

# Protecting Fundamental Freedoms in Communities

## BACKGROUND

Around the country, thousands of families are losing their homes due to the closure of manufactured housing communities. Owners of land-lease communities are increasingly seeking to maximize their profits by converting the use of the land to something other than a manufactured home community. These closures, however, often mean that the residents of the communities lose their homes – not only their shelter, but their main investment. For millions, these homes are the most viable means to affordable homeownership and protecting their rights has become an important legislative priority. Through community closings, homeowners are forced to either sell their homes at a fraction of their original value; move them, which also causes the homes to lose value; or abandon them altogether.

Advocates in many communities are working hard to implement policies to preserve these communities and establish the asset-building potential of manufactured homes. Resident ownership – through which homeowners buy the land their property sits on and therefore have more determination in what happens in their community – is a promising preservation and asset-building strategy. Policies promoting resident ownership, however, may not be enough to ensure that homeowners can actually act on an opportunity to buy their community. States also need to consider policies that protect residents' rights to assemble and go door-to-door to form homeowner associations and to advocate on their own behalf. Without such policies, residents are likely to fear eviction and loss of their homes if they attempt to create a resident association, organize to purchase their community or advocate for policies that promote resident ownership.

### About This Legislative Guide

This guide is a resource for anyone interested in safeguarding the rights of homeowners in manufactured home communities through state policy. Although there is a broad array of consumer protections that can improve the life of manufactured home community residents, this reference specifically focuses on those protections that lay the groundwork for resident purchase transactions. It is based on a careful review of existing and proposed state-level legislation, as well as the National Consumer Law Center's (NCLC) experience working with advocates in various states. This guide:

- Describes the growing crisis in closure of manufactured home communities;
- Identifies the four types of homeowner protections that pave the way for asset building in these communities;
- Specifies key elements of strong policies to protect homeowners; and
- Lists state precedents for policy adoption.

The appendices include suggested policy language for each issue. In addition, an appendix containing the full text of state laws that protect manufactured home community residents' freedoms of speech and association and protect them from retaliation is available on-line, along with appendices containing sample state laws that protect residents from eviction without good cause and protect their right to sell their homes.

## PRECARIOUS RIGHTS OF HOMEOWNERS IN LAND-LEASE COMMUNITIES

Owners of homes that are located in manufactured home communities gain only some of the advantages of homeownership. For example, because a third party owns the land underneath their homes, these homeowners do not have the same financial and emotional security or opportunity to create wealth that is traditionally associated with homeownership. Like renters, owners of manufactured homes on rented land may be required to move off the land at any time. However, unlike renters who are evicted, an owner of a manufactured home who is evicted from a community must either sell the home in which they have made a significant investment or transport it to another site. Despite the epithet "mobile home," today's manufactured homes are not particularly mobile. Moving a manufactured home typically costs between \$5,000 and \$10,000. This cost severely eats into any home equity the homeowner may have built up, and the move may cause structural damage to the home.

Indeed, the home can lose its entire value if the homeowner is required to leave the manufactured home community because the only realistic option may be to abandon the home or move it straight to a dump. If an owner decides to sell

a home but the community owner does not allow it to be sold on the lot, much of its value will be lost. Spaces in manufactured home communities are scarce in many parts of the country. Even where spaces are available, owners of these communities may refuse to accept older homes. A manufactured home without land to place it on has minimal market value, if any.

Striking a fair balance between the rights of the community owner, i.e., the landowner, and the owners of the homes is essential if a manufactured home is to be an asset. If a homeowner can be evicted from the community at the community owner's whim, the precarious status of the home robs it of a great deal of its value. Protections against unjustified eviction and other unfair or retaliatory actions by community owners are essential.

Furthermore, these protections also safeguard the exercise of basic rights of citizenship – speaking out on issues, advocating for public policies, forming associations and bringing problems to the attention of governmental authorities. If residents can be evicted for exercising these basic rights, their voices will be silenced. The community at large will suffer because the residents will not be able to act as a force for positive change.

### **Laying the Groundwork for Asset Building through Resident Ownership**

Protections against unjustified eviction and other unfair or retaliatory actions are needed to help owners of manufactured homes achieve ownership of their communities. Resident ownership of manufactured housing communities brings enormous advantages, both for the residents and for the community at large. When residents own the land on which their homes sit, they – and their neighbors – know that their homes are secure. The threat of community closure, which would leave hundreds of families without housing, is gone. With stable land tenure, the manufactured home becomes a true asset for a family rather than a potential financial disaster.

Experience has shown that, when residents own a manufactured housing community, they invest in it. They repave the roads, fix the sewer system, repair and repaint outbuildings and add landscaping and amenities. In New Hampshire, 40% of the resident-owned communities, aided by technical assistance providers, have undertaken major infrastructure improvements, some by successfully competing for Community Development Block Grants and U.S. Department of Agriculture funding and others by refinancing or using the capital improvement reserves set aside for that purpose.

Being able to make decisions collectively about the community also increases civic engagement and reduces neighborhood conflict. Fewer police calls, a reduced burden on social services, and the enhanced infrastructure are benefits everyone can reap.

## **FOUR BASIC PROTECTIONS FOR OWNERS OF MANUFACTURED HOMES**

The key policies that are needed to give residents stable land tenure and ensure that they can form resident associations and advocate for resident purchase opportunities and community preservation are:

- Freedom of Association and Freedom of Speech
- Freedom from Retaliation
- Freedom from Eviction without Good Cause
- Protection of the Right to Sell the Home in Place

What follows is a discussion of each of these policies, accompanied by a recommendation regarding the key elements needed to ensure a strong policy.

### **Freedom of Association and Freedom of Speech**

Resident associations are essential to resident ownership of manufactured home communities. A resident association acts as the decisionmaking body when the residents evaluate whether to purchase the community. If they do so, the resident association will either operate it or form a cooperative to operate it. Resident associations also have the ability to focus collectively on living conditions in manufactured home communities and level the imbalance of power between residents and community owners. Such associations are important advocates of residents' rights and often are the source of solutions for residents' problems. Associations can police community compliance with the law and help residents negotiate community rules, service charges and rentals.

Some community owners view resident associations as threatening, and there have been instances when community owners have prohibited or interfered with resident associations or retaliated or threatened retaliation against those who become involved. Elderly residents, who make up a substantial portion of manufactured home community residents, and people who have experienced homelessness, are particularly susceptible to such harassment. Community owners have also tried to discourage meetings by denying residents and associations the right to use the common areas and facilities for meetings. They have done so by imposing burdensome requirements such as insurance or substantial fees and by creating spurious resident associations dominated by employees of the community owner.

Residents can take advantage of a purchase opportunity even if they have not already formed a resident association. However, they usually need to act quickly to form one when a purchase opportunity arises. Impediments to the formation of a resident association can doom the acquisition. In addition, residents will be in a better position to take advantage of a purchase opportunity if they have already formed a resident association.

For all of these reasons, state policies that protect residents' ability to form resident associations are important if resident ownership of manufactured housing communities is to be a realistic possibility. Resident associations should be protected even in their infancy, when they have only a few members, as well as when they represent a majority of the residents.

**State precedents.** Eighteen states have laws or regulations that specifically protect the rights of manufactured home community residents to form resident associations.<sup>1</sup> Many of these laws also specifically protect the right to canvass and distribute leaflets within a community, invite public officials or other speakers to address the group and use community facilities for meetings.

Of the remaining states, many have laws, discussed in the next section, that at least prohibit community owners from evicting residents because of their involvement with a resident association. Although these laws do not afford any affirmative protections for resident associations, they at least prohibit the worst forms of negative consequences for residents who join them. In nine states<sup>2</sup> there appear to be no statutory protections at all for resident associations.

**Recommendations.** As described in the model policy attached as Appendix A, a strong policy gives residents the right to form and operate resident associations and to participate in regional, state or national resident associations. It prohibits harassment, interference and other unfair tactics toward resident associations and requires the community owner to make community meeting facilities available for resident meetings on the same basis as other events.

Although an association may have to be limited to homeowners if the residents purchase the community, in an investor-owned community both homeowners and nonowner residents have equivalent interests in such matters as community rules and lot rent, so the association should be open both to owners and nonowners. The suggested provision therefore requires resident associations to be open to all residents, with the sole exception of employees of the community owner, unless the association is contemplating a purchase of the community, in which case it can be limited to homeowners.

The suggested provision also allows residents, resident organizations and others to pass out flyers or canvass peacefully in the community, subject to reasonable rules as to time, place and manner. Minnesota already has such a provision guaranteeing not just residents but any person the right to do these things in a manufactured housing community during reasonable hours. There have been complaints about community owners limiting canvassing to a small number of hours per week, at times when residents are unlikely to be at home, so the suggested provisions clarify that these activities are to be allowed during the majority of normal waking hours.

### Freedom from Retaliation

An essential part of assuring that residents will be able to form resident associations is protecting them from retaliation – whether by eviction, selective rent increases, selective enforcement of community rules, decrease in services or otherwise. Few residents will risk eviction and the concomitant loss of their home – their major asset – if the community owner is free to retaliate against them for forming a resident association or advocating for the purchase of a community.

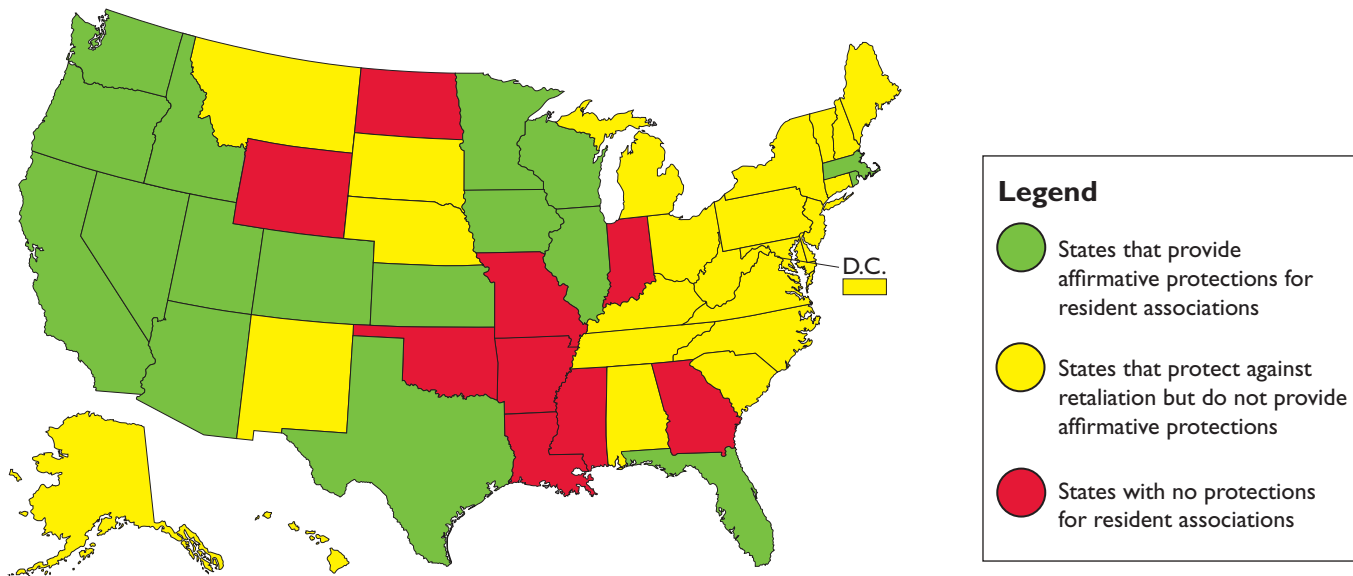
**State precedents.** The widespread recognition of this problem is demonstrated by the fact that 28 states prohibit retaliation against manufactured housing community residents because of involvement with a resident association.<sup>3</sup> The typical statute protects other acts as well, such as complaining to authorities about conditions in the community.

In addition, although they do not provide any specific protection for manufactured home community residents, 10 states have provisions in their general landlord-tenant laws, probably applicable to manufactured housing community residents, that prohibit retaliation because of involvement with a resident association.<sup>4</sup> Four additional states have general landlord-tenant statutes that prohibit retaliation, but only for complaining about conditions.<sup>5</sup>

In the remaining states there appear to be no statutory protections against retaliation that apply either to manufactured home community residents or to tenants in general. Even if a state does not have a statute prohibiting retaliation, there may be judicial decisions recognizing retaliation as a defense to eviction. For example in *Building Monitoring Systems Inc. v. Paxton* (905 P.2d 1215 [1995]), the Utah Supreme Court held that retaliation against a tenant who complained about substandard conditions was a defense to eviction. Judicial decisions, however, can be overruled and modified by subsequent decisions. Moreover, judicial decisions usually do not provide the comprehensive and detailed protection that a strong state statute can.

Even in the states that have antiretaliation laws, the laws vary in their strength and comprehensiveness. For example, some states provide only a short respite from eviction, for example about 75 days in South Carolina.

## States that Protect Resident Associations



**Recommendations.** The provision suggested in Section 2 of the model policy prohibits retaliation against a resident for exercising the right to join a resident association, making complaints about conditions in the community, engaging in political activity or exercising other similar rights. It prohibits retaliation in several forms, including eviction, rent increases, decreases in services and selective enforcement of rules.

Importantly, because the community owner's intent is always hard to prove, the suggested language creates a presumption, common in retaliatory eviction laws, that an eviction filed within six months after the resident exercised one of the protected rights is in retaliation for the exercise of that right. This presumption is not conclusive, but is rebuttable. In other words, the community owner always has the opportunity to prove that there was a legitimate reason behind the eviction. By the same token, even after the six-month period passes, the resident has the opportunity to prove that an eviction was motivated by retaliation.

### Freedom from Eviction Without Good Cause

The draconian nature of eviction gives the community owner extraordinary power over the resident. The resident's only viable response to an eviction may be the sale of the home to the community owner for a fraction of its worth and probably a fraction of what the resident still owes the institution that financed the home. The resident will leave the community with no equity or even owing a sizeable debt to the manufactured home financier.

Community owners often have a strong incentive to drive out low-income homeowners to free up lots. Then the community owner can sell a new home to a new resident.

The community owner, of course, must have the ability to evict a homeowner who does not pay rent or who persistently violates community rules. Otherwise, other residents bear the burden of unpaid rent and rule violations, and the quality of life in the community deteriorates. However, allowing eviction at the whim of the community owner creates an extreme imbalance of power. Residents whose land tenure is so precarious are likely to be fearful of taking any action that would bring them into disfavor with the community owner.

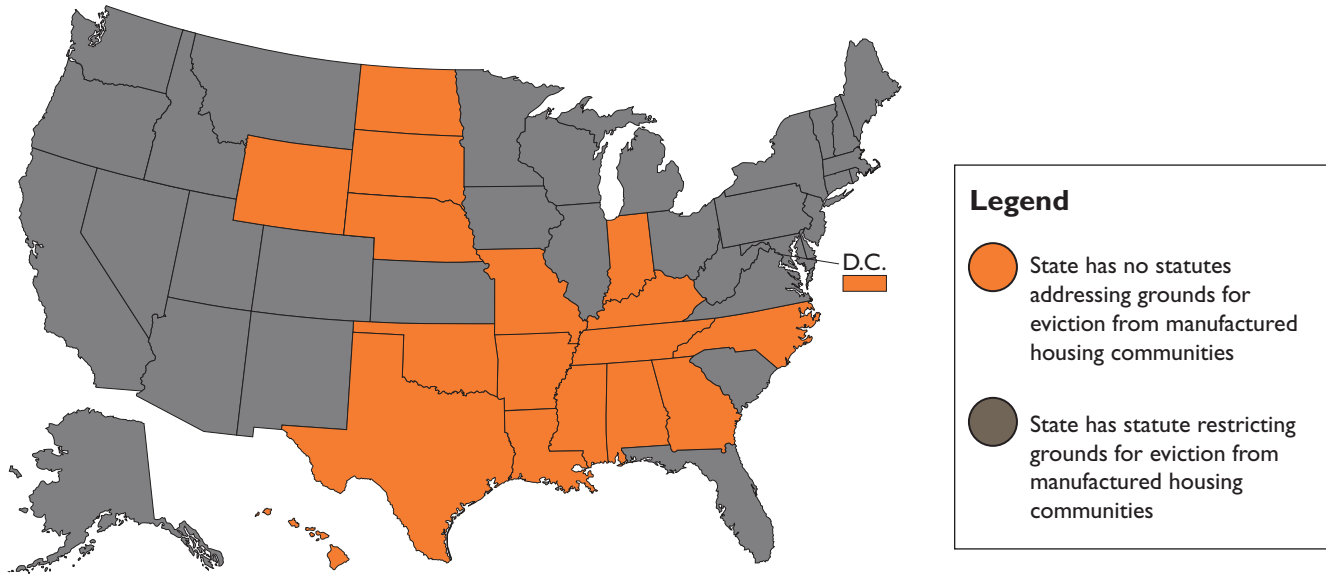
**State precedents.** Many states recognize the unfairness of allowing a community owner to evict a resident who has paid the rent and followed the community rules. These states require that the community owner prove some just cause for the eviction, such as nonpayment of rent, persistent violation of a community rule or disruption of other residents. However, some states still allow community owners to evict homeowners without showing any reason at all. And, even when a state appears to require just cause for eviction, the protection may be illusory because of loopholes.

Presently, only 16 states require that manufactured housing community leases be of at least a certain length.<sup>6</sup> Most of these states require community owners to offer residents leases of at least one year. Even these laws often have loopholes that could be abused, for example by allowing the community owner to offer a shorter lease simply by obtaining a written request from the resident.

Thirty-three states currently have some statutory provision regarding grounds for eviction of a resident from a manufactured housing community.<sup>7</sup> Some are full-fledged good cause statutes, prohibiting the community owner from terminating the lease

or refusing to renew it except for good cause such as failure to pay rent or violation of community rules. Many, however, are unclear as to whether the community owner can evade the good cause requirement by simply declining to offer the resident a renewal lease once the existing lease expires. In addition, the allowable grounds for eviction vary greatly from state to state. In some states the law is not completely clear that the listed grounds are the only grounds allowed, and some states include a catch-all such as “any legitimate business reason” as permissible grounds for eviction.

## States with Statutes Restricting Grounds for Eviction from Manufactured Home Community



NOTE: A state is colored blue if it has a statute restricting the grounds for eviction, regardless of the strength of the statute. In some states, the statutes fall considerably short of a good cause requirement.

**Recommendations.** Lease terms and lease renewal policies are an important part of a protection against eviction without cause. Requiring community owners to offer long-term leases is a good first step, but the community owner must also be required to renew the resident’s lease as long as the resident pays the rent and obeys the community rules. A protection against eviction without good cause is of little value if the community owner can simply decline to renew the homeowner’s lease without cause.

Inclusion of due process procedures is as important as defining the grounds for eviction. The community owner should not have the authority to decide when the statute’s grounds for eviction have been met, padlock the home or bar the resident from the community. Instead, the community owner should, at a minimum, have to seek a court order for eviction based on appropriate grounds specified in the document filed in court.

In addition, given the amount at stake for the homeowner, “snap” evictions should not be allowed. A homeowner should be given notice and an opportunity to cure any nonpayment of rent or rule violations.

Section 3 of the model policy included as Appendix A establishes a minimum lease term of two years. It prohibits termination of the lease and requires the community owner to offer the resident a renewal lease when the existing lease expires except for good cause. Good cause is defined as nonpayment of rent, rule violations, disorderly conduct or criminal activity, but protections are provided to ensure that the resident has fair notice of the problem and, where appropriate, an opportunity to correct it. Eviction must be by a court procedure and allowed only if the lease has been terminated or nonrenewed for good cause.

The provision suggested below requires a two-year advance notice if the community owner wants to terminate residents’ leases because of a change of use of the community. Because a change of use means mass evictions and, for many residents, loss of the equity in their homes, states seeking to protect resident tenure should also consider additional policies to protect against community closures. A key policy to consider is a resident purchase opportunity law. Resident purchase opportunity laws are discussed in greater detail in “Promoting Resident Ownership in Manufactured Home Communities: A Legislative Guide.”

### Protection of the Right to Sell the Home in Place

If it can’t be sold, a manufactured home is not an asset. If a manufactured home cannot be sold for continued use in the manufactured home community, its value is severely undercut. In many parts of the country there are few available spaces in manufactured home communities. Even when there are spaces available, a home may be too old to move. If the community



**Recommendations.** As described in Section 4 of the model policy attached as Appendix A, a strong policy prohibits community owners from interfering with residents' rights to sell their homes. It prohibits the community owner from acting as the agent or broker for a resident's sale of a home and prohibits arbitrary denial of a prospective buyer's right to assume the existing lot lease.

A common technique of community owners is to insist, as a condition of the lease, on an option to purchase the home on resale. Sometimes these lease clauses specify that the community owner can purchase the home at the NADA value. The *NADA Manufactured Housing Appraisal Guide* is a publication of the National Automobile Dealers Association and is similar to the "blue book" used to value used cars. The NADA guide has built-in depreciation assumptions and denies the homeowner the "as sited" value of the home. Section 4 of the model policy limits the community owner's ability to demand such requirements.

### **A Note on Enforcement and Waivers**

If a community owner is able to secure a waiver to any of these requirements, homeowner protections are rendered useless. An antiwaiver provision is essential if resident protections are to be meaningful. Otherwise, community owners could immunize themselves from the law by inserting waiver language in their standard-form leases. The policy language suggested below as Section 5 of the model policy therefore includes a prohibition against waiver of its protections.

It is a common saying that a right without a remedy is no right at all. Accordingly, Section 6 of the suggested policy gives residents the right to obtain a court order prohibiting the community owner from violating the tenancy protections, and a judgment for any actual damage caused by a violation. To provide an incentive for enforcement and to deter violations, the suggested policy provides for a minimum award based on the monthly rental amount and treble damages or punitive damages if aggravating factors are present. The suggested language also incorporates the protections of sections 1 through 4 into the residents' leases, so that a violation is also a breach of contract and makes remedies under the state's deceptive practices statute available to residents as well.

To make enforcement of the law affordable for residents, the suggested policy language provides that if the residents prevail in a suit they may recover their reasonable attorney fees from the community owner. Otherwise, community owners with greater legal resources could use dilatory tactics to exhaust the residents' resources and prevent the case from reaching a resolution, making litigation unaffordable even if the consumer can retain an attorney. By the same token, if the resident is litigating in bad faith to harass the community owner, the resident should be required to pay the community's reasonable attorney fees.

Two additional remedies are provided to address the problem of recalcitrant violators. First, the suggested policy allows a court to impose a receivership when a community owner persists in violating residents' rights. Second, to ensure that community owners cannot ignore the law, sell the community, keep the money and not pay valid court judgments to the residents, the suggested language provides that a judgment for the residents operates as a lien on the community.

## **ABOUT I'M HOME**

I'M HOME, or Innovations in Manufactured Homes, is an initiative of CFED, a national nonprofit organization dedicated to expanding economic opportunities for all Americans. The I'M HOME network includes nonprofit and for-profit, national and local partners who together work toward ensuring that all homeowners, regardless of whether their home is manufactured or site-built, enjoy the same rights and privileges of homeownership, including asset-building opportunities. For more information about I'M HOME, please visit [www.cfed.org/go/imhome](http://www.cfed.org/go/imhome).

## **ABOUT THE NATIONAL CONSUMER LAW CENTER**

The National Consumer Law Center (NCLC) is the nation's consumer law expert, helping consumers, their advocates and public policymakers use powerful and complex consumer laws on behalf of low-income and vulnerable Americans seeking economic justice. NCLC is the leading consumer legal advocate promoting legal protections for owners of manufactured homes. For more information about NCLC please visit [www.consumerlaw.org](http://www.consumerlaw.org).

## ENDNOTES

- <sup>1</sup> Ariz. Rev. Stat. § 33-1452; Cal. Civ. Code §§ 798.50 to 798.53; Colo. Rev. Stat. Ann. § 38-12-218; Fla. Stat. Ann. §§ 723.054 to 723.056; Idaho Code § 55-2013A; 765 Ill. Comp. Stat. Ann. § 745/25; Iowa Code § 562B.19; Kan. Stat. Ann. § 58-25,114; Code Mass. Regs. tit. 940, § 10.04; Minn. Stat. Ann. § 327C.13; Nev. Rev. Stat. § 118B.110; N.M. Stat. Ann. § 47-10-7; Or. Rev. Stat. § 91.920; R.I. Gen. Laws § 31-44-13; Tex. Prop. Code Ann. § 94.006; Utah Code § 57-16-16; Wash. Rev. Code § 59.20.070; Wis. Admin. Code, Ag., Trade & Cons. Prot. § 125.08(2). The text of these laws is reproduced in Appx. A.
- <sup>2</sup> Arkansas, Georgia, Indiana, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, and Wyoming.
- <sup>3</sup> Ariz. Rev. Stat. § 33-1491; Conn. Gen. Stat. § 21-80a; Del. Code tit. 25, § 7023; Fla. Stat. Ann. § 723.0615; Idaho Code § 55-2015; 765 Ill. Comp. Stat. Ann. § 562B.32; Iowa Code § 562B.32; Kan. Stat. Ann. § 58-25,125; Me. Rev. Stat. Ann. tit. 10, § 9097; Md. Code, Real Prop. § 8A-1301; Code Mass. Regs. tit. 940, § 10.04; Minn. Stat. Ann. § 327C.12; Mont. Code § 70-33-431; Neb. Rev. Stat. § 76-14,106; Nev. Rev. Stat. § 118B.210; N.H. Rev. Stat. Ann. § 540:13-a (incorporated into manufactured housing community laws by N.H. Rev. Stat. Ann. § 105-A:9); N.J. Stat. Ann. § 2A:42-10.10 (made applicable to manufactured housing communities by N.J. Stat. Ann. § 2A:42-10.13); N.Y. Real Prop. Law § 233(n); Ohio Rev. Code § 3733.09; Or. Rev. Stat. § 91.765; Pa. Stat. tit. 68, § 250.205; R.I. Gen. Laws § 31-44-5; S.D. Codified Laws § 43-32-27; Tex. Prop. Code Ann. § 94.251; Vt. Stat. Ann., tit. 10, § 6247; Va. Code Ann. § 55-248.50; Wash. Rev. Code § 59.20.070; W. Va. Code § 37-15-7. The text of these laws is reproduced in Appx. A.
- <sup>4</sup> Ala. Code § 35-9A-501; Alaska Stat. § 34.03.310; Cal. Civil Code § 1942.5 (prohibits retaliation for exercise of “rights under this chapter”); D.C. Code § 3505.02; Ky. Rev. Stat. § 383.705 (only in effect in certain parts of state); Mich. Comp. Laws § 600.5720; N.M. § 47-8-39; N.C. Gen. Stat. § 42-37.1; Or. Rev. Stat. § 90.385; Wis. Stat. Ann. § 704.45 (prohibits retaliation for “exercising a legal right relating to residential tenancies”). See also D.C. Code §§ 3505.02, 3505.06.
- <sup>5</sup> Colo. Rev. Stat. § 38-12-509 (awaiting Governor’s signature; only covers retaliation due to complaints about housing conditions, and allows manufactured housing community owners to opt out of the law altogether); Hawaii Rev. Stat. § 521-74; S.C. Code § 27-40-910; Tenn. Code § 66-28-514 (only covers retaliation due to complaints about housing conditions, and is only in effect in certain counties).
- <sup>6</sup> Ariz. Rev. Stat. § 33-1413(B), (K) (if resident and community owner disagree on the term of the lease, it must be for one year; resident also has right to demand 4-year lease); Cal. Civil Code § 798.18 (1 year); Conn. Gen. Stat. § 21-70(b) (1 year); Del. Code tit. 25, § 7007 (1 year); Fla. Stat. Ann. § 723.031 (1 year); 765 Ill. Comp. Stat. § 745/6(a), (f) (24 months); Iowa Code § 562B.10 (1 year); Md. Code, Real Prop. § 8A-202 (1 year); Mass. Gen. Laws Ch. 140, § 32P and Code Mass. Regs. tit. 940, § 10.03(1)(f) (5 years); N.Y. Real Prop. Law § 233(e) (1 year); Ohio Rev. Code § 3733.091 (1 year); R.I. Gen. Laws § 31-44-7(1)(xiv) (1 year); Tex. Prop. Code § 94.052 (6 months); Va. Code Ann. § 55-248.42:1 (1 year); Wash. Rev. Code §§ 59.20.050, 59.20.090 (1 year); Wis. Admin. Code, Ag., Trade & Cons. Prot. § 125.03 (1 year). In addition, while it does not require a specified lease term, Vt. Stat. Ann. tit. 10, § 6236 requires rent and utility charges to be fixed for one year.
- <sup>7</sup> Alaska Stat. § 34-03.225; Ariz. Rev. Stat. Ann. § 33-1476; Cal. Civil Code §§ 798.55, 798.56; Colo. Rev. Stat. § 38-12-203; Conn. Gen. Stat. § 21-80(b); Del. Code Ann. tit. 25, §§ 7010, 7010A, 7007; Fla. Stat. Ann. § 723.061; Idaho Code § 55-2009; 765 Ill. Comp. Stat. §§ 745/8, 745/15; Iowa Code §§ 562B.25, 562B.26, 562B.30; Kan. Stat. Ann. §§ 58-25,123, 58-25,120, 58-25,105(c); Me. Rev. Stat. Ann. tit. 10, § 9097; Md. Code Real Prop. §§ 8A-101, 8A-202; Mass. Gen. Laws Ch. 140, § 32J and Code Mass. Regs. tit. 940, § 10.09(5); Mich. Comp. Laws Ann. § 600.5775; Minn. Stat. § 327C.09; Mont. Code § 70-33-433; Nev. Rev. Stat. § 118B.200; N.H. Rev. Stat. Ann. § 205-A:4; N.J. Stat. Ann. § 2A:18-61.1; N.M. Stat. Ann. § 47-10-5; N.Y. Real Prop. Law § 233(b); Ohio Rev. Code §§ 3733.091, 3733.11(A)(2); Or. Rev. Stat. §§ 90.540, 90.545, 90.630, 90.632; Pa. Stat. Ann. tit. 68, § 398.3; R.I. Gen. Laws § 31-44-2; S.C. Code Ann. § 27-47-530; Utah Code Ann. § 57-16-5; Vt. Stat. Ann. tit. 9, § 6237; Va. Code Ann. § 55-248.50:1; Wash. Rev. Code Ann. § 59.20.080; W. Va. Code §§ 37-15-3, 37-15-6 (requiring good cause only during first five years of tenancy); Wis. Stat. Ann. § 710.15(5m).
- <sup>8</sup> Ariz. Rev. Stat. § 33-1452(E); Cal. Civil Code §§ 798.71 to 798.83; Colo. Rev. Stat. Ann. § 38-12-211 (“This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy”; this relatively weak phrasing implies that the community owner must apply the normal park standards); Conn. Gen. Stat. § 21-79; Del. Code tit. 25, § 7022; Fla. Stat. Ann. §§ 723.058, 723.059; Idaho Code § 55-2009; 765 Ill. Comp. Stat. § 745/24 (relatively weak provision: “the park owner shall be allowed to promulgate any general qualifications or lawful restrictions on park residents which limit or define the admission of entrants to the park); Iowa Code §§ 562B.11(1)(d), 562B.19(3)(c); Kan. Stat. Ann. § 58-25,114(C); Me. Rev. Stat. Ann. tit. 10, § 9094 (provision is less clear than others, merely saying that the community owner may not “require a mobile home to be removed from the park except pursuant to a rule contained in the written copy of the rules given to the tenant”); Md. Code, Real Prop. §§ 8A-601 to 8A-604; Mass. Gen. Laws Ch. 140, § 32M; Code Mass. Regs. tit. 940, § 10.07; Mich. Comp. Laws Ann. § 125.2328; Minn. Stat. Ann. § 327C.07; Neb. Rev. Stat. § 76-1495; Nev. Rev. Stat. §§ 118B.160, 118B.170; N.H. Rev. Stat. Ann. § 205-A:2; N.J. Stat. Ann. § 46:8C-3; N.M. Stat. Ann. § 47-10-12 (“This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy”; this relatively weak phrasing implies that the community owner must apply the normal park standards); N.Y. Real Prop. Law § 233(j); Ohio Rev. Code § 3733.11(H); Or. Rev. Stat. § 90.680; Pa. Stat. tit. 68, § 398.11; R.I. Gen. Laws § 31-44-4; S.C. Code Ann. § 27047-440; Utah Code Ann. § 57-16-4; Vt. Stat. Ann. tit. 10, § 6240; Wash. Rev. Code §§ 59.20.070, 59.20.073; Wis. Admin. Code, Ag., Trade & Cons. Prot. § 125.06.
- <sup>9</sup> Mont. Code Ann. § 70-33-305 (providing that sale of home does not entitle tenancy to be transferred to prospective buyer unless community owner consents, but placing no restrictions on community owner’s ability to reject prospective buyer); Tex. Prop. Code § 94-252 (prohibits requirement that homeowner use community owner as agent or broker, and prohibits fees or commissions, but places no restrictions on community owner’s discretion to disapprove prospective buyers).

# Appendix A

## RECOMMENDED POLICY LANGUAGE TO PROTECT RIGHTS OF HOMEOWNERS IN LAND-LEASE COMMUNITIES

Note: Much of the language here is based on the AARP Model Law in *Manufactured Housing Tenants: Shifting the Balance of Power*, a research report published by AARP in 2004.

### Sec. 1 Freedom of Association and Freedom of Speech

#### Resident Associations

(a) “Resident association” means any organization of residents of a manufactured home community, as defined at \_\_\_\_\_,<sup>1</sup> that is organized to address their common interests.

(b) The residents of a manufactured home community have the right to form and operate a resident association and to participate in regional, state, or national resident associations and advocacy groups.

(c) A resident association is entitled to the protections of this section regardless of the number or percentage of residents who are members.

(d) All residents may join a resident association and attend meetings, except that i) the community owner and his employees and independent contractors shall not be members and shall not attend meetings unless specifically invited to a particular part of a meeting; and ii) membership in a resident association that is formed for the purpose of purchasing the manufactured home community may be limited to owners of the manufactured homes located in the community.

(e) No officer or member of a resident association is personally financially responsible for the acts or omissions of the association or any other officers or members of the association.

#### Protection of Resident Associations

(f) No community owner shall harass or threaten any resident association, or engage in any unfair or deceptive conduct to inhibit or interfere with the creation or operation of such association by the residents.

#### Resident Meetings

(g) The community owner shall permit meetings in the manufactured home community by any resident association or residents relating to manufactured home living or for social or educational purposes, including forums for or speeches by public officials, candidates for public office, or representatives of community groups or resident associations.

(h) No community owner shall prohibit or adopt any rule prohibiting any resident, resident association, public official, candidate for office or other person from:

(1) Peacefully organizing, assembling, canvassing, petitioning, leafleting, distributing or otherwise exercising within the community the right of free expression for noncommercial purposes. A community owner may adopt and enforce rules that set reasonable limits as to time, place and manner, but these rules must allow access to the community during the majority of normal waking hours.

(2) Meeting, with the consent of the resident, in any manufactured home within the community.

(i) The community owner shall permit the resident association to use the common areas and facilities of the community to conduct its meetings and programs.

(j) The community owner shall not charge a resident or resident association a fee to use the common areas or facilities for meetings of the resident association in excess of the fee normally and uniformly charged for use of the common areas or facilities.

(k) The community owner shall not require a resident or resident association to obtain liability insurance in order to use the common areas or facilities of the community for the purposes specified in this section. However, if alcoholic beverages are permitted in common areas or facilities by community rules and are to be served at a meeting or private function of the resident association, the community owner may require liability insurance.

## **Sec. 2 Freedom from Retaliation**

### **Retaliatory Conduct**

(a) It is unlawful for a community owner to increase a resident's rent, decrease services, alter or refuse to renew an existing rental agreement, impose any fee, change community rules, enforce community rules in an unreasonable or non-uniform manner, bring or threaten to bring an action for eviction or other civil action, or take any other action in retaliation after:

- (1) The resident has expressed an intention to complain or has complained to a governmental agency about matters relating to the community.
- (2) The resident has made any complaint in good faith to the community owner.
- (3) The resident has filed or expressed an intention to file a lawsuit or administrative action against the community owner.
- (4) The resident has testified in a judicial or administrative proceeding or before a public body.
- (5) The resident has expressed an intent to organize or has organized or is a member of a resident association.
- (6) The resident has expressed an intent to abate or withhold rent or has abated or withheld rent for the actual and reasonable cost of repairing conditions in the manufactured housing community that are the responsibility of the community owner, or has urged others to do so, after giving the community owner notice and a reasonable opportunity to make the repairs.<sup>2</sup>
- (7) The resident has engaged in political activity.
- (8) The resident has retained counsel or an agent to represent his or her interests.
- (9) The resident has exercised his or her right to freedom of association and assembly or freedom of speech under this statute.
- (10) The resident has performed or expressed an intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to residents under the lease or under any federal, state or local law.

(b) In addition to the remedies provided by Sec. 6, retaliation is a defense to eviction. Any attempt to evict a resident, except for nonpayment of rent, within six months after the resident has taken an action described in subsection (a) shall create a rebuttable presumption that the eviction action is in retaliation against the resident.

## **Sec. 3 Protection from Eviction Without Good Cause**

### **Minimum Lease Term**

(a) All rental agreements shall be for a term of two years, unless a longer period is mutually agreed upon by both the resident and community owner.

### **Renewal of Lease**

(b) Sixty days prior to the expiration of the term of a rental agreement, the community owner must offer the resident a renewal lease for the same term and with the same provisions as the original agreement, unless the community owner notifies the resident in writing, a minimum of 60 days prior to the expiration of the rental agreement, that the agreement will not be renewed for good cause.

(c) Notwithstanding subsection (b), the renewal agreement may contain modified provisions relating to the amount and payment of rent if proposed by the community owner six months prior to the expiration of the existing rental agreement and if consistent with rental amounts for comparable rental spaces within the community, and may contain other modifications not prohibited by law with the mutual agreement of all parties to the rental agreement.

### **“Good Cause” Grounds for Termination of Rental Agreement**

(d) The community owner may terminate or refuse to renew the rental agreement only by following the procedures as set out in subsection (i) and for only one or more of the following reasons:

- (1) Nonpayment of rent, as specified in subsection (e).
- (2) Violation of a community rule, as specified in subsection (f).
- (3) Disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, endangers other residents or community personnel or causes substantial damage to the community premises.
- (4) The resident’s conviction of a crime, commission of which threatens the health, safety, or welfare of other residents or community personnel, all as specified in subsection (f).
- (5) A change in the use of the land, if the requirements of subsection (g) are met.
- (6) The resident’s refusal to enter into a renewal lease, provided that the community owner shows that it followed the procedures required by subsections (b) and (c).

(e) No community owner may institute eviction procedures for nonpayment of rent until 45 days have elapsed from the date the resident receives notice that rent is delinquent, and only if the resident has not tendered that delinquent payment during that 45 day period. The notice must state the total amount of rent due, including an itemization, and must inform the resident that the community owner intends to commence an eviction proceeding unless the resident makes the delinquent payment within 45 days. Nonpayment of any fees, late charges, or utility charges, or any charges prohibited by law is not grounds for eviction. Any payment made by a resident to a community owner shall be attributed first to delinquent rent payments, then to current rent payments, and last to fees, utility charges, or late fees. The community owner’s refusal to accept rent from a resident is not nonpayment of rent and is not grounds for eviction. Withholding rent in good faith under Sec. 2(a)(6)<sup>3</sup> is not nonpayment of rent and is not grounds for eviction.

(f) Violation of a community rule or regulation shall only be grounds for eviction if the rule has been properly promulgated pursuant to section \_\_\_\_,<sup>4</sup> the rule is not a significant modification of the existing lease agreement, unfair, unreasonable, or unconscionable; the resident has had at least 60 days’ notice of the rule before the violation took place; the rule violation is likely to continue or recur; and the continuing violation would have a significant adverse impact on the community or its residents. A rule violation may not be determined likely to recur unless the community owner gave the resident written notice of the violation, specifying the persons involved and its date, approximate time, and nature, and the resident failed to correct the violation or, in the case of a periodic rather than continuous violation, the violation recurred with such a frequency as to indicate that it is likely to have a significant adverse impact on the community or its residents. Violation of a rule is not a ground for eviction if the resident shows that it was not enforced uniformly within the community, nor if the conduct or conviction was committed by a member of the resident’s household, and not by the resident, and such other person is no longer living in the home and is not likely to return to the home.

### **Eviction for Change of Use**

(g) A community owner may terminate a rental agreement in order to change the community’s land use only if the community owner meets all of the following conditions:

- (1) The rental agreement or renewal agreement clearly and conspicuously discloses a change in land use as a ground for terminating the rental agreement;
- (2) The community owner has a present intent to change the land use to a use other than a manufactured home community; and
- (3) The community owner has notified the [State Agency] and each resident whose lease will be terminated of the intended change by certified or registered mail at least two years before the date of the change of use.<sup>5</sup>

(h) The community owner shall notify each resident and the directors of any resident or homeowners association in writing of any application for a change in zoning of the manufactured home community within 5 days after the filing for such zoning change with the zoning authority. Owners of manufactured homes that are sited in a

manufactured home community are entitled to all rights under state and local zoning laws and regulations that are extended to owners of land that abuts the real estate parcel that makes up the community.

#### **Eviction, Foreclosure Proceedings**

(i) The community owner may terminate the rental agreement or evict the resident only by court process. No eviction shall be ordered if the court determines that the eviction proceeding is in retaliation for the resident's conduct, as set out in Sec. 2.

#### **Exclusive Procedure**

(j) This section provides the exclusive procedure and grounds for removing, ejecting, or evicting a resident, regardless of any purported termination of the lease and regardless of whether the resident's original lease has expired or been renewed. The community owner's termination of or refusal to renew a lease on any grounds is ineffective unless and until the community owner has obtained a court order under this section. This section is binding upon any purchaser of the community and any successor in interest to the community owner.<sup>6</sup>

### **Sec. 4 Protection of the Right to Sell the Home in Place**

#### **Right to Sell Manufactured Home on Lot**

(a) No community owner shall deny any resident the right to sell or interfere with the sale of a manufactured home on a rented space or require a home to be removed from the space solely on the basis of the sale of the home. No community owner shall limit the sale of a home on the basis of the home's age or physical condition or in any way misrepresent that such a home may not be sold. No community owner shall require that a resident make any addition or improvement to the home as a condition of sale unless those additions or improvements are required by law.

(b) No community owner or employee of the community shall act as agent or broker in the sale of a resident's manufactured home, nor shall the community owner or employee exact a commission or fee from the sale of any home owned by a resident. No community owner or employee shall require that the resident use the services of a particular dealer or broker when selling the home.

(c) No community owner shall place unreasonable, unfair, or discriminatory restrictions on "For Sale" signs or on access to the community by prospective buyers, realtors, or other representative of the resident, or interfere with a resident's efforts to sell a manufactured home.

#### **Community Owner Option to Purchase**

(d) No community owner may request, negotiate or demand an option to purchase a resident's home upon re-sale or lease termination, unless the purchase price is determined by a qualified, neutral third party, at the expense of the community owner, or based on the first offer of a bona fide purchaser for value.

#### **Right to Sell Home in Place for Continued Use**

(e) Except as specified in subsections (f) and (g), a resident shall have the right to sell his or her home in place to a buyer of the resident's choosing, and the buyer shall have the right to continue to site the home on the existing rented space.

(f) The resident shall give the community owner notice of a proposed sale of the home in place. The community owner may require the prospective buyer to submit an application to lease, sublease, or receive an assignment of the lease for the rental site, and may make reasonable review of the new buyer as set forth below at section (g). The community owner shall have fourteen calendar days after receiving an application from the prospective buyer to give written notice to the buyer of the disapproval with the reasons for the disapproval stated therein, provided that such disapproval shall only be for reasons set out in subsection (g) below. If the prospective buyer is not provided with such written notice of disapproval within fourteen calendar days, the prospective resident is deemed approved. A notice of denial must be also sent to the selling homeowner, without detail, unless the prospective buyer has given written consent to release details to the homeowner.

(g) The community owner may refuse to lease to the prospective buyer only for the following reasons:

- (1) The prospective buyer does not have the financial ability to pay the rental amount or would pose an unreasonable hazard to the safety or peaceful enjoyment of the residents of the manufactured housing community;
- (2) The prospective buyer's application indicates that the prospective buyer will not comply with community rules regarding occupancy limits or owner occupancy requirements; or
- (3) In the case of resident-owned communities, the prospective buyer refuses to become a member of the resident association or cooperative.

(h) The age or condition of the manufactured home is not grounds for disapproving a prospective buyer for a lease. The community owner may not disapprove an assignment from the resident to the resident's bona fide creditor.

(i) The resident or prospective buyer may seek judicial review of the community owner's refusal to lease to the prospective buyer, and the burden will be on the community owner to prove that the disapproval was for reasons permitted by subsection (g) and that such disapproval was objectively reasonable and in good faith. If the court finds that the disapproval was not justified, the court shall order the grant of a site lease and award any actual damages, costs, and reasonable attorney's fees to the resident or prospective buyer. If the court finds in addition that the disapproval by the community owner was not in good faith, the award of actual damages shall be trebled.

### **Sec. 5 Waivers Prohibited**

The rights of residents or obligations of community owners under this Act may not be waived by any provision of the rental agreement, the community rules, or any attachments to them. In addition to the remedies specified elsewhere in this Act, any such agreement attempting to limit these rights shall be void and unenforceable.

### **Sec. 6 Remedies**

(a) A community owner who fails to comply with any requirement of this Act shall be liable to a resident or a resident association for the sum of:

- (1) any actual damage, including any emotional distress, sustained by such resident or resident association;
- (2) in the case of an individual action, twice the monthly rental amount; in the case of a class action; one month's rent for each class member; in the case of an action by a resident association, the sum of \$5,000, but the court shall adjust this figure to reflect any change since the adoption of this Act in the Consumer Price Index for All Urban Consumers most recently published by the United States Department of Labor;
- (3) the resident or resident association's reasonable attorney's fees and costs, including an upward multiplier of the fees to account for the contingent nature or other risk of the litigation.

(b) The court shall have authority to order temporary and permanent injunctive relief and such other equitable relief as may be appropriate, including appointment of a receiver to operate the community, as necessary to ensure that the residents' rights under this Act are protected.

(c) Where the court determines that a community owner's violation is willful or reckless, or where the court finds that the community owner has not attempted to resolve the dispute in good faith, the court shall at least treble the actual damages portion of the award, and may in its discretion award punitive damages greater than treble actual damages.

(d) Where the court finds that the action brought by the resident or resident association was brought in bad faith, knowing that the action was groundless, and was brought for the purpose of harassment, the court shall award the community owner the reasonable attorney's fees that were necessary to defend the action relating to this Act.

(e) Any action in violation of this Act is a violation of [the state deceptive practices statute] and any person aggrieved by a violation of this Act shall have a cause of action to seek the relief specified in section \_\_\_\_\_ of [the state deceptive practices statute.]<sup>7</sup>

(f) The provisions of this Act shall not bar any claim against any person under the common law or any statute, including any claim under [the state deceptive practices statute, landlord-tenant law, and similar legislation].

(g) For purposes of resident enforcement of rights under the rental agreement, all terms required by this Act to be included in the rental agreement shall be deemed as a matter of law to be part of the rental agreement, whether incorporated in the actual agreement or not.

(h) The resident has a lien against the realty on which the manufactured housing community is situated for any amounts owed the resident pursuant to this Act.

## ENDNOTES

<sup>1</sup> Most states already have a definition of “manufactured housing community” or “mobile home park” that should be cross-referenced here. If the state does not have a definition, one possible definition is “a use of land in which two or more lots or spaces are offered for rent or lease for the placement of manufactured housing and in which the primary use of the community or the manufactured home section thereof is residential!” As another example, Nebraska’s definition reads: “Mobile home park shall mean a parcel or contiguous parcels of land which have been so designated and improved that the parcel or parcels contain two or more mobile home lots available to the general public for the placement thereon of mobile homes for occupancy. The term mobile home park shall not be construed to include mobile homes, buildings, tents, or other structures temporarily maintained by any individual, corporation, company, or other entity on its own premises and used exclusively to house its own labor force, and shall not include real property which is rented or held out for rent for seasonal recreational purposes only and which is not intended for year-round occupancy.” Neb. Rev. Stat. § 76-1464. New York’s definition reads: “The term manufactured home park means a contiguous parcel of privately owned land which is used for the accommodation of three or more manufactured homes occupied for year-round living.” N.Y. Real Prop. Law § 233(a)(3).

<sup>2</sup> If the state has specific provisions about withholding rent to pay for repairs, a cross-reference such as “in accordance with § \_\_\_\_\_” should be inserted at the end of this section.

<sup>3</sup> If the state has specific provisions about withholding rent to pay for repairs, this cross-reference should be replaced with a reference to that statute.

<sup>4</sup> Several states set forth specific procedures for adopting rules governing the manufactured home community. If the state has such requirements, they should be cross-referenced here. If the state does not have such requirements, this phrase should be deleted.

<sup>5</sup> The state agency most responsible for manufactured home community issues should be referenced here. If the state offers relocation assistance or provides for other rights for homeowners in the case of community closure, the notice should be required to describe those rights.

<sup>6</sup> In some states, it may also be helpful to require the community owner to record the leases in the land records so that any purchaser will be on notice about the exact terms of the existing leases if the property is sold.

<sup>7</sup> In most states, the deceptive practices statute is broad enough to cover manufactured housing community issues and allows a person who is aggrieved by an unfair or deceptive act to bring suit. However, in some states the deceptive practices statute has significant gaps in coverage or imposes restrictions private suits. In those states, additional language may be necessary to ensure that residents and state enforcement authorities can bring suit under the deceptive practices statute to enforce the rights guaranteed by this Act.