

# FORGET ME NOT: MANUFACTURED HOME OWNERS AND THE LAWS THAT LEAVE THEM BEHIND

*Sue Eng Ly\**

## I. INTRODUCTION

“Life, Liberty, and the pursuit of Happiness.”<sup>1</sup> Those words from the Declaration of Independence are etched into the fabric of the United States. Americans aspire to live a life in which their hopes prosper and their dreams are realized. A chapter in everyone’s American dream involves the freedom to live one’s life while also finding the stability to do so. People find the source of that stability in homeownership.<sup>2</sup>

In recent years, market crashes and financial recessions have made it difficult for Americans to buy and own a home.<sup>3</sup> The traditional home became unaffordable for average Americans, and as a result, they had to find recourse elsewhere.<sup>4</sup> The alternative solution was in manufactured housing.<sup>5</sup> Prior to the mortgage crisis, there was already a growing interest in manufactured homes, but their popularity increased exponentially once the crisis hit.<sup>6</sup> In the years following the crisis, Americans became increasingly dependent on the existence and operation of manufactured home parks.<sup>7</sup>

Currently, about thirteen states are without manufactured home park legislation, and of the states that have enacted statutes, many of them have bare-bones protections that create more legal ambiguity to the detriment of the manufactured home owner.<sup>8</sup> The unfortunate consequence of these weak regulatory schemes is that some homeowners are afforded more legal

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\* To Professor Levinson, Professor Abramson, and Professor Sweeny for helping me through this difficult year. And to my mother—a refugee who makes America great.

<sup>1</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>2</sup> Christopher Mayer, *Homeownership Equals Stability*, N.Y. TIMES (July 16, 2014, 1:09 PM), <https://www.nytimes.com/roomfordebate/2014/07/15/should-housing-policy-support-renters-more/homeownership-equals-stability>.

<sup>3</sup> See Karl Vick, *The Home of the Future*, TIME (Mar. 23, 2017), <http://time.com/4710619/the-home-of-the-future/>.

<sup>4</sup> *See id.*

<sup>5</sup> *See id.*

<sup>6</sup> *See id.*

<sup>7</sup> *See id.*; see also Tom Geoghegan, *Why Do So Many Americans Live in Mobile Homes?*, BBC NEWS (Sept. 24, 2013), <http://www.bbc.com/news/magazine-24135022>.

<sup>8</sup> See CAROL L. CARTER ET AL., AARP PUB. POLICY INST., MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER 61 (2004), [https://assets.aarp.org/rgcenter/consume/d18138\\_housing.pdf](https://assets.aarp.org/rgcenter/consume/d18138_housing.pdf).

protections than others simply because of the state they happen to live in.<sup>9</sup> They are subject to abusive landlord practices and even more consequentially, left vulnerable to the loss of their home.<sup>10</sup> This Note serves to provide a model statute that addresses these legal issues by comparing and analyzing the language and effect of five manufactured home park statutes.

Part II of this Note elaborates on the origin of manufactured homes and their evolution into a prominent means of housing in the United States. Part III examines five different manufactured home park statutes and analyzes the strengths and weaknesses of some of the provisions in each. Part IV proposes a model statute that other states should either adopt or use to amend their current statutes, as a means to provide better protections to manufactured home owners. More specifically, this Note argues the importance of states having strong, comprehensive manufactured home park regulations by analyzing state statutes and applying that analysis to the creation of a model state statute.

## II. HISTORY OF MANUFACTURED HOMES AND MANUFACTURED HOME PARKS

### *A. The Origins of Manufactured Homes*

A manufactured home, commonly known as a “mobile home,” is a type of factory-built housing constructed in compliance with the federal housing code.<sup>11</sup> Manufactured homes were originally a product of the automobile industry in the 1930s as a form of temporary recreational housing for people with mobile lifestyles.<sup>12</sup> The declining post-World War II American economy forced a lot of families to move to new places searching for employment opportunities and required them to move on a moment’s notice.<sup>13</sup> The flexibility of owning a manufactured home, coupled with its affordability, made it an appealing permanent housing alternative to a site-built home.<sup>14</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Katherine MacTavish et al., *Housing Vulnerable Among Rural Trailer-Park Households*, 13 GEO. J. POVERTY L. & POL’Y 95, 101 (2006).

<sup>11</sup> CONSUMER FIN. PROT. BUREAU, MANUFACTURED-HOUSING CONSUMER FINANCE IN THE UNITED STATES 8 (Sept. 2014), [http://files.consumerfinance.gov/f/201409\\_cfpb\\_report\\_manufactured-housing.pdf](http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf).

<sup>12</sup> WILLIAM APGAR ET AL., NEIGHBORHOOD REINVESTMENT CORP., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY-AND ASSET-BUILDING STRATEGY 2 (Sept. 2002), [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w02-11\\_apgar\\_et\\_al.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w02-11_apgar_et_al.pdf).

<sup>13</sup> Rory O’Sullivan & Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 GONZ. L. REV. 285, 288–89 (2013).

<sup>14</sup> See APGAR ET AL., *supra* note 12, at 2–3.

Prior to the 1970s, the manufactured housing industry was largely unregulated, resulting in many injuries and deaths related to their construction.<sup>15</sup> As the manufactured home industry became an increasingly important source of housing, Congress started to recognize the dangers of an unregulated industry to the public's health and safety.<sup>16</sup> In response, Congress passed legislation that directed the United States Department of Housing and Urban Development (HUD) to create safety standards regarding the construction and installation of manufactured homes.<sup>17</sup> Eventually those standards were enacted into law and became what is now known as the "HUD Code."<sup>18</sup>

### *B. The Vulnerability of Manufactured Home Owners*

Since that time, the growing legislative push has been to regulate manufactured home parks because of the landlord-tenant relationship that arises between manufactured home owners and park owners.<sup>19</sup> Manufactured home parks are usually the private property of a person (also known as a "park owner" or "landlord") who leases spaces on her land to manufactured home owners in order to make a profit.<sup>20</sup> Most manufactured home owners own their homes, but they usually do not own any land. Therefore, manufactured home owners may have to pay monthly rent to place their homes in these parks, which subjects them to landlord-tenant laws.<sup>21</sup> However, this creates a legal ambiguity because although a manufactured home owner should be able to enjoy rights afforded to a traditional site-built homeowner, those rights are limited because of the substantial control a park owner has over park conditions.<sup>22</sup> Consequently, uniform landlord-tenant laws do not provide adequate legal protection to manufactured home owners,<sup>23</sup> putting them in vulnerable positions.<sup>24</sup>

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<sup>15</sup> See O'Sullivan & Medrash, *supra* note 13.

<sup>16</sup> *Id.* at 289.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Amy J. Schmitz, *Promoting the Promise Manufactured Homes Provide for Affordable Housing*, 13 J. AFFORDABLE HOUSING & COMMUNITY. DEV. L. 384, 388–89 (2004).

<sup>20</sup> MacTavish et. al., *supra* note 10, at 96.

<sup>21</sup> See Schmitz, *supra* note 19, at 388.

<sup>22</sup> *Id.*

<sup>23</sup> See *id.* at 389.

<sup>24</sup> See Lance George & Jann Yankausas, *Preserving Affordable Manufactured Home Communities in Rural America: A Case Study*, HOUS. ASSISTANCE COUNCIL 9 (Mar. 2011), [http://www.ruralhome.org/storage/documents/rcbi\\_manufactured.pdf](http://www.ruralhome.org/storage/documents/rcbi_manufactured.pdf).

They are often confronted with excessive rent rates, abysmal park management, and most detrimental of all, park closures.<sup>25</sup> Arguably, the solution would be for manufactured home owners to move when they are unhappy with their circumstances, but, unfortunately, it is not that simple.<sup>26</sup> Manufactured home owners are often left with no way out because of restrictive city ordinances that limit where they can place their home and the unwillingness of park owners to accept new homeowners.<sup>27</sup> Additionally, many manufactured home owners are impoverished—they cannot afford to relocate their home since the cost of moving can reach upwards of \$10,000.<sup>28</sup> Even if manufactured home owners want to move, the obstacles they face do not leave them with many options to improve their situations.<sup>29</sup>

Furthermore, without access to the money or influential weight of lobbyists, manufactured home owners lack the political power needed to advocate for their interests in state legislatures.<sup>30</sup> What is particularly disconcerting is the current trend of mobile home manufacturers purchasing manufactured home parks.<sup>31</sup> This puts manufacturers in an even stronger bargaining position over residents, which in turn incentivizes manufacturers to use their power to limit state regulation of parks.<sup>32</sup> Without powerful representation in legislatures pushing for legal protections, manufactured home owners suffer the consequences of gaps in the law.<sup>33</sup>

### *C. The Increase in Manufactured Homes and Manufactured Home Parks*

The growing popularity of these types of homes is reflected in the increase of manufactured home ownership over time.<sup>34</sup> When the United States Census started counting the number of manufactured homes in 1940, the number was so small that the results were placed in the “Other” category.<sup>35</sup> By 2015, manufactured housing made up 6.4% of all American households, which equaled approximately 8.5 million manufactured homes.<sup>36</sup>

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<sup>25</sup> *Id.* at 8.

<sup>26</sup> See Schmitz, *supra* note 19, at 389.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 387–88.

<sup>31</sup> *Id.* at 388–89.

<sup>32</sup> *Id.* at 387–88.

<sup>33</sup> See *id.* at 390, 392–93.

<sup>34</sup> CONSUMER FIN. PROT. BUREAU, *supra* note 11, at 10–12.

<sup>35</sup> *Historical Census of Housing Tables*, U.S. CENSUS BUREAU, <https://www.census.gov/hhes/www/housing/census/historic/units.html> (last updated Oct. 31, 2011).

<sup>36</sup> *2015 National – Housing Unit Characteristics – All Housing Units*, U.S. CENSUS BUREAU, [https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html#?s\\_areas=a00000&s\\_year=n2017&s\\_tableName=Tabl](https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html#?s_areas=a00000&s_year=n2017&s_tableName=Tabl)

A study of 112 counties conducted by the Consumer Financial Protection Bureau found that over one-third of homes in mostly southern states were manufactured housing<sup>37</sup> and about two-thirds of manufactured homes were in rural areas.<sup>38</sup> Although manufactured homes are in every state, these statistics indicate that the disproportionate impact of legal instability for manufactured home owners is confined to a particular geographical area of the country.<sup>39</sup>

Moreover, there are an estimated 50,000 manufactured home parks in the United States, with between 200 to 600 units in each park.<sup>40</sup> Approximately 30% of households that live in manufactured homes own the home but rent the land, while an additional 18% of these households rent both the manufactured home and the land, meaning almost half of all manufactured homes in the United States have obligations to a landlord or park owner.<sup>41</sup> Subjecting manufactured home owners to the “whims of park owners” is unfair because of what is at stake.<sup>42</sup> Manufactured home owners purchase their homes as emotional and financial investments in order to create stability in their lives.<sup>43</sup> With such critical investments on the line, park owners have a heightened responsibility and obligation to their residents.<sup>44</sup>

#### *D. The Current Legal Landscape of Manufactured Home Park Regulation*

Although the federal government has not yet regulated the maintenance and management of manufactured home parks, a growing number of states have.<sup>45</sup> In recognition of the problems associated with a lack of regulation, states began enacting statutes that were specifically tailored to regulate the landlord-tenant relationship of manufactured park owners and their residents.<sup>46</sup> There are currently about thirty states that have statutes that provide comprehensive regulation of manufactured home parks.<sup>47</sup> Some of

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<https://www.census.gov/programs-surveys/ahs/data.html> (Under “Select Table” on the left-hand side, select “Housing Unit Characteristics”; then click “Get Table” hyperlink) (last visited Dec. 21, 2017, 10:00 AM).

<sup>37</sup> CONSUMER FIN. PROT. BUREAU, *supra* note 11, at 11.

<sup>38</sup> *Id.*

<sup>39</sup> *See id.* at 10–11.

<sup>40</sup> MacTavish et al., *supra* note 10, at 97.

<sup>41</sup> CONSUMER FIN. PROT. BUREAU, *supra* note 11, at 21.

<sup>42</sup> MacTavish et al., *supra* note 10, at 99.

<sup>43</sup> *See* Schmitz, *supra* note 19, at 391.

<sup>44</sup> *See id.*

<sup>45</sup> CARTER ET AL., *supra* note 8, at 62.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

the earliest states to enact regulations were Arizona, Connecticut, Florida, Ohio, and Washington.<sup>48</sup>

Residents in states without regulations are left to find recourse in their respective state's Uniform Landlord-Tenant Act, which "merely supplement[s], without substituting for, comprehensive protections."<sup>49</sup> About thirteen states have not enacted manufactured home parks regulations, resulting in about 3.5 million homes being unprotected from potentially abusive landlord practices.<sup>50</sup> Even amongst the states with manufactured home park statutes, about one-fourth of them have "enacted skeletal statutes that address only a few of the most basic aspects" of manufactured home parks, none of which include whether a landlord may increase a resident's rent during their tenancy or whether a park owner is allowed to unreasonably impose park rules and regulations.<sup>51</sup>

### III. ANALYSIS

#### *A. Comparison of State Statutes*

Without a uniform manufactured home park statute, states have been left to their own devices to determine the content of the statutory provisions.<sup>52</sup> The effect of this has manifested itself into the different approaches that states have taken to address this issue.<sup>53</sup> For the purposes of this Note, the following state statutes will be analyzed and compared to one another: Arizona, Connecticut, Florida, Ohio, and Washington. All of these states offer regulatory schemes that share a similar framework in how their statutes are structured.<sup>54</sup> Interpreting these statutes will help people gain insights into the policies behind this kind of legislation and the legal implications on manufactured home owners.<sup>55</sup>

#### *B. Using Statutory Definitions as a Means for Legal Enforcement*

Definitions play a crucial role in laying the legal groundwork for manufactured home park statutes because they determine who is afforded

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 61.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*; O'Sullivan & Medrash, *supra* note 13, at 292-94.

<sup>53</sup> *See* CARTER ET AL., *supra* note 8, at 61-62.

<sup>54</sup> *See infra* notes 56-137 and accompanying text.

<sup>55</sup> *See infra* notes 56-137 and accompanying text.

protection under the statutes.<sup>56</sup> Terms that often get used interchangeably are “manufactured home” and “mobile home.”<sup>57</sup> Although these terms have been used colloquially to refer to the same type of home, many statutes create legal distinctions in the various combinations of these terms.<sup>58</sup> Some statutes limit their applicability to manufactured homes that were built “on or after June 15, 1976.”<sup>59</sup> This date limitation disregards homes built before June 15, 1976, taking those particular homeowners out of the protective net of the statute.<sup>60</sup>

Other states have created two different definitions of homes that are covered under their respective manufactured home park statutes.<sup>61</sup> For instance, Washington’s statute refers to homes built before June 15, 1976 as “mobile homes,”<sup>62</sup> and homes built after that date as “manufactured homes.”<sup>63</sup> Arizona also has two definitions in relation to these types of homes but refers to them both as “mobile homes.”<sup>64</sup> Arguably, providing two separate definitions in order to encompass homes built before and after the implementation of the 1974 HUD Code is an improvement from a date limitation. However, the wordiness of two definitions subjects manufactured home owners to nuanced legal arguments of whether the home is a manufactured home at all.<sup>65</sup> A better approach is reflected in Florida’s statute, which defines a “mobile home” as a “residential structure, transportable in one or more section . . .” without a date distinction.<sup>66</sup> The use of “mobile home” as an umbrella term makes the statute applicable to more residents who should be protected by it.<sup>67</sup>

Another important term that these statutes define is “manufactured home park.”<sup>68</sup> This term is critical in determining what type of land use will constitute a “manufactured home park” and who the statute will be enforced

<sup>56</sup> See *infra* notes 57–72 and accompanying text.

<sup>57</sup> See CARTER ET AL., *supra* note 8, at 2.

<sup>58</sup> See statutes cited *infra* notes 61–66 and accompanying text.

<sup>59</sup> E.g., CONN. GEN. STAT. ANN. § 21-64(1) (West, Westlaw through 2017 Jan. Reg. Sess.). The significance of this date comes from Congress’s enactment of the HUD Code in 1974, which required safer and higher quality manufactured homes, so homes built prior to that date are not federally up to code. See George & Yankausas, *supra* note 24, at 3.

<sup>60</sup> E.g., CONN. GEN. STAT. ANN. § 21-64(1) (West, Westlaw through 2017 Jan. Reg. Sess.).

<sup>61</sup> Compare WASH. REV. CODE ANN. § 59.20.030(8) (West, Westlaw through 2018 Reg. Sess.), with ARIZ. REV. STAT. ANN. § 33-1409(14) (West, Westlaw through 2018 1st Spec. Sess. and 2d Reg. Sess.).

<sup>62</sup> WASH. REV. CODE ANN. § 59.20.030(8) (West, Westlaw through 2018 Reg. Sess.).

<sup>63</sup> *Id.* § 59.20.030(6) (Westlaw).

<sup>64</sup> ARIZ. REV. STAT. ANN. § 33-1409(14) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>65</sup> See generally WASH. REV. CODE ANN. § 59.20.030(8) (West, Westlaw through 2018 Reg. Sess.); ARIZ. REV. STAT. ANN. § 33-1409(14) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>66</sup> FLA. STAT. ANN. § 723.003(8) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>67</sup> See *id.*

<sup>68</sup> See FLA. STAT. ANN. § 723.003(12) (West, Westlaw through 2018 2d Reg. Sess.); WASH. REV. CODE ANN. § 59.20.303(10) (West, Westlaw through 2018 Reg. Sess.); ARIZ. REV. STAT. ANN. § 33-1409(15) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

against.<sup>69</sup> States range in how broad or narrow they define what is considered a “park.”<sup>70</sup> Florida broadly defines such parks as a “use of land in which lots or spaces are offered for rent . . . for the placement of mobile homes and in which the primary use of the park is residential.”<sup>71</sup> Although this creates space for case law to complete what exactly constitutes “residential” use, concern arises when court opinions do not rule in favor of residents.<sup>72</sup> On the other hand, Washington sets out a more specific definition by stating that a mobile home park “means any real property which is rented or held out for rent to others for the placement of two or more mobile [or manufactured] homes . . . for the primary purpose of production of income.”<sup>73</sup> The definition acknowledges the business aspects of operating a manufactured home park which subject landlords to a higher standard of care.<sup>74</sup>

Moreover, states’ manufactured home park statutes do not use consistent terms when referring to individuals who operate manufactured home parks.<sup>75</sup> For instance, Connecticut distinguishes between a “licensee,” which is “a person who is licensed to operate and maintain a mobile manufactured home park . . .” and an “owner,” which is “a licensee or permittee or any person who owns, operates, or maintains a mobile manufactured home park . . .”<sup>76</sup> Creating this legal distinction between the two types of individuals indicates that those people who fall out of the purview of those definitions will not be held accountable for their actions even if they were “at fault.”<sup>77</sup> In contrast to Connecticut, Washington enforces its manufactured home park statutes against a “landlord,” who is considered to be the “owner of a [manufactured] home park and includes the agents of the landlord.”<sup>78</sup> With the inclusion of “agents of the landlord,” Washington broadly defines “landlord” while also being legally specific.<sup>79</sup>

<sup>69</sup> See statutes cited *supra* note 68.

<sup>70</sup> Compare WASH. REV. CODE ANN. § 59.20.303(10) (West, Westlaw through 2018 Reg. Sess.), and ARIZ. REV. STAT. ANN. § 33-1409(14) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.), with FLA. STAT. ANN. § 723.003(12) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>71</sup> FLA. STAT. ANN. § 723.003(12) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>72</sup> See Kevin Jewell, *Manufactured Homeowners Who Rent Lots Lack Security of Basic Tenants Rights*, CONSUMERS UNION 1 (Feb. 2001), <https://consumersunion.org/pdf/manhome.pdf>.

<sup>73</sup> WASH. REV. CODE ANN. § 59.20.303(10) (West, Westlaw through 2018 Reg. Sess.).

<sup>74</sup> See *id.* §§ 59.20.303(4), .030(10) (Westlaw).

<sup>75</sup> Compare *id.* § 59.20.030(4) (Westlaw), with CONN. GEN. STAT. ANN. § 21-64(7) (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>76</sup> CONN. GEN. STAT. ANN. §§ 21-64(4), (7) (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>77</sup> See Emily Bregel, *Families on Verge of Homelessness After Unknowingly Renting Condemned Trailers*, ARIZ. DAILY STAR (Aug. 26, 2017), [http://tucson.com/news/local/families-on-verge-of-homelessness-after-unknowingly-renting-condemned-trailers/article\\_8a4aa0aa-7b40-57c6-bb00-d3c51ab6f5dc.html](http://tucson.com/news/local/families-on-verge-of-homelessness-after-unknowingly-renting-condemned-trailers/article_8a4aa0aa-7b40-57c6-bb00-d3c51ab6f5dc.html).

<sup>78</sup> WASH. REV. CODE ANN. § 59.20.303(4) (West, Westlaw through 2018 Reg. Sess.).

<sup>79</sup> *Id.*



### C. The Confusing Nature of Rental Agreements

#### 1. The Downsides of the Documents (or Lack Thereof)

The protection of residents in manufactured home parks often rests on the strength of their states' rental agreement statutes.<sup>80</sup> Statutes that include these provisions assure uniformity in the types of contracts parties enter into within the same state.<sup>81</sup> Rental agreements between residents and landlords are generally required to be written.<sup>82</sup> Most of the language relied upon by the states is similar to the language used by Ohio: "The [landlord] shall offer each homeowner a written rental agreement for a manufactured home park lot . . . ." <sup>83</sup>

States without a written rental agreement provision still require landlords to abide by statutory mandates.<sup>84</sup> For example, the Florida statute states, "[w]hether or not a tenancy is covered by a valid written rental agreement, the required statutory provisions shall be deemed to be a part of the rental agreement."<sup>85</sup> However, it would be difficult to enforce undocumented rental agreements because practically speaking, it would place a heavier burden on residents to prove the breach in court.<sup>86</sup>

#### 2. Money Does Not Grow on Trees: Rent, Fees, and Security Deposits, Oh My!

Typically, manufactured home park statutes regulate matters relating to the financial obligations of residents during their tenancy.<sup>87</sup> For example, these statutes commonly require landlords to notify residents of any rent increases.<sup>88</sup> Arizona attempts to be more practical for manufactured home

<sup>80</sup> See generally Robert Stubbs, *The Necessity for Specific State Legislation to Deal With The Mobile Home Park Landlord-Tenant Relationship*, 9 GA. L. REV. 212 (1974).

<sup>81</sup> See *infra* notes 83–86. A rental agreement is "any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties." OHIO REV. CODE ANN. § 4781.01(X) (West, Westlaw through File 66 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>82</sup> See ARIZ. REV. STAT. ANN. § 33-1413(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.); CONN. GEN. STAT. ANN. § 21-70(b) (West, Westlaw through 2018 Feb. Reg. Sess.); OHIO REV. CODE ANN. § 4781.40(A)(1) (West, Westlaw through File 66 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1); WASH. REV. CODE ANN. § 59.20.060(1)(a) (West, Westlaw through 2018 Reg. Sess.).

<sup>83</sup> OHIO REV. CODE ANN. § 4781.40(A)(1) (West, Westlaw through File 66 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>84</sup> See FLA. STAT. ANN. § 723.003(2) (West, Westlaw through the 2018 2d Reg. Sess.).

<sup>85</sup> *Id.*

<sup>86</sup> See Schmitz, *supra* note 19, at 387–88; Jewel, *supra* note 72.

<sup>87</sup> See statutes cited *infra* notes 89–91.

<sup>88</sup> See *infra* notes 89–91 and accompanying text.

owners by requiring landlords to give notice “at least ninety days prior to the expiration [of the rental term] . . . .”<sup>89</sup> Ohio’s manufactured home park statute also offers some practicality by requiring that no “rental fee shall be increased during the term of any tenant’s or owner’s rental agreement.”<sup>90</sup> A statutorily mandated timeframe of notification and a prohibition of a rent increase within a rental term period are both important safeguards for residents because such safeguards provide some time to save money and find a new manufactured home park to move to.<sup>91</sup>

On the other hand, security deposit provisions are less reliable in protecting tenants.<sup>92</sup> Much to the chagrin of tenants, overbroad and weak statutory language results in far too many unreturned deposits that tenants are legally entitled to.<sup>93</sup> One of the pitfalls of manufactured home park statutes is their failure to address commingling of funds.<sup>94</sup> Some provisions require that the landlord must “not commingle”<sup>95</sup> the security deposits with any other of the landlord’s funds, while others mention the commingling of funds as a vague passing reference.<sup>96</sup> The impact of commingling funds is likely to be most detrimental to the manufactured home owner because it is her security deposit that is getting shuffled around through different accounts.<sup>97</sup> Forceful language against the commingling of security deposits holds landlords accountable when they take advantage of their tenants’ money.<sup>98</sup>

Additionally, unbeknownst to many manufactured home park residents, security deposits held by park ownership have the potential to accrue interest, which proves to be problematic depending on who bears the burden of paying that interest.<sup>99</sup> In Washington, landlords are “entitled to receipt of interest

<sup>89</sup> ARIZ. REV. STAT. ANN. § 33-1413(G) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>90</sup> OHIO REV. CODE ANN. § 4781.40 (B) (West, Westlaw through File 66 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>91</sup> See Roger Colten & Michael Sheehan, *The Problem of Mass Evictions in Mobile Home Parks Subject to Conversion*, 8 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 231, 232–33 (1999).

<sup>92</sup> See *infra* notes 93–102 and accompanying text. Security deposits serve as a safeguard for landlords in anticipation of damage that tenants may do to the property, but there is a legal mandate to return the deposits to the tenants if the tenant satisfies the terms of the rental agreement. JAMES N. JOHNSON, TEXAS PRACTICE GUIDE REAL ESTATE TRANSACTIONS §§ 28.129, .135 (2017).

<sup>93</sup> See Bregel, *supra* note 77.

<sup>94</sup> See generally FLA. STAT. ANN. § 723.031 (West, Westlaw through 2018 2d Reg. Sess.); CONN. GEN. STAT. ANN. § 21-83 (West, Westlaw through 2018 Feb. Reg. Sess.). Commingling of funds is frowned upon in the legal community due to a person’s dishonesty and underlying intent of personal gain. See Sonya Powell, *Intent as an Element of Attorney Misconduct*, 18 J. LEGAL PROF. 407, 408–09 (1993).

<sup>95</sup> See FLA. STAT. ANN. §§ 723.031(8), 83.49(1)(a) (West, Westlaw through the 2018 2d Reg. Sess.).

<sup>96</sup> See CONN. GEN. STAT. ANN. §§ 21-83(A)(6), 47a-21(h)(3)(A) (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>97</sup> See Schmitz, *supra* note 19, at 389.

<sup>98</sup> See FLA. STAT. ANN. §§ 723.031(8), 83.49(1)(a) (West, Westlaw through 2018 2d Reg. Sess.); see also Schmitz, *supra* note 19, at 389.

<sup>99</sup> See WASH. REV. CODE ANN. § 59.20.170(1) (West, Westlaw through 2018 Reg. Sess.); CONN.

paid” on security deposits, meaning that the interest accrued on the security deposit could ultimately extinguish what a resident paid in the security deposit.<sup>100</sup>

On the other hand, in Connecticut, the landlord must return the “full amount of the security deposit paid by such tenant plus accrued interest.”<sup>101</sup> Although not directly stated, the statute does ultimately hold the landlord responsible for paying the interest, which assures that residents get their deposits returned in full.<sup>102</sup>

*D. Home is Where the Headache is: Poor Provisions, Dismal Duties,  
Lackluster Landlords*

Manufactured home park statutes generally impose duties on landlords.<sup>103</sup> One issue that is not always covered by state statutes is in relation to garbage removal.<sup>104</sup> Some states leave it up to the parties in a rental agreement to determine the method of removing garbage.<sup>105</sup> Other states place the burden on the tenants to “dispose of all rubbish, garbage, and other . . . waste in a clean and sanitary manner at reasonable and regular intervals . . . .”<sup>106</sup> Manufactured home owners in these states are left to individually pay for garbage removal, which is a service that other non-manufactured home owners do not have to pay for.<sup>107</sup> States like Arizona

GEN. STAT. ANN. § 21-83(A)(6) (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>100</sup> See WASH. REV. CODE ANN. § 59.20.170(1) (West, Westlaw through 2018 Reg. Sess.); see generally Bregel, *supra* note 77.

<sup>101</sup> See CONN. GEN. STAT. ANN. §§ 21-83(A)(6), 47a-21(d)(2) (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>102</sup> See *id.* § 21-83(A)(6) (Westlaw).

<sup>103</sup> Statutes require landlords to keep common areas in clean and safe conditions, maintain the utility services such as water, gas, and electricity, and comply with local and state codes and statutes. See ARIZ. REV. STAT. ANN. § 33-1434(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.); CONN. GEN. STAT. ANN. § 21-82(a) (West, Westlaw through 2018 Feb. Reg. Sess.); FLA. STAT. ANN. § 723.022(A)(1)–(7) (West, Westlaw through 2018 1st Spec. Sess.); OHIO REV. CODE ANN. § 4781.38(A)(1)–(4) (West, Westlaw through Files 90 and 92–94, 2017 State Issue 1, and 2018 State Issue 1); WASH. REV. CODE ANN. §§ 59.20.130(1), (3), (6) (West, Westlaw through 2018 Reg. Sess.).

<sup>104</sup> See generally ARIZ. REV. STAT. ANN. § 33-1434 (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.); CONN. GEN. STAT. ANN. § 21-82 (West, Westlaw through 2018 Feb. Reg. Sess.); OHIO REV. CODE ANN. § 4781.38 (West, Westlaw through Files 90, 92–94, 2017 State Issue 1, and 2018 State Issue 1).

<sup>105</sup> FLA. STAT. ANN. § 723.012 (8) (West, Westlaw through 2018 2d Reg. Sess.). “The manner in which utility and other services, including, but not limited to, sewage and waste disposal, cable television, water supply, and storm drainage, will be provided, and the person or entity furnishing them. The services and the lot rental amount or user fees charged by the park owner for the services provided by the park owner shall also be disclosed.” *Id.*

<sup>106</sup> WASH. REV. CODE ANN. § 59.20.140(2) (West, Westlaw through 2018 Reg. Sess.).

<sup>107</sup> See FLA. STAT. ANN. § 723.012 (West, Westlaw through 2018 2d Reg. Sess.); OHIO REV. CODE ANN. § 4781.39 (West, Westlaw through Files 90, 92–94, 2017 State Issue 1, and 2018 State Issue 1); WASH. REV. CODE ANN. § 59.20.140(2) (West, Westlaw through 2018 Reg. Sess.).

have done a better job with these garbage removal provisions by including the following language: “The landlord shall . . . [p]rovide for the removal of garbage, rubbish and other waste incidental to the occupancy of the [manufactured] home space.”<sup>108</sup> The inclusion of such language ensures that waste is not accumulating within the park.<sup>109</sup>

Additionally, not all states provide stringent regulation regarding the maintenance of roads within a manufactured home park. Some states, such as Arizona, do not include any language referring to road maintenance.<sup>110</sup> Ohio offers higher standards by requiring roads within a manufactured home park to be “maintained in a condition satisfactory to the [agency] at all times.”<sup>111</sup> However, this mandate is problematic since Ohio recently abolished its regulating agency, making it unclear whether anyone is really going to be held accountable for failing to maintain the roads.<sup>112</sup> The states that do impose such duties generally require the landlord to keep the roads in “good condition,” but what constitutes “in good condition” is not clearly defined within the statute.<sup>113</sup>

Moreover, manufactured home park statutes typically include provisions mandating park landlords offer “good and safe working” water systems for residents,<sup>114</sup> but practically speaking, it has been difficult to enforce such provisions.<sup>115</sup> In one Connecticut case, a park resident’s eviction was affirmed because she confronted the landlord in a “loud, abusive, and profane” manner.<sup>116</sup> Although, the resident’s reasoning behind the confrontation was at the heart of the case.<sup>117</sup> Prior to the incident, the park experienced almost forty consecutive days of water issues.<sup>118</sup> The resident

<sup>108</sup> ARIZ. REV. STAT. ANN. § 33-1434(A)(5) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>109</sup> See Schmitz, *supra* note 19, at 393. See also Daniel Zwerdling, *Mobile Home Park Owners Can Spoil an Affordable American Dream*, NPR (Dec. 26, 2016, 1:32 PM), <https://www.npr.org/2016/12/26/502590161/mobile-home-park-owners-can-spoil-an-affordable-american-dream>.

<sup>110</sup> See ARIZ. REV. STAT. ANN. § 33-1434 (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>111</sup> OHIO REV. CODE ANN. § 4781.57 (West, Westlaw through Files 90, 92–94, 2017 State Issue 1, and 2018 State Issue 1).

<sup>112</sup> See Josh Sweigart, *State Budget Abolishes Mobile Home Oversight Agency*, DAYTON DAILY NEWS (June 29, 2017, 1:51 PM), <http://www.mydaytondailynews.com/news/state--regional-govt--politics/state-budget-abolishes-mobile-home-oversight-agency/s4HhSnk9BxqsGdWFXCGSXM/>.

<sup>113</sup> See CONN. GEN. STAT. ANN. § 21-82 (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>114</sup> See OHIO REV. CODE ANN. § 4781.38(A)(4) (West, Westlaw through Files 90, 92–94, 2017 State Issue 1, and 2018 State Issue 1).

<sup>115</sup> See *generally* Cedar Grove Assocs., LLC v. Gifford, No. MMXCV166016148, 2017 WL 4427092, at \*4 (Conn. Super. Ct. Aug. 29, 2017).

<sup>116</sup> *Id.*

<sup>117</sup> See *infra* notes 118–22 and accompanying text.

<sup>118</sup> See Post-Trial Brief for Defendant at 18, Cedar Grove Assocs., LLC v. Gifford, No. MMXCV166016148, 2017 WL 4427092 (Conn. Super. Ct. Aug. 29, 2017).

directed her anger towards park management only after her repeated calls and requests went unanswered.<sup>119</sup> Additionally, it appeared as though the rest of the park residents were frustrated with the unaddressed water conditions.<sup>120</sup> Taking the full story into consideration, it is understandable why the resident got as upset as she did towards the landlord.<sup>121</sup> The decision illustrates the weakness of the water provision in the statute because even something as critical as functioning water was not enough to compel the court to consider and understand the resident's frustrations.<sup>122</sup>

### *E. Sold Short by Sale*

Often, landlords are expected to follow certain notification procedures before selling their manufactured home parks. Although most states require that landlords give tenants notice of a park sale, they vary in how much notice the landlord must give.<sup>123</sup> For instance, Washington requires a notice of sale to all tenants in a manufactured home park "within fourteen days after the date" in which the landlord advertises the park for sale.<sup>124</sup> Such a provision could be beneficial to tenants because it lets them know what the landlord's intentions are early on before the park has even been sold. Unfortunately, the Washington statute does not provide additional clarification as to how much time tenants have before they are required to move out,<sup>125</sup> subjecting residents to a legal standard that is nearly impractical because of their financial and mobility constraints.<sup>126</sup>

Other statutes specifically require a written notification to tenants at least 180 days (approximately six months) before the sale of the park, as seen in Arizona.<sup>127</sup> This notification requirement offers more notice than a typical manufactured home park statute.<sup>128</sup> However, the dramatic decrease in the number of manufactured home parks indicates residents will probably need

<sup>119</sup> *See id.*

<sup>120</sup> *Id.*

<sup>121</sup> *See id.*

<sup>122</sup> *See Gifford*, 2017 WL 4427092, at \*4.

<sup>123</sup> *See* ARIZ. REV. STAT. ANN. § 33-1476(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.); CONN. GEN. STAT. ANN. § 21-70a(c) (West, Westlaw through 2018 Feb. Reg. Sess.); OHIO REV. CODE ANN. § 4781.40(A)(3) (West, Westlaw through Files 90, 92–94, 2017 State Issue 1, and 2018 State Issue 1); *see generally* WASH. REV. CODE ANN. § 59.20.300 (West, Westlaw through 2018 Reg. Sess.).

<sup>124</sup> WASH. REV. CODE ANN. § 59.20.030(13) (West, Westlaw through 2018 Reg. Sess.); *see id.* § 59.20.300 (Westlaw).

<sup>125</sup> *See generally id.* § 59.20.300 (Westlaw).

<sup>126</sup> *See Schmitz, supra* note 19, at 389.

<sup>127</sup> ARIZ. REV. STAT. ANN. § 33-1476.01(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>128</sup> *Compare* WASH. REV. CODE ANN. § 59.20.300(13) (West, Westlaw through 2018 Reg. Sess.), *with* ARIZ. REV. STAT. ANN. § 33-1476.01(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

more than 180 days to find a new park to move to considering the limited availability of parks.<sup>129</sup>

Some states have also included additional limitations on the sale of a manufactured home park.<sup>130</sup> For instance, Florida prevents local and state governments from approving the sale of a park unless the government has determined that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile homeowners.<sup>131</sup> This provision effectively serves as a protective net for homeowners because not only does it prevent park owners from arbitrarily deciding when to sell the park, it also ensures that the homeowners are guaranteed space for their homes, regardless of the outcome of the sale.<sup>132</sup>

### *F. Obstacles to Remedies*

Many manufactured home park statutes proscribe the types of remedies available to park residents upon a landlord's violation of the law.<sup>133</sup> For instance, Connecticut offers the following provision within its statute: "A resident who claims that an owner is violating any provision of this chapter, or an owner who claims that a resident is violating any provision of this chapter, *may* request a declaratory ruling from the Department of Consumer Protection."<sup>134</sup> That particular provision has been interpreted to mean that park residents must exhaust their administrative remedies before seeking judicial relief.<sup>135</sup> The issue in one case focused on whether the resident had a right to judicial relief when she filed the lawsuit before pursuing the statutory remedies.<sup>136</sup> In its analysis, the court determined that the inclusion of the word "may" did not make it discretionary for residents to seek administrative relief.<sup>137</sup> Instead, the court explained that based on the context of the whole manufactured home park statute, the word "may" meant that

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<sup>129</sup> See George & Yankausas, *supra* note 24, at 9.

<sup>130</sup> See generally FLA. STAT. ANN. § 723.083 (West, Westlaw through 2018 2d Reg. Sess.).

<sup>131</sup> *Id.*

<sup>132</sup> Falkinburg v. Village of El Portal, 183 So. 3d 1189, 1191–92 (Fla. Dist. Ct. App. 2016).

<sup>133</sup> See generally CONN. GEN. STAT. ANN. § 21-83e (West, Westlaw through 2018 Feb. Reg. Sess.); ARIZ. REV. STAT. ANN. §§ 33-1401–1501 (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>134</sup> CONN. GEN. STAT. ANN. § 21-83e (West, Westlaw through 2018 Feb. Reg. Sess.) (emphasis added).

<sup>135</sup> See Fairchild Heights Residents Ass'n., Inc. v. Fairchild Heights, Inc., 82 A.3d 602, 612–14 (Conn. 2014); Manufactured Hous. Cmty., Inc. v. Palma, No. 1 CA-CV 10-0405, 2011 WL 1856072, at \*4–5 (Ariz. Ct. App. May 3, 2011).

<sup>136</sup> Fairchild Heights Residents Ass'n., 82 A.3d at 612.

<sup>137</sup> *Id.*

residents were required to seek administrative relief before pursuing a judicial remedy.<sup>138</sup>

On the other hand, manufactured home park residents in Arizona have reaped the benefits of judicial interpretation.<sup>139</sup> In one case, a park owners' association sought a declaratory judgment against residents who wanted improvements to failing gas lines in the park.<sup>140</sup> Although successful in the trial court, the appeals court threw out the park owners' favorable judgment because it had not "completed the administrative appeals process."<sup>141</sup> The appeals court's deference to its statutory interpretation of the administrative process worked in favor of the residents.<sup>142</sup>

#### IV. RESOLUTION

Although imperfect, the existing manufactured home park statutes provide a foundation on which to build a stronger and more comprehensive legislative scheme for these parks.<sup>143</sup> States without manufactured home park statutes should enact one of their own, and states with such statutes should work towards improving them. This section provides a draft of a model statute with an explanation of the statutory language included. The provision of the model statute is followed by the reasoning for the drafting language.

##### A. Definitions

##### 1. Model Statute

##### [General Definitions]

(1) "Landlord" means the owner, lessor, sublessor, operator, or any combination thereof, of a manufactured home park.<sup>144</sup> "Landlord" includes agents of the landlord, such as anyone who is responsible for managing or operating a manufactured home park.<sup>145</sup>

<sup>138</sup> *Id.* at 613–14. This interpretation is obscure and goes against all logic and reason.

<sup>139</sup> *See infra* notes 140–42 and accompanying text.

<sup>140</sup> *Palma*, 2011 WL 1856072, at \*1.

<sup>141</sup> *Id.* at \*3.

<sup>142</sup> *See id.* at \*4–5.

<sup>143</sup> *See generally* ARIZ. REV. STAT. ANN. § 33-1409(13) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.); WASH. REV. CODE ANN. §§ 59.20.030(4), (10) (West, Westlaw through 2018 Reg. Sess.); FLA. STAT. ANN. § 723.003(8) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>144</sup> ARIZ. REV. STAT. ANN. § 33-1409(13) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>145</sup> *See* WASH. REV. CODE ANN. § 59.20.030(4) (West, Westlaw through 2018 Reg. Sess.).

(2) “Manufactured home” means a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.<sup>146</sup>

(3) “Manufactured home park” means a use of land<sup>147</sup> which is rented or held out to rent to others for the placement of two or more manufactured homes for the primary purpose of production of income<sup>148</sup> and/or residential use.”<sup>149</sup>

## 2. Reasoning for Statutory Language

The definitions are broadly written in order to encompass more individuals who are protected by the manufactured home park statute and those who are subject to its enforcement. The phrase “agents of the landlord” includes park managers and park operators without having to create a list of people, which has the potential of limiting the statute’s application.<sup>150</sup> Further, eliminating a date requirement within the definition of a “manufactured home” ensures that the statutes will protect all manufactured home owners, regardless of when their home was made.<sup>151</sup>

### *B. Rental Agreement: Terms, Security Deposit, and Rent*

#### 1. Model Statute

##### *[Terms and conditions of rental agreement]*

(A) At the beginning of the tenancy, a signed, written rental agreement must be executed by the landlord or agent of the landlord and a resident. The rental agreement shall be executed in good faith by both parties and shall not provide for the waiver of any rights given to either party by other provisions of this chapter. The rental agreement shall be for a specific period and shall include:<sup>152</sup>

<sup>146</sup> FLA. STAT. ANN. § 723.003(8) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>147</sup> *Id.*

<sup>148</sup> WASH. REV. CODE ANN. § 59.20.030(10) (West, Westlaw through 2018 Reg. Sess.).

<sup>149</sup> FLA. STAT. ANN. § 723.003(8) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>150</sup> See discussion *supra* Section III.B.

<sup>151</sup> See discussion *supra* Section III.B.

<sup>152</sup> ARIZ. REV. STAT. ANN. § 33-1413(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).



The amount of the rent.<sup>153</sup>

The amount of any security deposit.<sup>154</sup>

(B) The landlord shall offer the minimum one-year rental agreement to the resident prior to installation of the home in the manufactured home park or, if the home is in the manufactured home park, prior to the expiration of the resident's existing rental agreement.<sup>155</sup>

(C) Any written rental agreement shall have all blank spaces completed, and executed copies of the written rental agreement shall be furnished to all parties within ten days of execution.<sup>156</sup>

*[Rent]*

(A) The landlord may increase or decrease the total rent.<sup>157</sup> If the landlord increases the total rent, she must file a sufficient statement of justification for the increase with the local government. The statement of justification must include the following information:

The amount of rent prior to the increase.

The total amount of new rent the landlord requests.

An itemized list of expenses that show how the landlord determined the new amount.<sup>158</sup>

(B) In addition to the statement of justification, the landlord must provide sufficient documentation of each of the itemized expenses. If the landlord fails to provide either a sufficient statement of justification or sufficient documentation of each itemized expense, the rental increase will be denied.<sup>159</sup>

*[Security Deposits]*

(A) Whenever a security deposit is agreed upon by the landlord and the resident, the landlord must either:

Hold the total amount of such money in a separate non-interest-bearing account in a [insert State] banking institution for the benefit of the resident

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> OHIO REV. CODE ANN. § 4781.40(A)(1) (West, Westlaw through File 108 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>156</sup> ARIZ. REV. STAT. ANN. § 33-1413(B) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>157</sup> *Id.* § 33-1413(G) (Westlaw).

<sup>158</sup> See discussion *supra* Section III.C.2.

<sup>159</sup> See discussion *supra* Section III.C.2.

or,<sup>160</sup> hold the total amount of such money in a separate interest-bearing account in a [insert State] banking institution for the benefit of the resident.<sup>161</sup>

(B) In either of the aforementioned options in part (A), the landlord shall not commingle such moneys with any other funds of the landlord or in any other way make use of such moneys until such moneys are actually due to the landlord.<sup>162</sup>

## 2. Reasoning for Statutory Language

Requiring rent justification is a procedural mechanism that safeguards residents against landlords arbitrarily wielding their power to increase rent.<sup>163</sup> Additionally, placing the financial obligation of paying the interest on the landlord is more equitable because of residents' lack of bargaining power.<sup>164</sup> As a matter of fairness, landlords should pay for the interest since they are the ones making a profit from this relationship.

### C. Landlord Duties

#### 1. Model Statute

##### [Landlord Duties]

(A) At all times during the tenancy the landlord shall:

Comply with all requirements applicable to manufactured home parks,<sup>165</sup> including, but not limited to, building, housing, health, and safety codes materially affecting health and safety.<sup>166</sup>

Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.<sup>167</sup>

Keep each manufactured home space or lot marked in such a way that each resident will be certain of her area of responsibility.<sup>168</sup>

Provide for the removal of garbage, rubbish, and other waste incidental

<sup>160</sup> See FLA. STAT. ANN. §§ 83.49(1)(a)–(b), 723.031(8) (West, Westlaw through 2018 2d Reg. Sess.).

<sup>161</sup> See *id.* § 83.49(1)(a)–(b) (Westlaw).

<sup>162</sup> See *id.*

<sup>163</sup> See discussion *supra* Section III.C.2.

<sup>164</sup> See discussion *supra* Sections III.C.2, II.D, II.E.

<sup>165</sup> See WASH. REV. CODE ANN. § 59.20.130(1) (West, Westlaw through 2018 Reg. Sess.).

<sup>166</sup> OHIO REV. CODE ANN. § 4781.38(A)(1) (West, Westlaw through File 108 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>167</sup> *Id.* § 4781.38(A)(2) (Westlaw).

<sup>168</sup> CONN. GEN. STAT. ANN. § 21-82(a)(4) (West, Westlaw through 2018 Feb. Reg. Sess.).

to the occupancy of the manufactured home space.<sup>169</sup>

Keep all common areas of the manufactured home park, and vacant manufactured home lots not in the possession of residents, free of weeds or plant growth noxious and detrimental to the health of the residents and free from potentially injurious or unsightly objects and conditions.<sup>170</sup>

Maintain roads within the manufactured home park in good condition.<sup>171</sup>

Provide parking space twice the size of a standard manufactured home.<sup>172</sup>

## 2. Reasoning for Statutory Language

This portion of the model statute strikes the right balance of imposing expansive and specific duties on the landlord that assure full enforcement of the model statute.<sup>173</sup> The imposition of such duties conveys to the landlord the weight and gravity of her responsibilities.<sup>174</sup> Moreover, the model statute places the burden of garbage removal and road maintenance within the manufactured home park on the landlord since the landlord operates the park as a business.<sup>175</sup> Arguably, the imposition of duties might be construed to be overly and unfairly burdensome on the landlord. However, when a person chooses to enter into a profit-making enterprise that involves the livelihoods of other people and families, she must be prepared to accept the greater duties that come with it.<sup>176</sup>

### *D. Park Rules and Regulations*

#### 1. Model Statute

##### *[Park Rules and Regulations]*

(A) A landlord shall adopt written rules or regulations concerning the residents' use and occupancy of the premises. Such rules or regulations are enforceable against the residents only if:<sup>177</sup>

<sup>169</sup> ARIZ. REV. STAT. ANN. § 33-1434(A)(5) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

<sup>170</sup> WASH. REV. CODE ANN. § 59.20.130(4) (West, Westlaw through 2018 Reg. Sess.).

<sup>171</sup> *Id.* § 59.20.130(9) (Westlaw).

<sup>172</sup> See CONN. GEN. STAT. ANN. § 21-82(a)(13) (West, Westlaw through 2018 Feb. Reg. Sess.).

<sup>173</sup> See discussion *supra* Section III.

<sup>174</sup> See discussion *supra* Section III.

<sup>175</sup> See discussion *supra* Section III.D.

<sup>176</sup> See discussion *supra* Section III.

<sup>177</sup> ARIZ. REV. STAT. ANN. § 33-1452(A) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.).

Their purpose is to promote the convenience, safety, or welfare of the residents on the premises, preserve the landlord's property from abusive use, preserve or upgrade the quality of the manufactured home park, or make a fair distribution of services and facilities held out for the residents generally.<sup>178</sup>

They are reasonably related to the purpose for which adopted.<sup>179</sup>

They apply to all residents on the premises in a fair manner.<sup>180</sup>

They are sufficiently explicit in prohibition, direction, or limitation of the residents' conduct to fairly inform the residents of what must or must not be done to comply.<sup>181</sup>

They are not for the purpose of evading the obligations of the landlord.<sup>182</sup>

The prospective residents have a copy of the current rules or regulations before the prospective residents enter into a rental agreement.<sup>183</sup>

(B) If any landlord adds, changes, deletes, or amends any rule, she must provide notice in writing of all such additions, changes, deletions, or amendments to all manufactured home park residents sixty days before they become effective by first class or certified mail.<sup>184</sup>

## 2. Reasoning for Statutory Language

This model statute incorporates the best of all the provisions relating to park rules and regulations.<sup>185</sup> The provision grants the landlord enough freedom to promulgate the types of rules she wants but also provides important limitations as to what she can implement.<sup>186</sup> Further, the inclusion of a written notification requirement for any additions or changes made to park rules creates a necessary procedural hoop for landlords to jump through to make sure they do not change park rules according to their whims.<sup>187</sup>

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<sup>178</sup> *Id.* § 33-1452(A)(1) (Westlaw).

<sup>179</sup> *Id.* § 33-1452(A)(2) (Westlaw).

<sup>180</sup> *Id.* § 33-1452(A)(3) (Westlaw).

<sup>181</sup> *Id.* § 33-1452(A)(4) (Westlaw).

<sup>182</sup> *Id.* § 33-1452(A)(5) (Westlaw).

<sup>183</sup> *Id.* § 33-1452(A)(6) (Westlaw).

<sup>184</sup> *Id.* § 33-1452(E) (Westlaw).

<sup>185</sup> See discussion *supra* Section III.

<sup>186</sup> See discussion *supra* Section III.

<sup>187</sup> See discussion *supra* Section III.

*E. Sale or Change in Use of a Manufactured Home Park*

## 1. Model Statute

*[Change in Use of Manufactured Home Park]*

(A) A landlord must provide written notice of the sale or change in use of the manufactured home park to all residents who live in that manufactured home park within fourteen days after the date of which the landlord advertises the park for sale.<sup>188</sup>

(B) A landlord must provide a written notice of sale of a manufactured home park by certified mail, return receipt requested, or by personally delivering it to:<sup>189</sup>

Each resident of the manufactured home park.<sup>190</sup>

The officers of any known qualified resident organization.<sup>191</sup>

The local government within whose jurisdiction all or part of the manufactured home park exists;<sup>192</sup>

The housing authority within whose jurisdiction all or part of the manufactured home park exists.<sup>193</sup>

The [insert State name] housing finance commission [if one exists].<sup>194</sup>

The date by which the resident shall vacate shall be at least 365 days after receipt of the notification.<sup>195</sup>

(C) A notice of sale must include:

A statement that the landlord intends to sell the manufactured home park.

The contact information of the landlord or landlord's agent who is responsible for communicating with the qualified resident organization or eligible organization regarding the sale of the property.<sup>196</sup>

<sup>188</sup> WASH. REV. CODE ANN. § 59.20.030(13) (West, Westlaw through 2018 Reg. Sess.).

<sup>189</sup> OHIO REV. CODE ANN. § 4781.40(A)(3) (West, Westlaw through File 108 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>190</sup> WASH. REV. CODE ANN. § 59.20.300(1)(a) (West, Westlaw through 2018 Reg. Sess.).

<sup>191</sup> *Id.* § 59.20.300(1)(b) (Westlaw).

<sup>192</sup> *Id.* § 59.20.300(1)(d) (Westlaw).

<sup>193</sup> *Id.* § 59.20.300(1)(e) (Westlaw).

<sup>194</sup> *Id.* § 59.20.300(1)(f) (Westlaw).

<sup>195</sup> See OHIO REV. CODE ANN. § 4781.40(A)(3) (West, Westlaw through File 108 of the 132nd General Assembly, 2017 State Issue 1, and 2018 State Issue 1).

<sup>196</sup> WASH. REV. CODE ANN. § 59.20.300(2)(a)–(b) (West, Westlaw through 2018 Reg. Sess.).

## 2. Reasoning for Statutory Language

The most significant characteristic of this provision of the model statute is that it is a procedural safeguard for residents in manufactured home parks. The combination of requiring the landlord to notify residents of the park's potential sale and guaranteeing residents a minimum of one year to move out provides residents notice and sufficient time to make moving arrangements.<sup>197</sup> These aspects of the provision are important to manufactured home owners because it is typically impractical to move within the timeframe allotted by most state statutes.<sup>198</sup> Moreover, furnishing copies of written notification to relevant state agencies formalizes the process of selling a manufactured home park and creates necessary documentation of the transaction.<sup>199</sup> This additional step brings needed government oversight to the sale of manufactured home parks.

## V. CONCLUSION

The soul of a nation reveals itself in the way the nation treats its most vulnerable citizens. In the face of inequity, does it choose to turn a blind eye or does it choose to act? That is the question America has to ask itself regarding the plight of manufactured home owners. For far too long, the interests and livelihoods of these homeowners have fallen on deaf ears. Legislative accomplishments have come a long way since the introduction of the manufactured home to mainstream society. However, statutes have fallen short of protecting manufactured home owners to the fullest extent, making them more susceptible to abusive landlord practices. More must be done.

At the end of the day, the pride of homeownership is a crucial pillar of the American dream.<sup>200</sup> Despite the stereotypes and stigma surrounding manufactured home owners, most of them are people who are trying to get by and just need to catch a break.<sup>201</sup> In the words of Rachel Jackson, a manufactured home owner in Tucson, Arizona: "We've always tried our best . . . [w]e got into a place that wasn't great but it was ours. We could make it ours."<sup>202</sup> States should use the might of their legislative power to implement

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<sup>197</sup> See discussion *supra* Section III.E.

<sup>198</sup> See discussion *supra* Section III.E.

<sup>199</sup> See discussion *supra* Section III.E.

<sup>200</sup> Kelly Leighton, *Homeownership a Pillar to the American Dream, Study Finds*, PA. ASS'N OF RELATORS (Sept. 19, 2017), <https://www.parealtor.org/justlisted/homeownership-pillar-american-dream-study-finds/>.

<sup>201</sup> See Bregel, *supra* note 77.

<sup>202</sup> See *id.*

thoughtful and meaningful statutory protections in order to allow manufactured home owners to make their home their own.





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