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MOBILE HOME FINANCING

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INTRODUCTION

Skyrocketing sales of mobile homes during the past 10 years have, naturally, been accompanied by comparable increases in legal problems inherent in the financing of these sales. Input to these problems has come from several sources, including adoption of the Uniform Commercial Code, amendment of the Texas Certificate of Title Act, and unresolved questions relating to the status of mobile homes as consumer goods, equipment, inventory, motor vehicles, and homesteads.

Initially, the topic, "Mobile Home Financing," demands definition and clarification of such terms as "mobile home," "liens under the Texas Certificate of Title Act," "fixtures," "homestead," and several others.

MOBILE HOME AS A "MOTOR VEHICLE" UNDER THE TEXAS CERTIFICATE OF TITLE ACT

There is no Texas statutory definition of mobile home. However, the term "house trailer" is included in the definition of motor vehicle as used in the Texas Certificate of Title Act.¹ A house trailer is defined by the Act as "[A] vehicle without automotive power, designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle."² The use of the conjunctive mode indicates an intention to require that all of the enumerated conditions must be satisfied. Therefore, the term "mobile

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1. TEX. PENAL CODE ANN. art. 1436-1, § 2 (Supp. 1972), *amending* TEX. PENAL CODE ANN. art. 1436-1, § 2 (1953).

2. TEX. PENAL CODE ANN. art. 1436-1, § 2a (1953).

home" is clearly included within the statutory description of a house trailer, under the Texas Certificate of Title Act.

The statutory definition of a house trailer appears to impliedly exclude a structure which, though designed for human habitation, is not designed for being drawn by a motor vehicle. Thus, a portable type structure with no underlying frame and axle assembly would not meet the requirement and would not be a house trailer under the Certificate of Title Act. It might conceivably be argued that a portable structure with no axles and wheels, but with runners or skids, would meet the requirement that it be "designed for being drawn by a motor vehicle." However, it is doubtful that such was the intention of the legislature. Although there is no reported decision in Texas on the point, the requirement was probably intended to refer to a design with an underlying frame and axle assembly and wheels which would enable it to be drawn by a motor vehicle on the public roads and highways. Additionally, it must be recognized that the statutory definition does not require that the structure be used for human habitation, but only that it be one which is designed for such use.³

Texas courts have recently considered the question whether certain structures were classified as "trailers," "house trailers," or "trailer homes." In *Crawford v. Boyd*,⁴ a wooden frame structure, 12 feet wide and 64 feet long, was found not to be a "trailer house" within the meaning of a building restriction prohibiting trailer homes, even though the structure had exterior siding of aluminum and "looked a lot like a mobile home."⁵ This conclusion apparently was reached because the structure was without axles and wheels, never intended by the owner to be used as a vehicle, but rather as a permanent home for his family, attached to the soil by cables and connected to a septic tank. The court relied, in part, on a number of decisions from other states to that effect.⁶ In *Aluminum Company of America v. Kohuttek*,⁷ the court held a structure, referred to as a "trailer house," that had been deprived of all means of locomotion, placed on blocks, attached to public utilities, and used as a place of residence for eight people, was a building within the meaning of a restrictive covenant, requiring submission of plans and specifications to be submitted by the

3. *Id.*

4. 453 S.W.2d 232 (Tex. Civ. App.—Fort Worth 1970, writ ref'd n.r.e.).

5. *Id.* at 235.

6. *Id.* at 235.

7. 455 S.W.2d 789 (Tex. Civ. App.—Corpus Christi 1970, writ ref'd n.r.e.).

grantee to the grantor regarding any building to be placed on the land conveyed.⁸

The term "lien," as used in the Certificate of Title Act, is defined in very broad language:

The term "Lien" means a security interest, as defined in Section 1.201(37), Business and Commerce Code, created by every kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other written security agreement, as defined in Section 9.105(a)(8), Business and Commerce Code, of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle, and means any lien created or given by constitution or statute in a motor vehicle.⁹

The proper classification of a mobile home as "inventory," "consumer goods," or "equipment," is extremely important because of the difference in the requirements for the perfecting and filing of a lien on a mobile home which is inventory, as distinguished from one which is consumer goods or equipment. Section 41 of the Certificate of Title Act, as amended in 1971, provides that a non-inventory lien on a motor vehicle which is the subject of either a first sale *or* a subsequent sale can be perfected *only* by notation of the lien on the certificate of title in accordance with the Texas Certificate of Title Act.¹⁰ The term "inventory" is not defined by the Act, but since section 41 requires inventory liens to be perfected by compliance with chapter 9 of the Business and Commerce Code, the definition of "inventory," in that portion of the Code, is clearly applicable:

Goods are

. . . .

- (4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.¹¹

There are two other classes of goods defined by section 9.109 of the Code which are pertinent:

8. *Id.* at 791.

9. TEX. PENAL CODE ANN. art. 1436-1, § 3 (Supp. 1972), *amending* TEX. PENAL CODE ANN. art. 1436-1, § 3 (1953).

10. TEX. PENAL CODE ANN. art. 1436-1, § 41 (Supp. 1972).

11. TEX. BUS. & COMM. CODE ANN. § 9.109(4) (1968).

Goods are

- (1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;
- (2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;¹²

As the Uniform Commercial Code Comment in section 9.109 points out, the classification of goods as "consumer goods," "equipment," and "inventory," are mutually exclusive.¹³ The property cannot at the same time be both equipment and consumer goods, or both equipment and inventory, or any other combination. Therefore, a mobile home owned by a retail dealer might be either consumer goods, or equipment, or inventory. The principal use of the goods is determinative of its classification.¹⁴ If used by him as a week-end and summer vacation vehicle for the family, it is a consumer good; if used in his business as an office for himself and his employees, it is equipment; if he holds it for purposes of sale or lease, it is inventory. Although the Code may be looked to for these definitions, Section 41 of the Certificate of Title Act is a special provision relating to the perfection and filing of liens on motor vehicles and, therefore, prevails over the provisions of the Business and Commerce Code in this respect.¹⁵

PERFECTION OF NON-INVENTORY LIENS ON MOBILE HOMES IN TEXAS

Prior to adoption of the U.C.C. in 1965, the Texas lender was plagued by the prospect of application of the *Bank of Atlanta v. Fretz*¹⁶ decision which gave indefinite protection to the holder of a foreign lien, perfected and recorded under the law of that jurisdiction, as against an innocent purchaser for value and without notice in Texas, even though the purchaser relied on a Texas certificate of title which failed to show any liens on the vehicle.¹⁷ In 1971, the Texas Supreme Court held that section 9.103 of the Code abrogated the *Fretz* deci-

12. *Id.* at (1), (2).

13. *Id.* at comment 2.

14. *Id.*

15. TEX. BUS. & COMM. CODE ANN. § 9.310 (1968).

16. 148 Tex. 551, 226 S.W.2d 843 (1950).

17. *Id.* at 560, 226 S.W.2d at 849.

sion.¹⁸ Currently, when a motor vehicle is covered by a Texas certificate of title, Texas law will be applied in determining whether a lien on the vehicle is perfected and enforceable against an innocent purchaser, and a lien on a motor vehicle cannot be enforced against an innocent purchaser unless it is noted on the Texas certificate of title.¹⁹

It appears, then, that the non-inventory mobile home lender in Texas is entitled to rely on a Texas certificate of title covering the vehicle, and will be protected, assuming, of course, that the applicant for the loan is the owner and his name appears as such on the certificate.

ACCESSIONS

The priorities recognized with respect to accessions to mobile homes usually create no serious problems. The requirements of the Certificate of Title Act, with respect to the filing and recording of liens, do not apply to liens created on tires, radios, heaters, or other automobile accessories.²⁰ Thus, the general provisions of section 9.314 of the Business and Commerce Code relating to accessions apply.²¹ As a general proposition (eliminating the rarely occurring exceptions set out in 9.314(c)²²), if the security interest in the accessory attaches *before*

18. *Phil Phillips Ford, Inc. v. St. Paul Fire & Marine Ins. Co.*, 465 S.W.2d 933 (Tex. Sup. 1971).

19. *Id.* at 937. The court cited Section 9.103(d) of the Texas Business and Commerce Code which states:

Notwithstanding Subsections (b) and (c), if personal property is covered by the certificate of title issued under a statute of this state or any other jurisdiction which requires indication on the certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

Additionally, Section 44 of the Texas Certificate of Title Act, was cited which refers only to motor vehicles for which a receipt or certificate of title had been issued. In 1971, the legislature repealed section 44 of the Act, but included the essence of that section in the substantially amended provisions of section 41. Prior to 1971, section 41 covered liens on motor vehicles which were the subject of a first sale, requiring the lien to be noted on the importer's or manufacturer's certificate. This section now provides that a non-inventory lien on a motor vehicle, which is the subject of either a first or a subsequent sale, can be perfected only by notation of the lien on the certificate in accordance with the Act, and that an inventory lien can be perfected *only* by complying with chapter 9 of the Business and Commerce Code. Thus, it is no longer possible to perfect a lien on a motor vehicle which is the subject of a first sale by noting such on the importer's or manufacturer's certificate. If such a vehicle is non-inventory, the lien must be noted on the certificate of title; if it is inventory, it must be perfected in accordance with the requirements of chapter 9 of the Business and Commerce Code.

20. TEX. PENAL CODE ANN. art. 1436-1, § 1a (1953).

21. TEX. BUS. & COMM. CODE ANN. § 9.314 (1968).

22. These being:

(1) a subsequent purchaser for value of any interest in the whole; or
(2) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

the accessory is installed or affixed to the mobile home, the security interest takes priority over a prior perfected security interest in the mobile home.²³ If the security interest attaches *after* the accessory becomes a part of the mobile home, it is not valid as against a person who has a prior perfected security interest in the mobile home unless that person has consented, in writing, to the security interest in the accession or has disclaimed an interest in the accession as a part of the mobile home.²⁴

FIXTURES

If the mobile home is considered as either consumer goods or equipment and the wheels are removed and it is attached to realty in such manner and with the requisite intent to make it a permanent accession to the freehold, it may be deemed a "fixture."²⁵ This type of situation is illustrated in those instances readily observable at any lake resort area where the owner has purchased a mobile home, moved it to his tract, removed the wheels and attached it to an existing house, or placed it on concrete blocks, in such manner that it cannot be easily detached and removed without destroying it and without causing substantial damage to the realty.

The common law definitions of the term "fixture" are many and fraught with confusion, with the Texas Business and Commerce Code doing nothing to alleviate the situation.²⁶ The leading case in Texas defining a "fixture" is *Hutchins v. Masterson & Street*²⁷ where it was announced:

[W]hether a chattel has become an immovable fixture, consists in the united application of the following tests:

1st. Has there been a real or constructive annexation of the article in question to the realty?

(3) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

23. TEX. BUS. & COMM. CODE ANN. § 9.314(a) (1968).

24. *Id.* at (b).

25. See *Hutchins v. Masterson & Street*, 46 Tex. 551 (1877).

26. TEX. BUS. & COMM. CODE ANN. § 9.313 (1968) provides that "[t]he law of this state other than this title determines whether and when other goods become fixtures."

27. 46 Tex. 551 (1877).

2nd. Was there a fitness or adaptation of such article to the uses or purposes of the realty with which it is connected?

3rd. Whether or not it was the intention of the party making the annexation that the chattel should become a permanent accession to the freehold?—this intention being inferable from the nature of the article, the relation and situation of the parties interested, the policy of the law in respect thereto, the mode of annexation, and purpose or use for which the annexation is made.

And of these three tests, pre-eminence is to be given to the question of intention to make the article a permanent accession to the freehold, while the others are chiefly of value as evidence as to this intention.²⁸

Assuming that a mobile home would, because of appropriate facts and circumstances, be deemed a "fixture," what must be done in order to preserve and protect the security interest of a secured party in that unit? According to section 9.313 of the Business and Commerce Code, if the security interest has attached to the mobile home before it is affixed to the realty, *i.e.*, before it becomes a fixture, the security interest takes priority over the claims of all persons then having an interest in the realty.²⁹ A security interest attaches, under section 9.204,³⁰ when all three of the following requisites are met, unless an explicit agreement postpones the time of attaching: (1) there is agreement (subdivision (3) of section 1.201) that it attach, (2) value is given, and (3) the debtor has rights in the collateral.³¹ Thus, if these three requirements are satisfied before the mobile home is affixed to realty, the security interest takes priority over any other then existing claims.

The Code does not require that this security interest be perfected by filing a financing statement in order to gain priority over existing claims.³² However, it is necessary to perfect it by filing a financing statement in order to be protected against a subsequent purchaser for value, a subsequent creditor with a judicially obtained lien on the realty, or a creditor with a prior recorded encumbrance on the realty to the extent of subsequent advances.³³

Only in very rare cases should the lender consider taking a security interest in a mobile home *after* it has become attached to realty as a

28. *Id.* at 554.

29. TEX. BUS. & COMM. CODE ANN. § 9.313(b) (1968).

30. TEX. BUS. & COMM. CODE ANN. § 9.204 (1968).

31. *Id.* at (2).

32. TEX. BUS. & COMM. CODE ANN. § 9.313, comment 3 (1968).

33. *Id.* at comment 3.

fixture. In such a situation, the security interest is invalid and unenforceable against any person with an interest in the realty at the time the security interest attached, unless that person has consented, in writing, to the security interest or has disclaimed, in writing, an interest in the mobile home as a fixture.³⁴ In addition, it should be noted that in this situation, since the mobile home has become a fixture before the security interest attached, it is necessary to perfect the security interest by filing a financing statement in order to have priority, as against the type of subsequent purchasers and creditors mentioned in the preceding paragraph.

Financing statements covering goods which are or will become fixtures must conform to the general requirements of the Code as to form and content, and additionally must contain a description of the realty concerned and the name of the record owner of such realty.³⁵ If the financing statement relates to a purchase money security interest in a fixture, with a purchase price not exceeding \$1,500, the name of the record owner, as supplied by the debtor, is sufficient unless the secured party knows that such is not the correct name.³⁶ Financing statements covering fixtures are required to contain the statement: "Collateral is or includes fixtures."³⁷

The "Uniform" version of the Code leaves uncertain whether the recording is to be made and indexed in the same records as other types of security interests in realty, or whether it is to be recorded and indexed separately.³⁸ In 1967, section 9.403(d) of the Texas version of the Code was amended by adding the following provision:

34. TEX. BUS. & COMM. CODE ANN. § 9.313(c) (1968).

35. TEX. BUS. & COMM. CODE ANN. § 9.110 (1968). This section provides that "[f]or the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described."

36. TEX. BUS. & COMM. CODE ANN. § 9.401(c) (1968) provides:

A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.

37. TEX. BUS. & COMM. CODE ANN. § 9.403(d) (1968).

38. TEX. BUS. & COMM. CODE ANN. § 9.401 (1968) provides instruction as to the proper place where the financing statement should be filed in order to perfect a security interest:

When the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office of the County Clerk in the county where the real estate concerned is located.

Where the financing statement bears the statement "Collateral is or includes fixtures" or its substantial equivalent, the filing officer shall index the financing statement in a separate book endorsed "Security Interests in Fixtures." The filing of a financing statement bearing the above described statement perfects a security interest only in goods which are or are to become fixtures.

The filing is required to be indexed only in the name of the debtor.³⁹ Since the debtor as to the fixture may not be the record owner of the realty to which the fixture is attached, there is no way that a subsequent bona fide purchaser for value without actual notice, proposing to purchase the realty, can ascertain from the record the rights of one claiming a prior perfected security interest in the fixture. This poses the same basic type of unsatisfactory circumstance, for the very same reason, that was experienced prior to the adoption of the Code under old article 5498⁴⁰ which led to the decision in *Lone Star Gas Co. v. Sheaner*.⁴¹ In *Sheaner*, a lien on a water heater which a tenant had placed in a rented house was held valid and enforceable as against a subsequent bona fide purchaser for value who purchased the realty without knowledge of the existence of such lien.⁴² There has been much criticism as to this result, especially from the title insurance companies. A memorandum dated June 27, 1967, from John L. Hill, Secretary of State, to the County Clerks of Texas, urged that financing statements covering fixtures be indexed under the name of the record owner of the realty as well as the name of the debtor in those instances where they are not the same person, even though such procedure is not provided for in the Code.

In the event of default, a party holding a security interest in fixtures and entitled to priority may sever and remove the fixture from the realty.⁴³ He must, however, reimburse any owner or encumbrancer of the realty, who is not the debtor and who has not otherwise agreed, for the cost of repair of any physical injury which results therefrom.⁴⁴ Persons entitled to reimbursement may refuse permission to remove the fixture until the secured party gives adequate security for the performance of this duty.⁴⁵ Thus, as to security interests in fixtures, the

39. TEX. BUS. & COMM. CODE ANN. § 9.403(d) (1968).

40. Tex. Laws 1917, ch. 153, § 1 at 361, *as amended* TEX. BUS. & COMM. CODE ANN. § 10.102 (1968).

41. 157 Tex. 508, 305 S.W.2d 150 (1957).

42. *Id.* at 515, 305 S.W.2d at 155.

43. TEX. BUS. & COMM. CODE ANN. § 9.313(e) (1968).

44. *Id.*

45. *Id.*

Code has put an end to the old common law test of material injury to the freehold regarding the right of removal which was nebulous and uncertain at best.⁴⁶ It assures a right of removal of the fixture, yet affords adequate protection to the owner of the realty.

MECHANIC'S AND MATERIALMAN'S LIEN

One vexatious situation which lenders encounter is that of the priority which is given to the mechanic's or materialman's lien by the Business and Commerce Code for services and materials furnished with respect to a mobile home even though subsequent in time to a prior perfected security interest in the mobile home. Section 9.310 of the Code provides:

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

A close reading of this provision raises four interesting points. *First*: not everyone who furnishes services or materials is entitled to this priority. The furnishing of such services or materials must have been by one "in the ordinary course of his business."⁴⁷ This will preclude the nuisance claimant who, at the instigation of the debtor (or his wife's uncle or the mobile home park landlord), alleges a priority of lien when repossession is about to be effected by the holder of the prior recorded purchase money lien. *Second*: for many years Section 43 of the Certificate of Title Act⁴⁸ contained the express provision required by section 9.310 of the Code, giving priority to liens on motor vehicles according to the date of recording on the receipt or certificate of title.⁴⁹ However, section 43 of the Act was repealed in 1971⁵⁰ and there is no longer a statute which expressly provides for a priority of lien on motor vehicles contrary to that fixed by section 9.310 of the Code. *Third*: the exception as to priority extends only to a lien which is statutory and the statute expressly provides for some other priority.⁵¹ The Texas Constitution provides:

46. TEX. BUS. & COMM. CODE ANN. § 9.313, comment 5 (1968).

47. TEX. BUS. & COMM. CODE ANN. § 9.310, comment 2 (1968).

48. Tex. Laws 1939, ch. 4, § 43 at 602.

49. GMC Superior Trucks, Inc. v. Irving Bank & Trust Co., 463 S.W.2d 274, 276 (Tex. Civ. App.—Waco 1971, no writ).

50. Tex. Laws 1971, ch. 123, § 7 at 896.

51. TEX. BUS. & COMM. CODE ANN. § 9.310 (1968).

Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.⁵²

It is a well established rule that this lien is self-executing, and exists independently of any legislative act.⁵³ The legislature can only provide for the speedy and efficient enforcement of the lien.⁵⁴ Since the lien is constitutional, and not statutory in origin, it appears that the lien should be entitled to the priority given by section 9.310 of the Code, irrespective of any subsequent legislative exception. *Fourth*: the priority extends only to "a lien upon goods in the possession of such person"⁵⁵ The lien priority is, therefore, restricted to a "possessory" type of lien. Thus, when possession of the collateral is lost, the priority vanishes.⁵⁶

It appears that following the repeal of Section 43 of the Certificate of Title Act, a possessory lien arising from the furnishing of services or materials to a motor vehicle in the ordinary course of one's business will have priority over a prior perfected lien on the vehicle, irrespective of notice, good faith, perfection, or recording. Perhaps this priority may not be as bad as it seems at first glance. It represents a policy approach with long standing precedent with respect to vehicles which are susceptible to employment in commerce.⁵⁷ The same approach has long been used in admiralty law regarding repairs to ships, the rationale being that it is to the mutual interest and benefit of both the mortgagee and the owner-mortgagor that the ship be promptly repaired, enabling the expeditious return of the ship to work so that the mortgage obligations can be promptly met.⁵⁸

HOMESTEAD RIGHTS IN A MOBILE HOME

A prospective lender must consider the question of homestead status in those instances where he is considering the making of a loan for a purpose other than purchase money, taxes due on the mobile home, or for improvements to it, because liens to secure loans for any pur-

52. TEX. CONST. art. XVI, § 37.

53. *Strang v. Pray*, 89 Tex. 525, 528, 35 S.W. 1054, 1056 (1896).

54. *Id.* at 527, 35 S.W. at 1055.

55. TEX. BUS. & COMM. CODE ANN. § 9.310 (1968).

56. *Id.* at comment 2.

57. Annot., 32 A.L.R. 1005 (1924).

58. 48 AM. JUR. *Shipping* § 564 (1943).

pose other than these are not enforceable as against a homestead.⁵⁹

The question continues to be raised whether a homestead right can exist in a mobile home. The constitutional definition of the rural homestead is property consisting of not more than 200 acres of land in one or more parcels, together with the improvements thereon.⁶⁰ The urban homestead consists of a lot or lots, not to exceed \$10,000 in value at the time of designation as the homestead, without reference to the value of any improvements thereon. Furthermore, the property must be used for the purposes of a home or as a place to exercise the calling or business of the head of a family.⁶¹

In the leading Texas case, *Cullers & Henry v. James*,⁶² the supreme court pointed out that the homestead exemption is for lots or acres of land.⁶³ The language of the opinion makes it clear that the homestead exemption is an exemption of realty as distinguished from an exemption of personalty.⁶⁴ Accordingly, the court held that property, to be exempt as part of the homestead, "must be part of the exempt realty."⁶⁵

Three Texas courts of civil appeals cases have passed on the question of whether a mobile home can have homestead status. In *Clark v. Vitz*,⁶⁶ the owner placed a house trailer on blocks alongside his brick house and connected it to the electrical wiring of the house. The court held that it had been made a part of the house and consequently was part of the homestead, hence exempt from attachment by a general creditor.⁶⁷ In *Gann v. Montgomery*,⁶⁸ the mobile home owner secured the permission of his parents to park his house trailer, still mounted on wheels, in his parents' backyard behind the rented house in which the parents lived, while he looked for a job. Three weeks later, he

59. TEX. CONST. art. XVI, § 50. This section provides that the homestead of a family is not subject to forced sale for any debts except for the purchase money or any part thereof, taxes due thereon, or for work and material used in constructing improvements thereon.

60. TEX. CONST. art. XVI, § 51.

61. *Id.*

62. 66 Tex. 494, 1 S.W. 314 (1886).

63. *Id.* at 498, 1 S.W. at 315. Subsequently, the supreme court in *Woods v. Alvarado State Bank*, 118 Tex. 586, 591, 19 S.W.2d 35, 37 (1929) mentioned the distinction between the homestead and personal property exemptions in its historical analysis of the homestead laws.

64. *Cullers & Henry v. James*, 66 Tex. 494, 1 S.W. 314 (1886).

65. *Id.* at 499, 1 S.W. at 315.

66. 190 S.W.2d 736 (Tex. Civ. App.—Dallas 1945, writ ref'd).

67. *Id.* at 738.

68. 210 S.W.2d 255 (Tex. Civ. App.—Forth Worth 1948, writ ref'd n.r.e.).

executed a note for \$1,200 and mortgaged the house trailer to secure the payment of the note. The court distinguished this case from *Vitz*, pointing out that the owner of the mobile home held no possessory interest in the realty on which the mobile home was situated and that the mobile home had not been attached to realty so as to become a part of it.⁶⁹ Consequently, it was held that the mobile home was not a part of exempt homestead realty and could not receive protection from foreclosure of the mortgage.⁷⁰ In the most recent decision, *Capitol Aggregates, Inc. v. Walker*,⁷¹ a judgment creditor sought to foreclose on a mobile home which was occupied by the debtor's family. The mobile home was situated on concrete blocks, the wheels removed, on a trailer park lot which the debtor rented on a month-to-month basis. The court held that a leasehold interest in land, such as the debtor's periodic tenancy, was a sufficient interest in realty to support a homestead exemption, with such exemption extending to the improvements so attached to the realty as to become a part of it.⁷²

Consequently, if the mobile home is so modified as to deprive it of its mobility, is so attached to realty as to become a fixture, and is used for the purpose of a home or as a place to exercise the calling or business of the head of a family, it may be treated for all purposes as a part of the homestead. If so, any lien thereon must conform to the requirements of a lien on the homestead. For example, a lien to secure a post-purchase loan would require the joinder of the husband and wife, regardless of whether the mobile home belonged to the separate estate of one of them or to the community estate of both.⁷³ The lien would, of course, have to be recorded in the county where the homestead, or some part of it, is situated in order to gain protection under the recording statutes against subsequent creditors and purchasers of the homestead realty.⁷⁴

The lender is frequently faced with the "filing dilemma." Where should he file his lien if the mobile home is deemed to be either "consumer goods" or a "fixture" or a part of the homestead, or perhaps a combination of these? Most lenders today are wisely following the advice which has been widely circulated through Uniform Commercial

69. *Id.* at 260.

70. *Id.* at 260.

71. 448 S.W.2d 830 (Tex. Civ. App.—Austin 1969, writ ref'd n.r.e.).

72. *Id.* at 835.

73. TEX. CONST. art. XVI, § 50.

74. TEX. BUS. & COMM. CODE ANN. § 9.313, comment 3, and § 9.401(a) (1968).

Code Institutes: when in doubt, "file, file, file," in such manner as to cover every reasonable contingency.

ASSIGNMENT OF SECURITY INTEREST
IN A MOBILE HOME

Under the Business and Commerce Code, the obligation to pay, as well as the security interest in the collateral which secures that obligation, may be created by a security agreement.⁷⁵ As a result, many lenders no longer use the promissory note in transactions under the Code. As provided by the Code:

Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.⁷⁶

The Texas Motor Vehicle Installment Sales Act, which covers mobile homes, contains a provision to the contrary:

No retail installment contract . . . shall:

. . . .

(6) Provide that the buyer agrees not to assert against the seller or holder of any claim or defense arising out of the sale.⁷⁷

However, the succeeding section of the Act provides that if a retail installment sales contract is negotiated to a third party, who acquires it in good faith and for value and gives the notice provided for in the Act, and the third party does not receive, within 30 days of the mailing of such notice, a written notice from the buyer of any fact giving rise to any claim or defense of the buyer, any right of action or defense of a buyer may be cut off.⁷⁸

In reading these two sections of the Texas Motor Vehicle Installment Sales Act together, and seeking to give effect to both, it appears that while section 7.07 prohibits a provision in the contract under which

75. TEX. BUS. & COMM. CODE ANN. § 9.105(a)(8) (1968).

76. TEX. BUS. & COMM. CODE ANN. § 9.206(a) (1968).

77. TEX. REV. CIV. STAT. ANN. art. 5069-7.07 (1971) (emphasis added).

78. TEX. REV. CIV. STAT. ANN. art. 5069-7.08(4) (1971).

the buyer agrees that he will not assert any claim or defense against a holder of the contract, any such claim or defense may be cutoff under section 7.08 as against a holder who has satisfied the *notice* requirements thereof.⁷⁹

RIGHTS AND REMEDIES OF A SECURED PARTY UPON DEFAULT

The rights and remedies of a secured party and the debtor, upon default, are governed by subchapter E of section 9 of the Business and Commerce Code.⁸⁰ The term "default" is not defined by the Code, and the security agreement should clearly set out what will constitute default. The security agreement should also contain an acceleration clause giving the holder of the agreement an option, upon default, to mature the agreement and to declare the entire unpaid balance of the obligation to be immediately due and payable. The general provisions of the Code which require good faith, diligence, reasonableness and care apply.⁸¹

A secured party has several alternatives upon default, including the right to take possession of the mobile home upon default unless there is an agreement to the contrary. The Code authorizes the secured party to take possession without judicial process (if it can be done without a breach of the peace) or to render equipment unusable and to dispose of the collateral without removal from the debtor's premises.⁸² A secured party asserting the right to possession of a chattel may, after filing a suit to enforce such right, apply to the court for the issuance of a writ of sequestration when the circumstances indicate that the chattel should be seized by the court, and held in its custody pending judgment.⁸³ This is done to prevent the chattel from being

79. The notice requirements of article 5069-7.08 provide:

A notice of negotiation shall be in writing addressed to the buyer at the address shown on the contract and shall identify the contract, state the names of the seller and buyer; describe the motor vehicle; state the time balance and the number and amounts of the installments. The notice of negotiation shall contain the following warning to the buyer in ten-point bold face type:

**IF YOU HAVE ANY COMPLAINT OR OBJECTION REGARDING THE
GOODS OR SERVICES COVERED BY THE CONTRACT IDENTIFIED
IN THIS NOTICE, OR ANY CLAIM OR DEFENSE RELATING TO
SUCH CONTRACT, YOU MUST NOTIFY US WITHIN 30 DAYS FROM
THE DATE THIS NOTICE WAS MAILED.**

80. TEX. BUS. & COMM. CODE ANN. § 9.501-.507 (1968).

81. TEX. BUS. & COMM. CODE ANN. § 1.102(c) (1968).

82. TEX. BUS. & COMM. CODE ANN. § 9.503 (1968). Note should be taken that the authority to render the collateral unusable does not extend to consumer goods; only to equipment.

83. TEX. REV. CIV. STAT. ANN. art. 6840 (1960); TEX. R. CIV. P. 696-716.

damaged or removed from the court's jurisdiction. This right, however, must be considered in the light of the recent decision of the United States Supreme Court in *Fuentes v. Shevin*,⁸⁴ which held that procedural due process requires an opportunity for a hearing *before* the state authorizes its agents to seize property in the possession of a person upon the application of another.⁸⁵ The Court therefore acknowledged that a state has the power to seize goods before a final judgment in order to protect the security interests of creditors "so long as those creditors have tested their claim to the goods through the process of a fair prior hearing."⁸⁶ The Court held that while the nature and form of such prior hearings were deemed to be matters for legislation rather than adjudication, the state must provide for "the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor *before* he can be deprived of his property"⁸⁷ The Court refused to sustain the contention that the contractual provisions, which authorized the secured party to repossess the merchandise, constituted a waiver of the debtor's basic procedural due process rights.⁸⁸ In doing so, the Court distinguished the facts in *Fuentes* from those in *D. H. Overmyer Co. v. Frick Co.*⁸⁹ where the Court had outlined the considerations relevant to a contractual waiver of due process rights.⁹⁰ In *Overmyer*, the contract was negotiated between two corporations and the waiver provisions were specifically bargained for and drafted by their lawyers in the process of the negotiations so that the waiver was voluntarily, intelligently, and knowingly made by both parties who were aware of the significance of the waiver provision. In *Fuentes*, the contracting parties "were far from equal in bargaining power" and the purported waiver provision had not been the subject of any bargaining or negotiation, but was part of the printed sales contract and as such had the markings of a contract of adhesion.⁹¹

Accordingly, any attempt to strip the usual type of unsophisticated

84. 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972).

85. *Id.* at —, 92 S. Ct. at 2002, 32 L. Ed. 2d at 579.

86. *Id.* at —, 92 S. Ct. at 2002, 32 L. Ed. 2d at 579.

87. *Id.* at —, 92 S. Ct. at 2002-03, 32 L. Ed. 2d at 579, quoting *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 343 (1969) (concurring opinion).

88. *Fuentes v. Shevin*, 407 U.S. 67, —, 92 S. Ct. 1983, 2001-02, 32 L. Ed. 2d 556, 578 (1972).

89. 405 U.S. 174 (1972).

90. *Fuentes v. Shevin*, 407 U.S. 67, —, 92 S. Ct. 1983, 2001, 32 L. Ed. 2d 556, 578 (1972).

91. *Id.* at —, 92 S. Ct. at 2002, 32 L. Ed. 2d at 578.

debtor of his due process rights prior to default, by provisions in a printed form security agreement is not likely to survive an attack. The Court, in *Fuentes*, indicated that a debtor may waive his right to such a hearing *after* he has received notice of his opportunity for one and, "sensing the futility of the exercise in the particular case" has decided not to take advantage of it.⁹² The notice in each case must be such as will insure that the particular debtor's waiver of his basic procedural due process rights was voluntarily, intelligently and knowingly made, and that he was aware of the significance of his waiver.

If the secured party takes possession of the mobile home, he must use reasonable care in the custody and preservation of it, for failure to do so renders him liable for any loss occasioned thereby.⁹³ Reasonable expenses incurred in the custody, preservation, use or operation of the collateral, including insurance, taxes and other charges, are chargeable to the debtor and are secured by the collateral.⁹⁴ The mobile home may be used or occupied by a secured party pursuant to a court order or for the purpose of preserving it or its value.⁹⁵ It may also be used or occupied in a manner and to the extent provided in the security agreement if the mobile home is classified as "equipment," but not if it is deemed "consumer goods."⁹⁶

The secured party in possession of a mobile home, as collateral, after default may propose to keep it in satisfaction of the debtor's obligation if: (1) the mobile home is deemed "equipment;" or (2) the mobile home is considered "consumer goods" and he holds a purchase money security interest in the mobile home wherein the debtor has paid less than 60 percent of the cash price; or (3) the mobile home is considered as "consumer goods," and he holds a non-purchase money security interest in the mobile home wherein the debtor has paid less than 60 percent of the loan; or (4) the debtor has signed, after default, a statement modifying or renouncing his rights under subchapter E of the Business and Commerce Code.⁹⁷ A proposal to keep the collateral in satisfaction of the obligation must be sent, in writing, to the debtor and except in the case of consumer goods, to any other secured party who has a security interest in the mobile home and who has filed a financing statement indexed in the name of the

92. *Id.* at — n.29, 92 S. Ct. at 2000, 32 L. Ed. 2d at 577.

93. TEX. BUS. & COMM. CODE ANN. § 9.207(a), (c) (1968).

94. *Id.* at (b).

95. *Id.* at (d).

96. *Id.*

97. TEX. BUS. & COMM. CODE ANN. § 9.505(a) (1968).

debtor. This proposal must also be sent to any party known by the secured party to have a security interest in the mobile home. The secured party is entitled to retain the mobile home in satisfaction of the debtor's obligation unless the debtor or any other person entitled to notice objects in writing within 30 days either from receipt of notice, or after the secured party took possession.⁹⁸ If such objection is made, the secured party must dispose of the mobile home under section 9.504 of the Business and Commerce Code.⁹⁹

The debtor or any other secured party has the right to redeem the collateral, unless otherwise agreed to in writing after default, at any time before the collateral has been disposed of, its disposition has been contracted for by the secured party, or before the secured party has accepted it in satisfaction of the debtor's obligation.¹⁰⁰ Redemption requires tender of the fulfillment of all obligations secured by the collateral, together with all expenses reasonably incurred by the secured party in retaking, holding, preparing the collateral for sale, arranging for the sale, and to the extent provided for in the security agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred.¹⁰¹

The secured party in possession of a mobile home as collateral must dispose of it under section 9.504 within 90 days after taking possession, provided: (1) the mobile home is considered as "consumer goods" subject to a purchase money security interest, wherein the debtor has paid 60 percent of the cash price; or (2) the mobile home is considered as "consumer goods" subject to a non-purchase money security interest, wherein the debtor has paid 60 percent of the loan; or (3) written objections have been timely made, under subsection (b) of section 9.505, to a proposal by the secured party to keep the mobile home in satisfaction of the debtor's obligation; or (4) the debtor has not signed, after default, a statement renouncing or modifying his rights under section 9.505.¹⁰² In the event the secured party fails to dispose of the mobile home pursuant to and in accordance with these requirements, the debtor, at his option, may recover from the secured party either in conversion or under section 9.507(a).¹⁰³

98. *Id.* at (b).

99. *Id.*

100. TEX. BUS. & COMM. CODE ANN. § 9.506 (1968).

101. *Id.*

102. TEX. BUS. & COMM. CODE ANN. § 9.505(a) (1968).

103. *Id.*; accord, *Mallicoat v. Volunteer Fin. & Loan Co.*, 415 S.W.2d 347 (Tenn. Ct. App. 1966); cf. *Barker v. Horn*, 432 S.W.2d 21 (Ark. 1968).

After default, a secured party is entitled to dispose of the mobile home by sale, lease, or otherwise, either in its existing condition or after any preparation or processing that is commercially reasonable.¹⁰⁴ The Business and Commerce Code requires that the proceeds of disposition be applied in the following order:

- (1) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;
- (2) the satisfaction of indebtedness secured
- (3) the satisfaction of indebtedness secured by any subordinate security interest in the collateral [mobile home] if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest¹⁰⁵

The secured party must account to the debtor for any remaining surplus, and, unless otherwise agreed, the debtor is liable for any deficiency.¹⁰⁶

The mobile home may be disposed of either publicly or privately at any time and place, upon any terms. Provided, however, that every aspect thereof must be commercially reasonable.¹⁰⁷ In determining the time and place of the sale and whether it is to be public or private, "[t]he pragmatic considerations under 'commercial reasonableness' must relate to 'every aspect of the disposition'" ¹⁰⁸ including such aspects as the rate of depreciation of the property, storage fees, insurance fees, and maintenance expenses.¹⁰⁹

104. TEX. BUS. & COMM. CODE ANN. § 9.504(a) (1968).

105. *Id.*

106. *Id.* at (b).

107. *Old Colony Trust Co. v. Penrose Indus. Corp.*, 280 F. Supp. 698, 712 (E.D. Pa.), *aff'd*, 398 F.2d 310 (3d Cir. 1968). Section 9.504(c) of the Business and Commerce Code provides in part that:

Disposition of the collateral may be by public or private proceedings . . . but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral.

108. *Old Colony Trust Co. v. Penrose Indus. Corp.*, 280 F. Supp. 698, 715 (E.D. Pa.), *aff'd*, 398 F.2d 310 (3d Cir. 1968).

109. *Dynalectron Corp. v. Jack Richards Aircraft Co.*, 337 F. Supp. 659, 662 (W.D. Okla. 1972).

If the mobile home is considered as "consumer goods," the secured party is required to send reasonable notice to the debtor of the time and place of any public sale, or the time after which a private sale or other disposition, will be made.¹¹⁰ Reasonable notice is not specifically defined by the Code, but "at a minimum it must be sent in such time that persons entitled to receive it will have sufficient time to take appropriate steps to protect their interests by taking part in the sale or other disposition if they so desire."¹¹¹

The question of what constitutes a commercially reasonable sale is raised in several sections of the Code.¹¹² A Tennessee court used the following language in discussing commercially reasonable standards:

[T]he disposition shall be made in keeping with prevailing trade practices among reputable and responsible business and commercial enterprises engaged in the same or similar business.¹¹³

Included in consideration of what is commercially reasonable is the "method, manner, time, place and terms" of the sale.¹¹⁴ In general, while the method of sale may be either public or private,¹¹⁵ the secured party should choose between a public or private sale depending upon which, if either, is more commercially reasonable.¹¹⁶ With reference to a private sale, the draftsmen of the Code state:

One recognized method of disposing of repossessed collateral is for the secured party to sell the collateral to or through a dealer—a method which in the long run may realize better average returns since the secured party does not usually maintain his own facilities

110. TEX. BUS. & COMM. CODE ANN. § 9.504(c) (1968).

111. *Id.* at comment 5. The Arkansas Supreme Court has held that a letter of notice mailed more than one week before the resale gave the debtor reasonable notice even though the debtor never came to know of the sale. *Hudspeth Motors, Inc. v. Wilkinson*, 382 S.W.2d 191 (Ark. 1964). However, in *Barker v. Horn*, 432 S.W.2d 21 (Ark. 1968) oral notice given by the secured party to the debtor at the time of repossession that the automobile was to be sold to the highest bidder, without specifying any time or place of sale, was held to be an unreasonable notice. A New Jersey court, in *Conti Causeway Ford v. Jarossy*, 276 A.2d 402 (N.J. Dist. Ct. 1971) held that 2 days notice was insufficient while a Georgia court, in *Motor Contract Co. v. Sawyer*, 180 S.E.2d 282 (Ga. Ct. App. 1971) considered 10 days to be sufficient. The court in *Sawyer* went on to say that "[p]arties may agree between themselves upon standards (not manifestly unreasonable) by which the fulfillment of the rights and duties provided by the UCC in the event of default are to be measured [the agreement in that case stipulating 5 days]."

112. TEX. BUS. & COMM. CODE ANN. §§ 9.502(b), 9.504(c), 9.507(b) (1968).

113. *Mallicoat v. Volunteer Fin. & Loan Corp.*, 415 S.W.2d 347, 350 (Tenn. Ct. App. 1966).

114. *Old Colony Trust Co. v. Penrose Indus. Corp.*, 280 F. Supp. 698, 712 (E.D. Pa.), *aff'd*, 398 F.2d 310 (3d Cir. 1968).

115. TEX. BUS. & COMM. CODE ANN. § 9.504(c) (1968).

116. *Old Colony Trust Co. v. Penrose Indus. Corp.*, 280 F. Supp. 698, 712 (E.D. Pa.), *aff'd*, 398 F.2d 310 (3d Cir. 1968).

for making such sales. Such a method of sale, fairly conducted, is recognized as commercially reasonable¹¹⁷

If a private sale is held, steps should be taken to insure that it is conducted fairly in every respect.¹¹⁸ For example, it has been pointed out that when the debt is one arising from a retail transaction, the debtor should not be deprived of the benefit of the retail market.¹¹⁹

As to the terms of the sale, "[T]he policy of the law . . . requires a repossessing seller to resell at the best obtainable price on commercially reasonable terms."¹²⁰ An unusually low price on resale,¹²¹ or a sale of a used car at a price substantially less than the National Automobile Dealers' Association quotation is evidence that the sale did not take place in a commercially reasonable manner.¹²² The fact that a better price might have been obtainable, however, does not make the sale unreasonable per se:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any *recognized market* therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner.¹²³

In a private sale the "blue book" value of the mobile home does not establish a recognized market value of the unit,¹²⁴ but the "blue book" price may be used as evidence of the reasonable value of the unit and if sold for significantly less, the sale may be held to be commercially unreasonable.¹²⁵

In the event the secured party is not proceeding in accordance with

117. TEX. BUS. & COMM. CODE ANN. § 9.507, comment 2 (1968).

118. *Eichman v. Highland Park State Bank*, 345 S.W.2d 352, 354 (Tex. Civ. App.—Eastland 1961, writ ref'd).

119. *Hogan, Pitfalls in Default Procedure*, 2 UCC L.J. 244, 255 (1970).

120. *Elster's Sales v. El Bodrero Hotel, Inc.*, 58 Cal. Rptr. 492, 493 (Dist. Ct. App. 1967).

121. *Mercantile Fin. Corp. v. Miller*, 292 F. Supp. 797, 801 (E.D. Pa. 1968).

122. *Atlas Constr. Co. v. Dravo-Doyle Co.*, 114 P.L.J. 34 (Allegheny County Ct., Pa. 1965); *Family Fin. Corp. v. Scott*, 24 Pa. D. & C2d 587 (Allegheny County Ct. 1965).

123. TEX. BUS. & COMM. CODE ANN. § 9.507(b) (1968) (emphasis added).

124. *Carter v. Ryburn Ford Sales, Inc.*, 451 S.W.2d 199, 203 (Ark. 1970).

125. *Atlas Constr. Co. v. Dravo-Doyle Co.*, 114 P.L.J. 34 (Allegheny County Ct., Pa. 1965).

the Code requirements for the disposition of the collateral, a particular disposition may be ordered or restrained as may be required.¹²⁶ If a wrongful disposition has occurred, the debtor, those entitled to notice, and those whose security interest was made known to the secured party prior to such disposition, are entitled to recover from the secured party any loss caused thereby.¹²⁷ If the collateral was consumer goods, the debtor is entitled to recover an amount not more than the credit service charge plus 10 percent of the principal amount of the debt, or the time differential price plus 10 percent of the cash price.¹²⁸

A purchaser for value of the mobile home, disposed of after default, takes it free of any rights of the debtor, the security interest under which the disposition was made, and all subordinate interests.¹²⁹ The purchaser of the mobile home at such disposition is entitled to full protection even though the secured party has failed to comply with the Code requirements for the conduct of the disposition.¹³⁰ However, to be afforded this protection the purchaser at a public sale must have purchased with no knowledge of any defects in the sale, and not be guilty of collusion with the secured party, other bidders, or the person conducting the sale.¹³¹ If he purchased at a private sale, he must have done so in good faith.¹³² While the purchaser at a private sale is required to proceed in good faith, the purchaser at a public sale is protected so long as he is not actively proceeding in bad faith, however, he is under no duty to inquire into the circumstances of the sale.¹³³

If the disposition of the mobile home is through a public sale, the secured party is authorized to purchase it.¹³⁴ However, since a mobile home is not a type of collateral which is customarily sold in a recognized market or a type which is the subject of widely distributed standard price quotations, he is not authorized to purchase it at a private sale.¹³⁵

CONCLUSION

In the continuing absence of a statutory standard for positive determination of the status of a structure as a "mobile home" *vel non*, lend-

126. TEX. BUS. & COMM. CODE ANN. § 9.507(a) (1968).

127. *Id.*

128. *Id.*

129. TEX. BUS. & COMM. CODE ANN. § 9.504(d) (1968).

130. *Id.*

131. *Id.*

132. *Id.*

133. TEX. BUS. & COMM. CODE ANN. § 9.504, comment 4 (1968).

ers engaged in mobile home financing will continue to be faced with the problem of determining such status. Consideration must also be given to determination of the classification of the collateral as "inventory," "equipment," or "consumer goods," and whether it is to remain a chattel, or is to be affixed to realty. After default, the lender must use diligence in meeting the statutory requirements for disposition of the collateral in a commercially reasonable manner.

134. *Id.* at (c).

135. *Id.* Although there are no Texas decisions on this point, decisions in other jurisdictions support this view. *Carter v. Ryburn Ford Sales, Inc.*, 451 S.W.2d 199, 202 (Ark. 1970); *Norton v. National Bank of Commerce*, 398 S.W.2d 538, 540 (Ark. 1966); *Nelson v. Monarch Inv. Plan, Inc.*, 452 S.W.2d 375, 377 (Ky. Ct. App. 1970); *Alliance Discount Corp. v. Shaw*, 171 A.2d 548, 550 (Pa. Super. Ct. 1961).