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**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II**

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NARROWS REAL ESTATE, INC. dba, RAINIER VISTA MOBILE

HOME PARK,

Respondent,

v.

MHDRP, CONSUMER PROTECTION DIVISION, OFFICE OF THE

ATTORNEY GENERAL,

Appellant.

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BRIEF OF *AMICI CURIAE* KING COUNTY BAR ASSOCIATION,  
SNOHOMISH COUNTY LEGAL SERVICES, AND TACOMA-PIERCE  
COUNTY HOUSING JUSTICE PROJECT

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## I. INTRODUCTION

Washington's Legislature has recognized that there is "an inequality of the bargaining position" between landlords and tenants at mobile home parks. RCW 59.30.010(1). This disparity exists because mobile home park tenants tend to be low-income borrowers who have purchased manufactured homes under predatory loan terms, with fixed incomes, little to no remaining savings, few available sites for alternative placement, and insufficient funds to move the home even when such sites are available. Each tenant's home is personal property that is constantly depreciating in value. In contrast, the landlords own the underlying real estate, which tends to appreciate in value, and they can opt to sell or redevelop the land when economically advantageous to them. The tenants are thus under constant financial pressure and often compelled to pay whatever they can afford in order to keep their homes.

To address the unique nature of the tenancy relationship at mobile home parks, the Legislature has adopted the Manufactured/Mobile Home Landlord Tenant Act (the "Act") and the Attorney General's Manufactured/Mobile Home Dispute Resolution Program (the "Program"). The Act was adopted in 1977 in order to promote fairness at such parks and to provide mobile home park tenants with various legal protections. The Program was created 30 years later, in 2007, because

mobile home park tenants still faced substantial barriers to enforcing their rights under the Act. Together, the Act and Program were established to address mobile home park tenants' relative lack of bargaining power, to prevent abusive practices at mobile home parks, and to provide an efficient and effective method for addressing potential legal violations at such parks.

In this case, the parties dispute the meaning of the Act with regard to utility charges, and the scope of the Attorney General's remedial authority under the Program. These disputes should be resolved consistent with the language, structure, and underlying purposes of the Act and the Program. As to utility charges, the Act provides that landlords cannot charge more than "actual utility costs" for any and all utilities provided to tenants. RCW 59.20.070(6). As explained below, the narrow and plain language used, numerous related provisions of the Act, and the Legislature's underlying purposes all confirm that landlords must pass utility company charges onto tenants without any markups or extra charges. This reasonable limit on park landlords reflects the need for predictability for park tenants, limits the potential for landlord abuse, avoids confusion, and prevents unwanted disputes, as the Legislature intended.

As to remedial authority, the statutes establishing the Program authorize the Attorney General to order “corrective action” whenever “a violation” of the Act has been found in response to a complaint. RCW 59.30.040(5)(a). As explained below, the plain language of the relevant authorizing provisions, numerous related statutory provisions, and the Legislature’s underlying purposes all confirm that the Attorney General may order park-wide relief once a park-wide violation of the Act has been found. Such remedial authority accounts for the fact that many tenants are vulnerable and hesitant to come forward and ensures that the Program can be operated efficiently and effectively, as the Legislature intended. This Court should interpret the Act and Program accordingly.

## **II. IDENTITY AND INTEREST OF AMICI**

The King County Bar Association (“KCBA”) is a non-profit voluntary bar association based in King County, Washington. The KCBA administers several programs that serve low-income people, including its Housing Justice Project. Snohomish County Legal Services is a private non-profit organization that sponsors a Housing Justice Project in Snohomish County. And the Tacoma-Pierce County Housing Justice Project is a legal clinic that operates within Pierce County.

The KCBA’s Housing Justice Project, the Snohomish County Housing Justice Project, and the Tacoma-Pierce County Housing Justice

Project (collectively, the “HJPs”) are all legal clinics that provide free legal advice and representation to low-income tenants facing eviction, including tenants living in mobile home parks. The HJPs serve hundreds of such tenants each month by advising them of their rights, negotiating with landlords and opposing counsel, and when necessary, representing tenants in court at their eviction hearings. Together, the HJPs provide these services throughout Washington’s three largest counties. The HJPs have extensive institutional experience with mobile home parks, park tenants and landlords, and the Act and Program.

### **III. ARGUMENT**

#### **A. Mobile Home Park Landlords Must Charge for Amounts Paid to Utility Companies Without Markups or Extra Charges.**

In this appeal, the parties dispute the standards governing utility charges at mobile home parks. The parties initially disagree as to whether landlords may charge more for utilities than the amount “that appears on the utility provider’s bill . . . .” Reply Br. at 7 (internal quotations omitted). The parties further argue about whether the extra charges imposed in this particular case, even if permissible in theory, were sufficiently documented and proved. *See* Br. of Resp. at 24-25. The Court need not resolve this latter dispute, however, because the Act requires that a landlord pass through utility company charges without

markups or extra charges, as a matter of law. A review of the applicable statutory language, related provisions, and the Legislature’s underlying purposes confirms this interpretation. *See W. Plaza, LLC v. Tison*, 184 Wn.2d 702, 711-18, 364 P.3d 76 (2015) (discerning meaning of provision within the Act based on plain language, context, and legislative purpose).

Initially, the applicable statute states that a park landlord “shall not . . . [c]harge to any tenant a utility fee in excess of actual utility costs . . . .” RCW 59.20.070(6). In this context, “utility” means a “public utility,” which is “a business organization deemed by law to be vested with public interest [usually] because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities.” WEBSTER’S THIRD NEW INT’L DICTIONARY (1993) at 1836, 2525; *cf., e.g.*, RCW 7.60.005(14) (defining “utility” as “a person providing any service regulated by the utilities and transportation commission”). And “costs” are “the amount[s] . . . paid . . . or charged . . . for [the] service rendered.” WEBSTER’S, *supra*, at 515. The phrase “actual utility costs” thus reasonably refers to the amounts actually charged by regulated utility providers—not internal costs incurred by a landlord for maintenance or administration. *See, e.g.*, Thomson Reuters, *50 State Statutory Surveys: Regulation of Utils. Provided to Mobile Home Parks*,

0130 SURVEYS 16 (2015) (attached as App. A)<sup>1</sup> (“Most states regulate the provision of [utilities] to mobile home parks . . . [including] whether the landlord/owner may charge . . . fees higher than actual utility costs or charge fees for providing utilities . . . .” (emphasis added)). Under this reading, mobile home park landlords in Washington may impose a special utility fee only for the amounts they pay to utility companies, not for their own internal costs.

A review of statutory provisions in other states validates this reading of Washington’s language. Florida’s statute, for example, prohibits park landlords from charging “greater than that amount charged by the public utility,” as in Washington, but also includes an express exception for “the distribution of water,” for which park landlords may “charge for maintenance actually incurred and administrative costs.” FLA. STAT. § 723.045. New Mexico law similarly provides that any “charge for utility services” at mobile home parks “shall not exceed the cost . . . paid by the landlord . . . [to] the utility services,” *see* N.M. Stat. § 47-10-20(B), but then specifies in a separate statute that the landlord may charge “a reasonable fee to offset the cost of administration incurred by [the]

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<sup>1</sup> Amici have attached numerous cited sources to this brief as appendices, for the Court’s convenience. The Court can take judicial notice of these materials for the purpose of reaching a proper decision in this case. *See, e.g., Wayman v. Wallace*, 94 Wn.2d 99, 102-03, 615 P.2d 452 (1980) (noting appellate courts “can take notice of scholarly works, scientific studies, and social facts” to inform proper legal reasoning and adjudication).

landlord,” subject to special notice and reporting requirements, N.M. Stat. § 47-10-21. As these statutes demonstrate, actual utility costs are distinct and treated differently from a landlord’s internal costs of maintenance and administration at mobile home parks. Washington’s Legislature could have authorized fees for a landlord’s internal costs in addition to utility costs, but chose not to do so.

Related statutory provisions within the Act further confirm that mobile home park landlords in Washington are supposed to pass on actual charges from utility companies, not their own internal costs. The Act elsewhere makes it an independent “duty of the landlord” to “[m]aintain and protect all utilities provided to the mobile home . . . in good working condition,” with “[m]aintenance responsibility . . . determined at that point where the normal mobile home . . . ‘hook-ups’ connect to those provided by the landlord or the utility company.” RCW 59.20.130(6). In other words, the Legislature has required landlords, rather than tenants, to incur the costs of maintaining any necessary infrastructure for utilities at these parks. As such, a tenant’s agreement to pay the landlord a special fee for such maintenance would not only be contrary to the Legislature’s intent under the Act, it would also lack consideration and be unenforceable. *See, e.g., Queen City Constr. Co. v. City of Seattle*, 3 Wn.2d 6, 17-18, 99 P.2d 407 (1940) (noting “a promise to pay additional compensation for [a]

performance . . . the promisee is already under obligation . . . to perform is without consideration” (internal quotations omitted)).

Finally, the Legislature’s underlying purposes further support interpreting the Act to limit utility fees at mobile home parks to the actual amounts paid to utility providers. The Act was originally enacted in 1977 to provide “protections” to mobile home park residents in light of the “unique position” of owning a mobile home while renting the land on which the home is placed. 1977 FINAL LEGISLATIVE REPORT, 45th Wash. Leg. at 168 (App. B); *see also* Laws of 1977, ch. 279. The provisions governing utility charges were added two years later, in 1979, for the purpose of providing “clarification” and minimizing “ambiguous and dispute producing” standards. 1979 Final Legislative Report, 46th Wash. Leg. at 97 (App. C); *see also* Laws of 1979, ch. 186, §§ 4-5, 7. Both of these underlying purposes weigh heavily in favor of interpreting the Act to cap utility fees at the amount actually paid to utility companies, without markups or extra charges.

First, capping utility fees at actual costs paid to utility providers ensures multiple reasonable and needed protections for mobile home park tenants. Such tenants face numerous economic challenges, including “predatory” lending practices, a lack of “household equity or savings,” “chronic debt,” a “scarcity of trailer sites” for alternative placement,

“prohibitive costs for moving,” and forced displacement. Katherine MacTavish *et al.*, *Housing Vulnerability Among Rural Trailer-Park Households*, 13 GEO. J. ON POV. L. & POL’Y 95, 98-99 (2006) (App. D); *see also, e.g.*, Lynn Thompson, *32 families face eviction with sale of Kirkland mobile-home park*, SEATTLE TIMES (May 24, 2015) (App. E). Meanwhile, the mobile home park industry continues to flourish, generating “significant profits” for landlords. Katherine A. MacTavish, *The Wrong Side of the Tracks: Social Inequality and Mobile Home Park Residence*, 38 COMM’Y DEV’T 74, 85 (2007) (App. F); *see also, e.g.*, Rupert Neate, *America’s trailer parks: the residents may be poor but the owners are getting rich*, THE GUARDIAN (May 3, 2015) (App. G).

In this context, predictability with regard to utility charges is especially important for the tenants. That is because “high utility costs associated with mobile homes aggravate the financial insecurity” of the tenants and can “quickly consume a household’s monthly income” and “force hard choices” for them. MacTavish, 13 GEO. J. ON POV. L. & POL’Y at 101. For tenants in this situation, the “hidden costs of extra fees . . . can present insurmountable struggles that push a household toward transience or even into homelessness.” *Id.* at 100-01. Prohibiting regular utility fees from exceeding actual provider charges ensures that tenants receive a stable and predictable recurring bill.

Prohibiting landlords from charging special utility fees in excess of the amounts billed by utility companies also helps prevent abusive landlord billing practices. As the Legislature impliedly recognized when it adopted special protections within the Act related to utility fees in particular, landlords may be tempted to manipulate such fees in order to obtain short-term increases in revenues from tenants. *See, e.g.,* Matthew Ebnet, *Mobile Home Dwellers Tell of Power Play*, LOS ANGELES TIMES (Apr. 13, 2001) (App. H) (describing public testimony from park tenants urging that utility billing is “ripe for abuse”). Utilities are closely regulated in Washington “to ensure they only incur prudent expenses,” whereas park landlords are not. *Willman v. Wash. Utils. and Transp. Comm’n*, 154 Wn.2d 801, 806, 117 P.3d 343 (2005). In sum, prohibiting park landlords from charging a utility fee for their own internal costs provides multiple important protections for tenants.

Second, capping utility fees at actual provider costs also provides clarity for both tenants and landlords. If a landlord’s utility fee is capped at the amounts the landlord was charged by utility providers, determining whether the landlord has complied with the Act is relatively straightforward: one need only consider the relevant utility bills. In contrast, allowing a landlord to charge tenants for any costs the landlord has incurred that are arguably related to the provision of utilities at the

park would create ambiguity, invite confusion, and engender disputes, as in the present lawsuit. The extent to which a landlord could charge for overhead, for example, would be debatable. Likewise, the reasonableness of any given expense would be subject to disagreement. This type of standard-less and dispute-producing approach would run contrary to the Legislature's intent in restricting utility fees at these parks. Had the Legislature intended such an approach, it would have authorized landlords to charge for any administrative and maintenance costs in addition to actual utility costs. The Legislature chose not to do so.

Respondent Rainier Vista Mobile Home Park ("Rainier Vista") points out that the Act limits any given utility fee to "actual utility costs," in the plural. *See Op. Br.* at 32-33. But this merely reflects that a landlord might charge a singular "utility fee" to cover all the utilities servicing the tenant or multiple bills from a single utility, or that a utility might impose multiple charges within a given bill or incorporate various costs into the singular rate it charges. It does not mean that a landlord can charge tenants more than the actual amounts paid to utility providers, as Rainier Vista suggests. That would be contrary to the plain language, structure, and purposes of the Act.

Rainier Vista also complains that landlords unable to charge special fees for internal maintenance and administration will be forced to

use rental income to cover these expenses. *See* Reply Br. at 8. But that is precisely what the Legislature intended when it limited special utility fees to actual provider costs and imposed the duty on landlords to maintain any relevant on-site facilities. *See* RCW 59.20.070(6), .130(6). The Legislature also restricted the circumstances under which landlords can raise rent. *See* RCW 59.20.060. Tenants on fixed incomes thus enjoy predictable utility and rent bills, substantial advance notice for any rent increases, and the opportunity to prepare for (and potentially negotiate) such increases. It is reasonable to expect park landlords to account for long-term costs of maintenance, administration, and any other internal costs in setting rents.

Further, there is no reason to believe tenants will end up paying any more overall to cover utility-related park activities. Given the existing disparity in bargaining power favoring park landlords, most tenants are already paying as much as they can afford. *See* RCW 59.30.010(1) (recognizing “inequality of the bargaining position of the parties” in mobile home park tenancy relationships). Also, many parks generate more than enough revenue to cover potential utility-related expenses but choose to keep this revenue as profit instead. *See* MacTavish, 38 COMM. DEV’T at 85 (finding that parks under study generated “significant profits” while making only “limited investment in park upkeep or improvements”).

In sum, the Act prohibits mobile home park landlords from charging utility fees in excess of actual amounts paid to utility providers. The parties' additional dispute over the evidence supporting Rainier Vista's fees in this case is thus beside the point. Those fees, which included amounts to cover internal maintenance and administrative costs, violated the Act.<sup>2</sup>

**B. The Attorney General Is Authorized to Order Park-Wide Relief to Remedy a Park-Wide Violation of the Act.**

The parties in this appeal also dispute the scope of the Attorney General's remedial authority under the Program. *See, e.g.*, Resp. Br. at 27-36. At issue is whether the Attorney General is authorized to order relief for all park tenants affected by a given violation of the Act that the Attorney General discovers in response to a single tenant's complaint. A review of the applicable statutory language, related provisions, and the Legislature's underlying purposes confirms that the Attorney General has been granted such authority. *See W. Plaza, LLC*, 184 Wn.2d at 711-18.

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<sup>2</sup> In addition to being contrary to the governing language and underlying legislative purposes of the Act, Rainier Vista's position in this case is also contrary to its own rental agreement, which contemplates a fee to cover utility company costs only, rather than the park's internal costs of maintenance and administration. In particular, Rainier Vista's agreement indicated the park would impose a special fee for "water service," with no further detail or explanation. *See* Op. Br. at 28. At best, this reflects an understanding that tenants would be charged for the amounts paid to the water utility. As Rainier Vista admits, "'service' in this context" can be understood to mean a "supplier of utilities . . . that meet a public need," i.e., a public utility. Op. Br. at 30 (internal quotations omitted). There was no suggestion that Rainier Vista could or would charge for the sort of internal maintenance or administrative expenses that it now claims to be chargeable.

Initially, the applicable statute provides that when the Attorney General investigates a complaint and “finds by a written determination that a violation of [the Act] has occurred,” then the Attorney General “may issue an order requiring the respondent . . . to cease and desist from an unlawful practice and [to] take affirmative actions that in the judgment of the attorney general will carry out the purposes of [the Program].” RCW 59.30.040(5)(a), (7). The statute further specifies that such “affirmative actions may include, but are not limited to . . . [r]efunds of . . . improper fees” and any other “[r]easonable action necessary to correct a statutory or rule violation.” RCW 59.30.040(7).

On its face, this operative language does not limit the Attorney General’s remedial authority to the complaining tenant alone. To the contrary, the broad language that the Legislature chose confers wide and discretionary remedial authority under Washington law. *See Ins. Co. of N. Am. v. Kueckelhan*, 70 Wn.2d 822, 836-37, 425 P.2d 669 (1967) (“Administrative agencies have considerable latitude to shape their remedies within the scope of their statutory authority, especially where a statute expressly authorizes the agency to require that such action be taken as will effectuate the purposes of the act being administered.” (internal quotations omitted)). Here, the Legislature authorized the Attorney General to determine what remedial actions will “carry out the purposes”

of the Program, without artificially limiting such authority to a particular tenant. The statute even authorizes the Attorney General to order that “an unlawful practice” be remedied—not necessarily the violation initially complained of and investigated. RCW 59.30.040(7) (emphasis added).

Related provisions within the same statute further confirm that the Attorney General’s remedial authority can be exercised on a park-wide basis. The Attorney General is directed to issue a “written notice” whenever “a violation” of the Act is found, and the notice must specify not only “the corrective action required” but also “the penalties . . . that will result if corrective action is not taken . . . .” RCW 59.30.040(5)(a).

Whenever such penalties are contemplated, the Attorney General must “consider the severity and duration of the violation and the violation’s impact on other community residents . . . .” RCW 59.30.040(6) (emphases added). This establishes that the precise violation to be remedied can be park-wide and thus warrant correction on a park-wide basis. This also assumes the Attorney General will have investigated the park-wide effects of any given violation by the time an initial notice is issued, further confirming that the Legislature did not intend to limit the Attorney General’s remedial authority to a single tenant.

Finally, the Legislature’s underlying purposes also support interpreting the Attorney General’s remedial authority to allow for park-

wide relief. In adopting the Program, the Legislature was focused on the “inequality of the bargaining position” between landlords and tenants at mobile home parks. RCW 59.30.010(1). The Legislature adopted the Program as a way “to vindicate statutory rights” at such parks in response to this problem. RCW 59.30.010(2). The Legislature also intended for the Program to resolve disputes at such parks “quickly and efficiently.” *Id.* Both of these purposes support reading the governing statute to provide the Attorney General with park-wide remedial authority.

First, the Attorney General’s authority to order park-wide relief promotes the vindication of tenants’ statutory rights at mobile home parks. Many tenants at such parks are often hesitant or unable to make formal complaints notwithstanding ongoing park violations, due to fear of landlord retribution, language barriers, distrust of government, or ignorance of legal rights and available protections. *See, e.g., Sarah Kehoe, Lazy Wheels Mobile Home Park residents claim mistreatment*, BOTHELL REPORTER (2013) (App. I) (noting that many tenants at Washington mobile home park had voiced concerns but had also “expressed a desire to remain anonymous” for fear of retribution); Matthew Geyman *et al., Indigenous Guatemalan and Mexican Workers in Washington State*, 5 MEX. L. REV. 41, 54, 56-57, 63-64, 72-76 (2012) (App. J) (describing indigenous populations in Washington State with a substantial presence at

mobile home parks facing severe language barriers, cultural “fear of governmental authorities,” and ignorance of “what services are available”); Alan Blickenstaff, *Perspectives on Housing in Washington State*, Whitman College (2005) (App. K) at 8-10 (describing case study of Washington mobile home parks in which tenants did not understand applicable legal protections or “feel protected enough to speak out” and were unaware “they could file a complaint with the government”); Lyle F. Nyberg, *The Community and the Park Owner Versus the Mobile Home Park Resident*, 52 B.U. L. REV. 810, 814-815 (1972) (App. L) (noting park landlords “sometimes evict[] ‘troublemakers’ . . . who have taken their grievances to public officials”).

Without park-wide remedial authority for the Attorney General, such structural, cultural, and institutional barriers at mobile home parks would prevent the Program from vindicating the statutory rights of most park tenants. Instead, once a given tenant has been courageous enough to come forward and a violation has been found, the Attorney General is and should be allowed to vindicate the rights of all tenants at the park affected by that violation.

Second, the Attorney General’s park-wide remedial authority also promotes quick and efficient resolutions of disputes at mobile home parks. An exercise of park-wide remedial authority ensures that a given violation,

once found, is addressed holistically and without delay. It also avoids the waste and complication of multiple tenants filing successive and duplicative complaints. And it allows the Attorney General to address rather than ignore known statutory violations. In sum, the Attorney General's broad remedial authority is in furtherance of the legislative purposes underlying the Program.

#### IV. CONCLUSION

The two key disputes in this appeal can and should be resolved based on the plain language of the governing statutes, related statutory provisions, and the Legislature's underlying purposes. These indications of legislative intent all point in the same direction here: As to utility fees, mobile home park landlords cannot charge tenants any more than the amounts actually paid to utility companies. This avoids unpredictable billing for tenants and helps prevent abusive landlord billing practices. And as to the Attorney General's remedial authority under the Program, a park-wide remedy can be ordered if a park-wide violation of the Act has been found. This accounts for the reality that many tenants are hesitant or unable to come forward, while all affected tenants can and should be

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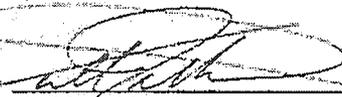
protected once a violation has been found. This Court should interpret the Act and the Program accordingly.

DATED this 10th day of June, 2016.

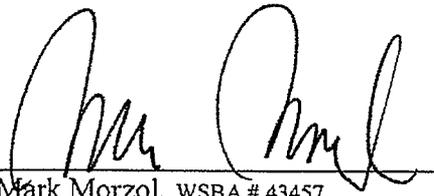
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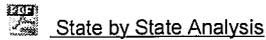
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## APPENDICES

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- Appendix B:** 1977 FINAL LEGISLATIVE REPORT, 45th Wash. Leg. at 168-69
- Appendix C:** 1979 Final Legislative Report, 46th Wash. Leg. at 97-98
- Appendix D:** Katherine MacTavish *et al.*, *Housing Vulnerability Among Rural Trailer-Park Households*, 13 GEO. J. ON POV. L. & POL'Y 95 (2006)
- Appendix E:** Lynn Thompson, *32 families face eviction with sale of Kirkland mobile-home park*, SEATTLE TIMES (May 24, 2015), available at <http://www.seattletimes.com/seattle-news/eastside/32-families-face- eviction-with-sale-of-kirkland-mobile-home-park/> (last visited June 1, 2016)
- Appendix F:** Katherine A. MacTavish, *The Wrong Side of the Tracks: Social Inequality and Mobile Home Park Residence*, 38 COMM'Y DEV'T 74 (2007)
- Appendix G:** Rupert Neate, *America's trailer parks: the residents may be poor but the owners are getting rich*, THE GUARDIAN (May 3, 2015), available at <http://www.theguardian.com/lifeandstyle/2015/may/03/owning-trailer-parks-mobile-home-university-investment> (last visited June 1, 2016)
- Appendix H:** Matthew Ebnet, *Mobile Home Dwellers Tell of Power Play*, LOS ANGELES TIMES (Apr. 13, 2001), available at <http://articles.latimes.com/2001/apr/13/local/me-50523> (last visited June 1, 2016)
- Appendix I:** Sarah Kehoe, *Lazy Wheels Mobile Home Park residents claim mistreatment*, BOTHELL REPORTER (2013), available at <http://www.bothell-reporter.com/news/238066511.html> (last visited May 31, 2016)
- Appendix J:** Matthew Geyman *et al.*, *Indigenous Guatemalan and Mexican Workers in Washington State*, 5 MEX. L. REV. 41 (2012)
- Appendix K:** Alan Blickenstaff, *Perspectives on Housing in Washington State*, Whitman College (2005), available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.504.4787&rep=rep1&type=pdf> (last visited June 1, 2016)
- Appendix L:** Lyle F. Nyberg, *The Community and the Park Owner Versus the Mobile Home Park Resident*, 52 B. U. L. REV. 810 (1972)

# Appendix A



0130 SURVEYS 16

50 STATE STATUTORY SURVEYS : REAL PROPERTY : MOBILE HOMES

Regulation of Utilities Provided to Mobile Home Parks

Thomson Reuters March 2015

Most states regulate the provision of electricity, gas, sewer, water, trash, and cable services to mobile home parks either through regulations or statutes. Laws cover a broad range of topics, such as what type of meters a landlord/owner must use, whether the landlord/owner may charge mobile home owners fees higher than actual utility costs or charge fees for providing utilities, whether landlord/owners may require homeowners to purchase services from a particular provider, and what kind of notice is required to effectuate a termination or interruption of service. This survey includes these topics and others. This survey generally does not include issues of taxation, building code guidelines, security deposits for utilities, or remedies for failure to pay utility bills.

The attached table organizes the content into the following subtopics:

- Restrictions on Tenants' Purchase of Goods and Services Prohibited or Limited •
- Landlord/Owner Prohibited from Interfering with or Charging for use of Gas or Electric Appliances •
- Landlord/Owner Prohibited from Profiting by Charging Tenants More than Actual Cost of Utilities •
- Landlord/Owner Permitted to Charge Other Fees in Connection with Providing Utilities •

Use Westlaw's Find feature and the following citation to retrieve the corresponding regulatory survey: 0120 REGSURVEYS 2.

**Alabama**

None

**Alaska**

None

**Arizona**

AZ ST § 33-1314.01 Utility charges;

 AZ ST § 33-1413.01 Utility charges; waste, garbage and rubbish removal charges

 AZ ST § 33-1434 Landlord to maintain fit premises

**Arkansas**

AR ST § 14-54-1604 Municipal regulation of manufactured homes

**California**

CA PUB UTIL § 5890 Discrimination based on income prohibited; telephone service providers; complaint procedure; penalties

**Colorado**

CO ST § 38-12-212.3 Responsibilities of landlord--acts prohibited

CO ST § 38-12-212.7 Landlord utilities account

**Connecticut**

CT ST § 21-78 Restrictions by owners on suppliers of commodities and services, reviewable by department

CT ST § 21-82 Owner's responsibilities. Resident's responsibilities. Payment of rent. Terms and conditions of rental agreement. Remedy for unlawful entry. Mitigation of damages. Acceptance of overdue rent

**Delaware**

DE ST TI 7 § 6075 Nonutility wells and permits for nonutility wells within a service territory served by a water utility under a certificate of public convenience and necessity

DE ST TI 16 § 122 Powers and duties of the Department of Health and Social Services

DE ST TI 25 § 7003 Definitions

DE ST TI 25 § 7006 Provisions of a rental agreement

DE ST TI 25 § 7008 Fees; services; utility rates

DE ST TI 26 § 117 Termination of service or sale

**District of Columbia**

None

**Florida**

FL ST § 513.05 Rules

FL ST § 723.012 Prospectus or offering circular

FL ST § 723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation

FL ST § 723.044 Interference with installation of appliances or interior improvements

FL ST § 723.045 Sale of utilities by park owner or developer

FL ST § 723.046 Capital costs of utility improvements

**Georgia**

None

**Hawaii**

None

**Idaho**

ID ST § 55-2006 Adjustments to rent, services, utilities or rules

ID ST § 55-2012 Improvements

**Illinois**

IL ST CH 55 § 5/5-1096 Community antenna television systems; interference with and payment for access

IL ST CH 65 § 5/11-42-11.1 Community antenna television system; interference with and payment for access

IL ST CH 210 § 115/2.8 Individual utilities

IL ST CH 210 § 115/3 Necessity of license to construct, maintain, etc., mobile home park; expiration of license

IL ST CH 210 § 115/9.2 Drainage; waste water

IL ST CH 210 § 115/9.3 Minimum sites; access

IL ST CH 210 § 115/9.4 Water supply

IL ST CH 210 § 115/9.5 Sewage and water carried wastes

IL ST CH 210 § 115/9.6 Sewer connections for each mobile home

IL ST CH 210 § 115/9.7 Garbage storage and disposal

IL ST CH 765 § 735/0.01 Short title

IL ST CH 765 § 735/1 Utility payments; termination and restoration of service

IL ST CH 765 § 735/1.1 Definitions

IL ST CH 765 § 735/1.2 Certain tenant-paid utility payment arrangements prohibited; notice of change in payment arrangement

IL ST CH 765 § 735/1.3 Tenant remedies and burdens of proof

IL ST CH 765 § 735/1.4 Prohibition on termination of utility service by landlord

IL ST CH 765 § 735/2 Receivership; utility service termination  
IL ST CH 765 § 735/2.1 Tenant damages  
IL ST CH 765 § 735/2.2 Recovery of damages; costs and fees  
IL ST CH 765 § 735/3 Notice of utility service termination, Et seq.  
IL ST CH 765 § 740/5 Disclosure of utility payments included in rent  
IL ST CH 765 § 745/4a Master antenna television services  
IL ST CH 765 § 745/19 Purchase of Goods and Services

**Indiana**

IN ST 8-1-2-122 Notice of termination of service; requisites  
IN ST 16-41-27-8 Rules  
IN ST 16-41-27-10 Mobile home community water supplies  
IN ST 16-41-27-11 Mobile home community sewage disposal

**Iowa**

IA ST § 562B.16 Landlord to maintain fit premises  
IA ST § 562B.24 Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of services

**Kansas**

KS ST 58-25.111 Duties of landlord  
KS ST 58-25.119 Unlawful removal or exclusion of tenant; diminished services; damages; security deposit  
KS ST 58-25.125 Certain retaliatory actions by landlord prohibited, remedies; increased rent, when; action for possession, when  
KS ST 58-25.127 Separate metering for water by landlord; requirements; not public utility

**Kentucky**

KY ST § 219.370 Regulation of community operations

**Louisiana**

None

**Maine**

ME ST T. 14 § 6045 Disclosure of transmission and distribution utility costs  
ME ST T. 14 § 6046 Disclosure of natural gas pipeline utility costs  
ME ST T. 30-A § 4358 Regulation of manufactured housing

**Maryland**

MD PUBLIC UTIL COMP § 1-101 Definitions  
MD PUBLIC UTIL COMP § 5-101 Regulation relating to standards for public service companies or gas master meter operators  
MD PUBLIC UTIL COMP § 13-203 Safe service or safety regulation violations  
MD REAL PROP § 8A-101 Definitions  
MD REAL PROP § 8A-501 Actions by park owners which are prohibited  
MD REAL PROP § 8A-503 Utility resale charges

**Massachusetts**

MA ST 140 § 32L Requirements and restrictions applicable to manufactured housing communities  
MA ST 166a § 22 Interference with rights of building occupants served by system; installation; consent of property owners; multiple dwelling units, manufactured housing communities  
MA ST 186 § 14 Wrongful acts of landlord; premises used for dwelling or residential purposes; utilities, services, quiet enjoyment; penalties; remedies; waiver

**Michigan**

[MI ST 125.2305](#) Mobile home code; promulgation; contents

[MI ST 125.2306](#) Promulgation of minimum standards

[MI ST 125.2328](#) Unfair and deceptive practices by park owner or operator, or employee; actions; report of alleged violations

[MI ST 125.2329](#) Shutoff of service for nonpayment by utility company; notice to department

[MI ST 484.3301](#) Short title; definitions

[MI ST 484.3302](#) Uniform video service local franchise agreement; order establishing standardized form, requirement for providing video services, contents

[MI ST 484.3303](#) Entry into or possession of franchise agreement by video provider before offering services; notice of completion of agreement by franchising entity; time for approval; transferability of agreement; notice of transfer; termination or modification of footprint; notice of changes; length of franchise; franchise requirements

[MI ST 484.3304](#) Public, education, and government access channels already in use; designation of capacity; channels not utilized or under utilized by franchising entity; transmission not to require additional alterations or changes; interconnection of providers; responsibility for content; liability; access to local broadcast stations; discrimination or alteration of copyright identification; reception technology; noncommercial purposes; written requests for capacity

[MI ST 484.3305](#) Existing franchise agreements; renewal or extension not allowed; conditions for continuing service by video provider; inconsistent or additional provisions, unenforceable; equal treatment for multiple video providers under franchise agreements

[MI ST 484.3306](#) Annual service provider fees; gross revenues; fees for support of public, education, and government access facilities and services; credits applied to fees from maintenance fees paid by provider for use of public rights-of-way; assessment

[MI ST 484.3307](#) Audits of video service provider's calculation of fees; costs; claims for unpaid fees, refunds, and corrections; line items on subscribers bills

[MI ST 484.3308](#) Video service or communications network, installation, construction, and maintenance within public right-of-way; access to public right-of-way; discrimination not allowed; permit fee

[MI ST 484.3309](#) Access to service by residential subscribers, denial because of race or income not allowed; defense to violation; provider with more than 1,000,000 access lines, time limits for providing access; progress reports; use of alternative technology; waiver or extension of time; providers using telephone facilities

[MI ST 484.3310](#) Activities forbidden in providing services to subscribers; establishment of dispute resolution process; resolution of complaints by commission

### **Minnesota**

[MN ST § 238.02](#) Definitions

[MN ST § 238.23](#) Access required

[MN ST § 238.24](#) Conditions for access

[MN ST § 238.241](#) Conditions for access by alternative provider

[MN ST § 325E.025](#) Landlords and tenants; utility bills

 [MN ST § 327C.03](#) Fees

[MN ST § 327C.04](#) Utility charges

[MN ST § 327C.05](#) Rules

### **Mississippi**

[MS ST § 77-3-97](#) Submetering of water and wastewater disposal service; definitions

### **Missouri**

None

### **Montana**

[MT ST 69-4-102](#) Underground power lines in new service areas

### **Nebraska**

[NE ST § 71-4629](#) Department; utility systems and sanitary conditions; standards

NE ST § 76-1482 Explanation of utility charges and services; required; when

NE ST § 76-1492 Landlord; duties; powers

NE ST § 76-14.100 Landlord; removal or exclusion of tenant; failure to supply services; tenant; remedies

#### **Nevada**

NV ST 118B.0195 "Utility" defined

NV ST 118B.140 Prohibited practices by landlord: Requiring or inducing purchase of manufactured home; charges

NV ST 118B.150 Prohibited practices by landlord: Rent and additional charges; payments for improvements; meetings; utility services; guests; fences; dues for associations of members; public officers or candidates; trimming of trees

NV ST 118B.153 Reduction of rent upon decrease or elimination of service, utility or amenity

NV ST 118B.154 Connection of utilities; reports of violations

NV ST 118B.155 Landlord to post or provide certain information regarding utility bills

NV ST 118B.157 Notice to tenants of interruption of utility or service

NV ST 118B.210 Retaliatory conduct by landlord and harassment by landlord, management or tenant prohibited

NV ST 461A.230 Provision of service for electricity, gas and water

NV ST 704.905 Definitions

NV ST 704.910 Applicability of provisions to mobile home parks; utility or alternative seller prohibited from selling to landlord at higher rate

NV ST 704.920 Applicability of provisions to company towns; examination of lines and equipment; costs; consequences of refusal to allow examination; repair of unsafe lines or equipment

NV ST 704.930 Manner of provision and interruption of service by landlord of mobile home park or owner of company town; notice of proposed increase in rates

NV ST 704.940 Rates; service charges; proration and limitations on certain charges for water; itemization of charges; retention of copy of billings; transfer of balance by landlord upon termination of interest in mobile home park

NV ST 704.950 Complaints: Investigation by division of consumer complaint resolution; action by commission; enforcement of order

NV ST 704.960 Annual report to be filed by landlord of mobile home park or owner of company town

NV ST 711.255 Video service provided to tenants: Prohibited conduct by landlord; responsibilities of provider; payment of compensation for access; rights and duties regarding construction, installation, repair and purchase of facilities; certain discounts prohibited

#### **New Hampshire**

NH ST § 205-A:2 Prohibition

NH ST § 205-A:6 Fees, Charges, Assessments

#### **New Jersey**

NJ ST 40:14B-23.1 Definitions

NJ ST 46:8C-2 Purchases from owners; fees for installation of appliances; purchases of gas; requirement to move or relocate; disclosure and relationship to costs of fees; unlawful gifts; double recovery

NJ ST 48:5A-49 Landlords allowing cable television service reception by tenants; prohibition of charges and fees; indemnification of owners by installers; definitions

#### **New Mexico**

NM ST § 47-10-20 Cost of utility services; access to records

NM ST § 47-10-21 Provision of utility services; administrative fee; disclosure requirement

NM ST § 47-10-22 Itemized bill; utility services; administrative fees

#### **New York**

 NY REAL PROP § 233 Manufactured home parks; duties, responsibilities

**North Carolina**

NC ST § 62-50 Safety standards for gas pipeline facilities

NC ST § 62-110 Certificate of convenience and necessity

NC ST § 143-150 No electricity to be furnished units not in compliance

**North Dakota**

None

**Ohio**

 OH ST § 4781.40 Rental agreements; disclosures; rules; prohibited conditions

OH ST § 4905.90 Definitions

**Oklahoma**

None

**Oregon**

OR ST § 758.300 Definitions

OR ST § 758.302 Application for exclusive service territory designation

OR ST § 758.305 Designated exclusive service territories

OR ST § 758.310 Assignment or transfer of rights in exclusive service territory

OR ST § 758.315 Water utility service provided by persons not designated by commission

**Pennsylvania**

66 Pa.C.S.A. § 1521 Definitions

66 Pa.C.S.A. § 1522 Applicability of subchapter

66 Pa.C.S.A. § 1523 Notices before service to landlord terminated

66 Pa.C.S.A. § 1524 Request to landlord to identify tenants

66 Pa.C.S.A. § 1525 Delivery and contents of termination notice to landlord

66 Pa.C.S.A. § 1526 Delivery and contents of first termination notice to tenants

66 Pa.C.S.A. § 1527 Right of tenants to continued service

66 Pa.C.S.A. § 1528 Delivery and contents of subsequent termination notice to tenants

66 Pa.C.S.A. § 1529 Right of tenant to recover payments

 66 Pa.C.S.A. § 1529.1 Duty of owners of rental property, Et seq.

 68 PA ST § 250.501-B Definitions

68 PA ST § 250.503-B Tenants' rights

68 PA ST § 398.4 Park rules and regulations

68 PA ST § 398.6 Disclosure of fees

68 PA ST § 398.7 Appliance installation fees

68 PA ST § 399.1 Short title

68 PA ST § 399.2 Definitions

68 PA ST § 399.3 Notices before service to landlord ratepayer discontinued

68 PA ST § 399.4 Identifying tenants

68 PA ST § 399.5 Delivery and contents of discontinuance notice to landlord ratepayer

68 PA ST § 399.6 Delivery and contents of first discontinuance notice to tenants

68 PA ST § 399.7 Rights of tenants to continued service

68 PA ST § 399.8 Delivery and contents of subsequent discontinuance notices to tenants

68 PA ST § 399.9 Tenant's right to withhold rent

68 PA ST § 399.10 Waiver prohibited, Et seq.

**Rhode Island**

 [RI ST § 31-44-3](#) Rules and regulations  
[RI ST § 31-44-7](#) Lease  
[RI ST § 31-44-8](#) Notice required by law  
[RI ST § 31-44-14](#) Resident owned mobile home parks--Record keeping  
[RI ST § 39-19-10.1](#) Installation of cable television in mobile or manufactured home parks

**South Carolina**

 [SC ST § 6-9-10](#) Enforcement of building codes by municipalities and counties; applicability to electric cooperatives, Public Service Authority and certain public utility corporations; conflicts with federal manufactured housing construction and installation regulations

**South Dakota**

[SD ST § 34-34A-16](#) Additional construction requirements not applicable--Zoning and tax laws applicable

**Tennessee**

None

**Texas**

[TX LOCAL GOVT § 232.007](#) Manufactured Home Rental Communities  
[TX UTIL § 104.258](#) Disconnection of Gas Service  
[TX UTIL § 124.002](#) Submetering  
[TX UTIL § 184.012](#) New Construction or Conversion  
[TX UTIL § 184.013](#) Submetering  
[TX UTIL § 184.014](#) Rules  
[TX WATER § 13.501](#) Definitions  
[TX WATER § 13.502](#) Submetering  
[TX WATER § 13.503](#) Submetering Rules  
[TX WATER § 13.5031](#) Nonsubmetering Rules  
[TX WATER § 13.504](#) Improper Rental Rate Increase  
[TX WATER § 13.505](#) Enforcement  
[TX WATER § 13.506](#) Plumbing Fixtures

**Utah**

[UT ST § 57-16-3](#) Definitions  
[UT ST § 57-16-4](#) Termination of lease or rental agreement--Required contents of lease--Increases in rents or fees--Sale of homes--Notice regarding planned reduction or restriction of amenities  
[UT ST § 57-16-10](#) Utility service to mobile home parks--Limitation on providers' charges

**Vermont**

[VT ST T. 10 § 6236](#) Lease terms; mobile home parks  
[VT ST T. 10 § 6238](#) Charges and fees  
[VT ST T. 10 § 6239](#) Goods and services

**Virginia**

 [VA ST § 55-226.2](#) Energy submetering, energy allocation equipment, sewer and water submetering equipment, ratio utility billings systems  
[VA ST § 55-248.45](#) Demands and charges prohibited; access by tenant's invitees; purchases by manufactured home owner not restricted; exception; conditions of occupancy

VA ST § 55-248.45:1 Charge for utility service

**Washington**

 WA ST 19.28.101 Inspections--Notice to repair and change--Disconnection--Entry-- Concealment--Accessibility-- Connection to utility--Permits, fees--Limitation--Waiver of provisions during state of emergency

WA ST 35.67.370 Mobile home parks--Replacement of septic systems--Charges for unused sewer service

 WA ST 59.20.070 Prohibited acts by landlord

 WA ST 59.20.130 Duties of landlord

**West Virginia**

WV ST § 24D-2-1 Legislative findings

WV ST § 24D-2-2 Definitions

WV ST § 24D-2-3 Landlord-tenant relationship

WV ST § 24D-2-4 Prohibition

WV ST § 24D-2-5 Just compensation

WV ST § 24D-2-6 Right of entry

WV ST § 24D-2-7 Notice of installation

WV ST § 24D-2-8 Application for just compensation

WV ST § 24D-2-9 Existing cable services protected

 WV ST § 24D-2-10 Exception

WV ST § 37-15-5 Demands and charges prohibited; access by tenant's invitee; purchases by factory-built home owner not restricted; exception; conditions of occupancy

**Wisconsin**

WI ST 66.0421 Access to video service

 WI ST 100.20 Methods of competition and trade practices

 WI ST 101.937 Water and sewer service to manufactured home communities

**Wyoming**

None

**United States**

None

**Guam**

5 G.C.A. § 32603 Access

**Puerto Rico**

None

**Virgin Islands**

29 V.I.C. § 225 Definitions

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**REAL PROPERTY**

**MOBILE HOMES**

**REGULATION OF UTILITIES PROVIDED TO MOBILE HOME PARKS (STATUTES)**

Thomson Reuters March 2015

Most states regulate the provision of electricity, gas, sewer, water, trash, and cable services to mobile home parks either through regulations or statutes. Laws cover a broad range of topics, such as what type of meters a landlord/owner must use, whether the landlord/owner may charge mobile home owners fees higher than actual utility costs or charge fees for providing utilities, whether landlord/owners may require homeowners to purchase services from a particular provider, and what kind of notice is required to effectuate a termination or interruption of service. This table includes these topics and others. This table generally does not include issues of taxation, building code guidelines, security deposits for utilities, or remedies for failure to pay utility bills.

This table identifies statutes pertaining to restrictions on mobile home tenants' purchase of services, and statutes that address the capacity of a landlord or owner to charge for the use of gas and electric appliances. It further lists whether a landlord/owner may charge tenants more for utilities than the landlord/owner pays on their behalf, and whether a landlord/owner may charge fees in connection with providing utilities.

**Table 1: Regulation of Utilities Provided to Mobile Home Parks**

State	Restrictions on Tenants' Purchase of Goods and	Landlord/Owner Prohibited from	Landlord/Owner Prohibited from Profiting	Landlord/Owner Permitted to Charge
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	Services Prohibited or Limited	Interfering with or Charging for use of Gas or Electric Appliances	by Charging Tenants More than Actual Cost of Utilities	Other Fees in Connection with Providing Utilities
Alabama	None	None	None	None
Alaska	None	None	None	None
Arizona	Prohibited, with exceptions for impositions of reasonable conditions on central gas, electricity, or water meter systems AZ ST § 33-1434	None	Yes AZ ST § 33-1413.01	None
Arkansas	None	None	None	None
California	None	None	None	None
Colorado	None	None	None	None
Connecticut	Owner shall not restrict without good cause if service is customarily home-delivered CT ST § 21-78	None	None	None
Delaware	None	None	Yes DE ST TI 25 § 7008	None
District of Columbia	None	None	None	None
Florida	No limits listed, but must be disclosed FL ST § 723.044	Yes FL ST § 723.044	Yes FL ST § 723.045	Yes, for maintenance FL ST § 723.045

Georgia	None	None	None	None
Hawaii	None	None	None	None
Idaho	Yes ID ST § 55-2012	Yes ID ST § 55-2012	None	None
Illinois	Prohibited, unless restriction is necessary to protect health or safety IL ST CH 765 § 745/19	None	Yes IL ST CH 765 § 745/19	None
Indiana	None	None	None	None
Iowa	Yes IA ST § 562B.16	None	Yes IA ST § 562B.16	None
Kansas	Restrictions prohibited unless reasonably necessary to protect health, safety, or welfare KS ST 58-25,111	None	Yes KS ST 58-25,127	None
Kentucky	None	None	None	None
Louisiana	None	None	None	None
Maine	None	None	None	None
Maryland	Yes MD REAL PROP § 8A-501	Yes MD REAL PROP § 8A-501	None	None
Massachusetts	Yes MA ST 140 § 32L	None	None	None
Michigan	None	None	None	None
Minnesota	Cannot restrict access to cable communications	None	Yes MN ST § 327C.04	None

	MN ST § 238.23			
Mississippi	None	None	None	None
Missouri	None	None	None	None
Montana	None	None	None	None
Nebraska	Yes NE ST § 76-1492	None	Yes NE ST § 76-1492	None
Nevada	None	May not interrupt utility with intent to terminate occupancy except for nonpayment of utilities NV ST 118B.150	Yes NV ST 118B.153 NV ST 704.940	No, except for cable television access NV ST 711.255
New Hampshire	None	None	None	Owner or operator may charge administrative fee for converting utility service to tenant NH ST § 205-A:6
New Jersey	Yes NJ ST 46:8C-2	Yes NJ ST 46:8C-2	None	No NJ ST 46:8C-2
New Mexico	None	None	Yes NM ST § 47-10-20	Landlord may charge reasonable fee to offset cost of administration incurred by providing utilities NM ST § 47-10-21
New York	Yes NY REAL PROP § 233	Yes NY REAL PROP § 233	None	All fees, charges or assessments must be

				reasonably related to services actually rendered NY REAL PROP § 233
North Carolina	None	None	None	Yes, for water and sewer service NC ST § 62-110
North Dakota	None	None	None	None
Ohio	Yes OH ST 4781.40	Yes OH ST 4781.40	None	Yes, if disclosed OH ST 4781.40
Oklahoma	None	None	None	None
Oregon	None	None	None	None
Pennsylvania	Yes 68 PA ST § 398.4	Yes 68 PA ST § 398.4	Yes 68 PA ST § 398.7	None
Rhode Island	Restrictions on choice of sellers of utilities are prohibited RI ST § 31-44-3 RI ST § 31-44-8	None	Yes RI ST § 31-44-3	Only if landlord/owner incurs costs in bringing the utility service to individual units, or in utilizing individual meters or in some similar cost, landlord/owner will be entitled to a return for the investment RI ST § 31-44-3
South Carolina	State and national building codes and regulations must be followed	None	None	None

	SC ST § 6-9-10			
South Dakota	None	None	None	None
Tennessee	None	None	None	None
Texas	None	None	Yes TX UTIL § 184.014 TX WATER § 13.5031	No, except for certain costs related to submetering TX WATER § 13.503 TX WATER § 13.5031
Utah	None	None	Variation: provider of utility may not receive greater return for supplying park residents than for other residential customers UT ST § 57-16-10	None
Vermont	Yes VT ST T. 10 § 6239	None	None	May charge for reasonable incidental services VT ST T. 10 § 6236
Virginia	Yes VA ST § 55-248.45	None	Yes VA ST § 55-248.45:1	None
Washington	Yes WA ST 59.20.070	Yes WA ST 59.20.070	Yes WA ST 59.20.070	None
West Virginia	Yes WV ST § 37-15-5	None	None	None
Wisconsin	None	None	None	None
Wyoming	None	None	None	None

United States	None	None	None	None
Guam	No interference with cable television 5 G.C.A. § 32603	None	None	None
Puerto Rico	None	None	None	None
Virgin Islands	None	Utilities are essential services 29 V.I.C. § 225	None	None

# Appendix B

# legislative report

**1977**

final edition

45th regular and  
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**SB 2667**

SPONSORS: Senators Morrison and Matson

COMMITTEE: Labor

Providing for the continued operation of the Yakima migrant labor housing project.

## ISSUE:

There is no provision in present state law for continuing the Yakima migrant labor housing demonstration project beyond the end of the 1975-77 biennium.

## SUMMARY:

The bill provides for the continued operation of the Yakima migrant labor housing project until December 1, 1978.

Senate: (a)	37	0	Effective: Sept. 21, 1977
House: (a)	89	2	C 287 L 77 1st ex. sess.
S. Concur:	42	0	

**SB 2668**

SPONSORS: Senators Marsh, Francis and Buffington

COMMITTEE: Judiciary

Enacting a landlord/tenant act for mobile home lots.

## ISSUE:

Many mobile home park residents are in the unique position of owning their homes while renting the land on which the homes are placed. Because the Residential Landlord-Tenant Act applies only to tenancies of dwelling units, and not to tenancies of lots, the protections afforded by this Act are not now available to the landlords and tenants of mobile home lots. Because many of the problems of the mobile home lot tenant are unique from those of the residential tenant, a separate act regulating this kind of tenancy has been sought. The most difficult problem currently experienced by the mobile home plot tenant is eviction from a lot with insufficient notice and without cause. Eviction can often be more devastating for a mobile home plot tenant than for the traditional residential tenant because the tenant of a mobile home plot must not only move all of his or her personal possessions, but must also expend in the vicinity of \$1,000 - \$2,000 to move his or her mobile home and, what is sometimes even more difficult, find a mover and a new lot.

## SUMMARY:

The bill seeks to offer the renter of a mobile home lot protection against eviction during a rental agreement and miscellaneous other protections.

The bill requires that every mobile home plot tenant be offered a rental agreement for a term of one year or more on or after the effective date of the bill. All other rental agreements are to be on a month-to-month basis. Mobile home park landlords whose parks have been condemned for public works projects or who rent to employees or transients (tenants for less than 30 days), however, are exempted from this requirement.

Any rental agreement must state the terms of the rent and any other charges, the rules for guest parking, the rules of the mobile home park, the name and address of the landlord and his or her agent, and the reasons any rental deposit may be withheld. If may not authorize the landlord to charge a fee for guest parking unless a violation of the park rules governing guest parking occurs, tow or impound a vehicle without notice to the owner, increase the tenant's rent by more than a pro rata share of any increase or decrease in the mobile home park's real property taxes or utility assessments or charges, charge an entrance or exit fee, or include any provision by which the tenant agrees to waive or forego any right or remedy.

A landlord is specifically prohibited from unduly limiting a tenant's right to sell his or her mobile home and may not restrict a tenant's freedom of choice in purchasing goods or services. The landlord, however, may restrict door-to-door solicitation and is given the right to approve or disapprove any exterior structural improvements on a mobile home lot.

Grounds for eviction during the term of a rental agreement are limited to (1) substantial or repeated violation of the park rules, (2) nonpayment of rent or other charges, or (3) conviction of the tenant of a crime which threatens the health, safety or welfare of other park tenants.

All rental agreements for a term of one year will be automatically renewed for a six-month term unless the rental agreement provides otherwise; unless the landlord gives three months advance notice to the tenant that the agreement will not be renewed or will only be renewed with new terms; or unless the tenant gives one month's advance notice to the landlord that he or she does not wish to renew the rental agreement for a six month term.

The bill permits a tenant who must move because of a change in employment to terminate an agreement during its term with 30 days written notice, although the tenant may be held responsible for the rent for the entire term if the landlord is unable to rent the lot. A tenant who is in the armed services may also terminate a rental agreement during its term with less than 30 days notice if reassignment orders do not permit greater notice.

Other miscellaneous provisions of the bill make any improvements by a tenant to a mobile home lot (except a natural lawn) the permanent property of the tenant; entitle the prevailing party in any action under the bill to reasonable attorney's fees; place venue for

any court action in the county where the lot is located; place jurisdiction over any actions in either the district or superior court; and provide that the forcible entry or detainer or unlawful detainer provisions of the Residential Landlord/Tenant Act apply to a mobile home lot tenancy.

Senate: (a)	42	2	Effective: Sept. 21, 1977
House: (a)	67	23	C 279 L 77 1st ex. sess.
H. Conf.			
Rpt. Adopt:	81	1	
S. Conf.			
Rpt. Adopt:	40	0	

**SB 2675**

SPONSORS: Senators Francis and Clarke

COMMITTEE: Judiciary

Modifying the penalty for the taking of certain merchandise.

## ISSUE:

In 1975 the Legislature authorized special civil actions against adult shoplifters and against parents of minor shoplifters. The shoplifter or parent of the shoplifter could be found liable for actual damages to a shop owner and the costs of the suit, and could in addition be required to pay a penalty equal to the retail value of the items shoplifted (although that amount could never be more than \$1,000).

## SUMMARY:

SB 2675 imposes an additional penalty of not less than \$100 nor more than \$200 in lieu of the requirement that the person liable pay the costs of the suit which were set at a minimum of \$100 and at a maximum of \$200.

Senate:	41	0	Effective: Sept. 21, 1977
House:	87	2	C 134 L 77 1st ex. sess.

**SB 2678**

SPONSORS: Senators Walgren, Bailey and Newschwander

COMMITTEE: Constitution and Elections

Authorizing additional distribution of the computer tape on statewide registered voters.

## ISSUE:

Under present law, the Secretary of State is authorized to arrange for a master computer tape or data file of the records of all the registered voters of the state to be compiled. The Secretary of State is further required to provide a duplicate of the master

statewide tape or file to the state central committee of each major political party at actual duplication cost. Duplicate copies of the tape or file are available to other political parties at duplication cost upon written request to the Secretary of State.

## SUMMARY:

The bill provides for an additional duplicate copy of the master tape or file to be provided without cost to the Statute Law Committee.

Senate:	36	0	Effective: Sept. 21, 1977
House:	83	0	C 226 L 77 1st ex. sess.

**SSB 2681**

SPONSOR: Ways and Means  
(Originally sponsored by Senators Donohue and Odegaard)

COMMITTEE: Ways and Means

Amending the appropriations law to direct transfers of certain funds of the State Treasurer.

## ISSUE:

General fund investments were estimated to earn \$10.7 million for the investment reserve account during the 1975-77 biennium. This estimate, contained in the 1975-77 biennial appropriations bill, was too high and without an amendment reflecting the true balance of the account, the State Treasurer would be required by law to transfer everything in that account to the general fund, leaving nothing to fund the operations of the State Finance Committee (Chapter 50, Laws of 1969).

The State Treasurer's service fund contains an additional \$4.8 million. Such revenues were estimated and counted in the 1976 supplemental appropriation and in current 1975-77 biennium balances, but were not included in the supplemental appropriation bills.

## SUMMARY:

The bill amends the 1975-77 biennial appropriations bill relating to transfers by the State Treasurer. The appropriation of \$10.7 million from the investment reserve account is reduced to \$8.25 million, and an additional appropriation from the State Treasurer's service fund is made of \$4.8 million. Both of these appropriations are for transfer to the general fund.

This act results in a gain of \$3.35 million to the general fund for the 1975-77 biennium.

The bill contains an emergency clause.

Senate:	39	0	Effective: May 24, 1977
House:	86	0	C 65 L 77 1st ex. sess.

# Appendix C



Final  
Legislative  
Report  
1979

46th Regular Session  
and  
First Extraordinary Session

This final edition of the 1979 Legislative Report is available upon request\* from the House Office of Program Research and the Senate Research Center.

For more detailed information regarding House Bills, contact:

House Office of Program Research  
205 House Office Building  
Olympia, WA 98504  
(206)753-0283

For more information regarding Senate Bills, contact:

Senate Research Center  
101 Senate Office Building  
Olympia, WA 98504  
(206)753-6826

*\*Price: \$5.00. In accordance with RCW 42.17.300, the final edition is available to the general public at a fee based on actual reproduction costs.*

HOPR-SRC 79

adopting rules relating to registration and licensing. The fine for failing to display valid decals is twenty-five dollars, sixty percent of which goes to the Snowmobile Account in the general fund and forty percent of which goes to the involved local government's general fund. Snowmobiles manufactured after January 1, 1975, must have valid and current registration papers before they may be transferred.

Registration fees and snowmobile fuel tax money are to be used by the State Parks and Recreation Commission to administer and coordinate snowmobile laws. They are deposited in a Snowmobile Account in the general fund. The Department of Licensing may keep up to three percent of the fees and fuel tax revenues for its administrative expenses. Remaining funds are to be used by the State Parks and Recreation Commission for snowmobile purposes.

Any excess funds must be invested and all interest earned accrues in the Snowmobile Account. (Vetoed Section)

Noise levels for snowmobiles manufactured (1) before January 4, 1973, must be eighty-six decibels or below; (2) after January 4, 1973, must be eighty-two decibels or below; and (3) after January 1, 1975, must be seventy-eight decibels or below. The authority of the Department of Ecology to adopt noise performance standards for snowmobiles is maintained.

Any person who operates a snowmobile in such a way as to endanger human life is guilty of a gross misdemeanor.

The snowmobiling money currently in the general fund is to be transferred to the Snowmobile Account. There is an appropriation of \$495,000 from the Snowmobile Account for snowmobile purposes.

House: (a)	85	10	Effective: Sept. 1, 1979
Senate: (a)	41	5	C 182 L 79 1st ex. sess.
H. Concur:	94	2	

#### VETO SUMMARY:

The Governor vetoed the section allowing interest earned from Snowmobile Account money to be credited to the Snowmobile Account. Currently, most interest from this type of account is credited to the State General Fund and not the specific account. The Governor seeks to continue this policy. (See VETO MESSAGE)

## SHB 1308

### PARTIAL VETO

SPONSORS: Committee on Judiciary  
(Originally Sponsored by  
Representatives Ehlers, May, King,  
Walk, Grimm, Barnes, Erickson,  
Bender, Mitchell, Charnley, Gruger and  
Burns)

COMMITTEE: Judiciary

Changing the laws concerning landlord and tenant in mobile home parks.

#### ISSUE:

Certain provisions of the Mobile Home Landlord-Tenant Act of 1977 have proven to be ambiguous and dispute producing. An attorney general's opinion has stated that major portions of the act do not apply to month-to-month tenancies. With the growing shortage of mobile home spaces and the significant expense of moving a mobile home, the mobile home park owner-tenant legal relationship needs clarification.

#### SUMMARY:

A landlord cannot offer a one-year lease to a tenant on terms that are more burdensome than offered a month-to-month tenant. This includes offering the lot at a rent higher than that charged a month-to-month tenant. If there is no written one-year lease or waiver of the right to a one-year lease, the tenant is considered to be in the park under a one-year lease.

There must be written rental agreements signed by all the parties for all mobile home lot tenancies. The rental agreement must include a listing of utilities or services provided the tenant, a description of the nature of any fees charged, and a description of the boundaries of the lot rented.

A landlord may not charge guest fees unless the guest stays for more than fifteen days in any sixty-day period. A landlord may not prohibit meetings of the tenants of the park to discuss mobile home matters nor penalize a tenant for participating in such meetings. A landlord may not evict or take other retaliatory actions against a tenant who, in good faith, takes certain lawful actions. A landlord also may not charge utility fees in excess of actual utility costs.

A landlord may terminate a tenancy without cause upon six-months notice as long as it does not cut short a valid lease which has longer than six months to run. However, a landlord may not terminate a tenant for participating in meetings of tenants in the park or if such action is in retaliation for certain authorized actions by the tenant. Rental agreements are automatically renewed for six months, or the original term if it is shorter, unless the landlord or tenant takes certain actions to stop

the renewal. A landlord may fail to renew by giving the tenant notice prior to the expiration of the agreement. The tenancy, however, will not be terminated until the six-month notice has been given. A landlord may increase rent upon expiration of the rental agreement by giving three-months written notice of the increase.

A number of specified duties are imposed on landlords and tenants. The manner in which notices under the act are to be served is specified. The terms and conditions regarding security deposits must be specified in the rental agreement. Security deposits must be placed in a trust account maintained by the landlord and the tenant must be notified of the location of the trust account. Any interest on such trust accounts is the property of the landlord unless otherwise agreed. Security deposits must be returned or an accounting made within fourteen days of the termination of the tenancy.

The remaining paragraphs describe the vetoed sections.

A landlord must offer a prospective floating home tenant a written rental agreement for a term of not less than one year. Any rental agreement for a term of one year or any renewed agreement is automatically renewed for an additional six-month term unless notice of nonrenewal is given. The landlord must give the tenant notice of nonrenewal three months prior to the expiration of the rental agreement. The tenant must give the landlord notice of nonrenewal one month prior to the expiration of the rental agreement. In addition, the tenant may otherwise terminate the rental agreement upon thirty days written notice if the tenant's location of employment is moved a distance of not less than twenty miles from the leased site. If the tenant is a member of the Armed Forces, less than thirty days notice will be allowed if a change in duty station order does not allow greater notice.

The rental agreement must specify the amount of rent, reasonable rules for land and water guest parking and moorage, and the conditions under which any deposit may be withheld. The rental agreement may not contain a provision which allows the landlord to increase the rent or alter the due date of rental payments during the term of the rental agreement. However, an escalator clause may be included for a pro rata share of any increase in the floating home moorage's real property taxes or utility assessments or charges if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges.

A landlord may not deny any tenant the right to sell the tenant's floating home within a moorage or require the removal of the floating home from the moorage solely because of the sale. However, the assignment of a rental right is subject to the landlord's approval which must come within fifteen

days of written notice. As assignee must assume all the duties and obligations of the assignor for the remainder of the rental agreement unless, by mutual agreement, a new agreement is entered into with the landlord.

Specific criteria are provided for termination of a rental agreement and any structural or affixed moorage improvements purchased and installed by a tenant on a floating home site must remain the property of the landlord.

The bill applies to floating home rental agreements entered into after September 30, 1979.

House:	88	7	Effective: Sept. 1, 1979
Senate: (a)	41	4	C 186 L 79 1st ex. sess.
H. Concur:	77	19	

#### VETO SUMMARY:

The Governor vetoed the floating home landlord tenant portions of the bill. She said they dealt with a local problem already controlled by city ordinance. She thought state preemption of a local ordinance was inappropriate in this situation. (See VETO MESSAGE)

### HB 1325

SPONSORS: Representatives Garrett and Zimmerman

COMMITTEE: Local Government

Revising the Optional Municipal Code.

#### ISSUE:

Legislation adopted in 1969 permits cities and towns to become non-charter code cities governed by the Optional Municipal Code. The purpose of the Code was to permit these local governments to exercise general powers of self-government. The experiences of cities and towns operating under the Code have revealed numerous, technical problems with the law.

#### SUMMARY:

The following technical changes in the Optional Municipal Code are made.

1. Procedures for cities and towns wishing to change their classifications to become non-charter code cities are clarified.
2. Procedures by which non-charter code cities may change their plans of government (mayor/council, commission, council/manager) and numbers of elected officials are clarified.
3. The minimum population of a new city that may be incorporated within five miles of a code city with a population of 15,000 or more is changed from 5,000 to 3,000.

# Appendix D

13 Geo. J. on Poverty L. & Pol'y 95

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Spring, 2006

Symposium Issue  
Forgotten America: Fighting Poverty in Rural Communities  
Policy and Practitioner Perspectives

HOUSING VULNERABILITY AMONG RURAL TRAILER-PARK HOUSEHOLDS<sup>al</sup>

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INTRODUCTION

Manufactured housing has emerged as *the* housing for rural Americans of modest means at the dawn of the twenty-first century. Manufactured home purchases now account for a significant portion of rural homeownership growth, particularly among low- and very low-income households.<sup>1</sup> Between 1990 and 2000 the number of manufactured homes in nonmetro places grew by 25% to represent 16% of all owner-occupied rural housing stock.<sup>2</sup> Half these homes are clustered in the “trailer parks,” as they are commonly termed (“manufactured home communities,” according to the industry), which now characterize the rural landscape.<sup>3</sup> Yet, while manufactured housing clearly supplies the leading source of unsubsidized, low-cost housing for rural homeowners and renters with few other housing options, it is a housing form that has never been fully embraced by communities or practitioners concerned with affordable housing for the rural poor.

\*96 Despite increasing popularity among consumers, despite federal government efforts to ensure adequate lending mechanisms (FHA Manufactured Home Loans) and housing quality (HUD construction regulations), and despite the official name change from “mobile” to “manufactured,” this housing sector remains troubled and troubling. Specific vulnerabilities arise from living in manufactured housing—particularly when sited on rental land in a trailer park—that prevent social mobility via the accumulation of wealth and exacerbate the already-precarious hold that poor rural households have on housing security.<sup>4</sup>

Drawing on field studies carried out in rural Illinois, New Mexico, North Carolina and Oregon, we examine three specific insecurities—financial, structural and social—that potentially produce housing vulnerability among the rural poor.<sup>5</sup> We introduce these ideas to the law and policy arena to support a solution-focused agenda among legislators, regulators, and other policy makers as well as advocates at the federal, state and local community levels. Such an agenda must move this housing sector toward realizing its potential as the first rung on a housing tenure ladder that leads to financial security and social mobility for the poor in rural America. First, we offer some background on manufactured or mobile-home communities as housing. Next we address the specific insecurities owners and renters in these communities experience. We end by considering new policies and legal reforms to address and alleviate the typical insecurities associated with manufactured housing and trailer-park life.

I. BACKGROUND

A mobile-home community differs fundamentally from other rural “communities of place”<sup>6</sup> because a park is typically the private property of a landowner who runs it as a profit-making enterprise. As private property, community governance is not democratic; whoever owns the land (or manages a park for the owner) makes and enforces the rules by which residents must live. Frequently, owners either strictly regulate residents' lives or, alternately, abdicate any responsibility for residents' behavior.

Yet, despite these constraints, a mobile-home park is a popular rural residential choice of those of modest means. Parks provide access to affordable, separate, stand-alone homes in small communities for people who, \*97 we found, generally share a profoundly rural identity.<sup>7</sup>

A trailer park emerges when a land developer clusters individual mobile homes densely on one site. Because the U.S. Census does not ask whether a trailer home is located in a park, park numbers can only be estimated. Almost half the nation's 8.8 million mobile homes (the fastest growing type of housing nationally) are situated in what the industry estimates as the 50,000 to 60,000 mobile home or manufactured home communities that exist in the United States.<sup>8</sup> A mobile-home community or trailer park may have as many as 600 units with a population equivalent to that of a small town, but typically has fewer than 200 units.

In the United States, more than half of mobile-home communities are found in rural areas for several reasons.<sup>9</sup> Urban zoning often excludes trailer parks, and rural zoning and housing codes are notoriously more lax than city codes. These conditions and cheap land make rural places differentially attractive for park developers and investors.

Four types of mobile-home communities are found in the United States. First are the *seasonal park communities* largely populated by retired couples in the Sun Belt who typically traverse a circular migration route from the South to the North on an annual basis in recreational vehicles (the self-propelled RV), or with vehicle-pulled trailers. Some seasonal parks also house permanent residents.

Second are *rental mobile-home communities* in which the landlord owns the land as well as the homes and rents to tenants—often the only affordable housing available to impoverished rural families. Often found adjacent to railroad tracks, highways, junkyards and water treatment plants on the edges of small towns, rental parks are typically shabby. Popular media images liken the rental parks to a rural version of an inner-city ghetto, given the dense concentration of households with too few resources, too many children, and dogs who “don't just bark—they bite.”<sup>10</sup> Rental parks perpetuate the negative stereotype of trailer parks as transient places housing a substantial share of “hard living,” poor, less well-educated people subject to job and housing instability.<sup>11</sup> Our Oregon field study targeted such parks.

A third type, termed a *land-lease park community*, combines a different resident population with a different ownership structure. Here, retired households and families with children own their homes, but the land on which they sit is \*98 rented from the park owner. These parks were the focus of our Illinois, New Mexico, and North Carolina field studies. Such parks may have large lots for newer, double-wide homes or older, single-wide units on smaller lots.

Finally, a newer variation is a form of *cooperative*, or *subdivision community*, where residents own both their homes and the land, or at least own shares in the cooperative that owns the land on which their homes stand.<sup>12</sup>

Rural rental parks and land-lease parks are the focus of this paper because residents of the other park types are not likely to be threatened by the kind of housing vulnerability we identify.

## I. INSECURITIES UNDERLYING HOUSING VULNERABILITY AMONG RURAL TRAILER-PARK FAMILIES

Mobile-home owners and renters who live in rural trailer parks are vulnerable for a complex of reasons having to do with housing trends, land-use regulations, industry practices, and imbalances between the supply and demand of affordable rural housing.<sup>13</sup> These broader trends converge to create three distinct types of insecurities—financial, structural and social—that underlie the special vulnerability of rural trailer park families across the United States. In this section of the paper we examine each of these insecurities more closely.

### A. Financial Insecurity

Homeownership is generally a source of greater stability than that experienced by renters, but circumstances conspire to make mobile-home owners as insecure as renters. High interest mortgages, exploitative lot rents or eviction, capricious park management, the sale of park land for a "higher use," rent-to-own home sale arrangements, and high utility costs all foster household financial vulnerability, particularly when the land beneath the home is controlled by another.

Despite various federal efforts to develop equitable financing of manufactured homes, lending practices are predatory for most households of modest means.<sup>14</sup> Unlike conventional homebuyers, most mobile-home owners (85%) purchase their home with personal property or chattel loans rather than mortgages because these loans are easier to obtain. But chattel loans, financed by sub-prime lending or finance companies, carry high interest rates (up to 13.5%). Given these \*99 low-income buyers with few financial resources, thirty-year loans are common. Further, while conventional homes tend to appreciate in value over time, mobile homes tend to depreciate. After about three years the typical mobile home has a wholesale value of only about half its original price. After twenty years, a family accrues little value on their investment in a mobile home, while paying more proportionally for it than a conventional homeowner. Such lending practices continue because the typical manufactured-home buyer is considered a risky investment. Repossessions climbed as high as twenty for every 100 mobile homes sold in 2001.<sup>15</sup> Even the industry acknowledges that many loans were made to people who could not afford them.<sup>16</sup>

It is in the best interest of the mobile-home distributors, who are often also park owners, to "lock in" long-term tenants. Management practices therefore tend to foster owners' park maintenance goals rather than residents' goals for conventional home ownership. Park owners as distributors urge people to trade up by financing a newer, more expensive unit. Much as with car purchases, if mobile home dealers keep monthly payments the same, residents often "buy in" to the idea of trading up because they do not immediately feel more financially challenged. Given the rarity of a park household obtaining a conventional home, trading-up to a better unit in the same park may seem like the next best option, but the financial costs are high. Because of depreciation, an owner receives little for a used unit, especially in places where the resale market for mobile homes is weak.<sup>17</sup> In the 1990s a typical loan was greater than the unit's worth after just a few years of depreciation.

Owners and tenants are captive to the whims of the park owner/landlord, with little recourse. As discussed above, trailer homeownership is not conducive to accumulation of household equity or savings.<sup>18</sup> A mobile-home purchase or the trade-up option thus mires families in chronic debt. If a family falls on bad times due to a job loss or for any other reason cannot make their mortgage payments, they can quickly lose everything. Because a mobile-home community is private property and few states have statutes regulating mobile-home evictions,<sup>19</sup> residents are subject to eviction without due process in instances of conflict with the park owner or neighbors. A national scarcity of trailer sites has allowed absentee park owners or managers to act arbitrarily toward tenants by raising rents or enforcing restrictive regulations—from the number of pets allowed, to the color of homes, to whether a car can be repaired in the driveway.<sup>20</sup> Given the prohibitive costs for moving a trailer,<sup>21</sup> we have found that owners have little choice but to relinquish their property rights or home if evicted by a park landlord.

\*100 Table 1. Prevalence of Manufactured/Mobile Homes in U.S by Location

U.S. Housing	Total	% Manufactured/Mobile homes
All housing units	115,904,641	7.6
<i>U.S. Region</i>		
Northeast	22,180,440	3.0
Midwest	26,963,635	3.0
South	42,382,546	11.6
West	24,378,020	7.1
<i>Study States</i>		

Illinois	4,885,615	3.2
New Mexico	780,579	18.6
North Carolina	3,523,944	16.4
Oregon	1,452,709	10.3

SOURCES: Compiled from U.S. Census Bureau, *Structural and Occupancy Characteristics of Housing: 2000* (2003).

Owners of trailer parks look to the monthly site rent as an income source. (In the heyday of the 1990s, boom trailer parks were touted as an excellent investment with extremely low up-keep costs.<sup>22</sup>) Park owners are known to dramatically raise lot rents or cancel leases, particularly if the land has appreciated in value due to urban sprawl.<sup>23</sup> Sudden and/or capricious lot rent increases in low-end rental trailer parks can be devastating, where a change of 10% or \$25 in the lot rent represents a substantial draw from household income. Likewise, the hidden costs of extra fees for children, parking, and pets can \*101 present insurmountable struggles that push a household toward transience or even into homelessness. Mobile-home owners squeezed between the expensive trap of the chattel mortgage, the escalating monthly rental costs for a park site, the restrictive regulations and codes used by management, and the prohibitive costs of moving their home have few options but to continue as land-lease park residents.

While not subject to predatory lending and chattel loans, rent-to-own home sales common in rental trailer parks also place low-income households in financial jeopardy. With a rent-to-own agreement, residents are told that after a fixed period, often five years of paying rent, they will own the trailer. Rent-to-own is appealing to landlords as it essentially absolves them of maintenance for aging trailers by transferring those often substantial costs to poor tenants. Households who, given their precarious financial situation, could never dream of homeownership through more conventional means are lured by these arrangements as well, assuming they will gain greater control over their housing. Yet, actual ownership rarely happens. Tenants' financial insecurities ensure that many will move well before the agreed ownership transfer is reached because of job loss, family needs, inability to manage the expense of the home, and other reasons. When a tenant abandons a rent-to-own agreement, not only is the hope of social mobility lost, but investments of time, energy, and money on maintenance and repairs are lost as well. For other tenants, the reverse occurs: the inability to make repairs and resultant declining condition of the home encourages a move. In Oregon we found aging trailers in shabby rental parks that were "sold" over and over until they were finally too dilapidated even to function as shelter.

Finally, high utility costs associated with mobile homes aggravate the financial insecurity of the rural poor. Energy costs are a significant cause of homelessness among poor households.<sup>24</sup> For families receiving public assistance (Temporary Assistance for Needy Families), the monthly energy burden averages about a quarter of household income.<sup>25</sup> Low-income household expenditures on energy can approach 70% of monthly income during harsh winters.<sup>26</sup> In an aging trailer with poor insulation, we found, monthly energy bills topping \$200 were not unusual in Oregon.<sup>27</sup> Such costs quickly consume a household's monthly income and often force hard choices between paying the light and heat bill or the rent. \*102 Older and ill-maintained appliances, manufactured long before today's fuel-efficient units, only compound the problem. One urban study found a quarter of evictions due to electric and gas service termination and 40% to water cut-offs.<sup>28</sup> A social service worker explains how high energy costs push households toward homelessness:

People get roped in before they realize how much it's going to cost to pay the bills. They don't earn enough to pay the rent and bills so they use the rent money to pay the electric bill. You can't live without lights or heat, right? Eventually, when they do this for long enough, they have to move out.<sup>29</sup>

Housing affordability is a particularly pressing issue facing low-income rural renter households. In 2003, over a third of rural renters fit the classification "housing-cost-burdened"—those whose housing costs consume over 30% of household income.<sup>30</sup> For mobile home renters, the housing cost burden rate climbs to 40.7% (See Table 2 for relative cost comparison by housing type). Renting a mobile home in the United States on average consumes 32% of household income.<sup>31</sup> Thus, while attracted

by the notion of affordability, people move into a rental trailer park only to find that, as in land-lease parks, hidden costs in reality make this housing form less than truly affordable.

### B. Home Structural Insecurity

In addition to financial insecurities, rural families who live in manufactured housing face numerous problems with the structural integrity of their homes. Costly structural problems such as poor construction, risks of air pollution and fire, and problems with maintaining sanitary living conditions in the face of overcrowding can overwhelm a poor rural family and further distance them from housing stability.

Consumer groups report a long history of serious home quality and safety problems generated by the mobile-home industry.<sup>32</sup> Smaller manufacturers especially resisted the federal guidelines for manufactured home construction implemented in 1976 to improve safety and durability.<sup>33</sup> Rural families with children tend to buy lower-end or used models (the average owner-occupied mobile home was constructed in 1984) in comparison with retired households (one-third of the mobile-home population) who more often can afford better construction and timely maintenance. Most builders offer only a one-year warranty on a new manufactured home. Yet even in newer homes—those less than five years old—we found that homeowners incur surprisingly high costs for repair or replacement of basic structural features such as doors, windows, floors, and roofs.

\*103 Table 2. Relative Cost of U.S. Housing by Type

	Owner-occupied units	Owner-occupied Manufactured/ Mobile homes	Renter-occupied Manufactured/ Mobile homes
Median purchase price	\$68,945.	\$25,212.	Not available.
Median Value	\$123,830.	\$27,474	Not available.
Median year acquired	1992	1995	Not available.
Median monthly cost	\$685	\$408	\$ 498 <sup>a</sup>
Median cost as % of income	18.2	16.9	32.0
% Housing cost burdened <sup>b</sup>	23.5	25.1	40.7

SOURCE: American Housing Survey (2001).

#### Footnotes

<sup>a</sup> Median rental cost for mobile homes likely reflects lot rent as a portion of cost.

<sup>b</sup> Housing cost burden occurs when a household spends 30% or more of monthly income on housing.

In a recent survey of mobile-homeowners by *Consumer Reports*, 82% were satisfied with their home, but a majority (including those whose homes were less than five years old) reported a least one major problem.<sup>34</sup> One-fourth had the particleboard sub-floors swell when wet and break down; over one-third had plumbing problems such as leaky sinks and showers.<sup>35</sup> Almost one-third had experienced leaking windows, doors and roofs for heating and cooling.<sup>36</sup> A major HUD study found that, exposed to normal wind conditions over a ten-year period, a manufactured home was five times more likely to incur structural failure than a conventionally-built home.<sup>37</sup> Because a manufactured home must be transported to a site, structural damage may also occur in transit or during installation.<sup>38</sup>

In addition to weather-related damage, living in a trailer confers potential \*104 health risks from air pollution, fire, and water.<sup>39</sup> First, the structure and materials of the mobile home pose air pollution risks greater than those of a conventional home.<sup>40</sup> Mobile home construction typically makes extensive use of pressed wood products such as plywood and particleboard, which include pollutants such as formaldehyde.<sup>41</sup> In relatively small-sized mobile homes (most commonly, single-wide homes), the airtightness required by federal manufacturing guidelines potentially means higher concentrations of these pollutants than in other home types. A large California survey of 1000 mobile-home residents found elevated indoor formaldehyde levels related to the physical symptoms of burning eyes and skin, fatigue, sleeping problems, dizziness, chest pains, and sore throat.<sup>42</sup> The negative effect held even when analysis controlled for age, sex, smoking status, and chronic respiratory or allergy problems.<sup>43</sup> If residents are also smokers, the airtight homes and the interaction of tobacco smoke with other common pollutants means the potential health risk for children in particular can be high, especially in seasons when and climates where residents are more often indoors.<sup>44</sup>

Another prominent health risk in mobile homes is elevated fire risk. In a manufactured home the likelihood that the fire is fatal is high; mobile homes have twice the rate of fire deaths of all other home types combined.<sup>45</sup> Smoke detectors in mobile homes, unlike in conventional homes, give little protective effect. Mobile homes not only are small, but also contain a high proportion of flammable materials that allow a fire to build quickly. If the home is older, this increases the fire risk. If residents smoke or consume alcohol, the risk of a fire-related death is higher in all housing, including mobile homes,<sup>46</sup> and higher smoking rates are associated with the population drawn to a manufactured home for its affordability.<sup>47</sup> Because of their propensity to burn quickly and to the ground, mobile \*105 homes built before 1977, which are common in rental parks, are often referred to as "matchsticks" or "firetraps."<sup>48</sup>

Across housing types in the nonmetro United States, renters are twice as likely as homeowners to live in housing deemed moderately to severely structurally inadequate.<sup>49</sup> Compared to conventional housing with an expected useful life of hundreds of years, the manufactured housing industry reports an average useful life for new manufactured homes of 57.5 years while other sources report a much shorter twenty-two-year median life span.<sup>50</sup> Many structural issues are exacerbated as a trailer ages. Holes caused by disintegrating particleboard flooring or deteriorating doors, for example, not only pose direct dangers, but also make it difficult to keep out rodents and pests. With a median mobile home age of twenty-three years,<sup>51</sup> some parents must resort to carrying young children around the clock to protect them from various hazards.<sup>52</sup>

Doubling-up or even tripling-up is a well-documented cost-saving strategy among renter families, but when employed in a trailer; over-crowding can be especially severe. The average size of a manufactured home represents half the living area of the typical conventional home in rural areas.<sup>53</sup> Older singlewide units common to rental parks are on average even smaller than more modern manufactured housing, with second bedrooms barely large enough to accommodate a single bed and a chest of drawers. Overcrowding, where there is less than one room per person, is reported for 9.2% of all renter-occupied trailers as compared to 4.9% of all renter-occupied housing.<sup>54</sup> The challenge of maintaining adequate living conditions for several families in such a tight space can easily exceed the limited resources of low-income families.

Together, high interest and insurance rates, rapid depreciation and physical \*106 deterioration, escalating site rents, high utility bills, and the expense of moving a home constitute substantial hidden costs associated with living in a mobile home park. It is clear why many families regret being sucked into buying or living in a mobile home without understanding the financial obligations that make it less affordable over the long-term than is initially apparent. What began as access to affordable housing can become for its owners or renters of modest means an "expensive trap."<sup>55</sup>

*C. Social Insecurity*

Beyond the financial and structural challenges discussed above, a collection of social insecurities arise from land-lease and rural rental trailer-park residence. The sense of transience that defines a mobile home park, together with issues similar to those in low-resource urban neighborhoods—such as lack of trust, diminished sense of community, residential segregation, and stigmatization—combine to exacerbate the vulnerability of rural poor families.

Rural people typically possess a strong sense of place and attachment derived from generations of the same families sharing a history and culture.<sup>56</sup> Mobile-home owners and renters in the parks we studied uniformly self-identified as rural and small-town people, but lacked attachment to the place where they lived in the manner we would expect of small town residents.<sup>57</sup> It seems that parks are not sources of place identity because residents prefer moving on to something better, epitomizing the American cultural ideal of social mobility. Their dedication to mobility—a sense of transience—exerts a distancing mechanism on daily life. Park residents neither feel rooted in place nor have a sense that their homes are permanent. They do not want their children to live in a park as adults. Thus, lacking an attachment to place (other than the place of origin or the place of dreams) may prevent park families from developing the sense of permanence associated with rural life.

As shelters and places, mobile homes and trailer parks are inherently settings of transience, whether in reality or psychologically. Medical anthropologists Huss-Ashmore and Behrman liken the impermanence and rootlessness trailer-park households experience to a “permanently transitional community.”<sup>58</sup> They argue that an ideology of transition in the park environment has substantial social costs for families because a sense of place or centeredness on a home is essential \*107 for emotional well-being.<sup>59</sup> Their study of Walla Walla, Washington, trailer parks found that residents thought of their trailer homes much as the people we spoke with in Illinois, New Mexico, and North Carolina did: “we are only here for now, until we can ‘make it’ and move on.”<sup>60</sup> Although, as “selecting for flexibility,” an ideology of impermanence allowed people to cope psychologically with their present situation in the short term, Huss-Ashmore and Behrman found that the accompanying sense of rootlessness actually led to negative health outcomes.<sup>61</sup>

For the apparent power of place to shape family well-being and child development, analogies to an inner-city ghetto readily emerge. While the popular media tends to overdraw such analogies,<sup>62</sup> rental parks do attract a concentration of hard-living residents, or what one Oregon social worker termed “the lowest of the low-income—families that are half a check way from homelessness at best.”<sup>63</sup> Such parks are seen as socially fluid places with the average household moving after only six to eight months in residence.<sup>64</sup> In such a context, levels of mutual trust run low while fears about other residents abound. In an effort to counter perceived negative influences, some parents employ child management strategies often seen in risky urban contexts.<sup>65</sup> They drastically limit their children's exposure to the neighborhood, keeping them indoors and off park streets when they are not in school.<sup>66</sup> Further, many parents limit their own social engagement in these park neighborhoods to avoid entering into potential dependency relationships they lack the resources to support. Day-to-day life in such contexts is vastly removed from the socially supportive community culture expected of rural, small-town life.

We found that trailer-park households, whether homeowners or renters, share a sense of impermanence. Households showed an unwillingness to forge substantive links with neighbors—who, they expect, will soon move.<sup>67</sup> Without a local social network, park households lack a sense of community—a positive identification with where they live and their neighbors. Furthermore, lacking attachment to the park, people neither use nor care for the park's common areas in \*108 ways that would make their community a better place to live.<sup>68</sup> These traits are a contrast with the importance of community in stable working-class communities where resources are typically exchanged among kin and friends for economic and social support.<sup>69</sup> Without kin and neighbors as social or financial supports, trailer-park households lack important ingredients to residents' social and economic well-being.

Faced with a tight rural rental housing options, low-income families often make choices that meet their short-term housing needs but that socially imperil them over the long run. A rural social worker explains how some families move into a park rental situation actually expecting to be evicted: "These families know they don't have enough to pay the rent and the utilities and afford anything else. They sign a contract for a place where the rent is 100% of their income. Then they can't pay the rent and the utilities not to mention food. But these are families who are in a constant state of crisis."<sup>70</sup> When an eviction occurs in a small town, a family reputation develops. A "ne'er-do-well" reputation only exacerbates a poor family's potential for ostracism in a rural community.<sup>71</sup> A rural housing authority worker explains the dilemma of rural renters, "We see it everyday, landlords are getting pickier and pickier about who they will rent to. If you've been evicted you really can't find a place."<sup>72</sup> A bad reputation as a renter in a small town can thus spur a family toward homelessness.

Social insecurities are enhanced by how the wider community or region spatially treats residents of a rural trailer park. Segregation in a rural trailer park, often on the edge of town, means that residents seldom cross paths with people who live in adjacent communities but differ by class. Without social contacts, stigma and stereotyping abound.<sup>73</sup> Park residence often makes families pariahs in a rural community—a social mechanism that perpetuates spatially-differentiated socioeconomic inequality. Using the attribute of park residence as a stigma, members of nearby communities establish a stereotyped relationship between park living and categorization of residents as "bad people."<sup>74</sup> For example, in one case, former friends from the adjacent town stopped speaking to Illinois park residents when their address was discovered; in another case a high school couple \*109 was forced to stop dating when the girl's parents learned the location of the young man's home. Townspeople consistently denigrated park residents as free-loaders who gain a fine education, although they do not pay for it.<sup>75</sup> Thefts and deviant behavior were often attributed to park residents. Such beliefs and actions contribute to a stigmatized identity and form barriers to better life chances, particularly for youth, despite being based on unverifiable innuendo. These boundaries effectively reinforce already existing unequal categories of class or ethnicity, and thus contribute to durable inequalities,<sup>76</sup> often in spite of individual park residents' personal best efforts to shape their own destiny.<sup>77</sup> Segregated families may also absorb the stereotypes associated with living in a trailer park. Defining oneself as "trailer trash," despite having managed to buy a home, is rampant in the parks. Such stigma inhibits greater social engagement in the wider community among park families as well as social engagement with park families by the rest of the community.

Rural trailer parks can also spatially reflect new social divisions or persistent social inequities in new contexts. Shabby or manufactured housing is not viewed as a good use for rural land in a suburbanizing landscape, particularly where new subdivisions are upscale housing or commercial developments.<sup>78</sup> Where second homes owned by affluent urbanites have consumed the housing that lower-income rural residents might once have occupied, rural housing values increase.<sup>79</sup> Because exclusionary zoning and lax legal support for mobile-homeowners' rights make them more vulnerable,<sup>80</sup> this rural gentrification creates pressures for land-use ordinances to exclude or marginalize new parks to the county fringe or to other nearby, but less well-off, communities.<sup>81</sup> Further, mobile-home parks, as the affordable housing in a rapidly transforming upscale, suburbanized area, tend to lodge the workers who occupy the service jobs that support a more affluent lifestyle of second-homeowners, rural tourism, or \*110 retirees.<sup>82</sup> The divisions may evolve into an equity issue of the center (those areas growing more upscale) versus the periphery (those areas housing the lower income service providers). In this way trailer parks reflect and represent visually the growing inequality between the classes in rural places.

As places, then, parks are an expression of the power relations in the wider area, defining who belongs to a place and who may be excluded. That is, the rural park as a distinctive space, segregated and inhabited by those of modest means, represents social relations of power between residents and non-residents (including park owners) that disadvantage and limit the local opportunities and comparative outcomes of the poor.<sup>83</sup> Although still subject to physical and perhaps financial vulnerabilities, manufactured homes in scattered sites, such as a trailer behind a family home, are not subject to the same social vulnerabilities experienced by rural trailer-park residents.

Rural trailer-park households with dreams of “stick-built” (conventionally-constructed homes) on owned land share insecurity about keeping their homes, underscored by an abiding dissatisfaction with achieving only half of the American homeownership dream. The sense of insecurity is fueled by two sources. First, trailer-park residents lack real financial and structural security about sustaining a permanent site for their homes. Second, households who feel vulnerable about keeping their homes do not develop the strong sense of place and permanence that typically characterizes rural residents. These insecurity factors, inherent to mobile-home life in most places today, reinforce housing vulnerability. Families have homes but can lose them in a heartbeat if a park is sold, rents for a lot or a home are raised, or if the park management reneges on their rights to live there.

## II. LAW AND POLICY IMPLICATIONS: PROMISING STRATEGIES TO ALLEVIATE HOUSING VULNERABILITY

Thus far we have shown that mobile-home park life in an owned home on rental land does not assure a poor rural family the qualities that satisfactory housing confers: security, autonomy, control, and affordability.<sup>84</sup> Rather, park residence bestows only a relatively permanent status that, due to a variety of social and financial reasons, does not foster social mobility or advancement toward conventional homeownership. Attaining half the American homeownership dream is regarded as better than renting by the rural park-households we interviewed. Yet, despite achieving ownership and perceiving themselves as \*111 “above” those who live in subsidized housing, residents find it difficult to move up or move out once established in a trailer-park community that is class-homogenous and spatially-segregated. The barriers to social and housing mobility are not insurmountable, however; certain interventions can enhance the social and financial potential of manufactured housing for the rural poor. Our focus now shifts to examining these strategies.

In several U.S. states, specific policies and programs are proving effective in alleviating the insecurities we describe, thereby making manufactured housing more viable for rural poor families. Most promising among these is the cooperative or resident-owned mobile home communities program begun in New Hampshire through the joint efforts of the New Hampshire Community Loan Fund (NHCLF) and mobile-home park residents.<sup>85</sup> In 1984, the NHCLF assisted the residents of Meredith Trailer Park with legal and financial assistance to purchase the land on which their homes sat. Since then, NHCLF has helped leverage resident ownership of seventy-two other parks, approximately 15% of New Hampshire's mobile-home parks.

Early research indicates that in addition to the obvious benefit of more security for the homeowners who are “tenants no more,” there are other tangible financial and social benefits to this model.<sup>86</sup> Working with local lenders, the NHCLF leveraged lower interest rates by using conventional mortgage loans for existing and new homeowners in these resident-owned communities. Such loans not only mean lower interest rates, but the substantial tax benefit of deducting loan interest from income tax. Further, early anecdotal evidence indicates that in these parks, manufactured homes hold their value, making them a sounder home investment. Other benefits are accruing as well: although subject to some forms of stigmatization, both park and non-park residents report a growing sense of social acceptance.

Resident-owned communities are catching on in other states as well.<sup>87</sup> In both California and Oregon, the transition from investor-owned communities to resident-owned communities is making the news.<sup>88</sup> Rhode Island, New York and Florida also have numerous conversions. The support of nonprofit organizations such as the NHCLF is vital, but local housing law and policy decisions can make park conversions more or less likely to succeed as well. Because residents are \*112 repeatedly out-manuevered by investors at the sale table, for example, “right of first refusal” protections are helpful in supporting these conversions.<sup>89</sup> Unfortunately, some industry experts worry that this innovation will take longer to adopt in more politically conservative regions such as the southeastern U.S., where manufactured housing is particularly prevalent.<sup>90</sup>

Other interventions hold similar promise for making trailer parks a more secure, accessible housing alternative for the rural poor. Below we outline policy and program suggestions that short of a full conversion to resident-owned parks will move us toward resolving the financial, structural, and social insecurities we have described.

#### *A. Alleviating Financial Insecurities*

Federal, state and local entities all have a role to play in reducing financial insecurities for rural poor trailer park families. Changes in lending practices, reclassification of manufactured housing as real property, consumer education, and resident protections can all help to alleviate residents' housing vulnerability.

As we have shown, current lending practices and high interest rates are a major drawback to manufactured homeownership. The manufactured housing industry is currently advocating legislative changes that would "modernize" FHA lending mechanisms.<sup>91</sup> The bill in the works proposes to raise maximum loan amounts to reflect more accurately the current market price of new and used homes, and to allow upfront costs of mortgage insurance to be financed. The bill would also, however, provide HUD the authority to increase insurance premiums and revise underwriting standards. These two provisions make it doubtful that this proposed modernization would help lower-income families, who have historically lagged in their use of FHA mortgages.<sup>92</sup> The poorest of rural mobile-home owners will no doubt continue to depend on chattel loans offered by predatory sub-prime lenders unless a more thoroughgoing approach is taken to housing policy reform.

Perhaps the most important locus for such systemic reform is state tax law. Buyers should have the option to have their homes "permanently affixed" and classified as real property whether on leased or owned land.<sup>93</sup> Given that manufactured homes are rarely moved and are difficult to move from their original installation site, it is inappropriate to classify them as personal property. The current system further penalizes low-income households who are already confined to a limited number of affordable housing choices. Currently, states do not allow HUD-code manufactured housing on leased land to be defined legally as real estate, so conventional loans cannot be obtained for these properties. Furthermore, municipal budgets, especially in rural jurisdictions, are fiscally strained by the increasing popularity of such non-real estate properties. Despite the rising share of manufactured housing in rural areas, we calculate that the property tax revenue local governments are able to collect has not increased correspondingly.

Changing the classification of mobile homes from personal to real property will have other ramifications. As personal property, mobile homes are taxed as a depreciable asset, regardless of their actual market value.<sup>94</sup> While taxes paid on chattel loans are deductible from income tax, few mobile homeowners take advantage of this benefit. If manufactured housing were valued as real property, assessed values and revenues should improve in the long run. Further, as is the case for all real property, the appraisal of manufactured homes would be transferred from county tax commissioners to county assessors, who are charged with determining "fair market value" rather than "book value" (estimated retail value based on age and condition) for homes.

Reclassification of all manufactured housing as real estate is a systemic change in housing policy that is necessarily long-term. However, there are other changes that can be enacted in a shorter time frame. Educating the consumer is critically important.<sup>95</sup> Homebuyer educators and counselors can be more proactive to help first-time homebuyers navigate a complex marketplace.<sup>96</sup> Many local non-profits and outreach organizations like the U.S. Department of Agriculture Cooperative Extension Service can expand their offerings of financial literacy and homeownership education to make families aware of the pitfalls associated with manufactured housing, such as predatory lending, high energy costs, and limited warranty services. Landownership and home location are key factors to a prospective mobile home buyer if households are to maximize equity potential; therefore these factors should be stressed.<sup>97</sup> The Consumers Union is another good source of information for counselors of buyers on deciphering the many options buyers have in the purchase process.<sup>98</sup> States and localities are beginning to offer guides for prospective homebuyers interested in manufactured housing.<sup>99</sup> Including information developed by HUD and other supporting agencies, these guides generally highlight important state-specific information on consumer rights, advantages and

disadvantages to owning a mobile home, knowing how manufactured housing is taxed, and finding a location for manufactured housing.

The issue of lot rent increases and park closures could be directly addressed in state law and policy. Rent increase laws making it necessary for park owners to justify rent increases when half of park residents request it make it more difficult for park owners to deal capriciously with tenants. In response to the need to protect mobile-home park residents from rapid displacement when parks are sold and closed, several states have extended mandatory resident "notice to quit" time periods<sup>100</sup> and increased compensation amounts to tenants forced to move but unable to afford to move their home.<sup>101</sup> These compensation packages generally do not meet the true cost of relocation of a mobile home (generally ranging from \$1500-\$5000) but they certainly represent a more equitable approach. In Oregon, for example, recent legislation provides relocation compensation to low-income families via tax credit packages that work like child-care tax credits. Several states and localities are developing mobile-home park directories to assist owners in finding new park locations for a home. Extra time, money, and consumer educational resources would help relieve some of the financial burden associated with park closures for rural poor families.

### *B. Alleviating Housing Structural Insecurities*

While manufactured housing has certainly changed in appearance during the last few decades, structural issues remain for both new and older homes. We suggest innovations in building codes and practices and in "upgrading" older homes. Further, we make suggestions to enhance safety and provide better oversights for installation. All are promising solutions to the many structural issues that currently plague much of the available manufactured housing in rural places.

For newer construction policy, updating the Department of Housing and Urban Development codes enacted in 1976 could be useful.<sup>102</sup> Some have argued that \*115 the code has been weakened by the use of performance standards rather than construction standards.<sup>103</sup> Certainly, well-recognized structural issues such as problems with particleboard flooring could be managed with simple changes to the code. Adding a moisture barrier, for example, would be a cheap and easy modification that could function as a vapor barrier to reduce noxious fumes as well.

Finding equitable ways to encourage the replacement of aging trailers with new units is necessary to dealing with pervasive structural problems.<sup>104</sup> Community Development Block Grant (CDGB) funds and local dollars are being used to help finance the replacement of aging trailers with newer HUD code units, yet these programs often require land ownership. One practitioner in Oregon advocates a combination approach that pairs DOE dollars with small grants from communities and park owners to total a down payment, making a loan on a new unit more affordable.<sup>105</sup> Replacing older units with newer homes could address the issue of overcrowding as well.<sup>106</sup>

High utility and energy costs could be addressed in several ways. Weatherization programs, run through local entities and funded by U.S. Department of Energy dollars, can be very effective in providing loans or grants to make aging trailers more energy-efficient. Rubberized roofs, double-paned windows, better-quality doors, and energy-efficient replacement furnaces and appliances can help to cut utility bills significantly. Such programs could be expanded under existing funding mechanisms. Resident-owned communities have already found ways to collectively purchase energy in blocks at a lower cost; investor-owned communities should be able to do so as well, at a savings to every household.

Because park residents are also vulnerable to damage to their homes in severe weather conditions, we recommend that landlords provide underground shelters to protect residents from injury or even death. Such a protective mechanism would help mitigate the loss of life witnessed last year on the Gulf Coast with Hurricane Katrina and, on a smaller scale annually during tornado season, in the Midwest. At minimum, parks should be required to have evacuation plans with which residents are familiar and practiced.

Finally, because the quality of the installation of a manufactured home affects its immediate and long term performance, the industry and communities need to develop better and more consistent standards and oversight.<sup>107</sup> Installation is \*116 covered by state regulations and oversight procedures that vary considerably. States have been slow to adopt recommended installation requirements such as those proposed by the National Standards Institute, but HUD is currently engaged in rulemaking on installation standards.<sup>108</sup> Whether at the state or federal level, formalizing standards such as those proposed by the National Commission on Manufactured Housing would enhance consumer protection against manufactured housing's many structural vulnerabilities.<sup>109</sup>

### *C. Alleviating Social Insecurities*

Addressing social insecurities through law and policy changes is more challenging, perhaps less amenable to direct legal and regulatory intervention. Yet innovative strategies offer some hope. Model resident-owned communities, changes in land-use policies, amended tax codes, and education programs are all places to begin to address the image problems associated with manufactured home residence.

Model resident-owned manufactured home communities in several states have showcased the potential for this housing sector to offer not only affordable, but also attractive and environmentally sound housing options.<sup>110</sup> Although not all communities are able to produce model projects on this scale, other planning efforts can upgrade the image of manufactured housing as well. The American Planning Association has recommended that rural townships seek to upgrade or eliminate private mobile-home parks with substandard environments and that local governments use a mixture of methods to ensure a stable environment for park households, including code enforcement, urban renewal, relocation assistance, utility extensions, and condemnation with appropriate compensation.<sup>111</sup> Many states now make funding available to upgrade park infrastructure.<sup>112</sup> And, by partnering with local developers, communities can encourage the integration of manufactured housing developments into plans addressing regional affordable housing needs.<sup>113</sup> Such efforts could make a lasting difference not only in living conditions, but also in the public perception of trailer parks.

Segregation of manufactured housing from surrounding areas can be addressed through local land use and zoning policy changes. A growing number of states allow manufactured homes to be placed in any neighborhood, but other regulations, such as minimum lot size, work more subtly to drive land costs up and maintain isolated trailer parks as the only affordable option for the rural poor. \*117 Strict design standards and deed restrictions also keep mobile homes out of established neighborhoods.<sup>114</sup> States and local governments need to reconsider such regulations to avoid perpetuating spatial inequality.

To address the perception of mobile home park residents as a burden on local tax revenues, municipalities and states should revisit how manufactured housing is classified in their tax codes. We understand that municipal budgets, especially in rural jurisdictions, are heavily dependent on local property taxes to finance their services, and the affordability of manufactured housing to the consumer may signify lower residential property tax values for local governments.<sup>115</sup> Code reform can help balance the advantages and costs to both low-income families and the communities in which manufactured housing is located. In New Hampshire, for example, residents in one resident-owned community petitioned to have their homes reclassified in the local tax codes so that they could more equitably contribute to the local tax base.<sup>116</sup>

Finally, education programs could help stabilize the most transient of park households—those who rent both home and lot, and whose transience creates negative stereotypes for all park residents.<sup>117</sup> “Ready to rent” educational programs, increasingly common in urban and rural jurisdictions alike, work with families who have a bad rental record to help them better understand budgeting, housing options, and landlord/tenant rights.<sup>118</sup> By stabilizing the most transient of mobile home park households, the stigma for all park residents can be diminished.

## CONCLUSION

What it will take to make the changes happen? Cooperative parks offer an opportunity for remaking the manufactured home and park industries but the process of conversion seems dependent on tenant activism—a risky role to assign to people already experiencing multiple housing insecurities. Yet, the cooperative movement in New Hampshire shows us that non-profits, philanthropists, lenders, local communities, and states are willing to work toward developing changes to support this housing sector. The reality is that mobile homes and trailer parks are the housing of choice for the rural poor. Such housing exists across virtually every small town in rural America. We must find ways to make this housing form work for both homeowners and communities.

## Footnotes

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<sup>1</sup> WILLIAM APGAR ET AL., REPORT TO THE FORD FOUNDATION BY NEIGHBORHOOD REINVESTMENT CORPORATION, AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY- AND ASSET-BUILDING STRATEGY 1 (2002).

<sup>2</sup> Michael Collins, *Rural America's Housing of Choice? Exploring Manufactured Housing's Growth Role*, RURAL VOICES, Summer 2003, at 1, 1-2, available at <http://www.ruralhome.org/manager/uploads/VoicesSummer2003.pdf>.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> Sonya Salamon & Katherine MacTavish, *Quasi-Homelessness Among Rural Trailer Park Households in the United States*, in INTERNATIONAL PERSPECTIVES ON RURAL HOMELESSNESS 8, 14 (Paul Cloke & Paul Milbourne, eds.) (forthcoming 2006).

<sup>5</sup> See Katherine MacTavish, *Going Mobile in Rural America: The Community Effect of Rural Trailer Parks on Child and Youth Development* (2001) (unpublished Ph.D. dissertation, University of Illinois at Urbana-Champaign); Michelle Eley, *Going Mobile in the Rural South: Informal Household Strategies of African-American Trailer-Park Families* (2004) (unpublished Ph.D. dissertation, University of Illinois at Urbana-Champaign).

<sup>6</sup> See, e.g., Michael McCloskey, *Local Communities and the Management of Public Forests*, 25 ECOLOGY L.O. 624, 627 (1999) (defining “communities of place” in opposition to “communities of interest”).

<sup>7</sup> See generally DAVID HUMMON, COMMONPLACES 47-68, 151-55 (1990) (explaining the idea of rural identity).

<sup>8</sup> See U.S. CENSUS BUREAU, STRUCTURAL AND OCCUPANCY CHARACTERISTICS OF HOUSING: 2000 1 (Nov. 2003), <http://www.census.gov/prod/2003pubs/c2kbr-32.pdf>; Howard Rudnitsky, *New Life for Old Mobile Home Parks: Investing in Parks through Real Estate Investment Trusts*, FORBES, Nov. 7, 1994, at 44.

<sup>9</sup> Charles Geisler & Hisayoshi Mitsuda, *Mobile-Home Growth, Regulation, and Discrimination in Upstate New York*, 52 RURAL SOC. 532, 533 (1987).

<sup>10</sup> See Eddie Dean, *Paradise, Yeah*, TALK, Sept. 1999, at 134.

- 11 See generally JOSEPH HOWELL, *HARD LIVING ON CLAY STREET: PORTRAITS OF BLUE COLLAR FAMILIES* (2d ed., 1990) (describing characteristics of "hard living" families).
- 12 APGAR ET AL., *supra* note 1, at 21-22.
- 13 These trends are similar to those housing trends Fitchen identified for the rural poor in New York state: supply and demand imbalance, insecure tenancy, rising rent burden, proliferation of land-use regulations and housing codes, and higher uses for rural land. See JANET FITCHEN, *ENDANGERED SPACES, ENDURING PLACES: CHANGE, IDENTITY, AND SURVIVAL IN RURAL AMERICA* 137, 268 (1991).
- 14 See Alex Berenson, *A Boom Built Upon Sand, Gone Bust*, N.Y. TIMES, Nov. 25, 2001, § 3; ALAN WALLIS, *WHEEL ESTATE: THE RISE AND DECLINE OF MOBILE HOUSING 215-18 (1991)* (interest rates for mobile home mortgages remain a few percentage points higher than single-family homes, placing them out of reach for low-income families).
- 15 Don Fuquay, Manufactured Housing Institute, *Lending Perspectives: Doing it The Right Way* (2001), [http://www.manufacturedhousing.org/lending\\_news/default.asp?id=1&article=16](http://www.manufacturedhousing.org/lending_news/default.asp?id=1&article=16).
- 16 *Id.*
- 17 See MacTavish, *supra* note 5, at 57 (describing this phenomenon at the Illinois study site). We found this to be true across the four research sites discussed in this article. See also Kevin Jewell, *Raising the Floor, Raising the Roof: Raising Our Expectations for Manufactured Housing*, 6 CONSUMERS UNION SOUTHWEST REGIONAL OFFICE PUBLIC POLICY SERIES 5, 15 (2003), <http://www.consumersunion.org/pdf/mh/raising.pdf>.
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- 34 *Dream Home ... or Nightmare?*, *supra* note 32, at 32.
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- 37 *Id.* at 34.
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- <sup>99</sup> See, e.g., CALIFORNIA SENATE SELECT COMMITTEE ON MOBILE AND MANUFACTURED HOMES, A GUIDE TO PURCHASING MOBILE AND MANUFACTURED HOMES (1998), [http://www.sen.ca.gov/ftp/SEN/COMMITTEE/SELECT/MOBILEHOMES/\\_home/guide.htm](http://www.sen.ca.gov/ftp/SEN/COMMITTEE/SELECT/MOBILEHOMES/_home/guide.htm); MICHIGAN DEPT OF LABOR AND ECON. GROWTH, THE MANUFACTURED HOME BUYER'S [sic] AND RESIDENT'S HANDBOOK (n.d.), [http://www.michigan.gov/documents/dleg\\_bccfs\\_handbook\\_145096\\_7.pdf#search=%22prospective%20manufactured%20home%20buyer%20state%20](http://www.michigan.gov/documents/dleg_bccfs_handbook_145096_7.pdf#search=%22prospective%20manufactured%20home%20buyer%20state%20)
- <sup>100</sup> See, e.g., COL. REV. STAT. § 38-12-202(1)(c) (2006) (Colorado).
- <sup>101</sup> See, e.g., 2005 Or. Laws ch. 826 § 1; OR. REV. STAT. §§ 197.485, 316.153, 316.502 (2006) (Oregon).
- <sup>102</sup> See 24 C.F.R. § 3280 *et seq.* (2006) (HUD Manufactured Home Construction and Safety Standards).
- <sup>103</sup> See WALLIS, *supra* note 14, at 214-15. Examining the differences between manufactured housing constructed under each may be an important research foundation for reforming the HUD code.
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- <sup>105</sup> Steve Jole, Presentation at the National Weatherization Training Conference, Getting Around the Institutionalized Roadblocks Inherent with "Problem" Mobile Home Parks (Dec. 14, 2005) (notes on file with authors).
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- <sup>109</sup> See NATIONAL COMMISSION ON MANUFACTURED HOUSING, FINAL REPORT (1994).
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113 Beamish et al., *supra* note 95, at 389.

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116 See Bradley, *supra* note 85.

117 See Beamish et al., *supra* note 95, at 388-89.

118 Portland, Oregon's Ready to Rent program, for example, guarantees a month's rent to landlords while providing financial literacy education to participants. See Portland Housing Authority, *Ready to Rent Guarantee for Landlords*, <http://www.hapdx.org/resident/r2r.html>.

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# Appendix E

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Eastside

## 32 families face eviction with sale of Kirkland mobile-home park



Originally published May 24, 2015 at 6:42 pm Updated May 26, 2015 at 1:26 pm



1 of 3 The mobile-home park where Bill and Lynn Leonard live has been sold, and high-end houses are to be built there. (Mike Siegel / The Seattle Times)

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**A developer plans to build 19 high-end homes on the site of a mobile-home park in Kirkland that's home to 32 families. Many are seniors and on fixed incomes. Four are veterans. Two are disabled. And there are young families with children.**

By Lynn Thompson   
Seattle Times staff reporter

When Lynn and Bill Leonard found a notice taped to their front door in late April that their Kirkland mobile-home park had been sold, Bill said his first reaction was panic.

The couple bought their double-wide for \$55,000 in 2005 and sank most of their savings into fixing it up. The interior is immaculate. The furnishings are contemporary. The back deck features two levels where they can look out over trees and nearby Juanita Creek.



But the couple, who live on Social Security and Bill's part-time job as a security guard, now face moving costs of about \$15,000 — if they can find a vacant spot in another mobile-home park.

“You’re faced with losing everything you’ve worked for. You’ve got one year to move and no place to go,” said Bill, a Navy veteran.

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In all, about 32 families will be displaced from Kirkland's only mobile-home park. Many are seniors, like the Leonards, and on fixed incomes. Four are veterans. Two are disabled. And there are young families with children.

Some, in single-wide trailers, likely won't be able to move their homes because they are no longer allowed in most mobile-home parks, neighbors said.

An Austin, Texas-based developer, PSW Real Estate, purchased the 3.4-acre Firwood Lane Mobile Home Park for \$3.2 million in February and plans to build 19 homes selling for about \$850,000 and up, according to city officials, who met with the developer about the plans in November.



The property is just a five-minute walk from Juanita Beach Park, in the Lake Washington School District and in a neighborhood where surrounding homes have recently sold from about \$400,000 to \$1 million.

“Nobody here is going to be able to afford one of the new homes,” Bill Leonard said.

The city of Kirkland looked into buying the property several years ago, said Planning Director Eric Shields. City Council members recognized the value in

Kirkland's only mobile-home park has been sold for \$3.2 million. Families... (Kelly Shea / The Seattle Times) More ▾

maintaining some of the city's most affordable housing stock. But the appraised value — about \$1.5 million — was much less than the owner was willing to consider — and the city legally could not pay more, even if it could have found the funds.

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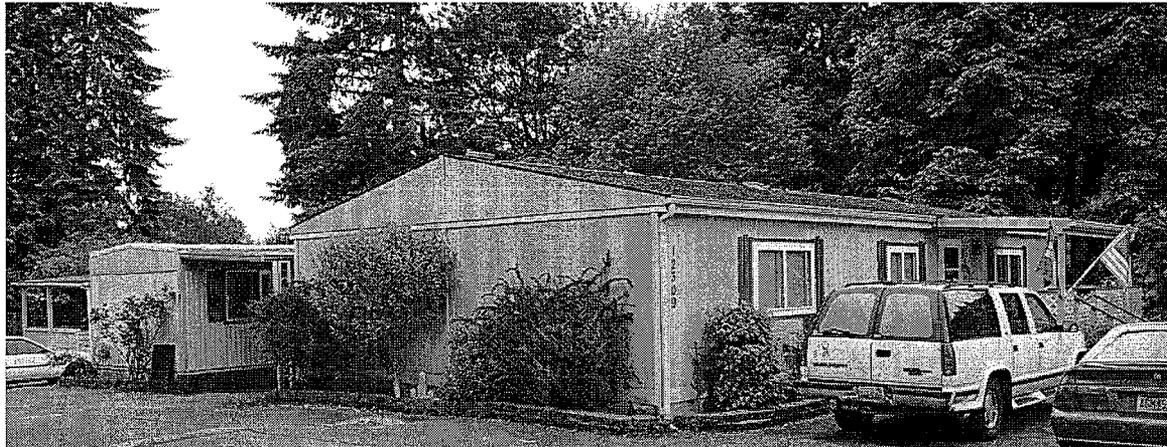


State Rep. Joan McBride, D-Kirkland, who was on the City Council at the time, advocated buying the property. She remembers running into a friend from Lake Washington High School who was a checker at a local store. The friend mentioned that she lived in the mobile-home park and was worried that it had recently been sold.

McBride said she organized a field trip to the property that included some low-income-housing providers and a mobile-home tenant advocate based in Olympia. But with its high valuation and an owner who at the time said he had no immediate plans to sell, McBride said the effort was abandoned.

She called the displacement of almost three-dozen families “tragic.”

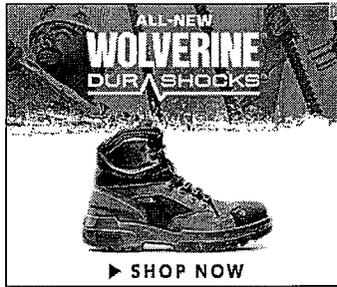
“It’s a very stable neighborhood in a beautiful location with great schools. We lose something as a city and a community when we lose an entire neighborhood,” she said.



Bill and Lynn Leonard's home at the Firwood Lane mobile home park in Kirkland. The community of mobile homes has been sold to a developer who plans to build 19 high-end houses. The Leonard's and other residents have one year to move, but they don't know where they'll go and worry they'll lose everything. The... (Mike Siegel / The Seattle Times) More ▾

Across the lane from the Leonards, Barbara and Ron Brown are trying to work through their own panic about finding a new place for their double-wide. They bought it for \$38,000 in 2003 and still owe \$20,000 on their mortgage. Now they, too, are looking at \$15,000 to relocate.

Barbara Brown said they were unable to find any mobile-home parks in North King County but have found two in Snohomish County with vacancies.



She said they don't have the money for the move.

"We don't know what we're going to do," she said. Still, she's grateful that their mobile home can be moved. She worries that the residents in single-wides, some with outstanding mortgages, will be pushed into bankruptcy or homelessness.

Barbara, a graduate of Redmond High School, is a breast-cancer survivor who works part-time at Toys R Us. Her feet are swollen, and she said she can't spend full-time on her feet. Ron, an Air Force veteran, has chronic obstructive pulmonary disease and relies on oxygen for breathing.

Both the Browns' and the Leonards' homes have American flags flying above the front porch.

The residents met this month with Ben Rutkowski, the Seattle division president of PSW Real Estate. He didn't return calls to The Seattle Times requesting a comment. Several residents said he is working with them and hoping the state, which regulates mobile homes, will provide some relocation expenses.

But Barbara Brown said she isn't counting on a bailout.



"He's trying to be nice, but sometimes you still get screwed," she said.

Lynn Thompson: [lthompson@seattletimes.com](mailto:lthompson@seattletimes.com) or 206-464-8305. On Twitter @lthompsontimes

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# Appendix F

## **The Wrong Side of the Tracks: Social Inequality and Mobile Home Park Residence**

Katherine A. MacTavish

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*Given the emerging social stratification of post-agrarian small-towns, potential effects are apt to be exacerbated for rural poor families such as those residing in mobile home parks, a now characteristic rural neighborhood form. Although a mobile home park offers affordable access to rural residence, social costs are attached to such access. This paper examines the intersection between mobile home park residence and social disadvantage. Drawing on an ethnographic field study in rural Oregon, findings reveal distinct conditional features of place that determine the nature of how rural inequality is emerging and the implications for poor and working-poor families.*

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**Key-words:** *affordable housing, rural housing, mobile home park, social stratification, stigmatization, unsubsidized low-cost housing, post-agrarian community, low-income rural families*

*If you live in a trailer park, you're on welfare, use drugs, and are a bad parent—automatically.*

—Mother of three, a three-year-resident of a Mountainview\* mobile home park

*The kids get named as trailer trash ... It might be cheap, but it's not worth the hassle people have to go through.*

—Mother of three, an eight-year-resident of a Mountainview mobile home park

*Some parents think my parents must be doing drugs. My parents aren't like that, but they know where I live.*

—14 year old male, a four-year-resident of a Mountainview mobile home park

That a rural mobile home park and its residents should be characterized in such negative terms is of little surprise. Although mobile home park residence offers one of the leading sources of unsubsidized low-cost housing in the United States (Collins, 2003), such residence comes with social costs attached (Kiter-Edwards, 2004; MacTavish, 2001; MacTavish & Salamon, 2006). Historically marginalized to the outskirts of town, the rural mobile home park and its residents have long been subject to both overt and covert stigma (Miller & Evko, 1985; Periera, 1995; Wallis, 1991). Popular media images of rural mobile home park life describe trailer parks as: "Paradise Estates, where the shade trees prosper

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and the trailers rot, where the dogs don't just bark, they bite, where trolling vans from evangelical churches battle a Mister Softee ice-cream truck for the souls of the children" (Dean, 1999:134). Such exposés draw the rural trailer park as the equivalent of a rural slum; an image the public willingly accepts (Baker, 1997). The ubiquitous and persistent use of the term *trailer trash* in everyday discourse is further indicative of how low-income, European American residents of mobile home parks remain one of last groups subject to ridicule in the United States (Hart et al., 2002).

That a mobile home park (or *manufactured home community*, as the industry prefers) and the individuals who reside therein are seen in such negative terms is of great concern, particularly in the context of current socioeconomic changes that are redefining who "belongs" and who does not belong in rural places. Rural growth over recent decades has produced increasing numbers of post-agrarian communities wherein farming and rural life are no longer equivalent (Castle, 1995). As rural communities are transformed by upscale development driven by the "urban growth machines" (Logan & Molotch, 1987), the social fabric of small towns evolves in new ways (Salamon, 2003). Where family reputation, for instance, once formed the basis for placement in a rural social hierarchy (Fitchen, 1991), measures of wealth as evidenced by place of residence and conspicuous consumption now prevail (Salamon, 2003). As suburbanization changes the social structure of small towns, personal wealth increasingly becomes the measure of individual worth. Given the emerging social stratification of post-agrarian small towns, potential effects are apt to be exacerbated for rural poor families whose "social connections are restricted and do not integrate them into the new, wider community that has replaced the former rural hamlet-and-hinterland community" (Fitchen, 1981, p. 56).

Such growth also works to tighten housing markets and displace lower-income rural residents, particularly in places adjacent to metropolitan areas (Fitchen, 1991; Ziebarth, Prochaska-Cue, & Shewsbury, 1997). Consequently, in recent decades a mobile home increasingly offers the most affordable and available rural housing option for families of modest means and retirees (Tremblay & Dillman, 1983; Meeks, 1988). Between 1990 and 2000, manufactured housing increased by 25 percent in the rural United States to comprise fully 16 percent of owner-occupied housing (Collins, 2003). Half of these homes are clustered in the approximately 30,000 to 40,000 mobile home parks that now characterize the rural landscape. Yet, despite the seeming ubiquitous nature of rural trailer parks, there is a national shortage for mobile home spaces, a condition currently made worse as increasing numbers of parks are closed when land is sold for a "higher use" (i.e., suburban development).

In this paper, we examine how processes of place contribute to the social stigmatization of rural mobile home parks and residents and work to exacerbate the social inequality already experienced by poor and working-poor rural families. Our question has important implications for rural communities concerned with ensuring affordable access to a rural way of life. Making use of field studies in Mountainview, Oregon, we first examine rural mobile home park residence and then identify specific conditional features of place that function to perpetuate negative stereotypes and detract from the potential of mobile home parks as a viable option for affordable rural housing.

## BACKGROUND

### The Emergence of Trailer Parks in the Rural United States

Trailers first appeared in the United States in the 1930s as an innovative alternative to temporary housing for vacationing families and traveling workers (Hart, Rhodes, & Morgan, 2002). Like those represented in the vintage 1950s' Lucille Ball film, *The Long, Long Trailer*, early "trailer courts" were akin to campgrounds centered around a

convenience store, restrooms, and a gas station. The trailer industry boomed during WWII when trailers were used as quick, affordable, and temporary housing for workers employed in the war effort (Wallis, 1991). Many early parks closed when the war effort ended, yet trailers were established as a housing form. Over time, innovations in design and structural improvements (e.g., the 1976 Housing and Urban Development [HUD] building codes and double-wide construction) and a name change first to mobile and then to manufactured housing made modern homes distinct from early trailers. Today, manufactured housing has emerged as *the* housing of choice among low and moderate income rural residents. Despite its seeming consumer popularity, as a housing form trailers and trailer parks remain controversial, often marked as “*bad*” places filled with “*bad*” people.

### **Stigmatized Residence and Child and Family Well-Being**

Processes that work to exacerbate inequality are well documented in the urban ghetto where the power of place to predict compromised outcomes is strong (MacLeod, 1987). By concentrating lower-income families into an area that socially and geographically reinforces their isolation from resources important to children’s healthy development and ensures their exposure to risks that compromise such development the community effect of an urban ghetto particularly pernicious (Furstenberg et al., 1999; Wilson, 1987). Over time, living isolated in a resource-deficient neighborhood, such as an urban ghetto, is theorized to produce a “culture of poverty” or an “urban underclass” within which the inter-generational transmission of poverty is highly intractable (Wilson, 1987).

Sentimentally and conceptually, there is little similarity between an urban ghetto and a rural small town. Ghettos are invariably seen as risky places in which to raised children (Wilson, 1987); small towns are more often idealized as good places in which to raise children (Hummon, 1990). Research provides evidence that agrarian small towns can function cohesively to support the successful development of children and youth (Elder & Conger, 2000; Salamon, 2003). High levels of trust and a sense that everyone knows everyone else in these small towns makes child rearing a community responsibility (Salamon, 2003). For families and children embedded in these social networks, collective resources such as time and attention are concentrated on the socialization of youth (Elder & Conger, 2000). As a consequence, children and youth with access to supportive community structures and opportunities are more resilient in overcoming serious family traumas than those with access to fewer such resources (Elder & Conger, 2000; Furstenberg et al., 1999).

Yet for the poor, integration into small town social fabric is a challenge. Without ties to the land, rural poor families are routinely designated low status and excluded from access to community resources (Duncan, 1999; Fitchen, 1981). Rural residential patterns that cluster poor families in open-country pockets, rental apartments, or trailer parks create rural neighborhoods marked as inferior often termed “the wrong side of the tracks” by the dominant community (Fitchen, 1991). Poor rural families residing in such places, along with those having “ne’er-do-well” reputations deserved or otherwise, struggle daily with social stigmatization (Duncan, 1999; Fitchen, 1981). High rates of residential mobility, spurred by deficient housing or unstable employment, or an adverse family reputation further exacerbate poor families’ integration into a rural community (Fitchen, 1991; Ziebarth et al., 1997). The social ramifications of being structurally or perceptually “outside” of a rural community intensify the effects of poverty, and essentially narrow the life chances of rural poor children and youth by excluding them from educational and cultural experiences that might otherwise support successful development (Duncan, 1999; Fitchen, 1995; MacTavish & Salamon, 2006).

With half of the nation’s 8.9 million mobile homes sited in mobile home parks and over half of these parks in non-metropolitan settings (U.S. Census, 2003; Meeks, 1998),

the mobile home park emerged as a characteristic place of residence for low-income families and children across the rural United States. Thus, how processes of place operate to define mobile home parks as the "wrong side of the tracks" has implications for the development of the approximately five million children nationally who call a rural trailer park home. If, as in the urban ghetto, these children are denied access to social resources and opportunities potentially available in a small town based on their place of residence, they, like the children in the urban ghetto, are developmentally in danger.

## **METHODS**

### **Field Study Approach**

The study was part of a larger, national level project examining mobile home park residence that included field study sites in Illinois, New Mexico, North Carolina, and Oregon. Although this analysis focused on Oregon, field study methods were similar across sites. Because we were interested in examining social processes in place, an ethnographic approach was most appropriate (Morse, 1998). Such an approach can uniquely situate social processes within context by revealing micro-level individual, group and community processes (Burton & Jarrett, 2000). Data collection in Oregon began in the fall of 2004 and continued through the summer of 2006. The initial field study worked toward establishing a physical, demographic, and social understanding of the community and mobile home park. Individual key informant interviews with the mayor, town planner, town manager, school administrators, local clergy, mobile home park owners, and youth recreation leaders provided a context in which to place what was later learned from mobile home park residents. Participant observations at church activities, community festivals, and local sporting events were made over the course of the study. Local recreation areas, restaurants, and retail establishments were patronized as well. The weekly newspaper was subscribed to and read throughout the study. In addition to these primary contextual data, census data were drawn on objectively to assess demographic similarities or differences between the community and the park that town residents might have downplayed or magnified. Combined, these background research methods provided a detailed overview of the study community and mobile home park.

Field study then focused on documenting the day-to-day experiences of residents within local mobile home park. A randomly selected sample of 15 percent of park households was surveyed (N=37) to capture descriptive data about household demographics, residential experiences, neighborhood and community perceptions, and patterns of social engagement in the park and nearby community. Households' responses to each in-home, typically 45-minute interview, were recorded and later coded and entered into a statistical database. Survey and qualitative description thus yielded a detailed image of trailer park life in this community. Percentages reported reflect data from the survey sample. In addition, the lead researcher on the project and her family lived in the largest mobile home park for four months during the summer of 2005. Renting a unit and residing in the park provided additional data that enriched our understanding of residential life.

Finally, a small sample of twelve families with children (n= 13 aged 8-11 years) and youth (n= 7 aged 14-18 years) was recruited and followed intensely for a full nine months. A series of standard parent and child in-home interviews took approximately ten hours to complete and gathered family background and developmental histories, information about patterns of interaction in the home, neighborhood, school, and town, and plans for the future. Repeated observations of family members in the home, school, neighborhood, and community were conducted to total on average ten hours per family. Families were offered \$125 in gift cards as an incentive for participation, and in general families appreciated

the opportunity to share information about their lives. Detailed field notes were recorded following each interview, observation, and encounter. Combined, these methods produced rich, thick data as necessary for rigorous qualitative study (Denzin, 1970).

## Data Analysis

An inductive analysis approach was employed (Strauss & Corbin, 1990). Field notes were read and reread to identify themes and patterns. Such themes and patterns were then examined through a systematic process of constant comparison wherein each piece of data was compared to every other relevant piece of data. For example, park residents' accounts of economic changes in the community were compared to census data that documented demographic shifts. Likewise, town residents' descriptions of the mobile home parks were compared to park residents' descriptions as well as to actual observations in the park. In this way, we strived for verification that was grounded in the data. Working through the data in this manner, we were able to identify core concepts related to the phenomenon of social inequality in post-agrarian America as well as to discern conditional features associated with place that support the production of social inequality.

### *Study Site*

"Mountainview," Oregon, population just over 8,000, was a small town not unlike many in the Pacific Northwest Region. In this one-street town, a four-lane highway lined with shops and businesses served as Main Street. Fully two decades of persistent economic decline however, had left many shops vacant and businesses boarded up. All but one of the half dozen large timber mills that reflect the town's heritage and former dependence on a timber economy were now idle. The primarily European American (93.6 percent) population of Mountainview was less educated than the average for both Oregon and the United States (See Table 1). As timber declined, jobs that required little formal education but paid a family wage were replaced by service-sector jobs that offered dramatically lower wages and few benefits. The loss of jobs meant not only a loss of income, but the loss of a shared way of life.

**Table 1. Demographic Change in "Mountainview," Oregon**

	1980	1990	2000	U.S. 2000
<b>Population</b>	6,921	6,850	8,016	Not Applicable
<b>Median Age</b>	30.0	33.4	37.3	35.3
<b>Median Household Income</b>	\$24,691	\$24,618	\$31,030	\$41,994
<b>Median Value of Homes</b>	\$84,551	\$52,569	\$95,200	\$119,600
<b>Percent of High School or Higher</b>	59.4	61.4	71.4	80.4
<b>Percent with Bachelor's degree or higher</b>	8.1	6.7	5.6	24.4
<b>Percent Families Below the Poverty level</b>	17.4	15.5	14.0	9.2

Source U.S. Bureau of the Census 1980a; 1980b; 1990a; 1990b; 2000. All dollars have been converted to 2000 dollars.

Despite economic hard times, Mountainview remained a community that prided itself on taking care of its own, particularly its children. Statements emphasizing, “We love our kids and as a community we spend money on our kids,” were common. The community’s efforts to invest in the future were clearly evident. The schools, which functioned as the hub of community life, had undergone recent renovations funded by voter-supported bonds. Thirty-six churches along with numerous social and civic organizations were all thriving. Athletic victories and defeats were front-page news, and the school honor rolls were a regular feature in the local newspaper. Thus, Mountainview appeared to represent the type of small towns portrayed in the literature as potentially resourceful for families and developing children (Salamon, 2003).

During the recent decades of economic decline, manufactured housing emerged as a significant source of affordable housing in Mountainview. Between 1980 and 2000, mobile homes doubled in prevalence and came to comprise fully one-fifth of Mountainview’s total housing stock. Roughly two-thirds of such homes (approximately 400) were located in eight “trailer courts,” as they were termed locally, scattered along the edges of town. All eight parks were full, with vacancies reported to be rare. Despite their prevalence and seeming popularity, the mobile home parks were not wholly welcome in Mountainview. Comments such as those opening this article, heard often, revealed the social place of mobile home parks in Mountainview. A negative association with the trailer parks—one that identified these neighborhoods as the *wrong side of the tracks*—was clearly present in Mountainview.

Thus, Mountainview offered an ideal site in which to study the intersection between social inequality and mobile home park residence. We first examine the residential experience of mobile home park residents in effort to understand how this neighborhood form worked for families. We then turn to identify conditional features of place that emerged as most salient to the production of a kind of social inequality that compromised the developmental experiences of park children and youth, in particular.

## FINDINGS

### Mobile Home Park Residence

Adults in the trailer parks were quick to say the kind of stigma and name calling in the opening comments of this paper “hardly matters” to them. Most adults interviewed made it clear that mobile home park residence was not their ideal; it was *affordable* and *available*. Residents with income and education levels well below those of town residents (See Table 2) appreciated how park residence offered them access to aspects of a rural life they desired—namely proximity to kin (81.1 percent report close kin in the community) and a place they define as, “ideal for raising kids.” The opportunity for ownership these parks offered (18.9 percent were purchasing through rent-to-own deals and another 35.1 percent reported owning their homes or paying on a loan) meant that formerly transient parents (62 percent of residents had moved three or more times in the last five years) could stabilize family life for their children. One father talked about growing up very transient because he changed schools three or four times a year. He explained, “I wasn’t going to have my kids grow up like that. I wanted them to be able to grow up and go to school in the same place. This is what we could afford but it has meant that they have been able to stay in the same town their whole lives.” Other parents likewise appreciated this aspect of park life.

Yet, almost two-thirds (62.1 percent) of park residents surveyed rated their neighborhoods as *somewhat to very desirable* and almost as many (59.5 percent) said they would recommend the park to a friend; more than one-in-three found their neighborhoods *somewhat to very undesirable* and would *not* recommend their park to others. Differences in rating between parks were clear among both residents and community leaders. The park rated as best was

described as “stable” and included around 60 homes neatly angled hitch-end-out along a series of dirt streets. The largest park included over 160 spaces clustered in what residents described as three rather distinct neighborhoods—one composed of an older section, a middle area that has “some good people but older trailers,” and a back area with “newer trailers and good people.” Residents’ ratings varied by location in this park with those in the newer section emphasizing what one mother of three explained, “We got real lucky with this neighborhood. We have real good neighbors here.” The smallest and shabbiest park was rated worst by residents and community leaders alike. The two dozen aging homes in this park were described as, “melting away in the Oregon rain,” and comments such as that from a resident of another park who stated, “I wouldn’t live in [the shabbiest park] if my life depended on it!” were common and made clear the less desirable environment this park was seen to offer. Space in the better park neighborhoods was sought after but limited. About a third of park households reported moving at least once within a park or between parks in an effort to access better living conditions. Limited space precluded other families from such moves. Thus, some residents had access to what they termed as satisfactory affordable housing; others did not realize such benefit in their park neighborhood.

**Table 2. Comparative Town-Park Demographics**

	Town*	Trailer Park**	Trailer park households with children**
Median Household Income***	\$31,030	\$19,428	\$18,572
Percent High School or higher	71.8	63.8	56.3
Percent B.A. Degree or higher	5.6	5.6	0

\*Source of Town data: U.S. Census 2000. \*\*Trailer Park figures based on survey data from randomly selected park households (N=37) and trailer park households with children (n=16). \*\*\* Figures converted to 2000 dollars.

Across the parks, parents in particular worried about knowing all their neighbors in such a highly transient context. We observed numerous strategies for managing children’s exposure to people parents did not know. Concerns about safety with respect to traffic and theft associated with drug activity worried parents as well. Disappointments over the lack of safe play spaces in the parks were often voiced and added to safety concerns as children almost invariably played in the streets. These were issues most parents managed within their neighborhoods.

Adults in the Mountainview trailer parks might have been quick to say the kinds of stigmatization evidenced in the opening comments “hardly matters” to them; yet a closer examination of the residential experiences of families outside of their park neighborhood revealed that such treatment shaped daily life, particularly for children and youth. Schools that segregated park children and sports programs that excluded the poor—along with community perceptions about park neighborhoods—clearly influenced park families’ access to resources and opportunities important to healthy development.

### **Class-Segregated Schools**

Schools, as a place, provide a potential context for cross-class integration, opportunity for children to form peer friendships, and access to adults. Yet in Mountainview, cross-class integration for park families and children was limited by school districting policies. All park children except those with identified special education needs, no matter the

location of their neighborhood, were bused each day to an elementary school on the edge of town. For some, this meant traveling a distance of three miles when they were within walking distance of another local elementary. Although some parents overwhelmingly acknowledged a positive view of the school, some were not fully satisfied with this policy. One mother of three explained her reaction when she first moved into the park and learned of the policy: "I was furious when they told me that—that they were going to bus the girls three miles to [the far school] instead of letting them go to that school [she points toward the elementary school within walking distance]." She fought the policy all the way to the superintendent to allow her girls to attend [the near school]. "It made no sense," she added. Her fight was unsuccessful.

The town and school officials confirmed the success of the educational programs at [the far school] but acknowledged a social hierarchy existed related to elementary schools in town that ranked [the far school] as the least desirable. Further, free and reduced lunch rates that consistently exceeded 70 percent as compared to 50-60 percent rates at other schools revealed that district policies concentrated the community's poorer students at [the far school]. This kind of segregation isolated children and families from potentially resourceful relationships that might reach across class boundaries. Park children's friendships concentrated on peers they knew from school and the neighborhood rather than on children from other parts of town. Even youth in high school reported friendships that tended to originate in their park neighborhood or [the far school]. Thus, the segregation of children by class added to the social exclusion of park families.

### **Exclusionary Recreation Programs**

The health and social benefits of participation in sports and recreational activities are well documented. Playing on Little League teams or taking part in organized recreation programs can offer lower-income children access to middle-class mentors and peers who might enhance their development. A Boys and Girls Club in Mountainview offered an extensive array of youth sports programs as well organized summer enrichment activities, yet few park families were able to take advantage of these opportunities. Only a few (two of the sixteen) families in the survey phase indicated children participating in these activities. Over half of the families (five of the eight with younger children) in our intensive sample participated because transportation and cost were often mentioned as challenges even to their engagement. Although the \$20 annual membership fee covered access to the club's after-school program, there were additional fees of from \$30 to \$50 dollars per child per sport. An annual auction at the Boys and Girls Club garnered well over \$100,000 a year to support programs and the club reported awarding \$10,000 in scholarships the prior year. Still, we repeatedly encountered families who were unaware of these supports. When asked about the distribution of scholarships, a program director explained, the scholarships worked on a "word of mouth" basis. He added, "I work with the staff. We get to know the cases on an individual basis. There are some who abuse the program and ask for a scholarship every session." Among park families, one mother of three voiced a view often heard, "It seems like you have to have money to participate."

Staff agreed that in some sense they offered two programs—an after-school program for the low-income children and a sports program for other town children. Defending this, a staff member stated, "Some of the kids in the after-school program do participate in the sports program." She then added that in part that was because, "it takes a *responsible* parent to have a child participate in a sport. For a child to participate, the parents have to bring them to practice and games." Families who cannot manage transportation were thus defined as "less responsible" and less deserving despite possible work schedule conflicts or a lack of transportation so common among underprivileged and working-poor families.

Park families again appeared to be excluded from opportunities that might enhance the healthy development of their children.

### Adolescence Identity

During adolescence, interaction with peers, parents, teachers, and other community members becomes meaningful in the construction of a young person's identity. Who an adolescent interacts with, and the content or tone of that interaction as reflected in how a community treats youth can have important implications for this process (Elder & Conger, 2000). Teens spoke candidly about how their trailer park neighborhoods and families were characterized in the wider community and how this characterization shaped their social interactions. Bringing friends home to the park was seen by youth as a little risky. One teen living in the shabbiest park explained, "I don't have friends here. A lot of adults don't want their kids near this place because of the drugs and stuff." A teen from the same neighborhood expressed this attitude, "I wouldn't bring anyone over here. It's crazy, it's too dirty, and there are too many druggies." For these teens, identifying with the trailer park was akin to identifying with deviant behavior and the "wrong side of the tracks." Managing this association meant limiting their interaction in the neighborhood and limiting peer contact with the neighborhood. A fifteen-year-old male who lived in the shabbiest park explained, "I just stay out of the trailer park; my life's not here." Another young male explained how this strategy of avoiding contact with the park worked well enough to make him a virtual stranger in his neighborhood, "Nobody knows me and I don't know them, probably they don't know I live in the trailer court." In other contexts, such strategies have proven effective supporting healthier development, but time away from home comes with acknowledged costs to family togetherness (Furstenberg et al., 1999; MacTavish & Salamon, 2006).

Thus, adults might say name calling and stigmatization "hardly matters," but in Mountainview the stigmatization of trailer parks and trailer park residents appeared to matter. Policies and practices effectively excluded park families from—rather than integrated them into—their potentially resourceful small town. Such exclusion had implications for child and youth development as park children essentially missed out on the kinds of social resources and opportunities that might have enhanced their development. Park residence thus appeared to exacerbate the social inequality these poor and working poor families already experienced. That such treatment occurred in a small town that prided itself as being invested in supporting children and youth seems ironic. We turn now to examine the features of place that emerge as most meaningful to producing the kinds of social stigmatization and exclusion observed.

### Conditions of Place and Social Inequality

In part, the marking of the Mountainview trailer parks as "*bad*" places inhabited by "*bad*" people persisted because there were parks and residents that confirmed the stereotypical notions of deviance associated with "*trailer trash*." None of the parks even approximated the modern standards of a *manufactured home community*. There are no clubhouses, sidewalks, recreation facilities, or even in some cases paved roads. Older trailers, densely clustered along potholed or worn roads more aptly characterized many park neighborhoods in Mountainview. As we indicated, there were better parks and better parts of parks, in addition to badly maintained parks and dilapidated sections readily visible and serving to reinforce negative impressions of this housing form in the wider community. Highly publicized incidents, most often associated with the worst park neighborhoods, included a methamphetamine bust, a child abuse case that resulted in death, multiple incidents of domestic violence, and several fatal fires. All were highly

visible in the local press, and despite some cases over a decade prior, all were a clearly a part of local legend about the parks.

Several conditional features of Mountainview emerged as important to the processes of place that function for parks and park residents to produce a spoiled identity. The effects of *development patterns* that called for the town to manage parks with substandard conditions and established a spatial concentration of poor; an *ownership structure* that included absentee owners, sub-landlords and rent-to-own arrangements; and a *demographic shift* in the community that left the town pressed to meet rising need for services to low-income families all conspired to diminish the potential of this affordable housing option.

### **Development Patterns and the Stigma of Trailer Park**

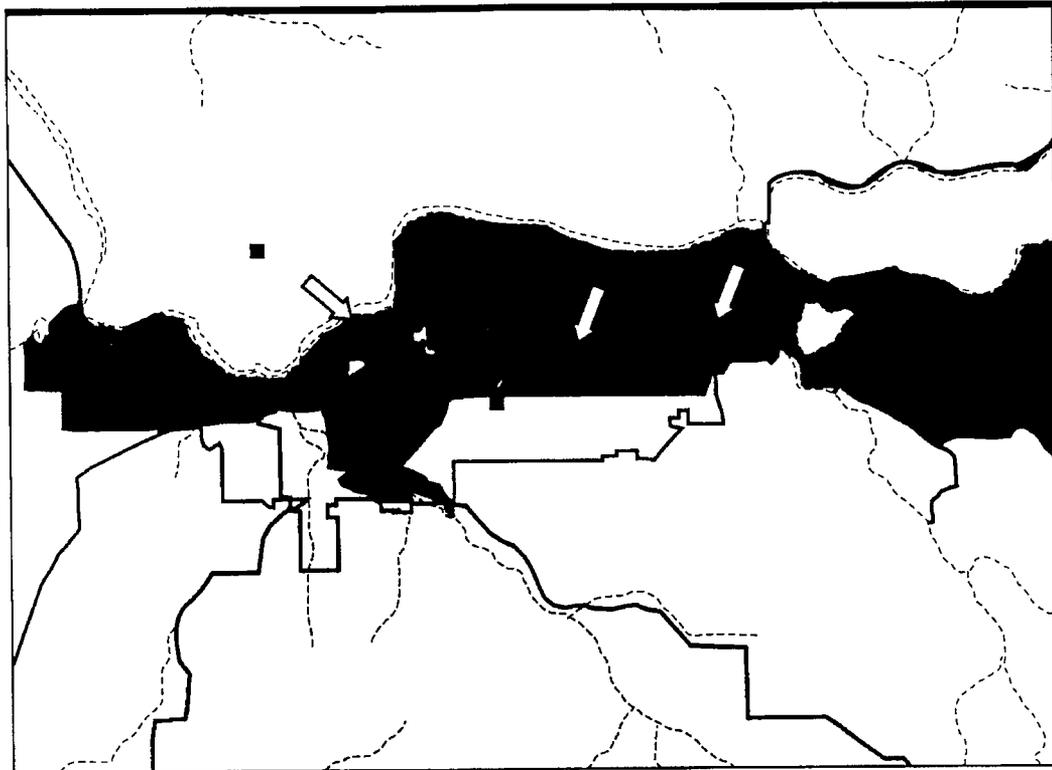
The gradual emergence of trailer parks along the edge of town, on cheap land adjacent to less desirable community features (e.g., highways, ditches, industrial activity, or railroad tracks) is a common development pattern across the rural United States (Hart et al., 2002). In Mountainview, such a pattern of development proved problematic as it produced shabby conditions in parks, relegated park residents to a ghettoized area of town, and abdicated management of code compliance in aging parks. Such conditions reinforced negative images of park life in the wider community.

The trailer parks in Mountainview first appeared in the late 1950s and early 1960s in response to a need for worker housing in the growing timber industry and a large public works project. These original parks were developed on private land in the county just outside the town limits. County zoning regulations and oversight in general in that era was lenient. These early parks were set up for temporary residence and often spaced for smaller travel trailers rather than larger, more permanent homes. Over time, the parks remained and residents settled in to live in smaller, older homes. When local well water problems forced an enlargement of the town limits, these trailer parks were included in the annexation. The town thus inherited the additional "problems" that come with these looser and now out-of-date county regulations. Older, often dilapidated homes dated to earlier park days were not up to code. Park lots, often developed for the placement of smaller travel trailers, meant overcrowded conditions. Substandard infrastructure meant persistent issues with flooding, water, and sewer systems.

Community efforts to bring the parks up to code focused on ensuring that any new placements or new park developments meet more modern code requirements. The city code enforcer acknowledged that a site visit was made each time a new trailer was placed, but bringing older homes and shabbier parks up to code, was a challenge and a drain on town resources. Uncooperative owners and managers, intent on "bucking the system," were seen as a major stumbling block. Some non-cooperative owners, a city official explained, "require the threat of a ticket to get a response." Stories of non-cooperation abounded. In one example, a park owner tried to bury the remains of a burned out trailer at the back of the park. A resident of the park reported the owner. The resident was shown on the front page of the local paper standing before the burned remains of the trailer. The lot where the owner was dumping the charred leavings was marked for development as a playground. The resident, a mother of two concerned about health risks from toxins, was reported as saying, "What kind of family wants their kids playing where there is this kind of stuff?" The owner admitted, "It was a mistake," but then added, "I had to get it [the charred debris] out of the park." The town and the Department of Environmental Quality cited the owner. In another incident, a different park owner used crumbled shag carpet to "resurface" a badly pot-holed road. Even park youth shook their heads in disbelief. In yet another example, town officials had to intervene when a park sewer system gave out and seeping sewage contaminated an area of the park. The manager put lime on the ground, but the city felt the contamination

warranted fencing the area off. Such public incidents of mismanagement brought visible attention to negligent management of some parks perpetuating negative associations with parks and park life in general.

**Figure 1. Concentration of Poverty in "Mountainview," Oregon (Approx. seven miles across)**  
**Arrows indicate approximate location of the three mobile home parks included in the study.**



Data Classes	Features
4.4% - 5.1%	Major Road
9.6% - 9.6%	Street
17.4% - 19.2%	Stream/Waterbody
23.4% - 23.5%	Stream/Waterbody
28.2% - 28.2%	School

Map created using Census 2000 Summary File 3 (SF3) - Sample Data.

Development patterns that located mobile home parks on the edge of town on inexpensive land were troublesome as well as serving to concentrate poverty in a certain section of Mountainview. All but one of the parks was located on the same side of town, across the tracks from Main Street in a low-laying section of town that locals deemed "Frog Hollow" (See Figure 1). It was an area characterized by small "authentic Oregon" homes built to house mill workers. Many of these homes deteriorated and were now either vacant or functioned as low-end rental housing. Rental apartment complexes were scattered through this section of town as well. While such placement on cheap land facilitated owner profits, the dense concentration the community's poorer residents produced what locals called the "ghetto" of Mountainview—an area adjacent to the

parks associated with frequent violence and drug activity. Park residents tried to define themselves and their neighborhood as separate from the poorer housing on adjacent streets with statements such as, "That happened there, I live here" but parks were invariably lumped together with the ghetto. Even youth related that they tried to avoid this part of town. One eighteen-year-old female explained a common reaction to this part of town, "This is a house on [street named as a ghetto]. It's on the corner, and that's as far as I would go down that street. It's a bad place."

Development patterns so common across the rural United States prove problematic in Mountainview. The resources and energy required to enforce code compliance strained an already reduced town staff. Segregation of park residents to an area defined locally as a ghetto isolated families in a section of town seen as undesirable. Combined, these factors perpetuated negative images of parks and reinforced a view of the parks within the community one city official described as, "low end, social problems—we don't want more!"

### **Ownership Structure and Social Inequality**

The ownership structure of the parks in Mountainside created issues as well. Absentee park owners unwilling to invest in park upkeep and improvements, sub-landlords who complicated managers' efforts to improve parks, and rent-to-own arrangements that absolved park owners from the maintenance of aging trailers all detracted from the quality of residential life and further stigmatized parks.

Like many rural trailer parks, those in Mountainview were developed by local families on surplus land or back fields. These early owners most often lived in the mobile home park either in a trailer or the original house. As such, they were members of the local small town community, a status that at least potentially inferred some sense of responsibility. Over time, as the original owners aged or needed to sell out, the parks changed hands. Today, owners of all three parks we studied lived out of town. Two were real estate investors and the other, the daughter-in-law of the original owner. The shabbiest park had changed hands several times in recent decades; it was currently owned by an investor who acquired it in a real estate trade for a strip mall in the next town over.

Owners were quick to identify expenses related to running the parks (e.g., taxes, garbage, electrical, water, and managerial salaries), but even thumbnail calculations revealed that all three parks turned significant profits. Still, we saw limited investment in park upkeep or improvements that might potentially improve the quality of life among residents or the public perceptions of park in the wider community. All three parks were filled with old, pre-HUD code trailers, many of which were ill maintained and unsafe. A newer section was developed in the largest park in the late 1990s and included a dozen newer, rental manufactured homes and as many lots in a two street section at the back of the park. Some upgraded homes were added to the tidiest park in the mid-1980s but those were now reaching 20 years of use when the estimated useful life for mobile homes is 22.5 years (Jewell, 2001). Although the owner of the shabbiest park reported extensive efforts to clean up what he described as conditions not unlike the city dump, he was reported as reluctant to upgrade homes even to basic safe living conditions.

An incident known locally as the "drier fire" provides an example. Town officials and social services providers had collectivity called the fire marshal several times in an effort to press this owner to upgrade the wiring in older trailers. Still, problems persisted until the death of a child ensured compliance. A faulty 220 volt plug on a drier salvaged from the park trash, combined with aged wiring in a trailer, caused a fire. Front page coverage in the local paper reported that rescue efforts were able to get the mother and two of the three children out of the home, but the youngest child, two years of age, perished in the fire. In relating the events following the fire, the park owner reported:

They sued me for \$1.7 million. Only the attorneys win in these deals. I settled for \$35,000 cash. There were 86 firemen out there. It cost me \$10,000 to bring the park up to electrical code after that. We had to repair the water and sewer lines, phone lines, it destroyed a lot. The insurance paid \$52,000 in damages, but I had to cover the losses from vacancies and repairs of all those sewer, water, and power lines.

The newspaper article revealed how this incident rocked the small town community, reinforcing an already negative image of park life.

The ownership structure of homes within the parks presented challenges to park quality as well. Contract-for-deed sales that are essentially rent-to-own agreements were evident in all three parks. Close to one-in-five households (18.9 percent or 7 of the 37) were purchasing their home through this type of arrangement. Such an arrangement essentially absolved park owners and management from upkeep on already shabby trailers. One community leader explains the ins and outs of rent-to-own sales with a focus on how these work in the shabbiest park. He stated, "What happens in that park is that the owner offers to sell the trailers on a kind of rent-to-own deal. What folks don't realize is that after they pay off the trailer, they can't afford to move it out of the park. And they can't sell it ... so he buys it back ... from them for [hand gesture indicating zero]." Although supports for maintenance and upgrading a home were available through a local social service program, the ownership structure often got in the way as either full home-ownership or a bank loan on the home was required to access program benefits. Rent-to-own sales precluded such assistance.

About half of the homes (45.9 percent) in the study parks were straight rental units. In some case, rental units included some of the newest and highest quality homes. More often they represented some of the oldest and shabbiest homes. In the largest park, we encountered a group of sub-landlords who owned and rented out older units within the park. Such a structure proved particularly problematic as they generated some of the worst residential situations for renters and neighbors alike. Management had instituted careful background screenings for new residents to determine whether families were "park material," but sub-landlords were reported as renting to "anyone," creating problems one resident described by saying, "This is the worst part of the park. It has a bad reputation. The cops are out here every other day." She placed much of the blame for the current situation on the "slumlords" who own the rentals in her area of the park. Such arrangement added to the already transient nature of park since over half (52.9 percent) of the renters lived in their home for less than three months. Although we observed how this housing form could work to stabilize once-transient families, it did not under such ownership conditions.

Ownership patterns in Mountainview thus contributed to the stigmatized identity of the park in several ways. A lack of willingness on the part of absentee owners to invest in park maintenance and upgrades resulted in highly visible, shabby homes and parks linked with numerous health and safety incidents. Rental units run by sub-landlords added to the already transient nature of parks and brought in associated problems. Rent-to-own arrangements, while offering residents who might not have other alternatives an opportunity for home-ownership, often resulted in poorly maintained homes as residents lacked the wherewithal to maintain aging trailers. Such outcomes exacerbated the already negative impressions of trailer parks in the wider community and lead one community leader to declare vehemently, "We have a variety of parks, some that are alright and some that should be burned to the ground!" Such an extreme expression reflected the collective animosity we encountered in Mountainview against the shabbiest park, in particular.

## A Demographic Shift in the Community

The demographic changes in Mountainview paralleled those in many former timber towns across the Pacific Northwest region (Hibbard & Elias, 1993). Community members described changes that “began with the spotted owl in 1989.” Referring to the town having lived through “hard times” since, one community leader asserted, “But the impacts came later. The community is just now feeling some of the impacts.” Hard times, he explains, meant that overnight a large proportion of the local men lost jobs that offered a solid income— \$25 an hour with benefits. These displaced timber workers, most of whom had little education, were left with few options. Family life was strained, as fathers were no longer able to provide for their families. “These are rough neck guys who lost their job.” He continued, “They had been earning \$25 an hour and now they had to accept government help—go to the food bank to feed their family. That was a huge change.” Residents, including many of the town’s limited stock of professionals, began to leaving town creating a demographic shift that referred to locally as the “*pooring-down of Mountainview*.” Such changes have now become an economic reality as poverty rates hovered above 17 percent for individuals while earnings essentially stagnated and housing costs almost doubled (See Table 1). In recent decades, local economic development meant expanding the road leading out of town to four lanes. Adults who used to work in town now commute to adjacent communities where, “They get a \$7-per-hour job at Wal-Mart. That’s half-time with no benefits,” explained another community leader. A social service provider confirmed the shift explaining,

Poverty is a challenge here. There aren’t a lot of opportunities in this town. It’s really hard to get on at the mill unless just about your whole family works there. When I have someone come in who needs work, there aren’t many places I can send them ... there aren’t many places to find work.

Along with the declining employment opportunities, some commented on a perceived cultural shift in the community. A social service provider explained, “What I have noticed over the years is how quickly the [poverty] mentality can happen. How someone can go from having parents who work to having an entitlement attitude.” At the same time, we heard from residents and community officials alike that there had been an influx of lower-income residents being referred to the town through county social services because their public assistance dollars would go further here than in other communities. Comparative median rents of \$530 for Mountainview as compared to \$635 affirm this (U.S. Census, 2000). The influx of newcomers was reflected in part in the 29.3 percent disability rate, well above the national rate of 19.3 percent.

These shifts came coupled with state and local funding challenges that meant diminishing services. As an official with the police department explained, “There has been a general migration of services out of Mountainview and into [county seat]. We used to have a Department of Motor Vehicles, a Department of Human Services office, a Children’s Services office, and an employment office. This migration created challenges for the population but also for us—especially as the population is growing.” Now, local officials reported, the town struggles to keep basic services like police and fire protection. The local police reported having to depend on voter issued bonds to support operational costs. Within this context there was strong local sentiment that the mobile home parks further strained an already stressed system. “Poverty is really a part of Mountainview. I’m sure that the trailer parks are a major contributor,” explains a school official. Sentiments were often heard, “We spend an inordinate amount on serving the trailer parks for police, fire, and ambulance service.” Local police and park managers

both indicated that the additional police calls to the parks were more of a density issue, often the result of a few high need individuals. For example, a park manager explained how one diabetic resident "who doesn't watch her blood sugar has the ambulance service out to the park at least three times a week." Still, perceptions that the parks are a drain on limited local resources were widely shared in the community. Such perceptions only reinforced animosity toward the parks and park residents.

As one town official talked about the biggest issues facing Mountainview, he suggested, "Affordable housing problem is significant." He echoed others' concerns that the existing affordable housing is substandard, "There is a negative stigma around use of the words *affordable housing*." He pointed to a photograph and a bookshelf behind us and stated, "I keep a picture of the [townhouse affordable housing] project. I am proud of the type of affordable housing made with quality in mind. It is possible to achieve both." Clearly, he felt this was in stark contrast to what the mobile home parks in town offered.

## DISCUSSION AND IMPLICATIONS

In Mountainview, the social and physical placement of trailer parks structures the daily experiences of park families. Although physical proximity might potentially facilitate their integration into the resourceful social fabric of place, strong class divisions between town and park derive and work in ways predicted by the literature (Duncan, 1999; Fitchen 1991) to erect barriers to such integration. Within our study population, we found families whose life circumstances, as well as their desire for affordable access to small town life, led to trailer park residence. Yet, conditional features of place produced few residential options within the parks that offered the kind of residential setting families hoped for. Issues arising from the stigmatization of their park neighborhoods as adverse places to live meant these families did not fully realize the benefits of small town life. Combined, the factors we identified exacerbated the social inequality already experienced by low-income and working-poor rural Mountainview families.

Stigma and subtle exclusion keep Mountainview park children from accessing opportunities and experiences that might enhance development. For rural youth and children, in particular, town is where they define themselves and where they are defined by the world outside of home and neighborhood (Childress, 2000). Whether children and youth define themselves as valuable or bothersome in the context of their community has important implications for their developmental outcomes (Elder & Conger, 2000). In Mountainview, park children and youth were clearly defined as bothersome. Thus, the differential treatment of trailer park residents by Mountainview residents has the capacity to shape the life chances of the over 200 children who call one of these three trailer parks home.

Further, we identified conditions of place that produced not only stigmatization but also substandard living conditions in parks. Development patterns so common across the rural United States that relegate parks to low-cost land lead to residential segregation of parks and a concentration of the town's poorest in a section that operated as the "wrong side of the tracks." Development patterns meant that regional administrative officials abandoned Mountainview as a small town to manage substandard conditions ostensibly inherited from the county. Ownership structures and a demographic shift in Mountainview in concert produced shabby park neighborhoods that tested both the managerial resources and the tolerance of the community. Although mobile home park residence as we observed does not approximate the dangers of an urban ghetto, conditions in some park neighborhoods seemed not unlike those described above in which, "*The shade trees prosper and the trailers rot.*" Clearly, residence in such a context has implications for families and children.

Our findings, thus, suggest that conditional features of rural places may function as mechanisms through which rural poor and working-poor trailer park families and social

disadvantage come together in space. Such conditions, which function to denigrate and exclude trailer park families from resources and opportunities important to their quality of life, have significant implications for policy and community development practice. Finding equitable ways to reduce the social stigmatization of parks and park residents successfully without sacrificing affordable housing would alleviate the social inequality that exacerbates the privation and lives of rural poor and working-poor rural families.

Problems associated with development patterns that abandoned Mountainview to shabby parks in mismanaged sections of town should be addressed directly. Mechanisms are available to upgrade both the infrastructure and housing stock in poorly maintained parks. Community Development Block Grant funds coupled with local dollars provide an equitable means for upgrading park infrastructure and homes in some communities (Bradley, 2001; Ward, 2005). Such strategies, however, require resident landownership. Other suggested strategies include pairing Department of Energy rebate dollars with local grants from communities and park owners to help residents leverage essentially a down payment on a new home (Jole, 2006). Such an approach would reduce monthly payments making a new unit an affordable option. Incentives offered by the local community, perhaps in the form of tax breaks, might encourage park owners to upgrade. Condemnations or the closure of the worst housing conditions, coupled with relocation compensation, is another suggested strategy (Weitz, 2004). The development of new parks or even a model manufactured home community within other areas of town would promote not only greater access to decent affordable housing, but also a better image of parks. Efforts to revitalize the local "ghetto" through home improvement mechanisms such as Habitat for Humanity would help as well. Urban models such as the use of university-community partnerships offer direction for these efforts.

Low-cost and equitable solutions to the issues caused by the ownership structure in the parks exist as well. Collaborative agreements with park owners using incentives as described above might help encourage a more willing investment in the park. Again, working with local service organizations or universities can provide needed time and energy to clean up parks and repair homes. Ready-to-rent education programs have worked in other communities to help stabilize the most transient of households (See Portland Housing Authority). Homeowner education programs likewise help to inform prospective buyers of loan options, support programs, and tax benefits that might help move more park residents into a healthier form of ownership—one that allows them to realize more return value for their investment (Bradley, 2003). Moving at least one local mobile home park toward resident ownership would support access to funding mechanisms for upgrading described above.

Addressing the attitudes that emerged from the "pooring-down of Mountainview" requires more systemic approaches. Currently the town seems overly attractive to some of the area's poorest residents. Even upgrading parks or developing new parks that promote affordable access to first-time home-ownership could help garner an influx of young, working-class families who desire a rural way of life but are challenged by rising home prices in adjacent communities. Other economic development strategies must keep in mind the need to balance the socioeconomic distribution of newcomers if the town is to avoid further bifurcation.

As trends in the rural United States increasingly see the elimination of mobile home parks through land sales and park closures, such strategies aimed at mitigating the negative aspects of park residence becomes even more relevant. If we are to preserve what is one of the leading sources of affordable rural housing, we will need to find a way to make mobile home parks work better for both families and communities.

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# Appendix G

# America's trailer parks: the residents may be poor but the owners are getting rich

It's an unusual but potentially lucrative investment: billionaire Warren Buffett is heavily invested, and his and others' success is prompting ordinary people to attend Mobile Home University, a 'boot camp' in trailer park ownership

Rupert Neate in Orlando, Florida

Sunday 3 May 2015 08.00 EDT

**T**he number one rule is stated twice, once in the classroom and once on the bus: "Don't make fun of the residents." Welcome to Mobile Home University, a three-day, \$2,000 "boot camp" that teaches people from across the US how to make a fortune by buying up trailer parks.

Trailer parks are big and profitable business - particularly after hundreds of thousands of Americans who lost their homes in the financial crisis created a huge demand for affordable housing. According to US Census figures, more than 20 million people, or 6% of the population, live in trailer parks.

It is a market that has not been lost on some of the country's richest and most high-profile investors. Sam Zell's Equity LifeStyle Properties (ELS) is the largest mobile home park owner in America, with controlling interests in nearly 140,000 parks. In 2014, ELS made \$777m in revenue, helping boost Zell's near-\$5bn fortune.

Warren Buffett, the nation's second-richest man with a \$72bn fortune, owns the biggest mobile home manufacturer in the US, Clayton Homes, and the two biggest mobile home lenders, 21st Mortgage Corporation and Vanderbilt Mortgage and Finance Company. Buffett's trailer park investments will feature heavily at his annual meeting this weekend, which will be attended by more than 40,000 shareholders in Omaha.

Such success is prompting ordinary people with little or no experience to try to follow in their footsteps.

## **'Don't make fun of the residents'**

On a bright Saturday morning, under the Floridian sun, Frank Rolfe, the multimillionaire co-founder of Mobile Home University who is the nation's 10th-biggest trailer park owner, conducts a tour of parks around Orlando, Florida. A busload of hopefuls, ranging in age from early 20s to late 70s, hangs on his every word.

As the tour approaches its first stop, Rolfe repeats a warning which earlier flashed on to a screen in a conference room of the Orlando airport Hyatt hotel: "When we are on the property, don't make fun of the residents, or say things that can get us in trouble or offend anyone. I once had a bank come to a mobile home park and say in front of my manager, 'Only a white trash idiot would live in a trailer.'"

Then comes a second, more unexpected warning: "Now, guys, I've got to tell you this park, I believe, is a sex-offender park. Everyone in here is a sex offender. I could be wrong, we're going to find out, but I think that's the deal on this one. So stay together as a herd."

He's not wrong. Signs at the entrance to Lake Shore Village, on the north-eastern outskirts of Orlando, warn: "Adults only. No Children." The park is described on the owner's business cards as "sex offender housing" and a "habitat for offenders".

On the forecourt the owner, Lori Lee, tells Rolfe's students she dedicated the park to sex offenders 20 years ago - and hasn't looked back.

"We were a family park when we first started. [But] about 20 years ago, I couldn't get on the property because a drug dealer had separated from his girlfriend in the park across the street ... and there was a long line of cars because she was undercutting her boyfriend."

Lee, 70, says she was advised that if she took in sex offenders the drug dealers would leave. "So, I started taking in sex offenders, and I have a very clean property. Sex offenders are watched by the news media, the TV, the sheriff's department, probation, the department of corrections ... so when they are in there, the drug dealers and the other people don't like to be around."

Sex offenders have been good for Lee financially, with park occupancy running at "1,000%". She rents trailer pad spots for about \$325 a month. The trailers are either owned by the tenant or rented from a third party. Many trailers are divided into three bedrooms, for which tenants are charged \$500 a month per room.

Lee claims she was once offered \$5m for Lake Shore Park, which is home to about 50 trailers.

"Last year I bought a park down the street, got rid of all the families, the drug dealers, the prostitutes, and brought in convicted felons. And then I bought the property across the way," she says. "Once you're into it and you're making money it's easy to say, 'One more, one more'."

She has her eyes on a fourth park, "but then I'm through. I'm 70 years old and I don't want to own any more".

Asked by an eager investor how regularly tenants leave her parks, Lee says: "When they die. [They] stay forever, they have no place to go."

Lee's strategy impresses Rolfe's students.

"I thought it was a brilliant idea, brilliant," says Mitch Huhem, who is looking to buy a trailer park with his wife, Deborah. "These people need a place to live, and they don't want to mess around.

"They've got to live somewhere, so you combine them in a certain place. They don't go out to hurt people. I think it's a community service, because if not they will be in your neighbourhood. Now they're all in one place, you can watch them all in one place. And they pay well and won't mess things up. I mean, why would you not? I think it's a brilliant idea."

### **'The rents do not go down'**

Rolfe, who with his business partner Dave Reynolds owns about 160 parks across the midwest, is unsure about taking in sex offenders. But he is certain Lee could make even more money if she raised the rent.

"She could definitely raise the rent," he says, as the tour group gets back on the bus. "She's got a definite niche, but she is definitely under the Orlando rent; she might be under by \$100 a month, maybe.

"Raising the rent is typically part of the day one purchase, because often the 'mom and pop' [previous, family-run owner of a park] has not raised the rent in years so it's far below market.

"[The rents] do not go down, that's one thing that's a safe bet in the trailer park world. Our rents do not go down.

"We traditionally raise our rents by an average of 10% a year or something like that, and it's pretty much true for the industry. Our world record [rent increase] went from \$125 to \$275 in one month."

Rolfe, who bought a pistol for personal security when he bought his first park, 20 years ago, says he sent a letter to every tenant at that park in Grapevine, Texas, telling them the rent was going to more than double but was still below the market rate of \$325.

"If you don't like this or you think you can do better, here's a list of all the other parks in Grapevine and a list of the owners," he said in the letter. "Go ahead, call them if you want to move. How many customers do you think we lost? Zero. Where were they going to go?"

Rolfe, who started Mobile Home University seven years ago and now runs boot camps every couple months in cities across the country, tells his students they can easily increase the rent even at parks that are already charging market rates, because there is so much demand for affordable housing and local authorities are very reluctant to grant permission for new parks.

He quotes US government statistics showing that in 2013, 39% of Americans earned less than \$20,000 - less than the government's poverty threshold income of \$20,090 for a three-person household.

"That's huge. No one believes that number - people say: 'You're crazy, this is America, everyone is rich.' [Being on an income of \$20,000 or less] means you have a budget of about \$500 a month for your housing, but the average two-bedroom apartment is \$1,109 a month. There's not a lot you can do."

Kenneth Staton, a 58-year-old, disabled tenant at a nearby (non-sex offender) trailer park, knows it.

"It's a profitable investment, but raising the rent is what hurts because people like myself, we're on a fixed income and we can only afford so much," he says, on the dirt road outside his trailer. "I'm on disability, and I go around and collect aluminium cans to see myself through a little bit."

Asked if he thinks he will see out his days in the trailer park, Staton says: "It kinda looks like it, unless I can find a house somewhere I can afford. I only get \$830 a month; \$500 goes for rent, about \$95 goes for electric. It don't leave much to live on. Luckily, I get food stamps."

### **'There's more poor people every day'**

Back at the boot camp, Rolfe, who runs his empire from the tiny town of Cedaredge, Colorado, is in full swing.

"Today there's a huge number of poor people, and there's more poor people like every day," he says. "Some of our parks get 100 calls a week from people that are looking for a mobile home to rent."

He tells his students tenants are more likely to be encouraged to put in a few more hours at Walmart or other low-paying jobs than find the \$3,000-\$5,000 it costs to move their trailer - the majority of tenants own their trailers and rent the pad space beneath - to another park.

The students are sold on the idea. Thomas Hawcett, a navy veteran from Long Island, vows not to go home until he's found a park to buy.

"The first park I'm going to look at is a 279-pad park," he says, over a "team dinner" at Orlando's Bonfish Grill. "I won't tell you where. I'll spend a week, and if I have to spend another week I'll spend another week. I brought enough money that I can write a cheque and give a good deposit if I see one."

Taylor Boyd, who already owns a trailer park but has yet to step inside a trailer, says the economics of trailer parks are "compelling".

“What’s that thing? ‘Sell to the masses and eat with the classes’,” he says, touting the inside of a dilapidated and mould-infested trailer in Overland Village, another Orlando trailer park owned by Lee. “There’s a lot more poor people than there are rich people, and they’re not making any more trailer parks.”

Is he planning to follow Rolfe’s advice and raise the rent? “If you’re a landlord, you’re going to raise the rent, but you’ve got to keep it low enough for the people to be able to afford to be there.”

A few trailers over, Chuck Newton is sitting on the steps of his trailer, shooting the breeze with some friends as Boyd and the other students excitedly explore the park and plan their burgeoning business ideas.

If the investors were to buy this park and put up his rent, Newton, who collects disability payments of \$700 a month and pays \$550 a month in rent, fears he would be forced on to the street.

“I would have to find another low-rent place to move to,” he says. “I would probably end up having to be homeless.”

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# Appendix H

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## Mobile Home Dwellers Tell of Power Play

*Landlords control utility bills, and some take advantage, residents say.*

April 13, 2001 | MATTHEW EBNET | TIMES STAFF WRITER

Nearly 100 Orange County mobile home residents on Thursday told state lawmakers their utility service and bills are at the mercy of unregulated and sometimes unscrupulous property managers.

The testimony came during a state Senate hearing held in Garden Grove as legislators consider taking action to address a flood of complaints about shoddy utility service and overcharging at mobile home parks.

In one case, Shirley Huffman of Garden Grove said she went to Oklahoma for two months and had a neighbor flip off her circuit breakers. When she returned home, she said, she still was socked with electric and gas bills totaling \$170.

Huffman paid, not knowing what else to do. "I'm helpless," Huffman said Thursday.

The problem stems from how power and natural gas are supplied in most cases. Utilities sell power and gas to the mobile home parks, leaving it to the property managers to determine how much each resident used and how much each resident owes.

The system is ripe for abuse, residents testified.

Many mobile homes are equipped with individual meters, but residents complained that some park managers rarely check them--choosing to estimate usage instead.

But property managers testified at the hearing that many of the problems are due more to complicated utility billing cycles and occasional errors, not abuse.

Allan Alt, president of Synergised Properties Inc., a Beverly Hills company that manages mobile home parks, said problems are "aberrations."

Sen. Joe Dunn (D-Santa Ana) called Thursday's hearing, in part because of the impact California's soaring energy bills could have on mobile home owners. The majority of the residents are on fixed incomes and concerned about rising rates as well as deeper problems in the mobile home industry.

Dunn and other state officials also expressed concern about the confusion mobile home owners experience when they try to file complaints or seek help.

Residents said they aren't sure where to go: the power company, the city, the county, the property manager or the California Public Utilities Commission. Each agency often refers queries elsewhere, residents testified. Even state officials acknowledge the problem.

"What we need is clarity," Kevin Coughlin, a program manager for the PUC, said at the hearing.

Dunn said he is considering filing legislation to address the complaints. Orange County has roughly 200 mobile home parks, and state officials estimate there are more than 5,000 in California.

"Somebody has got to take the bull by the horns," Dunn said.

Huffman, the Garden Grove mobile home owner, accused property managers of simply not reading the individual meters of mobile homes, often just guessing at a resident's power usage.

Others complained they've never received rebates for qualifying as low-income households or for qualifying under rebate programs for the medically needy.

Huffman's neighbor, James English, said he finally thrashed through bureaucracy to get his 15% disability discount, but he has yet to see the credit on his bill.

"I got the rebate, but I didn't. My meter is buried behind a jungle of brush, and when you get to it, it is so [corroded] you can't read it," he said. "So I think [property managers] just guess."

During the hearings, representatives of the mobile home industry acknowledged problems in the way customers are billed and treated. But they said confusion about where residents can go for help causes more problems than unethical or unregulated property management practices.

"There is a certain amount of error" built into a confusing and complicated process of different billing cycles for parks and for their residents, said Mike Cirillo, a spokesman for Star Management, a Pacifica-based mobile home property management company.

But that testimony did nothing to temper criticism from residents Thursday.

In conventional houses you have resources, such as payment extensions from the utility companies, said Mary Ann Stein, vice president of the San Jose-based California Mobilehome Resource and Action Assn. In mobile home parks, that's not an option, because utilities are part of the monthly bill, she said.

"If you don't pay, you get evicted."

# Appendix I

NEWS

# Lazy Wheels Mobile Home Park residents claim mistreatment, devaluing of homes



Lazy Wheel Mobile Park residents had a meeting regarding the treatment of management and the condition of the park. — Image Credit: Sarah Kehoe, Bothell/Kenmore Reporter

by SARAH KEHOE, Bothell Reporter Reporter  
Dec 30, 2013 at 2:00PM updated Jan 14, 2014 at 6:41PM

Brooke Mathers printed out flyers about holding a meeting for Lazy Wheels Mobile Home Park and walked to each one of her neighbors' homes to invite them.

"Many people here are suffering from the poor treatment by management and are afraid to talk about it," Mathers said. "But I'm not. The owners are sick and tired of me, but I'm not going to sit around and do nothing."

Mathers and many Lazy Wheels residents say their manager is not addressing complaints and neglecting the park.

Because of Mathers' efforts, on Dec. 19, more than 90 tenants from five mobile home communities came together at the Bothell Library Community Room. Attendees were from mobile homes around the state, including Lazy Wheels, Canyon Park, Northwest Mobile Estates, Country Club and Lago de Plato in Everett. The majority of those in attendance reside in Legislative District 1.

"I wanted to bring in not only residents from Lazy Wheels, but people from all over that felt they were being mistreated or not properly taken care of by owners of their mobile park homes," Mathers

said.

Leadership from the Dispute Resolution Program of the Washington State Attorney General's Office addressed the home owners on the laws in place governing landlords and tenants. Present at the meeting were representatives from Manufactured/Mobile Home Owners of America (MHOA), Legislative Action Team Chair Judith White, serving the Manufactured/Mobile Home Community on Legislative Issues, and Dan Young, attorney.

"When I took a personal tour of the Community of Lazy Wheels, I nearly freaked out at the egress from the park at the east end directly onto Woodinville Drive," White said. "It is together that we can make a difference in our communities for those who are facing challenging conditions in their communities such as consistent uniform practices, harassment/intimidation and landlords who are not following the Laws of the State of Washington. It is a two-way street and communication/cooperation and having a listening ear can go a long way to building a strong relationship in our communities."

A few residents at Lazy Wheels came to the Reporter to voice their concerns and troubles occurring at the park and with the park manager but expressed a desire to remain anonymous because they were concerned for their safety.

Mathers said park management "doesn't take our complaints seriously."

The Reporter contacted the manager but she declined to comment.

A friend of many residents and a coach to children at Lazy Wheels, Diana Ng, said she has seen the same issues in the park.

"Many are not aware of their basic rights," Ng said. "Not just immigrant families, fairly new to the community, also long time residents. Many Manufactured housing communities have a long history of being a place of oppression due to mismanagement, neglect and abuse. Brooke is doing everyone a favor by persevering and bringing the problems she and other residents of Lazy Wheels to the attention of the public."

Ng said Mathers and others have tried many different ways to reach out for help.

"We all have contacted the proper authorities; some who have helped and many who have not," Ng said. "Brooke and the other residents have suffered enough. Now it's time for that park to get cleaned up and for management to help unite residents, allow for community meetings and gatherings without manager interference or fear of punishment or retaliation. It's time to get things right."

One of the Lazy Wheels' owners, Linda Garcia, stood by her park manager, saying she is passionate about taking care of her residents.

"[She] is extremely diligent," Garcia said. "The trailer park is her life and she loves to help people. She bends over backwards to help anyone who needs it and we feel so lucky to have her."

Mathers stated that rents are not consistent within the park and some residents are charged more than others for the same accommodations.

Garcia said the discrepancy in some peoples' rent is due to a recent state law raising rent each month and rent fees are decided upon how long a resident has been living in the park.

"Many of our homes are filled with Hispanic families and we are happy to have them," she said. "I feel many residents that are upset are upset because the park is simply different from what it use to be. Back in the 60's there were senior citizens mainly living here and now there are families, so the atmosphere is a bit different and it is not the way they remember it."

Mathers believes the owners have put the park up for sale and have not informed their residents of this decision.

"I searched for 'mobile home parks for sale' with our zip code and state, it showed Lazy Wheels for sale on that page," Mathers said. "I told tenants in our park about what I'd seen and two days later the Lazy Wheels listing was gone."

Garcia said the park is not for sale.

"That is a rumor," she said. "We enjoy our community of residents and work hard every day to keep our park looking great."

A few tenants complained about the state of vacant trailer homes in the park at the meeting.

"Owners are not following the same rules and regulations tenants follow that owners put in the lease, owners are leaving evicted trailers filthy. Lots are in need of attention causing health and safety issues and are not up to regulation standards," Mathers said. "Our potential mobile home buyers see these dirty or evicted derelict trailers and then are not interested in our homes, so owners are blocking trailer sales of tenants here. I believe the owners are devaluing this park on purpose to create lower taxes."

Mathers said she and other residents have contacted the city of Bothell about the situation in Lazy Wheels park many times.

"We are aware of situations going on in Lazy Wheels and I have already contacted the property manager to work on the issue of the vacant homes," said Debbie Blessington, code enforcement officer at the city of Bothell. "These things take time to fix. I know if you are living somewhere and a home next to you is ugly, it can't be fixed fast enough, but it is more complex than just telling them to make it look better. Conditions have to be pretty extreme for the government to step in, with a specific condition causing a safety hazard or nuisance in a broader sense."

Blessington mentioned Mathers' other complaints about management is a legal issue, not a city issue.

"Most of the issues mentioned by Brooke are civil issues that are a legal matter," Blessington said.

Blessington said there are many code violations occurring at the park.

"Most have to do with the fact that residents have done construction and additions to their homes without permits," she said. "Lazy Wheels is one of three mobile parks in the city we are hoping to address in a more global way instead of unit by unit."

Garcia said she has been looking into fixing up the vacant homes in the park.

"It takes time," she said. "We have to decide if we will demolish a vacant home or bring someone in to fix problems with the home."

Garcia stated she has not received any maintenance requests from any residents in a while.

"When we do receive any written complaints, we drop anything to solve it," she said. "Although I must point out that each resident is responsible for the care of their own homes, while we are responsible for the upkeep of the surrounding area of the property."

Mathers plans on having more meetings in the future.

"We must get together and talk about what's going on," she said. "The only support we have is each other."

**Find this article at:**

<http://www.bothell-reporter.com/news/238066511.html>

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# Appendix J

INDIGENOUS GUATEMALAN AND MEXICAN  
WORKERS IN WASHINGTON STATE: LIVING  
CONDITIONS AND LEGAL ISSUES

Matthew GEYMAN  
Andrea L. SCHMITT  
Sarah LEYRER  
Daniel G. FORD  
Rebecca SMITH  
Matt ADAMS\*

*ABSTRACT. Indigenous workers are migrating to Washington State in increasing numbers. These workers often speak little or no Spanish or English, and instead speak pre-Hispanic languages such as Mixteco (spoken in southern Mexico) and Mam (spoken in Guatemala). Mam and Mixteco workers migrate to the U.S. due to a number of social, political and economic pressures in their countries. Once they are in the U.S., Mixteco workers generally perform difficult and poorly paid work in agriculture, while Mam workers work long days harvesting floral greens, often for less than the minimum wage. Indigenous workers face numerous legal needs, often involving immigration, wage payment, workers' compensation, housing, health care and language access, but addressing these needs is complicated by language barriers, cultural differences, and a general distrust of outsiders fostered by the history of violence and oppression in the workers' home countries. Case studies of litigation on behalf of Mam and Mixteco workers illustrate these dynamics. To address the legal needs of indigenous workers in Washington State, lawyers' associations in the home countries and in the U.S. should establish a transnational project to develop pro bono services for workers; law schools should train lawyers and students, in conjunction with community groups, to enforce workers' rights; and advocates should develop a pilot partnership project to match medical services in the U.S. with corresponding services in Mexico or Guatemala to cooperate in providing treatment and compensation to deserving workers under the Washington State workers' compensation system.*

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\* Matthew Geyman, attorney, Phillips Law Group, PLLC; Andrea L. Schmitt, attorney, Columbia Legal Services; Sarah Leyrer, attorney, Columbia Legal Services; Daniel G. Ford, attorney, Columbia Legal Services; Rebecca Smith, attorney, National Employment Law Project; Matt Adams, attorney, Northwest Immigrant Rights Project. Organizations listed for identification purposes only.

KEY WORDS: *Indigenous, migration, immigration, Mixteco, Mam, Washington State, transnational labor, floral greens, language barriers, pro bono legal work.*

RESUMEN. *Los trabajadores indígenas están migrando al estado de Washington en un número cada vez mayor. Estos trabajadores a menudo hablan poco o nada de español o inglés, y en su lugar hablan lenguas prehispánicas, como el mixteco (hablado en el sur de México) y mam (se habla en Guatemala). Los trabajadores mixtecos y mam emigran a los Estados Unidos debido a una serie de presiones sociales, políticas y económicas en sus países. Una vez que están en los Estados Unidos, los trabajadores mixtecos en general realizan un trabajo difícil y mal pagado en la agricultura, mientras que los mam trabajan largas jornadas en la cosecha de las verduras florales, a menudo por menos del salario mínimo. Los trabajadores indígenas se enfrentan a numerosas necesidades legales, a menudo relacionadas con la inmigración, el pago de salarios, la compensación de trabajadores, la vivienda, la salud y el acceso al idioma, pero ello se complica debido a las barreras del idioma, diferencias culturales, y una desconfianza generalizada de los extranjeros promovida por la historia de violencia y opresión en los países de origen de estos trabajadores. Los estudios de casos de litigio en nombre de los trabajadores mam y mixtecos ilustran esta dinámica. Para atender las necesidades legales de los trabajadores indígenas en el estado de Washington, las asociaciones de abogados en los países de origen y en los Estados Unidos deberían establecer un proyecto transnacional para desarrollar servicios pro bono para los trabajadores; las escuelas de derecho deben capacitar a los abogados y estudiantes, en colaboración con grupos comunitarios, para hacer cumplir los derechos, y los defensores deben desarrollar un proyecto piloto de colaboración para que los servicios médicos en los Estados Unidos coincidan con los servicios correspondientes en México o Guatemala; cooperar en el suministro de tratamiento y la compensación a los trabajadores que la merecen en el estado de Washington.*

PALABRAS CLAVE: *Indígena, migración, inmigración, mixteco, mam, estado de Washington, labor transnacional, follajes para arreglos florales, barreras del idioma, asesoría jurídica pro bono.*

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## I. INTRODUCTION

Indigenous Mexicans and Guatemalans facing poverty, displacement, and violent conflict are moving to the western United States in greatly increasing numbers. While indigenous workers historically headed to California and Oregon before Washington State, thousands of Washington residents now speak pre-Hispanic languages such as *Mixteco*, *Mam*, and *Purépecha*, often with limited ability to communicate in Spanish. Since the 1990s, many legal, medical, and social services providers have noted that Spanish- and English-language communication no longer suffices to meet the needs of indigenous people employed in many of the lowest-paying and most difficult jobs in these states.

One major indigenous group in Washington State is the *Mixteco* people from the Mexican state of Oaxaca,<sup>1</sup> who often do agricultural work throughout the state. Another is the *Mam* community from the Guatemalan department of Huehuetenango, typically employed in the floral greens industry on the Olympic Peninsula of western Washington.<sup>2</sup> Members of both indigenous groups are largely unaware of community resources and are often wary of soliciting services or asserting their legal rights. In addition to language barriers, members of these communities face considerable cultural hurdles that keep them socially and politically isolated in the United States, as they have been in their home countries. Some of these hurdles include linguistic and geographic barriers, distrust of authorities and outsiders, and systems for conveying and enforcing rights and responsibilities that vary significantly from corresponding systems in the U.S.

Non-profit groups in Washington State, including Columbia Legal Services (hereinafter "Columbia")<sup>3</sup> and Sea Mar Community Health Centers,<sup>4</sup> collaborate to address the pressing needs of major indigenous groups in Washington State. In order to overcome cultural barriers and support the community, Columbia has hired a *Mixteco*-speaking community worker to develop a program to educate indigenous *promotores*, or community advocates,

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<sup>1</sup> While *Mixtecos* also come from other Mexican states, including Puebla and Guerrero, immigrants from Oaxaca are most commonly found in Washington.

<sup>2</sup> Washington State is divided by the Cascade Mountain range that runs North-South. Western Washington contains the state's capitol city and major urban centers, including Seattle, as well as agricultural and forest land. Eastern Washington is primarily agricultural and has a lower concentration of urban centers.

<sup>3</sup> Columbia Legal Services is a nonprofit law firm that protects and defends the legal and human rights of low-income people. Columbia represents people and organizations in Washington State with critical legal needs who have no other legal assistance available to them. Columbia is engaged in efforts to conduct outreach, community education, and advocacy within communities of indigenous immigrants in Washington.

<sup>4</sup> Sea Mar Community Health Center is a community-based organization committed to providing quality, comprehensive health and human services to diverse communities, specializing in service to Latinos.

regarding community resources, legal rights, and basic health issues, as well as supplement Columbia's advocacy program with grass roots input on legal needs and priorities. The long-term goal of this program is to develop *Mixteco* leaders who can educate and advocate for their community. Columbia is also working to develop a similar project with *Mam*-speaking floral greens harvesters in western Washington.

Legal workers, medical providers, and scholars in Washington State are also developing ideas for collaborations with foreign universities, attorneys, the Federal Ombudsman, and human rights organizations to serve the transnational indigenous communities. Potential projects include community education in Mexico and Guatemala on U.S. legal rights and resources as well as academic exchanges and *pro bono* legal representation for indigenous communities in the U.S., Mexico, and Guatemala. Such concerted and multi-faceted efforts are needed to assist those who are among members of the poorest, most exploited, and most culturally isolated people in Washington State.

We begin this article by introducing two major groups of indigenous workers currently in Washington: the *Mam* and the *Mixteco*. Next we highlight some barriers faced by these workers due to language, culture, and other differences between Washington State and their home communities. We then briefly examine legal problems commonly faced by Washington-based workers and summarize their rights under applicable laws. With that backdrop, we present several case studies from the *Mam* and *Mixteco* communities in Washington to help illustrate how these barriers and legal problems function in practice and how they have been addressed. Finally, we discuss lessons we have learned to date and present three proposals for improving the working and living conditions of these workers through transnational collaboration and exchange.

## II. *MAM* WORKERS IN WASHINGTON STATE

### 1. *Mam* Origin and Current Populations

The transnational indigenous worker population in Washington includes about 1,500 Guatemalans of Maya descent, approximately 1,200 of whom are *Mam* workers and their families currently living in Shelton, Bremerton, Belfair, and Forks on the Olympic Peninsula in western Washington.<sup>5</sup>

Most *Mam* workers who migrated to Washington State are from Todos Santos Cuchumatán. Todos Santos is a rural community of about five thousand people located in the department of Huehuetenango in western Guate-

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<sup>5</sup> Columbia estimated the populations of various indigenous groups in Washington through an informal survey of community members. Columbia Legal Services, *Survey of Indigenous Immigrant Workers in Washington* (2010), available at <http://www.columbialegal.org/files/IndigenousSurvey5.pdf>.

mala. It sits in a mountain valley at 8,200 feet above sea level in a remote area not far from the Mexican border.<sup>6</sup>

The predominant language spoken in Todos Santos is *Mam*. Most men speak Spanish as a second language, but many women, especially older women, speak little or no Spanish. Todos Santos is one of the few Maya towns remaining in Guatemala where men, women, and children continue to wear traditional clothing. Many homes in Todos Santos are made of adobe bricks with thatch roofs, dirt floors and fire pits for cooking and heating. Indoor plumbing is relatively rare, especially in the surrounding villages. Most people subsist on corn, beans, and potatoes, sometimes supplemented with meat from chickens, turkeys, or pigs. The hillsides are planted with corn, potatoes, beans, and a few cash crops: chiefly broccoli and some coffee at the lower elevations.

Todos Santos is still very similar to the village described by the American anthropologist Maud Oakes sixty years ago in her book, *The Two Crosses of Todos Santos*.<sup>7</sup> For many people there, especially the young, Todos Santos is experiencing rapid and substantial change. Banks and money-wiring services are now common; many people carry cell phones; popular music is commonly heard on the street; and several internet cafés have opened their doors. There are also numerous large, multi-story houses recently built with remittances sent from the United States, some of which have American flags painted on the sides to acknowledge the source of financing.<sup>8</sup> According to the Bank of Guatemala, these remittances, or “*migra* dollars,” are now the country’s biggest source of income, exceeding every leading export crop including coffee, bananas, and sugar.<sup>9</sup>

## 2. *When, Why, and How Mam Workers Migrated from Todos Santos*

The current migration of *Mam* workers to Washington State began in the mid-1990s, about the same time as the signing of the Peace Accords that ended the Guatemalan civil war. The migration of *Mam* workers may have been facilitated by the earlier flow into the U.S. of indigenous Guatemalan

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<sup>6</sup> Most other indigenous workers from Guatemala are *Kanjobal* immigrants living in Belfair, Washington. *Id.* The *Kanjobal* workers migrated to Washington from an even more remote area of northern Huehuetenango to the north and east of Todos Santos. Manuela Camus, *Introducción: Huehuetenango, Mesoamérica y la ‘Frontera Sur,’ COMUNIDADES EN MOVIMIENTO: LA MIGRACIÓN EN EL NORTE DE HUEHETENANGO* 22-24 (Manuela Camus ed., 2007).

<sup>7</sup> MAUD OAKES, *THE TWO CROSSES OF TODOS SANTOS*, 29-36 (1951).

<sup>8</sup> These observations are based on visits to Todos Santos in March 2005 and June 2010. Recent changes in Todos Santos are also discussed in Jennifer Burrell, *Migration and the Transnationalization of Fiesta Customs in Todos Santos Cuchumatán, Guatemala*, 32 *LATIN AMERICAN PERSPECTIVES* (2005).

<sup>9</sup> Matthew J. Taylor et al., *Land, Ethnic and Gender Change: Transnational Migration and its Effects on Guatemalan Lives and Landscapes*, 37 *GEOFORUM* 42 (2006).

war refugees seeking asylum, including *Mam* from Todos Santos, who fled in the 1980s and early 1990s.<sup>10</sup> Since then, the *Mam* community in Washington has grown steadily, as news of opportunities in Washington and remittances have reached Todos Santos.

Although for hundreds of years the town was relatively self-sufficient, it has recently become less so. In the past, people from Todos Santos did seasonal work picking coffee and bananas on the coastal plantations in southern Guatemala, but always returned home to Todos Santos for the remaining part of the year. Nowadays, supplemental income from a few months of seasonal work on the coast no longer provides sufficient income for most families. Although the population continues to grow, the amount of productive land has remained fixed. As a result, more and more *Todosanteros* feel forced to migrate to the United States to support themselves and their families. Almost everyone in Todos Santos has at least one family member living in the U.S. According to one estimate, almost a third of the population of Todos Santos now resides in the United States.<sup>11</sup>

In most cases, *Mam* workers reach the U.S. in groups using hired guides, or *coyotes*, who escort them to the U.S. border with Mexico, and sometimes cross with them into the United States. The trip through Mexico has always been dangerous and costly, and in recent years has become even more so.<sup>12</sup> Workers usually borrow money to pay for the trip from relatives or money lenders at home. These debts may take years of work in Washington to pay off.<sup>13</sup> In the past, this migration was often temporary, but the heightened risk and cost of the trip have led an increasing number of *Mam* immigrants to settle in Washington for the long term. Intensified border enforcement since the terrorist attacks of September 11, 2001 has contributed to a reduction in temporary or "circular" migration and has further encouraged long-term settlement.

At one time, *Mam* workers who reached Washington State were almost all young males, many of whom had fathered children in Guatemala before leaving.<sup>14</sup> Women effectively head these households and raise their children in Todos Santos without their fathers.<sup>15</sup> Recent census data shows that one-

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<sup>10</sup> Taylor, *supra* note 9, at 44; see also Olivia Carrescia, *TODOS SANTOS: THE SURVIVORS* (First Run/Icarus Films, 1989).

<sup>11</sup> Burrell, *supra* note 8, at 16.

<sup>12</sup> Central Americans traveling through Mexico face extortion, sexual abuse, kidnapping, and murder by organized crime groups such as the *Zetas*, often with the knowing participation or acquiescence of Mexican authorities. MAUREEN MEYER, *A DANGEROUS JOURNEY THROUGH MEXICO: HUMAN RIGHTS VIOLATIONS AGAINST MIGRANTS IN TRANSIT*, THE WASHINGTON OFFICE ON LATIN AMERICA 1-5 (Dec. 2010), available at [http://www.wola.org/publications/a\\_dangerous\\_journey\\_through\\_mexico\\_human\\_rights\\_violations\\_against\\_migrants\\_in\\_transit](http://www.wola.org/publications/a_dangerous_journey_through_mexico_human_rights_violations_against_migrants_in_transit).

<sup>13</sup> *Id.*

<sup>14</sup> KURT SPREYER, *TALES FROM THE UNDERSTORY: LABOR, RESOURCE CONTROL, AND IDENTITY IN WESTERN WASHINGTON'S FLORAL GREENERY INDUSTRY* 137-38 (2004).

<sup>15</sup> Burrell, *supra* note 8, at 18.

third of Todos Santos households are now headed by females; in most cases, the men in these households have migrated to the United States.<sup>16</sup> A growing number of *Mam* women have also recently arrived, either alone or accompanied by males and, sometimes even with small children. In addition, there are now a significant number of U.S.-citizen children who have been born in Washington to *Mam* parents.<sup>17</sup> *Mam* workers were first drawn to Washington State by the opportunity to make money harvesting salal and other floral greenery, known as “brush” or *brocha*, which grows in the forests of Washington. The *Mam* workers are employed by floral greenery companies (called “brush sheds”) to gather forest brush which in turn is packaged and sold to florists all over the world. The attractive glossy green leaves and stems of the harvested greens provide structure to flower bouquets, and their durability makes them ideal for shipping. In the Pacific Northwest alone, harvesting forest greens is a \$150 million annual industry.<sup>18</sup>

Almost all *Mam* workers who harvest brush are male.<sup>19</sup> The few women employed generally work alongside their husbands or extended family.<sup>20</sup> *Mam* women generally describe brush harvesting as a job of “last resort” because of the hardships of hiking over difficult terrain, often in extreme weather, carrying heavy brush bundles and working to keep up with teams of men.<sup>21</sup> Most *Mam* women work in the home caring for children, in restaurants, as wreath-makers, or in the brush sheds cleaning, packing and sorting the floral greenery in preparation for sale.<sup>22</sup>

The majority of *Mam* workers lack transportation to commute to where they harvest the brush. An organizer, or *raitero*, often transports them for a fee (usually a share of gas money plus a small percentage of each worker’s daily pay). In other cases, a group of workers with access to a van commute together, each paying a share of the gas, without the need for a *raitero*. Although workers occasionally enter and harvest on land without the land owner’s permission, they usually obtain permits that allow them to harvest brush on specific land for a specific period of time. *Mam* workers sometimes obtain brush harvesting permits directly from either the U.S. Forest Service or pri-

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<sup>16</sup> Burrell, *supra* note 8, at 30.

<sup>17</sup> Some of these families are tri-lingual, with parents who speak fluent *Mam* and some Spanish, as well as school-age children who speak some *Mam*, some Spanish, and fluent English.

<sup>18</sup> Lesley Hoare, *The Changing Work Force in Pacific Northwest Forests: Salal Harvesters*, NORTHWEST FOREST WORKER SAFETY REVIEW 7 (2007).

<sup>19</sup> KATHRYN A. LYNCH & REBECCA J. MCLAIN, ACCESS, LABOR, AND WILD FLORAL GREENS MANAGEMENT IN WESTERN WASHINGTON’S FORESTS, U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE, PACIFIC NORTHWEST RESEARCH STATION GENERAL TECHNICAL REPORT PNW-GTR-585 46 (2003).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Spreyer, *supra* note 14, at 138; Lynch, et al., *supra* note 19, at 46.

vate landowners; sometimes they acquire them from the brush sheds who, in turn, obtain them from the land owners.

Brush picking work is both arduous and risky,<sup>23</sup> requiring long days in the forests hiking over difficult terrain, often in wet and cold weather, while carrying heavy bundles of brush along with tools needed to cut it.<sup>24</sup> Experienced workers can gather up to 300 pounds of salal during a day of work, which they must then carry out of the forest. Workers may perform this labor for ten or eleven months out of the year. To maximize wages, they often work six or seven days per week, leaving before dawn and returning to the brush sheds at the end of each day to sell the product. In many if not most cases, they earn less than the Washington State minimum wage of \$8.55 per hour.<sup>25</sup> Because the work is difficult and the pay low, brush pickers occupy the bottom rung of the economic ladder. Like other transnational indigenous groups, they often live well below the federally recognized poverty level.

### III. MIXTECO WORKERS IN WASHINGTON STATE

#### 1. Mixteco Origin and Current Populations

Another group of indigenous workers that migrated *en masse* to Washington State is the *Mixtecos*. Most *Mixteco* workers in Washington come from the state of Oaxaca, one of the poorest areas in Mexico. The region is home to almost 500,000 *Mixtecos*, who comprise one of the largest indigenous populations in the nation.<sup>26</sup> *Mixteco* workers typically come from small, rural com-

<sup>23</sup> In September, 2010, a brush picker working on the Olympic Peninsula was shot and killed by a hunter. *Hunter Arrested in Fatal Shooting Near Shelton*, SEATTLE TIMES, Oct. 1, 2010, available at [http://seattletimes.nwsource.com/html/localnews/2013048385\\_apwabrushpickerkilled.html](http://seattletimes.nwsource.com/html/localnews/2013048385_apwabrushpickerkilled.html).

<sup>24</sup> WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES, HARVESTING WASHINGTON'S BRUSH: MONITORING COMPLIANCE WITH LABOR LAWS IN THE FLORAL GREENS INDUSTRY 5-6 (2005).

<sup>25</sup> Report from Stan Owings, MS, CDMS, Owings and Associates, to Katherine L. Mason, Casey Law Firm (Feb. 16, 2005), available at <http://www.columbialegal.org/files/OwingsRe-Ramirez.pdf>. (Board certified vocational expert found in 2004 that brush pickers in western Washington earned an average of \$55 per day for eight to nine hours of work, averaging \$6.11 to 6.88 per hour). Washington's minimum wage is tied to the consumer price index, and it can change annually. WASH. REV. CODE § 49.46.020. The 2012 minimum wage is \$9.04. Washington State Department of Labor & Industries, *History of Washington Minimum Wage*, available at <http://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/History/default.asp>. WASH. REV. CODE stands for Revised Code of Washington, which contains all Washington State statutes — laws passed by the legislature and approved by the governor or passed directly by the people.

<sup>26</sup> Gaspar Rivera-Salgado, *Mixtec Activism in Oaxaca/California*, 42(9) AMERICAN BEHAVIORAL SCIENTIST 1446 (June/July 1999).

munities governed by customary laws from the colonial era known as *usos y costumbres*.<sup>27</sup> Many of their villages can be reached only after miles of travel over dirt roads, some of which are impassable in the rainy season.<sup>28</sup>

Prior to the Spanish conquest, *Mixtecos* thrived across a large portion of southern Mexico called the *Mixteca*.<sup>29</sup> The *Mixteca* includes parts of the present-day states of Oaxaca, Guerrero, and Puebla.<sup>30</sup> The *Mixteco* civilization established trade routes between *Mixteco* villages in the highlands, lowlands, and along the coast of the *Mixteca* region, where extreme variation in geography and temperature produces microclimates and a wide range of crops and wild game.<sup>31</sup> Although *Mixtecos* across the *Mixteca* have many linguistic and cultural commonalities, they tend to identify themselves by their hometowns because land disputes are common among *Mixteco* villages.<sup>32</sup>

*Mixtecos* in Washington State come from various Mexican towns and speak many variants of the *Mixteco* language, including the most common dialects *Mixteco Alto* (High *Mixteco*) and *Mixteco Bajo* (Low *Mixteco*), names attributed to the altitude of towns where they are spoken.<sup>33</sup> *Mixteco Alto* is mostly used in the mountains of Oaxaca and Guerrero, and *Mixteco Bajo* primarily in the lowlands of Oaxaca. Dialects, however, vary significantly. The *Mixteco Alto* of one town is often different from the *Mixteco Alto* of a town just a few miles away.<sup>34</sup> In attempting to categorize the *Mixteco*-speaking population, Columbia Legal Services has designated three broad categories to represent the distinct variants spoken by *Mixteco* workers in the State of Washington: *Mixteco Alto*, *Mixteco Bajo*, and *Mixteco* from Guerrero.<sup>35</sup> Approximately 5,500 *Mixtecos* live

<sup>27</sup> Leah K. VanWey, et al., *Community Organization, Migration, and Remittances in Oaxaca*, 40(1) LATIN AMERICAN RESEARCH REVIEW 86 (2005).

<sup>28</sup> MINES, RICHARD, ET AL., CALIFORNIA'S INDIGENOUS FARMWORKERS: FINAL REPORT OF THE INDIGENOUS FARMWORKER STUDY TO THE CALIFORNIA ENDOWMENT 22-26 (Jan. 2010), available at [http://www.indigenousfarmworkers.org/IFS%20Full%20Report%20\\_Jan2010.pdf](http://www.indigenousfarmworkers.org/IFS%20Full%20Report%20_Jan2010.pdf) (describing nine representative indigenous communities in the state of Oaxaca, including five *Mixteco*-speaking communities).

<sup>29</sup> Alejandra Leal, *La identidad mixteca en la migración al norte: el caso del Frente Indígena Oaxaqueño Binacional*, 2 AMÉRIQUE LATINE HISTOIRE ET MÉMOIRE (2001), available at <http://alhim.revues.org/index610.html>.

<sup>30</sup> *Id.*

<sup>31</sup> John Monaghan, *Mixtec History, Culture, and Religion* in ARCHAEOLOGY OF ANCIENT MEXICO AND CENTRAL AMERICA: AN ENCYCLOPEDIA 476-77 (2001).

<sup>32</sup> Carol Nagengast & Michael Kearney, *Mixtec Ethnicity: Social Identity, Political Consciousness and Political Activism*, 25 LATIN AMERICAN RESEARCH REVIEW 61-91, see especially 72 (1990).

<sup>33</sup> Monaghan, *supra* note 32, at 476-477.

<sup>34</sup> Summer Institute of Linguistics in Mexico, *Mixtecan Family*, available at <http://www.sil.org/mexico/mixteca/00i-mixteca.htm>.

<sup>35</sup> The categories "*Mixteco Alto*" and "*Mixteco Bajo*" refer to speakers who originate in Oaxaca. *Mixteco* from Guerrero, at least that we have encountered in Washington, is a form of *Mixteco Alto* that is mostly understandable to *Mixteco Alto* speakers who hail from Oaxaca. *Mixtecos* from Guerrero who are in Washington come from the region of Chemaltepec.

in Washington.<sup>36</sup> The great majority, approximately 3,500, speak *Mixteco Alto*. Of those remaining, most speak *Mixteco Bajo*, with about 100 *Mixteco* speakers from Guerrero.<sup>37</sup>

Traditionally, *Mixteco* writing was a logographic system in which pictures and symbols represented complete words and ideas.<sup>38</sup> Although a modern system of *Mixteco* writing has been recognized by the Mexican Ministry of Public Education, the numerous variants of the language make it impractical; as a result, few *Mixtecos* learn how to write.<sup>39</sup>

Due to extreme poverty and shortcomings in educational systems, indigenous Mexicans are more likely to quit school early and less likely to be literate than their non-indigenous counterparts.<sup>40</sup> Most *Mixtecos* living in Washington State have only completed a few years of formal schooling in Mexico; many, in fact, are functionally illiterate. Most speak little or no Spanish and no English.

*Mixteco* communities are present in many areas of the state, mostly in agricultural regions.<sup>41</sup> Some communities, including the town of Winchester, Washington, contain as few as fifteen *Mixteco* individuals—one or two families.<sup>42</sup> Others, such as the community in the Mt. Vernon-Burlington area, contain approximately 2,000 *Mixtecos*.<sup>43</sup>

## 2. *When, Why and How Mixteco Workers Migrated to Washington State*

Economic pressures have caused many *Mixtecos* to migrate north. Soil erosion, declining crop yields, water shortages, increased competition from U.S. corn producers, and deterioration of the traditional barter economy have forced *Mixteco* workers to migrate in order to survive.<sup>44</sup> Surveys show that 18

<sup>36</sup> Columbia Legal Services Survey, *supra* note 5.

<sup>37</sup> *Id.*

<sup>38</sup> ELIZABETH BOONE & WALTER D. MIGNOLO, *WRITING WITHOUT WORDS: ALTERNATIVE LITERACIES IN MESOAMERICA AND THE ANDES* 102 (1994).

<sup>39</sup> See, e.g., Eduardo Stanley, *La casa de la lengua de lluvia. Esfuerzos por lograr que el idioma mixteco pueda escribirse* (July 18, 2003), available at <http://www.laprensa-sandiego.org/archieve/july18-03/lengua.htm>.

<sup>40</sup> Daniel Cortés Vargas et al., *La educación indígena en México: inconsistencias y retos*, Observatorio Ciudadano de la Educación, available at [http://www.observatorio.org/comunicados/EducDebate15\\_EducacionIndigena.html](http://www.observatorio.org/comunicados/EducDebate15_EducacionIndigena.html) (noting that indigenous students are often poorer, more likely to have health problems, and more likely to attend schools with serious lack of infrastructure than their non-indigenous counterparts. They are also often unable to learn due to language barriers with Spanish-speaking teachers. As a result, illiteracy among Mexican indigenous adults is 31.6%, compared to 6.7% among non-indigenous adults).

<sup>41</sup> Columbia Legal Services Survey, *supra* note 5.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> MINES, *supra* note 28, at 13; see also Eric Schlosser, *In the Strawberry Fields*, THE ATLANTIC (Nov. 1995).

percent of the Mexican adult population (as a whole) receives remittances from workers in the U.S.; the rate for *Mixteco* workers is at least that high if not higher.<sup>45</sup>

In a survey of 38 *Mixtecos* living in Washington State, every individual interviewed reported leaving Mexico due to poverty or lack of work. Unsurprisingly, nearly all interviewees said they came to Washington for work opportunities. Some mentioned that they were also motivated because they had family members already living in Washington. All those surveyed arrived in Washington between 1979 and 2010, with most having done so in the last decade. All but one reported that people from their hometown were already in Washington before they immigrated. None of those we interviewed obtained permission to enter the U.S., and the majority walked across the U.S.-Mexico border.<sup>46</sup>

Many of the interviewees did not travel directly to Washington State, having first worked in other states such as California and Arizona after entering the U.S. In several established *Mixteco* communities including Walla Walla and Othello, immigrants travelled directly to those cities to join family members.<sup>47</sup>

A California study found that most indigenous Mexicans in the U.S. (56%) are men; among indigenous communities in Mexico, most are women (58%).<sup>48</sup> The same study found that 93% of indigenous Mexican men and 83% of indigenous Mexican women in the U.S. worked a month or longer in agriculture.<sup>49</sup> Women seemed to earn less and were generally treated worse.<sup>50</sup> Over half the women and a quarter of the men earned below the minimum wage.<sup>51</sup>

### 3. *Working and Living Conditions of Mixteco Workers in Washington State*

*Mixtecos* living in central and eastern Washington commonly work in the tree fruit industry, which includes cherries, pears, peaches, and apples. For approximately nine months of the year, during the different tree cycle and growth stages, there is substantial work to be performed. When the trees need care, or when it is time to harvest the fruit, there is only a short window of time to do a significant amount of work. This means that when work is available, the hours are long, the work is strenuous, and workers push themselves to make as much money as they can. Workers must build up savings to

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<sup>45</sup> Leah K. VanWey, et al., *Community Organization, Migration, and Remittances in Oaxaca*, 40 *LATIN AMERICAN RESEARCH REVIEW* 84 (2005).

<sup>46</sup> Columbia Legal Services Survey, *supra* note 5.

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

<sup>48</sup> MINES, *supra* note 28, at 33.

<sup>49</sup> *Id.* at 38.

<sup>50</sup> *Id.* at 61.

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

sustain their families through the slow winter months when few *Mixtecos* can find work.

Orchard owners have discovered that the best way to get workers to perform quickly is to pay them on a per piece basis, *e.g.*, for each tree pruned or each box of apples picked. Paying piece-rate discourages workers from taking breaks, and allows them to earn more if they can work quickly. The workers move as quickly and efficiently as possible, running up and down ladders in all weather conditions, often while carrying sharp tools or heavy loads of fruit.

For this reason, orchard work is dangerous. Workers are frequently injured by falls from ladders. Fruit on the ground, especially apples, causes falls and ankle injuries. Repetitive stress injuries are also common, as workers repeat the same motions thousands of times a day, which can damage tissue in hands, arms, and joints, causing work to become painful or impossible over time. Another hidden danger for *Mixteco* orchard workers is exposure to pesticides. Most tree fruit is grown with pesticides, and workers must wear protective clothing and handle their clothing carefully when they arrive home to avoid exposing their families to chemicals. While a large exposure to pesticides often causes immediate, dramatic results such as vomiting, skin sensitivity, or eye and throat irritation, low-level exposure over time may also harm workers and their families. *Mixtecos* working in orchards bring pesticide residue home with them on their clothes, bodies, and in their cars. One study linked pesticide exposure to a higher risk of developmental problems and delays in children.<sup>52</sup>

Aside from stress and danger, the agricultural work available to *Mixtecos* is unstable and competitive. An orchard may need many workers for a week, but for the next month have no available work. After a job ends, the indigenous workers in central Washington may drive up to 100 miles to find orchards that are hiring. Employers can take their pick of the eager, available labor and often hire young men before women and older workers. If a worker does find a job, he or she must work hard and avoid displeasing supervisors. Sometimes the bosses use fear tactics to influence workers' behavior, even preventing them from reporting illegal activity. Most are naturally reluctant to speak out against mistreatment for fear of losing their jobs and being blacklisted by local farms.

#### IV. BARRIERS ENCOUNTERED BY INDIGENOUS WORKERS

Several significant barriers prevent indigenous immigrants from successfully utilizing community services and obtaining access to justice, including linguistic and cultural isolation, and historic oppression by majority groups.

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<sup>52</sup> V. A. Rauh et al., *Impact of Prenatal Chlorpyrifos Exposure on Neurodevelopment in the First 3 Years of Life Among Inner-City Children*, 118 PEDIATRICS 1845-59 (2006).

### 1. *Language Barriers*

While there has been no comprehensive study of language proficiency among indigenous immigrants in Washington, our work indicates that a vast majority of indigenous immigrants living in Washington State do not speak Spanish as a native language; even among those who can speak some Spanish, many do not read or write Spanish.<sup>53</sup> English proficiency among the indigenous populations is extremely low.

In our work with indigenous people in Washington State, we have documented the presence of at least eight Mexican and Guatemalan indigenous languages.<sup>54</sup> Many of these languages contain sub-groups and localized variants that are mutually unintelligible or difficult to understand for speakers of the same languages.<sup>55</sup> Based on our work with indigenous communities and other community organizations, we estimate that there are fewer than a dozen skilled indigenous-language interpreters in Washington State, and differences in dialect increase the difficulty of finding competent interpreters.

Because many indigenous-language speakers have not obtained the fluency necessary to communicate effectively about complex issues in Spanish, and because professional indigenous-language interpreter services are not readily available, many indigenous people find themselves unable to express or resolve problems in critical areas such as workplace rights, housing, and health care.

There may also be language barriers within the families of these indigenous workers. The United States-born children of indigenous immigrants speak English as a native language, but may communicate with their parents primarily in Spanish—a second language for both the children and their parents—rather than in the parents' native indigenous tongue. The children's lack of fluency in their parents' native indigenous language can complicate efforts by outreach workers to communicate with indigenous workers through their English-speaking children.<sup>56</sup>

### 2. *Cultural Differences*

Many transnational indigenous migrants to Washington State come from native cultures which rely on unwritten customary laws and conventions rather than written statutes and contracts.<sup>57</sup> This fact, along with low levels of

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<sup>53</sup> MINES, *supra* note 28, at 4.

<sup>54</sup> These languages include *Amuzgo*, *Kanjobal*, *Mam*, *Mixteco*, *Nahuatl*, *P'urépecha*, *Tiqui*, and *Zapoteco*.

<sup>55</sup> Monaghan, *supra* note 31, at 476-477; MINES, *supra* note 28, at 21.

<sup>56</sup> *Id.* at 43.

<sup>57</sup> *Id.* at 45; JOHN M. WATANABE, *MAYA SAINTS & SOULS IN A CHANGING WORLD* 106-25 (1992).

literacy in Spanish, may make it difficult for indigenous immigrants to understand the importance of written agreements and documents.

These indigenous cultures also perceive disease, health, and healing in a vastly different way than the mainstream United States medical establishment.<sup>58</sup> As discussed below, these differences can significantly affect indigenous patients' access to effective medical care.

### 3. *History of Genocide, Violence, and Oppression*

As is true of indigenous peoples throughout the Americas, Mexican and Guatemalan indigenous peoples have experienced hundreds of years of oppression, discrimination and exploitation at the hands of majority groups. Countless people have been expelled from their lands<sup>59</sup> and have been the targets of brutal violence.<sup>60</sup> In many cases, governments have actively tried to eliminate indigenous languages and cultures.<sup>61</sup> The history of violence and oppression is particularly extreme in the case of indigenous Guatemalans, including the *Mam* community in Todos Santos, who suffered the consequences of 36-years of civil war, arguably the worst and bloodiest conflict in recent Latin American history.<sup>62</sup> During this extended period, 200,000 people were killed or disappeared; 150,000 became refugees; and 1.5 million were internally displaced, the majority of indigenous Guatemalans caught in the middle or targeted by the Guatemalan military.<sup>63</sup> In 1999, the United Nations Commission for Historical Clarification concluded that violence by the Guatemalan government against indigenous groups in the 1980s constituted genocide.<sup>64</sup>

<sup>58</sup> MINES, *supra* note 28, at 83-85.

<sup>59</sup> *Id.* at 10-11; Christopher H. Lutz & W. George Lovell, *Survivors on the Move: Maya Migration in Time and Space*, in THE MAYA DIASPORA 13-34 (2000); Alejandra Leal, *La Identidad Mixteca en la Migración al Norte: el Caso del Frente Indígena Oaxaqueño Binacional*, 2 AMÉRIQUE LATINE HISTORIE ET MÉMOIRE (2001), available at <http://alhim.revues.org/index610.html#text>.

<sup>60</sup> LUTZ & LOVELL, *supra* note 59, at 33-34; see also Catherine L. Hanlon & W. George Lovell, *Flight, Exile, Repatriation and Return: Guatemalan Refugee Scenarios, 1981-1998*, in THE MAYA DIASPORA, *supra* note 59, at 35 para. 6-8; Rufino Domínguez, Binational Ctr. for the Dev. of Oaxacan Indigenous Cmities., *Las Graves Violaciones a los Derechos Humanos de los Migrantes y Nuestras Familias* (2010), available at <http://centrobinacional.org/2010/11/las-graves-violaciones-a-los-derechos-humanos-de-los-migrantes-y-nuestras-familias/>.

<sup>61</sup> MINES, *supra* note 28, at 11; LUTZ & LOVELL, *supra* note 59, at 23-25.

<sup>62</sup> See, e.g., BEATRIZ MANZ, PARADISE IN ASHES: A GUATEMALAN JOURNEY OF COURAGE, TERROR, AND HOPE 91-182, 2004; DAVID STOLL, BETWEEN TWO ARMIES 60-164 (1993).

<sup>63</sup> Taylor; *supra* note 9, at 44; see also MANZ, *supra* note 62, at 91-182; STOLL, *supra* note 62, at 60-164.

<sup>64</sup> COMISIÓN DE LA ONU PARA EL ESCLARECIMIENTO HISTÓRICO [UNITED NATIONS COMMISSION FOR HISTORICAL CLARIFICATION], GUATEMALA, MEMORIA DEL SILENCIO 39-41 (1999), cited in MANZ, *supra* note 62, at 224-225.

Indigenous people in Mexico have faced racial discrimination by the government and non-indigenous peoples since the arrival of the Europeans.<sup>65</sup> Currently, this population suffers deprivation of public services and educational opportunities.<sup>66</sup> The education system, for example, fails to take into account indigenous peoples' unique cultures and languages.<sup>67</sup>

As explained above, both Mexican and Guatemalan indigenous peoples have been subjected to severe discrimination in their home countries.<sup>68</sup> Unsurprisingly, indigenous immigrants do not escape discrimination when they leave Mexico or Guatemala. Instead, Spanish-speaking *mestizos*, or non-indigenous Mexicans and Guatemalans, often perpetuate the discrimination against these workers in the United States, in addition to discrimination by the mainstream U.S. population.<sup>69</sup> A Washington State study describes the ethnic hierarchy with white and Asian-Americans at the top, followed by Latino U.S. citizens, undocumented Latinos, and finally indigenous people at the bottom.<sup>70</sup>

In the economic sphere, indigenous immigrants work in ethnically stratified labor markets where they occupy the least desirable levels.<sup>71</sup> Accustomed to poor living and working conditions in Mexico, *Mixtecos* may be seen as ideal candidates for U.S. farm labor contractors because they can be housed in substandard conditions, given difficult work, and be paid low wages.<sup>72</sup> This history of discrimination and violence profoundly affects indigenous immigrants' interactions with members of the Washington communities where they settle. As the authors of California's recent report on indigenous farmworkers put it, "[t]heir experience has taught them not to trust outsiders."<sup>73</sup> Distrust of outsiders and fear of governmental authorities may be even greater in the

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<sup>65</sup> SUHAS CHAKMA & MARIANNE JENSEN, THE INT'L WORK GROUP FOR INDIGENOUS AFFAIRS & ASIAN INDIGENOUS & TRIBAL PEOPLES NETWORK, RACISM AGAINST INDIGENOUS PEOPLES, 280 (2001).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 282; MINES *supra* note 28, at 2.

<sup>68</sup> MINES, *supra* note 28, at 11; LUTZ & LOVELL, *supra* note 60, at 13-34; CAROL A. SMITH, ED., GUATEMALAN INDIANS AND THE STATE 1540 TO 1988 258-85 (1990).

<sup>69</sup> Our clients tell of *mestizo* foremen who order them not to speak indigenous languages at work and *mestizo* children who taunt Guatemalan indigenous children at school for being "Indian." Oregon and California indigenous farmworkers report discrimination on the basis of language in work and health care settings. Stephanie Farquhar et al., *Promoting the Occupational Health of Indigenous Farmworkers*, 9 JOURNAL OF IMMIGRANT MINORITY HEALTH, 9 (2007); MINES, *supra* note 28, at 63, 75; Seth M. Holms, *An Ethnographic Study of the Social Context of Migrant Health in the United States*, 3 PLOS MEDICINE 1776 (2006).

<sup>70</sup> Farquhar, *supra* note 69.

<sup>71</sup> JONATHAN FOX & GASPART RIVERA-SALGADO, INDÍGENAS MEXICANOS MIGRANTES EN LOS ESTADOS UNIDOS 12 (2004).

<sup>72</sup> MINES, *supra* note 28, at 55; FELIPE H. LÓPEZ & DAVID RUNSTEN, EL TRABAJO DE LOS MIXTECOS Y LOS ZAPOTECOS EN CALIFORNIA 288-290 (2004).

<sup>73</sup> MINES, *supra* note 28, at 4.

case of the *Mam* immigrants as a result of the horrific governmental violence they and their families suffered during Guatemala's long civil conflict.<sup>74</sup> Any increased level of fear and distrust is hard to discern, however, because it is masked by the universal fear of governmental authority and outsiders that all undocumented immigrants share as a result of their unauthorized immigration status. All of them —both *Mam* and *Mixteco* alike— fear interaction with individuals outside their small communities who may bring their unauthorized status to the attention of U.S. immigration authorities. As a result, legal professionals, social service providers, and government officials must work especially persistently to gain indigenous immigrants' trust before effective communication can take place.

Immigrant indigenous people's distrust of Washington's systems is further exacerbated by the fact that their communities as a whole are relative newcomers to the state, and there is little community knowledge of what customs prevail and what services are available. The majority of indigenous immigrants have been in Washington for fifteen years or fewer.<sup>75</sup> On the whole, these immigrants have not had time to develop connections to the larger communities, living instead in culturally and linguistically isolated groups. Due to their lack of integration and limited economic opportunities, very few of their members have attained educational levels that allow them to join the ranks of social service providers, which would facilitate understanding between indigenous communities and mainstream society.

## V. LEGAL ISSUES AFFECTING INDIGENOUS WORKERS

The cultural and linguistic barriers faced by these indigenous immigrants have a profound effect on their legal situation, especially regarding immigration status, work, housing, health care, and language access.

### 1. *Immigration Status*

Because most indigenous workers living in Washington State have arrived recently, adults with authorized immigration status are rare. A major overhaul of U.S. immigration laws in 1996 drastically reduced the available avenues for unauthorized immigrants who perform manual labor to obtain legal status in the United States.<sup>76</sup> Previously, unauthorized workers had an opportunity to apply to an immigration judge ("IJ") for legal status called "suspension

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<sup>74</sup> Burrell, *supra* note 8, at 14.

<sup>75</sup> As indicated by Columbia Legal Services' survey of a small sample of Washington indigenous immigrants. Columbia Legal Services Survey, *supra* note 5.

<sup>76</sup> On September 30, 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 IIRIRA, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

of deportation" if they had resided in the U.S. for at least seven years, did not have a disqualifying criminal record, and could demonstrate that their removal (commonly known as "deportation") would cause "extreme hardship" to themselves or qualifying family members.<sup>77</sup> In 1996, however, this form of relief was eliminated and replaced with a much more restrictive "cancellation of removal," which requires ten years of continuous residence, no disqualifying criminal record, and the most onerous requirement: proof that their removal would cause "exceptional and extremely unusual hardship" to a United States citizen ("citizen") or lawful permanent resident ("permanent resident") spouse, parent, or child.<sup>78</sup> An IJ has no power to consider discretionary or humanitarian grants of relief for migrant workers who have resided in the U.S. for less than ten years or who do not have qualifying relatives (a spouse, child or parent who is either a citizen or permanent resident).

In addition to these limited exceptions, the 1996 law eliminated individuals ability to adjust their status through a U.S.-citizen or permanent-resident petitioner if the immigrant entered the U.S. without authorization.<sup>79</sup> Immigrants who enter the U.S. unlawfully and subsequently marry U.S. citizens are still forced to return to their home country for a consular interview.<sup>80</sup> In addition, they often face a ten-year bar to returning to the U.S. as a result of their prior unlawful presence.<sup>81</sup> One exception is for survivors of domestic violence, who may apply for immigration documents from within the U.S. if the abuser is a spouse or parent with citizen or permanent resident status.<sup>82</sup>

The 1996 law also made it more difficult for individuals facing persecution in their home country to obtain relief. Most importantly, the law now requires applicants for political asylum to submit their applications within one year of arrival to the U.S., or within one year of changed circumstances in their home countries that materially affect eligibility for asylum.<sup>83</sup> Political asylum continues to require that applicants demonstrate that they face a "well-founded fear of persecution" on account of race, religion, nationality, political opinion, or membership in a particular social group.<sup>84</sup> Given the U.S. State Department's reports that conditions generally have been improving in Central America since the wars of the late 1980s and early 1990s, most

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<sup>77</sup> 8 U.S.C. § 1254 (1995). U.S.C. stands for United States Code, which contains all United States federal statutes, passed by Congress and approved by the President.

<sup>78</sup> 8 U.S.C. § 1229b(b)(1).

<sup>79</sup> 8 U.S.C. § 1255.

<sup>80</sup> *Id.*

<sup>81</sup> 8 U.S.C. § 1182(a)(9)(B). A waiver is available in certain situations, but the applicant must usually wait outside the country between three to 14 months to see if the discretionary waiver application is approved. 8 U.S.C. § 1182(a)(9)(B)(v).

<sup>82</sup> 8 U.S.C. § 1154(a). This benefit is also available for an elderly parent who is abused by her or his adult citizen son or daughter. 8 U.S.C. § 1154(a)(1)(A)(vii).

<sup>83</sup> 8 U.S.C. § 1158(a)(2)(B), (D).

<sup>84</sup> 8 U.S.C. § 1101(a)(42).

applicants will have difficulty in demonstrating the well-founded fear of persecution necessary for asylum.

Despite these largely restrictive changes, some positive developments now provide certain migrant workers an opportunity to obtain legal status. For instance, Congress enacted a special visa (the "U" visa) for immigrants who are victims of certain crimes, including domestic violence, most violent crimes, and involuntary servitude and peonage, of particular importance as migrant workers are often exploited by employers seeking to avoid payment of wages.<sup>85</sup> In order to qualify, the victim must demonstrate that she or he cooperated with law enforcement in the investigation or prosecution of the crime.<sup>86</sup> In addition, Congress enacted the "T" visa for victims of human trafficking. This visa also requires victims to cooperate with law enforcement in the investigation or prosecution of the crime.<sup>87</sup>

Migrants who are apprehended by immigration authorities and placed in removal proceedings face major obstacles to securing relief. First, many individuals are detained throughout the removal process. This process usually lasts at least a few months if the person seeks to obtain substantive relief.<sup>88</sup> Some are eligible to apply for release from detention in exchange for a bond, but the minimum bond is \$1,500 and it is not uncommon for detainees to be required to post \$10,000 and \$20,000 bonds.<sup>89</sup> Those detained often face especially difficult choices when their spouses or children rely on them for financial and emotional support. In addition, unlike in the U.S. criminal justice system, individuals in removal proceedings have no right to a government-paid lawyer.<sup>90</sup> Unless the person is fortunate enough to receive *pro bono* representation or has the resources to retain a private attorney, she or he is forced to face the process alone.

Finally, those who are ordered removed from the country face great peril if they attempt to re-enter. Any person who is ordered removed and unlawfully reenters the country is subject to criminal prosecution that often results in prison sentences ranging from two to twenty years.<sup>91</sup>

Fear of the authorities pervades most unauthorized immigrants' decision-making in other areas as well. They are reluctant to complain about workplace abuses and injuries or to assert their rights to safe housing for fear of drawing attention to themselves. While civil courts, most Washington State agencies, and even many federal agencies do not participate in immigration enforcement, most indigenous immigrants do not understand the complex

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<sup>85</sup> 8 U.S.C. § 1101(a)(15)(U)(iii).

<sup>86</sup> 8 U.S.C. § 1101(a)(15)(U)(i)(III). There is no requirement that law enforcement obtain a conviction against the perpetrator.

<sup>87</sup> 8 U.S.C. § 1101(a)(15)(T).

<sup>88</sup> 8 U.S.C. § 1226.

<sup>89</sup> 8 U.S.C. § 1226(a)(2)(A).

<sup>90</sup> 8 U.S.C. § 1229a(b)(4)(A).

<sup>91</sup> 8 U.S.C. § 1326.

relationships between governmental entities, and are justifiably afraid of the severe consequences of immigration enforcement.

## 2. Wage-and-Hour Issues

A frequent legal complaint among indigenous immigrants is their employers' failure to pay wages owed.<sup>92</sup> Under Washington State law, the vast majority of employees have the right to earn a minimum wage per hour.<sup>93</sup> In 2012, the minimum wage in Washington is \$9.04 per hour.<sup>94</sup> Most employees also have the right to overtime pay.<sup>95</sup> Washington law offers other protections for workers, including the right to meal and rest breaks,<sup>96</sup> and the requirement that employers pay on time<sup>97</sup> and with pay records that document required information such as wages earned and hours worked.<sup>98</sup> Federal law also provides specific protections for agricultural workers, including the right to enforce wage rates promised by employers and recruiters.<sup>99</sup>

These laws protect employees regardless of their immigration status.<sup>100</sup> However, a 2002 United States Supreme Court decision denying compensation for lost wages to unauthorized workers who file unfair labor practice claims<sup>101</sup> has caused employers to renew arguments that unauthorized work-

<sup>92</sup> In a 2008 California survey of indigenous farmworkers, 27% of the legal complaints voiced by participants were for non-payment or underpayment of wages. MINES, *supra* note 28, at 102. For more general information on the vast scope of the problem of failure to pay wages in the United States, see ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES* (2009), available at [http://nelp.3cdn.net/1797b93dd1ccdf9e7d\\_sdm6bc50n.pdf](http://nelp.3cdn.net/1797b93dd1ccdf9e7d_sdm6bc50n.pdf).

<sup>93</sup> WASH. REV. CODE §§ 49.46.020; 49.46.010(4). The federal Fair Labor Standards Act also guarantees a minimum wage, 29 U.S.C. § 206(a), but that minimum wage is currently \$7.25 per hour, 29 U.S.C. § 206(a)(1)(C).

<sup>94</sup> See *History of Washington Minimum Wage*, *supra* note 24.

<sup>95</sup> WASH. REV. CODE § 49.46.130(2).

<sup>96</sup> WASH. ADMIN. CODE §§ 296-126-092, 296-131-020. WASH. ADMIN. CODE stands for Washington Administrative Code. It contains Washington State's regulations, implemented by state agencies under authority of statutes.

<sup>97</sup> WASH. ADMIN. CODE §§ 296-126-023, 296-128-035, 296-131-010.

<sup>98</sup> WASH. ADMIN. CODE § 296-126-040.

<sup>99</sup> 29 U.S.C. §§ 1822(c), & 1832(c) (the Migrant and Seasonal Agricultural Worker Protection Act or "AWPA"). These promises or "working arrangements" need not be in writing to be enforceable. *Colon v. Casco*, 716 F. Supp. 688, 693-94 (D. Mass. 1989).

<sup>100</sup> Statement of Gary Moore, Director of Washington State Department of Labor & Industries (May 1, 2002), available at <http://www.columbialegal.org/files/MooreReHoffman.pdf>; *In re Reyes*, 814 F.2d 168, 170 (5th Cir. 1987) (holding that AWPA applies to all workers irrespective of immigration status), *cert. denied*, 487 U.S. 1235 (1988); *Galaviz-Zamora v. Brady Farms, Inc.*, 230 F.R.D. 499, 501-02 (W.D. Mich. 2005) (holding that immigration status was not relevant where class sought damages for work performed under AWPA and the Fair Labor Standards Act).

<sup>101</sup> *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137, 146-47 (2002).

ers are not entitled to certain forms of compensation.<sup>102</sup> As a result, employers sometimes succeed in inquiring into plaintiffs' immigration status in the course of lawsuits.

Two large coverage gaps in wage-and-hour protections also affect many indigenous workers. First, agricultural workers are largely exempt from the right to collect overtime pay.<sup>103</sup> Second, workers who are not "employees" of the people who pay them, but are instead "independent contractors" are not afforded any of the rights described above.<sup>104</sup>

### 3. *Workers' Compensation*

Washington workers, including agricultural workers, who are injured at work generally have the right to industrial insurance or "workers' compensation,"<sup>105</sup> a program administered by the Washington State Department of Labor & Industries (hereinafter "the Department"). For workers injured on the job, this insurance program pays for necessary medical treatment, a portion of wages lost while the worker recovers, and benefits in cases of permanent disability or death.<sup>106</sup> Compensation is provided regardless of immigration sta-

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<sup>102</sup> See *Rivera v. NIBCO*, 364 F.3d 1057, 1065 (9th Cir. 2004). At the same time, the Inter-American Court of Human Rights has said, in the context of a discussion of non-discrimination and the rights of migrant workers with unauthorized status, that "the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment." Juridical Condition and Rights of the Undocumented Migrants, Inter-Am. C.H.R. Advisory Opinion, Report No. 18/03, OEA/Ser.A., doc. 18 (2003).

<sup>103</sup> WASH. REV. CODE § 49.46.130(2)(g). The federal Fair Labor Standards Act requires overtime for workers who engage in packing agricultural products, provided that the packing facility is not on a farmer's farm or that the farmer processes products from other farms. See 29 U.S.C. §§ 203(f), 213(b)(12); *Mitchell v. Huntsville Wholesale Nurseries, Inc.*, 267 F.2d 286, 290 (5th Cir. 1959).

<sup>104</sup> The distinction between employees and independent contractors is poorly defined in Washington law, and the legal analysis is very fact-specific. See definitions of "employee" and "employer" under WASH. REV. CODE § 49.46.010 (Minimum Wage Act); WASH. REV. CODE § 49.12.005 (Industrial Welfare Act); WASH. REV. CODE § 51.07.070 (Industrial Insurance ("workers' compensation")); and WASH. REV. CODE § 49.17.020 (Washington Industrial Safety and Health Act). There is no definition of "independent contractor" in Washington statutory law. However, examples cited by courts as "independent contractors" include brush pickers (workers who gather floral greenery in the forest). *Cascade Floral Products, Inc.*, No. 01-2-00877-7, slip op. (Superior Ct. of Washington State for Mason County, April 25, 2003) available at <http://www.columbialegal.org/files/MasonCyBrushRuling.pdf>. See also discussion of *Mam* workers' employment status, Section VI.1, *infra*.

<sup>105</sup> Title 51 WASH. REV. CODE.

<sup>106</sup> Chapter 51.36 WASH. REV. CODE; WASH. REV. CODE §§ 51.32.090, 51.32.060, 51.32.067. Other benefits such as vocational counseling may also be available. WASH. REV. CODE §§ 52.32.095-.0991. To receive benefits, injured workers generally must apply within one year

tus.<sup>107</sup> However the Department may deny benefits on the grounds that the injured person is an "independent contractor" and not an "employee" of any particular business, among other reasons.<sup>108</sup> As discussed below in the *Mam* case study, this is a particular problem for the *Mam* community, whose work in "brush picking" is often considered "independent contractor" work.

A worker can appeal a decision of the Department by filing an appeal within 60 days of the decision.<sup>109</sup> However, due to their restricted educational opportunities and attendant limited literacy, indigenous workers often have difficulty with appeals and other parts of the claims process.

It is unlawful to discharge or otherwise discriminate against any employee for filing a claim for compensation or exercising any other rights under the workers' compensation law.<sup>110</sup> It is also unlawful for an employer to discourage a worker from making a claim for compensation.<sup>111</sup> Indigenous workers are nevertheless especially vulnerable to retaliatory behavior because linguistic and cultural barriers often make them unaware of their rights.

#### 4. Housing Issues

Most indigenous transnational migrants must rent low-cost shelter when they arrive in the United States. Most people who rent housing are covered by Washington State's Residential Landlord Tenant Act (hereinafter "RLTA").<sup>112</sup> The RLTA outlines in detail a landlord's duties to a tenant; including duties to keep the premises structurally sound, weather tight, and in compliance with health and safety codes; and to supply and maintain heat, water, hot water, electrical, and plumbing systems.<sup>113</sup> The RLTA also specifies when and how a tenant can terminate tenancy<sup>114</sup> and when a landlord must refund a tenant's deposit.<sup>115</sup> However, these provisions usually require written notice or other documents,<sup>116</sup> and indigenous renters often have difficulty deciphering and complying with these requirements.

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of injury or within two years of the discovery of an occupational disease WASH. REV. CODE § 51.28.050; WASH. REV. CODE § 51.28.055. The worker's medical provider is required to facilitate the worker's claim for compensation. WASH. REV. CODE § 51.28.020.

<sup>107</sup> WASH. REV. CODE § 51.32.010.

<sup>108</sup> See WASH. REV. CODE §§ 51.08.180, 51.08.195.

<sup>109</sup> WASH. REV. CODE § 51.52.060.

<sup>110</sup> WASH. REV. CODE § 51.48.025.

<sup>111</sup> WASH. REV. CODE § 51.28.010.

<sup>112</sup> See WASH. REV. CODE § 59.18.040. Seasonal agricultural workers who live in housing in conjunction with their agricultural employment are excluded under WASH. REV. CODE § 59.18.040(6).

<sup>113</sup> WASH. REV. CODE § 59.18.060.

<sup>114</sup> See, e.g., WASH. REV. CODE §§ 59.18.200 and .090.

<sup>115</sup> WASH. REV. CODE § 59.18.280.

<sup>116</sup> See, e.g., WASH. REV. CODE § 59.18.070 (tenant must deliver written notice to landlord

Agricultural workers who receive seasonal housing as part of their employment are not afforded the remedies of the RLTA, but their living conditions are prescribed by federal and state standards for construction, water supply, sewage disposal, bathing facilities, cooking facilities, etc.<sup>117</sup> Federal law also makes any violation of Federal and State farmworker housing standards a violation of the Federal Migrant and Seasonal Agricultural Worker Protection Act, the principal federal law protecting farmworkers.<sup>118</sup>

Both State and Federal law forbid discrimination in the sale or rental of housing based on race, color, and national origin, among other similar protections.<sup>119</sup> While landlords cannot lawfully refuse to rent to indigenous families, they often require social security numbers, ostensibly as a means of verifying creditworthiness.<sup>120</sup> Because most indigenous immigrants in Washington State are unauthorized immigrants and thus lack social security numbers, this requirement is a substantial barrier to obtaining housing.

When indigenous immigrants decide to stay in Washington, many wish to purchase a home. For most agricultural workers, the only financially viable option is a used manufactured home in a manufactured home park.<sup>121</sup> These

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before exercising remedies for defective conditions on the premises); WASH. REV. CODE § 59.19.200 (written notice of 20 days required to terminate month-to-month tenancy); WASH. REV. CODE § 59.18.260 (written lease agreement required for landlord to collect deposit).

<sup>117</sup> See WASH. ADMIN. CODE §§ 246-358-001 to 175; WASH. ADMIN. CODE §§ 246-361-001 to 165; 29 C.F.R. § 500.321(a)(1); 29 C.F.R. § 190.142. C.F.R. stands for Code of Federal Regulations. It contains the regulations implemented by federal agencies under authority of federal statutes.

<sup>118</sup> 29 U.S.C. 1823(b)(1). This provision applies not only to employers and recruiters, but to any person who controls housing for migrant workers. *Howard v. Malcolm*, 629 F.Supp. 952, 954 (E.D.N.C. 1986). However, workers are often reluctant to complain about housing conditions for fear of workplace retaliation or fear that government agencies will close the housing altogether to enforce the standards.

<sup>119</sup> See WASH. REV. CODE § 49.60.030; 42 U.S.C. § 3604.

<sup>120</sup> Though the authors are aware of no such claims to date, a policy of requiring social security numbers may constitute unlawful discrimination under the federal Fair Housing Act ("FHA") because it creates a disparate impact on minority groups. See 42 U.S.C. § 3604 (discrimination based on race or national origin in housing prohibited); 42 U.S.C. § 3604 (most private landlords covered by the FHA); *Oti Kaga, Inc. v. South Dakota Housing Development Authority*, 342 F.3d 871, 883 (8th Cir. 2003) (stating that a facially neutral policy that has a significant impact on a protected minority group may violate the FHA).

<sup>121</sup> A manufactured home park is a community of two or more manufactured homes. WASH. REV. CODE 59.20.030(10). Manufactured homes are relatively inexpensive to build and are designed to be moved, either whole or in a small number of pieces, along public highways. Then they are installed semi-permanently in a manufactured housing "park," where they can be connected to utilities. The parks are owned by a landlord, and often contain up to hundreds of manufactured homes (each owned by individual homeowners) situated within a few feet of each other, with small yards. The homes are commonly known to Latin-American immigrants as "*trailas*," derived from the English word "trailer," a nonmotorized vehicle designed to be hauled behind another vehicle.

homes are inexpensively constructed, ostensibly portable, and located on another's land, so the homeowner has no other option but to rent the land beneath her home from a third party. It is rare for these homes to appreciate in value, and they are often costly. Indigenous immigrants must often pay maintenance charges on old homes, a monthly home payment, and a monthly rent payment for the lot on which their home sits.

People in this situation are protected by the Mobile/Manufactured Home Landlord Tenant Act (hereinafter "MHLTA"), which governs the rental of land on which homes are built.<sup>122</sup> When a homeowner rents the land for the manufactured home, the landowner is in a powerful position. Manufactured homes are very costly to move.<sup>123</sup> Some older homes cannot be moved because they are too old to transport on the streets. Consequently, if the homeowner is ordered to move the home, he or she must pay thousands of dollars to dispose of it.<sup>124</sup> Homeowner-renters enjoy more protections under the MHLTA than renters under the RLTA similar to this act, however, written notices and documents are often required for homeowner-renters to exercise their rights.<sup>125</sup>

To complicate matters, the purchase and sale of manufactured homes is governed by contract law. Manufactured homes are considered chattel rather than real estate, and they can be bought and sold like automobiles.<sup>126</sup> Because transactions relating to these homes are mostly unregulated, there are many opportunities to take advantage of unwary purchasers. For example, we have seen cases of people selling homes for many times their value, "selling" homes that they did not own, and selling homes that were unfit for human habitation. Indigenous immigrants are easy victims because they usually lack the knowledge to investigate the home's legality and value or are unaccustomed to asking for written purchase and sale contracts, which provide important protections if the deal sours.

##### 5. *Access to Health Care*

A vast majority of adult indigenous immigrants in Washington State lack health insurance, meaning that they have great difficulty paying for medical

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<sup>122</sup> WASH. REV. CODE 59.20.010 *et seq.*

<sup>123</sup> In January 2011, a Washington manufactured-home moving company estimated the minimum cost to move a home is \$5,000. That estimate is based on a moveable single-wide manufactured home with no attached structures. If a home is not moveable due to age or disrepair, does not have wheels, has attached structures like a deck or awning, or is larger (double- or triple-wide), moving costs increase.

<sup>124</sup> If a home is moveable, the transportation charges detailed above apply. Additional charges apply at the point of disposal based on weight. If a home is not moveable, the homeowner must employ an on-site demolisher to demolish the home and then transport it to the disposal site.

<sup>125</sup> See WASH. REV. CODE § 59.20.090(3) & (4).

<sup>126</sup> See *United States v. 19.7 Acres of Land*, 103 Wash.2d 296, 301, 692 P.2d 809 (1984); *Clevenger v. Peterson Constr. Co.*, 14 Wash. App. 424, 426, 542 P.2d 470 (1975).

care.<sup>127</sup> In partnership with the Federal government, Washington State provides medical benefits to certain classes of disabled and low-income adults.<sup>128</sup> Adults, however, must be citizens or authorized immigrants to receive these benefits.<sup>129</sup> The state maintains a small group of programs for low-income unauthorized immigrants, known as alien medical programs.<sup>130</sup> The programs cover only limited treatment for medical emergencies, cancer, and renal failure.<sup>131</sup> Children from low-income families<sup>132</sup> and low-income pregnant women<sup>133</sup> are also eligible for medical benefits regardless of immigration status.

Many indigenous people rely on local hospitals and clinics for care. Federal law requires hospitals to treat all people with emergency medical conditions, regardless of whether they have medical insurance.<sup>134</sup> State law, in turn, requires hospitals to provide low-income patients with free or reduced-cost care, depending on their income.<sup>135</sup> Many communities also have reduced-cost medical clinics which provide preventive and non-emergency care.

Most hospitals and community clinics, however, require proof of income before financially assisting patients. Because many indigenous workers earn money in cash,<sup>136</sup> they face difficulties in completing required paperwork. Though most hospitals and clinics will accept personal declarations of income,<sup>137</sup> indigenous patients often lack the knowledge and linguistic capacity to inquire into this possibility.

### 6. *Language Access*

Failure to provide interpreters or other services in a language that allows indigenous persons to access federally funded services may constitute national origin discrimination under Title VI of the federal Civil Rights Act of 1964.<sup>138</sup>

<sup>127</sup> The United States health care system is largely private, and patients without health insurance must generally pay a fee for each service they receive. These medical services often cost much more in the United States than they do in Mexico. *See* Mines, *supra* note 28, at 80.

<sup>128</sup> *See* WASH. ADMIN. CODE §§ 388-503-0505, 388-450-0210, 388-478-0080.

<sup>129</sup> WASH. ADMIN. CODE § 388-503-0505.

<sup>130</sup> *See* WASH. ADMIN. CODE § 388-438-0110.

<sup>131</sup> WASH. ADMIN. CODE §§ 388-438-0115, 388-438-0120.

<sup>132</sup> WASH. ADMIN. CODE § 388-505-0210.

<sup>133</sup> WASH. ADMIN. CODE § 388-462-0015.

<sup>134</sup> 42 U.S.C. § 1395dd.

<sup>135</sup> WASH. REV. CODE § 70.170.060; WASH. ADMIN. CODE §§ 246-453-010 *et. seq.*

<sup>136</sup> Particularly those working in the brush picking industry.

<sup>137</sup> Under Washington regulation, hospitals are *required* to accept personal declarations of income. WASH. ADMIN. CODE § 246-453-030(4).

<sup>138</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; *Lau v. Nichols*, 414 U.S. 563 (1974) (holding that failure to take affirmative steps to address language barriers for minority children who are excluded from effective participation in an educational program violates title VI regulations).

Title VI covers various services, including health care, education, police, and courts.<sup>139</sup>

Title VI, however, does not require interpreters for all federally-funded services. Federal guidance requires that agencies consider four factors in deciding what “reasonable steps” they must take to ensure meaningful access to services for limited English proficient (hereinafter “LEP”) persons: (1) the number or proportion of LEP persons in the service population; (2) how often LEP individuals come into contact with the program; (3) the importance of the benefit, service, information, or encounter to the LEP person; and (4) the resources available to service providers and the costs of providing language services.<sup>140</sup> Because indigenous immigrants are usually a small proportion of the community served by the agency, and qualified indigenous interpreters are hard to find, agencies may assert that they are not required to provide interpreters.

Lack of language access can also affect indigenous immigrants’ access to quality health care. Many indigenous people find themselves struggling to communicate in Spanish with medical providers, while others make do with family members—sometimes young children<sup>141</sup> for interpretation of difficult medical concepts.

Washington State law specifically requires that courts appoint certified or qualified interpreters to LEP persons in legal proceedings.<sup>142</sup> The government must pay for the interpreter in both criminal and civil proceedings in which the LEP individual is indigent.<sup>143</sup> Courts must have a “language assistance plan” that includes procedures for appointing interpreters and notifying court users of the right to an interpreter.<sup>144</sup>

Under Washington State law, school districts must provide “transitional bilingual education” to LEP students.<sup>145</sup> This includes assistance in the student’s primary language “where practicable,” and may include instruction in Eng-

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<sup>139</sup> See Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455- 41472 (June 18, 2002); United States Department of Health & Human Services, Office of Civil Rights *available at* <http://www.hhs.gov/ocr/civil-rights/resources/laws/revisedlep.html>.

<sup>140</sup> U.S. Department of Justice Guidance, 67 Fed. Reg. 41455, 41459 (June 18, 2002).

<sup>141</sup> Even English-speaking children are not qualified interpreters for medical concepts, and they may be even less effective than expected because they do not share a native language with their parents. Some indigenous parents do not speak indigenous languages to their children (based on the figures cited herein, it would appear that most do not), and many of those children speak English as a first language. Spanish, the language these children use to interpret, is often a second language for all parties involved. MINES, *supra* note 28, at 43.

<sup>142</sup> WASH. REV. CODE § 2.43.030 (state-certified interpreters must be appointed absent good cause, *e.g.*, lack of certified individuals).

<sup>143</sup> WASH. REV. CODE § 2.43.040.

<sup>144</sup> WASH. REV. CODE § 2.43.090.

<sup>145</sup> WASH. REV. CODE § 28A.180.040.

lish as a second language (hereinafter "ESL").<sup>146</sup> Districts must also provide "appropriately bilingual" communication to parents of LEP students when feasible.<sup>147</sup> Similarly, federal law prohibits schools from failing to take appropriate action to overcome language barriers that impede equal participation in instructional programs.<sup>148</sup> While ESL instruction should be widely available, the lack of teachers and instructional assistants who speak indigenous languages is a barrier to instruction in indigenous languages.

## VI. CASE STUDIES

The foregoing discussion of common barriers and legal problems faced by indigenous immigrant workers in Washington is based on knowledge gathered during years of working with members of these indigenous communities. While it is possible to analyze each barrier and legal problem discretely and in the abstract, in reality these obstacles occur simultaneously and influence one another. The true stories that follow of indigenous immigrants in Washington present a more accurate picture of the difficulties many face. We begin with a tragic Van accident in 2004 that resulted in the deaths of five *Mam* workers from Todos Santos, Guatemala.

### 1. Case Study: 2004 Van Accident Resulting in the Deaths of Five Mam Workers

Early in the morning on March 27, 2004, there was a head-on collision involving a vanload of eleven immigrant *Mam* workers from Todos Santos, then living in Shelton, Washington, who were going to pick brush in Lewis County. Five of the workers died and three more suffered life-threatening injuries, including one who was hospitalized for nearly a year and experienced permanent cognitive damage.<sup>149</sup> On December 19, 2005, two more *Mam* workers were killed in a similar van accident near Morton, Washington.<sup>150</sup> They were the sixth and seventh workers from Todos Santos to die in van accidents in Washington in less than two years. Hundreds turned out to grieve their deaths when their bodies were returned to Todos Santos.<sup>151</sup>

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<sup>146</sup> WASH. REV. CODE §§ 28A.180.030 & .040.

<sup>147</sup> WASH. REV. CODE § 28A.180.040(1)(b).

<sup>148</sup> Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f).

<sup>149</sup> Jane Hodges & Tan Vinh, *8 Killed, 4 Critically Hurt in 2 Highway Crashes*, SEATTLE TIMES, Mar. 28, 2004.

<sup>150</sup> WASHINGTON DEP'T OF LABOR & INDUS., FATAL HAZARD – TRANSPORTING BRUSH PICKERS IN UNSAFE VEHICLES, Aug. 2005, available at <http://www.lni.wa.gov/WISHA/hazalerts/Brushpicker.pdf>.

<sup>151</sup> Tom Knudson & Hector Amezcua, *The Pineros: Village Weeps for Lost Sons*, THE SACRAMENTO BEE, Jan. 29, 2006.

### A. *Overcoming Fears and Suspicions and Developing Trust*

The first challenge in representing the injured *Mam* workers and survivors of the workers who died in this accident was to overcome their fear of authorities and suspicion of outsiders. This required a number of meetings with the *Mam* workers and family members using bilingual *Mam*-Spanish interpreters, as well as a trip to Todos Santos to meet with family members. Because the need for legal representation was so great, the *Mam* overcame their general desire to remain invisible and agreed to work with lawyers to bring claims on their behalf.<sup>152</sup>

### B. *Fitting Claims within Workers' Compensation Framework*

The next challenge was to frame the claims of the *Mam* workers and their families in a way that fit within the framework of Washington workers' compensation law. As noted in the legal summary, Washington workers' compensation law covers Washington employees who are injured at work. In order for a Washington worker to be covered by the workers' compensation law, however, the worker must be an "employee," as opposed to an "independent contractor."<sup>153</sup> Thus, in order to assert claims for workers' compensation arising from the van accident, the *Mam* workers had to be *employees* working for an identifiable *employer* at the time of the accident.

The brush sheds have consistently argued that the *Mam* workers are independent contractors, not employees, and, therefore, brush sheds are not required to comply with workers' compensation laws, pay minimum wage, or comply with worker safety laws. However, information gathered from brush pickers indicates that in many cases, the true economic relationship between them and the brush sheds is an employee-employer relationship. In most cases, the workers pick the brush that the brush sheds specify, in locations the brush sheds direct, using permits obtained from the brush sheds, and the workers return at the end of each day to sell the brush they have picked to the same brush sheds that provided the permits.

The Department of Labor and Industries conducted audits confirming these facts and found that "[m]any of the audits have shown that the brush pickers are employees of the packing sheds."<sup>154</sup> To our knowledge, however, the Department has never issued citations or taken any other punitive action

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<sup>152</sup> In other matters involving legal issues such as housing issues, where the *Mam* workers and family members may feel there is less at stake, workers have been more reluctant to organize and assert their rights.

<sup>153</sup> See Parts V.A and V.B. herein.

<sup>154</sup> WASHINGTON DEP'T OF LABOR & INDUS., PROTECTING WORKERS AND PROMOTING FAIR BUSINESS PRACTICES IN THE SPECIALTY FOREST-PRODUCTS INDUSTRY, Aug. 2005, available at <http://www.columbialegal.org/files/ProtectingWorkersSpecialtyForestProductsIndustry.pdf>.

against the brush sheds for violating worker safety or workers' compensation laws. Nor, to date, has a Washington court been presented with these facts establishing the economic reality that brush workers in Washington are employees of the brush sheds or that they are entitled to the legal protections afforded to employees.

Under existing legal standards and the limited facts in that case, it might have been difficult to hold any one of the brush sheds responsible as the employer for workers' compensation purposes.<sup>155</sup> Thus, in an effort to ensure that the injured *Mam* workers and the surviving family members of those who died received workers' compensation benefits, it was necessary to argue that the driver and owner of the van (who died in the accident and was also a *Mam* worker from Todos Santos) was the employer and that the passengers in the van were his employees. This was supported by a notebook found in the van after the accident showing that each of the other *Mam* workers paid the driver a fraction of what they received from the brush sheds (as well as gas money).<sup>156</sup> Although the driver/employer had never paid workers' compensation insurance premiums, the passengers were covered under a state fund for employees whose employers fail to pay the required premiums. Treating the driver as the employer and the passengers as his employees did not require the brush sheds to accept responsibility as the workers' employers, but was a viable way under the unusual facts of that case to convince the Department to accept the workers' and their families' claims.

### C. *Establishing Workers' Earnings from Brush Picking Work*

The next challenge was to demonstrate the earnings of the *Mam* workers from their brush picking work. The Department was willing, in principle, to compensate the *Mam* workers and their families for the wages lost as a result

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<sup>155</sup> In 2003, the major brush sheds in Washington brought a lawsuit in Mason County Superior Court in Shelton and obtained a ruling stating that a brush shed will not be liable as an employer when it meets five conditions. According to the court's ruling, a brush shed is not liable when it (1) sells a permit to a brush picker, (2) does not require the brush picker to sell the product back to the company, (3) does not direct or control the work of the brush picker, (4) is not in the brush picking business, but rather is in the brush buying and brush packing business, and (5) requires that brush pickers be solely responsible for their own taxes and for complying with all other business regulations. WASHINGTON DEP'T OF LABOR & INDUS., HARVESTING WASHINGTON'S BRUSH: MONITORING COMPLIANCE WITH LABOR LAWS IN THE FLORAL GREENS INDUSTRY, July 2005, available at <http://www.columbialegal.org/files/HarvestingWashington-Brush.pdf>.

<sup>156</sup> Under Washington workers' compensation law, an employment relationship exists when the employer has a right to control the worker's conduct in the performance of his or her duties and there is consent by the worker to an employment relationship. See, e.g., *Novenson v. Spokane Culvert & Fabricating Co.*, 91 Wash.2d 550, 588 P.2d 1174 (1979). In the van accident case, the Department accepted the evidence that the driver deducted a portion of the workers' earnings as sufficient to demonstrate an employment relationship.

of the deaths and injuries caused by the accident, but it required evidence of the amount of the lost wages. Because these *Mam* workers labor in a hidden, "black market" economy, it could have been extremely difficult to quantify these lost earnings. The brush sheds do not keep permanent records of the amounts they pay to individual workers, and the workers themselves often have limited records of their earnings.

Fortunately, during the course of its investigation, the Department interviewed numerous *Mam* workers in the brush picking industry, and gathered information regarding the workers' daily, weekly, and monthly earnings. Using that information, a vocational expert determined that the *Mam* workers earned an average of \$55 for eight to nine hours of work per day, or \$6.11 to \$6.88 per hour, well below the Washington minimum wage.<sup>157</sup> This created a dilemma for the Department, because it did not want to pay workers' compensation benefits above the workers' actual earnings, but it also did not want to pay benefits based on earnings below the minimum wage. As a result, the Department agreed to pay compensation to the *Mam* workers and their families based on the Washington minimum wage, but only on a four-fifths (4/5) time basis — even though, in fact, the *Mam* workers regularly worked six or seven days a week.

#### D. Seeking Spousal Benefits Based on Customary Marriages

The last major legal effort was to obtain spousal survivor's benefits for the *Mam* women whose partners died in the van accident, based on their Maya customary marriages. The couples were never legally married in church or in civil ceremonies, but had lived together for many years, committed their lives to each other, raised and cared for their children together, and held themselves out to the community in Todos Santos as married couples. As such, they met all the requirements for a customary marriage under Guatemala's *unión de hecho* law.<sup>158</sup>

The Department agreed that Guatemalan law was the relevant law for determining whether the surviving spouses, all of whom were women, had been married to the *Mam* workers who died and qualified for spousal survivor benefits. The Department also found that the *Mam* women met all the requirements for demonstrating a customary marriage under Guatemalan law. Unfortunately, despite these findings, the Department concluded that the *Mam* women were not entitled to spousal benefits because they and their *Mam*

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<sup>157</sup> Owings Report, *supra* note 25.

<sup>158</sup> A marriage under the *unión de hecho* law is similar to a common law marriage as recognized in many states in the U.S. Under both forms of customary marriage, two people are accorded the same legal treatment as formally married couples if they live together for a significant period of time, hold themselves out to the world as a married couple, and intend to be married.

husbands had not met a technical requirement under Guatemala's *unión de hecho* law requiring that a couple present themselves to a lower court in Guatemala to obtain a legal order. Compliance was impossible because the husbands had died in the van accident. As a result, the children of the deceased *Mam* workers are receiving monthly survivor's payments (and will receive the payments until they each turn 18), but the wives did not receive additional spousal benefits.

*E. Lessons from the Van Accident Case Involving Mam Workers*

This case provides a window into the difficult lives and dangerous work of the hundreds of *Mam* workers who have migrated to Washington from Todos Santos. As the successful representation of the *Mam* workers in this case illustrates, when circumstances are sufficiently extreme and the need for legal representation compelling, it is possible to overcome language barriers, suspicion of outsiders, distrust of authority, fear of deportation, as well as every other barrier that often prevents the effective representation of indigenous workers.

At this time, the biggest challenge for *Mam* workers and their advocates in dealing with the brush industry is to find some way to hold the brush sheds responsible for providing basic worker protections and fairer pay to these workers, on whom the entire brush industry depends. Currently, *Mam* workers are often considered, rightly or wrongly, to be unprotected under Washington minimum wage or worker safety laws, and may only obtain workers' compensation, if at all, by characterizing their co-workers—usually other *Mam* workers from Todos Santos—as their employers. The brush sheds' businesses have been structured to make these *Mam* brush picking workers appear to be independent contractors, even though the economic reality is that the workers are working as employees for the brush sheds.<sup>159</sup>

At the same time, it is unclear whether a majority of *Mam* workers would prefer to be employees rather than independent contractors. As employees, for example, they would be entitled to workers' compensation, minimum wage, and protection under the worker safety laws that cover other Washington employees. On the other hand, as employees, they would also have to provide work authorization permits to the brush sheds in order to work in the U.S., something few of them have.

Generally speaking, workers' compensation cases on behalf of *Mam* workers and their families provide hope. As a result of these cases, eight *Mam* children from Todos Santos whose fathers died in the van accident now receive monthly checks from the Department, and they will continue receiving these

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<sup>159</sup> See 29 C.F.R. §500.20, defining "employment" under the Agricultural Worker Protection Act under the economic reality relationship test, including the degree of the putative employer's control over the work performed, and the extent to which the services rendered is an integral part of the putative employer's business.

payments until they each reach the age of 18 (or 21 if they remain in school). In the case of the *Mam* worker who nearly died and spent almost a year in the hospital, the Department has paid well over \$1 million for his medical care, which saved his life; and it will pay him a monthly pension for the rest of his life for the permanent injuries he suffered. As a result of our work on these cases and our continuing outreach to the community, we have developed an increasing level of trust with the *Mam* community in Washington which should help in future advocacy on their behalf on issues relating to housing rights, healthcare access, language assistance, and the like.

## 2. Case Study: *Mixteco Workers Living in Mobile Home Park in Othello, Washington*

In 2008, Columbia Legal Services opened an office in central Washington and conducted targeted outreach to Othello, a community with approximately 800 *Mixteco* *Alto* speakers. Shortly thereafter, the office began hearing about problems in the Othello Fields Mobile Home Park.<sup>160</sup> Many of the homeowners who rent spaces in Othello Fields are *Mixtecos*. In fact, the trend in Othello among *Mixtecos* is to arrive and immediately begin renting small, run-down apartments in several locations. When they have decided to purchase a mobile home, many *Mixtecos* prefer to live in Othello Fields because many from their community already live there. In spite of familiar neighbors, however, Othello Fields is not an easy place to live. Absentee owners have delegated park management authority to two managers who are often unavailable, unhelpful, and abusive to park residents.

### A. *Clash with Authority: Illegal Additions to Mobile Homes*

The first case Columbia took from the Othello Fields Mobile Home Park involved two cousin homeowners who wanted to improve their homes. Both were in the process of building larger entryways, and one was building an additional room off the entryway. Both cousins had invested substantial money in improvements, and their families had put in many hours of labor.

Unfortunately, the cousins were not familiar with state and county regulations regarding manufactured homes. One day the county inspector notified the cousins that the structures were illegal and needed to be removed. The cousins, however, were illiterate and mistakenly believed the notification tag placed on their property was the county's "seal of approval." They continued the projects until receiving an eviction notice for unauthorized construction. Eviction from a manufactured home park can be very costly for homeowners, who must either sell their home or move it to another location (assuming this can be found). Illegal additions had the added impact of invalidating the sale

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<sup>160</sup> The name of the mobile home park has been changed to protect the residents.

until the cousins were able to comply with government regulations. In short, the cousins were in a difficult situation.

At the cousins' request, Columbia intervened and established communications with the park. After extensive negotiations, the latter agreed not to evict the tenants provided they comply with numerous conditions. Columbia brought in a county and state inspector to look at the homes and advise the cousins how to proceed. A *Mixteco Alto* interpreter was hired to facilitate communication. The effort to stop the eviction was painful; the cousins and their families had to face the grim fact that much time and money had been wasted. In addition, they had to invest even more time and money to tear down the construction and dispose of the materials. The county and state inspectors discovered that the roof of one home had been illegally modified by the prior owner and informed a cousin that she could not move or sell her home until the roof had been entirely rebuilt in accordance with the building code—a project well beyond her family's means. In addition, the inspector informed her that it was unsafe for anyone to live in the home since the roof could collapse at any time.

#### B. *A Question of Responsibility to Maintain Utilities*

Another case involved park infrastructure. In a manufactured home park, each homeowner must provide maintenance up to the point where their homes connect to the park's utilities, *e.g.*, water and electricity.<sup>161</sup> The park's duty, on the other hand, is to maintain the equipment that provides utilities to the homeowners up to the point of connection to the owners' homes. For instance, the park must maintain common water pipes up to the points where the common system connects to the individual homes.

In this case, a homeowner's electricity stopped working in the dead of winter, when the temperature in eastern Washington often drops well below freezing. With difficulty due to limited Spanish, the homeowner repeatedly asked the managers (one of whom speaks Spanish) to fix the problem, but they insisted that since it was affecting his house, it was his responsibility. Finally, the homeowner retained a company to diagnose the situation. The company discovered that the park's electrical hookup, a large, metal box on an electrical pole, had burned out and needed to be replaced. They charged the homeowner \$150 for the diagnosis and a temporary repair, and then another \$1,200 to replace the electrical box. The homeowner paid the company with most of his savings that was set aside to get his family through the winter, which is when most agricultural workers are unemployed.

The homeowner then took the invoices to the managers and asked, in basic Spanish, for them to pay him back for the repair. The managers repeatedly refused the request. The homeowner could not understand their refusal

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<sup>161</sup> WASH. REV. CODE § 59.20.130(6).

and finally sought help from Columbia, which helped him understand how to represent himself in small claims court.

The client presented his case in small claims court through two interpreters: one who interpreted from *Mixteco Alto* to Spanish and another who interpreted from Spanish to English. The park managers defended their positions by arguing they had merely asked the homeowner, on several occasions, to provide verification that the repair was being done to park property. They said the homeowner had never done so and, for this reason, could not reimburse him. The judge quickly determined that the repair was related to park property and ordered the park to pay. After his day in court, the homeowner was elated; the judge had been fair, and he had won.

### C. *Easy Money*

In this final example, the homeowner was late in paying his lot rent around the end of 2008. By contract, this made him liable to the park for a \$45 late fee once the rent was six or more days late. However, the homeowner did not realize he owed a fee and the park managers never informed him of the fact. As a result, every month thereafter, the homeowner's rent was considered late because of the unpaid late fees and, although he paid his rent on time, another \$45 each month owed was added to his account. Finally, by August 2010, late fees owed exceeded \$900, which triggered an eviction notice. This notice was the first the homeowner heard of the debt, and he was shocked and dismayed because \$900 is a fortune to his family.

After extensive negotiations, Columbia helped the homeowner reach an agreement with the park's attorney. The homeowner agreed to punctually pay half the debt along with his next month's rent. In exchange, the park agreed to stop eviction proceedings and erase the homeowner's balance. The homeowner faced an unethical business practice—this was not a procedural mistake by the landlord but rather a deceptive withholding of information—that was very difficult to prove as a legal violation.<sup>162</sup> *Mixtecos* and other indigenous immigrants are particularly vulnerable to this type of abuse because most cannot read their rental contracts, often do not understand the agreements they sign, and have few trusted resources outside of their communities. The basic reason for this is extreme pressures on this isolated community.

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<sup>162</sup> Other homeowners in parks with the same ownership have complained that the managers sometimes pick up rental payments late and mark them late (triggering late fees), though the payments were placed in the drop-box by the due date. In this case, the late payment occurred so long ago that the homeowner had no memory of when the rent had been paid. If the practice of late-pickups is an unfair or deceptive pattern of conduct affecting other renters, it may represent a violation of the Washington Consumer Protection Act, WASH. REV. CODE §§ 19.86 *et. seq.* See, e.g., *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 719 P.2d 531 (1986).

*Mixtecos* face discrimination from those outside of their communities, predatory practices by those who make a living by taking advantage of poor people, and live in fear because of immigration laws. Many *Mixtecos* prefer to bow their heads and take abuse as the cost of providing a better future for their children.

#### D. *Lessons from Working with Mixteco Manufactured Home Owners*

The dream of having one's own home is common to many *Mixtecos* in Central Washington. Although advocates see potential problems that can follow from buying a used manufactured home in a park, the solution is not to discourage *Mixtecos* from purchasing these homes. In fact, manufactured housing communities are important sources of low-income housing and, when they are well-managed, can have a positive impact on residents and on the area in which they are located.

Because people will not stop buying used manufactured homes, education is key to preventing or minimizing many problems. For instance, homeowners need to know that receipts for each monthly rent payment serve as proof that rent was paid on time. By conducting a basic investigation of manufactured homes, potential purchasers can prevent a range of common problems including whether the seller actually holds title to the home, whether the purchase price represents fair value, and whether any modifications made to the home were legal.

Community education for *Mixtecos* in central Washington is particularly challenging because of cultural isolation, language barriers, and generally low levels of education. Advocates recognized that the community's trust was essential, and therefore requested an introduction from a local organization. To ensure relevance, advocates first asked *Mixtecos* what information they could provide, then used interactive teaching techniques based on popular education theory which assumes that all people have knowledge based on their life experiences and drawing on those experiences is the best way to educate effectively. Because advocates were aware that few *Mixtecos* could read, they provided handouts with plentiful illustrations.

To maintain contact after the initial presentations, Columbia hired a full-time *Mixteco* community worker to build and maintain connections between advocates and the *Mixteco* community. The community worker produced a compact disc in *Mixteco* with illustrations and advice on five common problems faced by *Mixtecos* in Washington. The compact disc has been distributed across Washington and has helped *Mixteco* workers find statewide assistance.

Even with the best educational outreach program, problems are bound to arise. To send a strong message to Washington's *Mixtecos* that Columbia is a trustworthy organization, Columbia's office in the heart of central Washington prioritized cases that involve *Mixtecos*. After helping a few clients with

legal problems, word began to spread and, as a result, *Mixtecos* now refer family and friends to Columbia. As a result of this combination of targeted outreach, communication, and advocacy, Columbia has begun to build trust within the *Mixteco* community. Now that Columbia has represented various homeowners in Othello Fields, more homeowners think of Columbia when they have housing problems. We are optimistic that by increasing homeowners' knowledge and challenging park management when problems arise, the quality of life for all families living in the park will improve. As advocates continue to strengthen their ties to the community, trust, communication, and interaction will increase and should help *Mixtecos* enjoy the benefits of rights that belong to them under Washington State law.

#### VII. LESSONS LEARNED AND THE WAY FORWARD

Years of experience working directly with immigrant workers, and more recent work with Washington State's growing indigenous immigrant communities, have taught us many lessons about the effective legal representation of transnational migrants. Primary among these have been that workers are most likely to assert their legal rights when they find trusted advocates and community organizations to help them. While all immigrants face cultural, geographic and linguistic isolation, indigenous workers face a deeper level of isolation and discrimination. The traditional means of community support, such as unions, community interaction, church, neighborhood groups and bilingual media simply don't exist in most communities in which indigenous workers find work. Spanish-speaking advocates and co-nationals who cannot communicate directly with workers in their own language are hampered in their attempts to render assistance.

Workers are more likely to seek help when they have overcome isolation. For many, this means seeking the support of their community both in the United States and their place of origin. Important aspects of that support include access to advocates who understand their unique language and culture. Finding community members who understand their legal problems and work to protect their rights is also integral to that support. While the U.S. legal system has jurisdiction over these workers' legal problems, only their home communities in Mexico can provide adequate moral support.

Properly addressing legal issues fundamental to indigenous immigrants requires cross-border collaborations and building upon existing resources in both countries. Opportunities for collaboration exist at several levels. In this section, we outline three potential opportunities presented from the general to the more specific, and offered here as initial thoughts gleaned from our experiences and those of indigenous community leaders in Washington State. We present these with the caveat that while we have a fairly clear understanding of the resources that exist in Washington State as well as fair knowledge

of existing resources within the U.S., our knowledge of what is available in Mexico and Guatemala is far outweighed by what we do not know. We welcome additional ideas for collaborative projects, as well as criticism and further development of these ideas.

1. *Create a Washington State Pilot Project to Develop a Pro Bono Practice within Mexico and Guatemala*

Along with its rich tradition of publicly and privately funded legal services programs, law schools active in community projects, as well as progressive trade unions, Washington State has traditionally had a deep commitment to lawyer volunteerism. This is due in large part to the commitment made by the association of attorneys, the Washington State Bar Association.

In Washington State, all lawyers must belong to the state Bar Association.<sup>163</sup> The Bar Association administers the statewide test that admits lawyers to practice, and oversees yearly licensing and disciplinary processes that can result in the loss of attorneys' license to practice law. The Washington State Supreme Court sets rules that lawyers must follow in order to continue in their profession. One of the state rules governs *pro bono* practice, and states: "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of *pro bono público* service per year."<sup>164</sup>

Generally, *pro bono* work means legal work that is provided without charge or at a reduced charge to individuals or religious, charitable, community, educational, or other groups. For many low income people, including indigenous immigrant workers, their only opportunity to access legal representation is through a *pro bono* attorney.

At its highest levels, the Washington Bar Association encourages and celebrates *pro bono* service. The Bar Association has a separate committee dedicated to increasing *pro bono* service by issuing yearly awards for such service, supporting a county-by-county *pro bono* recruitment network, and publicizing *pro bono* opportunities to its members.<sup>165</sup> Some larger law firms hire coordinators who recruit lawyers from within the firm to do volunteer *pro bono* work.<sup>166</sup>

<sup>163</sup> At both the state and federal level, many voluntary associations of lawyers exist, such as the American Bar Association and the National Lawyers' Guild. Smaller voluntary affinity groups also proliferate, such as associations of labor lawyers, immigration lawyers, and the like.

<sup>164</sup> Washington State Rules of Prof'l Conduct 6, available at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&groupName=ga&setName=RPC&pdf=1](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=ga&setName=RPC&pdf=1).

<sup>165</sup> See Washington State Bar Association, available at <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Pro-Bono-Opportunities>; Pro Bono Opportunities Guide, available at <http://www.advocateresourcecenter.org/oppsguide/>.

<sup>166</sup> Recent important *pro bono* legal work on behalf of indigenous workers in Washington includes the successful *pro bono* representation of a Mam woman from Todos Santos who sought

It is our understanding that such a formal *pro bono* system does not exist in Mexico or Guatemala, although lawyers in these countries certainly volunteer in their communities, and some *pro bono* services to the poor are offered through law schools as well as through Non-Governmental Organizations (“NGOs”) with lawyers on staff. A collaborative project between Washington State and Mexico lawyers and law schools—and, as the project develops, their counterparts in Guatemala—could establish a more formal system of *pro bono* service. That, in turn, could increase our mutual understanding of each country’s legal system and increase resources available to indigenous and other migrant workers when they return home.

One step towards a pilot project of this nature was a 2011 *pro bono* conference sponsored in 2011 by the University of Washington. The conference included deans and faculty of UNAM and the Universidad Michoacán del Oriente in Mexico.

*2. Build a Cadre of Lawyers and Community Organizers that Can More Effectively Represent Indigenous Workers*

A clinical or other law-school based program could train lawyers who have ties to indigenous communities transnationally, are knowledgeable about law and practice transnationally, and who could work together, in conjunction with community groups, to enforce indigenous workers’ rights within the United States. A law school class or clinic could focus on one particular subject—immigration, labor rights, rights of those who do not speak the dominant language, or rights of indigenous people—with sessions including international law, national law, local law, and law that arises from the customs and usages of indigenous people. Bilingual students could study for a portion of their time in Mexican or Guatemalan law schools and a portion of their time in Washington State law schools. For part of the coursework, students could spend some time in the home communities of indigenous people and the U.S. communities where indigenous people settle, working with community leaders and helping to identify legal problems for indigenous migrants and potential solutions to these problems.

The three law schools in Washington State (Seattle University, the University of Washington, and Gonzaga University) could help develop this project. Each has a vibrant clinical program. Seattle University is linked to the Jesuit university system in Mexico, and the University of Washington has signed an agreement with the National Autonomous University of Mexico (UNAM) to promote an exchange of students and legal education. UNAM

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and was granted withholding of deportation by the United States Immigration Court in Seattle in April 2011 based on past gender-based violence, her well-founded fear of future gender-based violence if she returned to Guatemala, and the documented failure of Guatemalan authorities to protect rural Mayan women from gender-based violence.

operates an extensive practice project for third-year law students, its *bufetes jurídicos gratuitos*, that include labor law in their portfolio. Columbia Legal Services in Washington State, a not-for-profit law firm, has a long tradition of community-based lawyering, and has spearheaded an indigenous worker legal project. Ties are beginning to develop between Washington legal services, Washington community leaders, and NGOs that operate in communities in Oaxaca from which migrant workers come. These NGOs include the Frente Indígena de Organizaciones Binacionales ("FIOB"), the Global Workers Justice Alliance Defenders Network, and the Centro de los Derechos del Migrante, all of which work within Oaxacan communities to provide support to indigenous migrant workers.<sup>167</sup> The project could also help to identify bi- or tri-lingual community members who could work with communities in Washington State.

### *3. Increasing Access to Workers' Compensation for Indigenous Transnational Workers*

As noted earlier in this article, employees injured on the job in Washington are entitled to paid medical care and compensation in the event of lost wages, disability, or death. But many workers do not even file compensation claims because they are unaware of their rights. Apart from the dangers of retaliation, lack of knowledge of their rights, and language barriers, they face practical challenges to cross-border access to compensation. For many workers in agriculture and brush harvesting, including indigenous workers, who return to their homes as their base of care and support, workers' compensation benefits simply end. State agencies are ill-equipped to pay compensation across borders. Access to prescription drugs out of the U.S., and the billing process for these, is problematic. Even more daunting is finding a surgeon, specialist, physical therapist, or other medical provider located near the worker in Mexico or Guatemala who is willing and able to bill a U.S. state agency for their services.

A pilot project could match medical services in the United States with medical services in Mexico or Guatemala and coordinate worker's compensation billing and payment mechanisms in the United States with those in Mexico or Guatemala. Such a project could explore systems for accomplishing smooth handling of worker's compensation claims across borders. The Washington State Department of Labor & Industries, which administers the state program, is amenable to processing the claims transnationally. The Secretariat of Foreign Affairs with its consulates, the Secretariat of Health, the National Commission on Human Rights, or other public or private institutions within Mexico might be conduits for identifying and training physicians to handle claims. Ongoing efforts to identify secure means of transferring

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<sup>167</sup> See [www.fiob.org](http://www.fiob.org); [www.globalworkers.org](http://www.globalworkers.org); [www.cdmigrante.org](http://www.cdmigrante.org).

money to rural areas of Mexico and Guatemala could be applied in order to ease payments to workers and their providers.

This project would take advantage of already existing public and private legal resources identified in the U.S. —law schools, NGOs, and public agencies charged with protecting workers. It could be scaled up to other areas both in the U.S. and elsewhere, especially the six states where most foreign worker fatalities occur (California, New York, Florida, Texas, Illinois, and New Jersey).<sup>168</sup> For Mexico, it could explore linkages within the U.S. with other legal services providers, medical service providers, unions, and community groups that have a presence in these states and in Mexico, such as the National Alliance of Latin American and Caribbean Communities, and Enlace International. Migration and human-rights-focused NGOs such as the Scalabrini Casas del Migrante, the Pastoral de Movilidad Humana, and projects in Mexico of the Appleseed Foundation might also be of help. Linkages between the two countries could help establish ties to other human rights, legal, or health-focused organizations.

With nearly 10,000 indigenous Mexican and Guatemalan workers in Washington State coupled with a high rate of workplace accidents given the dangerous work in which they are involved, cross-border access to workers' compensation is an important goal. Since employers pay into the workers' compensation system for the benefit of workers, and since rates depend on their safety record, ensuring access to compensation for transnational workers can promote workplace safety within the U.S.

#### VIII. CONCLUSION

Indigenous migrants to Washington State face a variety of legal difficulties that intersect in complex ways and are often compounded by social and cultural barriers. Despite these barriers, however, transnational indigenous migrants from Guatemala and Mexico contribute socially and economically to the state and create increasingly settled communities. In order to effectively serve these indigenous communities, social, legal, and medical services providers must collaborate with these communities, each other, and cross-border colleagues. With greater cooperation, patience, and persistence, the lives of indigenous peoples can be improved —regardless of where they live.

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<sup>168</sup> Katherine Loh & Scott Richardson, *Foreign-Born Workers: Trends in Fatal Occupational Injuries 1996-2001*, MONTHLY LABOR REVIEW 41-44 (2004).

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# Appendix K

**Perspectives on Housing in Washington State:  
Conditions in Walla Walla**

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## Abstract

Housing is an issue that affects everyone, regardless of race or class, thus current disparities in statistics such as home ownership and community quality between Latinos and whites are especially troubling. With the help of Ruben Garcia, a local real estate agent, and Ben Hooper and Ishbel Dickens of the Columbia Legal Services, I have pursued reasons behind these discrepancies in the Walla Walla region. Basic findings are in line with scholarly literature on the subject, citing a lack of education and some measure of steering beyond simply economics. Additionally, Latinos are at a higher risk to be pushed out of the home buying potential by market shifts towards more expensive houses. Main recommendations of this paper are that home buying information should be available in Spanish as well as English, that governmental data be re-envisioned so as to better capture the actual climate, and that tenant rights be strengthened through acts of legislature.

## Scholarly Research on the Issue

According to the U.S. Census Bureau, in 2003 the national homeownership rate was at 68.2%<sup>1</sup>; broken down into racial and ethnic categories, the rate was a rather stark 72.2% for whites as opposed to 47.6% and 46.3% for blacks and Latinos respectively. When such a discrepancy occurs, obviously it is going to raise some questions concerning why such a difference occurs. Scholarly literature, as well as advocacy groups, industry professionals, and governmental institutions have been grappling with the answers to these very questions.

The fact that less Latinos and blacks own homes than whites could mean several different things. It could mean that there is an inadequate supply of houses which fit the needs and desires of certain buyers more than others, and proportionally more of these buyers fall into Latino and black categories. It could mean that Latinos or blacks are, relative to whites, less able to afford the costs of home ownership, which could mean qualifying for loans or having money available for down payments and closing costs. It could mean that there is some form of institutional or personal discrimination, which is favoring white home buyers over Latino or black.

Authors and organizations, through their studies, tend to fall on one side or another of the debate which has been formed about the causes of this housing discrepancy. On one side, there is a school of thought which tends to emphasize the socioeconomic factors, citing discrepancies in income levels (median income in 2002 was \$54,633 for white families, as opposed to \$33,525 for black and \$34,185 for Latino<sup>2</sup>), education, and other factors, as the keys which cause the split. For example, one study in 2004 used Census microdata for the San Francisco Bay area to evaluate home ownership discrepancies. By correcting for socioeconomic factors, they were able to explain the majority of the discrepancy: "Sociodemographic characteristics, including education, income, language, and immigration status, have the potential collectively to explain almost 95 percent of the segregation of Hispanic households"<sup>3</sup>.

This same argument is made by lending institutions, which explain the difference as the result of being economic actors, which will obviously act in their economic best interest and favor those clients which appear to be better financial investments. In other words, those who have characteristics which banks could view as financial liabilities (lower income, unsteady work, lack of education, etc) explain the discrepancy in terms of loan applications which are

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1 United States. Census Bureau. *Statistical Abstract of the United States*. N.p.: U.S. Census Bureau, 2004-05 (Chart No. 950).

2 United States. Census Bureau. *Statistical Abstract of the United States*. N.p.: U.S. Census Bureau, 2004-05 (Chart No. 670).

3 Bayer, Patrick, Robert McMillan, and Kim S. Rueben. "What Drives Racial Segregation? New Evidence Using Census Microdata." *Journal of Urban Economics* 56. 2004: 514-535.

accepted between races. Simply put, this rationale gives institutions the benefit of the doubt, suggesting that unless large studies are able to prove otherwise, it makes more sense to see lending agents as economically rational entities<sup>4</sup>; basically meaning that if a minority and a white applicant have the same risk level, they will get equal acceptance.

One of the main ways in which this viewpoint is backed up is by what is actually missing from governmental data<sup>5</sup>. The Home Mortgage Disclosure Act (HMDA), which was originated in 1975 by Congress and is enacted through the Federal Financial Institutions Examination Council (FFIEC) to collect public data about lending institutions “that can be used to assist: in determining whether financial institutions are serving the housing needs of their communities... and in identifying possible discriminatory lending patterns”<sup>6</sup>. Essentially the data which is collected includes quantity of loan applications (and subsequent acceptance or refusal) sorted by income and race, as well as other statistics about the types of loans desired and types of financing being done. What is not included are statistics about the applicants themselves, beyond simply their race, income bracket, and whether they are approved or not. The data does not include “the borrower's credit history, debt load, and overall risk profile, the value of the property, or the documentation supporting the application information [and] also does not include the many other factors each lender considers in setting its prices, including cost of funds, prepayment risk, overhead expenses, loan-servicing costs, variations in the channels through which a loan may be processed, and the supply and demand of a particular type of loan in the secondary market”<sup>7</sup>. Without this data, which would enable analysts to compare approval and denial rates of similar customers, some theorists claim that we simply cannot make that judgment and must instead rely on the financial institutions to do that themselves. Essentially, the assumption is, again, that if all the factors are the same, then acceptance rates would be identical.

In opposition to these approaches, other theorists have attempted to show that there are factors beyond simple socioeconomic factors that lead to the home ownership disparity. Basically, these arguments state that there is a fundamental difference in the ways in which minorities and whites are treated throughout the process, which cannot simply be explained by running a statistical correction on income or educational attainment. This difference is attributed to an institutional and personal prejudice which alters the way in which minorities and whites are given access to and treated within the home buying process.

For example, the majority of home buyers utilize the services of a realtor, and by doing so become vulnerable to prejudicial steering, which is the process by which buyers are segregated by real estate agents into communities that they *should* live in. A study published in 2005 by Galster and Godfrey<sup>8</sup> analyzed the presence of steering in the Housing Discrimination Study (HDS) of 2000 conducted under the Fair Housing Act of 1968, which they then compared to a similar study conducted in 1989. Using paired-tests, in which members of different race groups with similar credentials go to identical lending agencies and compare treatment, this study found steering present in both white-black and white-Hispanic comparisons, though to a lesser extent in the latter. The most prevalent form of steering among Latinos was at the census

4 Bergman, Hannah. “HMDA Data Shows No Bias, Law Firm Concludes.” *American Banker* 170.104 1 June 2005: 3-3.

5 Zindler, Ethan. “Fed: HMDA Data Explain Most Variations in Price.” *American Banker* 170.177 14 Sept. 2005: 1.

6 Background and Purpose of HMDA. n.d. Federal Financial Institutions Examination Council. 3 Nov. 2005. <<http://www.ffiec.gov/hmda/history.htm>>.

7 Kolar, Joseph M. “HMDA Data Should Spur Financial-Literacy Efforts.” *American Banker* 23 Sept. 2005: 184-184.

8 Galster, George and Erin Godfrey. “By Words and Deeds: Racial Steering by Real Estate Agents in the U.S. in 2000.” *Journal of the American Planning Association* 71.3 Summer 2005: 251-268.

tract level through segregation into neighborhoods; basically, agents are limiting the properties which they are showing prospective buyers on the basis of racial conglomeration. Additionally, they have found that there has not been a significant decrease in the occurrence of such steering, which is surprising given that the Fair Housing law was strengthened in 1988. This implies that the enforcement is inadequate or that the possible deterrent factor is outweighed by something else.

Utilizing the same data (HDS 2000 and 1989) Zhao made similar conclusions, which found that even when correcting for socioeconomic status, blacks and Hispanics were shown 30 and 10 percent fewer units respectively than whites<sup>9</sup>. Zhao then further manipulated the data to isolate the ways in which prejudice was acting in the encounters. He found that among real estate brokers, there is a certain degree of prejudice which has gone unchanged even with the enforcement of the FHA, including ways in which minority brokers are prejudiced against other minority groups, which stresses the importance of not lumping all minority groups into the same category. This has been echoed in other essays, which stress the ways in which each racial group has different experiences of discrimination, and to simply apply findings about one to another would be incorrect<sup>10</sup>. Zhao's other main finding was that the strongest evidence of prejudice was a result of the bias of a broker's white customers. In other words, the main reason that brokers engaged in steering mechanisms was because of the racist prejudices of the white customers which were shown other neighborhoods.

Another common theme of the critiques lies in the arena of cultural capital, which essentially alleges that the differences in home ownership and loan acceptance could be somewhat explained by looking at the presence of education about the process and general understanding of the process by the buyers. A recent study by the FDIC exposed that there is a general misconception within the Latino community about the process of home ownership:

"The FDIC said many Latino renters and first-time homebuyers frequently held misconceptions about the purchase process. For example, the report said, a recent study found that 73% of the general population but only 22% of Latinos knew that borrowers do not need a perfect credit rating to qualify for a mortgage. Similarly, 74% of the general population but only 27% of Latinos were aware that borrowers do not have to take a 30-year mortgage loan."<sup>11</sup>

Similar conclusions were reached by Pliagas<sup>12</sup>, though with a different motivation. She claimed that the primary reason for the discrepancy was an educational deficiency, but she said that this proved that the process was non-discriminatory. DiPasquale and Kahn<sup>13</sup> went the opposite route with their study of housing choice. They examined the choice of communities by people moving into the Los Angeles area, then controlled for income and other factors to compare the places where different races ended up. They concluded that universally people of all races strove to live in the highest quality communities possible, but that minorities ended up in substandard communities based on their means at a disproportionately often rate. Further, they explain that this difference could be explained by institutional discrimination or that it could be found based upon the understanding and education of the different buyers:

"This gap may reflect differences in preferences between majority and minority households, but our data do show that as minority income rises minorities choose higher-quality communities. This evidence suggests to us that the gap in community expenditures is unlikely to be explained by differences in preferences. This gap would result if minorities lack information about potential opportunities because they

9 Zhao, Bo. "Does the Number of Houses a Broker Shows Depend on a Homeseeker's Race." *Journal of Urban Economics* 57. 2005: 128-147.

10 Krivo, Lauren J. "Immigrant Characteristics and Hispanic-Anglo Housing Inequality." *Demography* 32.4 Nov. 1995: 599-615.

11 Blackwell, Rob. "FDIC: Bridge Hispanic Info Gap." *American Banker* 170.59 29 Mar. 2005: 4-4.

12 Pliagas, Linda. "The Real Deal." *Hispanic Washington* 18.1/2 Feb. 2005: 30-32.

13 DiPasquale, Denise and Matthew K. Kahn. "Measuring Neighborhood Investments: An Examination of Community Choice." *Real Estate Economics* 27.3 Fall 1999: 389-424.

use different resources in their search than majority households.”

The implications of a cultural capital explanation are paramount. That means that while there may be institutional segregation, even if there was not, Latinos would be at a disproportionate risk to be denied or abused by the system.

Finally, several authors stress that cultural perceptions and experiential predispositions can also influence the socioeconomic status of Latinos, as well as their access to home ownership opportunities. One such study has stressed the absolute importance of demographics, but simultaneously has recognized the way in which perceptions of the process are a key factor which exacerbates the discrepancy: “Whether it’s due to cultural or historical factors, minority consumers often feel like foreigners in the U.S. when they’re in the market for a mortgage loan”<sup>14</sup>. The author then proceeds to explain that this is due to either misconceptions about the ways in which their credit histories and other factors match up with other consumers or that it can be developed by a cultural mistrust of banking institutions. By feeling outside the system, minorities are less likely to establish long-running affiliations with banking institutions, which directly impacts their ability to build sufficient credit histories. In a study of the discrepancy between assets of minorities and whites, Choudhury echoes the sentiment<sup>15</sup>. Analyzing similar discrepancies in the presence of non-home liquid assets among minorities and whites, which along with home ownership constitute a household’s primary means of wealth generation, she attributed the differences to both access to institutions and cultural differences in the perception of investment and savings. Both of these views explore the ways in which socioeconomics might describe the discrepancies in housing, but go beyond that to analyze the ways in which the socioeconomic status is shaped and reinforced by cultural and discriminatory boundaries.

It is for these reasons, that I have chosen to focus my research in several ways. First, I wanted to illustrate the ways in which socioeconomic discrepancies (for example, income) can play a large role in the presence of available housing on the market, which leads to exclusion and competition. Secondly, I wanted to find the ways in which that discrepancies was made more prevalent by the lack of access to basic information about the process, which would have given Latinos a disadvantage in this competitive market. And finally, I wanted to illustrate the ways in which the lack of data, in HMDA data for example, make isolating true causes of the housing discrepancy difficult.

## Methods

In terms of quantitative data, I relied heavily upon the U.S. Census Bureau's public data<sup>16</sup> to gather information on the conditions nationwide and within Washington state for the Latino community. Unfortunately, I was unable to use HMDA data, since it is broken down into Metropolitan Statistical Area/Metropolitan Division (MSA/MD), which refers to an area with at least one metropolitan area of 50,000+ population<sup>17</sup>, which Walla Walla does not qualify as. Thus, for governmental data, the smallest unit that I was able to deal with was Washington state, or another metropolitan area. It would have been greatly useful to have been able to obtain governmental statistics for Walla Walla as a city, as the simple lack of data makes it nearly impossible to isolate issues in the Walla Walla region.

To relate the data back to Walla Walla, I used several sources. One such source was a

14 Yin, Sandra. “The Title Wave That Isn’t.” *American Demographics* 25.8 Oct. 2003: 32-36.

15 Choudhury, Sharmila. “Racial and Ethnic Differences in Wealth and Asset Choices.” *Social Security Bulletin* 64.4 2002: 1-14.

16 United States. Census Bureau. *Statistical Abstract of the United States*. N.p.: U.S. Census Bureau, 2004-05.

17 *HMDA Glossary*. n.d. Federal Financial Institutions Examination Council. 3 Nov. 2005.  
<<http://www.ffiec.gov/hmda/glossary.htm>>

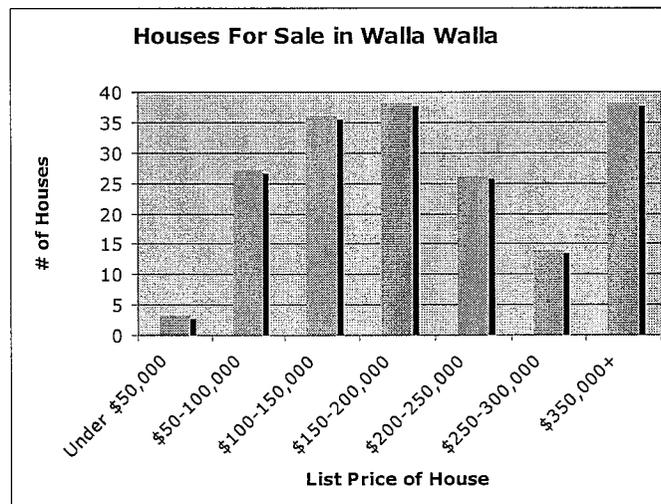
affordability calculator<sup>18</sup> available on a local realty website, which would calculate based upon income, level of debt and down payment the most expensive house that you could hope to afford. Next, I established basic income brackets, based upon the ways in which the Census Bureau divides the data, and plugged mean income for that bracket into the calculator. Then I looked within local realty search engines to view available properties. Additionally, I kept track of the web sites locally which had basic information about the process, as well as special programs for first time buyers and an optional Spanish language setting. Finally, I obtained information from the Columbia Legal Services about mobile home legislature and park information for the area, which set the basis for my case study, which was the mobile home situation in Walla Walla.

It was through this case study that I conducted my interview with a tenant at the Kings Mobile Manor, as well as several conversations with residents at Sterlings Mobile Home Park. The interview at Kings was conducted in Spanish via a translator, Lazaro Carrion. I found my interviewee by going door-to-door in the park, and he happened to be outside and available for a couple minutes. For this interview I recorded what was said, and it was later translated by Lazaro Carrion into the form that is included in this paper. The tenant has asked that identity be left out of the report, for fear of retaliation by the park owner for speaking to us. The conversations at Sterlings were very brief and were conducted in English. The process for finding interviewees was identical, but no one was able to give more than a minute or two commentary, thus a complete transcript has not been included. A thorough discussion of the findings of this case study will be explored in a later section.

#### Data

Based upon a search of the MLS databases at Coldwell Banker<sup>19</sup> and Windemere Real Estate<sup>20</sup>, below is a chart and graph showing the current availability of houses in Walla Walla, current as of 11/3/05.

<u>Housing Cost</u>	<u>Quantity</u>
Under \$50,000	3
\$50-100,000	27
\$100-150,000	36
\$150-200,000	38
\$200-250,000	26
\$250-300,000	14
\$350,000+	38



18 Mortgage Tools: Affordability. n.d. Century 21. 10 Oct. 2005.

<<http://www.netmovein.com/info/landscape?jpid=MortgageTools2>>.

19 Walla Walla, WA Real Estate Homes Properties and Lots. n.d. Coldwell Banker First Realtors. 3 Nov. 2005.

<[http://www.wallawallaidx.com/index.asp?site\\_id=217](http://www.wallawallaidx.com/index.asp?site_id=217)>.

20 Windemere Real Estate. n.d. Windemere Real Estate. 3 Nov. 2005.

<<http://www.windemere.com/index.cfm?fuseaction=listing.searchPropertyMapv2>>.

This chart shows that currently within Walla Walla, the price range which has the highest concentration is between \$100-200,000. With fewer houses available in the lower price ranges, one could clearly conclude that competition for said houses, if an equivalent number of potential buyers were interested, would be greater than the brackets with more available houses.

Next, using the Century 21 calculator mentioned above, maximum price that could be afforded for various income brackets has been calculated. All interests have been held constant (at 5%, which is currently below market, but the interest rate only factors into monthly payment). Additionally, all buyers are assumed to have no monthly debts. This means no car payments, credit card bills, or other recurring payments, which is obviously an overly ideal and unrealistic assumption. Then, based upon what percentage of annual income could be available for the down payment, loans were calculated.

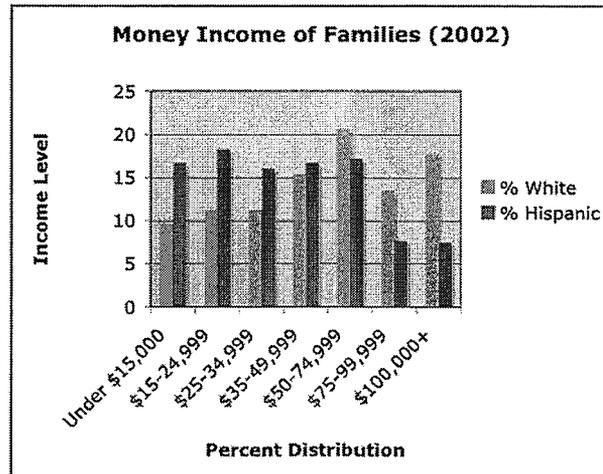
<u>Family Income</u>	<u>% Available</u>	<u>Max. Loan Amount</u>	<u>Monthly Payment</u>	<u>Max. House Afford</u>
\$10,000	5%	\$8,818	\$47	\$9,091
\$10,000	10%	\$17,636	\$95	\$18,182
\$10,000	25%	\$40,749	\$219	\$42,194
\$20,000	5%	\$1,736	\$95	\$18,182
\$20,000	10%	\$35,273	\$189	\$36,364
\$20,000	25%	\$81,499	\$438	\$84,389
\$30,000	5%	\$26,455	\$142	\$27,273
\$30,000	10%	\$52,909	\$284	\$54,545
\$30,000	25%	\$122,248	\$656	\$126,583
\$42,500	5%	\$37,477	\$201	\$38,636
\$42,500	10%	\$74,995	\$402	\$77,273
\$42,500	25%	\$173,185	\$930	\$179,327
\$62,500	5%	\$55,114	\$296	\$56,818
\$62,500	10%	\$110,227	\$592	\$113,636
\$62,500	25%	\$254,683	\$1,367	\$263,715
\$87,500	5%	\$77,159	\$414	\$79,546
\$87,500	10%	\$154,318	\$828	\$159,318
\$87,500	25%	\$356,557	\$1,914	\$369,202
\$100,000	5%	\$88,182	\$473	\$90,909
\$100,000	10%	\$176,364	\$947	\$181,818
\$100,000	25%	\$407,493	\$2,188	\$421,945

Remember, once again, that these are above ideal conditions, since the majority of families would have some sort of debt, and would probably not be able to get the maximum which the bank is calculating. Keeping in mind that the majority of houses in Walla Walla fall between \$100-200,000 and that there are very few houses under \$50,000 many income brackets, even under ideal conditions, would not be able to afford a house in Walla Walla. This can lead to several different options: renting, saving for a longer time, purchasing a mobile home, etc. These options will be discussed with the implications of this chart in a later section.

To continue this line of thought to its conclusion, here is the U.S. Census Bureau data of the "Money Income of Families" for 2002<sup>21</sup>, compared between white and Latino. The data is in percent distribution.

<sup>21</sup> United States. Census Bureau. Statistical Abstract of the United States. N.p.: U.S. Census Bureau, 2004-05 (Chart No. 670).

Family Income	% White	% Hispanic
Under \$15,000	9.7	16.7
\$15-24,999	11.3	18.3
\$25-34,999	11.3	16
\$35-49,999	15.4	16.7
\$50-74,999	20.6	17.2
\$75-99,999	13.5	7.7
\$100,000+	17.8	7.5



Evident in this data is that Latinos across the U.S. are more likely to fall in the lower economic brackets than whites. This means that more Latino families are going to be unable to afford the houses within Walla Walla, and will be relatively more excluded from homeownership chances.

Furthermore, in order to assess the educational opportunities available to home buyers, I went to the website of every real estate agency in the city of Walla Walla to see what kinds of services they offered<sup>22</sup>. The basic goal of such a survey was to figure out, if I was a prospective home buyer, what information is readily available to me, without actually contacting a realtor. I looked for basic information or descriptions of the process, special help for first time buyers, financial services (such as the loan calculator at Century 21), and whether or not a Spanish language version of the information existed.

Realtor	Basic Info	First Time Buyer	Financing Help	Spanish
Century 21	Yes	Yes	Yes	No
Christy's Realty	No	No	No	No
Coldwell Banker	Yes	Yes	Yes	No
Hepler-Jackson Realty	No	No	No	No
Linscott, Wylie & Blize, Inc.	Yes	Yes	Yes	No
Lloyd's Real Estate	No	No	No	No
Paradise Real Estate	No	No	No	No
Peterson Properties	No	No	No	No
Windemere Real Estate	Yes	Yes	Yes	No

While this does not actually assess the knowledge of the process within the Latino community (such information would be useful, but a large scale survey was impractical given time constraints), it sheds some light on the way in which Latinos could educate themselves prior to going to a realtor.

### Case Study: Mobile Home Ownership

Mobile homes are a considerable option when determining housing. Given that one of the major benefits of owning a home is that it is an asset, whereas renting is a one-way payment which will not be returned in any measure, mobile homes are an appealing middle ground. Statewide, mobile homes make up 10.2% of all homes owned, and 4.6% of all homes rented<sup>23</sup>.

<sup>22</sup> Website listings in Appendix E

<sup>23</sup> American Factfinder, n.d. U.S. Census Bureau. 20 Sept. 2005.

According to listed capacities of the 12 existing parks in Walla Walla and College Place, as many as 967 families may be living in mobile home parks. Unfortunately, though data on total population of mobile homes is available, this data is unsorted by demographics, which does not allow specific commentary on the precise ways in which mobile home conditions affect Latinos with respect to other races. However, due to the fact that mobile homes are cheaper than traditional homes (according to the Census Bureau, the average sales price for a brand new mobile home unit in 2003 was \$54,900<sup>24</sup> with older homes fetching a much smaller price typically) filling somewhat the gap in the housing market for those unable to afford a \$100,000+ investment. And as was shown earlier, Latinos are disproportionately represented in the income brackets that would be excluded from home ownership. A logical correlation would be that Latinos will be disproportionately represented in alternatives to home ownership, such as mobile homes. The typical arrangement for someone living in a mobile home is to be the actual owner of the home itself but to be renting the land on which the home is resting (hence the business of mobile home parks).

This case study primarily focuses on the problems within landlord tenant relations which have arisen due to lax enforcement of the Manufactured/Mobile Home Landlord Tenant Act, which outlines the rights and responsibilities of both landlords and tenants. According to a flier distributed by the Office of Manufactured Housing<sup>25</sup> these rights of tenants include a "written one year lease, privacy, sell home within a community, freedom of choice, request landlord to comply with laws, utilities provided by lease and roads maintained" as well as other rights outlined in detail. According to Ben Hooper and Ishbel Dickens of the Columbia Legal Services, who have been researching violations of this act across the state, landlords who violate the act are able to do such because tenants live in fear of eviction and the law is ineffectively enforced. Such infractions include not offering a one year lease, but instead a monthly lease, which allows the landlord to raise the rent more often, since one must merely give a 90 day notice prior to the raise on that month's bill, instead of the single time provided under a yearly lease; some landlords have been reported to be blocking sales of homes within a park, justifying the blockage on the grounds that they would not allow the buyer into the park under normal circumstances, and then months down the road, these landlords make offers to purchase the home at rock-bottom prices from the tenant. While the Manufactured/Mobile Home Landlord Tenant Act has provisions which prevent the eviction of tenants as retaliation for complaining about mistreatment, since the law is not widely understood or enforced, tenants do not feel protected enough to speak out. When I spoke to a tenant in Kings Mobile Manor, he desired that his identity be left out of the report simply because he was complaining about the park owner and the way in which the park tenants had been mistreated and was worried that exposure of his identity could lead to eviction. He articulated this fear, even after we had discussed his rights under the law, which would guarantee his protection from such retaliation. Obviously, this tenant is not putting too much faith in the law to protect them.

At the prompting of groups, such as Columbia Legal Services, the state of Washington passed House Bill 1640 on April 19<sup>th</sup> of this year<sup>26</sup>. This bill requires the Office of Manufactured Housing to maintain records of complaints filed against landlords by tenants, and then to use this information to recommend a strengthening or weakening of the Landlord Tenant Act in 2006. However, one of the problems is that no one is being told about the law; not a single

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<<http://factfinder.census.gov/home/saff/main.html?lang=en>>. (Chart QT-H10)

24 United States. Census Bureau. Statistical Abstract of the United States. N.p.: U.S. Census Bureau, 2004-05 (Chart No. 935).

25 See appendix A

26 State of Washington Legislature. State of Washington Legislature. Engrossed Substitute House Bill 1640. Olympia, WA: n.p., 19 Apr. 2005.

tenant, out of the five which I spoke to, or the single park manager knew that they could file a complaint with the government. Additionally, even if tenants did know about this law, the process of filing a complaint makes it very difficult to do. One must first notify, in writing, the landlord about the problem which they are complaining about. Then, the landlord must be given adequate time to deal with the problem, and if they do not, at that point, the tenant may go online or call an 800 number to receive a form that they can fill out and send into the Office of Manufactured Homes. However, when visiting the Office of Manufactured Housing website<sup>27</sup> there is no mention of this new law. It is possible to find the complaint form, but not instructions on how to go about filing a complaint. On the form itself, it says that "your complaint will be investigated when we receive documentation that you have notified the other party in writing of your complaint(s)"<sup>28</sup>. Is it the landlord's responsibility to notify the government that they have been served notice of a complaint? If so, what is the incentive to do such, when the only way in which you can be investigated is by doing such? Additionally, there is no form in Spanish or any explanation of rights in Spanish on the website. There is a flier which the Office of Manufactured Housing claims to have been distributing, which outlines the new law and gives the procedure for filing complaints, in both English and Spanish<sup>29</sup>, when I showed the flier to tenants, none had seen one before.

A striking example of the problems facing mobile home tenants is exemplified clearly in a comparison of conditions in two parks (Kings Mobile Manor and Sterlings Mobile Home Park) which are conveniently across the street from one another, giving a visual comparison as well<sup>30</sup>. Sterlings, which is a very small park, housing only 7 homes, is set up in a neat loop, with the road paved. Walking between the homes, you can tell that it is well cared for; it is clean and there is not a piece of trash in sight. When I went to visit, I stopped first in with the manager, who lives on site. They were unable to talk for very long, since they were busy working on repairs and such. They did tell me that average rent was \$150 per month for the piece of land, and every tenant brought their own park. Walking around the park, I encountered another resident, who I questioned about the conditions in the park. He told me basically, that if I was looking for problems, I had come to the wrong park, and that the landlord "is simply a great person;" the only problem he could remember was a disruptive tenant who was forced to leave. While he had not heard of the new law about filing complaints, he was uninterested in hearing about his rights, stating that it was a very good place to live and that he was very well cared for. The landlord lives in a house across the street and thus is constantly in communication with the tenants, and is readily available. All the tenants encountered were white.

Now, walk across Melrose St. to the other mobile home park in the area. Kings Mobile Manor is a much larger park, housing 58 homes. Immediately, you are struck by how, though there is more land, the homes seem closer together, the roads are unmaintained and full of potholes, and trash is littered all throughout the park. None of the tenants which I spoke with knew about the new law. The tenant which agreed to a quick interview<sup>31</sup> was unaware of his rights under the law, but didn't feel like he needed to have them explained. He was, however, thrilled that I had brought several copies of the Spanish flier which the Office of Manufactured Housing had made, and suggested that I leave a copy at every house. His opinion of the park were much less than ideal. He claimed that the landlord promised to install speed bumps, street

27 Mobile/Manufactured Housing. n.d. Office of Manufactured Housing. n.d.

<[http://www.cted.wa.gov/portal/alias\\_CTED/lang\\_en/tabID\\_480/DesktopDefault.aspx?tabID=0&alias=CTED&lang=en](http://www.cted.wa.gov/portal/alias_CTED/lang_en/tabID_480/DesktopDefault.aspx?tabID=0&alias=CTED&lang=en)>.

28 See Appendix B

29 See Appendix C

30 See Appendix D

31 See Appendix E

lights, and other safety issues, but never got around to it. She had fired the last manager, but had decided not to hire another afterwards. When incidents of crime occur on the property, she tells tenants to simply call the police, that it isn't her problem. The basic theme of the conversation was that of distrust on the part of the tenants, for the landlord had not done anything which made them believe that she cared. In fact, she lives in California and only makes a visit roughly once a year to the premise. This tenant suggested that if she actually did the things that she promised, things would be a lot better, and that if they could have a manager, conditions in the park would improve greatly. Finally, he explained that the rent ranges from \$185-250 for a spot in the park. As with Sterlings, the majority of tenants own their own homes and are simply renting the land. All tenants encountered were Latino and the majority spoke only Spanish.

Clearly, several conclusions can be drawn from this analysis. The first is that tenants are unaware of their rights, and the passage of a law which allows for the filing of complaints without telling tenants about that new right, will obviously skew the amount of actual complaints which are received. Additionally, something beyond economics is definitely going on in this comparison of two parks. Latinos are living in the higher priced, larger, worse conditioned park, while whites live in the cheaper but nicer park with both an on-site manager and landlord. Perhaps this can be explained by the fact that Sterlings is a much smaller park, and thus has fewer vacancies, though it seems like in such a case, there would at least be some Latinos in Sterlings, and some whites in Kings (which there may be, but they were not present, and when speaking to tenants of Kings, they identified the park as primarily Latino). Further conclusions will be drawn in the next section.

### **Results and Implications**

The scholarly debate on the subject of housing discrimination combines with the experience in Walla Walla to create a couple glimpses into the condition of housing in Washington state. The first is that simply put the current conditions in the housing market have stacked the odds against the lower income bracket in terms of being able to afford to buy a house. This is problematic for many reasons. If you are unable to purchase a house, you are forced into a renting experience, which is essentially a capital drain, as instead of accumulating wealth as you pay off loans, you merely pay your monthly rent. Additionally, the fact that Latinos are disproportionately represented in the lower economic brackets is troubling, when studies have shown that there are incredible disparities in terms of loan acceptance rates between minorities and whites<sup>32</sup> and that 20.8% of Latinos are lured into overpriced loans, as opposed to 8.7% for whites<sup>33</sup>. With an inability to get loans, and typically getting worse prices for loans, Latinos are pushed towards alternative housing options, such as mobile home parks.

The next key issue is that of education. The simple fact that no real estate agent has a Spanish language website for the city of Walla Walla, that the Office of Manufactured Housing does not have a Spanish language form for complaints, and other forms of assistance (for example, the Walla Walla Housing Authority<sup>34</sup>) do not have a Spanish language site, point to a linguistic disadvantage for Spanish speakers, who even if they speak English may be more comfortable speaking in Spanish. A rather simple step to leveling this dilemma of access to information is to provide more bilingual information in readily available places, such as the internet.

Insofar as language is an issue, one recommendation to address barriers confronted by

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32 Squires, Gregory D. "HMDA Disparities or Discrimination." *American Banker* 27 Sept. 2005: 8-8.

33 Anonymous, "Lenders Charge Minorities More For Loans: Federal Study." *Jet* 108.14 3 Oct. 2005: 20-20.

34 *Walla Walla Housing Authority*. n.d. Walla Walla Housing Authority. 3 Nov. 2005.

<<http://www.wallawallaha.org/>>.

individuals dominant in the Spanish language would be to strengthen civil rights laws and to increase and improve civil enforcement of the laws now in effect. Title VI of the Civil Rights Act of 1964<sup>35</sup>, the primary federal civil rights statute, prohibits national origin discrimination by recipients of federal funding. Title VI has been interpreted by courts to impose an affirmative obligation on federal money recipients to ensure meaningful access to persons with limited English proficiency. In many circumstances, this law may require documents, including web site postings, to be translated into Spanish, and for Spanish interpreters to be provided. Title VI has traditionally been underutilized and under-enforced. Greater civil enforcement by the Department of Justice's office of Civil Rights Enforcement and outreach to covered organizations that provide housing services to explain obligations to provide language access to Spanish speakers could help to combat the language barrier.

Additionally, there is a law working at the state level which has similar applicability as the Civil Rights Act. The Washington Law Against Discrimination (WLAD)<sup>36</sup> prohibits discrimination in real estate practices on the basis of national origin. Furthermore, this has been taken by Washington courts to mean that WLAD prohibits neutral practices which may have a discriminatory effect. This could include failure to provide translators or bilingual materials to consumers. By granting greater resources to the Human Rights Commission, which enforces WLAD, the legislature would be strengthening a law that protects the rights of those who traditionally are marginalized on the basis of language.

Furthermore, disregarding the possibility of institutional steering, which I did not study, the case study of the mobile home parks and their segregation implies that housing decisions are not simply economic questions. There must be something else acting on the buyer which is forcing Latinos into substandard communities. This could be a self-steering mechanism, desiring to live with members of one's own racial community, but it could also be an educational deficit or inability to gain access to other options. This feeling of being outside the system is likely to cause an identity to form in which distrust of the system develops and pessimistic complacency may take over. Additionally, if you have seen that you really have no options, the risk of being evicted from your current place becomes more important. It is due to reasons such as this that a further study into the motivations behind community choice must be undertaken, to develop the rationale with which minorities tend to live in substandard housing. It is understanding the motivation that can best get us to the heart of the issue.

Additionally, laws like the Mobile Home Landlord Tenant Act should be strengthened to protect the rights of individuals to obtain fair and reasonable housing. Complaints recorded via House Bill 1640 should be seen as the conclusive, sufficient test of mobile home park problems. Due to the pervasive lack of knowledge about one's rights or of the complaint process within parks in Walla Walla, I have reason to believe that park problems go underreported. This should be taken into account when analyzing the results of House Bill 1640, and should influence the strengthening of the Mobile Home Landlord Tenant Act.

Moreover, more research about the present conditions of mobile home parks and the ways in which conditions vary by race must be conducted. The simple lack of literature on the subject, as well as the lack of sufficient sources of demographic data make the analysis of conditions very difficult. Further studies could increase awareness of problems within the mobile housing and could shed light on ways in which they could be solved.

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35 Civil Rights Act. Pub. L. PL-88 352. 2 July 1964.

36 Washington Law Against Discrimination. Pub. L. RCW 49.60. 1 July 1995

Finally, governmental data, which is the primary source of information about the subject, must be more inclusive. HMDA data must include regions which are not centered around areas with 50,000 people, otherwise all rural and smaller city data is lumped together in an unintelligible mix, which makes it impossible to analyze conditions in a given, lesser populated area. This data also needs to include data about the loan applicant other than simply their race and income, for if the industry can justify the discrepancy as economically viable, there is no reason not to include information such as credit history, size of loan, and other risk factors. This would merely allow analysts to actually interpret the conditions surrounding the current disparity in loan acceptance. When an institution is collecting data to aide "in determining whether financial institutions are serving the housing needs of their communities"<sup>37</sup> and a specific community is being excluded from the home buying process a disproportionate amount, such information becomes a responsibility.

The studies which have been highlighted earlier in this piece shed some light on the problem, but the frustration with data and the sheer lack of study have limited these authors to merely postulating possible causes and interpretations that might occur if more systematic data was available. That said, one of the best ways to change what is occurring is to continue to read and write studies and interpretations.

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<sup>37</sup> Background and Purpose of HMDA. n.d. Federal Financial Institutions Examination Council. 3 Nov. 2005. <<http://www.ffiec.gov/hmda/history.htm>>.

## Appendix A – Office of Manufactured Housing Flier

**STATE OF WASHINGTON**  
 DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT  
 OFFICE OF MANUFACTURED HOUSING

**NOTICE**

**Chapter 429, Laws of 2005 (effective May 13, 2005):  
 New Legislation for Complaints and Investigation  
 of Landlord-Tenant Disputes**

Ombudsman Complaint Resolution Program (per Chapter 429, Laws of 2005)  
**1-800-964-0852 or visit [www.cted.wa.gov/omh](http://www.cted.wa.gov/omh)**

The Washington State Legislature expanded the authority and responsibilities of the Office of Manufactured Housing to investigate complaints that allege unfair practices or violations of the Manufactured/Mobile Home Landlord-Tenant Act, Chapter 59.20 RCW.

A Tenant's Right and Responsibility per Chapter 429, Laws of 2005:

**RIGHT**

- A tenant shall have the right to file a complaint with the Office of Manufactured Housing alleging an unfair practice or a violation of Chapter 59.20 RCW by the landlord.

**RESPONSIBILITY**

- A tenant must provide the landlord written notice of an alleged unfair practice or violation of Chapter 59.20 RCW and request remedy prior to filing a complaint with the Office of Manufactured Housing.

Rights and responsibilities of tenants are detailed in the  
 Manufactured/Mobile Home Landlord-Tenant Act, Chapter 59.20 RCW, and include:

**RIGHTS**

- written one year lease
- privacy respected
- sell home within a community
- freedom of choice in purchasing goods or services
- attend meetings of organizations that represent the interest of tenants
- request the landlord to comply with any provision of the law
- utilities provided by lease and roads maintained in good condition

**RESPONSIBILITIES**

- be current in the payment of rent
- comply with all legal obligations imposed upon tenants
- keep space as clean and sanitary as the conditions of the premises permit
- not intentionally or negligently destroy, deface, damage, impair, or remove any of the landlord's property, or permit any family member or guest to do so
- not permit a nuisance or common waste
- not engage in drug-related activities

Additional rights and responsibilities of landlords and tenants are detailed in the  
 Manufactured/Mobile Home Landlord-Tenant Act, Chapter 59.20 RCW

*For information and resources, or to file a complaint, contact  
 the Office of Manufactured Housing at 1-800-964-0852 or visit [www.cted.wa.gov/omh](http://www.cted.wa.gov/omh).*



**4. Steps taken to address issues**

Describe the steps you have taken regarding each issue. *Important:* Include names, phone numbers and/or addresses of organizations and individuals contacted (e.g., Health Department, Building Department, Law Enforcement, Labor & Industries). Include copies of any documentation resulting from the conversation. Describe any conversations you have had about this issue, with whom, contact information, and the date of contact. ATTACH copies of any written correspondence, permits, or other documentation (including lease/rental agreement, park rules). If you specified a time frame for a response, include that information and the date of expiration.

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. Outcome**

Briefly describe what you would consider a satisfactory outcome(s) to the issue(s).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. Approval and Signature**

I confirm that the information given in this request and any attachments are true and correct to the best of my knowledge. I have included a copy of the written notice I provided to the park resident or park owner. I further understand that no action will be taken on this request for assistance without my signature on this form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

RETURN TO:  
Office of Manufactured Housing  
Post Office Box 42525  
Olympia, Washington 98504-2525

(360) 725-2971 or 1-800-964-0852 (Toll-free within Washington); Fax (360) 586-5880

**OFFICE USE ONLY**

SV: Date: \_\_\_\_\_ Staff: \_\_\_\_\_ Notes: \_\_\_\_\_

DB: Date: \_\_\_\_\_ Staff: \_\_\_\_\_ Notes: \_\_\_\_\_

Ref: 59.20 §

\_\_\_\_\_  
\_\_\_\_\_

# Cuéntenos

## ¿Tiene usted una queja contra un PARQUE DE CASAS MANUFACTURADAS O MOVILES?

- Prácticas Injustas
- Reglas Irrazonables
- Aumentos de Renta Sin Restricción
- Posición de Negociación Desigual Después de Tenencia

**La Legislatura de Washington en 2005** aprobó una ley requiriendo que la **Oficina de Vivienda Manufacturada (OMH)** se mantenga al tanto de quejas registradas por inquilinos en parques de casas móviles. El OMH usará esta información para recomendar a la Legislatura en el 2006 cuales son los cambios necesarios para resolver disputas en los parques y el trato injusto por parte de los administradores/dueños.

Es muy importante que el OMH sepa los problemas que usted esté enfrentando sobre casas móviles – ellos necesitan reunir suficientes datos antes de la sesión legislativa del 2006. Ejemplos de las violaciones incluyen: reglas de parque irrazonables; problemas con garajes/cobertizos; falta de mantenimiento en áreas comunes; aumentos de renta más de una vez al año; reglas ejecutadas arbitrariamente; falta de reparación de servicios públicos en tiempo oportuno; y falta de renovación automática de contratos de renta. Al compartir su historia nos puede ayudar a obtener un **TRATO JUSTO** para los dueños de casas móviles en Washington.



**Necesitamos su ayuda para la  
lucha en conseguir un  
TRATO JUSTO para TODOS  
los Dueños de Casas Moviles**

Cuéntenos.

**Llame 1-800-964-0852**

O visite [www.cted.wa.gov/omh](http://www.cted.wa.gov/omh)

Después de llamar al OMH, le enviarán un formulario de queja. Regrese el formulario al OMH a la siguiente dirección:

Office of Manufactured Housing  
PO Box 42525  
Olympia WA 98504-2525

Para mayor información llame a:  
Mobile Home Owners of America, Inc. (MHOA) al 1-360-377-4004  
Mobile Home Tenants Association (MTA) al 1-253-840-4194

# Tell your story.

## Do you have a MANUFACTURED/ MOBILE HOME PARK COMPLAINT?

- Unfair Practices
- Unreasonable Rules
- Unrestricted Rent Increases
- Unequal Bargaining Position after Occupancy

**The 2005 Washington Legislature** passed a law requiring the Office of Manufactured Housing (OMH) to keep track of mobile home park complaints. OMH will use this information to recommend to the Legislature in 2006 what changes are necessary to resolve park disputes and unfair treatment by park managers/owners.

It is very important that OMH hears about the mobile home problems you are facing – they must collect sufficient data before the legislative session of 2006. Examples of violations include: unreasonable park rules; problems with carports/sheds; failure to maintain common areas; rent increases more than once a year; arbitrarily enforced rules; failure to repair utilities in a timely manner; and failure to automatically renew rental agreements. By sharing your story you can help us get a FAIR DEAL for mobile home owners in Washington.



**We need your help to fight  
for a FAIR DEAL for ALL  
Mobile Home Owners**

Tell your story.  
**Call 1-800-964-0852**

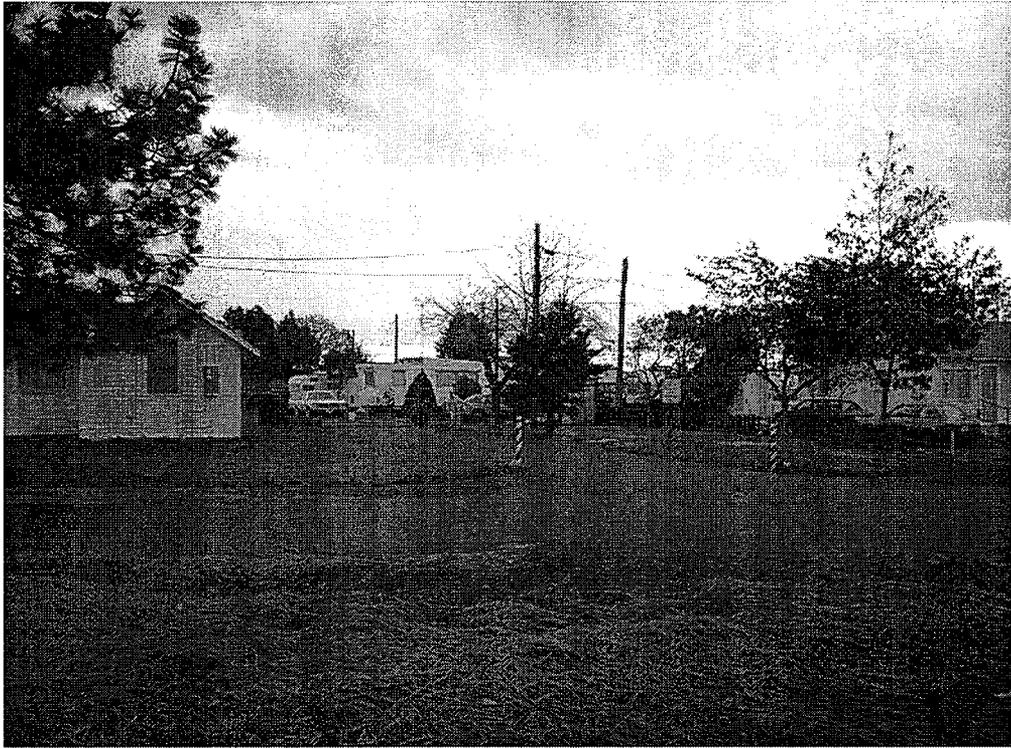
Or visit  
[www.cted.wa.gov/omh](http://www.cted.wa.gov/omh)

After you call OMH, you will be sent a complaint form. Send the complaint form back to OMH at:

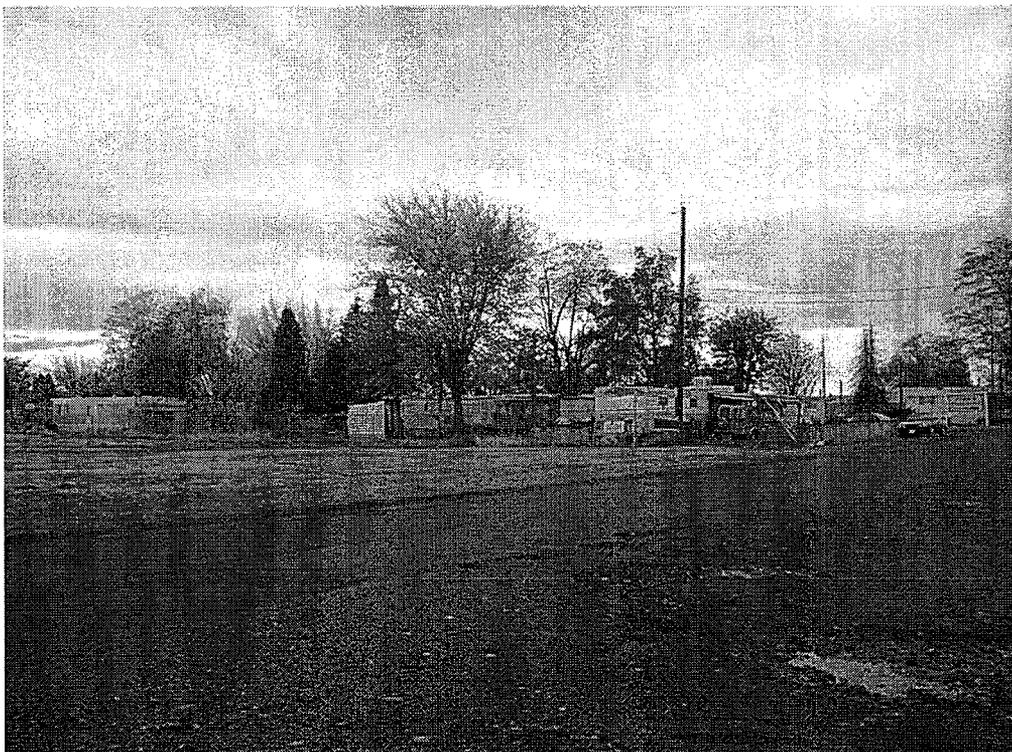
Office of Manufactured Housing  
PO Box 42525  
Olympia WA 98504-2525

**For More Information contact:**  
Mobile Home Owners of America, Inc. (MHOA) at 1-360-377-4004  
Mobile Home Tenants Association (MTA) at 1-253-840-4194.

**Appendix D – Mobile Home Park Visual Comparison**  
Sterling's Mobile Home Park



King's Mobile Manor



## Appendix E: Kings Mobile Manor Interview

Interview was conducted on 10/22/05 through a translator, Lazaro Carrion.

Interviewer: Have you had any problems living here?

Tenant: Well, we're only allowed to store two cars here, and two of my cars have already broken down. I didn't want to leave the cars stranded out in the streets so I brought them here. And once I got my third functioning car, the owner complained about me having three cars when we're only allowed to have two. And since I didn't have time to move them, she (landlord) towed one of my cars away. Also, I've asked for speed bumps throughout the park on the streets because too many cars drive fast through here. I have children and I don't want them getting run over. She (the landlord) says that she will get the problem fixed and put those speed bumps but she never does.

Interviewer: Did you know that this is something that's covered under the law? You can complain about something like this and submit a written complaint to her and to the state and if she doesn't address it, the state will enforce it.

Tenant: Well I've told her.

Interviewer: Well the thing is it has to be in written form to her and to the state in order for the law to enforce this complaint. That way there is a record of these kinds of complaints.

Tenant: Another problem that we have here is that there are not enough post lights, so it's really dark at night and there are a lot of thefts. Several of my tools that I keep outside have been stolen. We've told the landlord, but she never fixes the problem. Before, we used to have a manager who lived here and took care of this place. He was paid by the landlord and his job was to keep this place clean. He did a good job. But one day, he and the landlord got into an argument or fight and he was fired.

Interviewer: How long ago was this manager fired?

Tenant: Around two years ago.

Interviewer: Do you own your trailer home?

Tenant: Yes.

Interviewer: So you only pay property rent?

Tenant: Yes. I pay 185 dollars. She just recently raised it to 205 dollars, but the new tenants are charged 250.

Interviewer: So is the contract yearly or monthly?

Tenant: Yearly.

Interviewer: So the landlord doesn't live here?

Tenant: No, she lives somewhere in California.

Interviewer: So how do you pay your rent?

Tenant: Through mail.

Interviewer: Does she ever come here?

Tenant: Yes, she came like two weeks ago. But that was it for the whole year.

Interviewer: Do you have any questions regarding this law passed and the rights it entitles you to?

Tenant: No. But I do want to say that the landlord has put few people in charge that serve as unofficial managers who were responsible for cleaning up a little and maintaining the park. However, they were the ones causing problems and stealing from abandoned trailer homes. The funny thing is that one day they just took off without paying rent and stole the landlord's tools.

Interviewer: So where they the ones who stole from your property?

Tenant: No. It was just some punks who came in the middle of the night. So I told the landlord about these problems. But whenever we tell her any complaints, if she says she's gonna fix them, she never does. When it's out of her hands, she just tells us to call the cops. It would be nice if we had a manager living here maintaining the park. I think it would make things better.

## Appendix F: Realtor Websites

Realtor	Website
Century 21	<a href="http://www.century21rainmakerrealestate.com/">http://www.century21rainmakerrealestate.com/</a>
Christy's Realty	<a href="http://www.christysrealty.com/">http://www.christysrealty.com/</a>
Coldwell Banker	<a href="http://www.coldwellbankerfirstrealtors.com/">http://www.coldwellbankerfirstrealtors.com/</a>
Hepler-Jackson Realty	<a href="http://www.heplerjackson.com">http://www.heplerjackson.com</a>
Linscott, Wylie & Blize, Inc.	<a href="http://www.lwbrealtors.com/">http://www.lwbrealtors.com/</a>
Lloyd's Real Estate	<a href="http://www.wallwallarealty.com/">http://www.wallwallarealty.com/</a>
Paradise Real Estate	<a href="http://www.jamesparadise.com/">http://www.jamesparadise.com/</a>
Peterson Properties	<a href="http://www.petersenproperties.com/">http://www.petersenproperties.com/</a>
Windemere Real Estate	<a href="http://www.windemere.com/">http://www.windemere.com/</a>

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# Appendix L

# THE COMMUNITY AND THE PARK OWNER VERSUS THE MOBILE HOME PARK RESIDENT: REFORMING THE LANDLORD-TENANT RELATIONSHIP

## I. INTRODUCTION

Mobile homes are an increasingly popular form of housing. As a result of astounding growth over a period of only a few decades,<sup>1</sup> over six million people, who constitute nearly three percent of all households in the United States, live in mobile homes.<sup>2</sup> It is believed that "one new single-family dwelling of every five is a mobile home"<sup>3</sup> and that this fraction will increase.<sup>4</sup> The burgeoning demand is a reflection of the relatively low cost of this form of housing<sup>5</sup> and the attractiveness of the modern mobile home itself, which comes fully furnished for permanent living.<sup>6</sup>

As mobile homes have grown in size,<sup>7</sup> they have sprouted steps, foundations, garages and other fixtures, and increasingly resemble conventional housing.<sup>8</sup> Such outward, visible signs reflect a desire by mobile home owners, many of whom are connected to the local community by job or profession,<sup>9</sup> for the permanence and security of conventional housing. Mobile home owners move, on the average, no more often than the population in

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<sup>1</sup> Manufacturers' shipments of mobile homes increased by four times in the period 1960-1969. Statistical Abstract of the United States 1970, at 681.

<sup>2</sup> *Hearings on S. 2740 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency, 91st Cong., 1st Sess., vol. 91, at 5 (1969)* [hereinafter cited as *Hearings*].

<sup>3</sup> Federal Home Loan Bank Board, *A Study of the Mobile Home Industry 12 (1969)* [hereinafter cited as *Bank Board Study*]; see also *Hearings* at 5.

<sup>4</sup> A recent text sets the ratio as one out of four. D. Hagman, *Urban Planning and Land Development Control Law 145 (1971)* [hereinafter cited as *Hagman*].

<sup>5</sup> The average retail price of a mobile home has been estimated to be \$6,000, and ranges from \$4,000 to \$15,000. *Hearings* at 22. The cost of renting a lot in a park ranges from \$30 to \$60 per month. *Id.* at 27. In addition, maintenance is generally easy and inexpensive. See the poignant observation in Roberts, *The Demise of Property Law*, 57 *Cornell L. Rev.* 1, 4 n.18 (1971), that the conventional house at a median price of \$24,000 exceeds the financial grasp of the median household. Thus, mobile homes may play an important part in the solution of the national housing crisis. Comment, *Mobile Homes in Kansas: A Need for Proper Zoning*, 20 *U. Kan. L. Rev.* 87, 87-88 (1971) [hereinafter cited as *Kansas Comment*].

<sup>6</sup> The basic price of a typical mobile home includes appliances, cabinets, furniture carpeting and draperies; optional amenities include a dishwasher and central air conditioning. *Mobile Homes 5 (1971)*, a booklet available from the Council of Better Business Bureaus, Inc., 1150 17th Street, N.W., Washington, D.C. 20036. Mobile homes are furnished "in a manner that can be considered as approaching simple elegance." *Bank Board Study* 2.

<sup>7</sup> The average dimensions of a 1947 "trailer," 8 feet wide and 27 feet long, have increased to 12 feet wide and 60 feet long. Public Health Service, U.S. Dep't of Health, Educ. and Welfare, *Environmental Health Guide for Mobilehome Communities 2 (1971)*. Double-wide mobile homes are also being marketed.

<sup>8</sup> See *Kansas Comment* 97 & n.84. Thus, there is increasing judicial difficulty in the proper characterization of mobile homes. *Id.* at 90-94, 111-14.

<sup>9</sup> Over 40% are skilled or semi-skilled workmen. *Hearings* at 23.

general,<sup>10</sup> and are now considered to be as stable and financially responsible as the average local citizen.<sup>11</sup> Thus, the most striking irony of the modern mobile home is its lack of mobility.<sup>12</sup>

The growing demand for mobile home sites has met widespread community resistance,<sup>13</sup> usually expressed through zoning ordinances.<sup>14</sup> Mobile homes and parks may simply be banned altogether in smaller municipalities.<sup>15</sup> Of course, established parks may be allowed to exist by a special permit under the zoning ordinances<sup>16</sup> or as a nonconforming use.<sup>17</sup> Perhaps the most frequent restriction is that mobile homes must be placed in parks, rather than on single lots.<sup>18</sup> Communities usually couple such a restriction with the requirement that parks be licensed<sup>19</sup> and located only in certain

<sup>10</sup> *Id.* at 24, 31; Kansas Comment 89-90 & n.29. A recent survey showed that 80% of the mobile home owners surveyed had made no moves in the preceding five years. Bank Board Study (app.) 6, citing Better Homes and Gardens, Feb. 1968.

<sup>11</sup> Bank Board Study 11-12.

<sup>12</sup> "The mobile home is definitely more 'home' than 'mobile' since the mobile home of a past era has evolved into a factory-built home." Kansas Comment 116. Mobility was the distinguishing characteristic of the "trailer," the mobile home's forerunner, which trailed behind the family car. This role has been taken over by the so-called recreational vehicle. A mobile home, on the other hand, weighs over five tons and moving one is strictly for the professional. Mobile Homes, *supra* note 6, at 12.

Despite their names, mobile homes as a rule are not very mobile. Most are so wide that special permits are needed to haul them along highways, and they are so heavy that they require special trucks to pull them.

In most instances, it costs at least \$200 to move a mobile home from one side of town to another, and the charge on hauls of 1,000 miles or more can be up to \$1,600.

N.Y. Times, Oct. 19, 1972, § 2, at 86, col. 1.

<sup>13</sup> Community resistance is based on outdated public attitudes toward mobile home residents and the belief

that they have high public service requirements while generating low tax revenues.

This may be a myth because, on the average, the number of children per unit may not be high, thus the burden on schools may not be greater than for an equivalent number of units of single family housing. Moreover, mobile homes can be taxed in a number of ways—as a motor vehicle, taxed as property of the mobile home park owner, by local excise taxes, by the personal property tax or by the real property tax. Hagman 146. See also Kansas Comment 87, 89-90; Note, Toward an Equitable and Workable Program of Mobile Home Taxation, 71 Yale L.J. 702 (1962). See generally Bartke & Gage, Mobile Homes: Zoning and Taxation, 55 Cornell L. Rev. 491, 519-26 (1970).

<sup>14</sup> Many states delegate the zoning power through enabling acts to their cities and towns. Hagman §§ 33-40; see, e.g., Kan. Stat. Ann. § 12-707 (Supp. 1971); Mass. Gen. Laws Ann. ch. 40A (Supp. 1972); N.H. Rev. Stat. Ann. ch. 31, § 60 (Supp. 1971).

Zoning restrictions may be at fault for the poor appearance and location of some mobile homes and parks, thus reinforcing public antipathy. Bank Board Study 34. As one court has noted, such restrictions demonstrate a "town's determination that there be metaphorical tracks for a mobile home park to be on the other side of." Lavoie v. Bigwood, 457 F.2d 7, 10 (1st Cir. 1972).

<sup>15</sup> Hagman 145.

<sup>16</sup> *Id.* at 146.

<sup>17</sup> See generally *id.* § 80; Kansas Comment 106-09.

<sup>18</sup> This appears to be a common practice. See, e.g., Council on Community Affairs, Fla. Dep't of Community Affairs, Report of Hearings on Mobile Home Park Operations in Florida 3 (1970) [hereinafter cited as Florida Report].

<sup>19</sup> The state itself may require that mobile home parks obtain licenses from a local authority, usually the board of health. See, e.g., Mass. Gen. Laws Ann. ch. 140, §§ 32A & 32B (Supp. 1972). See also Legislative Research Center, Univ. of Mich. Law School, A Handbook of Model State Statutes 33-40 (1971), which is based upon California and Minnesota statutes.

areas.<sup>20</sup> There are additional means of restricting parks.<sup>21</sup> The immediate effect of such restrictions is scarcity of space available for mobile homes.<sup>22</sup>

This tension between growth and restriction has propelled mobile home park owners into a dominant market position. This Note will examine the practical effects of such an advantage on the landlord-tenant relationship and the resulting problems of mobile home park residents.<sup>23</sup> It will then analyze a recent statute<sup>24</sup> intended to alleviate such problems, and will present a model legislative proposal<sup>25</sup> for states which are beginning to realize the need for reform in this area.

## II. THE LANDLORD-TENANT RELATIONSHIP IN MOBILE HOME PARKS

### A. Prerogatives of the Park Owner

#### 1. The Park Owner's Dominant Position

Because local restrictions in effect require a mobile home owner to rent land, the park owner has a preeminent place in this housing market. Almost half of all mobile homes are located in parks,<sup>26</sup> which often have waiting lists of prospective residents.<sup>27</sup> The established park owner can usually de-

<sup>20</sup> Parks are usually restricted to commercial or industrial, rather than residential zones. Bartke & Gage, *supra* note 13, at 498 & n.41. The town may require a determination that a park would have no adverse impact on the neighborhood and impose a minimum distance from existing residences. *Lavoie v. Bigwood*, 457 F.2d 7, 10 (1st Cir. 1972). The state may also impose specific requirements as to placement. *See, e.g., Vt. Stat. Ann. tit. 10, § 6235 (Supp. 1972).*

<sup>21</sup> In addition to ordinary residential zoning restrictions as to lot size, setbacks and sanitation, stringent building codes or other devices may effectively exclude mobile homes. *See Kansas Comment 94, 95, 104-05. See generally 54 Am. Jur. Mobile Homes, Trailer Parks & Tourist Camps §§ 13-14 (1971).* The constitutionality of such restrictions has been questioned. Roberts, *supra* note 5; *Kansas Comment 94-95, 99-105.*

<sup>22</sup> For example, out of 351 communities in Massachusetts, 31 have no zoning code, only 28 allow parks, and only 36 more allow parks under special permits. Bureau of Planning Programs, Mass. Dep't of Community Affairs, *Status of Zoning Regulations Relative to Mobile Homes in Massachusetts: A Summary Report 12-26 (1970).* Zoning ordinances often are even more stringent in large urban areas where park residents may seek employment. For example, of 27 Boston area communities only two allow parks and the rest have either zero, one or two parks as nonconforming uses, the outstanding exceptions being the neighboring towns of Saugus (5), Peabody (11) and Danvers (4). *Id.* at 12-26.

Even in a community which has halted mobile home development, the growing demand for mobile homes and their increased size often require park expansion. Such expansion may be difficult under a special permit, which may be conditioned to protect neighboring property owners. *See generally Hagman § 113.* Expansion is not permitted for a nonconforming use, absent specific authorization in the zoning ordinance. *See id.* § 82 & n.20.

<sup>23</sup> The commentators have ignored landlord-tenant problems in mobile home parks, in favor of zoning and taxation of mobile homes. *See, e.g., Bartke & Gage, supra* note 13, and the comprehensive list of articles cited therein at 492 n.6. Constitutional and legislative limits on the scope of local zoning may, by making more space available for mobile homes, eventually alleviate the conditions producing landlord-tenant problems. However, this Note assumes that the present shortage of space will continue.

<sup>24</sup> Cal. Ann. Civ. Code §§ 789.5-.7 (West Supp. 1972); *see part III infra.*

<sup>25</sup> *See part IV infra.*

<sup>26</sup> *Hearings* at 28. There are over 22,000 parks in the United States, with 60-75 mobile home sites in the average park. *Id.* at 25.

<sup>27</sup> Although it is estimated that 60% occupancy is needed to meet operating expenses, the national average occupancy rate in mobile home parks was 95.8% in 1968. *Id.* at 25. A recent survey in Massachusetts showed that a prospective tenant must often wait over four years before being allowed to enter a park. Bureau of Planning Programs, Mass.

pend upon the community to keep competition away. For example, where parks are otherwise banned, "considerable benefit can flow from a legal nonconforming use status due to the monopoly position that might be conferred."<sup>28</sup> Unlike other kinds of monopolies, there usually is no significant government regulation.<sup>29</sup>

Frequently, a park owner enhances his position by operating a mobile home sales dealership.<sup>30</sup> In this dual role of seller and lessor, he is able to require the prospective resident to buy a mobile home from him.<sup>31</sup> A tying arrangement of this type is a possible violation of antitrust laws.<sup>32</sup> Alternatively, some park owners charge an entry fee,<sup>33</sup> which may not be refunded even when short occupancy does not merit the expense.<sup>34</sup> Such practices keynote the problems facing residents once they move into a park.

## 2. Eviction Under Landlord-Tenant Law

The park resident is in the unique position of owning his home while renting the land on which it is placed.<sup>35</sup> Because few parks require or use written leases,<sup>36</sup> he is generally a tenant at will on the mobile home site.<sup>37</sup> A tenancy at will is terminated by operation of law upon the death of either

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Dep't of Community Affairs, Preliminary Results of Mobile Home Park Survey 3 (1971) [hereinafter cited as Park Survey].

<sup>28</sup> Hagman 148. See Florida Report 4. Even towns which allow parks may be able to limit their number to one or two. See note 22 *supra*; Lavoie v. Bigwood, 457 F.2d 7, 10 & n.2 (1st Cir. 1972), in which it appeared that only one park was permitted in the town.

<sup>29</sup> See, e.g., notes 89-93 and accompanying text *infra*. But see note 97 *infra*.

<sup>30</sup> See Park Survey 3 (38% of park owners also sell mobile homes); see also N.Y. Times, Oct. 19, 1972, § 2, at 86, col. 4.

This practice may be seen as a way of recouping high investment costs of a park. For example, the limits on insured mortgages under the Federal Housing Act of 1969 were raised to \$2,500 per site and to \$1,000,000 per total project. Florida Report 11. As one spokesman has said:

from a financial point of view a \$40 to \$50 a month rent, or even a rent of \$60 to \$75 per month in some cases, will not by itself develop a satisfactory financial return on a 100-space park at a construction cost of half a million dollars.

[When the park owner also sells mobile homes] [t]he total financial figures suddenly become intriguing and almost without exception prove extremely rewarding under actual track records.

Sunday Herald Traveler & Sunday Advertiser (Boston), Oct. 8, 1972, § 2, at 25, col. 2, quoting Frank J. Sparks, Jr., executive director of the New England Mobile Home Ass'n.

<sup>31</sup> The park owner may instead require a prospective resident to buy a new home from a particular dealer, with whom he may have a kickback arrangement. Florida Report 5-6.

<sup>32</sup> A brief description of the tying arrangement may be found in 52 B.U.L. Rev. 463, 465-69 (1972). Further development of the antitrust problems is beyond the scope of this Note.

<sup>33</sup> This is usually a flat rate of \$400. However, fees may range from \$300 to \$2,500. Florida Report 6.

<sup>34</sup> Florida has responded to this problem by requiring the proration of an entry fee over two years where tenancy is terminated for reasons other than nonpayment of rent. Fla. Stat. Ann. § 83.255 (Supp. 1972).

<sup>35</sup> He is in a no-man's land between permanence and mobility. The conventional home owner also owns the land, while the apartment dweller who rents the space has not invested in a home. See also note 49 *infra*.

<sup>36</sup> Florida Report 4. See also Park Survey 4 (no park owners surveyed used leases).

<sup>37</sup> In some states he may be characterized as a "mere licensee" rather than a tenant at will. See 51C C.J.S. Landlord & Tenant § 6(1), at 38 (1968).

the landlord or tenant,<sup>38</sup> by a conveyance of the fee by the landlord,<sup>39</sup> by attempted assignment or sublease by the tenant,<sup>40</sup> or by the commission of voluntary waste by the tenant.<sup>41</sup> It may be terminated immediately by either party, with or without cause,<sup>42</sup> by giving notice to the other party.<sup>43</sup> This common law relationship has been amended by statutes to require that termination notice be given in writing at least one month in advance,<sup>44</sup> or if for nonpayment of rent within a shorter period.<sup>45</sup> The practical effect of these statutes is to create a tenancy from month to month.<sup>46</sup>

Upon termination, the person entitled to the site<sup>47</sup> may recover possession by summary process.<sup>48</sup> The scope of this action is narrow, the only question being whether the tenancy was terminated; the tenant will probably have no substantive defense, whatever the reasons behind eviction.<sup>49</sup>

There are many reasons why a park owner might evict a resident: for instance to improve the park's appearance by evicting residents with old homes.<sup>50</sup> Of course, this would make room for new homes which he may be selling. The park owner sometimes evicts "troublemakers" who have attempted to organize other residents or who have taken their grievances to

<sup>38</sup> 51C C.J.S. Landlord & Tenant § 170 & n.76 (1968), citing *Ferrigno v. O'Connell*, 315 Mass. 536, 53 N.E.2d 384 (1944).

<sup>39</sup> *Id.* § 169 and cases cited n.60 (majority view).

<sup>40</sup> *Id.* § 171 & nn.83-84.

<sup>41</sup> *Id.* § 171 & n.81.

<sup>42</sup> See note 49 and accompanying text *infra*.

<sup>43</sup> 51C C.J.S. Landlord & Tenant § 167 (1968) and cases cited nn.39-40; note 46 *infra*. The common law later required a reasonable period of notice.

<sup>44</sup> The period of notice is usually the same as the rental period. See, e.g., Mass. Gen. Laws Ann. ch. 186, § 12 (Supp. 1972). It will be assumed that rent in parks is paid monthly.

<sup>45</sup> See, e.g., Mass. Gen. Laws Ann. ch. 186, § 11 (Supp. 1972) (fourteen days' notice under written lease).

<sup>46</sup> 51C C.J.S. Landlord & Tenant § 156 nn.16.5 & 16.10 (1968).

Statutes in many states have blurred the lines between estates at will and estates from period to period, and have had the effect of creating a new hybrid estate, having some of the peculiarities of each of the two older types of estates.

R. Powell & P. Rohan, *Real Property* ¶ 258, at 184 (abr. ed. 1968).

<sup>47</sup> The person entitled to the site shall be assumed to be the park owner operating under a license, if any is required.

<sup>48</sup> See, e.g., Cal. Ann. Code Civ. Pro. §§ 1159-79a (West 1972); Mass. Gen. Laws Ann. ch. 239, § 1 (Supp. 1972); N.H. Rev. Stat. Ann. ch. 540, § 12 (Supp. 1970).

<sup>49</sup> See, e.g., *Lavoie v. Bigwood*, 457 F.2d 7, 9 (1st Cir. 1972), citing *Wormood v. Alton Bay Camp Meeting Ass'n*, 87 N.H. 136, 175 A. 233 (1934).

Of more concern to the tenant is the reason for eviction. Mobile home parks in Florida are statutorily included in the category of transient rental accommodations. This was proper at the time of original enactment, and still is where overnight trailer parking is rented. A different set of conditions exists where a mobile home is involved. Modern day mobile homes, because of size, are not easily moved and it is rare that they are. They are owned by the tenant and represent a sizable capital investment on his part. Yet, Florida law does not speak to the difference in types of property involved. The result is that an eviction law, [Fla. Stat. Ann. § 509.141 (Supp. 1972)] designed to be used for motels, hotels, and overnight trailer camps, is applied to cases involving mobile homes, where at the very least a showing of cause should be required.

Florida Report 5.

<sup>50</sup> California appears to have foreclosed this possibility. See notes 140-44 and accompanying text *infra*.

public officials.<sup>51</sup> The stated reason or pretext for eviction is often violation of park rules.

If evicted, the unfortunate resident must undertake the expense of removing his mobile home.<sup>52</sup> It is usually difficult to find a properly zoned lot or rental space in another park.<sup>53</sup> In addition, another park may require purchase of a new mobile home. Also, there is no guarantee that eviction will not recur. The resulting impact on the mobile home owner is often severe.<sup>54</sup>

### 3. Imposition of Park Rules

Park owners commonly promulgate rules and regulations.<sup>55</sup> Hypothetically, such rules could be considered conditions of the tenancy, taking effect at the beginning of the rental period subsequent to notice. In practice, however, rules that are unreasonable, illegal and often undisclosed<sup>56</sup> prior to the tenancy or the period in question may be imposed and enforced immediately upon threat of eviction. Questions of power aside, residents may embrace such unilateral restrictions because such restrictions create a controlled environment.<sup>57</sup>

The park owner may prohibit pets, families with children, subleasing, and any immoral or disorderly conduct. He may prohibit alterations to mobile homes, or require residents to make certain repairs. The resident is often required to deal exclusively with a company designated by the owner for necessary fuel and home accessories.<sup>58</sup> The owner may receive a rebate or

<sup>51</sup> See, e.g., *Lavoie v. Bigwood*, 457 F.2d 7 (1st Cir. 1972); N.Y. Times, Oct. 19, 1972, § 2, at 86, col. 2 (retaliation for rent strike). See Model Statute § 4, part IV *infra*.

<sup>52</sup> See note 12 *supra*.

<sup>53</sup> See note 22 and accompanying text *supra*.

<sup>54</sup> The facts of one case are illustrative:

The record demonstrates that ejection would have a severe impact on the plaintiff. In particular, he has very modest means, supports three children, has little employment flexibility because his job classification is rare, could expect little cash return from the sale of his mobile home, and would be unable to afford the monthly rent for a dwelling suitable for a family of five.

*Lavoie v. Bigwood*, 457 F.2d at 14 n.16.

<sup>55</sup> A typical set of rules, from which the examples in the text are taken, may be found in Community Rules and Regulations for Mobilhome Developments (Final Draft), available from the Mobile Home Manufacturers Ass'n, 6650 NNW Highway, Chicago, Illinois 60631.

The practice of promulgating rules has an interesting parallel in the law of innkeepers, although it is probably no longer apt in light of the increased permanence of park residents. See J. Levi, P. Hablutzel, L. Rosenberg & J. White, Model Residential Landlord-Tenant Code 6 n.8 (1969) (tentative draft). For a more extensive discussion of the role of innkeepers and their rules, see 43 C.J.S. Innkeepers (1968).

<sup>56</sup> Florida Report 8-9. Nondisclosure of some rules is particularly unfair where the park owner also sold the home; the resident may not have bought a home under such conditions, or may have bargained for a lower price. See Model Statute § 2(c), part IV *infra*.

<sup>57</sup> See note 58 *infra*.

<sup>58</sup> For example, in *Southland Dev. Corp. v. Ehrler's Dairy, Inc.*, 468 S.W.2d 284 (Ky. 1971), a mobile home park owner attempted to enforce a no-solicitation rule incorporated in a resident's lease so as to prevent milk deliveries requested by the resident from an unauthorized dealer. The rule was strictly construed so as not to apply.

Restrictions on deliveries are said to be needed to reduce traffic in the park, thus pro-

kickback from the designated dealer.<sup>59</sup> Of course, the park owner is the final interpreter of the rules and ultimate judge of any violations.

Another widespread practice, whether or not in the form of a written rule, is the imposition of a resale fee if the mobile home owner wishes to sell his mobile home.<sup>60</sup> A park owner may require removal of a mobile home, either because it is old or because he does not approve of the prospective buyer. More commonly, however, he allows the home to remain and the buyer to move in upon payment of a commission, although he has not contributed to securing the buyer.<sup>61</sup> Such conditions, compounded by the difficulty in finding another park allowing used homes,<sup>62</sup> may result in forced sales.<sup>63</sup>

The resale fee poses a complex problem of competing property interests because the value of a mobile home is dependent upon the availability of a site. The park owner justifies the fee by arguing that he is entitled to part of the proceeds of any sale, which necessarily reflect the value of location in his park. On the other hand, any premium would be the result of community restrictions on available space. The resident objects to the commission because the mobile home itself is a substantial investment which may be rendered almost worthless by unavailability of a new site. In this context, the tenant has no bargaining power and is forced to cooperate with the park owner.<sup>64</sup>

However beneficent a park owner may be, the preceding examples of rules which may be imposed illustrate the great potential for abuse.<sup>65</sup>

moting safety and a quiet, sheltered environment. This may be particularly important for fuel and oil deliveries, which must be made as frequently as twice a month.

Some parks exclude children, which may be at the insistence of the community, seeking to lessen the supposed burden on schools. Hagman 145; *see also* note 26 *supra*. This Note will not venture into this controversial area. *See* Model Statute § 2(b), part IV *infra*.

<sup>59</sup> Florida Report 8.

<sup>60</sup> *Id.* at 7; Park Survey 4 (40% surveyed charged such a fee). The park owner may charge a flat fee of from \$100 to \$700. *Id.* More commonly, the resale commission is usually 10% of the sale price, but some park owners have charged as much as 25%. N.Y. Times, Oct. 19, 1972, § 2, at 86, col. 1. In some cases the resident is not informed of this fee prior to entering the park. *See* note 88 *infra*. California has, by implication, prohibited such fees. Cal. Ann. Civ. Code § 789.7 (West Supp. 1972).

<sup>61</sup> This may be unlawful under the Clayton Act, § 2(c). *See* 1 CCH Trade Reg. Rep. ¶ 4010.64.

<sup>62</sup> *See* note 31 and accompanying text *supra*.

<sup>63</sup> Forced sales result because of the expense of moving mobile homes. Thus it is not surprising that few mobile homes are moved. Florida Report 5, *quoted at* note 49 *supra*; Kansas Comment 90 & n.31.

<sup>64</sup> This situation could be viewed as a contract of adhesion. *But see* O'Callaghan v. Waller & Beckwith Realty Co., 15 Ill. 2d 436, 155 N.E.2d 545 (1958), in which an exculpatory clause in a residential lease was held valid and not against public policy, despite a post-war housing shortage resulting in a great disparity of bargaining power.

<sup>65</sup> Further abuses include head taxes charged for guests and children, fees for non-existent social clubs, and "exit" fees when the mobile home is removed from the park. *See* Florida Report 6-7; N.Y. Times, Oct. 19, 1972, § 2, at 86, col. 1 (\$1,000 exit fee).

## B. Protection for the Park Resident

### 1. Constitutionally Protected Activity

In *Lavoie v. Bigwood*,<sup>66</sup> a park resident instituted an action under the Civil Rights Act<sup>67</sup> in response to attempted proceedings to evict him in state court. He alleged the eviction resulted from his complaints to public officials about the park and his active membership in a tenants' association. The plaintiff claimed that the eviction, constituting "state action" made "under color of" state law, violated his fourteenth amendment rights of speech and association. The district court, failing to find state action, dismissed and the resident appealed.

The First Circuit noted that the claimed retaliatory motive of the park owner would be no defense in the state court action;<sup>68</sup> it also analyzed the zoning scheme imposed by the town which gave the park owner a monopoly.<sup>69</sup> Neither aspect by itself would constitute "state action" under the "neutrality" principle,<sup>70</sup> whereby a state if not privy to a discriminatory purpose is not said to have acted. However, the court concluded that the neutrality principle was inapposite<sup>71</sup> "where the state gives special support to a nominally private party or, for other purposes, markedly restricts alternatives to dominion by a private party."<sup>72</sup> The court found that the zoning scheme demonstrated a purpose to require, as a condition of living in a mobile home in the town, that the plaintiff reside in the defendant's park.<sup>73</sup> The court held that the town action restricting mobile homes and the concomitant creation of private monopoly constituted "state action." The park owner's deprivation of the resident's rights was taken "under color of" the state ejection statute.<sup>74</sup> Therefore, the First Circuit reversed.

*Lavoie* is a revealing glimpse into the private world of a mobile home park, and demonstrates an encouraging judicial openness to the problems of park residents. Eviction, whatever its basis, has a serious impact on the resident.<sup>75</sup> Yet *Lavoie* only protects him from those evictions which are un-

<sup>66</sup> 457 F.2d 7 (1st Cir. 1972).

<sup>67</sup> 42 U.S.C. § 1983 (1970).

<sup>68</sup> Note 49 *supra*.

<sup>69</sup> This scheme was similar to that described at notes 18-21 and accompanying text *supra*. Although the record was unclear, it tended to show that the defendants' park was the only one in the area, and that the town had denied permits for other parks. 457 F.2d at 10 & n.2.

<sup>70</sup> *Reitman v. Mulkey*, 387 U.S. 369, 376 (1967).

<sup>71</sup> The court relied on the following line of cases: *Lathrop v. Donohue*, 367 U.S. 820 (1961); *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961); *Railway Employees' Dep't v. Hanson*, 351 U.S. 225 (1956). In these cases, state action was found where the government placed monopoly power in private hands to further other policies, even though the deprivation of rights was collateral. 457 F.2d at 13-14.

<sup>72</sup> 457 F.2d at 14.

<sup>73</sup> *Id.* at 13.

<sup>74</sup> *Id.* at 15. *Accord*, *Bowles v. Blue Lake Dev. Corp.*, 1 CCH Poverty L. Rep. ¶ 2325.51 (S.D. Fla. 1971), discussed in note 77 *infra*.

<sup>75</sup> See note 54 *supra*.

constitutional. This without more legislative action forces the resident to make a federal case out of summary eviction.<sup>76</sup> The scope of such constitutional relief is still unclear,<sup>77</sup> and state action may not be found in every case, even under the First Circuit's reasoning.<sup>78</sup> Furthermore, judicially created relief is often inadequate because it is after the fact and possibly costly and protracted.<sup>79</sup> The unwieldy kind of relief granted in *Lavoie* demonstrates the need for comprehensive legislative reform.

## 2. Statutory and Administrative Relief

Beyond the historically established legal system of landlord-tenant law are several recent innovations designed to protect tenants. Unfortunately, many of these laws were not drafted broadly enough to include mobile home park residents. For example, one statute which prohibits intentional failure to furnish water, heat or power applies to any "lessor or landlord of any building or part thereof."<sup>80</sup> Statutes which allow rent withholding for health or safety code violations simply do not apply to mobile home parks.<sup>81</sup> Be-

<sup>76</sup> See note 79 *infra*. Such a constitutional defense to a simple summary proceeding may raise substantial problems. See *Schweiger v. Superior Court of Alameda County*, 3 Cal. 3d 507, 518-19, 476 P.2d 97, 104, 90 Cal. Rptr. 729, 736 (1970) (dissenting opinion).

<sup>77</sup> *In re Quarles*, 158 U.S. 532 (1895), held that a person has the right to complain to public authorities. *Accord*, *Hosey v. Club Van Cortlandt*, 299 F. Supp. 501, 504 (S.D.N.Y. 1969) (tenant reporting sanitary and housing code violations); *cf.* *Edwards v. Habib*, 397 F.2d 687, 690-98 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969). Courts have also recognized a tenant's right to organize and petition for better housing and have halted retaliatory evictions. *McQueen v. Druker*, 438 F.2d 781 (1st Cir. 1971); *see* *Hosey v. Club Van Cortlandt*, 299 F. Supp. 501 (S.D.N.Y. 1969). The reasoning of these cases would logically apply to park residents as well. Indeed, in *Bowles v. Blue Lake Dev. Corp.*, 1 CCH Poverty L. Rep. ¶ 2325.51 (S.D. Fla. 1971), a park owner who attempted to evict a resident for complaining to public health authorities and zoning officials about sanitary conditions in the park was permanently enjoined from bringing the possessory action, as it would violate the resident's constitutional rights under color of state law.

<sup>78</sup> The court noted the difficulty in determining what constitutes state action in this context. 457 F.2d at 14-15. In a community where there is more than one park, it may be more difficult to find a monopoly which may be considered as state created. *Id.* This is also true where the resident is able to afford another kind of housing in the community. *Id.* at 14 & n.16. Also, monopoly power may be conferred by the combined actions of many communities in the area; this situation is not adequately covered by the reasoning in *Lavoie*.

<sup>79</sup> In *Lavoie*, for example, the park resident was compelled to bring suit in a federal district court and appeal to a circuit court to vindicate his rights; this is more costly and longer than the usual summary proceeding in state court. This delay, while it may buy some time for the resident, is prejudicial to the landlord's interests.

Such a procedure may also give rise to unseemly conflict between state and federal systems of law. For example, *Hosey v. Club Van Cortlandt*, 299 F. Supp. 501 (S.D.N.Y. 1969), held that when state law clearly rejects the defense of retaliatory eviction, federal courts may enjoin the use of state courts for this purpose.

<sup>80</sup> Mass. Gen. Laws Ann. ch. 186, § 14 (Supp. 1972) (emphasis added).

<sup>81</sup> See, e.g., Ill. Ann. Stat. ch. 23, § 11-23 (Supp. 1972) ("building containing housing accommodations"); Mass. Gen. Laws Ann. ch. 239, § 8A (Supp. 1972) ("tenement"); N.Y. Multiple Residence Law § 305-a (McKinney Supp. 1972) ("multiple dwelling"); N.Y. Real Prop. Actions & Proceedings Law §§ 769-82 (McKinney Supp. 1972) ("multiple dwelling"); Pa. Stat. Ann. tit. 35, § 1700-1 (Supp. 1972) ("dwelling"); *but see* S.D. Comp. Laws Ann. § 43-32-9 (1969). The duty generally imposed by these statutes on the landlord to repair buildings cannot logically apply to resident-owned mobile homes.

cause common landlord-tenant terminology does not adequately describe the park situation, improved tenant-protection statutes are unavailable to park residents who therefore have fewer avenues of recourse than tenants at will in apartments.

On the other hand, the few statutes prohibiting retaliatory evictions for reporting building or health code violations may protect park residents.<sup>82</sup> Also, the general relief of a stay of execution in a summary process action is often available.<sup>83</sup> These remedies are particularly welcome because they limit the park owner's power of eviction, which is his ultimate weapon.

Few states have given special attention to the mobile home park tenancy. Several grant the park owner the remedy of summary process.<sup>84</sup> Those which give special treatment for park evictions have demonstrated wide disparity in attitudes.<sup>85</sup>

Some protection may be afforded by antitrust and consumer protection laws. Although broadly written, these laws encounter substantial problems of interpretation and applicability. Massachusetts, for example, borrows from the Federal Trade Commission Act<sup>86</sup> in prohibiting unfair and deceptive trade practices.<sup>87</sup> However, there are no decisions under either act directly involving mobile home park abuses. Difficulties result from isolation of particular unfair practices in the park owner's net of dominance.<sup>88</sup> Possibly

<sup>82</sup> See, e.g., Ill. Ann. Stat. ch. 80, § 71 (1966) ("property used as a residence"); Mass. Gen. Laws Ann. ch. 186, § 18 and ch. 239, § 2A (Supp. 1972) ("residential premises"); N.J. Stat. Ann. §§ 2A:42-10.8, -10.10 & -10.12 (Supp. 1972) ("premises used for dwelling purposes"); R.I. Gen. Laws § 34-20-10 (1970) ("premises"); but see Cal. Ann. Civ. Code § 1942.5 (West Supp. 1972) ("tenantability of a dwelling"). Some of these statutes are limited in protection to complaints concerning building or health code violations. However, some are much broader; for example, the Massachusetts statutes were recently amended to protect tenant union activities. Mass. Acts of 1972, ch. 99. See Model Statute § 4, part IV, *infra*.

<sup>83</sup> See, e.g., Mass. Gen. Laws Ann. ch. 239, § 9 (Supp. 1972):

In an action of summary process to recover possession of premises occupied for dwelling purposes . . . [in certain cases] . . . a stay or stays of judgment and execution may be granted, as hereinafter provided, for a period not exceeding three months . . . as the court may deem just and reasonable, upon application of the tenant.

<sup>84</sup> See, e.g., Mass. Gen. Laws Ann. ch. 140, § 32J (Supp. 1972). The word "licensee" therein refers to the park owner. *Id.* § 32B. See Model Statute § 1(a), part IV *infra*.

<sup>85</sup> See, e.g., Cal. Ann. Civ. Code § 789.5 (West Supp. 1972) (60 days' notice); Fla. Stat Ann. § 83.241 (Supp. 1972) (30 day delay of execution in certain park evictions); Nev. Rev. Stat. § 40.250 (Supp. 1971) (five days' notice). See Model Statute § 1(c), part IV *infra*.

<sup>86</sup> 15 U.S.C. § 45 (1970).

<sup>87</sup> Mass. Gen. Laws Ann. ch. 93A (1972). See also Vt. Stat. Ann. tit. 9, § 2453(a) (1970); Wash. Rev. Code Ann. § 19.86.020 (Supp. 1971).

<sup>88</sup> See notes 60-64 and accompanying text *supra*. *Commonwealth v. Decotis*, No. 19535 in Equity (Mass. Super. Ct. for Essex Cty. Dec. 4, 1972), was an action under the Massachusetts Consumer Protection Act against a mobile home park and sales organization. In a 17-page opinion, the court held that the imposition of a resale fee, which amounted to little more than a shakedown, violated the Act because of a lack of prior disclosure. The court also held the resale fee per se unlawful in such circumstances, as it was unreasonable and unconscionable. A permanent injunction was issued, prohibiting the charging of any resale fees and requiring restitution of all resale fees received since 1965. The court stated:

If there be a public policy to protect tenants who rent a home or an apartment from a landlord who owns both the land and the building thereon, how much more should the law protect the owner of the mobile home . . . . [U]nder the agreements introduced into evidence, the landlord can toy with the tenant on a month-to-month

the only effective broad remedy available under such acts is the requirement of prior disclosure of park rules.

Residents may turn to the agency, if any, which licenses the parks; this agency is usually the state or local board of public health.<sup>89</sup> In Massachusetts, for example, the local board of health has power to adopt rules and regulations governing parks.<sup>90</sup> This power has been held to extend beyond formulation of rules directly relating to public health.<sup>91</sup> Although local involvement in park problems is both desirable and necessary, many boards are unsympathetic. The board members may be overworked or concerned strictly with health problems. Furthermore, they may be unconcerned about residents who, they feel, do not pay their share of taxes.<sup>92</sup>

A few states have established mobile home advisory boards, which generally have limited powers to regulate parks.<sup>93</sup> Here again, administrative bodies which have some power to protect park residents are unresponsive.

### C. *The Need for Reform*

The dominance of the park owner in the landlord-tenant relationship is a product of his monopoly position conferred by the community and his power to evict without cause. The great potential for abuse has only rarely met legal limits. Present law, whether created by the legislature or by the courts, affords the park resident little protection.<sup>94</sup> It is no wonder that the mounting problems are beginning to receive public attention.<sup>95</sup> It is not surprising, either, that the state legislatures have been staked out as the battleground.<sup>96</sup> The problems of the mobile home park resident are particularly suited for comprehensive legislative action.

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basis and is able to extract fees—some of which are never mentioned until demanded and others are in amounts which are outrageous and unconscionable. *Id.*, slip op. at 14. This case does not prohibit the park owner from simply requiring the tenant to remove the home, and therefore may be a pyrrhic victory.

<sup>89</sup> See note 19 *supra*.

<sup>90</sup> Mass. Gen. Laws Ann. ch. 140, § 32B (Supp. 1972).

<sup>91</sup> *Cliff v. Board of Health of Amesbury*, 343 Mass. 58, 175 N.E.2d 489 (1961); *Gilliam v. Board of Health of Saugus*, 327 Mass. 621, 100 N.E.2d 687 (1951). However, many boards may be unaware of this power and discretion in regulating parks.

<sup>92</sup> Florida Report 10.

<sup>93</sup> Mass. Gen. Laws Ann. ch. 6, § 108 (1966); Vt. Stat. Ann. tit. 10, § 6202 (Supp. 1972) (technology of mobile homes); Wash. Laws of 1971, 1st Ex. Sess., ch. 82 (mobile home construction and other problems). Even in Florida, "there presently is no agency in the executive branch of government designed and equipped to study problems of the type encountered by mobile home tenants." Florida Report 1.

<sup>94</sup> The inappropriate application of traditional landlord-tenant law highlights the need for general reform of this body of law. Model Code, *supra* note 55, at 1, 5-8. In urban housing, as in mobile home parks, the "wide discrepancy between supply and demand has created a seller's market." Moskowitz & Honigsberg, *The Tenant Union-Landlord Relations Act: A Proposal*, 58 Geo. L.J. 1013, 1014 (1970). Indeed, some have heralded the demise of property law as a distinct system. Roberts, *supra* note 5.

<sup>95</sup> For example, on March 5, 1972, CBS carried a report on mobile home park problems in its program "60 Minutes." See also N.Y. Times, Oct. 19, 1972, § 2, at 1, col. 4.

<sup>96</sup> This may be literally true.

The mobile home owners are beginning to put pressure on state governments to improve their situation. Plans are under way in Michigan to picket the Statehouse in an effort to get the Legislature to adopt a bill that would spell out rights of tenants. N.Y. Times, Oct. 19, 1972, § 2, at 86, cols. 3-4. See also Boston Herald Traveler, Feb. 23, 1972, at 3 ("500 Jam State House Hearing on Mobile Home Parks").

## III. CALIFORNIA REFORM OF THE RELATIONSHIP

California has enacted a surprisingly large amount of mobile home legislation recently.<sup>97</sup> Not only are there many mobile home owners there, but also a unique and active association of residents.<sup>98</sup> Together, these factors help explain why California was the first state to deal with park problems by formulating a new legal matrix governing the park landlord-tenant relationship.<sup>99</sup> The statute basically prohibits the termination of a mobile home tenancy without cause. This approach is deserving of scrutiny: it may become a model for other states.<sup>100</sup>

The statute continues to protect legitimate landlord concerns by provid-

<sup>97</sup> See, e.g., Cal. Ann. Health & Safety Code §§ 18,000-18,851 (West Supp. 1972).

<sup>98</sup> The Golden State Mobile Owners League has approximately 20,000 members. *Hearings* at 35.

<sup>99</sup> Cal. Ann. Civ. Code §§ 789.5-7 (West Supp. 1972):

§ 789.5 Termination of tenancy or other estate at will or lease in mobilehome park; notice; manner; waiver void

(a) No tenancy or other estate at will or lease, however created on or after the effective date of this section, in a mobilehome park may be terminated except upon the landlord's giving notice in writing to the tenant, on the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than 60 days, to be specified in the notice. No lease shall contain any provision by which the tenant waives his rights under this section, and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void. However, any lease may provide that the tenancy may be terminated upon the landlord's giving notice in writing to the tenant, in such prescribed manner, to remove from the premises within a period of more than 60 days, to be specified in the notice.

(b) This section shall only apply to mobilehomes or trailer coaches which are required to be moved under permit.

(c) This section shall not affect any rights or proceedings set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure.

(d) After the effective date of this subdivision, a tenancy shall be terminated pursuant to this section only for one or more of the following reasons:

(1) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobilehomes.

(2) Conduct of the tenant, upon the mobilehome park premises, which constitutes an annoyance to other tenants or interference with park management.

(3) Failure of the tenant to comply with rules and regulations of the mobilehome park as established by the management in the rental agreement at the inception of the tenancy or as amended subsequently with the consent of the tenant, or without his consent upon six months written notice. However, regulations applicable to recreational facilities may be amended at the discretion of the management.

(4) Nonpayment of rent, utility charges, or reasonable incidental service charges.

(5) Condemnation or change of use or ownership of the mobilehome park.

(e) Meetings by tenants relating to mobilehome living and affairs in the park community or recreation hall shall not be subject to prohibition by the park management if such meetings are held at reasonable hours and when the facility is not otherwise in use.

(f) The management of a mobilehome park shall specify, in the notice required by this section, the reason for the termination of any tenancy in such mobilehome park.

§ 789.6 Restriction on termination of tenancy, etc., in mobilehome park; space for purchaser of mobilehome from owner of park

Notwithstanding the provisions of Section 789.5, a tenancy or other estate at will or lease in a mobilehome park may not be terminated for the purpose of making the tenant's space in the park available for a person who purchased a mobilehome from the owner of the mobilehome park or his agents.

§ 789.7 Fees

The owner of a mobilehome park or his agents shall not charge any fees to tenants other than charges for rent, utilities, or incidental reasonable service charges.

<sup>100</sup> Florida, which also has an active federation of mobile home owners with a membership of 30,000, recently passed such legislation. Fla. Laws of 1972, 2d Reg. Sess., ch. 72-28.

ing that it "shall not affect [certain] rights or proceedings"<sup>101</sup> in the Code of Civil Procedure.<sup>102</sup> Thus, it is necessary to examine the preserved remedies, generally, but not exclusively,<sup>103</sup> remedies for the landlord to recover possession. Unlawful detainer is perhaps the most important.<sup>104</sup> Thus, in case of possession after any of the following the landlord need give only three days' notice in order to recover possession: (1) expiration of the term;<sup>105</sup> (2) default in the payment of rent under a lease or agreement;<sup>106</sup> (3) failure to perform conditions of the lease or agreement;<sup>107</sup> (4) violation of a covenant against assigning, subletting, committing waste or a nuisance, or using the premises for an unlawful purpose;<sup>108</sup> or (5) elapsing of the period specified by the tenant in a notice to terminate.<sup>109</sup>

Because unlawful detainer appears to be predicated in most cases upon the existence of a "lease" or "agreement," it would be in the park owner's interest to require a lease. He may also argue, with much logic, that park rules

<sup>101</sup> Cal. Ann. Civ. Code § 789.5(c) (West Supp. 1972).

<sup>102</sup> Cal. Ann. Code Civ. Pro. §§ 1159-79a (West 1972).

<sup>103</sup> For example, in case of a default in rent, "[a] tenant may take proceedings . . . to obtain possession of the premises let to a subtenant . . . in case of his unlawful detention." *Id.* § 1161(3).

<sup>104</sup> *Id.* § 1161.

<sup>105</sup> *Id.* § 1161(1). A tenancy at will, because it has no definite term, must first be terminated by notice. *Id.* Cal. Ann. Civ. Code § 789 (West Supp. 1972) provides for termination of a tenancy at will upon 30 days' notice. Similarly, a tenancy from month to month is "for a term not specified by the parties [and] is deemed to be renewed . . . unless one of the parties gives written notice to the other" at least 30 days prior to termination, or for a lesser term specified by the parties which is not less than seven days. Cal. Ann. Civ. Code § 1946 (West Supp. 1972). This area is not free of difficulty because of a confusing overlap in the California statutes and because courts rarely have occasion to define such simple tenancies. See note 46 *supra*; see generally Comment, Some Problems Involving the California Statutes on Landlord and Tenant, 4 Hastings L.J. 161 (1953).

<sup>106</sup> Cal. Ann. Code Civ. Pro. § 1161(2) (West 1972).

<sup>107</sup> *Id.* § 1161(3).

<sup>108</sup> *Id.* § 1161(4). Nuisance is defined in Cal. Ann. Civ. Code § 3479 (West Supp. 1972) as "[a]nything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." Under this definition, as one writer summarizes,

the following have been found to be nuisance: noise during the usual hours of sleep, being boisterous and intoxicated while quarreling to excess, and using vile language. See Goddard, California Landlord and Tenant Law and Procedure p. 100 (Legal Bookstore, Los Angeles, 1966) for lower court citations. . . .

. . . Examples of activity that were held sufficient to constitute unlawful purpose are: violation of the Health and Safety Code because too many people were living in a small space, violation of city fire ordinance, and violation of zoning laws. See Goddard, California Landlord and Tenant Law and Procedure p. 101 (Legal Bookstore, Los Angeles, 1966) for lower court citations.

M. Moskowitz, P. Honigsberg & D. Finkelstein, California Eviction Defense Manual 24 (1971).

Waste is an unlawful act or omission of duty by one rightfully in possession which permanently injures the inheritance. Southern Pac. Land Co. v. Kiggins, 110 Cal. App. 56, 293 P. 708 (Dist. Ct. App. 1930) (removal of large quantities of soil). Waste must be proven by evidence of acts which have resulted in substantial depreciation of the market value of the property. Sallee v. Daneri, 49 Cal. App. 2d 324, 121 P.2d 781 (Dist. Ct. App. 1942) (thinning trees may have been beneficial and did not constitute waste).

<sup>109</sup> Cal. Ann. Code Civ. Pro. § 1161(5) (West 1972).

constitute an "agreement."<sup>110</sup> Either way, unlawful detainer is permitted only for the reasons specified in the statute. However, a park resident may be considered to hold possession as a tenant from month to month and not under an agreement.<sup>111</sup> If so, 30 days' notice is necessary to terminate, and no cause is required for the termination.<sup>112</sup>

The new statute applies to any "tenancy or other estate at will or lease" in a mobile home park,<sup>113</sup> which seems broad enough to apply to any park resident.<sup>114</sup> It extends to 60 days the period of notice required to terminate under specified conditions, some of which track the unlawful detainer statute.<sup>115</sup> Any provision in a lease by which the tenant waives this right is "deemed contrary to public policy and shall be unenforceable and void."<sup>116</sup> However, the park owner should have an election of proceeding under the unlawful detainer statute, if he has cause as defined by that statute, and has given only three days' notice.<sup>117</sup> On the other hand, the 60 days' notice required by the new statute ought to be interpreted as the only way to terminate a month to month tenancy which is not under a lease or agreement. This is a possible way to reconcile subsections (a) and (c) of the statute.<sup>118</sup>

<sup>110</sup> The new mobile home park statute, for example, mentions the "rental agreement." Cal. Ann. Civ. Code § 789.5(d)(3) (West Supp. 1972). Also, *Schweiger v. Superior Court of Alameda County*, 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970), involved a seemingly typical apartment dweller under a month to month oral agreement. The court assumed the three day notice to quit for nonpayment of rent was effective, presumably under the theory that this was a default under an "agreement."

<sup>111</sup> A tenancy for an indefinite period under which the rent is payable monthly is a tenancy from month to month. *Palmer v. Zeis*, 65 Cal. App. 2d Supp. 859, 151 P.2d 323 (App. Div., Super. Ct. 1944). This appears to apply to the usual park tenancy which is not under a lease. Thus, it can be terminated only by 30 days' notice under Cal. Ann. Civ. Code § 1946 (West Supp. 1972). Note 105 *supra*.

<sup>112</sup> Cf. *Schweiger v. Superior Court of Alameda County*, 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970). The court stated that unlawful detainer implies an unrestricted power to raise rent in order to evict, but held that another statute allowing a tenant to repair the premises and demand payment precluded the use of unlawful detainer in retaliation; the court noted that an "identical conflict would exist if a landlord sought to terminate a tenancy under Civil Code, section 1946." 3 Cal. 3d at 511 n.3, 476 P.2d at 99 n.3, 90 Cal. Rptr. at 731 n.3.

<sup>113</sup> Cal. Ann. Civ. Code § 789.5(a) (West Supp. 1972).

<sup>114</sup> *But see Roberts v. Casey*, 36 Cal. App. 2d Supp. 767, 93 P.2d 654 (App. Div., Super. Ct. 1939), in which a lower court's holding that certain occupants of an apartment building were mere "lodgers" was affirmed. This was based on evidence that the owner retained keys to all apartments, furnished linens, maid service, light, water, heat and telephone service, kept the premises clean and removed the garbage.

<sup>115</sup> Violation of mobile home ordinances and laws, annoying conduct, violation of park rules, nonpayment of rent or charges, condemnation or change of use. Cal. Ann. Civ. Code § 789.5(a), (d) (West Supp. 1972); Cal. Ann. Code Civ. Pro. § 1161 (West 1972). It is arguable that the resident who is a month to month tenant may terminate upon 30 days' notice, as before, under § 1946. See note 105 *supra*.

<sup>116</sup> Cal. Ann. Civ. Code § 789.5(a) (West Supp. 1972).

<sup>117</sup> This is because his previous rights and proceedings are preserved by § 789.5(c) of the statute. The landlord has a statutory right under the unlawful detainer statute to elect a forfeiture, even though this is not provided for in the lease or agreement. *Sexton v. Nelson*, 228 Cal. App. 2d 248, 39 Cal. Rptr. 407 (Dist. Ct. App. 1964).

<sup>118</sup> It may be argued that the new statute compels the park owner to give 60 days' notice in every case, but this disregards subsection (c) which preserves landlord remedies

The statute then specifies the reasons permitted for termination, which must be stated in the notice required to terminate.<sup>119</sup> Again, the park owner should be able to elect the remedy of unlawful detainer in case of a lease or agreement if he has cause as defined by that statute; in any other case, including a month to month tenant, he must have cause for termination within the new statute. Thus, the statute limits the previous arbitrary power of the park owner to evict without cause, which is a substantial contribution.<sup>120</sup>

There are so many "state laws and regulations relating to mobile homes"<sup>121</sup> in California that it would be easy for the park owner to find a violation to rely upon for termination. Some of these laws and regulations embody a state interest which arguably should not be regulated by the landlord as it is no part of the landlord-tenant relationship.<sup>122</sup> Expansively interpreted this could unduly broaden the park owner's right to recover possession. However, the court is permitted under the statute to require that a breach not be trivial.<sup>123</sup>

To permit annoying conduct or conduct which interferes with park management<sup>124</sup> to constitute cause for termination arguably allows much of the old freedom of eviction. However, here again the court rather than the owner decides what conduct is within these prohibitions.<sup>125</sup>

The park owner may terminate for violation of park rules.<sup>126</sup> This encourages substantial private law-making by the park owner, who retains discretion in making and enforcing rules. A possible check is the requirement that a rule, to constitute a basis for termination, must have been established "in the rental agreement at the inception of the tenancy or as amended subsequently with the consent of the tenant, or without his consent upon six months written notice."<sup>127</sup> This subsection thus provides the park owner

where the facts fall within the specific provisions of the unlawful detainer statute. Subsection (c) embodies legitimate landlord concerns for swift recovery of possession.

<sup>119</sup> Cal. Ann. Civ. Code § 789.5(d) (West Supp. 1972); subsection (f) imposes the duty to specify the reason or reasons in the notice to terminate.

<sup>120</sup> See note 49 *supra*; see Model Statute § 1(b), part IV *infra*.

<sup>121</sup> Cal. Ann. Civ. Code § 789.5(d)(1) (West Supp. 1972); see note 97 *supra*; see Model Statute § 1(b)(3), part IV *infra*.

<sup>122</sup> Compare Cal. Ann. Health & Safety Code § 18,050(h) (West Supp. 1972) (requirement of current annual vehicle license for mobile home), with Cal. Ann. Health & Safety Code § 18,050(e) (West Supp. 1972) (prohibition against mobile home in unsanitary condition). Although both reflect a state interest, which is guarded by possible punishment under § 18,080 of the Code, only the second example involves conduct which may have adverse impact on the park and its residents.

<sup>123</sup> A trivial or merely technical breach will not support a forfeiture in unlawful detainer. See *McNeece v. Wood*, 204 Cal. 280, 285, 267 P. 877, 880 (1928); *Randol v. Scott*, 110 Cal. 590, 597, 42 P. 976, 978 (1895); *Keating v. Preston*, 42 Cal. App. 2d 110, 118, 108 P.2d 479, 483 (Dist. Ct. App. 1940). "[S]ubstantial compliance of a condition involving a forfeiture, when its literal fulfillment is prevented by uncontrollable circumstances," is a good defense. *Knight v. Black*, 19 Cal. App. 518, 526, 126 P. 512, 515 (Dist. Ct. App. 1912). See Model Statute § 1(b)(2), part IV *infra*.

<sup>124</sup> Cal. Ann. Civ. Code § 789.5(d)(2) (West Supp. 1972).

<sup>125</sup> See also note 123 *supra*.

<sup>126</sup> Cal. Ann. Civ. Code § 789.5(d)(3) (West Supp. 1972).

<sup>127</sup> *Id.*

needed flexibility to change rules as park conditions change,<sup>128</sup> while providing some certainty to the resident receiving prior disclosure of terms, and a long cooling-off period before the enforcement of rules. It is questionable whether this is the proper balance to strike. Disclosure of terms prior to tenancy is not assured.<sup>129</sup> The six-month delay may be avoided by the park owner.<sup>130</sup> Rules may not be uniformly enforceable.<sup>131</sup> Finally, the park owner retains power to impose unilaterally additional terms which may be unreasonable.<sup>132</sup>

A park owner may also terminate for "[n]onpayment of rent, utility charges, or reasonable incidental service charges."<sup>133</sup> This provision coupled with an express prohibition on other charges<sup>134</sup> should eliminate many of the practices discussed above.<sup>135</sup> In addition, the imposition of utility and service charges might be considered "rules," giving the unconsenting resident six months' lead time. However, while nonpayment of rent as cause for termination is legitimate, it implies unrestricted power to raise the rent to any level and to evict a resident who is unwilling or unable to pay. This power would allow retaliation against a resident,<sup>136</sup> and possible circumvention of the prohibition against unreasonable charges.<sup>137</sup>

Condemnation or change of use of the park appears to be fair cause for termination.<sup>138</sup> Change of ownership is also legitimate, but contains a certain potential for abuse.<sup>139</sup>

<sup>128</sup> This is especially important with the increased permanence of mobile home residents. If only rules which were in effect at the time the resident moved in are enforceable, they may be completely outmoded in five years. This would also result in a nightmare of different sets of rules, depending on when a particular resident moved into the park.

<sup>129</sup> Disclosure at the inception of the tenancy may be after the resident has bought a home and moved into the park, when it is too late to escape unfair rules. See note 56 *supra*.

<sup>130</sup> For example, he may first promulgate a rule that all residents must consent to further rules. After this takes effect, the resident who refuses to consent to a second rule would face possible eviction. Subsection (a) of the statute may prohibit such a practice as against public policy, but it appears to be limited to protecting the requirement of 60 days' notice.

<sup>131</sup> Some residents may be subject to certain rules while those who have not consented are not bound by them.

<sup>132</sup> See note 64 *supra*. See Model Statute § 2(a), part IV *infra*.

<sup>133</sup> Cal. Ann. Civ. Code § 789.5(d)(4) (West Supp. 1972). See Model Statute § 1(b)(1), part IV, *infra*.

<sup>134</sup> *Id.* § 789.7.

<sup>135</sup> See notes 55-65 and accompanying text *supra*.

<sup>136</sup> But see note 112 *supra*. See Model Statute § 2(a), part IV *infra*.

<sup>137</sup> If raising rent is an obvious attempt to offset a decree invalidating a charge as unreasonable within § 789.7, a court might not allow termination for nonpayment of the increase. See note 112 *supra* (resolution of conflicting statutes). However, a park owner who is prohibited from charging certain fees perhaps should be able to readjust the rent to preserve his profit margin. At least, the rent would then be a truer and more obvious indication of the cost of park living.

<sup>138</sup> Cal. Ann. Civ. Code § 789.5(d)(5) (West Supp. 1972).

<sup>139</sup> *Id.* For example, the park owner could transfer his ownership to a straw man to produce cause to evict certain residents. However, this would be cumbersome and probably apparent to the licensing authority. See Cal. Ann. Health & Safety Code § 18,507 (West Supp. 1972) (notice to agency of change of ownership). The Health & Safety Code also requires a permit to operate a park, the loss of which might be added as a reason for termination.

The act forbids terminating to make space available to one who purchased a mobile home from the park owner or his agents.<sup>140</sup> This prohibition would apply to the many park owners who sell mobile homes,<sup>141</sup> and perhaps those who allot space in the park to certain mobile home dealers.<sup>142</sup> Unlike retaliatory eviction statutes, which provide a rebuttable presumption that notice of termination under certain circumstances is retaliatory,<sup>143</sup> the burden of proving such a motive would be placed on the tenant. This would create substantial difficulties if the park owner stated other reasons. Also, the park owner always profits by eviction if he is selling mobile homes.<sup>144</sup> The legislature could not have intended to restrict all evictions by a park owner who sells homes; the question of which evictions are prohibited by this section is thus problematical.

A further problem with the California scheme is the absence of adequate remedies. The relief granted to a resident appears to be available only when he is in a defensive posture in an unlawful detainer action. For example, tenants are given the right to hold meetings in a park community hall,<sup>145</sup> but there is no penalty if the park owner refuses to allow this. In addition, the park owner may have almost unrestricted power to raise the rent<sup>146</sup> or change the rules<sup>147</sup> to produce cause for termination. However, the requirement of eviction for cause makes a substantial contribution to the housing security of mobile home park residents.

#### IV. A MODEL STATUTE

Any legislative solution of the prevailing mobile home park problems should begin with a reform of the landlord-tenant relationship.<sup>148</sup> The California approach appears to be promising for several reasons. It is simple and easily understood by park residents. Promoting private local settlement of disputes in court, rather than through possibly remote and unconcerned agencies, this statutory framework thus requires no government expense. Much of the park owner's arbitrariness is limited while his role as a rule-maker is emphasized. It appears fair, and flexible enough to last through

<sup>140</sup> Cal. Ann. Civ. Code § 789.6 (West Supp. 1972).

<sup>141</sup> See note 30 *supra*.

<sup>142</sup> See note 31 *supra*. However, it would have to be demonstrated that such a dealer was an agent of the park owner; just the reverse would seem to be true.

<sup>143</sup> See, e.g., Mass. Gen. Laws Ann. ch. 186, § 18, and ch. 239, § 2A (Supp. 1972). A presumption that notice of termination within a certain time after a tenant complaint to officials is retaliatory would be difficult to apply in this context. The evil against which this statute is intended is a rapid turnover of park residents for profit; unlike retaliatory evictions, there need not be any particular landlord animus towards the tenant nor any specific act by the tenant.

<sup>144</sup> Not only may a park owner make space available for a home he is selling, but he may also enhance the appearance of the park.

<sup>145</sup> Cal. Ann. Civ. Code § 789.5(e) (West Supp. 1972).

<sup>146</sup> See text accompanying note 136 *supra*.

<sup>147</sup> But see note 123 *supra*.

<sup>148</sup> See note 94 and accompanying text *supra*. In addition to the basic approach set out in the text, reform should include broadening the more recent statutes protecting tenants to apply to park residents. See notes 80-83 and accompanying text *supra*.

possibly large changes ahead in mobile home housing. Such considerations should guide state legislatures in solving park problems.

Set out below is a proposed Model Statute governing the mobile home park landlord-tenant relationship.<sup>149</sup> After each of the four sections is a commentary.

*Section 1.*

(a)<sup>150</sup> *If a mobile home owner or person holding under him holds possession of a mobile home space in a mobile home park without right, after the determination of a tenancy or other estate at will or lease, as provided in this section, the park owner entitled to the mobile home space may recover possession thereof by summary process.*

(b)<sup>151</sup> *Any tenancy or other estate at will or lease in a mobile home park, however created on or after the effective date of this section, may be determined by the park owner entitled to the mobile home space or his agent only for one or more of the following reasons:*

(1) *Nonpayment of rent or reasonable incidental service charges, unless the tenant, within 14 days after receipt of notice to remove, as provided in this section, pays or tenders to the park owner or his agent all rent or reasonable incidental service charges then due;*

(2) *Substantial violation of any enforceable park rule or rules;*

(3) *Violation of any law or ordinance which protects the health or safety of other mobile home park residents.*

(c) *Termination shall not be effective unless made in the following manner: by the tenant giving at least 30 days' notice in writing to the park owner, or by the park owner entitled to the mobile home space giving at least 30 days' notice in writing, delivered by certified or registered mail, to the tenant which shall state the reason or reasons for termination.*

**Comment:**

This section grants the park owner a remedy to recover possession of a mobile home space after the termination of a tenancy. A tenancy may be terminated only in the manner and for the reasons specified in this section. Nonpayment of rent is cause for termination, but this remedy is limited by other provisions.<sup>152</sup> Violation of certain laws as cause for termination is intended to provide relief where the park has few or no rules governing conduct which adversely affects other residents. However, private lawmaking by the park owner is encouraged by allowing substantial violation of park rules as cause for termination. This provision will require judicial balancing of the substantiality of any offense. The park owner's power to impose rules

<sup>149</sup> The entire proposal, except as noted, is based on S. 1307 (Mass. 1972), sponsored by Attorney General Robert Quinn, which the author of this Note helped draft. See also letter from Howard R. Goldberg, Assistant Attorney General (Vermont), to Paul K. Connely, Assistant Attorney General (Massachusetts), Feb. 29, 1972, and enclosed copy of proposed legislation, on file at Boston University Law Review.

<sup>150</sup> See Mass. Gen. Laws Ann. ch. 140, § 32J (Supp. 1972). In states which, like Massachusetts, require the park owner to obtain a license, the word "licensee" may be substituted for "park owner."

<sup>151</sup> See Cal. Ann. Civ. Code § 789.5(a) (West Supp. 1972); Fla. Laws of 1972, ch. 72-28, § 1(1)-(3).

<sup>152</sup> Model Statute §§ 2(a) & 4.

is further limited by allowing only enforceable rules to serve as a basis of termination. The enforceability of a rule is defined by the following section.

*Section 2. The following restrictions shall apply to all mobile home parks:*

*(a) No park rule shall be unreasonable, unfair or unconscionable. Any rule or change in rent which does not apply uniformly to all park tenants of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair. However, a park owner may restrict entrance to a certain age group or to persons with or without children.*

*(b) No park rule shall restrict a tenant in his choice of a seller of fuel, furnishings, accessories, goods or services connected with a mobile home unless such rule is necessary to protect the health, safety or welfare of park residents. However, the park owner may impose reasonable rules on the use of central fuel or gas meter systems in the park. If any such rule is imposed, the charge for the goods or services shall not exceed the average prevailing price in the locality for the same or similar goods or services.*

*(c) Any park rule, however denominated by the park owner, which is not disclosed in writing to the tenant a reasonable time prior to tenancy, or by written notice 30 days prior to its enforcement, or which does not conform to the requirements of this section shall be unenforceable.*

**Comment:**

This section provides for disclosure of park rules and prohibits those which are unreasonable, unfair or unconscionable. This section is worded so broadly that it might be considered too vague, but it is no more so than some consumer protection acts.<sup>153</sup> In addition, this section contains more specific prohibitions. Discriminatory rules or changes in rent are presumed to be unfair, which should be an effective device to prevent retaliation by the park owner. Anticompetitive practices, such as receiving kickbacks from designated dealers, are limited. However, some parks contain central fuel systems and the park owner is allowed to reasonably regulate their use. Park owners, pursuant to their demonstrated concern, are allowed to keep out families with children.<sup>154</sup> If concerns for fair and open housing supersede deference to the park owners' interests, this provision may be omitted.

This section would be the appropriate place to resolve the problem of resale fees. Outright prohibition does not deal with the owner's right to remove the mobile homes, an especially severe hazard for the resident who is forced by circumstance to give up mobile home living.<sup>155</sup> However, for the sake of simplicity this problem, replete with complex ramifications, is not incorporated into the model statute.<sup>156</sup>

<sup>153</sup> See notes 86-88 and accompanying text *supra*.

<sup>154</sup> See note 58 *supra*.

<sup>155</sup> See notes 60-64 and accompanying text *supra*.

<sup>156</sup> It is suggested that the problem of removal of old homes be kept distinct from the

Any rule which does not conform to the requirements of the section is unenforceable. A nonconforming rule could not be used as a basis for termination, and, under the following section, the resident could obtain judicial relief from the imposition of an unenforceable rule.

*Section 3.*

*Any affected park resident may sue to enforce the preceding section, and the court may award damages or grant injunctive or other appropriate relief. In any such action, the clerk of the court shall mail copies of any judgment, decree, permanent injunction or order of the court to the authority licensing such mobile home park.*

**Comment:**

This section gives a park resident a right of action to enforce section 2. Enforcement provides determination of the validity of park rules outside of a summary proceeding under section 1, and should encourage the park owner to stay within reasonable bounds in promulgating rules. This section could provide for awarding of costs and reasonable attorney's fees to the park resident. Copies of any court order are required to be sent to the authority licensing the park, which should increase their awareness of and responsiveness to park problems. Additional copies could also be sent to the state attorney general, who might be given enforcement powers.<sup>157</sup>

*Section 4.*<sup>158</sup>

*(a) Any mobile home park owner or agent who threatens to or takes reprisals against any park resident for any lawful conduct including, but not limited to, reporting to the authority licensing such mobile home park, a board of health, the attorney general, or any other appropriate government agency a violation or suspected violation of the preceding sections or any applicable health or safety code, shall be liable for damages which shall not be less than one month's rent or more than five months' rent, or the actual damages sustained by the resident, whichever is greater, and the costs of the suit including reasonable attorney's fees.*

*(b) The receipt of any notice of termination of tenancy, except for nonpayment of rent, or of any notice of increase of rent within six months of filing a complaint as described in the preceding paragraph*

problem of what a resident does with his home when he leaves the park. Thus, the park owner could specify a reasonably old age, such as twelve years, after which a mobile home would be required to be removed. At the same time, a resident could be given the right to assign his right of possession to a suitable prospect. *But see* note 40 and accompanying text *supra*. The park owner could be required to give his reasonable consent to the prospective tenant of the site, while the resident could be required to go through with the sale of his home, in order to prevent his speculation on the value of the site. This would appear to protect adequately the resident in a brand new home who is forced to leave the park for such reasons as illness. The new tenant should be notified of the age of the home and how long it is permitted to remain on the site. This would be reflected in the sale price of the home, the new resident then assuming the burden of eventually having to remove the home.

<sup>157</sup> *See* note 87 *supra*. This statute would tie in very well with such consumer protection acts, and it would provide the park resident administrative flexibility, a wide range of established enforcement procedures, and ability to curb widespread problems.

<sup>158</sup> *See* Mass. Gen. Laws Ann. ch. 186, § 18, & ch. 239, § 2A (Supp. 1972); *see also* Moskowitz & Honigsberg, *supra* note 94, at 1029.

*shall create a rebuttable presumption that such notice is a reprisal against the resident.*

*(c) It shall be a defense to any summary proceeding to recover possession of a mobile home space in a mobile home park that the dominant purpose of the person bringing the action is reprisal.*

**Comment:**

This section prohibits reprisals or retaliatory evictions for lawful conduct by a park resident, such as reporting code violations. This section, as well as the others, would expand the scope of the usual summary proceeding.<sup>169</sup>

**V. CONCLUSION**

The problems of mobile home park residents arise from a confluence of factors over which they have little control: community restrictions on available space, the resulting dominant position of park owners, a landlord-tenant system of law which is unfairly weighted against them, exclusion from coverage by statutes protecting tenants and limited protection in the courts. These problems are uniquely suited for legislative reform. California has led the way in attacking these problems by altering the balance of power between landlord and tenant. By requiring eviction for cause, California has initiated a promising experiment, which may produce great improvements for landlord-tenant law as a whole.

LYLE F. NYBERG

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<sup>169</sup> This result may have been accomplished in part by retaliatory eviction statutes; summary proceedings may no longer be summary.

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DECLARATION OF SERVICE

On the 10th day of June, 2016, I caused to be served a true and accurate copy of Brief of *Amici Curiae* King County Bar Association, Snohomish County Legal Services, and Tacoma-Pierce County Housing Justice Project, via electronic mail, per agreement of the parties listed below:

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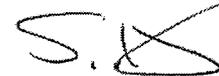
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I declare under penalty of perjury under the laws of the State of  
Washington and the United States that the foregoing is true and correct.

DATED this 10th day of June, 2016 at Seattle, Washington.



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