

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 15-002

This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (2011 Replacement Volume.)

TO: Requestor

FROM: Commissioner of Revenue
Alabama Department of Revenue

Date: March 8, 2016

RE: Issuance of Alabama certificate of title after manufactured dwelling sold as “abandoned” under Sections 35-12A-1, et seq., Code of Alabama 1975.

FACTS

The facts as represented by the Requestor are as follows¹:

Requestor is a manufactured housing community located in Montgomery County, Alabama. Requestor has purchased an abandoned manufactured home (“the home”) pursuant to Ala. Code §§35-12A-1, *et seq.* Requestor now wishes for the Alabama Department of Revenue to issue a certificate of title for the home or, alternatively, issue an acceptable application to the Probate Office of Montgomery County so that it may apply for a certificate of title to be issued in the ordinary course of business.

In the Requestor’s community, lots are offered for rent to tenants that will bring their own home subject to the lot lease and payment of rent. In many cases, the tenant’s home is subject to the lien of a finance company or bank. From time to time, the tenant fails to pay the lot rent and, usually at the same time, fails to pay the lienholder the required loan payments. By that point, the tenant sometimes abandons the home. While one would think the lender would immediately exercise self-help repossession of the abandoned home, many lenders will not repossess the home until they find a purchaser for it, which can sometimes take in excess of one year. While the home sits on the lot, rent is not being paid and the home often deteriorates because there is no power or water being used in the home. In response to situations like this occurring throughout the state, the Alabama Legislature enacted the Abandoned Manufactured Dwellings Act (“the Act”) codified at Sections 35-12A-1, *et seq.*, Code of Alabama 1975.

¹ This revenue ruling, like all revenue rulings, is the Alabama Department of Revenue’s interpretation of the law or regulations as applied to the facts and assertions contained in the request for a ruling. If any facts or conclusions asserted by the requestor were misstated or misleading, or if facts that are relevant or material to a proper legal determination of this revenue ruling are omitted by the requestor, this revenue ruling may be void.

In the particular transaction at issue in this letter, a home owned by one of the Requestor's tenants was abandoned and the home was encumbered by a lien to a finance company. After sending all notices required by Ala. Code §§ 35-12A-1, *et seq.*, to both the owner and the lienholder with no response from either, the home was sold involuntarily. All steps required under the Act to non-judicially sell the home were satisfied.

The problem arose when the Requestor sought a certificate of title application from the Montgomery County Probate Office. The Probate Office told the Requestor that the Department had not issued a form application. The undersigned then scheduled a meeting with the Motor Vehicle Division who advised that the Requestor should seek a Revenue Ruling.

ISSUE

Whether the Alabama Department of Revenue is required to issue a certificate of title under circumstances presented or, alternatively, whether the Department is required to issue a form application for certificate of title to purchasers of abandoned manufactured dwellings as contemplated by Ala. Code §§ 35-12A-1, *et seq.*, and Ala. Code § 32-20-32.

LAW AND ANALYSIS

The certificate of title procedure regarding a manufactured home sold under the Abandoned Manufactured Dwellings Act is codified at Sections 35-12A-1, *et seq.*, Code of Alabama 1975. This request does not seek guidance as to the actual procedures a manufactured dwelling community owner must undertake to effectuate a sale of an abandoned manufactured home. The Department of Revenue will assume that all requirements for the sale have been met.

Nowhere under the Abandoned Manufactured Dwellings Act is it found that a purchaser of an abandoned manufactured home is due to be issued a title not subject to existing liens. Likewise, the Alabama Manufactured Home Certificate of Title Act codified at Section 32-20-1, *et seq.*, Code of Alabama 1975, does not specifically provide that a manufactured home that was involuntarily transferred to a new owner is to be issued a title that is free of existing liens. The pertinent statute regarding the issuance of a certificate of title for a manufactured home whose interest was involuntarily transferred is Section 32-20-32 of the Code. Section 32-20-32 (a), states:

If the interest of an owner in a manufactured home passes to another other than by voluntary transfer, the transferee, except as hereinafter provided in subsection (b), shall promptly mail or deliver to a designated agent the last

certificate of title, if available, and proof of the transfer, together with his or her application for a new certificate in the form the department prescribes. If the interest of an owner in a manufactured home passes to another other than by voluntary transfer, and the manufactured home is permanently affixed to the real property and the owner of the manufactured home and the real property are the same then the transferee, except as hereinafter provided in subsection (b), shall promptly mail or deliver to a designated agent the last certificate of title, if available, and proof of the transfer, together with his or her application for a certificate of cancellation in the form the department prescribes.

Additionally, subsection (c) of the foregoing statute states the following:

Notwithstanding anything to the contrary contained in this section, a person holding a certificate of title whose interest in the manufactured home has been extinguished or transferred other than by voluntary transfer shall forthwith mail or deliver the certificate to the department upon request of the department; and the delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate; and the action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of an owner or lienholder named in the old certificate.

For comparison, the Department administers the titling of abandoned motor vehicles under Sections 32-13-1, *et seq.*, Code of Alabama 1975. The Abandoned Motor Vehicle Act is quite similar to the Abandoned Manufactured Dwelling Act regarding notice requirements to current titleholders and lienholders; however, there is one striking difference. Where the Abandoned Manufactured Dwelling Act and the Alabama Manufactured Home Certificate of Title Act does not provide that a new manufactured home title is to be issued by the Department free of liens, the Abandoned Motor Vehicle Act specifically does. Section 32-13-3(c), states:

Upon payment of the sales price, the purchaser shall be entitled to and the person, firm, or governmental entity making the sale shall issue a bill of sale, in a form as prescribed by the Department of Revenue, to the abandoned motor vehicle, **free and clear of all liens, security interests, and encumbrances**. Notwithstanding the foregoing, if the person, firm, or governmental entity making the sale of the motor

vehicle failed to provide notice, or did not attempt to provide notice to the current owners, registrants, secured parties, and lienholders of record, if any, for the motor vehicle in the manner required herein, then the sale of the abandoned vehicle shall be void and the current owners, registrants, secured parties, and lienholders of record, if any, for the motor vehicle shall retain their ownership, security interests, liens, and interests in the motor vehicle.

[emphasis added]

When all the requirements are met pursuant to an abandoned motor vehicle sale the purchaser acquires the vehicle free and clear of all liens, security interests and encumbrances. The same cannot be said for the sale of an abandoned manufactured home. Nowhere in the Code is language found that an abandoned manufactured home that is purchased at a sale pursuant to Section 35-12A-8 is acquired free and clear. The Alabama Legislature could have added the same "free and clear" provision for abandoned manufactured homes as it did for abandoned motor vehicles. It chose otherwise.

Even though the Code does not clearly state that manufactured homes purchased under the Abandoned Manufactured Dwellings Act can be obtained free of all liens and security interests, the legislature did provide a method whereby a title could be issued, nonetheless. Section 32-20-24, Code of Alabama 1975, states:

If the department is not satisfied as to the ownership of the manufactured home or that there are no undisclosed security interests in it, the department may accept the application but shall do either of the following:

(1) Withhold issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the manufactured home and that there are no undisclosed security interests on it.

(2) As a condition of issuing a certificate of title or certificate of cancellation, require the applicant to file with the department a bond in a form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to fifty thousand dollars (\$50,000) for manufactured homes less than 10 model years

old and twenty-five thousand dollars (\$25,000) for all manufactured homes 10 years old or older and shall be conditioned to indemnify any prior owner and lienholder and any subsequent purchaser of the manufactured home or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title or certificate of cancellation for the manufactured home or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the manufactured home. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposits accompanying it, shall be returned at the end of three years or prior thereto if the manufactured home is no longer in this state and the currently valid Alabama certificate of title is surrendered to another state, unless the department has been notified of the pendency of an action to recover on the bond.

A purchaser of an abandoned manufactured home can obtain a certificate of title for the home by posting a bond. The form application used by the Department for obtaining a certificate of title for a manufactured home is the same used to obtain a certificate of title for a motor vehicle.

HOLDING

When the requirements have been met for the sale and purchase of an abandoned manufactured home under the Abandoned Manufactured Dwellings Act, Sections 35-12A-1, *et seq.*, Code of Alabama 1975, the Requestor is required to obtain a title under bond for the dwelling pursuant to Section 32-20-24, Code of Alabama 1975, using the same certificate of title application that is used for motor vehicles.

Julie P. Magee