
6-1-2002

Manufactured Homes under U.C.C. Revised Article 9: A New Conflict between Certificates of Title and Financing Statements

Mark R. Koontz

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Mark R. Koontz, *Manufactured Homes under U.C.C. Revised Article 9: A New Conflict between Certificates of Title and Financing Statements*, 80 N.C. L. REV. 1829 (2002).

Available at: <http://scholarship.law.unc.edu/nclr/vol80/iss5/6>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Manufactured Homes Under U.C.C. Revised Article 9: A New Conflict Between Certificates of Title and Financing Statements

Creating and perfecting a security interest in manufactured homes has long been an uncertain process.¹ Under the most recent revisions Article 9 of the Uniform Commercial Code (UCC), for the first time, speaks directly to the topic of manufactured homes. The UCC now supplies both a definition of “manufactured-home” and rules on perfection and priority of security interests in “manufactured-home transactions.”² The drafters of Revised Article 9 have entered an arena where the UCC, state certificate of title statutes, and local real estate law all contend to determine how security interests are created and perfected.³ Although Revised Article 9 somewhat clarifies how security interests in manufactured homes are perfected and when they have priority over other secured interests, uncertainty remains.⁴ Specifically, the drafters have added a

1. WASH. REV. CODE ANN. § 65.20.010 (West 1994 & Supp. 2002) (“The legislature recognizes that confusion exists regarding the classification of manufactured homes as personal or real property. This results in a variety of problems, including: (1) Creating confusion as to the creation, perfection, and priority of security interests”); JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE, § 24-5, at 859 (5th ed. 2001); AMERICAN LAW INSTITUTE, REVISIONS CONCERNING FEDERAL-STATE INTERFACE, INTELLECTUAL PROPERTY, AND CERTIFICATES OF TITLE 9-103(2) (Reporter’s Explanatory Note 2) (1996) (“The need to coordinate Article 9 with a variety of non-uniform certificate of title statutes, the need to provide rules to take account of goods that are covered by more than one certificate, and the need to govern the transition from perfection by filing to perfection by notation all create pressure for a detailed and complex set of rules.”), available at <http://www.law.upenn.edu/bll/ulc/ucc9/ctfdstm4.htm> (on file with the North Carolina Law Review); C. Scott Pryor, *How Revised Article 9 Will Turn the Trustee’s Strong-arm Into a Weak Finger: A Potpourri of Cases*, 9 AM. BANKR. INST. L. REV. 229, 261–62 (2001), at LEXIS, Secondary Legal Library, American Bankruptcy Institute Law Review File (providing examples of the diverse methods creditors have used to perfect security interests in manufactured homes).

2. U.C.C. § 9-102(a)(53) (2001) (defining “[m]anufactured home”); *id.* § 9-102(a)(54) (defining “[m]anufactured home transaction”); *id.* § 9-334(e)(4)(A)–(B) (establishing priority of a perfected manufactured-home transaction security interest over real estate encumbrances); *id.* § 9-515(b) (permitting a thirty-year effectiveness of financing statements filed incident to a manufactured-home transaction).

3. The difficulty between whether the UCC or other state statutes control is not unique to the manufactured-housing context. See, e.g., Joann H. Henderson, *Coordination of the Uniform Commercial Code with Other State Laws in the Farm Financing Context*, 14 IDAHO L. REV. 363, 391–93 (1978) (discussing the relationship between the UCC and state farm-financing laws).

4. A recent change on the North Carolina Secretary of State’s web site illustrates the confusion. In early September 2001, the answer to the question of whether manufactured

layer of confusion by failing to explain how UCC section 9-515(b), which provides for the filing of financing statements in connection with manufactured-home transactions, interacts with existing certificate of title statutes. Revised Article 9 sections 9-311(a)(2) and 9-334(e)(4) dictate deference to state certificate of title statutes in establishing a method of perfection, but section 9-515(b) states that perfection of a security interest in a manufactured-home transaction should occur through filing a financing statement. This Recent Development attempts to resolve the conflict among these provisions, showing that section 9-515(b) should be applied in situations when a certificate of title is not required.

In order to understand when section 9-515(b) will operate, it is first necessary to examine the definition of manufactured homes. Many terms are commonly used in association with "manufactured home," including mobile home, trailer, and modular home.⁵ Many courts and commentators have recognized the potential confusion in determining, for certificate of title purposes, whether certain property fits the label of manufactured home.⁶ Notably, certificate of title

homes were fixtures or personal property, was: "Are manufactured home lien filings considered fixtures or personal property such as vehicles? Either one, depending upon whether or not the manufactured home is attached to real property." NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE, *Frequently Asked Questions: UCC Revised Article 9*, at <http://www.secretary.state.nc.us/ucc/uccfaq.htm> (last visited Sept. 1, 2001) (on file with the North Carolina Law Review) [hereinafter *Frequently Asked Questions*]. The answer goes on to state that if the manufactured home is attached to the ground with its wheels removed, filing occurs in the real property index. If the home is not attached to the ground, and retains its wheels, filing occurs in the central filing office. *Id.* By late September 2001, the answer had changed: "Revised Article 9 has generated some question regarding how security interests in manufactured homes should be perfected under North Carolina law. The question relates to the interaction of Revised Article 9 and North Carolina's Certificate of Title law." The answer continues by stating that although the office will accept financing statements on manufactured homes, legal counsel is advisable. *Id.*

5. *Holiday Acres Prop. Owners Ass'n, Inc. v. Wise*, 998 P.2d 1106, 1108 (Colo. App. 2000), *modified*, 2000 Colo. App. LEXIS 1192 (Colo. Ct. App. July 6, 2000) ("There are indeed differences in the construction of trailer homes and mobile, modular, [and] manufactured [homes]. However, various bodies of law use the terms interchangeably."); Katharine N. Rosenberry, *Home Businesses, Llamas and Aluminum Siding: Trends in Covenant Enforcement*, 31 J. MARSHALL L. REV. 443, 467 (1998) (discussing various terms associated with manufactured homes in the context of restrictive covenants).

6. *See, e.g., Albany Disc. Corp. v. Mohawk Nat'l Bank*, 269 N.E.2d 809, 810 (N.Y. 1971) ("The briefest consideration yields the view that precise definition [of a mobile home] is elusive . . ."); *Assocs. Capital Corp. v. Cookeville Prod. Credit Ass'n*, 569 S.W.2d 474, 479 (Tenn. Ct. App. 1978) ("The definition of a 'mobile home' for legal purposes will vary according to the circumstances, that is, not only according to the nature and surroundings of the vehicle or building itself but also according to the purpose and context of the legal definition"); WHITE & SUMMERS, *supra* note 1, § 24-5, at 859; Paul M. Shupack, *On Boundaries and Definitions: A Commentary on Dean Baird*, 80 VA. L. REV.

definitions vary among states.⁷ Revised Article 9 attempted to resolve the differences by narrowly defining manufactured homes, closely following the definition in 42 U.S.C. § 5402(6).⁸ By stating specific minimum dimension requirements of either eight-by-forty feet or footage totaling 320 square feet, the definition rules out small trailers. By requiring a permanent chassis,⁹ the statute also excludes modular or prefabricated homes.¹⁰

The Revised Article 9 definition of manufactured homes is helpful in two respects. First, the definition of a manufactured home is particularly important for those states that have not explicitly defined manufactured homes under certificate of title legislation.¹¹ In

2273, 2280 (1994) (recognizing the ambiguity in certificate of title definitions). In many cases, the terms manufactured home and mobile home are used interchangeably. *See, e.g., Adams v. Greenpoint Credit Corp. (In re Earls)*, 243 B.R. 101, 102 (B.A.P. 10th Cir. 1999), *aff'd*, 232 F.3d 901 (10th Cir. 2000) ("In the record, the home is referred to interchangeably as a 'manufactured home' and a 'mobile home'; we see no need to distinguish between the terms in this appeal."). When a state certificate of title statute defines a mobile home differently than the manufactured home definition of U.C.C. § 9-102(53), further difficulties arise. *See infra* notes 16-19 and accompanying text.

7. *See, e.g., infra* note 11 (providing examples of state certificate of title definitions). Some definitions leave out dimensional requirements. *See, e.g., infra* note 11. Many contain requirements relating to internal amenities. *E.g.,* CONN. GEN. STAT. ANN. § 21-64(1) (West 1994 & Supp. 2002) ("Containing sleeping accommodations, a flush toilet, tub or shower bath, kitchen facilities and plumbing and electrical connections for attachment to outside systems . . .").

8. U.C.C. § 9-102(a)(53) (2001). The definition is as follows:

"Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

Id.

9. A chassis is "[t]he rectangular steel frame, supported on springs and attached to the axles, that holds the body and motor of an automotive vehicle." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 324 (3d ed. 1992). The wheels of a manufactured home may be removed without disturbing the chassis. *Ass'n for Regulatory Reform v. Pierce*, 670 F. Supp. 1041, 1043 (D.D.C. 1987), *vacated on other grounds*, 849 F.2d 649 (D.C. Cir. 1988).

10. 1 ELDON H. REILEY, SECURITY INTERESTS IN PERSONAL PROPERTY § 24:2 (3d ed. 1999) (quoting U.C.C. § 9-102(a)(53)).

11. *E.g.,* ALASKA STAT. § 28.10.661 (Michie 2000); GA. CODE ANN. § 40-3-2 (2001); HAW. REV. STAT. § 286-2 (1985 & Supp. 1992); KY. REV. STAT. ANN. § 186.010, § 186A.345 (Michie 1997 & Supp. 2001); MINN. STAT. § 168A.01 (2001); NEB. REV. STAT.

such states, judicial decisions often determine which manufactured homes are subject to certificate of title statutes, rather than legislative rule, thereby creating uncertainty over what property is classified as a manufactured home.¹² In the interest of uniformity, states lacking a definition may adopt the Revised Article 9 definition in their certificate of title acts. Second, the definition limits the extended financing statement's¹³ effectiveness of section 9-515(b) to cover only large sized manufactured homes and only for thirty years.¹⁴ These larger manufactured homes will inevitably cost more, therefore increasing the need for long-term financing.¹⁵

Despite the general usefulness of the "manufactured home" and "manufactured-home transaction" definitions, the purpose for their inclusion in the UCC elicits some questions. For instance, state law may require a certificate of title for a manufactured home, but that same home may not fit the requirements laid out in Revised Article 9.¹⁶ The likely outcome is that the security interests in these

§ 60-102 (1998); N.C. GEN. STAT. §§ 20-38 to -71.1 (1999); N.J. STAT. ANN. § 39:1-1 (West 1990 & Supp. 2001); OR. REV. STAT. § 803 (1997).

12. In North Carolina, certificates of title were required for mobile homes under *King Homes, Inc. v. Bryson*, 273 N.C. 84, 89 (1968). In those states defining manufactured homes, the definition often lacks dimensional requirements or reference to the Department of Housing and Urban Development's (HUD) standards. For example:

"Manufactured home" means a preconstructed building unit or combination or preconstructed building units without motive power designed and commonly used for residential occupancy by persons in either temporary or permanent locations, which unit or units are manufactured in a factory or at a location other than the residential site of the completed home.

COLO. REV. STAT. § 38-29-102 (2001); LA. REV. STAT. ANN. § 9:1149.2(2), (3) (West 2000) (" 'Manufactured home' means a mobile home 'Mobile home' means a factory assembled structure or structures transportable in one or more sections, with or without a permanent foundation, and includes the plumbing, heating, air conditioning, and electrical systems."); 75 PA. CONS. STAT. ANN. § 102 (West 1996 & Supp. 2001) (" 'Mobile Home.' A trailer designed and used exclusively for living quarters or commercial purposes which exceeds the maximum size limitations prescribed by this title for operation on a highway and is only incidentally operated on a highway."); WIS. STAT. ANN. § 340.01 (29) (West 1999 & Supp. 2000) (" 'Mobile home' means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction.").

13. A financing statement is filed, usually with the secretary of state, to serve as a warning to potential creditors that the property in question is encumbered. See WHITE & SUMMERS, *supra* note 1, at § 21-1, at 712.

14. U.C.C. § 9-515(b) (2001) ("[A]n initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing.").

15. See *infra* notes 59-60 and accompanying text.

16. A manufactured or mobile home could fail to meet the UCC definition of "manufactured home" if the certificate of title statute did not state minimum dimension

manufactured homes, covered by the state certificate of title statute but not included within the Revised Article 9 definition, will not benefit from the priority rules established by section 9-334. Further, it is possible that instead, they will be subjected to any number of outcomes under controlling state law.¹⁷ The priority rule in section 9-334 will likely have no effect when a manufactured home may be eligible for perfection and priority using the requirement of the Revised Article 9 definition, but a certificate of title may not be required to establish ownership.¹⁸ For the vast majority of cases, though, the UCC definition of "manufactured home" in section 9-102(53) and the "manufactured-home transaction" priority rule in section 9-334 allows a security interest perfected pursuant to a certificate of title statute to have priority over a real estate encumbrance.¹⁹

In light of all the unnamed categories of transactions that Revised Article 9 governs, the presence of the "manufactured-home transaction" is conspicuous. By defining the manufactured-home transaction, Revised Article 9 settles a long-standing controversy splitting the courts: whether a security interest perfected on a certificate of title has priority over a real property encumbrance.²⁰

requirements. Several states have not defined manufactured homes by reference to dimensions. *E.g.*, ALA. CODE § 32-8-2(9) (1999); COLO. REV. STAT. § 38-29-102 (2001); LA. REV. STAT. ANN. § 9:1149.2(2), (3) (West 2000); MICH. COMP. LAWS ANN. § 125.2302(g) (West 1997); WIS. STAT. ANN. § 340.01(29) (West 1999 & Supp. 2001).

17. *See infra* notes 36–38 and accompanying text (exploring the significance of section 9-334). When state law gives priority to a recorded mortgage over notation on the certificate of title, failure to meet the "manufactured home" definitional requirements in the UCC would defeat the priority rule established for manufactured-home transactions in section 9-334(2)(4)(b). *See infra* notes 36–38 and accompanying text.

18. Section 9-334(e)(4)(b) requires notation of a security interest on the certificate of title before perfection. *See infra* notes 53–64 and accompanying text (suggesting that section 9-515(b) may be tailored for such a situation).

19. WHITE & SUMMERS, *supra* note 1, § 24-5, at 858. In a typical situation, financing is required for the purchase of a manufactured home. The creditors who level purchase money secure their interest by notation on the certificate of title. At a later date, the manufactured home owner may mortgage the real property upon which the manufactured home sits. Section 9-334(e)(4)(b) gives priority to the first creditor.

20. *Compare* *Altegra Credit Co. v. Banks* (*In re Banks*), 259 B.R. 848, 851 (Bankr. E.D. Va. 2001) (holding that although a certificate of title was no longer required when the manufactured home was affixed to the ground and that a security interest perfected by notation on the certificate of title had priority over the real property encumbrance), *with* *Assocs. Capital Corp. v. Cookeville Prod. Credit Ass'n*, 569 S.W.2d 474, 478 (Tenn. Ct. App. 1978) (holding that the mortgagee's interest in real estate had priority over the secured party noted on the certificate of title). In many respects, however, the disagreement was less about disputes under Former Article 9, and more about the tension between state certificate of title statutes and state real property law.

Certificate of title statutes originally sought to deter sales of stolen motor vehicles.²¹ Gradually, they began to serve other functions, including providing a means to perfect a security interest in the vehicle.²² Currently, every state's certificate of title statute provides that the *only* way to perfect a security interest in the goods covered by a certificate is by notation on the certificate of title.²³ The circumstances in which certificate of title statutes apply to manufactured homes are unclear, however. Because perfection under the UCC predominantly occurs through the filing of financing statements, and perfection under certificate of title statutes is accomplished exclusively through notation on the certificate of title, any uncertainty concerning the scope of a certificate of title statute creates an inherent tension between the UCC and the existing state law. Much difficulty is avoided when a certificate of title statute

21. BARNET HODES & G. GALE ROBERSON, *THE LAW OF MOBILE HOMES* 58 (3d ed. 1974); Note, *Security Interests in Motor Vehicles Under the UCC: A New Chassis for Certificate of Title Legislation*, 70 *YALE L.J.* 995, 995 (1961).

22. See, e.g., N.C. GEN. STAT. § 20-58 (1999) (indicating how a security interest may be perfected on a certificate of title by notation of the secured party's name and address on the certificate of title).

23. *Id.*; see ALA. CODE §§ 32-8-61 to -67 (1999); ALASKA STAT. § 28.10.231 (Michie 2000); ARIZ. REV. STAT. §§ 28-2132, -2135 (1998 & Supp. 2001); ARK. CODE ANN. § 27-14-802 (Michie 1994 & Supp. 2001); CAL. VEH. CODE §§ 6301, 6303 (West 2000); COLO. REV. STAT. § 42-6-120 (2001); CONN. GEN. STAT. ANN. § 14-185 (West 1994 & Supp. 2002); DEL. CODE ANN. tit. 21, § 2332 (1995); D.C. CODE ANN. § 50-1202 (2001); FLA. STAT. ANN. § 319.27(1) (West 2001); GA. CODE ANN. § 40-3-50 (2001); HAW. REV. STAT. § 286-41(c) (1985 & Supp. 1992); IDAHO CODE § 49-510 (Michie 1998); 625 ILL. COMP. STAT. ANN. 5/3-202 (West 1993 & Supp. 2002); IND. CODE ANN. § 9-17-2-2 (Michie 1997); IOWA CODE ANN. § 321.50 (West 1997 & Supp. 2002); KAN. STAT. ANN. § 8-135(c)(5) (1994); KY. REV. STAT. ANN. § 186A.190 (Michie 1997 & Supp. 2001); LA. REV. STAT. ANN. § 32:710 (West 2000); ME. REV. STAT. ANN. tit. 29-A § 702 (West 1996 & Supp. 2001); MD. CODE ANN. TRANSP. §§ 13-202 to -207 (1999 & Supp. 2000); MASS. ANN. LAWS ch. 90D, § 21 (Law. Co-op. 1994 & Supp. 2002); MICH. COMP. LAWS § 257.238 (2001); MINN. STAT. § 168A.17 (2001); MISS. CODE ANN. § 63-21-43 (1999 & Supp. 2001); MO. ANN. STAT. § 301.600 (West 2000); MONT. CODE ANN. § 61-3-103 (2001); NEB. REV. STAT. § 60-110 (1998); NEV. REV. STAT. ANN. §§ 482.424 to 482.432 (Michie 1998 & Supp. 2001); N.H. REV. STAT. ANN. § 261:24 (1993); N.J. STAT. ANN. § 39:10-9 (West 1990 & Supp. 2001); N.M. STAT. ANN. §§ 66-3-201 to -202 (Michie 2001); N.Y. VEH. & TRAF. LAW § 2118 (McKinney 1996 & Supp. 2001); N.D. CENT. CODE § 35-01-05.1 (1987 & Supp. 2001); OHIO REV. CODE ANN. § 4505.13 (Anderson 1999 & Supp. 2001); OKLA. STAT. ANN. tit. 47, § 1110 (West 2000 & Supp. 2002); OR. REV. STAT. § 803.097 (1997); 75 PA. CONS. STAT. § 1106 (West 1996 & Supp. 2001); R.I. GEN. LAWS § 31-3.1-19 (2000); S.C. CODE ANN. § 56-19-620 (Law. Co-op. 1991); S.D. CODIFIED LAWS § 32-3-41 (Michie 1998 & Supp. 2001); TENN. CODE ANN. §§ 55-3-123 to -137 (1998); TEX. TRANSP. CODE ANN. § 501.111 (Vernon 1999); UTAH CODE ANN. §§ 41-1a-601 to -606 (1998 & Supp. 2001); VT. STAT. ANN. tit. 23, § 2042 (1999); VA. CODE ANN. § 46.2-638 (Michie 1998 & Supp. 2001); WASH. REV. CODE ANN. § 46.12.095 (West 1994 & Supp. 2002); W. VA. CODE ANN. § 17A-4A-1 (Michie 2000); WIS. STAT. § 342.19 (West 1999 & Supp. 2000); WYO. STAT. ANN. § 31-2-103 (Michie 2001).

defines manufactured homes in a manner similar to Revised Article 9.²⁴ Such states can benefit the most from the innovation of section 9-334: resolution of the disagreement over the priority of interests perfected through notation on the certificates of title when the manufactured home is considered a fixture.

The creditor who has a perfected security interest noted on the certificate of title is protected against a real estate creditor or owner with a real property interest in the land.²⁵ Section 9-334(e)(4) removes the need for determining when a manufactured home has become a fixture—whether the manufactured home is considered a “good” or a “fixture,” the only method for perfecting a security interest is through a certificate of title statute as provided in section 9-311(a)(2).²⁶ While Revised Article 9 resolves the battle between certificates of title and fixture filings, it creates a potential conflict between certificates of title and financing statements.²⁷ Revised Article 9 does not indicate when a certificate of title is needed instead of a financing statement.

Prior to the enactment of Revised Article 9, little attention was paid to the validity of a financing statement to perfect a security interest in a manufactured home. Even though the vast majority of security interests generally were perfected through filing a financing statement,²⁸ the settled practice for manufactured homes was a notation on the certificate of title.²⁹ Some situations arose when a

24. E.g., IDAHO CODE § 39-4105(13) (Michie 1998) (describing “manufactured home” according to the HUD definition in 42 U.S.C. § 5402(6) (2000)); KAN. STAT. ANN. § 58-4202(a) (1994) (same); MISS. CODE ANN. § 63-21-5(j) (1999 & Supp. 2001) (same); MO. ANN. STAT. § 700.010(5) (West 2000) (same); NEV. REV. STAT. ANN. § 489.113(1) (Michie 1998 & Supp. 2001) (same); N.Y. VEH. & TRAF. LAW § 122-c (McKinney 1996) (same).

25. See U.C.C. § 9-334(e)(4) (2001).

26. The uniform version of section 9-311(a)(2) states: “Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to: (2) . . . any certificate-of-title statutes covering . . . mobile homes.” U.C.C. § 9-311(a)(2) (2001).

27. See *infra* notes 30–36 and accompanying text (explaining the tension between certificates of title and financing statements). Revised Article 9 does not help resolve disputes between fixture filings and real estate mortgages.

28. WHITE & SUMMERS, *supra* note 1, § 22-10, at 779.

29. E.g., *Dodson v. One Valley Bank of Oak Hill, Inc.* (*In re Johnson*), 1993 U.S. App. LEXIS 23408, at *4 (4th Cir. 1993); *Altegra Credit Co. v. Banks* (*In re Banks*), 259 B.R. 848, 851 (Bankr. E.D. Va. 2001); *Smith v. Commercial Credit Plan, Inc.* (*In re Avery*), 7 B.R. 28, 29–30 (Bankr. D.S.C. 1980); *Hughes v. Young* 115 N.C. App. 325, 329–30, 444 S.E.2d 248, 251 (1994); *Peoples Sav. & Loan Ass’n v. Citicorp Acceptance Co.*, 103 N.C. App. 762, 766–67, 407 S.E.2d 251, 253–54 (1991); *Millersport Bank Co. v. Blauser*, 1984 Ohio App. LEXIS 9558, at *7 (Ohio Ct. App. 1984); *Gen. Elec. Credit Corp. v. Nordmark*, 684 P.2d 1, 3 (Or. Ct. App. 1984). *But see Shelter Am. Corp. v. Ray*, 800 P.2d

certificate of title was not required for a manufactured home,³⁰ but when one was required, notation on the certificate usually provided the exclusive method for perfection.³¹ Revised Article 9 acknowledges the exclusivity of certificate of title perfection in section 9-311, which states "the filing of a financing statement is not necessary *or effective* to perfect a security interest in property subject to: . . . certificate of title statute[s]."³² Section 9-515(b), however, allows for perfection of manufactured-home transactions through financing statements. The apparent conflict between sections 9-311(a)(2) and 9-515(b) is reconciled only through acknowledging situations when a certificate of title is not required, thus allowing financing statements to perfect security interests in manufactured homes in those cases.³³

743, 746 (Okla. Ct. App. 1990) (holding that a mortgagee had a superior interest to the security interest perfected by notation on the certificate of title); *Rose v. Russell*, 1990 Tenn. App. LEXIS 294, at *14 (Tenn. Ct. App. 1990) (holding that the proper method of perfecting a security interest in a mobile home affixed to the ground was submitting a fixture filing, not notation on the certificate of title); *Citizens Bank of Mich. City v. Hansom*, 497 N.E.2d 581, 585 (Ind. Ct. App. 1986) (holding that a purchaser of real estate was not subject to the security interest noted on the manufactured home's certificate of title) (superseded by IND. CODE ANN. § 9-17-6-7 (Michie 1991)); *Assocs. Capital Corp. v. Cookeville Prod. Credit Assoc.*, 569 S.W.2d 474, 478 (Tenn. Ct. App. 1978) (holding a mortgagee's interest to be superior to a security interest noted on certificate of title).

Only four states do not require notation of security interests on certificates of title: Maine, Massachusetts, New Hampshire, and Vermont. *HODES & ROBERSON*, *supra* note 21, at 58 & n.11. Since initial publication of *The Law of Mobile Homes*, Alabama, Mississippi, and New York have subjected manufactured homes to certificate of title statutes. *See* ALA. CODE § 32-8-31(9) (Michie 1999); MISS. CODE ANN. § 63-21-9 (1999 & Supp. 2001); N.Y. VEH. & TRAF. LAW § 2102(19) (McKinney 1996).

30. When a state does not have certificate of title legislation applicable to manufactured homes, perfection would occur through a financing statement. *See, e.g.*, *Mullen v. Green Tree Fin. Corp.*, 730 So. 2d 9, 14-15 (Miss. 1998) (holding that a security interest perfects absent notation on certificate of title); *Albany Disc. Corp. v. Mohawk Nat'l Bank*, 269 N.E.2d 809, 811-12 (N.Y. 1971) (holding that a financing statement is required to perfect a security interest); *First Shelby Nat'l Bank v. Mitchell*, 406 So. 2d 959, 961 (Ala. Civ. App. 1981) (holding that a financing statement perfects a security interest).

31. *See supra* note 25.

32. U.C.C. § 9-311(a)(2) (2001) (emphasis added).

33. The inclusion of section 9-515(b) may be an attempt by the drafters to move away from perfection of goods under certificate of title statutes. *See* AMERICAN LAW INSTITUTE, REVISIONS CONCERNING FEDERAL-STATE INTERFACE, INTELLECTUAL PROPERTY, AND CERTIFICATES OF TITLE 9-103 (2) (Reporters' Explanatory Note 2) (1996), available at <http://www.law.upenn.edu/bll/ulc/ucc9/ctfdstm4.htm> (last visited Apr. 18, 2002) (on file with the North Carolina Law Review). The ALI states:

We strongly suspect that Article 9 could be made simpler and the Drafting Committee's work significantly reduced if perfection of security interests were divorced from certificate of title statutes. We encourage the Drafting Committee to consider having the normal filing rules apply to perfection of security interests

The “manufactured-home transaction,” defined in section 9-102(a)(54), provides the scope for when section 9-334(e)(4) will give priority to a secured interest perfected on a certificate of title as against an encumbrance on real property. Not every transaction involving a manufactured home will fall under section 9-334(e)(4): the provision covers only those secured transactions creating a purchase money security interest in the manufactured home, or those when the manufactured home serves as the primary collateral.³⁴ Section 9-334(e)(4) requires the security interest in the manufactured-home transaction to be “perfected pursuant to a statute described in section 9-311(a)(2).”³⁵ The UCC is largely coherent up to this point; difficulty arises with the introduction of section 9-515(b).

In rendering financing statements ineffective for manufactured homes covered by certificate of title statutes, section 9-311(a)(2) conflicts directly with section 9-515(b), which seems to give permission to perfect security interests through filing, and extends the filing period to thirty years.³⁶ The purpose of section 9-515(b) is unclear at best because almost all states require perfection of

in goods subject to a certificate of title statute, particularly goods other than automobiles.

Id.

34. U.C.C. § 9-102(a)(54).

35. *Id.* § 9-334(e)(4). Section 9-311(a) states: “[T]he filing of a financing statement is not necessary or effective to perfect a security interest in property subject to: . . . (2) [list any certificate-of-title statute . . . which provides for a security interest to be indicated on the certificate as a condition or result of perfection . . .].” *Id.* § 9-311(a)(2). Sections 9-334(e)(4) and 9-311(a)(2) work together to void the priority rule of 9-334(e)(4) for security interests in manufactured homes not covered by certificate of title statutes or other state-created filing systems. *Id.* § 9-311(a)(2); *id.* § 9-334(2)(4).

36. “[A]n initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing . . .” *Id.* § 9-515(b). Financing statements generally remain effective for five years. *Id.* § 9-515(a). Because manufactured home financing has become increasingly difficult to attain, most available financing is long-term, thereby justifying an exception to the standard rule. See David Holzel, *Open Sesame: The Manufactured Housing Industry Is Seeking Greater Access to Financing Sources in 2001*, MODERN HOMES ON-LINE, May-June 2001, at http://216.167.103.115/modern_homes/FEAT_open_sesame.html (discussing difficulties in securing manufactured-home financing) (on file with the North Carolina Law Review). In 2000, the average price of a single-wide manufactured home was \$30,400 while double-wides averaged \$53,900. U.S. CENSUS BUREAU, AVERAGE SALES PRICE OF NEW MANUFACTURED HOMES BY REGION AND SIZE OF HOME, available at <http://www.census.gov/const/www/mhsindex.html> (last visited Apr. 18, 2000) (on file with the North Carolina Law Review). In fact, West Virginia has changed the thirty-year rule in section 9-515(b) to allow for forty-year effectiveness. W. VA. CODE ANN. § 46-9-515(b) (Michie 2001). Cases such as *In re McRae* illustrate the impetus for the exception to the five-year rule. See *McRae v. Sec. Pac. Hous. Serv.* (*In re McRae*) 628 So. 2d 429, 432 (Ala. 1993) (holding that a mobile home financing statement has a duration of five years unless it indicates that an extended period applies).

manufactured homes by notation of the security interest on the certificate of title.³⁷ At worst, section 9-515(b) could become a trap for practitioners unfamiliar with Revised Article 9.³⁸ Filing a financing statement is not qualified according to section 9-515(b), nor is section 9-311(a)(2) cross-referenced,³⁹ so practitioners might assume that Revised Article 9 permits manufactured home perfection through financing statements.

Significantly, Louisiana, Washington, North Dakota, and Georgia, have not adopted section 9-515(b).⁴⁰ Of these four states, Louisiana and Washington have indicated the purpose for the omission in their official comments.⁴¹ Louisiana rejected section 9-515(b) as irreconcilable with section 9-311(a)(2).⁴² After stating that the UCC manufactured-home definition in section 9-102(53) was rejected in favor of Louisiana's, the Louisiana official comment continues: "[I]n revised Chapter 9, security interests in manufactured homes are not perfected by the filing of ordinary financing statements alone, but instead the security interest is noted on the certificate of title. Accordingly, the thirty-year rule in revised U.C.C. Article 9 [section 9-515(b)] is suppressed in Louisiana as unnecessary."⁴³

Washington made several substantive changes to the uniform version of the Code in order to avoid conflicts with state law. First, the drafters changed the definition of "manufactured home" in section 9-102(53) to accord with an existing state definition.⁴⁴ Additionally, Washington completely eliminated the "manufactured-home transaction" of section 9-102(54).⁴⁵ Washington recognized that the purpose of the "manufactured-home transaction" was to allow for

37. See *supra* note 29 (citing the states that do not require notation of the security interest on the certificate of title).

38. The standard UCC forms provided to the states heighten this possibility. The "UCC Financing Statement Addendum" allows a secured party to check a box on the lower right-hand corner of the form if the financing statement is "filed in connection with a Manufactured-Home Transaction—effective 30 years." U.C.C. § 9-521(a). Although individual jurisdictions are allowed, even encouraged at times, to make changes to the uniform text, section 9-521 requires that a state filing office accept the uniform forms provided in section 9-521. *Id.*

39. Financing statements are not effective are not effective to perfect security interests in goods subject to certificates of title. U.C.C. § 9-311 (a)(2) (2001).

40. GA. CODE ANN. § 11-9-515(b) (2001); LA. REV. STAT. ANN. § 10:9-102 (West 2000); N.D. CENT. CODE § 41-09-86(2) (1987 & Supp. 2001); WASH. REV. CODE § 62A.9A-515(b) (1994 & Supp. 2002).

41. LA. REV. STAT. ANN. § 10:9-102 cmt. 53(b); WASH. REV. CODE § 62A.9A-cmt. 3.

42. LA. REV. STAT. ANN. § 10:9-102 cmt. 53(b).

43. *Id.*

44. Compare U.C.C. § 9-102(53), with WASH. REV. CODE § 62A.9A-102(53).

45. Compare U.C.C. § 9-102(54), with WASH. REV. CODE § 62A.9A-102(54).

the special priority rule in section 9-334(e)(4).⁴⁶ In Washington's view, its statutes had already anticipated the innovations regarding manufactured homes in Revised Article 9.⁴⁷ Because the legislature had already addressed the problem of priority in Washington Revised Code section 65.20, any reference to manufactured homes in their Revised Article 9 was unnecessary.⁴⁸

Neither Georgia nor North Dakota have issued official comments, so the rationales for omitting section 9-515(b) from their versions of Revised Article 9 are unclear. Georgia has deleted any reference to manufactured homes.⁴⁹ North Dakota has included all references to manufactured homes except in section 9-515(b).⁵⁰ This absence arguably suggests the possibility that the North Dakota legislature sought to avoid inclusion of the "public-finance transaction" rather than the "manufactured-home transaction."⁵¹

Besides Louisiana, Washington, Georgia, and North Dakota, all other jurisdictions have adopted section 9-515(b), creating a need for each jurisdiction to interpret the relationship between financing statements and certificates of title. Although there is a presumption that certificate of title statutes apply in almost every state to manufactured-home transactions, elementary principals of statutory interpretation dictate a construction of section 9-515(b) so that the statute may take effect rather than fail.⁵²

46. Security interests in manufactured homes perfected pursuant to a certificate of title statute now have priority over certain real property encumbrances. U.C.C. § 9-334(e)(4). The Washington Official Comments indicate the purpose for omitting sections 9-102(54) and 9-334(e)(4): "[C]hapter 65.20 RCW, enacted in 1989, provides a means for eliminating the title certificate and converting or merging a manufactured home into the real property on which it is installed. Once converted, the manufactured home is treated no differently than any other real property for title or security purposes." *Id.* § 62A.9A-102 cmt. 3.

47. § 62A.9A-102 cmt. 3.

48. *Id.* § 62A.9A-334 cmt. 1.

49. See GA. CODE ANN. §§ 11-9-102(a)(53), -102(a)(54), -334(e)(4)(A-B), -515(b) (2001) (omitting any reference to "manufactured homes").

50. N.D. CENT. CODE §§ 41-09-02(1)(ccc), (ddd), 41-09-54(5)(d), 41-09-86(2) (1987 & Supp. 2001).

51. Section 9-515(b) allows for thirty-year financing statement effectiveness for both the manufactured-home transaction and the public-finance transaction. U.C.C. § 9-515(b). The North Dakota Century Code leaves out reference to manufactured homes only in section 9-515(b), while it completely omits reference to public-finance transactions. N.D. CENT. CODE § 41-09-86 (2001). The UCC defines "public-finance transaction" in section 9-102(a)(67).

52. *Bird v. United States*, 187 U.S. 118, 124 (1902) ("There is a presumption against a construction which would render a statute ineffective . . ."); *Market Co. v. Hoffman*, 101 U.S. 112, 115-16 (1879) (using the statutory maxim to reconcile language that allowed sellers to offer a property interest for a limited term of "one or more years" and language

Three distinct interpretations of section 9-515(b) warrant examination: (1) section 9-515(b) is intended for use when manufactured homes are purchased for inventory; (2) section 9-515(b) is intended for manufactured homes in existence before the certificate of title statutes were enacted; and (3) section 9-515(b) applies when the motor vehicle act of a given state does not require a certificate of title for the manufactured home. Evaluation of each interpretation demonstrates that only the third interpretation is viable, and that one of three potential amendments is required to ensure that section 9-515(b) causes no conflict with the state certificate of title statute: (1) indicating in the state certificate of title statute which manufactured homes require certificates of title;⁵³ (2) indicating that the section only applies to manufactured homes not requiring a certificate of title; or (3) deleting section 9-515(b).

Given the maxim of statutory interpretation that each statutory provision be interpreted to give it effect, it is possible that section 9-515(b) was intended to apply to manufactured homes that are held as inventory. Retail mobile home dealers purchase large quantities of manufactured homes, and a certificate of title is not required to transfer ownership.⁵⁴ Therefore, a financing statement is the ideal method to perfect a purchase money security interest in the manufactured homes.⁵⁵ Like all dealers of goods covered by certificate of title statutes, manufactured-home dealers can file a financing statement to perfect an interest in inventory even if the certificate of title statute would otherwise apply.⁵⁶ It could follow that

that seemingly gave a purchaser "the right to retain the possession thereof during his term so long as he chooses"; *United States v. Blasius*, 397 F.2d 203, 207 n.9 (2d Cir. 1968) (citing the maxim of statutory interpretation "against construing a statute as containing superfluous or meaningless words or giving it a construction that would render it ineffective"); Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, WIS. L. REV. 1179, 1184 (1990) (citing the maxim that "[t]here is a strong presumption against interpreting a statute so as to render it ineffective").

53. Some states have not included a definition of manufactured homes for certificate of title purposes, despite the fact that, in those states, manufactured homes are subject to such statutes. ALASKA STAT. § 28.10.661 (Michie 2000); GA. CODE ANN. § 40-3-2 (2001); HAW. REV. STAT. § 286-2 (1985 & Supp. 1992); KY. REV. STAT. ANN. § 186.010, § 186A.345 (Michie 1997 & Supp. 2001); MINN. STAT. § 168A.01 (2001); NEB. REV. STAT. § 60-102 (1998); N.J. STAT. ANN. § 39:1-1 (West 1990 & Supp. 2001); N.C. GEN. STAT. §§ 20-38 to -71.1 (1999). Other states could more specifically define "manufactured home" to follow the definition in Revised Article 9.

54. G. Ray Warner, *Automobiles and Titled Collateral Under Revised Article 9*, AM. BANKR. INST. J., 18, 18 (2000), at LEXIS, Secondary Legal Library, American Bankruptcy Institute Journal File.

55. *Id.*

56. U.C.C. § 9-311(d) ("During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by

because of the nature of the manufactured-home business, these dealers may need a longer period of time than the five-year limit otherwise applicable to perfect by filing. Section 9-515(b), however, applies only to the "manufactured-home transaction," a definition supplied by section 9-102(a)(53) and specifically excluding manufactured homes held as inventory.⁵⁷ Therefore, section 9-515(b) does not govern perfection of a security interest in manufactured homes held as inventory.

Second, section 9-515(b) could also be intended to apply to manufactured homes existing before the certificate of title statutes were enacted. Assuming that a manufactured home has not been moved from the time the certificate of title statute was passed, there may be no invocation of the certificate of title statute.⁵⁸ Thus, filing a financing statement under section 9-515(b) would protect the secured parties' security interests for an additional thirty years.⁵⁹ Most certificate of title statutes have been in effect for a considerable time,⁶⁰ far beyond the time-line of normal financing arrangements. Therefore, it is highly unlikely that creditors would still be filing financing statements on a manufactured home purchased forty years ago.

Finally, a third permissible construction for section 9-515(b) would apply the provision when the motor vehicle act of a given state does not expressly require a certificate of title for the manufactured home.⁶¹ Initially, this interpretation is open to a similar criticism, considering that certificate of title statutes in virtually every state have been applied to manufactured housing; it seems a rare occasion when the certificate of title statute would not apply. In fact, though, there are currently four states that do not expressly require a certificate of title for manufactured homes.⁶² Furthermore, in states subjecting manufactured homes to certificates of title, certain exceptions may permit perfection and priority to be determined by

that person as a lessor and that person is in the business of selling goods of that kind, this section (prohibiting the filing of financing statements) does not apply to a security interest in that collateral created by that person.").

57. *Id.* § 9-102(a)(54).

58. In this instance, manufactured homes may never have received a certificate of title.

59. § 9-515(b).

60. As of 1961, forty states had enacted certificate of title legislation. Note, *supra* note 21, at 996 n.10.

61. ELDON H. REILEY, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 15:20 (3d ed. 2001).

62. The four states are Maine, Massachusetts, New Hampshire, and Vermont. See HODES & ROBERSON, *supra* note 21, at 58 & n.11.

means other than notation on the certificate of title.⁶³ For example, a bankruptcy court in North Carolina explicitly held that a security interest was not perfected by notation on a manufactured-home certificate of title in *In re Wester*.⁶⁴ Financing statements may also prove effective when state certificate of title statutes allow the title to be purged through application to the department of motor vehicles.⁶⁵

63. These states have statutes that either explicitly remove manufactured homes from the certificate of title requirement or fail to mention manufactured homes. See VT. STAT. ANN. tit. 23, § 2012(9) (1999) ("No certificate of title need be obtained for [a]ny other type of vehicle designed primarily for off-highway use and deemed exempt by the commissioner."); N.H. REV. STAT. ANN. § 261:1 (1993) (omitting mention of manufactured homes). In Oklahoma, the possibility that a large percentage of manufactured homes may not require certificates of title has been suggested in dictum. See *In re Gray*, 40 B.R. 429, 434 n.4 (Bankr. W.D. Okla. 1984) ("Questions may be raised as to whether mobile homes constructed and intended at inception to be attached to realty, should not be financed in the same manner as conventional homes."). This Recent Development contends it is unlikely, however, that financing statements would ever replace certificates of title because mortgages would be more appropriate.

64. 229 B.R. 348, 353 (Bankr. E.D.N.C. 1998). Although previous decisions had held that a certificate of title is no longer effective once the manufactured home is affixed to the ground, see *supra* note 29 (listing cases), *In re Wester* carved out a special exception to the certificate of title requirement on wholly different grounds. *In re Wester*, 229 B.R. at 353 (holding that a certificate of title was not required for a manufactured home purchased from a manufactured-home dealer and already affixed to the ground). It is conceivable that a financing statement would be a permissible method of perfection on the facts of *In re Wester*. *Wester*, 229 B.R. at 353. The case involved the purchase, by *Wester*, of a manufactured home from a manufactured home dealer that had already affixed the home to real estate. *Id.* at 349. The court found that no certificate of title was required when the dealer placed the manufactured home on real estate because of the manufacturer-dealer exception. *Id.* at 351-52; see also N.C. GEN. STAT. § 25-51(1) (2000) (recognizing an exception to the certificate of title requirement for manufacturers, dealers, and non-residents). The determining question was whether, upon purchase of the manufactured home by *Wester* (a non-dealer), a certificate of title was required. The court reasoned that even though the manufactured home fell within the scope of the certificate-of-title statute, because *Wester* did not intend to operate the manufactured home on the highway, a certificate of title was not required. 229 B.R. at 353. The statute indicating which motor vehicles required certificates of title read: "[E]very owner of a vehicle intended to be operated upon any highway of this State . . . shall, before the same is so operated, apply to the Division for . . . a certificate of title." N.C. GEN. STAT. § 20-50(a) (1998) (emphasis added).

65. The following twenty-three states have enacted statutes that either allow for the purging of title or permit purchasers of new manufactured homes to avoid titling altogether when they intend to attach the manufactured home permanently to the ground: ARIZ. REV. STAT. § 28-2063(A)(3) (1998 & Supp. 2001); CAL. HEALTH & SAFETY CODE § 18551(a)(3)-(6) (West 1992 & Supp. 2002); COLO. REV. STAT. § 38-29-118 (2001); GA. CODE ANN. § 40-3-31.1 (2001); IDAHO CODE § 63-305(1)-(4) (Michie 1998); IOWA CODE ANN. § 435.26(1)-(2) (West 1997 & Supp. 2002); KY. REV. STAT. ANN. § 186A.297 (Michie 1997 & Supp. 2001); LA. REV. STAT. ANN. § 9:1149.6 (West 2000); MINN. STAT. § 168A.141 (2001); MISS. CODE ANN. § 27-53-15 (1999 & Supp. 2001); MO. STAT. ANN. § 700.111 (West 2000); MONT. CODE ANN. § 15-1-116 (2001); NEV. REV. STAT. ANN. § 361.244(1)-(2) (Michie 1998 & Supp. 2001); N.J. STAT. ANN. § 39:10-11-1 (West 1990 &

These statutes recognize that a manufactured home may become real estate, thereby rendering a certificate of title irrelevant. Accordingly, Revised Article 9 recognizes the extinction of certificates of title in section 9-303(b): "Goods cease to be covered by a certificate of title at the . . . time the certificate of title ceases to be effective under the law of the issuing jurisdiction."⁶⁶

Apart from these states and other limited exceptions as illustrated in the *In re Wester* case, section 9-515(b) will have no use. Given the provision's limited effect and the confusion it will likely create, the wisdom of its presence in Revised Article 9 is questionable. The drafters easily could have included a direction to the states that section 9-515(b) only allows a financing statement to be effective when a state statute does not require a manufactured-home certificate of title. Moreover, all or portions of section 9-515(b) could have been enclosed in brackets to indicate deference to controlling state law.⁶⁷ At this time, after the adoption of section 9-515(b) in virtually every state, legislators are faced with three potential amendments: (1) indicating in the state certificate of title statute which manufactured homes require certificates of title; (2) including in section 9-515(b) an indication that the section only applies to manufactured homes not requiring a certificate of title; or (3) deleting section 9-515(b).

First, by indicating in the certificate of title statute which manufactured homes require certificates of title, some security interests may benefit from the extended financing statement effectiveness of section 9-515(b). When the certificate of title statute

Supp. 2001); Act of Dec. 19, 2001, ch. 506, 2001 N.C. Sess. Laws §2-3, 506 (2001); OHIO REV. CODE ANN. § 4505.11 (Anderson 1999 & Supp. 2001); OR. REV. STAT. § 820.510 (1997); 75 PA. CONS. STAT. § 1140(A) (West 1996 & Supp. 2001); TEX. CIV. STAT. art. 5221f § 19(l) (Vernon 2000); UTAH CODE ANN. § 41-1a-503(2) (1998 & Supp. 2001); WASH. REV. CODE ANN. § 65.20.040 (West 1999); 2001 Wis. Legis. Serv. 16 § 2539(d) (West); WYO. STAT. ANN. § 31-2-502 (Michie 2001).

According to most of these statutes, a financing statement would not be effective because the manufactured home becomes part of the real estate through purging. Upon severing the manufactured home from the ground, the owner is required to reapply for a certificate of title. *E.g.*, IDAHO CODE § 63-305(4) (1998); VA. CODE ANN. § 46.2-653 (Michie 1998) ("[A]t such time as the wheels and other equipment previously used for mobility have been removed and the unit has been attached to the realty, . . . the Virginia title issued for the unit may be returned to the Department for cancellation . . ."); *see also* ENT Fed. Credit Union v. Chrysler First Fin. Serv. Corp., 826 P.2d 430, 432 (Colo. Ct. App. 1992) (explaining the procedure for purging certificate of title).

66. U.C.C. § 9-303(b) (2001).

67. Section 9-502 provides an example of this approach when the uniform text concludes with a legislative note: "Language in brackets is optional." *Id.* § 9-502 (Legislative Note).

articulates the exceptions,⁶⁸ creditors will have more confidence in their ability to take advantage of perfection through financing statements.⁶⁹ For example, the certificate-of-title statute in *In re Wester* could have indicated that purchases from manufacture-dealers of manufactured homes already affixed to the ground need not apply for a certificate of title. Second, the conflict between certificates of title and financing statements could be resolved by indicating in section 9-515(b) that it applies only to manufactured homes not requiring a certificate of title. This approach renders section 9-515(b) largely irrelevant in most states, while still permitting the extensive use of financing statements in those few jurisdictions not requiring certificates of title.⁷⁰ Finally, deleting section 9-515(b) eliminates the conflict with respect to manufactured homes and leaves perfection to state certificate of title statutes. Indeed, four states have already removed the section.⁷¹

Revised Article 9 has simultaneously introduced uniformity and confusion into the realm of manufactured home financing. The priority rule of section 9-334(e)(4) largely will silence the debate between the priority of certificates of title and real property encumbrances. The extended financing statement effectiveness of section 9-515(b), though, will create a new subject of controversy in an historically contentious area. Although section 9-515(b) might apply in those states not requiring perfection of a security interest on a certificate of title, the section's potential scope is exceedingly narrow. At worst, section 9-515(b) will cause confusion among practitioners and courts; at best, legislators will use the conflict as an opportunity to revisit and directly address the tenuous relationship between the UCC and certificate of title legislation.

MARK R. KOONTZ

68. The surprising result in *In re Wester* illustrates the uncertain boundaries of certificate of title requirements.

69. This approach, while giving effect to section 9-515(b), deprives the creditor of the priority rule of section 9-334(e)(4), which operates only when certificates of title are present. If the jurisdiction is unsettled in its case law regarding the priority of financing statements as against real property encumbrances, this approach may create renewed uncertainty.

70. Maine, Massachusetts, New Hampshire, and Vermont do not require certificates of title for manufactured homes. See *supra* note 29 and accompanying text.

71. See *supra* note 40 and accompanying text.