

# DEFENDING THE RIGHT TO REMAIN FOR MOBILE HOME RESIDENTS UNDER VIRGINIA LAW

DAVID TISEL<sup>∞</sup>

## ABSTRACT

*Most owners of mobile homes, also known as manufactured homes, rent the underlying land from a private mobile home park owner. Popular perception of manufactured housing as mobile belies the reality that most of these homes are never moved after their delivery from the factory. Even though mobile home residents typically lose their homes or sell them at a loss if displaced from a park, state law governing lot leases in mobile home parks treats lot tenants as essentially mobile. In Virginia, the mild lot tenant protections in the Manufactured Home Lot Rental Act (MHLRA) are clouded by statutory ambiguities. The lack of written opinions in General District Courts where Virginia eviction cases are heard, and the near impossibility of appealing a rent nonpayment case to a court of record due to the requirement of posting an appeal bond, contribute to a dynamic where the mobile home park is governed more by informal relationships between lot tenants and park owners, rather than by law. The social bonds underlying these relationships are changing as corporations take over management from longtime small landlords, suggesting that enforcement of formal legal protections will be essential to retaining manufactured housing as a form of affordable housing. This Article develops strategies for defending Virginia mobile homeowners from displacement through statutory interpretation arguments, litigation strategies, legislative and budgetary advocacy at the state level, and coordination with residents organizing to remain at home.*

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<sup>∞</sup> Pro Bono Fellow, Hunton Andrews Kurth LLP, Richmond VA; J.D. New York University School of Law '23; M.C.P. Massachusetts Institute of Technology '18. Thank you to Martin Wegbreit, Joe Ciszek, Daniel Rezai, Steve Fishbach, Eric Huntley, Elizabeth Coltrane, and the editors of the N.Y.U. Review of Law and Social Change for your important contributions to this work. Thank you to my dear wife Bella for supporting me, and for bringing me to Virginia and showing me the beauty of your home state.

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## INTRODUCTION

Mobile homeowners who rent the land beneath their homes live under the specter of displacement.<sup>1</sup> The threat of an involuntary move due to eviction,

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1. ESTHER SULLIVAN, MANUFACTURED INSECURITY: MOBILE HOME PARKS AND AMERICANS' TENUOUS RIGHT TO PLACE 87 (2018) ("Living under the specter of dislocation, 'praying that the time don't come,' wears on residents. It also distorts their ability to assess whether or not the time is really coming. This is true of any haunting—it distorts one's ability to clearly estimate risk. Residents can live for decades under the specter of dislocation.").

increased lot rent, or the sale and redevelopment of underlying land, is terrifying.<sup>2</sup> Given the limited number of available lots, displaced mobile home residents often must relocate far away from their homes.<sup>3</sup> The story of Virginia resident Angela Durrer is sadly a common one:

[She] moved to Albemarle County's Ridgewood Mobile Home Park in 1998 because it was the only place close to her aging parents that she could afford. She lived there—just five minutes from her parents' home and her job—for more than 20 years, until, in 2019, Ridgewood's owner sold the park. She couldn't find another park with an open lot, nor could she afford to rent or buy a place in Charlottesville or Albemarle County . . . So, Durrer moved to Staunton, more than 40 miles away from her lifelong home.<sup>4</sup>

When mobile homeowners lose their lot, they typically also lose their most valuable asset, as most manufactured or “mobile” homes<sup>5</sup> are mobile in name only.<sup>6</sup> As a result, park owners wield incredible economic power over lot tenants—as one corporate landlord put it, a mobile home park “is like a Waffle House where the customers are chained to their booths.”<sup>7</sup>

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2. See Mark Robinson, *Chesterfield's Third-Largest Mobile Home Park Could Change Hands. Residents Worry What Comes Next*, RICHMOND TIMES-DISPATCH (May 30, 2021), [https://richmond.com/news/local/chesterfields-third-largest-mobile-home-park-could-change-hands-residents-worry-what-comes-next/article\\_2ce3f267-a4c4-59e7-96a9-365b66364f69.html](https://richmond.com/news/local/chesterfields-third-largest-mobile-home-park-could-change-hands-residents-worry-what-comes-next/article_2ce3f267-a4c4-59e7-96a9-365b66364f69.html) [https://perma.cc/C6ZU-MGGS] (“First word of the sale came via a legally required notice placed in residents' mailboxes . . . Some misinterpreted it as a notice to vacate, and thought their families had to pack up and leave. Others' minds turned to the chance of rising costs they could not afford, the prospect of uprooting their lives. ‘I didn't sleep for two days,’ said Mayra Prera, a 40-year-old single mother who has lived in the neighborhood tucked off Midlothian Turnpike for nine years. ‘I thought, Oh my God, I'm going to lose everything, and I have my two children. Where am I going to go live?’”).

3. E.g., Erin O'Hare, *Affordable Mobile Home Parks Are Disappearing from Charlottesville — A New Law May Bring Them Back*, CHARLOTTESVILLE TOMORROW (Mar. 7, 2022, 8:00 AM), <https://www.cvilletomorrow.org/articles/affordable-mobile-home-parks-are-disappearing-from-charlottesville-a-new-law-may-bring-them-back> [https://perma.cc/NBZ8-DXFA].

4. *Id.*

5. Even though not every manufactured home is truly mobile, this article uses “mobile home” and “manufactured home” as synonyms based on popular usage of the terms.

6. Telephone Interview with Dave Anderson, Exec. Dir., Nat'l Manufactured Home Owners Ass'n (Mar. 21, 2022) (“The only thing that makes these homes ‘mobile’ was that they were built on a steel chassis to make them mobile from the factory to the lot, but current models are not meant to be moved after that.”); see also CONSUMER FIN. PROT. BUREAU, MANUFACTURED HOUSING CONSUMER FINANCE IN THE UNITED STATES 10 (2014), [https://files.consumerfinance.gov/f/201409\\_cfpb\\_report\\_manufactured-housing.pdf](https://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf) [https://perma.cc/X936-RESZ] (finding that at least 75% of manufactured houses are never moved).

7. Frank Rolfe, *quoted in* JIM BAKER, LIZ VOIGT, & LINDA JUN, PRIV. EQUITY STAKEHOLDER PROJECT, PRIVATE EQUITY GIANTS CONVERGE ON MANUFACTURED HOMES 5 (2019), <https://pestakeholder.org/wp-content/uploads/2019/02/Private-Equity-Giants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf> [https://perma.cc/79HT-YW65].

Also known as “manufactured housing,” mobile homes serve as unsubsidized affordable housing for a diverse group of residents. As rents rise precipitously across the nation,<sup>8</sup> “manufactured housing is the largest source of non-subsidized affordable housing in the United States.”<sup>9</sup> Although resident demographics vary both regionally and park-by-park, national statistics indicate that mobile home residents are most likely to be older, white individuals with fixed incomes, or working-class immigrant families.<sup>10</sup> For people with savings and fixed incomes, such as lower income retirees, the economics of manufactured housing make sense: as of 2024, you can purchase a new manufactured home for approximately \$40,000 to \$250,000, or a used home for \$10,000 to \$50,000, and monthly lot rents typically fall in the range of \$300 to \$800.<sup>11</sup> Manufactured home ownership is also attractive to people who may not qualify for,<sup>12</sup> or who do not apply for, either conventional home mortgage financing or subsidized rental housing due to the immigration status of one or more family members. The cost structure and loosely regulated nature of manufactured housing serves the needs of working-class immigrants, who frequently have savings and income in cash but lack documentation of income or status.<sup>13</sup> When immigrant families are displaced from parks, the

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8. Michael Sainato, *Renters Across US Face Sharp Increases – Averaging up to 40% in Some Cities*, GUARDIAN (Feb. 16, 2022, 5:00 AM), <https://www.theguardian.com/us-news/2022/feb/16/renters-rent-increases-us-lease> [https://perma.cc/NMG3-VFVS].

9. *Factory-Built Housing for Affordability, Efficiency, and Resilience*, EVIDENCE MATTERS (Off. of Pol’y Dev. & Rsch., U.S. Dep’t of Hous. & Urb. Dev., Wash., D.C.), Winter/Spring 2020, at 3, <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight1.html> [https://perma.cc/BYP2-VUB5].

10. Telephone Interview with Esther Sullivan, Professor, Univ. of Denver (Mar. 26, 2022); see also THE MANUFACTURED HOME CMTY. COAL. OF VA. & PROJECT:HOMES, AN ASSESSMENT OF CENTRAL VIRGINIA’S MANUFACTURED HOUSING COMMUNITIES 10 (2016), [https://mhccv.org/wp-content/uploads/2017/08/mhccv\\_centralva\\_report.pdf](https://mhccv.org/wp-content/uploads/2017/08/mhccv_centralva_report.pdf) [https://perma.cc/S2UU-LGJC] (“[W]hile Hispanic or Latino households represent a mere 5% of households within the region, they double that amount (12%) in all manufactured homes. The demographic story of families living within manufactured home parks reveals a population that, by a large margin, is less educated, is majority white, has a higher percentage of children than the region as a whole, and is more likely to be sharing the household with at least one other family.”).

11. *Mobile Home Prices: How Much Do They Cost?*, U.S. MOBILE HOME PROS, <https://www.mobilehomesell.com/mobile-home-prices/> [https://perma.cc/N7NP-A5LG] (last visited Feb. 18, 2024). Financing a mobile home purchase is less straightforward than financing site-built ownership housing, but purchasers often use chattel loans or FHA loans. *Id.*

12. See CONG. RSCH. SERV., NONCITIZEN ELIGIBILITY FOR FEDERAL HOUSING PROGRAMS 16 (2023), <https://sgp.fas.org/crs/misc/R46462.pdf> [https://perma.cc/7PR6-GG78] (“[G]uidance in FHA’s Single-Family Housing Policy Handbook states that only lawful permanent residents and non-permanent residents that meet certain conditions are eligible to receive an FHA-insured loan.”).

13. Telephone Interview with Esther Sullivan, *supra* note 10.

modest American social safety net is generally unavailable to them.<sup>14</sup> Therefore, immigrants often have the most to lose when they are displaced from mobile home parks, and the most to gain by securing the right to remain.

Table 1 below shows that Hispanic households make up a small minority of park residents in Virginia.<sup>15</sup> Legal aid practitioners in Virginia have reported that parks in the suburbs around Washington D.C. and Richmond tend to be majority Hispanic, while parks in rural Virginia are more likely to be majority white.<sup>16</sup> Around one quarter of Virginia mobile home park residents have incomes below the federal poverty line.<sup>17</sup>

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14. E.g., Aimee Picchi, *Legal U.S. Immigrants May Be Scared to Sign up for Benefits*, CBS NEWS (Aug. 3, 2018, 5:45 AM), <https://www.cbsnews.com/news/legal-immigrants-may-be-scared-to-sign-up-for-benefits/> [https://perma.cc/FV6M-MPWX]. Immigrant workers paid in cash also struggled to document the income necessary to qualify for pandemic-era rent relief programs in Virginia. Erin O'Hare, *The State has \$700 Million Available in Rent Assistance, but Local Nonprofits Fear the Complicated Application Process Will Prevent Vulnerable People from Applying*, CHARLOTTESVILLE TOMORROW (Aug. 6, 2021), <https://www.cvilletomorrow.org/the-state-has-700-million-available-in-rent-assistance-but-local-nonprofits-fear-the-complicated-application-process-will-prevent-vulnerable-people-from-applying/> [https://perma.cc/Z52C-KMX6] (“[S]ome of these folks do not have checking accounts and deal exclusively in cash, and often can’t get or give proof that they’ve worked a certain number of hours in a given week or month, all things that complexify the application process and ultimately affect whether or not an individual or family receives aid.”).

15. Note that the American Community Survey may undercount Hispanic households if these households are less likely to respond to the survey based on language barriers, fear of U.S. government agents, or any other reason. See Robert Warren, *2020 American Community Survey: Use with Caution, An Analysis of the Undercount in the 2020 ACS Data Used to Derive Estimates of the Undocumented Population*, 10 J. MIGRATION & HUM. SEC. 95, 134–45 (2022).

16. Telephone Interview with Joe Ciszek, Staff Att’y, Va. L. Aid Soc. (Mar. 16, 2022).

17. 2007–2011 *American Community Survey Public Use Microdata Sample*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/microdata/access.2011.html#list-tab-735824205> [https://perma.cc/G8TV-LSFT] (last visited Feb. 18, 2024).

*Table 1: Characteristics of Mobile Home Residents in Virginia, Texas, and Florida<sup>18</sup>*

	Virginia	Texas	Florida
<b>Mobile Home Households</b>	151,870	592,414	624,882
<b>Race and Ethnicity</b>			
Non-Hispanic White (%) <sup>*</sup>	78.0%	58.6%	83.8%
Non-Hispanic Black (%) <sup>*</sup>	15.5%	4.9%	4.4%
Hispanic (%) <sup>*</sup>	5.1%	34.6%	10.1%
<b>Additional Demographic Data</b>			
Living alone (%)	29.8%	21.8%	33.6%
Poverty (%)	25.2%	23.6%	19.7%
Age 55 or Older (%) <sup>*</sup>	35.6%	34.3%	59.0%
Non-Citizen (%) <sup>*</sup>	4.2%	16.5%	7.2%

<sup>\*</sup> Demographic characteristics are based on heads of households, not all residents of households.

Corporate real estate investors have moved into the park ownership business, which until recently had been mostly run by local “mom and pop” landlords.<sup>19</sup> *Evicted*, Mathew Desmond’s ethnography of a Milwaukee mobile home park, features a local small landlord who cuts various deals with residents to avoid

18. 2007–2011 American Community Survey Public Use Microdata Sample, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/microdata/access.2011.html#list-tab-735824205> [<https://perma.cc/G8TV-LSFT>] (last visited Feb. 18, 2024); table from Eric Robsky Huntley, Lecturer in Urban Science and Planning, Massachusetts Institute of Technology, to author (Jun. 13, 2023) (on file with author). Dr. Huntley’s body of research is available at <https://github.com/ericrobskyhuntley>; see also SULLIVAN, *supra* note 1.

19. Profit-maximizing firms are interested in the profit potential of parks partially due to the limited options for residents to relocate. BAKER, VOIGT, & JUN, *supra* note 7; see also Sophie Kasakove, *Investors Are Buying Mobile Home Parks. Residents Are Paying a Price*, N.Y. TIMES (Mar. 27, 2022), <https://www.nytimes.com/2022/03/27/us/mobile-home-park-ownership-costs.html> [<https://perma.cc/XUM7-A7PE>] (“Across the country, manufactured-housing park residents like Ms. Clement are finding their homes at the center of a bull’s-eye, as a deluge of investment companies expand their mobile-home park portfolios at a breakneck pace, threatening the stability of one of the nation’s few remaining sources of affordable housing.”).

eviction.<sup>20</sup> Anecdotally, faraway corporate landlords are less likely to make a handshake deal on late rent and more likely to resort to formal legal means of collection, such as issuing notices to pay or quit.<sup>21</sup> Upon purchasing a park, profit-maximizing firms often raise lot rents or redevelop the land, both of which can result in resident displacement.<sup>22</sup> As a result of these new social and market dynamics, mobile home residents will be forced to rely more on formal legal protections and representation to secure their homes.

This Article reviews the Virginia law of mobile home lot tenancies, suggests statutory interpretation arguments to protect lot tenants, and advocates for legislative changes to make mobile homes a more secure form of affordable housing. While displacement and housing cost burden in mobile home communities are growing national issues,<sup>23</sup> each state has unique law of mobile home lot tenancies.

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20. MATTHEW DESMOND, EVICTED 38–40 (2016) (“Tobin worked with his tenants. He let them pay here and there. When tenants lost their jobs, he let some of them work off the rent. He would sometimes tell Lenny, ‘They may be slow paying, but they’re good people.’ He lent a woman money to attend her mother’s funeral. When the police picked up the drunks responsible for cutting grass and collecting litter in the trailer park, Tobin bailed them out of jail. . . . In an average month, forty of Tobin’s tenants were behind—nearly one-third of the trailer park. The average tenant owed \$340. But Tobin only evicted a handful of tenants each month. . . . [One tenant] offered to clean up the trailer park and attend to some maintenance concerns if Tobin canceled the eviction. Tobin accepted the offer.”).

21. E.g., Randy Walker, *A Hedge Fund-Linked Company Bought a Mobile Home Park. Many Residents Were Told to Pay Hundreds More or Be Evicted*, CARDINAL NEWS (Nov. 2, 2022), <https://cardinalnews.org/2022/11/02/a-hedge-fund-linked-company-bought-a-mobile-home-park-many-residents-were-told-to-pay-hundreds-more-or-be-evicted/> [<https://perma.cc/F298-TY4W>] (“Massie Mobile Home Park in Montgomery County [Virginia] was purchased by a company linked to the hedge fund Alden Global Capital. Shortly after, many residents, many of whom receive HUD aid, found ‘notices to quit’ on their doors telling them to pay about \$700 on top of their regular rent or be evicted.”).

22. See Wyatt Gordon, *Could Trailers Be the New Face of Affordable Housing?*, VA. MERCURY (Feb. 15, 2021, 12:01 AM), <https://www.virginiamercury.com/2021/02/15/could-trailers-be-the-new-face-of-affordable-housing/> [<https://perma.cc/R6WH-L5PB>] (“These parks are a gold mine for someone who wants to come in and build a 20-story apartment complex.”). Upon purchasing a park, a profit-maximizing firm often raises rents and then refinances with a government-backed loan, “pulling” equity from the park with help from the government. See Mary Childs, *How the Government Helps Investors Buy Mobile Home Parks, Raise Rent and Evict People*, NAT’L PUB. RADIO WNYC (Dec. 18, 2021, 7:09 AM), <https://www.npr.org/2021/12/18/1034784494/how-the-government-helps-investors-buy-mobile-home-parks-raise-rent-and-evict-pe> [<https://perma.cc/2XW2-U4ZH>] (“‘When private investors come to buy parks, [they] raise the rent, sometimes 20, sometimes 50, sometimes 70%’ . . . It’s similar to refinancing your house if it has risen in value and pulling cash out with a new mortgage. So the company borrows another, say, \$3 million and, cash in hand, repeats the cycle at a different mobile home park, potentially displacing more of the nation’s poorest homeowners.”).

23. See Abha Bhattarai, *‘We’re All Afraid’: Massive Rent Increases Hit Mobile Homes*, WASH. POST (Jun. 6, 2022, 6:00 AM), <https://www.washingtonpost.com/business/2022/06/06/mobile-manufactured-home-rents-rising/> [<https://perma.cc/96G5-W22R>] (“Surging home prices and rents are cascading down to the country’s mobile home parks, where heightened demand, low supply and an increase in corporate owners is driving up monthly costs for low-income residents with few alternatives. At the same time, private-equity firms and developers are often circling nearby, looking to buy up such properties and turn them into more lucrative ventures, including timeshare resorts, wedding venues and condominiums.”).

This Article presents a case study, which could be replicated for each state, from one that is not an outlier in this area. Virginia is today a politically moderate state<sup>24</sup> with property law that dates back to the legally enforced racial caste system of the colonial era.<sup>25</sup> In comparative perspective, Virginia's landlord-tenant law is in the middle of the road, as state-by-state rankings generally list it neither among the most tenant-friendly nor the most landlord-friendly.<sup>26</sup> Nevertheless, the state has a chronic eviction crisis. Five of the nation's top ten cities with the highest eviction rates in 2016 were located in Virginia,<sup>27</sup> and eviction filings spiked after COVID-related rent relief programs expired in 2022.<sup>28</sup>

Mobile homes provide affordable housing in fact, but they are not typically subsidized nor treated as "affordable housing" under the law. While tenants in

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24. See Henry Graff, *Election Results Show Virginia Still Moderate, Says Political Expert*, NBC12 (Nov. 9, 2022, 2:49 PM), <https://www.nbc12.com/2022/11/09/election-results-show-virginia-still-moderate-says-political-expert/> [https://perma.cc/8XML-UNSF].

25. Virginia property law recognized "property in man" until the Thirteenth Amendment, the Union Army, and an uprising of enslaved people abolished the institution of slavery. See generally W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* 55–83 (1935) ("How the Civil War meant emancipation and how the black worker won the war by a general strike which transferred his labor from the Confederate planter to the Northern invader, in whose army lines workers began to be organized as a new labor force."). Abolition did not excise racism from property law in Virginia, as new forms of subordination and exclusion, such as sharecropping, debt peonage, convict leasing, racially restrictive covenants, and redlining perpetuated the racial caste system. *Sharecropping Contracts*, PIEDMONT VA. DIGIT. HIST., <http://piedmontvahistory.org/archives14/exhibits/show/reconstruction/sharecropping/laborcontracts> [https://perma.cc/S762-VRY3]; *Convict Leasing*, VA. MUSEUM OF HIST. AND CULTURE, <https://virginiahistory.org/learn/convict-leasing> [https://perma.cc/542U-CWD5]; Catherine Komp, *Mapping Projects Show Lasting Impact of Redlining, Racial Covenants in Virginia*, VPM NEWS (July 29, 2019, 8:50 PM), <https://vpm.org/radio/news/mapping-projects-show-lasting-impact-of-redlining-racial-covenants-in-virginia> [https://perma.cc/8EL4-P45T]. Although these practices are now illegal, they leave a legacy of unequally distributed wealth and opportunity, including that people of color are less likely to own land and thus more likely to rent. THE COMM'N TO EXAMINE RACIAL & ECON. INEQ. IN VA. L., *IDENTIFYING VIRGINIA'S RACIALLY DISCRIMINATORY LAWS AND INEQUITABLE ECONOMIC POLICIES* 15 (2022) (finding that in 2018, 73% of white families in Virginia owned homes, while only 48% of Black households did).

26. E.g., Hannah Lapin, *State Rankings in Terms of Best Legislation for Landlords*, VISIO LENDING (July 4, 2019, 9:00 AM), <https://www.visiolending.com/blog/state-rankings-in-terms-of-best-legislation-for-landlords> [https://perma.cc/4YF3-5LJH] (ranking Virginia as the 21st most landlord-friendly state out of 50); Agnes Gaddis, *Top 20 Most and Least Landlord Friendly States of 2022*, REALWEALTH (Mar. 15, 2022), <https://realwealth.com/learn/landlord-friendly-states/#:~:text=According%20to%20RentCafe%2C%20Vermont%20is,eviction%20notices%2C%20and%20rent%20increases> [https://perma.cc/9YYE-U5PP] (not listing Virginia among the most or least landlord-friendly states).

27. Emily Badger & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. TIMES: THE UPSHOT (Apr. 7, 2018), <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html> [https://perma.cc/FB4Y-5JJN].

28. *Virginia's Eviction Crisis*, VA. POVERTY L. CTR. (Aug. 19, 2022), <https://vplc.org/virginias-eviction-crisis/> [https://perma.cc/GZS4-WWCY] ("Since July 1, Virginia has seen nearly 16,000 new eviction cases, marking the end of the state's rent relief program and the expiration of temporary legal protections provided to tenants during COVID-19.").



federally subsidized affordable housing have heightened tenancy protections,<sup>29</sup> lot tenancies in mobile home parks are governed by state law, which in Virginia provides mobile homeowners with shorter eviction notice periods than tenants with rent subsidies<sup>30</sup> and limited protection from lease nonrenewal at the will of the landlord.<sup>31</sup> Mobile home park owners in Virginia are also free to increase lot rents to any amount upon lease renewal,<sup>32</sup> while rents for lease renewals in subsidized affordable rental housing are governed by comprehensive regulatory schemes designed to limit cost burden for tenants.<sup>33</sup>

Virginia law has unique structural barriers to enforcing a right to remain. Most Virginia tenants lack counsel,<sup>34</sup> and eviction hearings are typically over in a matter

29. Both state law and federal regulations govern eviction of public housing tenants, including tenants with Section 8 vouchers who rent private accommodations. *See* U.S. DEP'T OF HOUS. & URB. DEV., HUD OCCUPANCY HANDBOOK, CHAPTER 8: TERMINATION, [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hshg/4350.3](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hshg/4350.3) [<https://perma.cc/ZYS9-QPAT>]. Tenants in Low Income Housing Tax Credit properties have good cause eviction protections. NAT'L HOUS. L. PROJECT, AN ADVOCATE'S GUIDE TO TENANTS' RIGHTS IN THE LOW-INCOME HOUSING TAX CREDIT PROGRAM 7 (2021), <https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf> [<https://perma.cc/D8ZJ-2FWY>].

30. *Compare* VA. CODE ANN. § 55.1-1245F (2024) (standard five-day notice to pay rent or quit), *with* U.S. DEP'T OF HOUS. & URB. DEV., HUD OCCUPANCY HANDBOOK, CHAPTER 8: TERMINATION 15, [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hshg/4350.3](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hshg/4350.3) [<https://perma.cc/ZYS9-QPAT>] (minimum ten-day notice requirement for Section 8 tenants).

31. *Compare* VA. CODE ANN. § 55.1-1302B (2024) (no-fault 60-day lease termination provision in the Virginia Manufactured Home Lot Rental Act), *with* U.S. DEP'T OF HOUS. & URB. DEV., TENANCY ADDENDUM, SECTION 8 TENANT-BASED ASSISTANCE HOUSING CHOICE VOUCHER PROGRAM (2010), [https://www.hud.gov/sites/documents/DOC\\_11738.PDF](https://www.hud.gov/sites/documents/DOC_11738.PDF) [<https://perma.cc/8QSM-G26G>] (requiring “good cause” for lease termination of Section 8 tenancies, such as “serious or repeated violation of the lease”).

32. *See generally* Manufactured Home Lot Rental Act, VA. CODE ANN. §§55.1-1300 to §§55.1-1319 (2024).

33. Public housing tenants, including Section 8 voucher tenants, generally pay 30%–40% of their income in rent, and the subsidy amount can vary based on the market rent charged by a private landlord. U.S. DEP'T OF HOUS. & URB. DEV., HOUSING CHOICE VOUCHERS FACT SHEET, [https://www.hud.gov/topics/housing\\_choice\\_voucher\\_program\\_section\\_8#hcv01](https://www.hud.gov/topics/housing_choice_voucher_program_section_8#hcv01) [<https://perma.cc/7L8D-H333>] (last visited Sept. 14, 2023). In other common subsidized housing programs, most notably Low-Income Housing Tax Credit (LIHTC) housing, rents are set at percentages of the local Area Median Income (AMI) and tenants are screened by household income such that income qualified tenants can afford the below-market rents without being overly cost burdened. NAT'L HOUS. L. PROJECT, LIHTC ADMISSIONS, RENTS, AND GRIEVANCE PROCEDURES (2018), <https://www.nhlp.org/resources/lihtc-admissions-rents-grievance-procedures/#~:text=LIHTC%20rents%20are%20calculated%20to,for%20different%20income%20categories%20online> [<https://perma.cc/7RG2-UQC3>]. In LIHTC properties, rents upon lease renewal continue to be limited by regulators' calculations of affordable rents for different percentiles of the AMI for as long as the property remains in the LIHTC compliance period. ILL. HOUS. DEV. AUTH., MANUAL FOR OWNERS AND AGENTS OF PROPERTIES WITH FEDERAL LOW INCOME HOUSING TAX CREDITS (LIHTC) 32 (2019), <https://www.ihda.org/wp-content/uploads/2020/02/LIHTC-Manual-Final.pdf> [<https://perma.cc/23XW-4V57>].

34. SHAUNA STRICKLAND, SCOTT GRAVES, & RICHARD SCHAUFFLER, NAT'L CTR. FOR STATE CTS., VIRGINIA SELF-REPRESENTED LITIGANT STUDY: OUTCOMES OF CIVIL CASES IN GENERAL DISTRICT COURT, JUVENILE & DOMESTIC RELATIONS COURT, AND CIRCUIT COURT 2 (2017), <https://brls.org/wp-content/uploads/2018/03/Outcome-Report.pdf> [<https://perma.cc/KZ4P-C3TH>].

of minutes.<sup>35</sup> Eviction cases are heard in General District Courts (GDC), which lack juries and written opinions.<sup>36</sup> To appeal a nonpayment of rent case from GDC to a court of record, a tenant defendant must post a bond that can range in the thousands of dollars,<sup>37</sup> making it nearly impossible for indigent tenants to appeal eviction cases.<sup>38</sup> Without written opinions, and because eviction cases are largely exempt from higher court review, different GDC judges interpret the law differently case-by-case.<sup>39</sup> The net result is that caselaw is both unpredictable<sup>40</sup> and underdeveloped<sup>41</sup> in enforcement of market rate tenants' rights under Virginia law—including for manufactured homeowners who rent lots.

While some residents face displacement due to new investment, especially in growing areas adjacent to the Northern Virginia and Richmond metro areas, other residents suffer from lack of investment in park infrastructure, especially in rural parts of the state.<sup>42</sup> Sometimes, after decades of looking the other way as a park owner failed to invest in critical infrastructure, municipal code enforcement can work against residents, with vacate orders resulting in displacement.<sup>43</sup>

This Article imagines a future Virginia with strong enforcement of a robust right to remain for manufactured homeowners in privately owned parks and a smooth pathway from for-profit private park ownership to nonprofit and collective resident land ownership. Section I catalogues legal rights currently held by manufactured housing residents under Virginia law. Section II describes the current state of enforcement of those rights based on interviews with legal aid practitioners

35. KATHRYN HOWELL, BENJAMIN TERESA, CAROLINE HANLEY, CONNOR WHITE, & MARIA TOVA ENRIQUEZ DOUGHERTY, RVA EVICTION LAB, EVICTION, LEGAL COUNSEL AND THE COURTHOUSE 5 (2021), <https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2021/11/Eviction-Legal-Counsel-and-the-Courthouse-1.pdf> [<https://perma.cc/U6YG-AJMD>] (reporting that, in Richmond, the average eviction hearing length was less than three minutes, and over 40% of hearings were less than one minute long).

36. Telephone Interview with Joe Ciszek, *supra* note 16.

37. VA. CODE ANN. § 8.01-129 (2024) (“When the appeal is taken by the defendant, he shall be required to give security also for all rent which has accrued and may accrue upon the premises, but for not more than one year’s rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises for a period not exceeding three months.”); *see also* Letendre v. Fungate, 701 F.2d 1093, 1095 (4th Cir. 1983) (holding that the bond requirement does not violate the Fourteenth Amendment of the U.S. Constitution, as “[t]he Virginia statutory requirement of an appeal bond for rent which has accrued and may accrue but not to exceed one year’s rent is well within the language of *Lindsey* permitting a bond to guard a damage award already made or to insure a landlord against loss of rent if the tenant remains in possession”) (citing *Lindsey v. Norment*, 405 U.S. 56 (1972)).

38. E-mail from Marty Wegbreit, Retired Litig. Dir., Cent. Va. Legal Aid Soc’y, to author (Mar. 16, 2022, 13:50 EST) (on file with author).

39. Telephone Interview with Joe Ciszek, *supra* note 16.

40. *Id.*

41. *See* Kathryn A. Sabbeth, (Under)Enforcement of Poor Tenants’ Rights, 27 GEO. J. ON POVERTY L. & POL’Y 97, 104 (2019).

42. Telephone Interview with Dave Anderson, *supra* note 6.

43. *E.g.*, Gordon, *supra* note 22 (“[H]undreds of residents of Rudd’s Trailer Park on Richmond’s Southside faced eviction as a result of owners who allowed code violations to pile up until much of the park was condemned as a fire hazard.”).

and original analysis of park sale notices on file with the Virginia Department of Housing and Community Development. Section III envisions new potential rights enforcement strategies that could leverage existing law to catalyze park cooperative conversions and limit evictions. Section IV proposes policy interventions that the Virginia General Assembly could adopt based on best practices from other states. These policies would strengthen tenants' rights and align the treatment of manufactured homes under state law with their importance as a vital source of affordable housing.

## I.

### CURRENT LEGAL PROTECTIONS FROM DISPLACEMENT FOR MANUFACTURED HOMEOWNERS UNDER VIRGINIA LAW

#### *A. Statutory Protections Under the Manufactured Home Lot Rental Act*

##### *1. Eviction*

The Manufactured Home Lot Rental Act (MHLRA) governs lot leases for manufactured homes in Virginia.<sup>44</sup> The Virginia General Assembly first enacted the MHLRA in 1975 and has since amended the statute frequently.<sup>45</sup> Today, the MHLRA prohibits so-called “self-help evictions,” requiring that landlords sue for eviction in General District Courts rather than resort to harassment measures meant to drive out tenants.<sup>46</sup> The statute incorporates part of the Virginia Residential Landlord Tenant Act (VRLTA),<sup>47</sup> which governs typical apartment and house rentals, but also contains requirements and rights unique to lot lessees. To educate residents about the MHLRA, the statute requires landlords to provide lot tenants with a statement of tenant rights and responsibilities, and failure to do so is grounds for dismissing an eviction suit.<sup>48</sup>

As under the VRLTA, lot tenants can be evicted for not paying their rent or for breaching their lease.<sup>49</sup> Lot renters can also be evicted for violating reasonable rules and regulations imposed by the landowner, which are effectively incorporated into the lease as additional terms.<sup>50</sup>

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44. *See generally* VA. CODE ANN. § 55.1-1300 to § 55.1-1319 (2024).

45. Manufactured Home Lot Rental Act, Virginia Legislative Information System, <https://law.lis.virginia.gov/vacodepopularnames/manufactured-home-lot-rental-act/> [<https://perma.cc/XB3E-5T8S>] (last accessed Jan. 14, 2024); Manufactured Home Lot Rental Act, VA. CODE ANN. § 55.1-1300 to § 55.1-1319 (2024) (amended 1983, 1984, 1986, 1987, 1989, 1991, 1992, 1999, 2000, 2001, 2005, 2006, 2017, 2018, 2019, 2020, 2021, 2022, and 2024).

46. VA. CODE ANN. § 55.1-1311 (2024); VA. CODE ANN. § 55.1-1252 (2024).

47. *See generally* VA. CODE ANN. § 55.1-1200 to § 55.1-1262 (2024).

48. VA. CODE ANN. § 55.1-1303 (2024) (“[L]andlord shall not file or maintain an action . . . against the tenant in a court of law for any alleged lease violation until he has provided the tenant with the statement of tenant rights and responsibilities.”).

49. VA. CODE ANN. § 55.1-1311 (2024).

50. VA. CODE ANN. § 55.1-1304 (2024); VA. CODE ANN. § 55.1-1228 (2024).

Under the MHLRA, lot tenants do not have a right to a renewal lease unless the tenant purchased their manufactured home from the landowner or their affiliate.<sup>51</sup> This leaves residents vulnerable to the landlord deciding not to renew the lot lease for any reason. The true reason for nonrenewal may even be retaliation for the tenant organizing or standing up for their rights; although such retaliatory conduct is prohibited,<sup>52</sup> few tenants can prove in court that their no-fault lease nonrenewal was retaliatory. This tips the balance of power toward landowners and can disincentivize tenant activism, especially since mobile home owners fear both displacement and the loss of a valuable asset.

The MHLRA does stipulate that lot leases are automatically renewed under the same terms and conditions unless terminated by either party with 60 days' notice,<sup>53</sup> creating a potential legal defense to eviction for tenants whose leases were not explicitly renewed but not properly terminated either. The section of the VRLTA that allows residential landlords to evict tenants who have overstayed their lease<sup>54</sup> is not among the many sections incorporated into the MHLRA.<sup>55</sup> Furthermore, the section of the MHLRA titled "Eviction of tenant" allows landlords to file for eviction only under specific circumstances: "violation of the applicable building and housing code caused by a lack of reasonable care" by the tenant or their guest,<sup>56</sup> violation of the reasonable rules and regulations set by the landowner,<sup>57</sup> and the grounds for tenant eviction in the specifically enumerated sections of the VRLTA. Those enumerated sections do not include § 55.1-1233 that allows a typical residential landlord to evict a holdover tenant after expiration of a rental term, suggesting a potential legal defense for holdover tenants who have not otherwise violated the terms of their lease.<sup>58</sup>

However, § 55.1-1251, a portion of the VRLTA which is incorporated into the MHLRA, states, "If the rental agreement is terminated, the landlord may have a claim for possession," which arguably covers holdovers as well as other types of evictions.<sup>59</sup> If a landlord does not provide notice of a change of lease terms at least 60 days prior to expiration, then the agreement is renewed on the same terms and conditions for another year,<sup>60</sup> but if a landlord provides new terms for the next year, such as higher rent, and the tenant does not accept the new terms, then this constitutes a "notice to vacate."<sup>61</sup> The "notice to vacate" referenced in § 55.1-

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51. VA. CODE ANN. § 55.1-1308(A) (2024).

52. VA. CODE ANN. § 55.1-1314 (2024).

53. VA. CODE ANN. § 55.1-1302(B) (2024).

54. VA. CODE ANN. § 55.1-1233 (2024).

55. VA. CODE ANN. § 55.1-1311 (2024).

56. VA. CODE ANN. § 55.1-1315 (2024).

57. VA. CODE ANN. § 55.1-1228 (2024).

58. VA. CODE ANN. § 55.1-1311 (2024).

59. VA. CODE ANN. § 55.1-1251 (2024).

60. VA. CODE ANN. § 55.1-1302(B) (2024).

61. VA. CODE ANN. § 55.1-1301(A) (2024). ("A notice of any change by a landlord in any terms or provisions of the written rental agreement shall constitute a notice to vacate the premises,

1301(A) is likely the same as the notice that “the rental agreement is terminated” in § 55.1-1251. Steve Fishbach of the Virginia Poverty Law Center suggests that Virginia judges would construct the interaction of these two statutory provisions as providing a right to evict holdover tenants without other good cause.<sup>62</sup>

A standard rule of statutory construction adopted in Virginia is that “[w]hen one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they conflict, the latter prevails.”<sup>63</sup> § 55.1-1251 speaks to evictions generally while § 55.1-1233 covers holdover evictions specifically, and § 55.1-1233 is not currently incorporated into the MHLRA.<sup>64</sup> Despite the incorporation of § 55.1-1251, counsel for a holdover tenant facing eviction without good cause could still argue that if the General Assembly meant to allow lot owners to evict holdover tenants without good cause, they would have incorporated § 55.1-1233 into the MHLRA along with the other parts of the VRLTA.

The MHLRA has ambiguous and sometimes conflicting terms.<sup>65</sup> Marty Wegbreit, the recently retired Litigation Director at Central Virginia Legal Aid Society, notes that controlling caselaw interpreting the MHLRA is sparse, and interpretation of its provisions in GDC “varies greatly from court to court and from judge to judge, even within the same jurisdiction.”<sup>66</sup> This is because GDC eviction decisions come in the form of a “checkmark on a judgement form” and no written decision.<sup>67</sup> Furthermore, indigent tenants essentially never appeal eviction judgments from a GDC to a court of record.<sup>68</sup> The reason is that Virginia tenants must post bond to appeal nonpayment eviction cases.<sup>69</sup> In 1983, the Fourth Circuit Court of Appeals upheld this tenant appeal bond requirement against a Fourteenth Amendment due process challenge, even though the bond amount in the case was

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and such notice shall be given in accordance with the terms of the written rental agreement or as otherwise required by law.”)

62. E-mail from Steve Fishbach, Litig. Dir., Va. Pov. L. Center, to author (Dec. 19, 2024, 3:40PM EST) (on file with author).

63. Va. Nat’l Bank v. Harris, 257 S.E.2d 867, 870 (Va. 1979).

64. VA. CODE ANN. § 55.1-1311 (2024).

65. For example, there is a latent ambiguity in the general requirement that lot leases be renewed, but the lack of specific remedy of a holdover eviction noted above.

66. E-mail from Marty Wegbreit, *supra* note 38.

67. Telephone Interview with Joe Cizek, *supra* note 16. As a contrast, in New York City Housing Court, written decisions are generally required if there is a trial, but “motions are often resolved with a marking on the file jacket.” E-mail from Julia McNally, Housing Dir., Legal Aid Soc. Queens Neighborhood Branch, to author (Apr. 16, 2022, 09:20 EST) (on file with author).

68. Telephone Interview with Joe Cizek, *supra* note 16.

69. VA. CODE ANN. § 8.01-129 (2024) (requiring an appellant tenant to post an appeal bond); VA. CODE ANN. § 16.1-106 (2024) (establishing the right to appeal from General District Court to Circuit Court); VA. CODE ANN. § 16.1-107 (2024) (restricting appeals of eviction cases to those appellants who have paid an appeal bond); VA. CODE ANN. § 16.1-108 (2024) (setting forth procedures for paying appeal bonds into court).

equal to more than five months' rent,<sup>70</sup> making appeal of nonpayment cases to courts of record impossible for the vast majority of tenants.<sup>71</sup>

In 2022, the Virginia General Assembly expanded the jurisdiction of the Virginia Court of Appeals to include any final civil judgment of a Circuit Court.<sup>72</sup> The General Assembly also passed HB 614, which would have removed the requirement for an indigent tenant to post an appeal bond in a nonpayment of rent case, but Governor Youngkin vetoed this bill.<sup>73</sup> According to Wegbreit, had Governor Youngkin signed HB 614, "[f]or the first time ever, legal aid [would] have [had] a clear path to appeal civil cases from GDC to an actual appellate court of record."<sup>74</sup> Now that HB 614 has been vetoed, the appeal bond for nonpayment cases is still a roadblock to creating "a body of reported appellate decisions,"<sup>75</sup> so legal aid lawyers and pro se mobile home owners will have to contend with the ambiguities in the MHLRA and unpredictable outcomes in GDC, making it hard for residents to have clarity on their rights in eviction cases under Virginia law.<sup>76</sup>

## 2. Sale of Park or Conversion of Use

Recent legislative changes have created new opportunities for preserving Virginia mobile home parks as permanently affordable housing. In 2020, the Virginia General Assembly passed legislation that requires that prior to selling a park, the landowner must give residents 60 days' notice and an opportunity to make an offer to purchase the park.<sup>77</sup> This legislative intervention may create an opportunity for residents to organize to collectively purchase their park as a community land trust or cooperative, or to engage a local nonprofit to purchase the park on the community's behalf.<sup>78</sup> National organizations like Resident Owned Communities USA (ROC USA) have worked with park residents to complete such purchases in

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70. *Letendre v. Fugate*, 701 F.2d 1093, 1095 (4th Cir. 1983) ("Because the Virginia statute and the bond fixed in this case both fall within the acceptable limits under *Lindsey*, the judgment of the district court is AFFIRMED.") (citing *Lindsey v. Normet*, 405 U.S. 56 (1972)).

71. In 2016, 73% of U.S. renters had cash savings of less than \$4,000. Riordan Frost, *Cash-Strapped During COVID-19*, HARVARD JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (Jun. 2020), <https://www.jchs.harvard.edu/blog/cash-strapped-during-covid-19> [<https://perma.cc/P6RG-FN8U>].

72. VA. CODE ANN. § 17.1-405 (2024).

73. Governor's Veto Explanation, H.B. 614, 162nd Gen. Assemb., 2022 Sess. (Va. 2022), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?221+amd+HB614AG> [<https://perma.cc/XQ4J-NPDY>] ("The General Assembly rejected my proposed amendments, which would allow an indigent tenant to appeal, but require a payment plan of equal monthly payments within six months or the date of a circuit court hearing, whichever is earlier. Accordingly, I veto this bill.").

74. E-mail from Marty Wegbreit, *supra* note 38.

75. *Id.*

76. The legal ambiguity and unpredictability may also subtly encourage tenants to avoid court. *See infra* Part II.A.

77. VA. CODE ANN. § 55.1-1308.2 (2024).

78. Telephone Interview with Jonathan Knopf, Exec. Dir., Manufactured Home Cmty. Coal. of Va. (Mar. 22, 2022).

twenty-one states across the country.<sup>79</sup> Virginia has yet to see a park purchased directly by residents to form a land trust or cooperative,<sup>80</sup> but Virginia nonprofits have begun to purchase parks with the long-term goal of transitioning ownership to residents.<sup>81</sup> Despite new opportunities created by the 2020 legislation, gaps in enforcement of residents' rights threaten to undermine these rights in practice.

Since 2020, Virginia park owners who wish to advertise a park as for sale must notify residents and the Department of Housing and Community Development (DHCD) that the park is for sale at least 90 days prior to accepting a purchase offer, except if the sale is to a family member.<sup>82</sup> In addition to the first 90-day notice, "acceptance of [any] offer shall be contingent upon the park owner sending written notice of the proposed sale and the purchase price in the real estate purchase contract at least 60 days before the closing date on such purchase contract" to residents and DHCD.<sup>83</sup> During this notice period, the owner "shall consider" offers made by a resident association.<sup>84</sup> The owner is not required to choose resident association offers over third-party offers.<sup>85</sup>

Residents have additional rights if their tenancies are ended in order to facilitate park redevelopment or a change in land use.<sup>86</sup> Instead of the typical 60-day lease nonrenewal notice period, 180 days' notice is required [i]f the termination is "due to a change in the use of all or any part of a manufactured home park" by the landlord, "including conversion to hotel, motel, or other commercial use, planned unit development, rehabilitation, or demolition."<sup>87</sup>

In addition, "[i]f the termination of a rental agreement is due to the sale of the manufactured home park to a buyer that is going to redevelop the park and change its use," then the current landlord must provide such residents with \$5,000 in relocation expenses within the 180-day notice period.

Since not all landlords or park purchasers are public with their intent to redevelop or retain manufactured home park use, residents could challenge an eviction based on a 60-day notice of lease nonrenewal for lack of 180-day notice per §

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79. *Meet the Communities*, ROC USA, <https://rocusa.org/meet-the-communities> [<https://perma.cc/5NVW-6TA4>] (last visited Aug. 28, 2023). The states are Washington, Oregon, California, Idaho, Montana, Utah, Colorado, Minnesota, Missouri, Texas, Wisconsin, New York, Delaware, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, North Carolina, and Pennsylvania. *Id.*

80. Telephone Interview with Joe Ciszek, *supra* note 16.

81. Telephone Interview with Jonathan Knopf, *supra* note 78; *see also* PROJECT:HOMES, 2021 REPORT TO THE COMMUNITY: IMPROVING LIVES IN BERMUDA ESTATES 1 (2021), [https://www.project-homes.org/files/ugd/686255\\_f30cd09266b643c097ef0dc5dce72663.pdf](https://www.project-homes.org/files/ugd/686255_f30cd09266b643c097ef0dc5dce72663.pdf) [<https://perma.cc/U5JV-NGTC>]; *What We Do: Southwood*, HABITAT FOR HUMAN. OF GREATER CHARLOTTESVILLE, <https://www.cvillehabitat.org/what-we-do/southwood-new.html> [<https://perma.cc/L22T-K6PX>] (last visited Jul. 4, 2023).

82. VA. CODE ANN. § 55.1-1308.2 (2024).

83. *Id.*

84. *Id.*

85. *Id.*

86. VA. CODE ANN. § 55.1-1308 (2024); VA. CODE ANN. § 55.1-1308.1 (2024).

87. VA. CODE ANN. § 55.1-1308 (2024).

55.1-1308 and lack of relocation expenses paid per § 55.1-1308.1 on the theory that the owner intends to either redevelop the park or sell to a developer. The tenant should be allowed to investigate the factual question of the owner's intent to redevelop or sell through court issuance of a subpoena duces tecum. Of course, this litigation theory depends on the availability of appeals to courts of record if the GDC arbitrarily decides to give a judgement for the landlord despite this dispute of material fact.<sup>88</sup>

### *B. Constitutional and Common Law Protections*

Tracking with the language of the Fifth Amendment to the U.S. Constitution, the Virginia Constitution states that “no person shall be deprived of his life, liberty, or property without due process of law.”<sup>89</sup> Deprivation of property is the inherent result of eviction from a mobile home park: since evicted residents can almost never move a manufactured home to a new lot, they either abandon the home and lose all of its value, or sell it under duress.<sup>90</sup> Mobile home evictions also differ from other evictions in that “[l]andlords have incentive to encourage turnover among tenants because they stand to gain more through selling an abandoned home than they might make off lot rent alone.”<sup>91</sup> Some unscrupulous park owners have a business model that relies on legal dispossession: the owner sells a mobile home already on the park, soon evicts the residents over late rent or a lease violation, and then claims the home as abandoned property, pocketing the purchase price and repeating the cycle.<sup>92</sup>

Based on this property deprivation facilitated by Virginia courts,<sup>93</sup> the property rights of manufactured homeowners facing eviction should be protected by takings doctrine under the U.S. and Virginia Constitutions. In cases where a lot eviction results in the landowner gaining a manufactured home at the resident's expense, residents could challenge the abandoned property law combined with the MHLRA as an unconstitutional deprivation of property without due process of law

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88. See Telephone Interview with Joe Ciszek, *supra* note 16.

89. VA. CONST. art. 1, § 11; U.S. CONST. amend. V.

90. Telephone Interview with Dave Anderson, *supra* note 6.

91. *Solving the Mobile Home Park Problem*, VA. POVERTY L. CTR. (Apr. 11, 2019), <https://vpplc.org/solving-the-mobile-home-park-problem/> [<https://perma.cc/Y3UT-8BP3>] (“While standard landlord-tenant law is designed for a landlord who faces significant risk if a tenant breaks their lease, there’s a vastly reduced risk for landlords in the mobile home park context. Tenants who own their home don’t harm the landlord if they damage the home. And because lot rent is usually a fraction of the cost of a rental unit, tenants can get several months behind in rent before it starts to harm the landlord.”).

92. Telephone Interview with Elizabeth Coltrane, Staff Att’y, Blue Ridge Legal Servs. (June 17, 2021).

93. In *Shelley v. Kraemer*, 334 U.S. 1 (1948), the U.S. Supreme Court held that enforcement of racially restrictive covenants (prohibiting home sales from white to non-white persons) by state courts qualified as “state action” under the Fourteenth Amendment. This strand of the state action doctrine is somewhat dormant today but could be revived.



under the Virginia Constitution<sup>94</sup> and the Fourteenth Amendment to the U.S. Constitution.<sup>95</sup> Lot tenants could argue that “Taking the mobile home from A” (the tenant) “to give it to B” (the landlord), is not a legitimate public purpose under settled constitutional doctrine,<sup>96</sup> so the deprivation of residents’ property should fail an as-applied substantive due process rational basis test. But landlords could defend the statute by arguing that the MHLRA already provides adequate procedural and substantive rights in cases of eviction, park sale, or redevelopment, through notice periods and possible compensation for relocation expenses.<sup>97</sup> Overall, takings doctrine has typically protected the rights of landowners rather than tenants, and there are some potential dangers in trying to use it to protect mobile homeowners as lot tenants.<sup>98</sup> This probable failure of takings doctrine to protect low-income mobile homeowners from repossession in predatory lot leases enforced by Virginia courts sheds light on whose property rights the Constitution protects, and whose rights are left unenforced.

However, takings doctrine may apply when local government rezoning causes resident displacement. Rezoning could displace and dispossess residents in at least two ways. First, an “upzoning” could allow development of more intensive and profitable uses, such as commercial use or luxury housing.<sup>99</sup> Second, a “down-zoning” could prohibit land use for manufactured homes where they currently exist.<sup>100</sup> The availability of potential remedies depends on the type of rezoning.

Under normal zoning rules, even if a local government passes an ordinance or zoning map amendment that prohibits manufactured home use in an area that is already a mobile home park, existing mobile homes would be allowed to remain on the land.<sup>101</sup> Residents could initiate a regulatory takings suit if a local ordinance did not allow current structures to remain on the land, requiring them to leave their homes without compensation. In the New York Appellate Division case *Village of Valatie v. Smith*, a local government that had prohibited manufactured homes outside of specifically zoned areas sued a manufactured home owner to remove the structure from the land after it was passed from father to daughter upon the

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94. V.A. CONST. art. 1, § 11.

95. U.S. CONST. amend. XIV, § 1.

96. See *Calder v. Bull*, 3 U.S. 386, 388 (1798) (opinion of Chase, J.) (describing “a law that takes property from A. and gives it to B.” as “contrary to the great first principles of the social compact” and an enactment that “cannot be considered a rightful exercise of legislative authority”).

97. See *supra* part I.A.1.

98. One general danger is that arguing for heightened constitutional protections for mobile home owners ignores the needs of “regular” tenants who do not own mobile homes, and basing a right to residential tenure protection on property ownership may further property rights rather than a right to housing.

99. E.g., Jenna deJong, *Community Members Express Concern About Planned Redevelopment of 2 Silverthorne Mobile Home Parks*, SUMMIT DAILY (Jan. 26, 2022), <https://www.summitdaily.com/news/local/community-members-express-concern-about-planned-redevelopment-of-2-silverthorne-mobile-home-parks/> [<https://perma.cc/998Z-RUNZ>].

100. See, e.g., *Vill. of Valatie v. Smith*, 596 N.Y.S.2d 581 (N.Y. App. Div. 1993).

101. See Christopher Serkin, *Existing Uses and the Limits of Land Use Regulations*, 84 N.Y.U. L. REV. 1222, 1223 (2009).

father's death.<sup>102</sup> Basing its decision on the New York Constitution, the Appellate Division reasoned that "a change in ownership of the property does not destroy a valid existing nonconforming use" and held that the local ordinance provision requiring that the daughter move the home upon inheriting it "does not constitute a reasonable means of achieving a legitimate goal."<sup>103</sup> Similar arguments could be marshaled if local governments in Virginia attempted to remove manufactured homes through the local zoning code.

On the other hand, constitutional challenges to displacement by park redevelopment after an "upzoning" would likely fail because of the state action requirement for civil rights challenges under 42 U.S.C. § 1983.<sup>104</sup> In an "upzoning" that leads to redevelopment of a mobile home park, the proximate dispossessor is the owner who evicts, even if a local government facilitates the displacement. Therefore, a resident bringing a federal constitutional claim for deprivation of property without due process of law under the Fourteenth Amendment and 42 U.S.C. § 1983 would likely fail the state action requirement as the evictor would be a private actor not acting "under color of law."<sup>105</sup>

Under Virginia common law, a plaintiff whose property was used or taken by another without permission can recover damages for "conversion."<sup>106</sup> In theory, an evicted manufactured home owner could sue the park owner for conversion for taking their manufactured home without permission, but in practice it would be easier for the resident to sell the home to the owner, even at a loss, given the uncertainty and delay of pursuing litigation. Furthermore, a common law conversion claim may be displaced by statute, since the MHLRA provides a comprehensive scheme for evictions that includes awarding relocation expenses in some cases.<sup>107</sup>

## II. ENFORCEMENT

This Section describes the current state of legal enforcement of Virginia mobile home residents' rights in the eviction, zoning, and park sale contexts.

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102. *Vill. of Valatie*, 596 N.Y.S.2d at 581–82.

103. *Id.* at 581.

104. *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) ("The ultimate issue in determining whether a person is subject to suit under 42 U.S.C.S. § 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of federal rights 'fairly attributable to the state?'").

105. 42 U.S.C. § 1983; *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974) (holding that a utility company was not a state actor subject to suit under § 1983); *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019) (holding that a private operator of public access television was not a state actor). Such a suit may be appropriate, though, if a municipality owned the park, since municipalities may be liable under § 1983 if they deprive individuals of federally protected rights pursuant to "official policy" or "custom." See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 659 (1978).

106. *E.g.*, *Frasier v. Ameriprint, Inc.*, No. 125513, 1994 WL 1031196 (Va. Cir. Ct. May 24, 1994).

107. See generally VA. CODE ANN. § 55.1-1300 to § 55.1-1319 (2024).

*A. Eviction Defense*

Data is sparse on Virginia eviction suits in general, and that data does not delineate which tenants are mobile home owners.<sup>108</sup> In addition, many mobile home owners vacate upon request of the park owner without going through the formal eviction process, complicating efforts to enforce legal rights.<sup>109</sup> Joe Ciszek from the Virginia Legal Aid Society describes the lot rental market as a “gray-market”:

Land owners have strong structural, institutional power, but it costs time and money to use it. Tenants have shaky, ill-defined rights, but moreover often have other vulnerabilities, such as immigration concerns, low/fixed incomes due to age or disability, and large families to support. This creates a system where neither side prefers to dispute cases in the legal forum provided by court.<sup>110</sup>

In those eviction cases that do go to court, the majority of Virginia tenants are self-represented; a 2017 Virginia Self-Represented Litigant Study found that both parties are represented by counsel in only one percent of all General District Court cases.<sup>111</sup> Thirty-one percent of GDC cases were housing cases, and plaintiff-only representation was highest in housing cases, at 63%.<sup>112</sup> A startling 42% of housing cases in General District Courts were default judgements in favor of the plaintiff, who is almost always the landlord or land owner.<sup>113</sup> There were zero default judgements where the housing court defendant—almost always the tenant—was represented by counsel.<sup>114</sup> A 2021 study of Richmond eviction cases showed that the average hearing length was less than three minutes, and over 40% of hearings were less than one minute long.<sup>115</sup> Given this data, reducing the rate of default judgements by providing a right to counsel in eviction cases is likely to have a greater effect on reducing displacement than changing the text of the MHLRA or using creative legal strategies to enforce it.<sup>116</sup>

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108. E-mail from Marty Wegbreit, *supra* note 38.

109. E-mail from Joe Ciszek, Staff Att’y, Va. L. Aid Soc., to author (Apr. 7, 2022, 13:41 EST) (on file with author).

110. *Id.*

111. STRICKLAND, GRAVES, & SCHAUFFLER, *supra* note 34, at i, 17-18.

112. *Id.* at 2.

113. *Id.* at 5.

114. *Id.* at 56.

115. HOWELL, TERESA, HANLEY, WHITE, & TOVA ENRIQUEZ DOUGHERTY, *supra* note 35. (2021), <https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2021/11/Eviction-Legal-Counsel-and-the-Courthouse-1.pdf> [<https://perma.cc/U6YG-AJMD>].

116. *See infra* Part III.A.

### B. Zoning

Although manufactured housing provides an important supply of affordable housing, “[m]ost cities zone very little space for trailer parks—presumably a reflection of the general bias against low-income housing.”<sup>117</sup> Because of local zoning restrictions, it is incredibly rare for new parks to open in Virginia.<sup>118</sup> In this market environment, the exchange values of Virginia mobile homes have recently risen faster than single family homes in the state.<sup>119</sup>

Virginia affordable housing advocates achieved an important victory in 2021 when the General Assembly passed a new law requiring each local government to “incorporate into comprehensive plan strategies to promote manufactured housing as a source of affordable housing.”<sup>120</sup> Advocates can use this language to push local governments for preservation and expansion of mobile home parks in their comprehensive plans. However, questions remain, including whether the statute creates a private right of action to enforce the planning requirement through litigation, and whether it creates a vested right for mobile home residents against displacement through rezoning. These questions are yet untested as this statute was recently adopted and has been the subject of litigation as of this writing.<sup>121</sup>

### C. Park Sale

#### 1. Enforcement of Resident Notice Requirement

Pursuant to § 55.1-1308.2, “acceptance of [any purchase] offer shall be contingent upon the park owner sending written notice of the proposed sale and the purchase price in the real estate purchase contract at least 60 days before the closing date” to residents and DHCD.<sup>122</sup> If the owner did not send notice to residents

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117. Nolan Gray, *Reclaiming “Redneck” Urbanism: What Urban Planners Can Learn from Trailer Parks*, STRONG TOWNS (Aug. 12, 2016), <https://www.strongtowns.org/journal/2016/8/11/reclaiming-redneck-urbanism-what-urban-planners-can-learn-from-trailer-parks> [<https://perma.cc/YWU2-2QND>] (“But where [parks] exist, they are often subject to uniquely liberal land-use regulation, with minimal setbacks, fewer parking requirements, and tiny minimum lot sizes.”).

118. Gordon, *supra* note 22 (“Building new mobile home parks [...] can be a near-impossible task under some local zoning laws, many of which have been rewritten over the last few decades to include lower densities, larger setbacks and street circulation requirements that make new parks cost-prohibitive. To get around the new rules and develop a classic layout mobile home park necessitates a special-use permit.”).

119. O’Hare, *supra* note 3 (“Between 2016 and 2019, the average value of site-built single family homes in Virginia rose by 17%, whereas manufactured homes rose by 36% . . .”).

120. VA. CODE ANN. § 15.2-2223.5 (2024) (“During an amendment of a locality’s comprehensive plan after July 1, 2021, the locality shall incorporate into its comprehensive plan strategies to promote manufactured housing as a source of affordable housing. Such strategies may include (i) the preservation of existing manufactured housing communities, (ii) the creation of new manufactured home communities, and (iii) the creation of new manufactured home subdivisions.”); *see also* O’Hare, *supra* note 3.

121. Telephone Interview with Joe Ciszek, *supra* note 16.

122. VA. CODE ANN. § 55.1-1308.2 (2024).

and DHCD per the statute, then the sale should not close. Two related questions arise: First, what happens if notice was “sent” but not received? Second, do residents or DHCD have a right of action to sue to invalidate a sale based on improper notice? The first is an open legal question in Virginia, as there are no recorded decisions addressing it as of early 2024.<sup>123</sup> A court deciding adequacy of notice would reference the Notice section of the Virginia Residential Landlord and Tenant Act, which authorizes electronic notice if specified in the rental agreement. Otherwise, “notice is served at the tenant’s last known place of residence, which may be the dwelling unit.”<sup>124</sup>

On the question of enforcement through a private right of action, Virginia courts are reticent to imply a private right of action if a statute provides another mode of redress.<sup>125</sup> “When a statute is silent . . . we have no authority to infer a statutory private right of action without demonstrable evidence that the statutory scheme necessarily implies it.”<sup>126</sup> § 55.1-1308.2 is silent on enforcement of the resident notice requirement, except that acceptance of the park offer is “contingent upon” notice.<sup>127</sup> Four other sections of the MHLRA are covered by the express private right of action in § 55.1-1318, but not the park sale notice requirement.<sup>128</sup> To survive a motion to dismiss, a suit by residents to invalidate a sale based on lack of notice would have to convincingly argue that § 55.1-1308.2 creates a resident right to notice of sale that necessarily implies the remedy of a private lawsuit; indeed, that section of the statute does not contemplate other redress for violation of that right.<sup>129</sup>

§ 55.1-1319 of the MHLRA authorizes “[t]he attorney for any locality [to] file an action for injunctive relief for violations of this chapter.”<sup>130</sup> A clearer legal path for invalidation of a sale would be if residents asked their local city attorney to file suit on their behalf, but the success of this strategy depends on the participation of a willing city attorney.

Whether initiated by residents, the Commonwealth, or a municipality, litigation over untimely or otherwise improper notice of intent to sell could “win” by invalidating a sale that would have led to displacement. However, even if such a lawsuit were ultimately unsuccessful, the time necessary for litigation could

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123. E-mail from Marty Wegbreit, *supra* note 38.

124. VA. CODE ANN. § 55.1-1202 (2024).

125. Sch. Bd. of Norfolk v. Giannoutsos, 380 S.E.2d 647, 649 (Va. 1989) (“One of the basic principles of statutory construction is that where a statute creates a right and provides a remedy for the vindication of that right, then that remedy is exclusive unless the statute says otherwise.”).

126. Cherrie v. Va. Health Servs., 787 S.E.2d 855, 858 (Va. 2016).

127. VA. CODE ANN. § 55.1-1308.2 (2024).

128. VA. CODE ANN. § 55.1-1318 (2024) (“If the landlord acts in willful violation of § 55.1-1303, 55.1-1306, 55.1-1310, or 55.1-1314 or if the landlord fails to provide a written, dated rental agreement, the tenant is entitled to recover from the landlord an amount equal to the greater of either the tenant’s monthly rental payment at the time of the violation or actual damages and reasonable attorney fees.”).

129. VA. CODE ANN. § 55.1-1308.2 (2024).

130. VA. CODE ANN. § 55.1-1319 (2024).

provide residents with the opportunity to organize, submit an offer to purchase, or relocate on a less compressed time frame, depending on residents' goals. Such a legal strategy should be aligned with a plan to preserve the park as affordable housing, whether through nonprofit or resident ownership, possibly backed by public subsidy.

## 2. Analysis of Park Sale Data

This Section analyzes data on Virginia mobile home park sales to provide insights for legal and community development practitioners to work with residents who have received notice of intent to sell, and to advocate for a statewide mobile home park affordable housing preservation policy backed by public subsidy. Since the notice law came into effect in January 2021, there have been 95 notices of purchase offer, and 37 notices of intent to sell, as of December 2023. The mean price per lot was \$44,804, and prices per lot ranged from \$4,500 for a park in Galax in rural Southwestern Virginia to \$229,333 in Alexandria near Washington, D.C.<sup>131</sup>

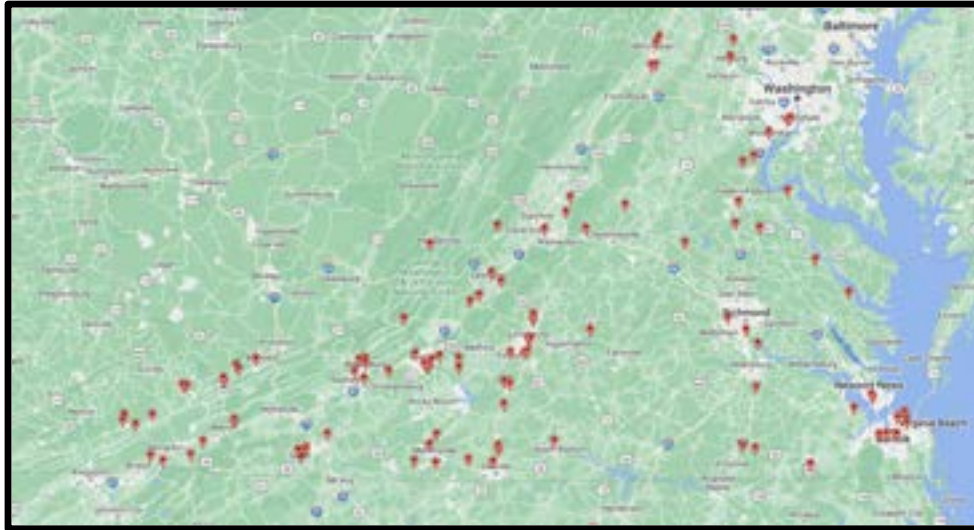
Table 2: Data Analysis of Notice Documents

Statistical Notice Document Analysis	
Mean Price Per Lot	\$44,804.87
Median Price Per Lot	\$31,250.00
Standard Deviation	\$38,087.02
Maximum Price Per Lot	\$229,333.33
Minimum Price Per Lot	\$4,500.00
Notice Document Counts	
Number of Complete Notices with Price and Number of Lots	110
Total Number of Notices	132
Notices of Purchase Offers	95
Notices of Intent to Sell	37

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131. Data on file with author. With assistance from Jonathon Knopf and the Manufactured Home Community Coalition of Virginia, I compiled and analyzed data from the public notice documents published on DHCD's website. See *Manufactured Housing (MH)*, VA. DEP'T OF HOUS. & CMTY. DEV., <https://www.dhcd.virginia.gov/mh> [<https://perma.cc/ED9M-LA8Y>] (last visited Jan. 12, 2024).

*Figure 1: Locations of Parks with Purchase Offers in Virginia, January 2021–December 2023*<sup>132</sup>



The data show that mobile home parks are sold across the Commonwealth, including in rural areas, small towns, and large metropolitan areas. The majority of park sales occurred in the southwestern half of the state. The eastern crescent formed by the Washington suburbs, the Richmond metro, and Hampton Roads (Norfolk, Virginia Beach, and Newport News) is more urbanized and expensive than the western half of the state, although pockets of development pressure are found in university towns such as Charlottesville and Blacksburg.

The wide distribution of per-lot prices means that a statewide mobile home affordability preservation policy needs to be nimble enough to account for the variety of housing markets in the state. Given the range of real estate values across the state, a flat rate per-lot purchase subsidy program would underserve the Northern Virginia metro area and possibly over-subsidize parks in far Southwest and South-Central Virginia. One alternative would be a purchase subsidy calculated as a percentage of the park's appraised value, which would send more public dollars to more expensive areas but make affordability preservation possible in all parts of the state.

In reviewing the data on notices, I saw that many notice letters were missing information such as the number of lots, the purchase price, or the full address of

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132. David Tisel, *Locations of Parks with Purchase Offers in Virginia*, BatchGeo, <https://www1.batchgeo.com/map/96fbb6f60128ea90a23aa34c7f4496c4> [https://perma.cc/6F7J-DSXG] (last visited Mar. 3, 2024). Location data on file with author. With assistance from Jonathon Knopf and the Manufactured Home Community Coalition of Virginia, I compiled and analyzed data from the public notice documents published on DHCD's website. See *Manufactured Housing (MH)*, VA. DEP'T OF HOUS. & CMTY. DEV., <https://www.dhcd.virginia.gov/mh> [https://perma.cc/ED9M-LA8Y] (last visited Jan. 12, 2024).

the manufactured housing park. Missing information could be the basis of a resident or city attorney lawsuit challenging a park sale based on insufficient notice. Since the § 55.1-1308.2 notice requirements for a proposed park sale would be a case of first impression in Virginia, plaintiffs could analogize to Virginia statutory notice requirements for eviction suits<sup>133</sup> and U.S. Constitutional due process notice requirements to terminate housing benefits.<sup>134</sup>

### III.

#### ENVISIONING GREATER ENFORCEMENT

Since most residents in mobile home parks lack the funds to pay for legal representation, and eviction defense does not yield contingency fees, the private bar is unlikely to enforce residents' rights under the MHLRA,<sup>135</sup> so residents need other enforcement strategies. Legal aid organizations already defend indigent residents from eviction suits, and more public funding for civil legal services could provide a robust right to counsel in eviction. More funding for legal services, along with an easier pathway to appeal GDC judgements, would also help to develop the caselaw interpreting the MHLRA, making application of the law more consistent. Municipal attorneys and even the Virginia Attorney General should step in to enforce the MHLRA in cases that affect groups of residents, such as a sale or conversion of a park. Alternatively, groups of residents could sue using aggregate litigation tools, or they could incorporate residents' associations with associational standing to sue. All potential legal strategies are bolstered by resident organizing that builds collective power. This Section expands on these potential strategies to bolster the enforcement of residents' rights.

#### *A. Legal Aid Funding*

Since individual tenant rights are enforced by representation of counsel, increased state and local funding for legal aid in Virginia could increase the percentage of represented tenants and decrease displacement. A 2021 report from the Richmond Eviction Lab found that tenant representation reduced judgments for landlords by 30%.<sup>136</sup> The same report showed that 90% of Richmond tenants still lacked counsel.<sup>137</sup> Studies from other states have also shown decreased eviction

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133. *E.g.*, VA. CODE ANN. § 55.1-1245(F) (2024) (requiring at least five days' written notice of nonpayment before filing an unlawful detainer (eviction)).

134. The 14th Amendment Due Process clause, as interpreted by *Goldberg v. Kelly*, 397 U.S. 254 (1970), applies to Section 8 terminations and requires stating factual reasons for the termination. *Caulder v. Durham Housing Authority*, 433 F.2d 998, 1003–04 (4th Cir. 1970) (“Succinctly stated, *Goldberg* requires (1) timely and adequate notice detailing the reasons for a proposed termination . . .”).

135. *See Sabbeth*, *supra* note 41.

136. HOWELL, TERESA, HANLEY, WHITE, & TOVA ENRIQUEZ DOUGHERTY, *supra* note 35.

137. *Id.*



rates when tenants have counsel.<sup>138</sup> Virginia should supplement federal funding for civil legal aid through an additional guaranteed state funding source so that more tenants have counsel in eviction cases.

### *B. Appeals*

Increased legal aid capacity would also increase the possibility for residents to appeal eviction judgements from GDCs to courts of record. As noted above, since Governor Youngkin vetoed HB 614,<sup>139</sup> tenant appeals will continue to be prohibitively expensive without new legislation to abolish appeal bonds. Appellate decisions could clarify ambiguities in the MHLRA, and GDC eviction judgements may be more predictable and accountable if judges know they face reversal by a court of record.

### *C. Municipal Attorneys*

The MHLRA empowers “[t]he attorney for any locality” to enforce its provisions through filing an action for injunctive relief.<sup>140</sup> Ciszek believes that since the MHLRA was amended in 2020, no City or County Attorney has sued to enforce the MHLRA.<sup>141</sup> Although legal aid offices may be better equipped to handle individual eviction cases, municipal attorneys should step in when entire communities are faced with displacement due to park sale or redevelopment, since those cases concern groups of local constituents and land located within the municipality.

The MHLRA requires that the Virginia Department of Housing and Community Development receive notice of a proposed park sale.<sup>142</sup> DHCD should email copies of these notices to the City or County Attorney for the municipality where each park is located, so that the municipal attorneys have an opportunity to investigate whether notice was proper and whether residents were given an opportunity to make an offer as required by the MHLRA.<sup>143</sup>

### *D. Attorney General Enforcement*

DHCD should also proactively share notice data on park sales and redevelopment with the Virginia Attorney General’s Office so that the AG can monitor for

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138. *E.g.*, N.Y.C. OFF. OF CIV. JUST., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR FOUR OF IMPLEMENTATION IN NEW YORK CITY 25 (2021), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf) [<https://perma.cc/S668-LBTF>].

139. Governor’s Veto Explanation, H.B. 614, 162nd Gen. Assemb., 2022 Sess. (Va. 2022), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=HB614> [<https://perma.cc/8KMN-DN43>].

140. VA. CODE ANN. § 55.1-1319 (2024).

141. Telephone Interview with Joe Ciszek, *supra* note 16.

142. VA. CODE ANN. § 55.1-1308.2 (2024).

143. VA. CODE ANN. § 55.1-1308.2 (2024).

repeat or gross violations of the MHLRA by specific landlords, developers, or investors. There is precedent for the Virginia AG to investigate and sue landlords for violating Virginia law: former Attorney General Herring recently sued Jumpstart University, Vasilos Education Center, and Carl Vaughan for allegedly defrauding low-income tenants.<sup>144</sup> The Attorney General's power to investigate misrepresentation under the Virginia Consumer Protection Act<sup>145</sup> should be applied to investigate park owners whose business models involve dispossessing residents through leasing, eviction, and repossession through "abandonment."<sup>146</sup>

### *E. Aggregate Litigation*

Landlords are obliged under the MHLRA to "[c]omply with applicable laws governing health, zoning, safety, and other matters pertaining to manufactured home parks," including the maintenance of "all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord."<sup>147</sup> Aggrieved park residents whose landlord fails to maintain these basic requirements could bring suit through a class action<sup>148</sup> in federal court under diversity jurisdiction if the landlord is neither a Virginia resident nor a Virginia corporation.<sup>149</sup> Such a resident lawsuit would also have to argue for an implied right of action.<sup>150</sup>

### *F. Community Organizing*

Robust community organizing can protect residents' rights, independent of or alongside litigation. In 2022, residents in Leesburg, Virginia effectively organized to protect their community from a sale for redevelopment that would have

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144. Press Release, Off. of the Att'y Gen., Commonwealth of Va., Attorney General Herring Sues Jumpstart University, Vasilos Education Center, and Carl Vaughan for Allegedly Defrauding Tenants (Aug. 18, 2021), <https://www.oag.state.va.us/consumer-protection/index.php/news/492-august-18-2021-herring-sues-jumpstart-university-vasilos-education-center-and-carl-vaughan-for-allegedly-defrauding-tenants> [<https://perma.cc/25ZB-73XJ>] ("When a landlord takes advantage of their tenants, especially when those tenants are low-income or even homeless, they must be held accountable for the harm they have caused," said Attorney General Herring.).

145. See VA. CODE ANN. § 59.1-203 (2024).

146. Apparently, this practice is common by some park owners. Telephone Interview with Elizabeth Coltrane, *supra* note 92.

147. VA. CODE ANN. § 55.1-1303 (2024).

148. A group of residents suing to enforce the minimum standards provisions of the MHLRA could satisfy the commonality, typicality, and adequacy requirements for class certification, but since another prerequisite is that the "class is so numerous that joinder of all members is impracticable," a small number of residents may be denied certification on numerosity grounds. FED. R. CIV. P. 23(a).

149. The suit would also have to satisfy the minimum \$75,000 amount in controversy requirement for diversity jurisdiction. 28 U.S.C. § 1332.

150. See *supra* Section II.C.1.

displaced residents.<sup>151</sup> In another example, residents at Harmony Place in Alexandria, Virginia were already organized to demand park infrastructure maintenance when they received the notice of proposed sale, and they are now negotiating with potential buyers to demand fixes to drains, power lines, and streets as part of a purchase agreement.<sup>152</sup> This type of outcome is not an obvious result of the resident notice provisions in the MHLRA, but it shows the power of resident organizing, especially when policy creates opportunities for utilizing collective power.

#### IV. LEGISLATIVE REFORM

The Virginia General Assembly can strengthen the rights of manufactured home residents and communities in the face of displacement pressure from rising lot rents and park sales to profit-maximizing corporations. Since the Virginia General Assembly is a statewide legislative body, successful advocacy requires a statewide majoritarian coalition. Tenants' rights are sometimes viewed as an urban issue championed by progressive Democrats.<sup>153</sup> The salience of tenants' rights for mobile home park residents across the state challenges this assumption and creates an opportunity for statewide coalition-building across Party and geographic lines. A statewide movement that combines mobile home park tenants and tenants of traditional buildings could achieve more than either group in isolation. This Section outlines a menu of legislative and budgetary strategies that other jurisdictions

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151. See Elizabeth Stinnette, *Sale of Leesburg Mobile Park Averted, for Now, as Developer Backs Out*, LOUDON TIMES (Jan. 22, 2022), [https://www.loudontimes.com/news/sale-of-leesburg-mobile-park-averted-for-now-as-developer-backs-out/article\\_86536048-7bb9-11ec-84a7-bfe001c73231.html](https://www.loudontimes.com/news/sale-of-leesburg-mobile-park-averted-for-now-as-developer-backs-out/article_86536048-7bb9-11ec-84a7-bfe001c73231.html) [<https://perma.cc/C4QT-DREL>] ("The impending sale of Leesburg Mobile Park, which likely would have led to the eviction of residents, has been called off, at least for now . . . . Darius Saeidi, the prospective buyer, wrote that he decided not to move forward with the \$11 million deal 'due to complexities with the county and our confidence in being able to work with them to successfully find a resolution to the relocation of the tenants.'").

152. See Mary Wadland, *Harmony Place Mobile Home Residents in Alexandria South Demand Repairs Be Part of Upcoming Sale*, ZEBRA (Dec. 17, 2021), <https://thezebra.org/2021/12/17/harmony-place-mobile-home-residents-in-alexandria-south-demand-repairs-be-part-of-upcoming-sale/> [<https://perma.cc/VLL9-WTMM>] ("Residents had already been organizing when the owner announced that a private buyer, SRP Alexandria, LLC, had made an offer on the property. Residents stepped up their efforts to make sure that they had the full 60 days under the Manufactured Home Lot Rental Act to make an offer themselves, which the owner would be required to consider.... Catholics for Housing, a non-profit with experience managing mobile home parks, has been working (with financial support from Fairfax County) to make an offer on behalf of residents. At the same time, Fairfax County has reached out to SRP Alexandria, LLC, to see if they will sign an agreement to address residents' concerns and improve conditions if the company becomes the new park owner.").

153. See, e.g., Claudia Grisales, *With Evictions on the Rise, House Democrats Team up to Push New Housing Protections* (Feb. 10, 2022, 5:01 AM), NAT'L PUB. RADIO, <https://www.npr.org/2022/02/10/1079395385/with-evictions-on-the-rise-house-democrats-team-up-to-push-new-housing-protectio/> [<https://perma.cc/T7ZM-GQZ4>] (reporting that attempts to provide significant help for tenants "in the past year have faced staunch opposition from Republicans and moderate Democrats.").

have adopted. The first Subsection focuses on improving tenure rights of tenants generally, and the second focuses on defending the right to remain for manufactured housing residents in particular.

### *A. General Tenants' Rights*

#### *1. Right to Counsel in Eviction Cases*

As mentioned above, Virginia should budget more state and local funds to legal aid to establish a right to counsel in eviction cases. The high percentage of default judgements in Virginia<sup>154</sup> suggests that strengthening legal rights in the Virginia Code will help Virginia tenants only if they have access to counsel.

Critics of the Right to Counsel may argue that New York City's program is currently struggling to provide each tenant a lawyer in an eviction suit, and the program has a large gap between its promise and the current reality.<sup>155</sup> However, its commitment of funds has still resulted in far more tenants receiving legal help than in jurisdictions like Virginia that have not committed to a right to counsel in eviction cases.<sup>156</sup>

#### *2. Rent Stabilization*

Oregon and California have adopted legal caps on annual rent increases for tenants who remain in place. In Oregon, the limit is 7% plus the prior year's percentage rate inflation, as calculated by the Consumer Price Index.<sup>157</sup> In California, the limit is 5% plus a local cost of living adjustment up to an additional 5%, so the cap on rent increases ranges from 5% to 10% annually, depending on the locality.<sup>158</sup> Twelve California municipalities further restrict rent increases.<sup>159</sup>

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154. STRICKLAND, GRAVES, & SCHAUFFLER, *supra* note 34, at 4.

155. Frank Festa & Annie Iezzi, *NYC's Floundering 'Right to Counsel' Fails to Keep Pace with Eviction Cases*, CITY LIMITS (Jan. 3, 2023), <https://citylimits.org/2023/01/03/nycs-floundering-right-to-counsel-fails-to-keep-pace-with-eviction-cases/> [<https://perma.cc/85UZ-T6FD>].

156. *Compare id.* (reporting that 35% of New York City tenants facing eviction were represented by counsel in October 2022), with J. Brian Charles, *Right to an Attorney? Most Tenants Face Landlords Without One.*, GOVERNING (May 20, 2019), <https://www.governing.com/archive/gov-right-to-attorney-legal-defense.html> [<https://perma.cc/ALN4-NY68>] (discussing eviction proceedings in Richmond, Virginia, and noting that, overall, only about 10% of tenants were represented in evictin proceedings in 2019).

157. In 2020, the maximum annual rent increase in Oregon was 9.9%. *Oregon's Rent Control Law, Explained*, BUNGALOW (Feb. 1, 2022), <https://bungalow.com/articles/oregons-rent-control-law-explained#rent-control-in-oregon> [<https://perma.cc/8BS5-7Y24>].

158. *California's Rent Control Law, Explained*, BUNGALOW (Feb. 1, 2022), <https://bungalow.com/articles/californias-rent-control-law-explained> [<https://perma.cc/PU9U-GFF2>].

159. *Rent Control in California: Which Cities Restrict Rents?*, SPARKRENTAL (July 26, 2022), <https://sparkrental.com/rent-control-in-california/> [<https://perma.cc/LN24-CSBX>].

New York City has had various forms of rent regulation for over a century,<sup>160</sup> and as of 2021, there were over one million housing units subject to Rent Stabilization in New York City.<sup>161</sup> New York's Rent Stabilization is a comprehensive system that allows for rent increases for improvements to the building or apartment,<sup>162</sup> but generally, maximum annual rent increases are set by an appointed five-person Rent Guidelines Board, and percentage increases have typically ranged between 0% and 6%.<sup>163</sup> In 2019, New York State expanded a statewide option for municipalities to opt into Rent Stabilization.<sup>164</sup> Certain municipalities in Nassau, Rockland, Westchester, and Ulster counties are now covered.<sup>165</sup>

### 3. Good Cause Eviction

Typical state landlord-tenant law allows for “no-fault” evictions, where a tenant can be evicted upon expiration of their lease, even if the tenant is up to date on rent and has not violated the lease terms. Oregon recently prohibited this practice and now requires a “just cause” for evicting a tenant who has lived for at least one year in their domicile.<sup>166</sup> In addition, Washington, D.C. landlord-tenant law has for decades required a “good cause” for terminating a residential lease.<sup>167</sup>

### 4. Tenant Right of First Refusal

In 1980, Washington, D.C. granted residential tenants a right of first refusal when their buildings are sold.<sup>168</sup> The Tenant Opportunity to Purchase Act, or TOPA, gives tenants in multifamily buildings a collective and assignable right to

160. TIMOTHY COLLINS, N.Y.C. RENT GUIDELINES BD., AN INTRODUCTION TO THE NEW YORK CITY RENT GUIDELINES BOARD AND THE RENT STABILIZATION SYSTEM 12 (2020), <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2020/01/intro2020.pdf> [https://perma.cc/2Y5K-A3GA].

161. *Rent Control FAQ*, N.Y.C. RENT GUIDELINES BD., <https://rentguidelinesboard.cityofnewyork.us/resources/faqs/rent-control/> [https://perma.cc/PK7L-FYKU] (last visited Jun. 22, 2023).

162. *Rent Stabilization and Rent Control*, N.Y. DEP'T OF HOMES & CMTY. RENEWAL 2–3 (2022), <https://hcr.ny.gov/fact-sheet-1> [https://perma.cc/H8KP-H4H3].

163. *Rent Guidelines Board Apartment Orders #1 Through #51*, N.Y.C. RENT GUIDELINES BD., <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2019/08/aptorders.pdf> [https://perma.cc/6GUX-MCM5] (last visited Jan. 11, 2024).

164. *Activists Aim to Spread Rent Control Across New York*, THE REAL DEAL (Aug. 22, 2022), <https://therealdeal.com/2022/08/22/after-kingston-activists-push-rent-control-in-5-upstate-cities/> [https://perma.cc/E3CQ-N2MK].

165. *Rent Stabilization and Emergency Tenant Protection Act*, N.Y. DEP'T OF HOMES & CMTY. RENEWAL, <https://hcr.ny.gov/rent-stabilization-and-emergency-tenant-protection-act> (last visited Jan. 11, 2023) [https://perma.cc/UKF5-ERRU].

166. *About Just Cause Eviction and Rent Increase Protections*, OREGONLAWHELP, <https://oregonlawhelp.org/resource/about-just-cause-eviction-and-rent-increase-protections> [https://perma.cc/BFU8-BHGE] (last visited June 22, 2023) (noting that rent delinquency is considered a cause for eviction).

167. D.C. CODE § 42–3505.01 (2023).

168. Judy Meima, *Lessons from 20 Years of Enabling Tenants to Buy Their Buildings*, SHELTERFORCE (Nov. 23, 2020), <https://shelterforce.org/2020/11/23/the-keys-to-the-tenant-opportunity-to-purchase/> [https://perma.cc/SY38-9DLX].

match a third-party offer on their building.<sup>169</sup> Over the last forty years, thousands of residents have used TOPA to preserve their homes as permanently affordable housing, either through collective purchase as a limited equity cooperative, or by assignment to an affordable housing developer with a plan to retain affordable rents; both options typically also rely on the availability of public subsidy as part of the transaction.<sup>170</sup>

### *B. Rights Specific to Mobile Home Park Lot Tenants*

#### *1. Lot Rent Stabilization*

Lot rent stabilization is essential to prevent displacement, because regardless of a right to counsel or good cause eviction law, owners could lawfully evict a resident who was unable to pay a radically increased lot rent upon lease renewal. In 2019, New York State passed legislation limiting lot rent increases to three percent annually, unless a park owner can provide justification for raising the rent more than that (but never more than six percent).<sup>171</sup> Virginia should adopt similar limitations on annual lot rental increases to ensure that other tenure protections are not circumvented through large rent increases upon lease renewal.

#### *2. Good Cause Eviction*

The Virginia General Assembly should clarify the MHLRA's ambiguity about holdover evictions by explicitly requiring a "good cause" to not renew a lot lease, such as the tenant's noncompliance with the rental agreement. As of 2003, 32 other states had good cause eviction requirements for mobile home lot rentals.<sup>172</sup>

#### *3. Tenant Right of First Refusal*

Currently, Virginia park sellers must only "consider" residents' collective offer on the park in the notice period.<sup>173</sup> By comparison, a right of first refusal for mobile home park residents would bolster the notice and resident opportunity to offer provisions already in the MHLRA by requiring a seller to accept the resident offer if it matched the price and material conditions of a third-party offer. The right of first refusal, coupled with technical assistance and financing for cooperative

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169. *Id.*

170. *Id.*

171. Jason Bushby & Austin Holland, *New Law Expands Protections for Manufactured Homeowners and Tenants in New York*, FIN. SERVS. PERSPS. (July 23, 2019), <https://www.financial-servicesperspectives.com/2019/07/new-law-expands-protections-for-manufactured-homeowners-and-tenants-in-new-york/> [<https://perma.cc/QP7J-7EEL>].

172. CAROLYN L. CARTER, ODETTE WILLIAMSON, ELIZABETH DEARMOND, & JONATHAN SHELDON, NAT'L CONSUMER L. CTR., *MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER* 68 (2004), [https://assets.aarp.org/rgcenter/consume/d18138\\_housing.pdf](https://assets.aarp.org/rgcenter/consume/d18138_housing.pdf) [<https://perma.cc/87TW-WA4F>].

173. VA. CODE ANN. § 55.1-1308.2 (2024).

resident purchases, would turn park sales from threats of displacement into opportunities for preserving permanent affordability. Connecticut, Florida, Massachusetts, Minnesota, New Jersey, New York, and Rhode Island provide manufactured housing communities with a right of first refusal (subject to qualifications) to purchase their park if the resident association can match the third-party offer.<sup>174</sup> The right of first refusal is necessary given that no cooperative purchases have taken place under the current opportunity to purchase law.<sup>175</sup> There are already examples of park owners selling to a third party despite a bona fide offer by residents.<sup>176</sup>

#### 4. Public Capital and Funding for Technical Assistance

To complete a park purchase, resident associations need financing, but risk-averse banks are unlikely to lend to newly formed resident associations lacking equity, cash, and credit history. Nationally, ROC USA lends capital to help finance mobile home park transactions,<sup>177</sup> and this kind of nonprofit financing would be bolstered by low-interest, subordinated public debt as part of each mobile home park purchase by residents. Such public financing could also help fund needed infrastructure repairs and could preserve permanent affordability through recordation of an affordability covenant that runs with the land. Washington, D.C.'s Department of Housing and Community Development lends public capital from the Affordable Housing Trust Fund to resident associations to purchase their buildings as limited equity cooperatives.<sup>178</sup> D.C. also provides technical

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174. CAROLYN CARTER, NAT'L CONSUMER L. CTR., SUMMARY OF STATE MANUFACTURED HOME COMMUNITY PURCHASE OPPORTUNITY LAWS (2023), <https://www.nclc.org/wp-content/uploads/2023/04/summary-of-state-purchase-oppty-laws-March-2023-revision-final.pdf> [<https://perma.cc/Q5B5-X6FJ>].

175. Cat Modlin-Jackson, *Could Community Ownership Save Mobile Home Parks?*, VA. PUB. RADIO (Nov. 30, 2020, 5:04 AM), <https://www.wvtf.org/news/2020-11-30/could-community-ownership-save-mobile-home-parks> [<https://perma.cc/UN5L-5YAB>] (“[C]urrently there are no resident-owned mobile home parks in the state.”).

176. *E.g.*, *Mobile Home Park Residents Fear Impact of Sale to West Coast-Based Investor*, ALEXANDRIA LIVING (Nov. 15, 2022), <https://alexandrialivingmagazine.com/news/fairfax-county/mobile-home-park-residents-fear-impact-of-sale-to-west-coast/> [<https://perma.cc/26ET-KRUQ>].

177. *Financing*, ROC USA, <https://rocusa.org/become-a-roc/financing/> [<https://perma.cc/C25Q-FQBY>] (last visited July 11, 2023).

178. JENNY REED, D.C. FISCAL POL'Y INST., DC'S FIRST RIGHT PURCHASE PROGRAM HELPS TO PRESERVE AFFORDABLE HOUSING AND IS ONE OF DC'S KEY ANTI-DISPLACEMENT TOOLS (2013), [https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First\\_Right\\_Purchase\\_Paper-Final.pdf](https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf) [<https://perma.cc/RTU3-VFQV>] (“DC's First Right [to] Purchase . . . has helped to preserve nearly 1,400 units of affordable housing over the past decade and is one of the District's key tools to help residents stay in their homes as housing costs rise around them. The program provides low-interest loans to tenant groups that want to purchase — and in many cases rehabilitate their building — when their landlord has decided to sell. Without financial and technical assistance provided by the First Right [to] Purchase program, many tenant groups are unable to take advantage of the important right they have in DC to potentially purchase and preserve their housing when their apartment building is being sold.”).

assistance for these resident purchases and funding for resident organizing in the tenant right of first refusal process.<sup>179</sup>

#### CONCLUSION

One of my first cases as a legal aid attorney was to defend a Central American family of eighteen from eviction from a Virginia manufactured home park. Although the family had purchased the manufactured home, they rented the land from a private owner. The park owner decided that the household had grown too large, in violation of the lease and community rules, and he sued for eviction. The experience of litigating this case showed me the precarity of this system of housing, and the power that landowners can wield through the law and courts.

Manufactured housing provides an affordable home for thousands of Virginians, but park residents are rightfully wary of their displaceability under both the letter of Virginia law and its current manner of enforcement. Attorneys in non-profits, local governments, and the state government can stand with residents by creatively enforcing the MHLRA and advocating to strengthen tenure protections. Even under current law, residents can organize to defend their communities from speculative purchases that displace families. Stability, affordability, and community control of land will come from the power of resident organizing, and lawyers should help further these goals by utilizing creative legal tools in partnership with resident leaders.

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179. *Id.*