

**Unusual Collateral in Real Estate Finance—  
Beyond Cars and Boats and Planes**

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## **Preface:**

Commercial real estate lending is no longer as simple as a promissory note and a deed of trust, if it ever was. The elements of value in commercial real estate projects which might become collateral for a loan or which give the real property collateral value are becoming more numerous. The operations of commercial real estate have become more complex. And the law keeps evolving, as we know because we are here in a continuing legal education forum which is needed because of those evolutions.

Two years ago, I put together a paper on the kinds of collateral related to real estate lending which I had encountered in my own practice. A series of "... you won't believe it but wait until you hear this...." stories and the lessons that I took from them. This year the continuation of the effort to discuss concerns in the collateral involved in commercial real estate lending is a collection of new things, evolution of older things and reconsideration of certain collateral because of changes in the law or my recent appreciation of changes from some time ago. Instead of "... you won't believe it but...", this year the subjects are in the nature of "...we might need to rethink how we are doing this because a lender might not be able to get comfortable loaning money on it...." But I hope there is still some entertainment value to my musings.

## **I. An Update on Modular Structures and Projects which are Assemblages of Modular Structures**

In the first paper on unusual collateral, I talked about the "mansion at the huntin' lease" as an introduction to the issues involved in classifying and obtaining collateral interests in mobile homes or manufactured homes. In addition to mobile homes, there are also in commerce "industrial/modular residences". The number of uses of modular structures has grown greatly, not just in the last two years, and now includes, inter alia, affordable subdivisions composed of modular structures, dormitories, hotel rooms, hospital rooms, and medium or high rise structures in which modular units are inserted into larger structures to complete the project. A renewed consideration of the subject of functional components installed in bigger projects is appropriate.

The presentation in 2017 focused on residential structures manufactured off-site but located on real property which might be owned or leased. That subject dealt with "park trailers" versus "manufactured homes" and with Chapter 1201 of the Occupations Code and with the agency known as the Texas Department of Housing and Community Affairs. Chapter 1201 contains methods for a lender to obtain a lien on the manufactured housing, provisions for making the manufactured housing part of the real estate on which it is permanently located, methods for foreclosure of a lien, a system for retitling of a foreclosed manufactured home, and more in a comprehensive program dealing with the subject. Chapters 2 and 63 of the Property Code contribute to the certainty about how liens are taken and enforced against manufactured homes governed by Chapter 1201.

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