

SPOTLIGHT ON UNDERSERVED MARKETS

Tenant Protections in Manufactured Housing Communities




Freddie Mac
MULTIFAMILY



Tenant Protections in Manufactured Housing Communities

Manufactured housing is home for more than 6.7 million households, which equates to more than 12 percent of low-income households in the United States.¹ As of June 2018, the median household income of manufactured housing residents was \$30,000. Manufactured homes are on average half the cost of a site built home and cost around \$70,600 or \$49 per square foot per 2016 data. By comparison, the average cost for a site built home without land costs was \$286,814 or \$107 per square foot.² Manufactured homes are generally located on land owned by the homeowner (or family member) or in a third-party owned manufactured home community (MHC). Based on available data from Datacomp/JLT³, there are approximately 37,254 MHCs across the country.

When living within MHCs, most tenants own or finance the purchase of their home and rent the site upon which the home is located (though in some cases tenants may also rent the homes). Based on information from appraisals and what we have heard anecdotally, this arrangement is generally more affordable on an ongoing basis than renting an apartment or owning a home and land together. Accordingly, MHCs are often viewed as an effective way to provide affordable housing without the need for subsidies. This hybrid rental/ownership structure can create potential risk for tenants if they need to move or fall behind on their rent. Once a homeowner has put their home on a site in an MHC, it can be difficult⁴ and expensive⁵ to move.

In response to these unique circumstances, many states have adopted laws and regulations to specifically protect MHC tenants, in addition to (or in some cases, in substitution of) laws protecting tenants generally. The Federal Housing Finance Agency (FHFA), through the Duty to Serve (DTS) regulation, is seeking to increase protections for tenants in MHCs and has identified a specific complement of eight tenant protections to be used as a floor (referred to as the DTS tenant protections).⁶

In this paper, we provide a review of the degree to which DTS tenant protections are currently addressed by the 50 states, and explore how such protections, if not covered by state law, might be voluntarily included in leases by community owners.

We find that:

- The tenant protections currently provided vary greatly by state, and in some cases states have decidedly different approaches to MHC tenant protections than the DTS tenant protections
- No DTS tenant protection is currently adopted across all 50 states
- No state includes all eight DTS tenant protections, and seven states do not include any DTS tenant protections
- The most common protection is “Right to Cure Default on Rent Payments”, found across 82 percent of states

¹ Freddie Mac tabulations of 2016 American Community Survey data

² Manufactured Housing Institute at <https://www.manufacturedhousing.org/wp-content/uploads/2018/06/2018-MHI-Quick-Facts-updated-6-2018.pdf> (accessed on December 10, 2018). Approximately 93,000 new manufactured homes were produced in 2017.

³ Available data from JLT/Datacomp represents 49 states as of 2016. This is the most comprehensive MHC data set available.

⁴ <https://mobilehomeliving.org/transporting-mobile-home-best-mobile-home-mover/>

⁵ <https://www.howmuchisit.org/cost-to-move-a-mobile-home/>

⁶ 12 CFR 1282.33(c)(4)

- The least common protection is “Right to Sell within a Reasonable Period After Eviction”, which is not clearly mandated in any state, and we view as possibly protected in 16 percent of states
- Of the 50 states, only one (covering 1,389 MHCs) adopted more than 75 percent of the DTS tenant protections, 12 states (covering an additional 10,172 MHCs) adopted between 50 to 75 percent of the DTS tenant protections, and 19 adopted between 25 to 49 percent, with the remaining 18 adopting less than 25 percent⁷
- Through outreach to community owners, we found that four of the protections were viewed as particularly onerous or difficult to put into practice:
 - One-year renewable lease term, unless there is good cause for non-renewal
 - Right to sublease or assign pad lease without unreasonable restraint (owners were particularly concerned with the right to sublease)
 - Right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner
 - Right to receive at least 60 days’ notice of planned sale or closure of the manufactured housing community (owners were particularly concerned with the notice of planned sale)

Duty to Serve and Tenant Protections

In the DTS regulation, FHFA has identified a minimum set of tenant protections to be instituted, either through state law or lease agreement, in order for a loan on that MHC to qualify for DTS credit.⁸ These minimum protections are:

1. One-year renewable lease term unless there is good cause for non-renewal
2. 30-day written notice of rent increases
3. 5-day grace period for rent payments and the right to cure defaults on rent payments
4. Right to sell the manufactured home without having to first relocate it out of the community
5. Right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner
6. Right to sublease or assign the pad site lease for the unexpired term to the new buyer of the tenant’s manufactured home without any unreasonable restraint
7. Right to post “For Sale” signs
8. Right to receive at least 60 days’ notice of planned sale or closure of the manufactured housing community

⁷ The analysis shows a breakout based on percentage of adopted protections without double counting states. For instance, a state that adopts 80 percent of protections would only be counted above 75 percent, but not above 50 percent in order to avoid duplicates.

⁸ https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/2016%20Duty%20to%20Serve%20Final%20Rule_For%20Web.pdf

Freddie Mac Survey of State Tenant Protection Laws

To understand the current prevalence of these tenant protections in state law, Freddie Mac commissioned a 50-state survey. In this survey, completed in March 2018, a legal team from Dickinson Wright PLLC identified state laws⁹ and regulations applicable to manufactured housing specifically, and the landlord-tenant relationship more generally. They reviewed state statutes and regulations to determine whether and to what extent each DTS tenant protection was affirmatively addressed. This survey was not inclusive of municipal and local laws, however, compliance with local laws providing equal or greater protections than those listed under DTS would still qualify. They also noted where a state was silent with regard to a particular DTS tenant protection, or if an alternative tenant protection was indicated.

The research revealed a certain amount of ambiguity in the laws and some challenges in interpreting whether particular measures were considered more or less protective of tenants. For example, in some states, there is inconsistency with respect to the application of MHC laws and regulations and the general landlord-tenant laws and regulations, particularly in MHCs where some site tenants own their homes while others rent homes from the community owner. Further, the use of “good cause”, “reasonable” and “unreasonable” in some of the DTS tenant protections made it difficult to determine whether certain state provisions would satisfy the DTS requirements. And in some cases where the DTS tenant protections appear to require an affirmative right (such as the requirement that tenants have a “right” to post “For Sale” signs), state laws appear non-compliant because no such affirmative statutory or regulatory right could be identified. However, per Dickinson Wright PLLC, if tested, many states would likely imply such a right does exist. Moreover, signage rights are as likely to be regulated by municipalities as by the state, and analysis of municipal regulations was outside the scope of this inquiry.

Finally, in states where MHC tenant protection was clearly a legislative priority (as evidenced by substantial legislative history and regulations in place), states in some instances took their regulation in a direction diametrically opposed to the DTS tenant protections. For example, some states seemed to view a lease term shorter than one year or not automatically renewable as being more tenant friendly because it offers the tenant more flexibility and freedom to move.¹⁰

Exhibit 1 and accompanying Appendix A provide a summary of Dickinson Wright PLLC findings from the 50-state survey of MHC DTS tenant protections.

⁹ Municipal and local laws were not reviewed as part of this survey

¹⁰ We understand this is the case in California, where a lease must be in excess of 12 months, except that a tenant can reject such a lease and accept a lease of 12 months or less, including month to month. Cal. Civ. Code Sec 798.17. Further, the law prohibits the automatic renewal of a lease that is for 12 months or less if the auto renewal is for a term longer than the initial term and can be exercised by one party. Cal. Civ. Code Sec. 798.18.

Exhibit 1: 50-State Survey^{11, 12, 13}

Protection #	1		2	3		4	5	6	7	8
State	One-Year Lease Term	Lease is Renewable	30-Day Notice of Rent Increases	5-Day Grace Period for Rent Payments	Right to Cure Default on Rent Payments	Right to Sell Home Without Relocation	Right to Sell within Reasonable Period Post-Eviction	Right to Sublease or Assign Pad Lease w/o Unreasonable Restraint	Right to Post "For Sale" Signs	60-Day Advance Notice of Planned Sale/Closure of MHC
Alabama	No	No	No	No	Yes	Maybe	No	Maybe	No	No
Alaska	No	No	No	No	Yes	Yes	No	Yes	No	No/Yes (1)
Arizona	No	Yes	Yes (2)	No	Yes	Maybe	No	Yes	Yes	No/Yes (2)
Arkansas	No	No	No	Yes	Yes	Maybe (3)	No	Maybe	No	No
California	Yes (4)	Yes (4)	Yes	Yes	Yes	Yes	No	Maybe	Yes	No/Yes (1)
Colorado	Yes (5)	No	Yes	No	Yes	Yes	No	Maybe	Yes	No/Yes (1)
Connecticut	Yes (6)	Yes	Yes (6)	Yes	Yes	Yes	No	Maybe	No	No/Yes (1)
Delaware	Yes (7)	Yes	Yes	Yes	Yes	Yes	No	Yes (8)	Yes	No/Yes (1)
Florida	Yes (9)	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Georgia	No	No	No	No	Yes	No	Maybe (26)	No	No	No
Hawaii	No	No	Yes	No	Yes	Maybe	No	Yes (10)	No	No/Yes (1)
Idaho	No	Yes (11)	Yes (12)	No-3 days	Yes	No	No	No	No	No/Yes (13)
Illinois	Yes	Yes (14)	Yes	No	Yes	Yes	No	No (15)	No	No/Yes (1)
Indiana	No	No	Yes	No	Yes	Maybe	No	No	No	No
Iowa	Yes (16)	No	Yes	No-3 days	Yes	No (17)	No	No	No	No
Kansas	No	No	Yes	No-3 days	Yes	Yes	No	No	No	No
Kentucky	No	No	No	No	Yes	Maybe	No	No	No	No
Louisiana	No	No	No	No	No (18)	No (17)	No	No (19)	No	No
Maine	No	No	Yes	Yes	Yes	No (17)	No	No	Yes	Yes/Yes
Maryland	Yes	No	No (20)	No	No	Yes	No	No	No	No/Yes (1)
Massachusetts	Yes	Yes	Yes	No	Yes	Yes	Maybe (26)	Yes	Yes	No (21)/Yes
Michigan	No	No	No	No	Yes	Yes	Maybe (26)	Yes	Yes	No-45 days/Yes (1)
Minnesota	No	Yes	Yes	No	Yes	No	Maybe (26)	No (15)	Yes	No/Yes (1)
Mississippi	No	No	No	No-3 days	No	No	No	No	No	No
Missouri	No	No	No	No	No	No	No	No	No	No
Montana	No	Yes	No	No	Yes	Yes	No	No	No	No/Yes (1)
Nebraska	No	No	Yes	No	Yes	Yes	No	No	No	No
Nevada	No	No	Yes	No	Yes	Yes	No	No (22)	Yes	No/Yes (1)
New Hampshire	No	Yes	Yes	No	Yes	Yes	No	No	No	No/Yes (1)

¹¹ This review was commissioned by Freddie Mac and completed by Dickinson Wright PLLC

¹² The numbers in the table refer directly to the corresponding number in the appendix of this paper

¹³ Two protections: (1) one-year renewable lease term unless there is good cause for non-renewal and (2) 5-day grace period for rent payments and the right to cure defaults on rent payments, are split in this table. However, a state is only considered to meet the minimum DTS tenant protection if both aspects of the tenant protection are present.

Exhibit 1: 50-State Survey (Continued) ^{14, 15, 16, 17, 18}

Protection #	1		2	3		4	5	6	7	8
State	One-Year Lease Term	Lease is Renewable	30-Day Notice of Rent Increases	5-Day Grace Period for Rent Payments	Right to Cure Default on Rent Payments	Right to Sell Home Without Relocation	Right to Sell within Reasonable Period Post-Eviction	Right to Sublease or Assign Pad Lease w/o Unreasonable Restraint	Right to Post "For Sale" Signs	60-Day Advance Notice of Planned Sale/Closure of MHC
New Jersey	No	Yes	Yes	Yes	No (23)	Yes	No	No (15)	No	No/Yes (1)
New Mexico	No	No	Yes	No	Yes	Yes	Maybe (26)	No	No	No/Yes (1)
New York	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No/Yes (1)
North Carolina	No	No	No	No	Yes	No	No	No	No	No/Yes (1)
North Dakota	No	Yes	Yes	No	No	No	No	Yes	No	No/Yes (1)
Ohio	No	Yes	Yes	No	No	Yes	No	No	No	No/Yes (1)
Oklahoma	No	Yes	No	No	Yes	No	No	No	No	No
Oregon	No	Yes	Yes	No-4 days	Yes	Yes	No	Yes	Yes	No/Yes (1)
Pennsylvania	No	Yes	Yes	No	Yes	Yes	No	No	No	No
Rhode Island	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes (24)/Yes
South Carolina	No	No	Yes	Yes	Yes	No	No	No	No	No
South Dakota	No	Yes	Yes	No	Yes	No	No	No	No	No/Yes (1)
Tennessee	No	No	No	Yes	Yes	No	No	No	No	No
Texas	No	Yes	Yes	No	Yes	Yes	No	No (19)	No	No/Yes (1)
Utah	No	Yes	Yes	No	Yes	Yes	Maybe (26)	No	Yes	No/Yes (1)
Vermont	No	Yes	Yes	No	Yes	Yes	Maybe (26)	Yes	No	Yes/Yes
Virginia	Yes	Yes	No	Yes	Yes	Yes	Maybe (26)	No	Yes	No/Yes (1)
Washington	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes (25)	Yes	Yes/Yes
West Virginia	Yes	No	No	No	No	Yes	No	No	No	No/Yes (1)
Wisconsin	No	Yes	No-28 days	No	Yes	Yes	No	Yes	Yes	No/No-30 days
Wyoming	No	No	No	No-3 days	No	No	No	No	No	No/No
Yes Total	13	24	32	13	41	29	0	13	17	5
No Total	37	26	18	37	9	15	42	32	33	17
Maybe Total	0	0	0	0	0	6	8	5	0	28

¹⁴ This table should not be reviewed without reading Appendix A

¹⁵ The term "renewable" is not defined in the Final Regulations. For purposes of this summary, the term "renewable" is interpreted in a manner favoring tenant's ability to renew the rental agreement or lease, even if that renewal requires the giving of notice by either landlord or tenant (or both), and even if the "renewal" period is shorter than the original lease term (for example, if a tenant holding over after expiration of a rental agreement or lease term is viewed as having a month-to-month rental agreement or lease term). In some instances, this interpretation may suggest that a state's statutory or regulatory scheme is more favorable to tenants than it might be in practice. For example, if a landlord is permitted to terminate leases or rental agreements by providing adequate notice to the tenant (thereby negating the tenant's right to renew the lease), but the lease would otherwise be renewable by the tenant, then that state's law is noted as renewable, since absent such notice, the lease or rental agreement would be renewed. A "No" response in this column encompasses states where there are explicit prohibitions against automatic renewals or month-to-month holdovers, as well as states where the manufactured housing and landlord-tenant laws do not explicitly address lease renewal or whether a tenant holdover is deemed to provide any rights.

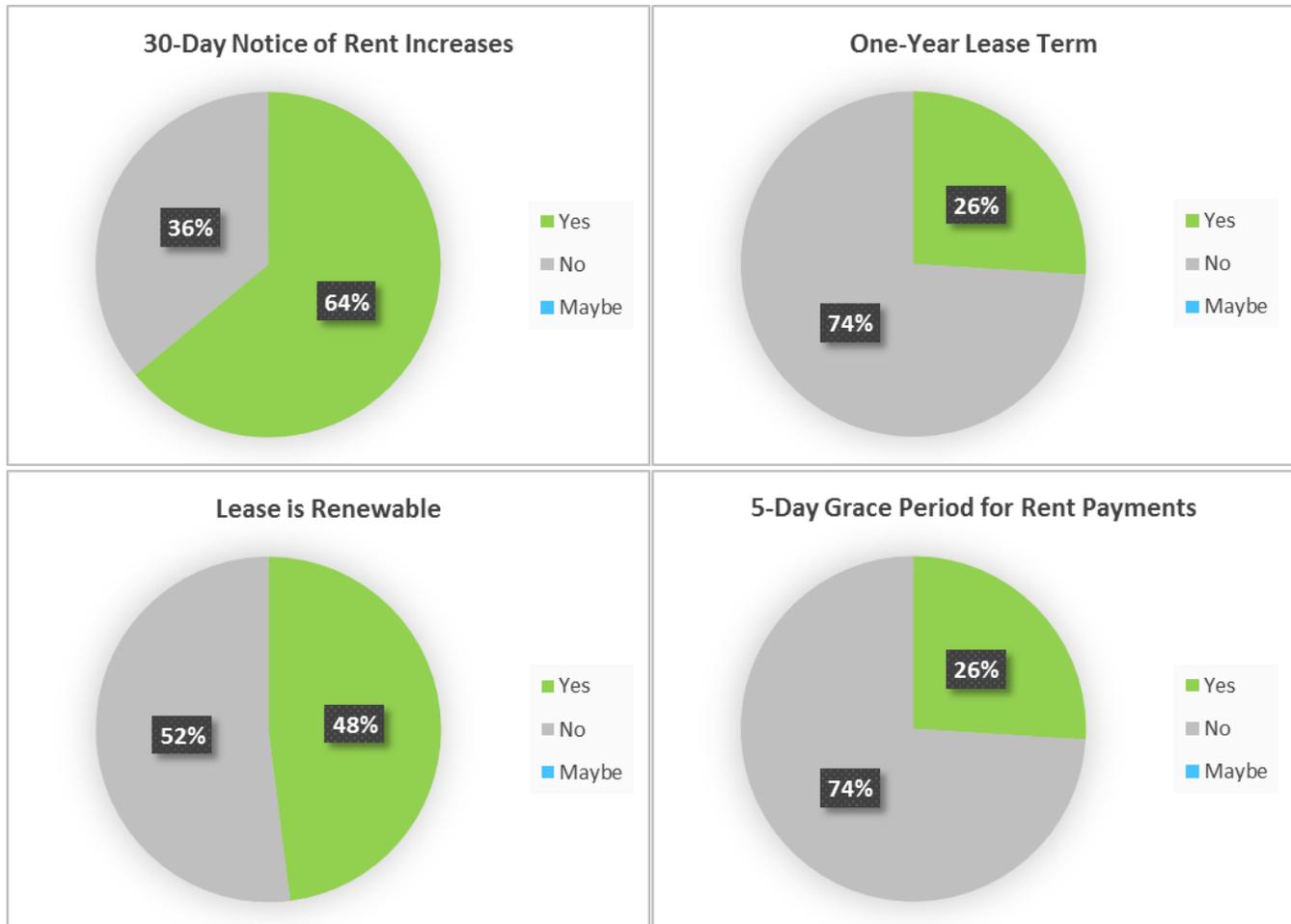
¹⁶ Grace Period is interpreted to mean any period following the date that rent is due, specified by statute or regulation, during which Landlord may not terminate the lease or impose additional fees or charges for nonpayment of rent, and Tenant is permitted to pay rent and continue occupancy

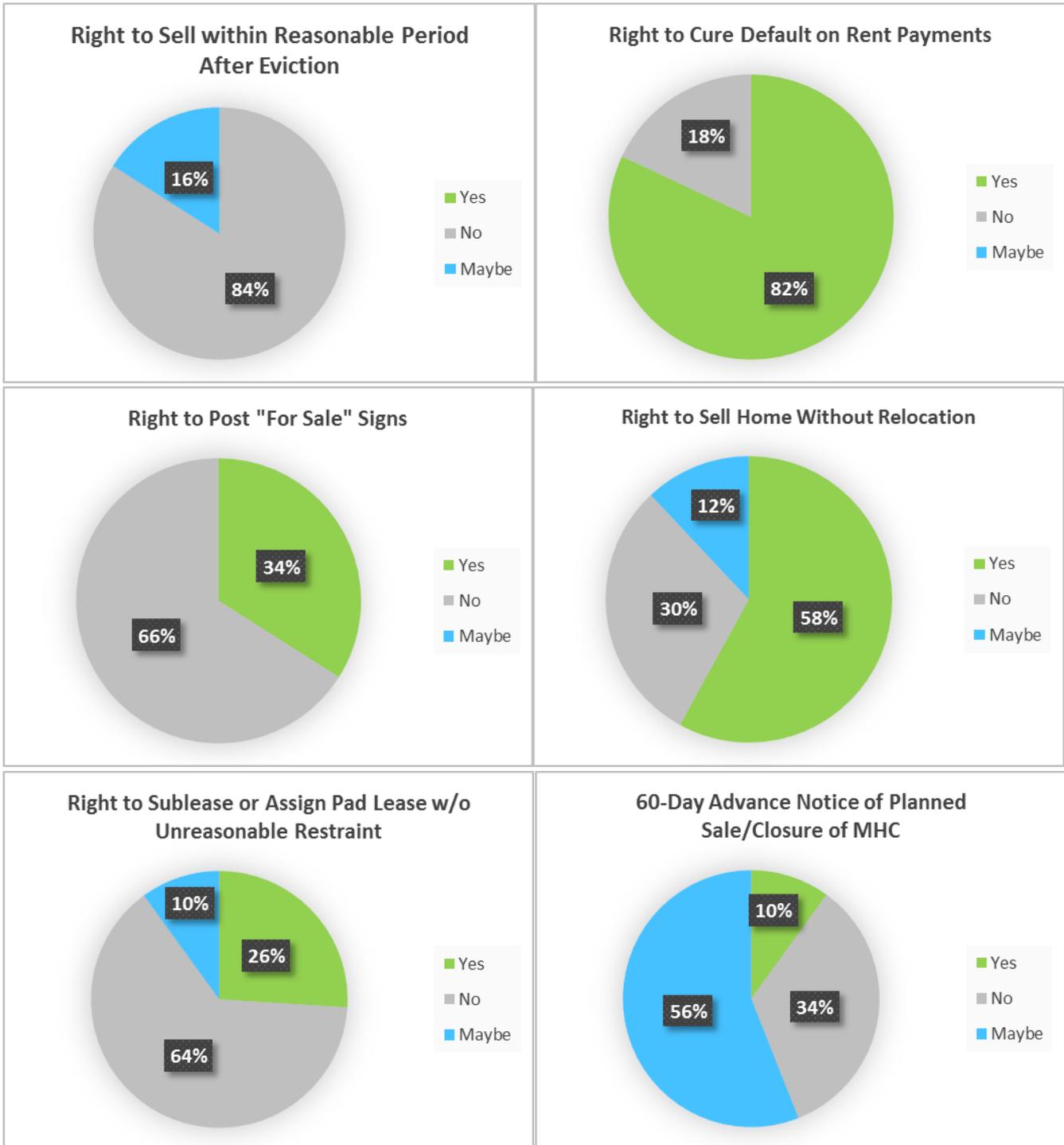
¹⁷ The "Maybe Total" row includes cases that were designated as "No/Yes" in addition to anything designated as "Maybe"

¹⁸ In the "right to sell within a reasonable period post eviction" column, all states that are designated as "Maybe" provide some right of sale, but it is not clear whether the requirements of those statutes satisfy the "reasonable period" requirement of the DTS tenant protections. The specific requirements for each state are identified in Appendix A.

Overview of Survey Results

In review, 43 states have some combination of the DTS tenant protections, no state has all of the protections and seven states have none of the protections. In addition, many states include these protections in varying degrees. This concept is evaluated in more detail below. For summary purposes, we included a “No/Yes” designation as a “Maybe” in the charts below.





Understanding the Survey Results

When considering these survey results, it is important to understand the nuances of the DTS tenant protections and to recognize the limits of the survey.

Many states differentiate between MHC tenants who own their own home and are renting only the pad site versus MHC tenants who are leasing both the home and the pad site from the MHC. Under each scenario, the home sits on a pad site and the tenant pays rent to lease the pad site. Homeowners pay rent only to cover the cost of the pad site.

As the DTS regulation applies to “pad lease protections,” we view those provisions applicable generally to an MHC tenant who owns their home as meeting the statutory minimum. We have not separately addressed the scenario where a tenant is renting both the home and the pad/site or where a tenant is renting a manufactured home outside of an established MHC.

One-year renewable lease term: In conducting our survey, we took the position that a state law satisfied the protection if: (a) the law requires a minimum one-year term; and (b) there was no express limitation on renewal (thus, the lease is considered “renewable”).

30-day notice of rent increases: For purposes of our survey, we indicated a “Yes” only if state law expressly requires at least 30 days’ notice of a rent increase, whether in conjunction with month-to-month leases or at the end of the lease term.

Posting “For Sale” signs: In conducting our survey, we marked the category “Yes” only where an express right was given to tenants in the manufactured housing community. This analysis does not capture the interplay between other legal frameworks (e.g., rights to free speech, municipal restrictions or permission to post signage). In practice, unless a lease expressly prohibited the posting of a “For Sale” sign, we would assume that the tenant would have that right. No states had any prohibition or material limitation on a tenant’s rights to post signs.

60-day notice of planned closure or sale: For purposes of our survey, we marked the category “Yes” if the law expressly required at least 60 days’ notice both of a proposed sale or closure. We note, however, that the requirements may not apply in all cases. For example, some states meet the 60-day period, but provide an exemption if a lease were to expire prior to the anticipated sale or change in use. This may create a complicated determination when lease terms or renewal rights may be unclear (or may vary based on the nature of the tenancy). In addition, in some cases, only certain types of closure – such as condemnation or change of use – trigger the notice requirement.¹⁹ For purposes of the survey this category would still be marked “Yes”. If, however, a state only requires notice for a planned closure, but not the sale (or vice versa), the category would be marked “No”.

¹⁹ See, e.g., 10 Maine Revised Statutes Annotated § 9097(1)(F)

Understanding Variations in State Law and DTS Tenant Protections

As seen in the summary tables and Appendix A, there are a number of variations in how states address concerns targeted by the DTS tenant protections. These variations, or the presence or absence of certain protections, may be the deliberate result of the legislative process. Therefore, changes to existing tenant protections or implementation of additional tenant protections through state law would likely require further legislative action.

When examining state laws in detail, we found nuances in their implementation that result in misalignment with the DTS tenant protections. To highlight this, we take a deeper look at how Idaho addresses the DTS tenant protections.

Idaho

One-Year Lease Term	Lease is Renewable	30-Day Notice of Rent Increases	5-Day Grace Period for Rent Payments	Right to Cure Default on Rent Payments	Right to Sell Home Without Relocation	Right to Sell within Reasonable Period Post-Eviction	Right to Sublease or Assign Pad Lease w/o Unreasonable Restraint	Right to Post "For Sale" Signs	60-Day Advance Notice of Planned Sale/Closure of MHC
No	Yes (11)	Yes (12)	No-3 days	Yes	No	No	No	No	No/Yes (13)

One-year renewable lease term: In Idaho, manufactured housing rental agreements are automatically renewed for the original term, except if: (a) a landlord gives the resident no less than 90 days' written notice of an intention not to renew the rental agreement (except in the case of when a rental agreement is terminated due to tenant abandonment); or (b) a resident notifies the landlord in writing 30 days prior to the expiration of a rental agreement of an intention not to renew the rental agreement. However, Idaho does not require a minimum lease term. Therefore, according to our analysis, the minimum DTS tenant protections would not be met.

30-day notice of rent increases: Idaho law around notice of rental increase varies based on home ownership. Under the Manufactured Home Residency Act (governing rental agreements for sites only), rents may be increased after expiration of a lease term only upon 90 days' written notice with additional restrictions imposed. We have indicated that the state law satisfies the DTS tenant protections because this time frame applies to pad site leases. However, we note that the notice provision for park-owned homes (i.e., where the home and site are both rented) is only 15 days. Accordingly, it is possible that Idaho's provisions may not be viewed as meeting the DTS tenant protection requirement.

5-day grace period for rent payments and right to cure defaults on rent payments: Idaho has a three-day grace period for rent payments; therefore, it does not align with the DTS tenant protection.

60-day advance notice of planned sale or closure of MHC: Idaho law provides for 180 days' notice if taking or cessation of site rental is contemplated. Additional notice may be required by federal, state, or local law, however no notice is required for sale of the property. Accordingly, it is not in alignment with the DTS tenant protections.

Right to sell home without relocation and right to sell after eviction: Idaho law provides pad site tenants with an affirmative right to sell their home without relocation but permits the MHC landlord to approve or disapprove of the

transfer upon the same basis that the landlord approves or disapproves of any new resident. The latter requirement was viewed as a sufficient limitation on the right that there was a question as to whether the Idaho statute complies with the DTS tenant protection. Idaho law does not separately address sale after eviction but does prohibit removing any home until pad site rent has been fully paid.

Moreover, Idaho does not meet the minimum DTS tenant protections for the right to sublease or assign pad lease without unreasonable restraint, or the right to post “For Sale” signs because these issues are not affirmatively addressed by Idaho statute. Nevertheless, these protections effectively may be available to tenants in Idaho without an affirmative statutory right.

As seen through the specifics of Idaho law listed above, there can be subtle but substantive differences that exist among protections. Even if the policy behind a DTS tenant protection is addressed in state law, the details of that protection as implemented may not align with the DTS regulation.

Variations exist across states as well. To understand this better, we look more closely at two protections: “Right to sublease or assign pad lease without unreasonable restraint” and “60-day advance notice of planned sale/closure of MHC”.

Right to Sublease or Assign Pad Lease Without Unreasonable Restraint

- Delaware law varies based on homeownership. For a homeowner renting the pad site, the law permits assignment and sublease if the home qualifies for retention in the manufactured housing community according to written standards promulgated by the community, and the new tenant is accepted by landlord (which acceptance must be conditioned upon the same basis that landlord evaluates other tenants). We considered this to align with the DTS tenant protection.
- Hawaii law permits the tenant to sublet or assign without a landlord’s consent unless otherwise agreed in a written rental agreement. A written rental agreement may provide that the tenant’s right to sublet is subject to the consent of the landlord (but may not prohibit sublet or assignment). As the lease may not prohibit sublease or assignment, we consider this provision in alignment with the DTS tenant protection.
- Illinois, Minnesota and New Jersey law generally do not provide an affirmative right for tenants to assign or sublease. All three states were deemed to not qualify under the DTS tenant protection.
- Louisiana provides for a right to sublease or assign, unless expressly prohibited in the lease. Similarly, Texas law provides that a landlord may prohibit assignment and subleasing so long as the prohibition is contained in the lease (but there is no affirmative right to sublease or assign otherwise recognized). Since the landlord may prohibit assignment and subleasing, Texas and Louisiana do not align with this DTS tenant protection.
- Nevada law provides that restrictions on subleasing are permissible so long as the restrictions are disclosed in the rental agreement. If not restricted in the rental agreement, a landlord cannot prohibit subleasing as long as the proposed subtenant meets the general requirements for tenancy in the community. Since the landlord may

prohibit subleasing and assignments are not affirmatively addressed, this would not be considered as qualifying under the DTS tenant protection.

- Washington law provides affirmative protection for the tenant's right to assign a manufactured housing community lease, but not a right of sublease. Because the DTS tenant protection requirement is a right to sublease or to assign, Washington law satisfied this DTS tenant protection.

60-Day Advance Notice of Planned Sale/Closure of MHC:

- Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Virginia and West Virginia laws provide for notice for at least some changes of use, or termination of use, as a manufactured housing community (the exact parameters vary), but not for prospective sale (unless the sale also contemplates a potential change of use). In some states, the notice for change of use is applicable only where the tenant owns the home and rents the site, and is not necessarily applicable for rental of park-owned homes. To reflect this distinction, all of these states were categorized as "No/Yes" in our analysis, though we recognize that the advanced notice would have to cover both in order to meet the DTS requirements
- Massachusetts law requires a two-year advance notice of planned change of use or discontinuance of an MHC. However, it sets forth a minimum 45-day (not 60, as required by the DTS tenant protections) notice of any intention to sell or lease the land upon which the community is located. Otherwise, the statute is extremely tenant protective, including providing that a group of residents representing at least 51 percent of the manufactured homeowners residing in the community may exercise a right of first refusal to purchase at the same price being offered by a third-party purchaser. Since the minimum notice for planned sale is only 45 days and not 60, Massachusetts was considered "No/Yes" for our analysis.

These examples demonstrate the difficulty of simplistically quantifying the extent of state adoption of the DTS tenant protections.

The Current Market of Manufactured Housing Communities

To better understand the current suite of tenant protections that states are using, we examined the relationship between DTS tenant protections that a state employs and the number of MHC properties located within each state. This correlation highlights the impact that tenant protections could have in any given state, and how many properties are already covered to varying degrees. For example, we look to see if a state has a large number of MHCs, but does not have a high percentage of tenant protections. In contrast, if a state's legal framework contains many tenant protections, but there are few MHCs in that state, the number of tenants protected is proportionally smaller. Exhibit 2 below outlines this relationship at the state level.

Exhibit 2: Supply of MHCs Compared with Percent of Tenant Protections^{20, 21, 22}

State	Freddie Mac Funded MHCs	Number of MHCs	Percent of National MHCs	Percent of Tenant Protections (Yes Only, out of 8 Total)
Alabama	0	793	2%	0%
Alaska	6	67	0%	25%
Arizona	32	911	2%	38%
Arkansas	0	266	1%	13%
California	66	3,285	9%	63%
Colorado	11	578	2%	38%
Connecticut	0	118	0%	50%
Delaware	3	143	0%	75%
Florida	77	2,790	7%	75%
Georgia	16	731	2%	13%
Hawaii	0	N/A	N/A	25%
Idaho	2	350	1%	13%
Illinois	13	814	2%	38%
Indiana	11	1,153	3%	13%
Iowa	11	467	1%	13%
Kansas	1	417	1%	25%
Kentucky	11	1,236	3%	0%
Louisiana	1	586	2%	13%
Maine	6	235	1%	50%
Maryland	1	211	1%	13%
Massachusetts	0	159	0%	63%
Michigan	41	1,199	3%	38%
Minnesota	11	404	1%	25%
Mississippi	1	312	1%	0%
Missouri	3	678	2%	0%
Montana	0	278	1%	13%
Nebraska	2	279	1%	25%
Nevada	7	368	1%	50%

²⁰ Freddie Mac data is tracked internally and includes funded loans through October 31, 2018

²¹ Available data from JLT/Datacomp represents 49 states as of 2016. This is the most comprehensive MHC data set available

²² 60-day advance notice must be “Yes/ Yes” in order to fully satisfy the DTS tenant protection requirement. If there’s a “No”, then it does not count for DTS credit. Also, “One-Year lease term” and “lease is renewable” are one protection when combined, so both need to be yes. The same is true for “5-day grace period for rent payments” and “right to cure default on rent payments”.

Exhibit 2: Supply of MHCs Compared with Percent of Tenant Protections (Continued)

State	Freddie Mac Funded MHCs	Number of MHCs	Percent of National MHCs	Percent of Tenant Protections (Yes Only, out of 8 Total)
New Hampshire	7	305	1%	25%
New Jersey	4	235	1%	25%
New Mexico	4	364	1%	25%
New York	14	1,161	3%	63%
North Carolina	1	2,735	7%	0%
North Dakota	3	142	0%	25%
Ohio	11	2,166	6%	25%
Oklahoma	4	718	2%	0%
Oregon	21	1,218	3%	50%
Pennsylvania	13	1,472	4%	25%
Rhode Island	0	36	0%	50%
South Carolina	4	832	2%	25%
South Dakota	0	264	1%	13%
Tennessee	9	635	2%	13%
Texas	37	2,487	7%	25%
Utah	5	243	1%	38%
Vermont	0	120	0%	50%
Virginia	3	539	1%	50%
Washington	11	1,389	4%	88%
West Virginia	0	380	1%	13%
Wisconsin	3	707	2%	38%
Wyoming	0	278	1%	0%
Grand Total	487	37,254	100%	29% (Average)

Where state regulation does not satisfy DTS requirements, MHC owners can voluntarily add the DTS tenant protections to their leases as a way to fill in the gaps and ensure compliance with DTS tenant protections at their communities.

There are two primary ways that owners might choose to satisfy the DTS tenant protection requirements. They can add to their leases those tenant protections that are not explicitly included in applicable state law, essentially closing the gap between that state's tenant protections and those required by the DTS regulation. Alternatively, if they want to avoid ambiguity or interpretive issues, they may add all the DTS tenant protections to their leases. Though this approach creates more regulatory certainty, it may result in duplication of tenant protections and, in certain cases, could potentially conflict with state law. For example, in California, state law provides for a minimum lease term of 12 months, but a tenant is given the right to reject that term and enter into a lease for a lesser term. California law also prohibits certain automatic renewals of leases. Therefore, if a community owner were to implement a blanket minimum one-year

renewable lease term, that community could be in violation of California state law by eliminating their tenant's right to opt for a shorter lease term. Community owners will have to assess the method most suitable for them and may require legal advice to do so.

Community Owners Feedback

To accompany our review of the scope of the protections in state laws, we conducted outreach to four community owners in order to better understand the feasibility of adopting these protections voluntarily. We had conversations with MHC owners who had national footprints, regional footprints and even state-specific footprints. We asked for their opinions of each of the protections and what it would take for them to implement those lease protections not already covered by applicable state law. We found that four protections in particular were seen as onerous or unworkable.²³

- One-year renewable lease term unless there is good cause for non-renewal
- Right to sublease the home without unreasonable restraint
- Right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner
- Right to receive at least 60 days' notice of planned sale of the MHC

Feedback from community owners regarding each tenant protection is discussed below. Please note that the focus in the discussion was on homeowner residents who only lease the pad site.

One-Year Renewable Lease Term Unless There is Good Cause for Non-Renewal

A common practice is for MHC owners to offer a one-year lease in the first year, followed by a renewable month-to-month lease thereafter. For owners who intend to own long term, the idea of offering one-year renewable leases is uncontroversial. For MHC owners who intend to own the community for a shorter term in order to add value and sell, the idea of a one-year lease is much less attractive. Some short-term holders plan to only hold communities for three or four years, so they look for as much flexibility as possible to make necessary improvements quickly.

Regardless of investment strategy, both long- and short-term holders thought that moving to a required one-year renewable lease structure is not a necessary step. In states like California, we heard that refusing to renew a lease for a resident in good standing is not easy or automatic.²⁴ Furthermore, according to the owners, the eviction process tends to be very lengthy, with timeliness ranging from a few months to nine months in some cases. As such, owners feel that this area is already heavily regulated and are inclined to retain control to move quickly if the need arises. Based on our market experience, we have found that residents tend to live in MHCs for an average of eight years notwithstanding the prevalence of month-to-month leases.

²³ Some of these are only part of the DTS tenant protection, the portion we listed is the only part of the protection which owners took objection to.

²⁴ California law only permits a tenancy to be terminated for specific, stated reasons.

30-Day Notice of Rent Increases

We heard no issues with this protection.

5-Day Grace Period for Rent Payments

We heard no issues with this protection.

Right to Cure Default on Rent Payments

Many owners are open to having cure periods and all of those surveyed currently have them.

Right to Sell Home Without Relocation

All the community owners we spoke to already provide this protection so long as the resident who is trying to sell their home continues to be in good standing and pays rent. Many of the owners work with the residents to help them through this process by posting the for-sale home on their website and marketing the home to any future residents. In some instances, the owners purchase the home directly from the residents to speed up the process. The community owners will then either dispose of the homes and install new homes or refurbish the homes for resale or rental.

In the few instances where the homes are obsolete, some MHC owners send homeowners a notice that they cannot sell their home without first removing it from the community. In this narrow circumstance, the stated goal of the community owners is to ensure that the homes within the communities are well maintained and up to a uniform standard per the community's rules and regulations. Having an obsolete home severely detracts from the community's appearance. This is a rare occurrence and not all owners pursue this path. As mentioned above, some owners choose instead to purchase the home from the residents and dispose of it themselves.

Right to Sublease or Assign Pad Lease Without Unreasonable Restraint

Through our outreach we heard that owners are reluctant to allow subleasing. They worry about having individuals who are not on the lease residing in the community. In the MHC owners' view, the sublessee may not be as invested in the community or maintenance of the home as a homeowner would. MHC owners prefer to permit subleasing if the potential tenants passed the same screening process as all other residents at the community and signed an agreement with the MHC. Owners' concerns may be diminished if they were to receive clarity that imposing such restraints would not be considered "unreasonable."

Owners generally do not have an issue with assigning the pad lease for the unexpired term to the qualified buyer of the tenant's manufactured home. However, in most instances they simply write a new lease and do not charge any fees for "breaking" the lease, as they view this change as no loss in occupancy.

Right to Post "For-Sale" Signs

This is not an issue for the owners we surveyed. All of them currently allow this protection.

Right to Sell the Manufactured Home in Place Within a Reasonable Time Period Following Eviction

Those surveyed identified this protection as problematic, particularly given how difficult it is to remove a tenant in the event of an eviction. As mentioned above, the eviction process is expensive and time consuming. Depending on the state, it can take from a few months to six or even nine months. Owners are reluctant to extend that timeline even further. In addition, given the requirements and time intensive nature of the eviction process, owners do not begin the proceedings without being sure that the eviction will stand. While a few owners could not get comfortable with allowing any extra time, others said they would consider 30 days. Willingness to offer this additional time would be predicated on how difficult and time consuming the eviction process already is within a specific state. For every day that the pad site is occupied by a home which is not paying rent, the owner is losing money, which might end up affecting the owner's ability to cover debt service.

60-Day Advance Notice of Planned Sale/Closure of MHC

The owners surveyed were firmly opposed to giving a 60-day notice of a planned sale unless it is already mandated by law. They underscored that the process of selling a community is extremely delicate. Giving such a notice to all residents and staff could adversely affect the sale. Purchase and Sale Agreements often include clauses that occupancy and overall operations must remain consistent throughout the process, otherwise the sale might fall through. A notice of sale would cause anxiety among community staff, which could potentially lead to employee resignations. Consequently, community operations as well as rule enforcement would decline. If the sale subsequently fell through, the community might be left with fewer staff to oversee management and potentially an owner that is cash strapped and unable to properly maintain the community going forward.

Because the concerns raised with ongoing operations are not implicated in the event of closure, owners did not have a problem with providing a 60-day notice prior to a closure of a manufactured housing community.

Opportunity for Implementation

We also asked four owners to consider how long they would need to update their leases should they agree to the above lease provisions. The respondents agreed that updating all leases at once would be extremely time consuming and an administrative burden (and potentially could result in violation of existing lease terms). Ideally, they would prefer to do it upon lease turns. Some noted that one year might be enough to implement the changes, particularly given the size variations of MHCs, which are generally around 200 pad sites, but could contain as few as 30 to as many as 1,300 pad sites. Larger communities would likely require more than one year to implement.

Capital Markets Investor Feedback

We also surveyed two investors, with over \$1 Billion in investments, in the first loss B-pieces and mezzanine pieces of our K series securitizations, which regularly include MHCs. These securitizations are the primary means by which Freddie Mac Multifamily attracts private capital and distribute risk. The consensus among investors surveyed was that these protections appeared to be prudent practices and should not thwart participation from investors.

Conclusion

MHCs are an important source of affordable housing across the country. However, due to the unique ownership and rental structure where a tenant in an MHC often owns their home and rents the land on which the home is located, there are unique challenges. As a result, states and FHFA have looked to put various tenant protections in place. States have done this in a variety of ways, and FHFA has identified a set of eight protections that they prioritize and hold as appropriate for receiving DTS credit pursuant to this Regulatory Activity. Current state laws vary significantly and affect the application of these protections. The combination of protections laid out in the DTS regulation does not appear to be present in a significant number of states.

Based on our research, out of 37,254 communities in the Datacomp/JLT²⁵ data set, 8,927 MHCs (24 percent) are covered by at least five of the DTS tenant protections and 11,561 MHCs (31 percent) are covered by at least four of the protections. This means that there are significant gaps to achieving full implementation. This is reinforced when looking at Freddie Mac's funding through October 31, 2018, where we find that out of the 487 properties we have financed, 171 (35 percent) are covered by at least five tenant protections and 208 (43 percent) are covered by at least four of the tenant protections. Furthermore, we find that not a single state has implemented all DTS tenant protections and seven states do not have any DTS tenant protections.

One way to fill in the gaps and ensure full implementation of the DTS tenant protections is by working with community owners. They have the ability to voluntarily include needed protections in their leases. Based on our conversations, some protections would be unattractive to community owners, while others would require flexibility in terms of method and time in order to include and ensure they are not in conflict with existing state laws.

²⁵ Available data from JLT/Datacomp represents 49 states as of 2016. This is the most comprehensive MHC data set available.

Appendix A: Specifics of Manufactured Housing Community Tenant Protections as of March 2018

- (1) Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Virginia and West Virginia law provides for notice for at least some changes of use or termination of use as a manufactured housing community (the exact parameters vary), but not for prospective sale (unless the sale also contemplates a potential change of use). In some states, the notice for change of use is applicable only where the tenant owns the home and rents the site, and not necessarily applicable for rental of park-owned homes.
- (2) Arizona law differs depending on whether the home is owned by the tenant or by the manufactured housing community owner. The former is governed by the Mobile Home Parks Residential Landlord and Tenant Act ("MHP Act"), while the latter is governed by the Residential Landlord and Tenant Act. The MHP Act provides that a landlord must provide notice of an intention to increase rents at least 90 days before expiration or renewal of a lease term; the Residential Landlord and Tenant Act is silent with respect to this issue. Similarly, while the MHP Act requires 180 days' notice to tenants if a change of use for the mobile home park is intended, the Residential Landlord and Tenant Act does not address this issue (so a community comprised entirely of "park-owned" homes may not be subject to the notice requirement), and neither law contains a notice requirement for the prospective sale of a manufactured housing community.
- (3) Arkansas statutes provide no affirmative right to sell a home in a manufactured housing community, however, if a home on a leased site is unoccupied and the rent is 60 or more days past due, then after 30 days' notice, the home may be subject to a lien for past-due rents accruing after the notice.
- (4) California law provides for a minimum lease term of 12 months, but tenants can reject that term and enter into a lease for a lesser term. California law prohibits certain automatic renewals of leases, as further described in footnote 5.
- (5) Month-to-month tenancies are permitted, but Colorado law allows a tenant to elect a fixed term of not less than one year.
- (6) Connecticut law varies somewhat, depending on whether the home is owned by the tenant, or by the manufactured housing community owner. Under the MHP Act (which governs rental of pads/sites for tenant-owned homes), a minimum one-year renewable lease is required unless the tenant elects otherwise in a written request. The general landlord-tenant law (which governs rental of "park owned" homes) does not include this requirement. Similarly, the MHP Act provides for 30 days' notice for any rent increase, but the general landlord-tenant law does not contain this requirement.
- (7) Delaware law varies based on home ownership. Under the MHP Act (which governs rental of pads/sites for tenant-owned homes), a minimum one-year term is required unless the parties agree in writing otherwise. The general landlord-tenant law (governing rental of park-owned homes) is silent on this issue.

- (8) Delaware law permits assignment and sublease, and sale of a home without relocation if the home qualifies for retention in the manufactured housing community according to written standards promulgated by the community, and the new tenant is accepted by landlord (which acceptance must be conditioned upon the same basis that landlord evaluates other tenants).
- (9) Florida law generally requires one-year lease terms, but the initial term of a lease may be for a shorter period to permit all leases to be coterminous.
- (10) Unless otherwise agreed in a written rental agreement, Hawaii law permits the tenant to sublet or assign without the landlord's consent. A written rental agreement may provide that the tenant's right to sublet is subject to the consent of the landlord (but may not prohibit sublet or assignment); however, the basis upon which the landlord's consent can be withheld is not specified.
- (11) In Idaho, manufactured housing rental agreements are automatically renewed for the original term, except if: (a) a landlord gives the resident no less than 90 days' written notice of an intention not to renew the rental agreement (except in the case of when a rental agreement is terminated due to tenant abandonment); or (b) a resident notifies the landlord in writing 30 days prior to the expiration of a rental agreement of an intention not to renew the rental agreement.
- (12) Idaho law varies based on home ownership. Under the Manufactured Home Residency Act (governing rental agreements for sites only), rents may be increased after expiration of a lease term only upon 90 days written notice; provided, however, that leases may contain a rent escalation clause. For park-owned homes (i.e., lease of home and site), a landlord may increase rents upon 15 days' notice if other limitations are not established in a written lease.
- (13) Idaho law provides for 180 days' notice if a taking or cessation of site rental is contemplated and other notice as may be required by federal, state or local law. No notice provision is required for sale of the property.
- (14) In Illinois, a manufactured housing agreement must automatically renew, unless (1) the tenant notifies the owner 30 days prior to the expiration of the lease that he does not intend to renew the lease; (2) the park owner notifies the tenant 30 days prior to the expiration of the lease that the lease will not be renewed and specify in writing the reasons, such as violations of park rules, health and safety codes or irregular or non-payment of rent; (3) the park owner elects to cease the operation of either all or a portion of the mobile home park; or (4) the park owner seeks to change the terms of the agreement, unless the only change is in the amount of rent, in which case it is sufficient if the park owner provides a letter notice to the tenant stating the changed rent amount.
- (15) Illinois, Minnesota and New Jersey law generally do not provide an affirmative right for tenants to assign or sublease, but in the case where a tenant sells their home to a new owner, the community owner may not reject the purchaser as a tenant unless they fail to meet the community's general qualifications or lawful restrictions for tenancy (possibly implying some right of assignment).
- (16) Iowa law provides for a one-year lease term, unless otherwise specified in the lease agreement.

- (17) Under Iowa law, a tenant will be considered to have abandoned their home if the tenant is absent, without reasonable explanation, for 30 days, and either a default in the payment of rent or other termination has occurred. In the event of abandonment, a landlord may, following notice, charge rent on the home, and potentially assert a lien against it. The statute is silent as to a sale before eviction. Louisiana and Maine statutes are similar.
- (18) Louisiana's current scheme only allows a mobile home owner an opportunity to cure late rent within the discretion of the court.
- (19) Louisiana provides for a right to sublease or assign, unless expressly prohibited in the lease. Similarly, Texas law provides that a landlord may prohibit assignment and subleasing, so long as the prohibition is contained in the lease (but there is no affirmative right to sublease or assign otherwise recognized).
- (20) In Maryland, there is not an explicit notice requirement for increasing rent but there is a provision that governs park fees, which may only be increased upon written notice to each resident at least 30 days before the effective day of the increase. Likely, this implies that rents are addressed by contract law.
- (21) Massachusetts law provides for a minimum 45-day (not 60, as required in the Final Regulation) notice of any intention to sell or lease the land upon which the community is located (or any portion thereof). Otherwise, the statute is extremely favorable, including providing that a group of residents representing at least 51 percent of the manufactured home owners residing the community may exercise a right of first refusal to purchase at the same price being offered by a third-party purchaser.
- (22) Nevada law provides that restrictions on subleasing are permissible so long as the restrictions are disclosed in the rental agreement. If not restricted in the rental agreement, a landlord cannot prohibit subleasing as long as the proposed subtenant meets the general requirements for tenancy in the community.
- (23) New Jersey law generally provides no cure right after the 5-day grace period has expired unless the landlord has habitually permitted late payment of rent, in which case 30 days' notice is required.
- (24) In Rhode Island, if at least 51 percent of the home owner households are members of an incorporated home owner households association and such association's organizational documents allow for the association to acquire and operate a mobile home park on behalf of the residents, then before an owner may sell the park (for any reason) or lease the park (for any purpose that would result in a discontinuance of the park), the seller must notify the association of the terms of the sale, and the association will have the right to purchase (or lease, as applicable) the park on the same terms and conditions, provided that the association enters into a purchase/lease agreement within 45 days of such notice.
- (25) Washington law provides affirmative protection for the tenant's right to assign a manufactured housing community lease, but not a right of sublease.
- (26) The vast majority of states (42 out of 50) are silent on post-eviction sale. Vermont and Massachusetts give the tenant 3 months (or as otherwise set by court order). Other states, including Virginia, Minnesota and Michigan,

give between 60-90 days, but require the tenant to pay rent and fees. Utah provides for 15 days, while Georgia gives 10 days. The range of timeframes adopted by these states underscores the difficulty in determining what is considered a “reasonable time period.”