



MANUFACTURED HOUSING DIVISION

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OPINION COMMITTEE

January 18, 2006

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RQ-0431-6A

The Honorable Gregg Abbott
Attorney General for the State of Texas
209 W. 14th Street
Austin, TX 78701

Dear General Abbott:

Your opinion is requested on two matters:

First, this letter is to request your opinion as to whether a tax lien on a manufactured home:

(a) exists with respect to that specific manufactured home that is placed on a property tax roll as of January 1st for a tax year because it was in the taxing jurisdiction (regardless of ownership) and, therefore, may be recorded on that specific home regardless of ownership as reflected on the records of the Texas Department of Community Affairs, Manufactured Housing Division (the "MHD") or

(b) exists only on property of the individual who has personal liability for the taxes assessed and, therefore, may only be recorded if the taxpayer reflected on the certified appraisal roll is the same as the person who, at the time the lien is recorded with MHD, is shown on MHD's records as the owner of the home.

This issue has been summarized as, "Does the lien follow the home or the taxpayer?"

HB 2438 (79th Legislature, regular session) amended the Texas Tax Code to provide that in order to be enforceable a tax lien on a manufactured home must be recorded with the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the "MHD"). This requirement, found at TEX. TAX CODE, §32.03(a-1), reads as follows:

(a-1) A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code.

TEX. OCC. CODE, §1201.219 provides in relevant part:

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department. The recordation of a lien with the department is notice to all persons that the lien exists. Except as provided by Chapter 32, Tax Code, a lien recorded by the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home.

Second, your opinion is requested on whether a tax lien on a manufactured home that has been converted to real property in accordance with TEX. OCC. CODE, §1201.2055 must be recorded with the MHD in order to be enforceable and, if such a lien is not required to be recorded, must the MHD record a lien on such real property if it is filed with MHD?

In that regard, HB 2438 amended TEX. OCC. CODE, §1201.216 to provide:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the department no longer considers the home to be a manufactured home for purposes of regulation under this chapter

(b) On application and subject to Sections 1201.2076 and 1201.209, the department shall issue for the structure described in the application a new statement of ownership and location restoring the structure's designation as a manufactured home only after an inspection and determination that the structure is habitable as provided by Section 1201.453.

TEX. OCC. CODE, §1201.2055(h) provides:

(h) The provisions of this chapter relating to the construction or installation of a manufactured home or to warranties for a manufactured home apply to a home regardless of whether the home is considered to be real or personal property.

January 18, 2006
Request for Opinion
Page 3

I am making this request in my capacity as presiding officer of the Manufactured Housing Board pursuant to TEX. GOV'T. CODE, §402.042(b)(5). Please do not hesitate to ask if you require additional information.

Respectfully submitted,

A handwritten signature in black ink that reads "Valeri Stiers Malone" with a stylized flourish at the end.

Valeri Stiers Malone
Presiding Officer
Manufactured Housing Board