 of section 39-05-35 and the release of the security interest or lien as provided in section 39-05-16.1. Upon the filing of a release, the security interest or lien perfected under section 35-01-05.1 is terminated.

5. The affidavit of affixation must be presented for recording pursuant to chapter 47-19, together with the fees provided by law. Upon receipt from the recorder of a copy of the recorded affidavit of affixation by the person presenting the affidavit for recording, that person shall deliver for filing to the department of transportation the copy of the affidavit of affixation and the other documents as provided in subdivision d of subsection 2.

6. A manufactured home is deemed to be real property when all of the following events have occurred:

a. The home is permanently affixed to land as provided in subsection 1;

b. An affidavit of affixation conforming to the requirements of subsection 3 has been recorded in the conveyance records in the office of the recorder in the county where the manufactured home is permanently affixed;

c. A copy of the recorded affidavit of affixation has been delivered for filing to the department of transportation as provided in subsection 5; and

d. The requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.

7. Upon the satisfaction of the requirements of subsection 6, the manufactured home is deemed to be real property; any mortgage, deed of trust, lien, or security interest which can attach to land, buildings erected thereon, or fixtures affixed thereto attach as of the date of its recording in the same manner as if the manufactured home were built from ordinary building materials onsite. Title to the manufactured home must be transferred by deed or other form of conveyance that is effective to transfer an interest in real property, together with the land to which the structure has been affixed. The manufactured home is deemed to be real property and is governed by the laws applicable to real property.

8. Except as provided in subsections 3, 5, 6, and 7, an affidavit of affixation is not necessary or effective to convey or encumber a manufactured home or to change the character of the manufactured home to real property. A conveyance of land upon which is located a manufactured home for which an affidavit of affixation has been recorded does not effect a conveyance or encumbrance of any interest in the manufactured home. A conveyance or encumbrance may only be made under the provisions of chapter 39-05. An agreement by a party to the transaction whereby the requirements of this subsection are waived is void as contrary to public policy.

9. Nothing in this section impairs any rights existing under law before the effective date of this Act of anyone claiming an interest in a manufactured home.

**SECTION 13. AMENDMENT.** Section 57-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-04. Real property defined.** Real property, for the purpose of taxation, includes:

1. The land itself, whether laid out in town lots or otherwise, and improvements to the land, such as ditching, surfacing, and leveling, except plowing and trees, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, and quarries in and under the same and shall expressly include all such improvements made by persons to lands held by them under the laws of the United States, all such improvements to land the title to which still is vested in any railroad company and which is not used exclusively for railroad purposes, and improvements to land belonging to any other corporation or limited liability company whose property is not subject to the same mode and rule of taxation as other property.

2. All structures and buildings, <u>including manufactured homes as defined in section 41-09-02 with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied,</u> including systems for the heating, air-conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges thereto belonging or in anywise appertaining, but shall not include items which pertain to the use of such structures and buildings, such as machinery or equipment used for trade or manufacture which are not constructed as an integral part of and are not essential for the support of such structures or buildings, and which are removable without materially limiting or restricting the use of such structures or buildings.

3. Machinery and equipment, but not including small tools and office equipment, used or intended for use in any process of refining products from oil or gas extracted from the earth, but not including such equipment or appurtenances located on leased oil and gas production sites.

**SECTION 14. AMENDMENT.** Section 57-55-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-55-01. Definition.** For the purposes of this chapter, "mobile home" means a structure, either single or multisectional, which is built on a permanent chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, owned or used as a residence or place of business of the owner or occupant, which is either attached to utility services or is twenty-seven feet [8.23 meters] or more in length<u>, and includes a manufactured home as defined in section 41-09-02 other than a manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied</u>. For purposes of this chapter, "utility services" means services purchased by the occupant from a utility company under the jurisdiction of the public service commission, a rural electric cooperative, or a political subdivision of the state.

**SECTION 15. AMENDMENT.** Subsection 2 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter does not apply to a mobile home that:

   a. Is used only for the temporary living quarters of the owner or other occupant while the person is engaged in recreational or vacation activities, provided the unit:

      (1) Displays a current travel trailer license; or

      (2) Is a park model trailer that is used only for seasonal or recreational living quarters and not as a primary residence, and which is located in a trailer park or campground, and for which the owner has paid a park model trailer fee under section 39-18-03.2. For purposes of this paragraph, "park model" trailer means a recreational vehicle not exceeding forty feet [12.19 meters] in length

which is primarily designed to provide temporary living quarters for recreation, camping, or seasonal use, is built on a single chassis, is mounted on wheels, has a gross trailer area not exceeding four hundred square feet [37.16 square meters] of enclosed living space in the setup mode, and is certified by the manufacturer as complying with American national standards institute standard A119.5.

b. Qualifies as a farm residence as described by subsection 15 of section 57-02-08, provided such mobile home is permanently attached to ~~the ground~~ a foundation.

c. Is permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns the land on which such mobile home is located or is in possession of the real property under the terms of a lease in recordable form which has a term that continues for at least twenty years after the date of execution with the consent of the lessor of the real property.

d. Is owned by a licensed mobile home dealer who holds such mobile home solely for the purpose of resale, and provided that such mobile home is not used as living quarters or as the place for the conducting of any business.

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| _____ | _____ |
| Speaker of the House | President of the Senate |
| _____ | _____ |
| Chief Clerk of the House | Secretary of the Senate |

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1301.

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|---|---|---|---|---|---|---|
| House Vote: | Yeas | 92 | Nays | 0 | Absent | 2 |
| Senate Vote: | Yeas | 46 | Nays | 0 | Absent | 1 |

_____
Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

_____
Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

_____
Secretary of State