

Promoting Resident Ownership of Communities

BACKGROUND

Across the country, manufactured home community closures are increasing. Yet despite this epidemic of closures, only 18 states have policies that require or encourage the owners of the land beneath manufactured homes to give homeowners the opportunity to purchase the land on which their homes sit. These closures mean the total or partial loss of an important investment for owners of manufactured homes. 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.

About This Resource Guide

This guide is a resource for anyone interested in promoting resident purchase opportunities through state policy. 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:

- Summarizes the case for resident purchase as an important asset-building strategy;
- Describes key elements of a strong policy to promote resident ownership;
- Lists state precedents for policy adoption; and
- Lays out the arguments that advocates can use to make the case for positive policy change.

The appendices include model legislative language, summaries of resident purchase opportunity legislation enacted around the country, and the full text of those laws.

RESIDENT PURCHASE AND ASSET BUILDING

Manufactured homes are either placed on land owned by the homeowner or in manufactured home communities. The placement literally spells the difference between a home that grows in value and one that loses value. With rare exceptions, homes placed on leased land are treated like personal property and financed with so-called “chattel loans.” This is because conventional single-family mortgages require land and property to be bundled together to qualify for financing. Chattel loans carry significantly higher interest rates and offer less favorable terms than conventional mortgages. For more information on financing homes in manufactured home communities, refer to [“Financing Manufactured Homes in Land-Lease Communities: A Policy Brief.”](#)

Manufactured homes have traditionally been priced by a “blue book” listing, much like a car, that assumes depreciation. Such valuations fail to consider that the value of a manufactured home reflects not only the value of the unit itself, but the land where the home is sited, features of the community and, most importantly, the home's relation to the land. The land underneath a manufactured home often drives the property's appreciation. A home's security on the land where it is sited can have a tremendous impact on the home's value. Homes placed on leased land without protections do not benefit from the appreciation in the value of the land, and homeowners are vulnerable to eviction. Moreover, frequent and excessive land rent increases can leave homeowners financially vulnerable, and disinvestment in the community infrastructure may create health and safety concerns. There is also a negative correlation between rent level and homeowner equity. For owners of manufactured housing to benefit from lower cost financing and build wealth through asset appreciation, they must have long-term control over the land on which their homes sit.

KEY ELEMENTS OF STRONG POLICIES TO ENCOURAGE RESIDENT PURCHASE

There are four basic types of laws that provide notice or promote resident purchase opportunities for manufactured home communities:

- Laws granting residents advance notice and a right of first refusal when the community is sold;
- Laws granting residents advance notice and placing a duty on the landowner to consider any reasonable offer the residents make and negotiate with them in good faith;
- Laws granting residents advance notice when the community is sold but no other protections; and
- Laws providing a tax incentive for landowners to sell the community to the residents.

To strengthen the ability of residents to purchase their communities, additional features should be considered depending on the specific type of law, including the form and nature of the notice of intent to sell, stipulations about how much notice is required, details about homeowners' rights once notice is given, any exceptions for specific transactions, zoning matters and penalties for noncompliance.

Sometimes it is not possible to persuade a state to adopt a full-fledged purchase opportunity policy initially. First step policies that can get the ball rolling are discussed in the Resource Guide, "[First Steps toward a Resident Purchase Opportunity](#)."

Strong homeowners associations are another critical element of resident ownership. To encourage the development of resident associations, strong policies must be in place to level the playing field between landowners and residents. The policies must encourage the formation of resident associations by protecting homeowners against excessive rent increases and no cause or retaliatory eviction. These policies are analyzed in detail in "[Protecting Fundamental Freedoms in Communities](#)."

Form and Nature of Notice to Community Residents

The first three types of laws – the right of first refusal, notice coupled with a duty of good faith negotiation, and notice-only – all require informing residents when the community is sold. Yet the circumstances in which notice is given and the length of the notice period required by these laws vary widely.

To whom must the notice be sent? About half of the states that have resident purchase opportunity laws require landowners to send notice to each resident or unit in the community. In Connecticut, for example, the landowner must send notice to each unit and the resident association if it exists. If the community lacks an association, one may be formed after issuance of the notice to pursue the purchase of the community. In New Jersey, if an association does not exist, the landowner must notify each resident. New Hampshire, Vermont, and Washington State also require notice to each resident. Delaware's law requires notice to the resident association, but if there is no resident association the community owner must give a state agency the names and addresses of all the homeowners, and the state agency must send individual notices.

Other state laws require notice only to a resident association. If a resident association does not exist, the residents are generally not entitled to notice, and the community can be sold without warning. Some of these laws also require resident associations to have been formed in accordance with applicable law, which may require incorporation, or require a certain level of membership, such as 51% of the owners of manufactured housing in the community. To form an association in Florida and New Jersey, residents need the written consent of two-thirds of all homeowners in the community. In Rhode Island and Florida the association must be incorporated. Rhode Island also requires that the association's articles of incorporation reserve the power of the organization to negotiate, acquire and operate the manufactured home community.

Moreover, the mere existence of a resident association may not be sufficient. Some state laws require the resident association to send a notice to the landowner expressing the residents' interest in purchasing the community, outlining its authority to do so and listing the names of the association's officers. Generally, this notice must be sent annually. In Florida, the association is required to file a notice of its right to purchase the community with the local court. After this notice is recorded by the court, a copy must be provided to the landowner.

A law that requires notice to residents only if they have formed a resident association and complied with paperwork requirements means that many communities can be sold without notice to residents. Residents in some manufactured home communities, however, are unable to establish associations because of intimidation or manipulation by community owners. Although it is generally in residents' best interests to form a resident association if they purchase the community, and sometimes a requirement, they may need the freedom to organize the association and enlist residents as members while they are preparing their purchase offer.

In addition to notice to residents, several states require notice to one or more governmental agencies, typically the state housing finance agency. This is a highly effective and important part of the notice provisions. Once the state housing finance agency learns that a community may be sold, it may reach out to residents or make the information available to advocacy organizations that work with residents. The state agency or advocacy organization will work with residents to develop a plan to save the community and provide other technical assistance to the residents that makes a purchase opportunity realistic. This also provides a mechanism for the agency to begin tracking closure and transfer activity in the state to determine the extent of

the housing loss and redevelopment occurring, which can be a very important first step in advancing awareness and furthering manufactured home community policy. Notice to local governments is also helpful, as they are most affected by the loss of affordable housing and may have a unique ability to assist residents.

When is notice required? States also vary widely as to the circumstances in which notice is required. Some require notice whenever the community is being sold. A common requirement is notice whenever the landowner receives a bona fide offer from a third party or an offer that the owner intends to consider or accept. Typically the landowner must send notice within 10 days of receiving the offer and disclose the price and other material terms and conditions.

Other states, however, require notice to residents only when the landowner lists the community for sale. This requirement significantly reduces residents' opportunity to purchase the community, as many communities are sold without ever having been listed for sale. They are often sold in invitation-only gatherings among investors, or sometimes, the landowner is approached by a developer or investor who makes an offer to buy the community. Listings are also sometimes posted on member-only or realtor-only Web sites subject to confidentiality agreements so that the residents, who would have standing to enforce the statute, cannot be told.

Other states have an even more restrictive variant, requiring notice to residents only when the community is being sold for a change in use. This variant means that residents will rarely be given the opportunity to purchase their communities, as it is very difficult to prove that the community was sold with the intent to change its use. Moreover, once a developer is prepared to buy the community and change its use, the price is usually too high for the residents to match. To foster resident ownership and avoid closures for redevelopment requires making purchase opportunities available before the community has development value.

Content of notice. State laws vary in their requirements about what the notice to the residents must contain. Examples of items notices might be required to include are:

- A mere statement that the landowner has listed the community for sale;
- The price, terms and conditions of the offer the landowner plans to accept or has accepted conditionally;
- A copy of the offer the landowner has received; and
- A detailed list of information, such as a statement of the appraised value and the terms of any seller financing.

Obtaining information at the earliest possible stage is critical for residents hoping to put together a purchase offer on a tight deadline. The notice should include at least enough information so that the homeowners can determine whether it is realistic to make a purchase offer. Providing a brief notice with just the most essential information as would customarily be furnished to buyers by a commercial realtor may be just as effective as a more detailed notice, if the landowner has a duty to provide information promptly to the residents once they begin preparing an offer. It would also be appropriate to require further disclosures during the due diligence period as are customary for commercial land transactions.

Recommendations. To create the broadest purchase opportunity for residents, notice should be required whenever the community is about to be sold, whether for a change in use or for continuation as a manufactured home community, and regardless of whether it is listed with a real estate agent or otherwise. A strong policy requires notice to all the residents even if they have not formed a resident association or notified the landowner. State agencies and local government (when applicable), should also be required to receive notice to ensure all residents are informed. An effective notice should include at least the information commercial realtors customarily give to buyers so that the residents can determine whether it is realistic to begin the process of putting together a purchase offer. A strong law should also require customary disclosures during the due diligence period.

The Advance Notice Period

State laws vary considerably in the length of the advance notice period – the period that the landowner must wait after giving notice to the residents before entering into a final agreement with a third party to sell the community. Advance notice periods that states have adopted include 10 days, 30 days, 45 days, 60 days and 120 days. The most common period is 45 days. Before that time elapses, the residents must be prepared to purchase the park by either offering or actually executing a purchase and sale agreement with the landowner. Vermont, however, simply requires that the residents express their interest in purchasing the community within the advance notice period (45 days).

The shortest period, a 10-day advance notice period, in all likelihood will never be of any actual benefit to residents. Ten days is an insufficient time for residents to put together a purchase offer. A 30-day advance notice period is likewise unlikely to benefit residents except in the most unusual circumstances. In most areas of the country, a 60-day period should be sufficient, but what advance notice period is realistic will depend in large measure on the state. Important factors include:

- How complicated are the state’s laws regarding formation of a cooperative? Residents will be able to commit to a purchase and a closing date more quickly if the state has a law that readily allows them to form a limited equity cooperative. Additional time will be necessary if the state requires cooperatives to comply with securities laws (“Blue Sky” or real estate sales laws).
- Is technical expertise available to help the residents form a cooperative and prepare a purchase offer?
- Are resources available to help the residents finance the purchase of the community?

Many state laws give the residents an additional period of time after making the purchase offer to obtain and finalize the financing for the purchase of the community. The time period ranges from “a reasonable period” to 90 days to 135 days to arrange financing and consummate the transaction. A “reasonable” time to obtain financing is a standard term in commercial real estate transactions.

Recommendations. The complexity of the state’s laws regarding cooperatives and the availability of technical and financial resources should be taken into account in setting the advance notice period. For the law to be effective in promoting resident ownership, the advance notice period should be at least 60 days. In many states, a longer period will be necessary. In order to be effective, the subsequent period to close the transaction should be 45 to 90 days, depending on the availability or novelty of ready financing for this type of transaction in the state. Allowing such a time period for closing is a routine term in commercial transactions.

Residents’ Rights upon Receiving Notice

In Connecticut, Florida, Massachusetts, Minnesota, New Jersey and Rhode Island, residents have a right of first refusal upon receiving notice of an impending sale of the community. A right of first refusal means that, if the residents can match the existing offer, they have the right to purchase the community. These statutes typically require the residents to meet the price, terms and conditions of the offer. However, some states, such as Connecticut, only require residents to meet the essential provisions of any existing bona fide offer to purchase the community. A 2008 Delaware law gives residents a “right of first offer,” a relatively untried approach that is somewhat similar (this law and other states laws are summarized in Appendix B).

A second type of law requires the landowner to consider any offer made by the residents and negotiate in good faith with the residents. A third type of law requires notice only, without imposing any other obligation on the landowner.

A law creating a right of first refusal provides the strongest protection to homeowners and gives them the most realistic opportunity to purchase the community. Granting the residents a right of first refusal codifies the state’s commitment to homeownership opportunities. It is an important step toward overcoming any preconception on the part of landowners that residents are incapable of owning and running their own communities.

That the residents, whose homes are located on the land and whose investments in those homes depend on being able to remain in the community, should have the first opportunity to buy the land is not a startling idea. Giving the residents the opportunity to buy the land on which their homes sit, and on which the value of their homes depends, is simply a matter of good faith and fair dealing – duties that are implied terms of all contracts. Giving the homeowners whose property rights are in jeopardy a purchase opportunity is both an equitable balancing of two property rights and a land use regulation. Indeed, giving the residents a right of first refusal benefits the landowner by making it likely that there will be two bidders instead of just one for the community.

A Note on Zoning

Closure of a manufactured home community and conversion of the land to some other use often requires a zoning change. Several states, including Florida, Idaho and South Carolina, have specific laws requiring community owners to notify residents of any application for a zoning change. These laws give residents an opportunity to participate in the local government’s decision-making process that will determine whether they lose their homes – a matter of fundamental fairness. Preserving the existing zoning may also make it easier for the residents to purchase the community. The model law (in Appendix A) includes a zoning notice provision based on Florida’s law.

Landowners sometimes oppose right of first refusal laws, and in states with strong property rights environments such an approach may be vulnerable. In Washington, for example, the state Supreme Court struck down a right of first refusal law because the right of first refusal was considered to constitute a “taking,” restricting landowners’ right to dispose of their property as they see fit. Although that decision rested on state constitutional grounds that may not be applicable in other states, it is still important to consider alternatives. (Washington has now adopted a law that requires notice prior to the sale but does not require a right of first refusal).

A law that requires notice to residents, plus places some duties upon landowners, is an attractive alternative in states that will not adopt right of first refusal laws. The notice-and-good-faith-negotiation approach has been effective in Vermont and New Hampshire, where residents or nonprofit organizations have successfully bought many communities. Although in these states the community owner remains free to choose between the residents' offer and the competing offer, the good faith negotiation requirement means that the landowner must allow the residents to develop an offer, give it reasonable consideration and inform the residents if the outside bidder submits an increased offer. Furthermore, the landowner cannot deny residents the same access to the community and to information – such as operating expenses and rent rolls – that the landowner would give to a commercial buyer.

A notice-only law that lacks both a right of first refusal and a duty of good faith negotiation is a relatively weak approach. For a number of years, Oregon had a notice-only law with a tax exemption, but so far this law, along with its short, 10-day advance notice period, has not been particularly successful in enabling residents to purchase their communities.

Recommendations. A right of first refusal law is the strongest means of giving residents the opportunity to purchase their communities. If a right of first refusal law is adopted, it should be drafted to minimize the possibility of a constitutional challenge. In particular, it should include legislative findings, a severability clause and free-standing notice and good-faith negotiation provisions that could operate independently if the right of first refusal portion were struck down. Advocates should analyze their state's constitutional restrictions before deciding whether to press for a right of first refusal law. A law providing notice and a duty of good faith negotiation is a reasonable alternative to a right of first refusal law.

Exceptions for Specific Types of Transactions

Most resident purchase opportunity laws include exceptions for specific types of sales. Usually most of these exceptions are for transfers within the landowner's family or within a corporation or partnership. These exceptions recognize landowners' desires to continue a family business. Other common exceptions are for foreclosure auction sales and purchases by eminent domain. In addition, many state statutes exempt the resale of the community by a lender who purchases the property at a foreclosure auction.

Some states make an exception for exchanges of land for other real property (a device allowed by a section of the Internal Revenue Code, 26 U.S.C. § 1031, to minimize federal tax obligations). This exception is written unnecessarily broadly in some of the statutes. The only time that such an exchange should be exempted from a resident purchase opportunity law is when the community owner has already purchased the replacement property through a qualified exchange intermediary and is then caught in the statutory period for selling the community. Making an exception for all sales in which the seller intends to buy another investment or the buyer is in an exchange is unnecessary. The seller will be free to buy something else without jeopardizing the statutory time period because it does not start until the closing on the sale to the homeowners. The model law in Appendix A includes appropriately narrow language as an option for states that want to include this exception.

Some states create an exception for transfers when the buyer does not intend to close the community. Such an exception dramatically undermines the effectiveness of a resident purchase opportunity law. It deprives homeowners of most of the opportunities they might have to purchase their communities, instead confining their purchase opportunity to the very point when the land has become unaffordable because of its development value.

Recommendations. It is reasonable for states to exempt transfers within the landowner's family, transfers within a corporation or partnership (as long as it is not done to avoid the application of the statute, such as by a sale of all interests in an entity or partnership as an alternate transfer method), foreclosure sales and purchases by eminent domain. States may also wish to exempt certain exchanges of land for other real property which the seller has already acquired through a qualified 1031 exchange intermediary. Most of these exceptions – particularly the ones for transfers within a family, partnership, or corporation – do not in fact result in a significant change in ownership of the community (although they need to be drafted carefully so that they do not inadvertently open up ways to manipulate a transaction to avoid the application of the statute).

Tax Incentives to Encourage the Sale of the Community to Homeowners

The sale of a community to owners of manufactured housing benefits the residents living there and the larger community as well. When a family not only owns the home in which they live but also controls the land where that home is placed, the family gains stability and so does the community surrounding the manufactured home community. Such a purchase also ensures the preservation of affordable housing. Recognizing the importance and benefit of such transfers, some states provide tax incentives to increase the likelihood that residents will be able to purchase their community.

The tax incentive may reduce or eliminate the landowner's tax liability for capital gains upon the sale of a community to the residents. Such an incentive acts as an inducement to the landowner to sell to the residents to reduce taxes and may also make it easier for the residents to make a competitive offer without matching the offer of a private investor or developer.

Of course, a tax incentive means a loss of revenue to the taxing authority when a community is sold. However, this loss must be balanced against the substantial burdens that government shoulders due to the displacement of residents and loss of affordable housing when a community is not preserved. The lost tax revenue is likely outweighed simply by the many benefits to the community at large when a manufactured home community becomes a self-governing cooperative, such as greater civic engagement, reduced police calls, reduced burden on social services, and infrastructure improvements that benefit the environment. In jurisdictions with state-funded relocation assistance, preservation of manufactured home communities also results in direct savings to this fund.

Tax incentives work well with a right of first refusal. In states where a right of first refusal may not be politically feasible, tax incentives can greatly strengthen the effectiveness of a notice law.

Recommendations. Tax incentives may significantly increase the ability of residents to purchase the community where they live. Complete exclusion of any gain from a sale to residents would provide the strongest incentive. Although it is unlikely that such an exclusion would have any appreciable impact on a state budget given the low number of conversions currently occurring, there are other alternatives for states with particular budget concerns. The exclusion could be limited to a percentage of the taxable gain from the sale, the absolute amount that could be excluded statewide in any year could be capped, or the state could assure itself of the cost of the incentives through the use of limited tax credits.

Penalty for Noncompliance with State Laws Protecting Owners of Manufactured Housing

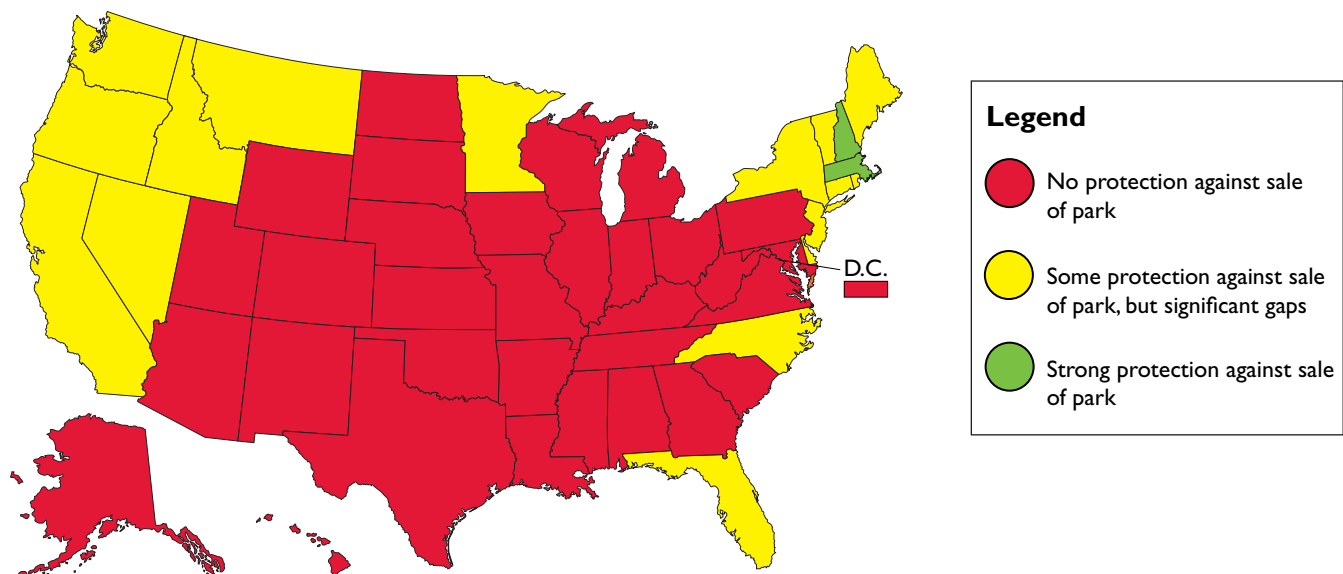
Any policy that encourages the sale of the community to residents must be enforceable to provide a real opportunity for homeowners to purchase their communities. Unfortunately only a handful of states provide meaningful protections for homeowners who were denied notice or opportunity to purchase their community. The most common provision allows the residents or association to bring an action against the landowner for injunctive relief, damages and attorney fees. In a minority of states, a local official (often the attorney general) has enforcement authority. Vermont has the stiffest penalty. The community owner must disgorge profits – \$10,000 or 50% of the gain realized from the sale of the community. In addition the community owner may be subject to actual and punitive damages.

Although homeowners in most of these states can get damages, the sale of the community is still valid. No state statute explicitly voids the transaction if the law is violated. In fact, the law often specifically states that the sale of a community in violation of the law is still valid.

STATE PRECEDENTS FOR POLICY ADOPTION

As of October 2011, 18 states had adopted some form of resident purchase opportunity legislation: California, Connecticut, Delaware, Florida, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont and Washington.




How Secure is the Land in Your Manufactured Housing Community?



The following table lays out the relative strengths and weaknesses of each of these states' resident purchase laws based on their treatment of the key policy elements identified earlier. (Although zoning issues figure into resident purchase opportunities, this table does not consider zoning policy because it is often addressed separately from resident purchase opportunities.)

Policy Element	CA	CT	DE	FL	ID	ME	MA	MN	MT	NC	NV	NH	NJ	NY	OR	RI	VT	WA
Form & nature of notice: Who is notified	~	~	✓	✓	~	+	+	+	~	~	~	+	+	+	~	~	+	+
Form & nature of notice: What type of sale triggers notice	+	~	✓	+	✓	~	+	✓	~	~	✓	+	~	~	+	+	+	✓
Length of notice period	~	+	+	✓	~	✓	✓	✓	~	~	~	+	+	+	~	✓	✓	~
Residents' rights upon receiving notice	~	+	✓	✓	~	~	+	✓	~	~	~	✓	+	+	✓	+	✓	~
Exceptions for specific types of transactions	✓	✓	~	✓	+	+	✓	✓	~	~	+	✓	✓	✓	✓	✓	✓	+
Tax incentives to encourage sale to homeowners	~	~	~	~	~	~	~	~	+	+	~	~	~	~	+	~	+	+
Penalties for noncompliance	✓	~	✓	~	~	✓	✓	✓	~	~	~	✓	~	~	~	~	+	~

KEY

Policy element	Strong 	Medium 	Weak 
Form & nature of notice: Who is notified	All homeowners are notified without having to take special steps.	All homeowners are notified, without having to take special steps, in some but not all circumstances.	Homeowners are notified only if they take certain steps, such as forming an HOA and/or notifying landowner of interest in purchasing the community.
Form & nature of notice: What conditions triggers notice	Any sale triggers notice.	Notice required regardless of whether a change of use is intended, but with other limits, e.g., only when community is listed or advertised, not when owner receives offer.	Notices required only when a change of use is intended.
Length of notice period	60 days or more	45-59 days	Less than 45 days
Residents' rights upon receiving notice	Provides right of first refusal	Provides duty of good-faith negotiation	Provides neither right of first refusal nor a duty of good-faith negotiation
Exceptions for specific types of transactions	Provides no exceptions	Provides the usual exceptions	Provides more than the usual exceptions
Tax incentives to encourage sale to homeowners	Provides tax incentives	N/A	Does not provide tax incentives
Penalties for noncompliance	Sets substantial penalties for noncompliance	Sets some penalties for noncompliance	Does not lay out penalties for noncompliance

MAKING THE CASE FOR POLICIES PROMOTING RESIDENT PURCHASE

Advocates have used some of the following arguments to help build strong and diverse coalitions to support resident ownership. These arguments can be tailored for a variety of audiences.

Manufactured Home Communities Are an Important Affordable Housing Resource

Approximately 43% (2.9 million) of existing occupied manufactured homes are located in manufactured home communities. Although the definition of a manufactured home community varies from state to state, at minimum it is a parcel of land that accommodates two or more manufactured homes. Most communities are located in suburban, rather than rural areas. Research data on the number of manufactured home communities existing on a state or national level are limited. Experts estimate that there are 50,000 to 60,000 communities nationwide. Anecdotal evidence suggests that, due to zoning restrictions and developmental pressures, few new manufactured home communities have been created since the early 1980s. Investors, who range from small family-run enterprises to corporations with multiple properties, own most of the communities.

The placement of manufactured homes in communities or parks continues to be a popular choice for consumers who are not able to acquire land, especially in high-cost areas. Zoning ordinances, especially near higher density areas, may require the placement of manufactured homes in manufactured home communities. In 2010, nearly a third of new homes sold (13,000) were placed in communities. On average, consumers who place their homes in communities tend to have lower incomes than those who place their homes on privately owned land. In 2001, the median household income of a manufactured home owner who leased a lot in a community was \$25,000, compared with a median household income of \$29,000 for those who also owned land. Due to their affordability, manufactured homes are a popular source of housing for older Americans, who make up a significant part of the park population. Indeed, nearly half (49%) of residents are age 50 or older and nearly one-quarter (24%) are age 60 or older.

Homeowners in Land-Lease Communities Face Unique Challenges

Once sited, manufactured homes are rarely moved. Moving a home can be quite expensive, costing on average \$5,000 to \$10,000 and representing five to seven years' worth of equity for many homeowners. Relocation is difficult, and the home may be damaged during the move. Most significantly, there is a shortage of rentable lots in many communities, and available lots may be restricted to newly manufactured units. These factors give landowners significant leverage over community residents. Such leverage may result in unnecessary requirements, such as requiring that residents purchase their home or equipment from a dealer affiliated with the landowner. The landowner also may impose undue community rules, controls over utilities and services or unscheduled rent increases. Residents who complain about such practices or attempt to organize other residents may be vulnerable to eviction. Homeowners forced to leave the community must move the home or abandon it, including any accrued equity.

Despite these unique challenges faced by homeowners, about 10 states do not have any laws that protect homeowners in land-lease communities. Even in states with laws governing these communities, the level of protection with regard to leases, rent increases, evictions and park closures varies. For example, a state law may require that the homeowner receive a written lease, but that lease may be for a short term and offer little or no protection. Many laws are modeled on residential landlord-tenant laws and do not take into account important distinctions between owners of manufactured homes leasing space in a community and other, more typical, renters.

Homeowners May Not Find Out that Their Community is for Sale Until it is Too Late

Unless there is a state law requiring advance notice, community owners typically withhold information about the community's closure until the very last minute. When they place their homes in a community, homeowners do not always receive accurate information about the likelihood of closure. Indeed, advocates tell of homeowners who receive statutorily required closure notices within weeks of moving into a community. Nor do homeowners have access to the trade associations, publications, private networks and listing services that landowners use to keep current on inter-investor offers and sales of manufactured home communities. Aside from the personal hardship many homeowners experience in the process of leaving the community and finding a new site for their homes, the lack of advance notice deprives homeowners of the opportunity to organize and attempt to purchase the community. In fact, community owners may even require potential buyers, real estate agents and brokers to agree not to inform the residents that a community is for sale.

Although some states require advance notice to homeowners when the owner intends to close the community and use the land for another purpose or sell the community to someone who will not maintain the land as a manufactured home community, the notice period is often very short. Homeowners have on average 180 days, and in some states just 60 days, notice of closure. During this time they will be in fierce competition with their former neighbors for new spaces as the massive eviction of manufactured homes exacerbates the shortage of lot spaces in any given area. Moreover, many of the homeowners, who are often living on low incomes, will have to raise thousands of dollars to move their homes. A few states offer relocation

funds or tax credits to displaced homeowners. The amount of compensation, however, is usually capped and may not compensate the homeowner for the total cost of moving the home.

There Are Several Effective Models for Preserving Manufactured Home Communities

Initiatives to preserve manufactured home communities typically involve promoting third-party ownership or resident ownership of the land. States and municipalities have also enacted moratoriums on closure or zoning changes.

- **Third-party ownership** of the manufactured home community, either through a nonprofit or a community land trust (CLT), is one strategy used to prevent closure. Nonprofits own the land and ensure that the community remains affordable; the lease arrangements with homeowners vary. CLTs typically give the homeowner a ground lease, which can vary in length according to state law (most last for 99 years) and is renewable and inheritable. Some CLTs buy the community with the intent of working with residents to purchase the park collectively. State or local housing authorities may also directly purchase communities.
- **Resident ownership** of the land is the primary strategy being employed to preserve manufactured home communities in some states. This model, which has been employed most successfully in Massachusetts, New Hampshire, Rhode Island, California and Florida, encourages homeowners to collectively purchase their community by forming a nonprofit or for-profit cooperative corporation. A resident-owned entity may be a “cooperative,” as specified by statute, or another form of shareholder- or membership-controlled entity that is operated on cooperative principles. When the cooperative purchases the land, it is a separate legal entity, and individual homeowners can buy memberships or shares in the corporation. The cooperative can borrow money in its own name. Members receive leases that represent the right to occupy the lot by virtue of the fact that they are members of the cooperative.

Collective ownership and control of the land eliminates the risk of community closure, as the community is removed from the speculative real estate market. The monthly lot fee or rent is stabilized, and homeowners gain control over the community’s infrastructure. Nonprofit cooperatives have also received federally backed Community Development Block Grants (CDBG) or U.S. Department of Agriculture (USDA) Rural Development money to make major repairs. In New Hampshire, 40% of the resident-owned communities, assisted by technical assistance providers, have undertaken major infrastructure improvement projects, some by successfully competing for CDBG and USDA funding and others by refinancing or using the capital improvement reserves they set aside for that purpose. In addition, homeowners may be able to apply for lower cost conventional real estate financing rather than chattel loans that are common for homes placed on rented land. There are intangible benefits to community ownership as well, including more civic engagement and the sense of control over one’s community.

Resident Purchase Opportunity Policies Are a Proven, Successful Strategy

Resident purchase opportunity policies are a proven strategy that has enabled thousands of residents to purchase their communities in states across the nation. For example, in the 24 years since New Hampshire adopted its resident purchase opportunity law, residents there have purchased nearly 100 communities, preserving over 5,000 homes. At present, over 20% of the communities in the state are resident-owned cooperatives, ranging in size from 6 units to 392 units, with resident leaders from all walks of life.

California and Florida have similar laws, although with shorter time periods and more gaps, particularly in Florida. California has at least 100 resident-owned communities, and Florida has hundreds. Vermont, with a law providing 45 days’ advance notice, has converted over 40 communities to either resident or non-profit ownership. Massachusetts and Rhode Island, which have 45-day notice periods, each have between 10 and 15 resident-owned communities, a significant percentage in these small states.

Resident-owned communities are good investments for the business community as well. In New Hampshire, residents have obtained financing for the purchase of 99 communities, and not one loan has gone bad. Resident-owned communities provide such stability that Fannie Mae started a pilot program in New Hampshire to make conventional single-family financing available for residents who buy or improve manufactured homes in resident-owned communities. This initiative will help eliminate predatory or high-cost financing of manufactured homes.

Resources Exist to Make Resident Ownership a Reality

Homeowners, through the resident association, control the conversion process. To successfully convert a manufactured home community from private to resident ownership, they need extensive technical assistance and financing. Residents in New

Hampshire and other states have benefitted from having experienced nonprofit agencies guide them in the conversion process by arranging financing and providing ongoing technical assistance and community management training.

ROC USA® a national organization launched in May 2008, supports a network of trained (and ROC USA® Certified) nonprofit technical assistance providers to assist homeowners across the country. As of October 2011, ROC USA® had certified nine technical assistance providers to operate in 20 states.

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.

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.

Appendix A

MODEL LAW AND ALTERNATIVES

A. Model Law with the Right of First Refusal

The following model law is based on § 113 of the AARP Model Law in Manufactured Housing Community Residents: Shifting the Balance of Power (2004), available at www.aarp.org/research/housing-mobility/affordability. It has been reworked, however, to be a free-standing law rather than one part of a package. In addition, it has been augmented by specific model legislative findings, a severability clause, alternate language that imposes a duty of good faith negotiation without a right of first refusal, and requirements for public notice. A tax incentive provision is outlined in section B and a zoning provision in section C.

Owners of Manufactured Housing Community Purchase Opportunity Act

Legislative Findings

(a) The legislature finds that:

- (1) Homeownership is an important right that deserves public protection, and it is the policy of this state to encourage affordable housing ownership, including manufactured home community living.
- (2) Current market conditions place owners of manufactured housing at a disadvantage compared to other potential investors in the purchase of manufactured home communities. Owners of manufactured housing do not receive accurate information about the likelihood of manufactured home community closure at the time they place their homes in manufactured home communities. Nor do they have access to the trade associations, publications, private networks and listing services by which manufactured housing landowners keep abreast of inter-investor offers and sales of manufactured home communities, so they do not receive adequate notice or an opportunity to purchase the community. In addition, because of their fear of eviction, owners of manufactured housing lack bargaining power in comparison to manufactured housing landowners and other potential purchasers.
- (3) In many cases, owners of manufactured home communities have not only failed to inform the resident homeowners that the community is for sale, but have affirmatively prevented the homeowners from learning this information, by forbidding real estate agents and prospective buyers from revealing this information to homeowners. These practices create a dysfunctional market that excludes the potential buyers who have the most at stake and the greatest need for an opportunity to purchase the community.
- (4) This law comports with existing contractual obligation of good faith and fair dealing in the context of leasehold agreements for manufactured homes in communities because of the need to balance the property rights of both the landowner and the homeowner.
- (5) The increasing closure of manufactured home communities and their conversion to other uses makes manufactured housing living insecure for resident homeowners. Because of low vacancy rates in existing manufactured home communities and the high cost or even impossibility of moving homes, many owners of manufactured housing have to abandon their homes when a community closes, losing not only their shelter but also their built-up equity. Affording manufactured home community homeowners the opportunity to purchase their communities increases the stability and security of these communities.
- (6) The closure of manufactured home communities harms the public by leading to abandoned homes, attracting crime, requiring the state to test for and remove asbestos, lead, and other toxins, potentially increase demand for government-funded affordable housing and homeless shelter beds, and leading to increased usage of state landfills.
- (7) Affording manufactured home community homeowners the opportunity to purchase their communities benefits the public by: a) preserving affordable housing; b) reducing the call on police resources, as manufactured home community homeowners who own the real estate as well as their homes are able to exercise self-governance and experience fewer societal conflicts; c) reducing a host of public health and safety problems, particularly for vulnerable low-income and elderly owners of manufactured homes, such as increased homelessness and

- abandonment of homes; d) avoiding increased cost to the state for replacement housing; e) avoiding damage to the local economy that occurs when members of the workforce are deprived of housing; and f) enabling homeowners to control and improve community infrastructures such as water and sewer systems that affect the public at large.
- (8) Granting homeowners a right to notice and an opportunity to offer to purchase the manufactured home community has no effect on the landowner's ability to receive full market value for the community, as it merely enables homeowners to meet any offer the landowner has received. There is no legitimate business justification in avoiding a sale to homeowners willing to offer full market value.
- (9) Granting homeowners a right to notice and an opportunity to offer to purchase the manufactured home community is a necessary step in balancing their rights, needs, and property interests against the desire of the landowner to receive market value when selling the community.

Definitions

(b) As used in this section

- (1) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on a site, is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the U.S. Department of Housing and Urban Development and complies with the standards established under the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. §§ 5401 et seq. For purposes of this Act, the term shall include structures that meet the preceding definition but were manufactured prior to June 15, 1976 and do not conform to the standards established by the U.S. Department of Housing and Urban Development under the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. §§ 5401 et seq. Such term shall not include any self-propelled recreational vehicle.¹
- (2) "Manufactured home community" means 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.
- (3) "Community owner" means the owner of a manufactured home community.
- (4) "Manufactured homeowner" or "Homeowner" is a person who owns a manufactured home and has a tenancy in a manufactured home community under a rental agreement.
- (5) "Owners of manufactured housing' association" or "Homeowner Association" means any organization of homeowners of the manufactured home community that is controlled by and open to all homeowners. The term includes a corporation or cooperative.

Sale Notice

- (c) No community owner shall make a final unconditional acceptance of any offer for the sale or transfer of a manufactured home community without first sending a letter, by registered or certified mail, to every homeowner and to the State Housing Finance Authority, and to the local government entity in whose jurisdiction the community is located, notifying them of the terms of the offer the community owner has conditionally accepted to intends to accept (the "Sale Notice"). The Sale Notice must include the following:
- (1) The price, terms and conditions which the community owner has conditionally accepted or intends to accept for the sale or lease of the community, along with a copy of any pending purchase and sales agreement signed by the parties; and
- (2) A statement of the deadline for a Homeowner Association to notify the community owner of its interest in purchasing the community and to submit a proposed purchase and sale agreement or lease agreement.

Owners of Manufactured Housing Purchase Opportunity

(d) The Homeowners, acting through a Homeowner Association shall have the right to purchase or lease the community, provided that the Association meets the essential provisions of any pending purchase and sale agreement. The Association shall exercise its right by notifying the community owner of the Association's interest in purchasing the community in writing and by submitting a proposed purchase and sale agreement or lease agreement with terms substantially equivalent to that of the bona fide offer (the "Purchase Notice"). The Association must deliver the Purchase Notice via certified or registered mail to the community owner within 90 days of receipt of the community owner's Sale Notice. The Association shall have 60 days in addition to the 90 day period in which to obtain any necessary financing or guarantees and to close on the purchase or lease. If no Homeowner Association exists at the time the community owner gives its Sale Notice, the homeowners may form one for the purpose of considering whether to exercise the purchase opportunity.

An Alternative for Purchase Opportunity

An alternative form of purchase opportunity act simply requires the community owner to give advance notice to the residents and to consider any offer they make and negotiate in good faith with them. To enact this alternative, a state would replace (d) above with:

Owners of Manufactured Housing's Purchase Opportunity

(d) If a Homeowner Association, after receiving the Sale Notice, wishes to purchase the community, it shall submit a proposed purchase and sale agreement or lease agreement in writing via certified or registered mail to the community owner within 90 days of receipt of the community owner's Sale Notice. If the community owner accepts the Association's proposal, the Association shall have 60 days in addition to the 90 day period in which to obtain any necessary financing or guarantees and to close on the purchase or lease. If no Homeowner Association exists at the time the community owner gives its Sale Notice, the homeowners may form one for the purpose of considering whether to exercise the purchase opportunity.

Information to Association

(e) i. After the community owner gives the Sale Notice, the community owner must make the same information available to the Homeowner Association that it has or would have provided to a prospective purchaser, in a timely manner. The community owner shall also provide any additional information that a prospective lender requires.
ii. Any Confidentiality Agreement or other agreement which would limit Homeowners' ability to acquire the same information about the listing or offer of their community for sale or limit information regarding the community which would otherwise be available to non-resident investors, is hereby declared void as against public policy.

Good Faith

(f) The community owner shall consider any purchase offer made by the Homeowner Association and shall negotiate with the Homeowner Association in good faith.

Completion Deadline

(g) Any unreasonable delay by the community owner in supplying information requested by the Homeowner Association under subsection (e), or any delay resulting from litigation involving the sale and/or litigation affecting the marketability of the title of the manufactured home community, shall be added to the days available to the Homeowner Association.

Repeat Effective Periods

(h) The requirements set forth in subsections (c) through (j) shall apply separately to each substantially different agreement to offer for sale or to purchase or lease the community.

Exclusions²

(i) This section does not apply to a government taking by eminent domain; a forced sale pursuant to foreclosure (except that the community owner must notify homeowners of any impending or actual foreclosure action); a transfer by gift, devise or operation of law; a transfer by a corporation to an affiliate; a transfer by a partnership to one or more of its partners (except that a corporate or partnership transfer made for the purpose of skirting the application of this statute or as an alternate transfer method shall not be exempt hereunder); or a sale or transfer

to a person who would be an heir, or to a trust, the beneficiaries of which would be heirs, of the community owner if the community owner were to die intestate.³

Recording in the Registry of Deeds

(j) Recording in the Registry of Deeds

- (1) A community owner may, as shall be appropriate under the circumstances, record in the registry of deeds of the county in which the community is located an affidavit certifying that:
 - (i) The community owner has complied with the requirements of this section (including a copy of the notice sent to the homeowners of the community); or
 - (ii) The sale or transfer of the manufactured home community is exempt from this section pursuant to subsection (1).
- (2) An affidavit filed in accord with subsection (j)(1) shall be presumptive evidence of compliance for purposes of good title in the hands of a bona fide purchaser.
- (3) A Homeowner Association that makes an offer to purchase the community pursuant to subsection (d) may record notice of the offer having been made in the registry of deeds.

Penalty

(k) A community owner who sells, leases or transfers a community and fails to comply with the terms of this section shall be liable to the homeowners in the amount of \$50,000.00 or 50 percent of the gain realized by the community owner from the sale, whichever is greater. In addition, failure to comply with this section is an unfair and deceptive act or practice as defined by [the state's unfair and deceptive acts and practices] law. Owners of manufactured housing or an association may also bring an action for injunctive relief, actual damages, and attorney fees and costs.

State Agency Assistance

(l) Upon the request of the Homeowner Association, the [relevant state agency] shall, either directly or through contracted services, assist the Association in acquiring financing for the purchase of the community and provide technical assistance.

Severability and Interpretation

- (m) (1) This law shall be liberally interpreted to achieve its purpose of expanding the opportunities for owners of manufactured housing to purchase their communities and to impose a statutory and contractual obligation of good faith and fair dealing upon community owners.
- (2) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

B. Tax Incentive Provision

The following tax provision can be coupled with the model law or the alternative outlined in sections A above to provide landowners with an incentive to sell the community to owners of manufactured housing.

Exclusion of capital gain for qualified sale of manufactured home community

Proceeds from the sale of a manufactured home community by a community owner to a Homeowners' Association, homeowner cooperative, homeowner membership organization, or to any group composed entirely of homeowners, or to a nonprofit organization that represents such a group, shall be excluded from gross income of the community owner as defined in § ____.⁴

C. Zoning Provision

The following zoning provision provides some protection against another means by which manufactured home communities are closed – rezoning by the existing community owner. It can be included as part of the model law or as a free-standing addition to the state's zoning laws.

The community owner shall notify in writing each manufactured homeowner and, if a Homeowner Association has been established, the directors of the association, 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.⁵ In addition, owners of manufactured housing with homes 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.⁶

ENDNOTES

- ¹ This definition parallels that in the federal Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. § 5402(6). The third sentence of the definition was added to remove any doubt that owners of homes built prior to the adoption of the HUD Code have the same purchase opportunity rights as owners of newer homes. This full definition is unnecessary in states that already have a definition of “manufactured home,” although if such a definition is incorporated by reference the state should make sure that it includes both homes built to the HUD Code and homes that were built before that Code was adopted.
- ² Some state laws also exclude transfers where the landowner is exchanging the land for another parcel of real estate. If such an exception is adopted, it should not be too broadly drafted. Appropriate language would be: “A bona fide exchange of a community for other real property under section 1031 of the Internal Revenue Code, as long as, at the time the community owner lists the property or receives an offer for the community, the community owner has already commenced the exchange by the purchase of a property through an qualified exchange agent.”
- ³ If state law does not specify the heirs of a person who dies intestate, this last phrase should be replaced with language that specifies certain relatives of the community owner, such as: “or a sale or transfer to the community owner’s father, mother, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, nephew, or cousin.”
- ⁴ This section is appropriate if the state has a capital gains tax applicable to such a sale. The vast majority of states that impose income taxes include capital gains from the sale of a community as part of the taxpayer’s gross taxable income. While some states provide preferential treatment to the sale of particular assets such as those held for a certain length of time or property located within the state, most community sales would still create a tax liability for the operator. The cross-reference found in the model should be to the state’s income and/or capital gains tax law. For states without an income tax, or where preferential treatment may already reduce the operator’s tax liability, a reduction or elimination of property transfer taxes for sales to residents may provide incentive. It may be preferable from a drafting standpoint to include the incentive in the state tax laws rather than the right of first refusal or notice law.

For states in which the sale would not result in an income tax liability, the model statute could be modified to provide an exclusion for other taxes imposed at the time of sale such as a property transfer tax.
- ⁵ If the state zoning law requires notice to abutters or abutting landowners, it may be helpful to add the following statement to this provision: “
- ⁶ This provision is based on Florida’s law, Fla. Stat. Ann. § 723.081. Other examples of laws that require residents to be given notice of proposed zoning changes are Idaho Code § 55-2007(3)(f); S.C. Code § 27-47- 620.