I'M HOME
Innovations in Manufactured Homes

NATIONAL CONSUMER LAW CENTER

MANUFACTURED HOUSING POLICY BRIEF

# Financing Homes in Communities

## BACKGROUND

Assets are the foundation for promoting long-term economic opportunity for Americans. They provide security during unexpected financial troubles, such as medical expenses, car repairs, or job loss. Assets also foster and encourage long-term plans and dreams, such as going to college and starting a business. For the past few generations, homeownership has been the bedrock of household financial assets. Even during periods of instability in the housing market, homeownership remains the primary source of wealth for many Americans and continues to be the centerpiece of the American Dream. For 17 million Americans, the path to the American Dream is via manufactured housing. Today's manufactured housing market is a high-quality and affordable entry into asset building for many families, but obstacles in obtaining conventional financing effectively create a roadblock for many because often these homes – though as permanent as homes built on site – are often treated more like auto loans rather than traditionally built homes. The I'M HOME (Innovations in Manufactured Homes) initiative works to address these challenges and to help ensure that all homeowners – including owners of manufactured housing – have equal access to the asset-building opportunities of homeownership. Our goal is to make sure that families who choose a manufactured home can access the same opportunities as owners of any other type of home.

## ABOUT THIS POLICY BRIEF

This policy brief is a blueprint for states considering ways to increase the availability of better and less expensive mortgage financing for those who truly need it, the low- and moderate-income purchasers of manufactured homes in land-lease communities. It outlines the primary obstacles to conventional mortgage financing of manufactured homes in land-lease communities and recommends specific policies that states can enact to promote conventional financing. Buying a manufactured home in a land-lease community[1] (where people own their homes but rent the land beneath) provides a number of advantages over a site-built home on an individual lot. They offer high-quality housing at a lower cost, faster construction and a population density that permits more community amenities at a lower price. A primary disadvantage of manufactured housing, however, is its financing options. Most homes are financed with mortgages. But most manufactured homes sited in land-lease communities are financed with chattel loans. Chattel is the legal term for personal property, as opposed to "real" property, which generally includes land and the structures attached to the land. Chattel loans differ in many respects from mortgages, and in fact, more closely resemble auto loans. The key disadvantages to chattel financing of homes compared with conventional mortgage financing include:

- Shorter loan terms (typically 20 years instead of 30);
- Higher interest rates (at least two to five percentage points higher[2])
- Differential rights in case of default; and
- A more limited pool of lenders (including the common practice of dealer, in-house, financing by manufactured home retailers), which reduces a consumer's opportunity to shop for competitive loans and affects home resale values.

## ACTION STEPS FOR STATES TO INCREASE MORTGAGE FINANCING OF MANUFACTURED HOMES IN LAND-LEASE COMMUNITIES

A mortgage lender's primary concern is repayment of a loan and, in the event of default, that the resale price of the home will cover the outstanding loan balance. Interestingly, lender concerns largely coincide with homeowner concerns because they too seek to protect their investment. To increase conventional financing opportunities for owners of manufactured housing living in land-lease communities, states must address four policy areas:

- Classifying a home as real property
- Ensuring that a home and homeowners may remain in their community

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- Allowing the transfer of the home to a new owner; and
- Protecting lender interests.

Each of these obstacles can be addressed by state policy that would protect not only lenders, but also owners of manufactured homes in land-lease communities. Although some of these policies may be addressed via lease provisions and other contractual terms, a statutory fix is the most efficient method. A statutory fix is also more appealing to lenders because the terms and conditions are clear upfront without the need to work with individual community owners to create new lease agreements on a case-by-case basis.

### Classifying a Home as Real Property

Classifying manufactured homes as real property improves a homeowner's financing options, but the conversion to real property does not automatically permit the homeowner or buyer to obtain favorable financing terms. Many other factors also influence a lender's decision to extend favorable financing terms. However, designation of a manufactured home as personal property will generally preclude favorable conventional financing terms.[4] A home classified as personal property is titled differently and is commonly appraised differently (more similar to auto blue book appraisals). Such a home is often not listed by real estate agents and is subject to different procedures if the homeowner defaults on the loan, as compared with site-built homes. For these reasons, conventional mortgage lenders generally do not engage in chattel lending.

Some states permit the conversion of manufactured homes from personal property to real property but many do not allow homes on leased land to be converted. Where they do, some only allow conversion on leased land in conjunction with particular financing programs or require extended leases for the home to be converted to real property. In some cases, the community owner's permission is required. Each of these policies deters homeowners from converting their home and enjoying the many benefits of real property classification.

For the conversion process from personal to real property to appeal to lenders, states should enact policies that clearly classify the home as real property, ensure that any personal property title is purged and preserve the priority of existing secured lenders. The conversion process should be simple, voluntary and easy to verify through public records.[5]

### Ensuring That a Home and Homeowners May Remain in Their Community

Being forced to move your home from its original site can be devastating – and expensive. Moving a home, regardless of whether the reason is a community closure or a steep rent increase often totals an amount equal to more than five years' worth of equity and it may permanently damage the home. It can also be very difficult, if not impossible, to find another location for the home.

Forcing a homeowner to move his or her home also greatly increases the probability of default. A homeowner forced to

## Cooperative Considerations

In addition to statutory and contractual methods of providing lender security, promoting resident ownership in manufactured housing communities also addresses many lender security concerns.[3] Given the security and benefits of resident-owned communities to both homeowners and lenders, states with policies that increase opportunities for residents to purchase the community where they live are more desirable to homeowners, lenders and the secondary mortgage market. Another critical factor in promoting resident ownership of communities is the availability of community-based technical assistance providers to help organize and prepare community residents with the legal, financial and organizing tools needed to purchase their community. States that foster the capacity of such organizations create a more viable market for conventional lenders.

However, lenders must consider the legal structure of community ownership. When purchasing their community, many residents choose to organize as limited-equity cooperatives. Doing so limits the value of the share (the homeowner's interest in the land) but ensures stable and affordable entry while still allowing for a home to appreciate in value. An alternative to this approach is to form a cooperative with unlimited equity for the shareholders. In such cases, the price of moving into the community may reflect the value of the share (or land) more than the value of the home itself, and a homebuyer's mortgage may have to finance the share. Share financing creates difficulties for lenders, as the lender is not entitled to the same bankruptcy protections when financing the share as when financing a home. When there is greater equity in the land, landowners may find converting it to other uses very attractive, again threatening security for homeowners and lenders. Lenders must consider whether states provide for the creation of limited-equity cooperatives when designing financing products. There are other ownership models that provide similar benefits as the limited-equity cooperative model, such as nonprofit ownership, but these may be more cumbersome.

relocate may have little choice but to walk away from the home and stop making payments on the loan if a new location is not available or if they do not have the funds (generally $5,000 to $10,000) to move it. Protections ensuring that a home and homeowner may remain decrease the likelihood of default. It also protects the home's value as collateral. Policy actions that states can take to protect a homeowner's ability to remain in place include:

***Enacting laws that promote the opportunity for residents to purchase their community.*** Such policies may provide homeowners with advance notice and a right of first refusal if the landowner wishes to sell or convert use. This way, residents may purchase the community themselves by matching the sales price. Another important aspect of such a policy is to place a duty on the community owner to consider any reasonable offer made by the homeowners and to negotiate in good faith with them.

***Providing tax and zoning incentives that encourage landowners to sell to community residents.*** States can reduce or waive state income taxes on capital gains, transfer taxes or other tax liabilities for landowners who sell a community to residents. Limiting the rezoning of manufactured home communities for alternative uses may encourage landowners to sell to residents by discouraging speculation by real estate investors.

***Restricting unjust evictions for activities such as community organizing.*** Without protections, homeowners are at the mercy of the community owner. Protections against unjust evictions by the landowner may include:

- **Good Cause Eviction:** A landowner should have "good cause," such as failure to pay lot rent or breaking laws or community rules, for evicting a homeowner. Limits on unreasonable community rules make good cause eviction requirements effective.
- **Grace Periods for Rent Payments:** Homeowners should have a reasonable grace period to catch-up on late rent payments prior to the start of eviction proceedings. Similar protections include requirements that rent payments received be first applied to rent, rather than toward late or other fees.
- **Right to Cure:** Homeowners should have a reasonable time period to correct, or "cure," violations, such as overdue rent or a community rule violation.

***Requiring written leases to provide certainty and security.*** A written, recorded lease informs prospective community purchasers about the status of individual homeowners. Written leases clearly outline the rights and responsibilities of both the landowner and the homeowner and may include additional lease requirements, such as the number of years of the lease and the right to renew the lease automatically.

### Allowing the Transfer of the Home to a New Owner

Owners of manufactured homes on leased land are at a disadvantage when they wish to sell or transfer ownership of their home. Unlike other personal property, such as cars, which tend to have the same value regardless of where they are situated, the value of a manufactured home (regardless if it is classified as real or personal property) is closely linked to the home's relation to the land. Because manufactured homes are difficult and expensive to move and because suitable sites are often hard to find, a manufactured home's value on a particular lot may be much higher than the appraised value of the home,[6] often based on a blue book value much like a car.

Selling a home on the land on which it sits is essential to the value of that home. However, there are many ways in which a community owner may restrict the sale of a home in its current community. Policy actions that states can take to protect a homeowner's ability to transfer their home to a new owner include:

***Allowing the sale of the home in the community.*** State statutes should allow a homeowner to sell his or her home where it is sited.

***Allowing subleasing and assignment of the lease.*** A homeowner should have the option of selling his or her home and subleasing the lot (or assigning the lease) to the new homeowner, provided the buyer meets reasonable criteria.

***Allowing "For Sale" signs.*** Homeowners should be allowed to post "For Sale" signs in front of their home, give access to their home to possible buyers and realtors, and conduct other activities required for selling a home at a fair price.

***Limiting landowners' abilities to reject new purchasers.*** Homeowners should be allowed to sell their home to any buyer (with reasonable protections for the community owner), but community owners often attempt to influence homeowners to sell to them, at a price that favors the community owner. To secure the homeowners' assets and for the homeowners to get the benefit of their lease, the community owner must be barred from exerting pressure on homeowners to sell the house to them at its NADA (book) value, which has a built-in presumption of depreciation, like automobiles, or by dictating the value at the time of purchase.

- **Providing a reasonable time period after an eviction to sell the home.** In cases where an eviction is necessary, the homeowner should have a reasonable period of time to sell his or her home.

### Protecting Lender Interests

Policies that protect the position of a secured lender also benefit homeowners by encouraging conventional financing in land-lease communities. Policy actions that states can take to protect the position of a secured lender include:

***Requiring notice to the lender and right to cure upon default on the ground lease.*** Just as traditional mortgage lenders pay tax or insurance charges to protect their investment, lenders for homes on leased land also need protections, such as notice when a homeowner is dangerously close to eviction, so that the lender may intercede to protect its holding.

***Allowing the lender to sell the home on site after foreclosure.*** Lenders benefit from the ability to sell the home on site, primarily to ensure fair market value. However, a disadvantage to homeowners of this is the unusual situation in which a homeowner seeks to retain the land lease, even after foreclosure, possibly to place a new home on that site. This is a highly unlikely situation and may be resolved by providing that the lender has the right to sell the home on site unless the homeowner wishes to place another home on that site.

## ABOUT I'M HOME

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

## ABOUT THE NATIONAL CONSUMER LAW CENTER

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

## Endnotes

1 Land-lease communities are commonly referred to as a manufactured housing parks or communities.

2 Wirtz, R. A. (2005, July) Home, sweet (manufactured?) home? Fedgazette. Available at http://www.minneapolisfed.org/pubs/fedgaz/05-07/cover.cfm.

3 For more information on laying the groundwork for resident ownership, please visit www.cfed.org/go/imhome and www.consumerlaw.org.

4 See, e.g., Fannie Mae Announcement 07-06, "Manufactured Housing Requirements, Clarifications, and New Forms" (June 15, 2007) available at https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2007/0706.pdf (detailing Fannie Mae's standards for manufactured home loans and requiring that homes be classified as real property note that only loans secured by both the home and land are eligible for purchase by Fannie Mae).

5 For more information about manufactured homes as real property, please visit www.cfed.org/go/imhome and www.consumerlaw.org.

6 For a discussion of the value of a home as sited as opposed to the value of the home in isolation see In re Valdez, 338 B.R. 97 (Bankr. N.D. Cal. 2006) (holding that a secured creditor was entitled to the full value of the home of $40,000 in its current location, rather than the □box value□ of $16,500 for the purpose of determining the value of the creditor□s secured claim under 11 U.S.C. § 506, because the creditor could sell the home on site under state law).

# *California*

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

California provides some protections that encourage resident purchase of communities and permit the sale and transfer of the home on site, including strong protections that allow the lender to sell the home where it is sited. California's policies for conversion of home from chattel to real property are limited and make conventional financing unlikely for many homeowners in California land-lease communities.

### Classification of a Home as Real Property

Manufactured homes on leased land may be converted to real property as long as the homeowner has a minimum 35-year lease. Such a long lease requirement makes it unlikely that many owners of manufactured housing in California land-lease communities will qualify for conversion.

### Ensuring That a Home and Homeowners May Remain in their Community

California provides some opportunity to purchase protections to residents by requiring from 30 days to one year's notice to residents before the landowner lists the community with a licensed real estate broker or offers to sell it to another party. However, California's law:

- Only requires notice; there is no right of first refusal, which would obligate the park owner to sell to the residents if they matched the terms of the other offer;
- Does not require the community owner to negotiate in good faith with the residents;
- Only requires notice to a resident association; if the residents do not have a resident association, no notice is required; and
- Only requires notice to the resident association if it sends a letter to the landowner once a year stating that it is interested in purchasing the community.

**Limitations on Eviction**

California requires "good cause" eviction, a (limited) right to cure and a written lease.

### Allowing the Transfer of the Home to a New Owner

California allows the sale of a home in the community and a landowner may only veto new purchasers for reasons such as financial inability to pay rent or inability to comply with community rules and regulations. The state also allows "For Sale" signs to be posted, but does not provide for time after an eviction in which to sell the home.

### Protecting Lender Interests

California law allows lenders to sell the home on site after foreclosure. The state also provides for notice to the lender and a right to cure upon default on the ground lease.

# Florida

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

Florida provides some protection to encourage resident purchase of communities and to permit the sale and transfer of the home. It also has some protections allowing the lender to sell the home where it is sited. Florida's policies for conversion of homes to real property are limited and could make conventional financing unlikely for many homeowners in land-lease communities.

### Classification of a Home as Real Property

Although manufactured homes may be converted to real property, doing so can be extremely difficult for those on leased land. The law requires that they have a recorded leasehold interest of at least 30 years to convert the home.

### Ensuring That a Home and Homeowners May Remain in their Community

Florida law protects residents by requiring the landowner to give residents notice and a right of first refusal, in some circumstances 45 days before the park is sold. However, Florida's law has serious loopholes. First, it requires notice only to a resident association (if the residents do not have one, the park can be sold without any advance notice). Second, it requires notice to the resident association only if the association has given a request to the landowner for such a notice, recorded the request with the local court and given the landowner a copy of that notice request. Third, if the landowner receives an offer to buy the community without having offered it for sale, the only obligation is to give notice. No delay in the sale is required.

**Limitations on Eviction**

Florida requires "good cause" eviction and a limited right to cure.

### Allowing the Transfer of the Home to a New Owner

Florida allows for the sale of the home in the community. The landowner may not unreasonably withhold its approval. State law also allows "For Sale" signs to be posted, but does not allow for time after an eviction in which to sell a home.

### Protecting Lender Interests

It also allows lenders to sell the home on site after foreclosure, but, it does not offer the lender a right to cure upon default of the ground lease.

# Minnesota

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

Minnesota provides some protection to encourage resident purchase of communities and to permit the sale and transfer of the home. It also has some protections allowing the lender to sell the home where it is sited. Minnesota's policies for conversion of homes to real property are extremely limited and make conventional financing unlikely for homeowners in land-lease communities.

### Classification of a Home as Real Property

Homeowners in land-lease communities may not convert their homes to real property in Minnesota.

### Ensuring That a Home and Homeowners May Remain in their Community

Minnesota protects residents by requiring landowners, or buyers in some circumstances, to give 45 days' notice and a right of first refusal. A strength of Minnesota's law is that the landowner must give notice to a resident of each home, not just to a resident association. However, notice is required only if the buyer intends or decides to close the community or convert it to another use within one year, which dramatically narrows the scope of the protection. A landowner who lists the community with a realtor or advertises it for sale to the public in a newspaper must also give written notice to the residents, but need not delay before selling the park.

**Limitations on Eviction**

Minnesota requires "good cause" eviction and a right to cure (10 days for rent, 30 days for rules violations). State law also requires a written lease.

### Allowing the Transfer of the Home to a New Owner

Minnesota allows "For Sale" signs to be posted, but the landowner may charge a fee. The landowner has the right to refuse a new buyer but must specify in writing the criteria used for rejection. In Minnesota, the court may allow 60 days after an eviction to sell the home.

### Protecting Lender Interests

State law allows the lender a right to cure upon default, if it is due to nonpayment of lot rent. But, it is unclear if the lender will receive notice for other types of default. The lender also has the right to sell the home onsite after foreclosure.

# Montana

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

Montana provides no protection to encourage resident purchase of communities, nor does it permit the sale and transfer of the home. Montana's policies for conversion of homes to real property are extremely limited and make conventional financing unlikely for homeowners in land-lease communities.

### Classification of a Home as Real Property

It is very difficult for those on leased land in Montana to convert their home to real property. Generally, the law requires all fixtures that make the home movable be removed and that it be on a permanent foundation owned by the homeowner. If these and other conditions are met, then the home could be treated as an improvement to real property with respect to financing.

### Ensuring That a Home and Homeowners May Remain in their Community

Montana does not have any purchase opportunity protections. It does not offer any conversion incentives.

**Limitations on Eviction**

Montana requires "good cause" eviction. It also gives homeowners a right to cure (seven days for rent, 14 days for rules violations).

### Allowing the Transfer of the Home to a New Owner

There are no provisions in Montana law that allow for the sale of the home in the community. There are no limits on a landowners' rights to reject a new purchaser, nor are there provisions to allow subleasing or assignment of the lease. Also, state law does not include provisions for "For Sale" signs nor for time after an eviction in which to sell the home.

### Protecting Lender Interests

Montana law does not provide a lender a right to cure after default on a ground lease or a right to sell the home after foreclosure.

# New Hampshire

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

New Hampshire protections successfully encourage resident purchase of communities. State policy also permits the sale and transfer of the home but does not provide time after eviction to sell the home. Lenders, upon request, receive notice of default, may cure the default and may sell the home where sited. New Hampshire enjoys broad policies for conversion of homes to real property.

### Classification of a Home as Real Property

Homes placed on leased land and connected to utilities are deemed real property.

### Ensuring That a Home and Homeowners May Remain in their Community

New Hampshire provides relatively strong protections to residents. It requires landowners to give each resident advance notice of almost any sale of the community.  In addition, the landowner has a duty to consider any offer the residents make to buy the community and to negotiate in good faith with them. New Hampshire does not give residents a right of first refusal, so the landowner is not obligated to sell to the residents if they match the terms of the other offer, but it has a very strong community loan program that has enabled many community residents to take advantage of the advance notice and buy their community.

**Limitations on Eviction**

New Hampshire requires "good cause" eviction. It also gives residents a right to cure (30 days for late rent payment, reasonable time for other violations).  State law also requires written leases.

### Allowing the Transfer of the Home to a New Owner

New Hampshire allows for the sale of a home in the community and a landowner may not unreasonably withhold approval of a new purchaser.  It also allows "For Sale" signs. There is no provision for time after an eviction in which to sell the home.

### Protecting Lender Interests

New Hampshire law requires notice to lenders and a right to cure upon default on the ground lease, as well as the ability to sell the home onsite after foreclosure

# New York

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

**Note:** *Analysis contained here is based on existing law as of July 2008. Pending law as of August 2008 has not yet been signed by the Governor.*

New York provides no protection to encourage resident purchase of communities. State policy permits the sale and transfer of the home. It has no protections allowing the lender to sell the home where it is sited. New York prohibits purging of motor vehicle title for manufactured homes, making conventional financing unlikely for homeowners in land-lease communities.

### Classification of a Home as Real Property

A New York statute provides that the motor vehicle certificate of title for a manufactured home shall not be suspended or revoked because the home has been attached to realty. There is no state statute that provides for conversion from personal to real property.

### Ensuring That a Home and Homeowners May Remain in their Community

New York does not offer purchase opportunity protections. It offers a right to cure (three days for late rent and 30 days for rules violations) and requires that a written lease be offered.

### Allowing the Transfer of the Home to a New Owner

New York allows for the sale of the home in the community and provides that a landowner's approval of a purchaser may not be unreasonably withheld. New York also allows "For Sale" signs, but does not have a provision for time after an eviction in which to sell the home.

### Protecting Lender Interests

The state does not have a provision giving notice or a right to cure upon default to the lender, nor does it give a lender a right to sell the home on site after foreclosure.

# *Washington*

## POLICIES THAT PROMOTE CONVENTIONAL FINANCING OF MANUFACTURED HOMES

Washington provides some protection to encourage resident purchase of communities and to permit the sale and transfer of the home. It also has some protections allowing the lender to sell the home where it is sited. Washington's policies for conversion of homes to real property are extremely limited and make conventional financing unlikely for homeowners in land-lease communities.

### Classification of a Home as Real Property

Although manufactured homes in Washington may be converted to real property it can be extremely difficult to convert homes on leased land; the homeowner must have a land lease of at least 35 years.

### Ensuring That a Home and Homeowners May Remain in their Community

Washington provides some protection to community residents. The landowner must give notice to the residents, any resident association and a number of governmental offices within 14 days after any advertisement, multiple listing or public notice advertising the community for sale. The law also encourages the landowner to negotiate in good faith with the residents for the sale of the community and provides a tax incentive if the landowner sells the community to the residents or a local government, local housing authority, nonprofit community or neighborhood-based organization, federally recognized Indian tribe or regional or statewide nonprofit housing assistance organization. The law does not require the landowner to wait any period of time after giving notice or after receiving a third-party offer to enable the residents to make an offer.

**Limitations on Eviction**

Washington also requires "good cause" eviction and a right to cure (five days for rent, 15 days for rules violations). In addition, it requires a written lease.

### Allowing the Transfer of the Home to a New Owner

Washington allows for the sale of the home in the community but does not have any provisions protecting the right to use "For Sale" signs. Washington has some protections putting limits on a landowner's ability to reject a new purchaser but does not give a homeowner time after an eviction in which to sell the home.

### Protecting Lender Interests

Washington does not have a provision giving notice or a right to cure upon default to the lender nor does it give a lender a right to sell the home onsite after foreclosure.