

# Out of House and Home: The Disparate Application of Louisiana's Eviction Laws to Mobile Home Owners

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# Out of House and Home: The Disparate Application of Louisiana's Eviction Laws to Mobile Home Owners

## INTRODUCTION

Natasha Thompson, with her partner John and children, moved into the Pine Haven mobile home park five years ago in Moss Bluff, Louisiana.<sup>1</sup> Natasha spearheaded the family's move into the park and even convinced her sister to move her family from South Carolina into Pine Haven.<sup>2</sup> The family owned the mobile home they lived in, but leased the land underneath the home from Pine Haven.<sup>3</sup> Natasha thought she was finally settled until one day she was served with a 15-day notice to vacate the premises.<sup>4</sup> The landowner's decision to evict Natasha was not because of any failure by Natasha to comply with her lease, but rather because the landowner had sold the land on which Natasha's mobile home was situated, and the buyer had no intention to maintain the land as a mobile home community.<sup>5</sup> Many of the Pine Haven residents lived on Social Security or held hourly wage jobs, barely earning enough to make the lot payments of \$145 per month, and many faced homelessness as a result of the eviction.<sup>6</sup> Moving Natasha's home in particular would cost 34 times her monthly rent, a significant amount in such a short time.<sup>7</sup>

Natasha's situation occurred because Louisiana does not have legislation specifically addressing the unique circumstances of mobile home owners facing eviction. Currently, Louisiana eviction laws subject mobile home owners to the same speedy eviction procedures as a typical apartment dweller.<sup>8</sup> If a lessee fails to pay rent on time, Louisiana law only allows additional time to cure nonpayment of the rent, and even that remedy is left to the discretion of the court.<sup>9</sup> Considering the financial

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1. Shannon Sims, *Trailer Park Nation: The Great Eviction*, OZY (May 4, 2015), <http://www.ozy.com/true-story/trailer-park-nation-the-great-eviction/40029> [<https://perma.cc/W9QS-SDKR>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *See* *Monroe Hous. Auth. v. Coleman*, 70 So. 3d 871, 872–73 (La. Ct. App. 2011) (applying summary eviction to an apartment dweller); *see also* *Williams v. Reynolds*, 448 So. 2d 845, 846–47 (La. Ct. App. 1984) (applying summary eviction to a mobile home owner).

9. LA. CIV. CODE art. 2013 (2017).

position of most mobile home owners,<sup>10</sup> and the heavy costs associated with moving a mobile home,<sup>11</sup> these laws are detrimental to mobile home owners.

Many states have enacted eviction statutes tailored to the circumstances of mobile home owners who lease the land underneath their homes.<sup>12</sup> Some have gone as far as to require the landowner to establish “good cause” to evict the tenant.<sup>13</sup> Other states have addressed the issue by enacting legislation that extends the period of notice required to evict the mobile home owner beyond the time normally granted to residential tenants, without the requirement that the landowner establish good cause.<sup>14</sup> To balance the needs of the landowner and tenant, Louisiana should not adopt a good-cause statute. Instead, Louisiana should simply extend the notice period required to evict a mobile home owner, requiring a minimum term of one year and providing a statutory right to cure rent instead of the current regime based on judicial discretion.<sup>15</sup>

Part I of this Comment provides background on mobile homes and the demographics of the people who own these homes. Part II discusses Louisiana’s laws on eviction in general and the problems these laws cause for mobile home owners in particular. Part III surveys mobile home eviction laws in other jurisdictions to find a more equitable approach for Louisiana. Part IV proposes a unique solution for Louisiana to alleviate the problems mobile home owners face in eviction. Specifically, this Comment argues that Louisiana should move away from the trend of other states in promulgating “good-cause” statutes and instead apply a different regime that more fairly balances the rights of both the landowner and the mobile home owner.

## I. THE MODERN MOBILE HOME

Mobile homes have undergone a significant transformation since their beginnings. They have grown not only in size and complexity throughout

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10. See Roger Colton & Michael Sheehan, *The Problem of Mass Evictions in Mobile Home Parks Subject to Conversion*, 8 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 231, 233 (1999); see also J. Royce Fichtner, Note, *The Iowa Mobile Home Park Landlord–Tenant Relationship: Present Eviction Procedures and Needed Reforms*, 53 DRAKE L. REV. 181, 185 (2004).

11. See, e.g., Colton & Sheehan, *supra* note 10, at 232.

12. See discussion *infra* Part III.

13. E.g., DEL. CODE ANN. tit. 25, § 7010 (West 2017).

14. E.g., N.C. GEN. STAT. ANN. § 42–14 (West 2016).

15. LA. CIV. CODE art. 2013 (2017).

the years, but also in popularity.<sup>16</sup> Despite the changes in design over time, mobile homes still offer quality living at an affordable price.<sup>17</sup> The modern design of mobile homes, however, has changed the ability of mobile home owners to move the home once it is placed on the land, which can pose significant challenges upon eviction from the land.<sup>18</sup>

#### A. *The History and Affordability of Mobile Homes*

The modern mobile home finds its roots in the travel-trailer design of the 1920s and 1930s.<sup>19</sup> The aftermath of the Second World War spawned housing shortages, which prompted many to turn to mobile homes as an alternative source of housing.<sup>20</sup> Mobile home manufacturers, noticing the growing popularity of mobile homes, seized the opportunity during the 1950s by designing and constructing units to be used as permanent shelters.<sup>21</sup> The mobile home industry continued to accelerate throughout the 1950s and 1960s.<sup>22</sup> By 1973, mobile home production comprised more than 20% of all housing production,<sup>23</sup> and throughout the 1980s, the number of mobile homes in the United States increased by more than 50% to reach approximately seven million by 1990.<sup>24</sup> In 2007, the Manufactured Housing Institute estimated that there were more than ten million mobile homes throughout the United States, housing approximately 22.5 million people.<sup>25</sup> Although mobile homes account for 6% of occupied housing nationwide, the comparative data shifts dramatically based on geography.<sup>26</sup> In 112 counties among southern and western states, mobile homes account for

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16. See discussion *infra* Part I.A.

17. See discussion *infra* Part I.A.

18. See discussion *infra* Part I.C.

19. Robert R. Stubbs, *The Necessity for Specific State Legislation to Deal with the Mobile Home Park Landlord–Tenant Relationship*, 9 GA. L. REV. 212, 212 n.2 (1974).

20. WILLIAM APGAR ET AL., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY- AND ASSET-BUILDING STRATEGY 2 (2002).

21. *Id.*

22. Werner Z. Hirsch & Joel G. Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol*, 35 UCLA L. REV. 399, 403 (1988).

23. Stubbs, *supra* note 19, at 212 n.2.

24. Esther Sullivan, *Halfway Homeowners: Eviction and Forced Relocation in a Florida Manufactured Home Park*, 39 L. & SOC. INQUIRY 474, 477 (2014).

25. *Id.*

26. See CONSUMER FIN. PROT. BUREAU, MANUFACTURED HOUSING CONSUMER FINANCE IN THE UNITED STATES 5 (2014).

over one-third of occupied housing.<sup>27</sup> Louisiana in particular is among the top ten states that contain the most mobile homes as a percent of housing units.<sup>28</sup>

The popularity of mobile homes is largely due to their relatively low cost in comparison to traditional homes.<sup>29</sup> In 2014, the average price of a traditional on-site built home with land was \$345,800, with the price per square foot averaging \$97.10.<sup>30</sup> On the other hand, the average price of a mobile home was \$65,300, with the price per square foot averaging \$45.41.<sup>31</sup> Given the low cost of mobile homes in comparison to traditional homes, their high quality and composition of a larger number of rooms on average than traditional homes is surprising.<sup>32</sup>

### *B. The Demographics of Mobile Home Owners and the Landlord–Tenant Relationship*

The affordability of mobile homes makes them an attractive option for families living on low incomes. Mobile home dwellers generally make less than 50% of the area median income,<sup>33</sup> and mobile home purchases now account for a considerable portion of rural homeownership growth among low-income households.<sup>34</sup> Furthermore, many elderly citizens living on fixed incomes take advantage of the low cost of mobile home living.<sup>35</sup> Across the country, 32% of mobile home heads of household are of retirement age.<sup>36</sup> Mobile homes are a more attractive option for these

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27. *Id.*

28. U.S. CENSUS BUREAU, MOBILE HOMES, PERCENT OF TOTAL HOUSING UNITS (2008), <https://www.census.gov/library/publications/2011/compendia/statab/131ed/rankings.html> [<https://perma.cc/P3WA-VATL>].

29. Stubbs, *supra* note 19, at 213–14; *see also* Sullivan, *supra* note 24, at 477.

30. MANUFACTURED HOUS. INST., QUICK FACTS 4 (2015).

31. *Id.*

32. Hirsch & Hirsch, *supra* note 22, at 402; *see also id.* at 402 n.5.

33. Amy J. Schmitz, *Promoting the Promise Manufactured Homes Provide for Affordable Housing*, 13 J. AFFORDABLE HOUSING & COMMUNITY. DEV. L. 384, 386 (2004); *see also* Colton & Sheehan, *supra* note 10, at 233 (“Mobile home residents are typically poorer than the average rental household, with incomes lower by a third.”).

34. Katherine MacTavish et al., *Housing Vulnerability Among Rural Trailer-Park Households*, 13 GEO. J. POVERTY L. & POL’Y 95, 95 (2006).

35. Sullivan, *supra* note 24, at 478; *see also* Colton & Sheehan, *supra* note 10, at 233 (“The statistics initially seem to indicate that mobile home tenants are more likely to be older and hence more likely to live on fixed incomes than their apartment renter counterparts.” (quoting Hirsch & Hirsch, *supra* note 22, at 414)).

36. CONSUMER FIN. PROT. BUREAU, *supra* note 26, at 5.

individuals than traditional apartments because mobile homes provide owners with the opportunity to build equity in the home over time and provide the privacy and amenities that conventional homeownership is known for.<sup>37</sup> Given these attractions, these homes have become an inexpensive living arrangement for those with low incomes and easily maintained retirement homes for elderly citizens living on fixed incomes.<sup>38</sup>

Mobile home owners, however, are unique in the circumstances of their ownership. Although most families who dwell in mobile homes own the home itself, very few also own the land underneath the home.<sup>39</sup> As a result, mobile home owners typically lease the land underneath their home, called a pad or lot, from a mobile home park owner.<sup>40</sup> Ultimately, this scenario represents a “half-way point between owning and renting”<sup>41</sup> and is quite different from a typical apartment lease, where the owner of the land is also the owner of the building being occupied. Considering this unique land tenure, the mobility of the home presents unique challenges should the landowner give the mobile home owner short notice of eviction.<sup>42</sup>

### C. *The Immobility of the Mobile Home*

Despite the name, mobile homes are not very mobile anymore. The name is likely a vestige of the 1920s and 1930s’ travel-trailer design, which could be hitched to a car and easily moved from place to place.<sup>43</sup> The misconception of mobility has resulted in mobile homes being built, sold, financed, and even taxed as automobiles.<sup>44</sup> Industry representatives prefer the term “manufactured home,”<sup>45</sup> likely in an attempt to downplay

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37. Schmitz, *supra* note 33, at 385.

38. See JOHN FRASER HART ET AL., *THE UNKNOWN WORLD OF THE MOBILE HOME* 5 (2002).

39. HOUS. ASSISTANCE COUNCIL, *PRESERVING AFFORDABLE MANUFACTURED HOME COMMUNITIES IN RURAL AMERICA: A CASE STUDY* 7 (2011) (“Among manufactured homes located in communities, 80 percent are owned by their inhabitants; however, only 14 percent of park residents also own the lot on which their unit is placed.”); see also Fichtner, *supra* note 10, at 185.

40. Fichtner, *supra* note 10, at 185; see also Hirsch & Hirsch, *supra* note 22, at 405–06 (“Typically, mobile home living involves a landlord who leases the land or pad upon which the coach is located to a tenant.”).

41. Stubbs, *supra* note 19, at 213–14.

42. See discussion *infra* Part I.C.

43. Fichtner, *supra* note 10, at 189.

44. HART ET AL., *supra* note 38, at 5.

45. Congress promulgated legislation in 1974 to increase safety standards and construction quality of mobile homes, but later amended these laws in 1976 to

the notion that these structures are mobile in nature.<sup>46</sup> The immobility of a mobile home is largely due to four factors: modern design, costs, age, and a lack of vacancy.

### 1. Modern Design

Modern mobile homes have significantly evolved from their travel-trailer predecessors. In the post-Depression years, many viewed mobile homes as “recreational housing,” likely because of their high mobility at the time.<sup>47</sup> By 1950, however, most mobile homes were used as primary housing and were becoming more difficult to move because of demands from consumers for larger homes.<sup>48</sup> Today, manufacturers design most mobile homes to be permanently placed on a pad or lot.<sup>49</sup> In fact, only 1% of mobile homes are ever moved once placed in a mobile home park.<sup>50</sup>

The construction of modern mobile homes and the process involved in moving them reveals, in part, why few mobile home owners ever move their home. Instead of a permanent chassis, manufacturers design many mobile homes to be equipped only with a temporary set of axles and wheels.<sup>51</sup> Once the mobile home reaches its destination, the movers regularly remove the axles and wheels, and the home is “placed on blocks, anchored to the ground, and then connected to utilities.”<sup>52</sup> Moreover, the majority of mobile homes are either “double-wide” or “triple-wide,”

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replace the term “mobile home” with “manufactured home.” Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 60, 288 Stat. 700 (amended 1976). Technically, the term “mobile home” refers to homes that were manufactured before 1976, whereas the term “manufactured home” refers to those produced after 1976. APGAR ET AL., *supra* note 20, at 2. In practice, however, the two terms are synonymous. Sullivan, *supra* note 24, at 475 n.1. Therefore, for simplicity and familiarity, this Comment will only use the term “mobile home.” See HART ET AL., *supra* note 38, at 3 (“[The name ‘manufactured housing’] has been generally ignored, and probably wisely, because [it] is unfamiliar and confusing to people outside the industry.”).

46. Sullivan, *supra* note 24, at 475 n.1.

47. Rory O’Sullivan & Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 GONZ. L. REV. 285, 288 (2013).

48. *Id.* at 288–89; see also HART ET AL., *supra* note 38, at 17.

49. Colton & Sheehan, *supra* note 10, at 232.

50. Hirsch & Hirsch, *supra* note 22, at 405.

51. See Fichtner, *supra* note 10, at 190; see also Colton & Sheehan, *supra* note 10, at 232.

52. Fichtner, *supra* note 10, at 190; see also Colton & Sheehan, *supra* note 10, at 232.

which means that they were manufactured “in either two or three parts, delivered in sections, aligned, bolted, sealed, roofed, carpeted, and occupied on site.”<sup>53</sup> To remove the home, this process must be repeated in reverse.<sup>54</sup> Additionally, the movers must find the appropriate axles and wheels, and to gain access under the coach, the skirting must be removed, which usually results in its destruction.<sup>55</sup> Unlike the early trailers that one could move by using a simple car hitch,<sup>56</sup> the process of moving modern mobile homes requires much more work and is typically costly.

### 2. *Costs*

Given the labor-intensive process of moving a mobile home, the costs of transporting these dwellings are substantial, which is particularly true when the owners are low-income or elderly, fixed-income individuals.<sup>57</sup> Justice Sandra Day O’Connor remarked on this hardship when she wrote that “[t]he term ‘mobile home’ is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself.”<sup>58</sup> Actual estimates can range from \$5,000 to \$10,000 and can include the replacement of site-specific portions of the home that were left or destroyed to facilitate the move, such as skirting, porches, carports, and similar amenities.<sup>59</sup> Furthermore, double-wide and triple-wide mobile homes require expensive weatherization to protect the exposed portion of the home during the move.<sup>60</sup> This substantial cost can represent several years of equity for many mobile home owners.<sup>61</sup>

### 3. *Age*

In addition to the design of the homes and the cost of moving, the age of a mobile home also has a significant effect on its mobility.<sup>62</sup> One reason is that over time, the frames of mobile homes slacken, which can result in

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53. Colton & Sheehan, *supra* note 10, at 232; *see also* Hirsch & Hirsch, *supra* note 22, at 403–04.

54. Colton & Sheehan, *supra* note 10, at 232.

55. Hirsch & Hirsch, *supra* note 22, at 404.

56. Fichtner, *supra* note 10, at 189.

57. Colton & Sheehan, *supra* note 10, at 232.

58. *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992).

59. NAT’L CONSUMER LAW CTR., PROMOTING RESIDENT OWNERSHIP OF COMMUNITIES 9 (2015); *see also* Colton & Sheehan, *supra* note 10, at 232; *see also* Schmitz, *supra* note 33, at 389.

60. Hirsch & Hirsch, *supra* note 22, at 404.

61. NAT’L CONSUMER LAW CTR., *supra* note 59, at 9.

62. Colton & Sheehan, *supra* note 10, at 232.

serious structural damage should one attempt to relocate the home.<sup>63</sup> Some old homes may be suitable for housing but are simply no longer roadworthy from an engineering perspective.<sup>64</sup> Another reason is that many mobile home parks have strict age limits for the units they admit, which means that even if one is able to get the home on a truck, there might not be a place to put the home because of the age restrictions of numerous parks.<sup>65</sup> Most parks will not accept a unit more than ten years old.<sup>66</sup> This factor is particularly problematic for the elderly mobile home owner because elderly persons on fixed incomes own a significant number of the oldest generations of mobile homes.<sup>67</sup>

#### 4. *Lack of Vacancy*

Even with a newer mobile home, the lack of vacancy at many mobile home parks further cripples the mobile home owner's ability to move the home. Local neighborhoods and towns regularly resist the presence of mobile homes in their vicinities.<sup>68</sup> The impetus of local resistance usually stems from a combination of stereotypes involving aesthetic concerns, apprehension over increased demand for municipal services, and fears that mobile homes depreciate the value of adjacent property and threaten the stability and morality of the community.<sup>69</sup> Although evidence suggests that these concerns are exaggerated, municipalities regularly pass restrictive zoning laws that result in many mobile home parks being

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63. Sullivan, *supra* note 24, at 478.

64. Colton & Sheehan, *supra* note 10, at 232; *see also* O'Sullivan & Medrash, *supra* note 47, at 290.

65. Colton & Sheehan, *supra* note 10, at 233.

66. Elizabeth Austin, *A Man's Home Is His Castle*, LEGAL AFFAIRS, July/August 2005, at 15.

67. Colton & Sheehan, *supra* note 10, at 232–33.

68. APGAR ET AL., *supra* note 20, at 6.

69. *Id.*; *see also* Fichtner, *supra* note 10, at 191; *see also* MacTavish et al., *supra* note 34, 108–09.

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. Park residence often makes families pariahs in a rural community—a social mechanism that perpetuates spatially-differentiated socioeconomic inequality. . . . Townspeople consistently denigrated park residents as free-loaders who gain a fine education, although they do not pay for it. Thefts and deviant behavior were often attributed to park residents.

*Id.* *See also* HART ET AL., *supra* note 38, at 2–3.

located in distant rural areas.<sup>70</sup> These zoning regimes have the net effect of discouraging the construction of new parks to compensate for the closures of older parks because of the heavy zoning restrictions placed on property developers.<sup>71</sup>

Moreover, many of the remaining parks are full.<sup>72</sup> Park-owner associations estimate that vacancy rates are as low as 2% to 3%.<sup>73</sup> As a result, mobile home owners in many cases must join a waiting list,<sup>74</sup> and evidence suggests that mobile home owners can expect to wait over four years before being allowed into a park.<sup>75</sup> Ultimately, the combination of zoning restrictions and park waiting lists makes vacancy a significant factor in a mobile home owner's ability to move the home.

## II. APPLICATION OF LOUISIANA EVICTION LAWS TO MOBILE HOME OWNERS

Eviction laws unique to mobile home communities are necessary to address the precarious circumstances of mobile home owners. Without new legislation, landowners will continue to evict mobile home owners without giving the tenants enough notice to gather the resources necessary to move the home, if it can be moved at all.<sup>76</sup> The current regime in Louisiana unfortunately leaves mobile home owners susceptible to the same speedy eviction procedures as apartment dwellers.

### A. Louisiana Law on Lease Termination and Notice

Louisiana's laws on eviction currently allow a landowner to give a mobile home owner in a month-to-month lease as little as ten days' notice

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70. See MacTavish et al., *supra* note 34, at 97; see also HART ET AL., *supra* note 38, at 2; see also APGAR ET AL., *supra* note 20, at 6.

71. See Fichtner, *supra* note 10, at 191.

72. See Stubbs, *supra* note 19, at 216; see also Colton & Sheehan, *supra* note 10, at 233 ("The immobility of mobile homes and the typical mobile home resident is exacerbated by the very low vacancy rates traditionally found in mobile home parks. Obviously, finding a vacant pad to move to is a necessary part of any plan to move a mobile home.").

73. Colton & Sheehan, *supra* note 10, at 233–34 (citing HAMILTON ET AL., 1984 RENTAL HOUSING STUDY: MOBILE PARKS UNDER RENT STABILIZATION 57 (1985)).

74. See *id.*; see also Stubbs, *supra* note 19, at 216–17.

75. See Lyle F. Nyberg, *The Community and the Park Owner Versus the Mobile Home Park Resident: Reforming the Landlord–Tenant Relationship*, 52 B.U. L. REV. 810, 812 n.27 (1972).

76. See Sims, *supra* note 1.

for eviction.<sup>77</sup> A mobile home owner in a lease with a fixed term can receive, at most, only 30 days' notice before the end of the term should the landowner not desire to renew the lease, and Louisiana allows this notice to be waived such that the landowner can immediately institute eviction proceedings once the term ends without any notice.<sup>78</sup> Considering the socio-economic status of most mobile home owners<sup>79</sup> and the costs of moving a mobile home,<sup>80</sup> these short notice periods have serious, detrimental effects on mobile home owners. Further, if the home is too old to be moved, the owner may have no other choice than to abandon the home and face homelessness.<sup>81</sup>

*Williams v. Reynolds* illustrates the effects of this issue.<sup>82</sup> In *Williams*, the lessor and lessees entered into a verbal month-to-month lease of the lessor's land.<sup>83</sup> The lessees used the land as a plot upon which to place their mobile home.<sup>84</sup> When the lessees failed to pay rent, the lessor filed suit seeking past-due rent and eviction of the lessees.<sup>85</sup> The trial court awarded past-due rent but denied eviction.<sup>86</sup> The lessees paid the amount of the judgment and then sought to pay two months in advance.<sup>87</sup> The lessor refused the advance rent and sent notice of his intent to terminate the lease.<sup>88</sup> The trial court again denied eviction, but the Second Circuit

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77. LA. CODE CIV. PROC. art. 4701 (2017); *see also* LA. CIV. CODE. art. 2728 (2017).

78. LA. CODE CIV. PROC. art. 4701.

79. *See* discussion *supra* Part I.B.

80. *See* discussion *supra* Part I.C.2.

81. *See* Chad T. Anderson, *Additional Time to Move Is Not the Issue With (Im)Mobile Homes: Why North Carolina Needs Statutory Reform to Provide the Mobile Home Owner-Tenant with Adequate Security of Tenure and Security of Investment*, 92 N.C. L. REV. 591, 599 (2014).

82. *See generally* *Williams v. Reynolds*, 448 So. 2d 845 (La. Ct. App. 1984). Published litigation regarding the eviction of mobile home owners in Louisiana is sparse. This scarcity is likely due to the inability of many low-income individuals to afford legal representation. Luz M. Molina & Emily P. Ziober, *The Justice Gap*, 61 LA. B.J. 412, 413 (2014). This inability is particularly true within the context of landlord-tenant law. *Id.* at 414. Given the financial position of most mobile home owners, the thinness of published litigation in this area is logical. *See* discussion *supra* Part I.B.

83. *Williams*, 448 So. 2d at 846.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

reversed.<sup>89</sup> The appellate court reasoned that because the lessor gave proper notice to the lessee under Louisiana's summary eviction laws, which require only ten days' notice for those in month-to-month leases,<sup>90</sup> the lessor was entitled to evict the lessee.<sup>91</sup>

*Williams* is but one example of a court applying summary eviction laws to mobile home owners.<sup>92</sup> The experience of the Sunny Acres Mobile Home Park residents in Lafayette, Louisiana provides another example of Louisiana's lack of protection for mobile home owners.<sup>93</sup> The owners of Sunny Acres decided to change the use of the land from a mobile home park to a different development and gave the mobile home owners leasing the land two months' notice to vacate the premises.<sup>94</sup> Although two months is a significantly longer period of notice than that given to the Pine Haven residents,<sup>95</sup> it still resulted in some residents abandoning their homes to seek shelter elsewhere.<sup>96</sup> Taken together, the circumstances in Pine Haven, *Williams*, and Sunny Acres illustrate that without legislation specifically addressing the precarious circumstances of mobile home owners, Louisiana law leaves them considerably vulnerable.

#### *B. Louisiana Law on Judicial Control and the Opportunity to Cure Late Rent*

The time periods for notice of the termination of the lease and eviction are not the only source of injustice in Louisiana for mobile home owners. If a mobile home owner fails to pay rent for the land, Louisiana law allows the lessor to evict the mobile home owner in as little as five days' notice without any statutory right to cure the late rent.<sup>97</sup> In a case involving nonpayment of rent, the mobile home owner would suddenly be faced with

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89. *Id.* at 847.

90. LA. CODE CIV. PROC. art. 4701 (2017); *see also* LA. CIV. CODE. art. 2728 (2017).

91. *Williams*, 448 So. 2d at 847.

92. *See generally id.*

93. Kendria LaFleur, *Vacate Deadline Arrives for Residents of Sunny Acres Mobile Home Park*, KATC (Sept. 30, 2015, 6:27 PM), <http://www.katc.com/story/30156949/vacate-deadline-arrives-for-residents-of-sunny-acres-mobile-home-park> [<https://perma.cc/7RZZ-J8QX>]; *see also* Jazmin Thibodeaux, *Lafayette Mobile Home Eviction Notice Causes Stress for Residents*, KFLY (July 29, 2015, 6:22 PM), <http://klfy.com/2015/07/29/lafayette-mobile-home-eviction-notice-causes-stress-for-residents/> [<https://perma.cc/RU2X-RRJD>].

94. LaFleur, *supra* note 93.

95. Sims, *supra* note 1.

96. LaFleur, *supra* note 93.

97. LA. CODE CIV. PROC. art. 4701 (2017).

the overwhelming costs of moving the home.<sup>98</sup> Louisiana's laws on dissolution allow an obligor who has failed to perform an obligation additional time to do so, but only within the discretion of the court.<sup>99</sup> Courts and scholars alike have dubbed the power of the courts to control the dissolution of a lease as the doctrine of "judicial control,"<sup>100</sup> and such power is founded in

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98. See discussion *supra* Part I.C.2.

99. LA. CIV. CODE art. 2013 (2017). Before the enactment of Louisiana Civil Code article 2013, courts and scholars generally understood that a party wishing to dissolve a lease for failure of the other party to perform could do so only through judicial process. See *id.* art. 2719 cmt. b; see also VERNON V. PALMER, LEASES: THE LAW IN LOUISIANA 78–79 (1982); see also Reed v. Classified Parking Sys., 324 So. 2d 484, 490 (La. Ct. App. 1975). This understanding stems from article 2729 of the Civil Code of 1870, which provided for the dissolution of leases under these circumstances "in the manner expressed concerning contracts in general," and at the time, the relevant articles in the Civil Code of 1870 regarding "contracts in general" provided only for judicial dissolution of contracts. LA. CIV. CODE art. 2719 cmt. b. Under this policy, the doctrine of judicial control developed such that courts now have considerable discretion in determining whether dissolution is appropriate in a given case. See PALMER, *supra*, at 79–80; see also Waseco Chem. & Supply Co. v. Bayou State Oil Corp., 371 So. 2d 305, 308–09 (La. Ct. App. 1979) (using the following four factors to determine if dissolution was appropriate: first, the extent and gravity of the failure to perform alleged by the complaining party; second, the nature of the obligor's fault; third, the good or bad faith of the parties involved; and fourth, the surrounding economic circumstances). When the legislature revised the articles on dissolution in 1984, article 2013 provided, and still does provide, that when the obligor fails to perform, the obligee can "regard the contract as dissolved" according to the circumstances, suggesting that a lease could also be terminated extra-judicially in some cases. LA. CIV. CODE art. 2013. This extra-judicial power of the parties, however, does not entirely undermine the doctrine of judicial control because the obligor can always judicially challenge the actions of the obligee, and therefore obligees act at their own risk and subject to the potential review of the courts. PALMER, *supra*, at 78–79.

100. See Little Bell, LLC v. Centerpoint Energy, Inc., 838 F. Supp. 2d 522, 529–30 (W.D. La. 2012) ("Louisiana law does not favor the cancellation of leases. Thus, judicial control vests Louisiana courts 'with discretion under certain circumstances to decline to grant a lessor cancellation of a lease although such right appears to be available to him.'" (citations omitted)); see also PETER S. TITLE, LOUISIANA REAL ESTATE TRANSACTIONS § 18:71, in LOUISIANA PRACTICE SERIES (2012) ("[A]lthough the lessor ordinarily may dissolve the lease because of the lessee's failure to pay rent promptly when due, that right is subject to judicial control according to the circumstances. . . . Thus, there is a jurisprudential rule that if the lessor and lessee have established a custom by acquiescence whereby the lessor has accepted late payments of rent from the lessee, the lessor

principles of equity.<sup>101</sup> The doctrine of judicial control, however, is unsettled in the jurisprudence such that reasonable minds can differ regarding which circumstances warrant applying judicial control to prevent the dissolution of a lease.

For example, in *Ergon, Inc. v. Allen*, the lessee failed to pay rent timely, and the lessor sought to evict the lessee.<sup>102</sup> Upon notice to vacate, the lessee tried to pay the late rent and the lessee's representative explained that he thought automatic payment was set up, but the lessor refused to accept the late payment.<sup>103</sup> The trial court found the lessee's explanation reasonable and applied the doctrine of judicial control to prevent the lease from being terminated.<sup>104</sup> The Second Circuit affirmed the ruling of the trial court regarding its use of judicial control to prevent termination of the lease.<sup>105</sup> The appellate court reasoned that judicial control was appropriate in this particular circumstance because dissolution of the lease would result in serious financial disadvantage to the lessee and its royalty owners and consumers.<sup>106</sup>

In a concurring opinion, however, Judge Brown reasoned that the application of judicial control clashed with positive law.<sup>107</sup> Specifically, Judge Brown cited Louisiana Civil Code article 4 for the notion that courts can proceed in equity only when positive law is silent.<sup>108</sup> Judge Brown stated that because positive law governed the circumstances of the case, judicial control could not be used.<sup>109</sup> Scholars have agreed with Judge Brown's sentiment that judicial control was an inappropriate remedy in *Ergon*.<sup>110</sup>

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will not be permitted to cancel the lease because of late payment without a prior notice to the lessee that it intends to enforce the lease provision strictly.”).

101. *Ergon, Inc. v. Allen*, 593 So. 2d 438, 441 (La. Ct. App. 1992) (Brown, J., concurring).

102. *Id.* at 439 (majority opinion).

103. *Id.*

104. *Id.*

105. *Id.* at 441.

106. *Id.* at 440–41.

107. *Id.* at 441 (Brown, J., concurring).

108. *Id.*

109. *Id.*

110. See GEORGE M. ARMSTRONG, LOUISIANA LANDLORD AND TENANT LAW 237-0 (1995).

Surprisingly, the *Ergon* lessee had been late before in paying its rent. Yet, inexplicably, it put itself at risk of a potential \$7,000,000 loss and disruption of its business. The questionable equities in *Ergon* demonstrate why one judge dissented from application of the doctrine where the civil code is otherwise clear . . . The *Ergon* majority alluded

*Ergon* portrays how reasonable minds might differ regarding whether judicial control should be applied in a given set of circumstances. Therefore, judicial control is an uncertain remedy for mobile home owners, a class of homeowners “most in need of reasonable security” in the placement of their mobile homes.<sup>111</sup>

### III. MOBILE HOME EVICTION LAWS OF OTHER JURISDICTIONS

Unlike Louisiana, at least 35 states regulate mobile home park evictions through statutory law.<sup>112</sup> The protections these states afford mobile home

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to the great harm that would occur to third persons if the lease were canceled as the reason for application of the doctrine. That valid concern does not, in this writer’s opinion, support the application of [judicial control] under the circumstances of *Ergon*.

*Id.*

111. Manufactured/Mobile Home Landlord–Tenant Act, ch. 116, 2008 Wash. Sess. Laws 533, 533 (codified as amended at WASH. REV. CODE ANN. § 59.20.135 (West 2016)). Another remedy perhaps even more uncertain for mobile home owners is the doctrine of “abuse of rights.” *See generally* Julio Cueto-Rua, *Abuse of Rights*, 35 LA. L. REV. 965 (1975). The doctrine originated in France and has permeated many other civil law jurisdictions. *Id.* at 967. At its most fundamental level, the abuse-of-rights doctrine posits that if a holder of a right exercises it with the predominant intent to harm another, the court will not enforce the right. *Id.* at 991. Civil law jurisdictions have applied the abuse-of-rights doctrine in other circumstances as well, however. *See* Ill. Cent. Gulf R.R. Co. v. Int’l Harvester Co., 368 So. 2d 1009, 1014 (La. 1979).

The doctrine has been applied where an intent to harm was not proven, if it was shown that there was no serious and legitimate interest in the exercise of the right worthy of judicial protection. Protection or enforcement of a right has been denied when the exercise of the right is against moral rules, good faith or elementary fairness.

*Id.* (citations omitted). A mobile home owner could argue in a given case that a landowner abuses the right to evict the mobile home owner because of the serious harm it causes the mobile home owner with little or any benefit to the landowner, or because the landowner’s intent in harming the mobile home owner. The doctrine of abuse of rights has not gained strong traction in Louisiana, however, and courts sparingly invoke it. *Id.* Louisiana courts prefer to apply the overarching contractual obligation of good faith in these circumstances because of its longstanding place in Louisiana law. *See* Capone v. Kenny, 646 So. 2d 510, 512 (La. Ct. App. 1994). Moreover, the doctrine of abuse of rights has never been successful in a landlord–tenant situation. *Id.* Therefore, mobile home owners should not rely on this remedy to protect them from mobile home park evictions.

112. ALASKA STAT. ANN. § 34.03.225 (West 2016); ARIZ. REV. STAT. ANN. § 33-1476 (2016); CAL. CIV. CODE §§ 798.55, 798.56 (West 2017); COLO. REV.

owners vary widely.<sup>113</sup> Some jurisdictions have taken a radical approach by providing limited grounds for eviction in these scenarios,<sup>114</sup> while others take a more moderate approach by simply extending the amount of time required for notice to the mobile home owner before eviction can occur.<sup>115</sup> Most of the jurisdictions that have enacted mobile home eviction statutes have also provided a statutory right to cure late rent to allow the mobile home owner to avoid termination of the lease by simply paying the late rent before the designated amount of time in the statute.<sup>116</sup>

### A. Exclusive Grounds for Eviction

In response to the unique circumstances of mobile home owners, many jurisdictions have gone as far as to enact legislation significantly limiting a landowner's ability to evict a mobile home owner absent "good cause."<sup>117</sup> The basic tenet of good-cause statutes is that mobile home owners can expect to

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STAT. ANN. § 38-12-203 (West 2016); CONN. GEN. STAT. ANN. § 21-80(b) (West 2017); DEL. CODE ANN. tit. 25, §§ 7007, 7010, 7010A (West 2017); FLA. STAT. ANN. § 723.061 (West 2017); IDAHO CODE ANN. § 55-2009 (West 2017); 765 ILL. COMP. STAT. §§ 745/8, 745/15 (West 2016); IOWA CODE ANN. §§ 562B.25, 562B.26, 562B.30 (2016); KAN. STAT. ANN. §§ 58-25,123, 58-25,120, 58-25,105(c) (West 2017); ME. STAT. tit. 10, § 9097 (2017); MD. CODE ANN., REAL PROP. §§ 8A-101, 8A-202 (West 2017); MASS. GEN. LAWS ch. 140, § 32J (2016); MICH. COMP. LAWS ANN. § 600.5775 (West 2016); MINN. STAT. ANN. § 327C.09 (West 2017); MONT. CODE ANN. § 70-33-433 (West 2017); N.C. GEN. STAT. ANN. §§ 42-14, 42-14.3 (West 2016); NEV. REV. STAT. ANN. § 118B.200 (West 2016); N.H. REV. STAT. ANN. § 205-A:4 (2017); N.J. STAT. ANN. § 2A:18-61.1 (West 2017); N.M. STAT. ANN. § 47-10-5 (West 2017); N.Y. REAL PROP. LAW § 233(b) (McKinney 2017); OHIO REV. CODE ANN. § 4781.37 (West 2016); OR. REV. STAT. ANN. § 90.630 (West 2016); 68 PA. STAT. AND CONS. STAT. ANN. § 398.3 (West 2016); 31 R.I. GEN. LAWS ANN. § 31-44-2 (West 2016); S.C. CODE ANN. § 27-47-530 (2016); TEX. PROP. CODE ANN. § 94.052 (West 2015); UTAH CODE ANN. § 57-16-5 (West 2016); VT. STAT. ANN. tit. 10, § 6237 (West 2017); VA. CODE ANN. § 55-248.50:1 (West 2016); WASH. REV. CODE ANN. § 59.20.080 (West 2017); W. VA. CODE ANN. §§ 37-15-3, 37-15-6 (West 2016); WIS. STAT. ANN. § 710.15(5m) (West 2017).

113. See ARIZ. REV. STAT. ANN. § 33-1476 (requiring exclusive grounds for eviction that a landowner must meet to evict a mobile home owner); see also N.C. GEN. STAT. ANN. §§ 42-14, 42-14.3 (extending the notice period for eviction of a mobile home owner without requiring exclusive grounds to evict).

114. See, e.g., FLA. STAT. ANN. § 723.061.

115. See, e.g., N.C. GEN. STAT. ANN. § 42-14.

116. See, e.g., ALASKA STAT. ANN. § 34.03.220(b).

117. See, e.g., DEL. CODE ANN. tit. 25, § 7010. The difference between "due cause" and "good cause" is semantic.

remain on the property as long as they meet the obligations of the rental agreement.<sup>118</sup> These statutes typically provide exclusive grounds for eviction that constitute good cause<sup>119</sup> and almost always include nonpayment of rent and the tenant's engagement in illegal activity.<sup>120</sup> Of the 35 jurisdictions that have legislatively addressed mobile home eviction, 31 states have enacted some variant of a good-cause statute.<sup>121</sup>

### 1. Florida

Some scholars consider Florida's good-cause statute as a model for other jurisdictions, particularly in the context of park closures.<sup>122</sup> Under Florida's statute, a park owner can evict a mobile home owner only on five grounds: (1) nonpayment of rent; (2) the mobile home owner's violation of a federal law, state law, or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park; (3) the mobile home owner's violation of a park rule, park regulation, or the rental agreement; (4) a change in use of the land from a mobile home park to some other use; and (5) failure of the purchaser, prospective tenant,

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118. Anderson, *supra* note 81, at 598.

119. See, e.g., ALASKA STAT. ANN. § 34.03.225.

120. Andrea B. Carroll, *The International Trend Toward Requiring Good Cause for Tenant Eviction: Dangerous Portents for the United States?*, 38 SETON HALL L. REV. 427, 431 (2008).

121. ALASKA STAT. ANN. § 34.03.225; ARIZ. REV. STAT. ANN. § 33-1476 (2016); CAL. CIV. CODE §§ 798.55, 798.56 (West 2017); COLO. REV. STAT. ANN. § 38-12-203 (West 2017); CONN. GEN. STAT. ANN. § 21-80(b) (West 2017); DEL. CODE ANN. tit. 25, §§ 7007, 7010, 7010A; FLA. STAT. ANN. § 723.061 (West 2017); IDAHO CODE ANN. § 55-2010 (West 2017); 765 ILL. COMP. STAT. §§ 745/8, 745/15 (West 2016); ME. STAT. tit. 10, § 9097 (West 2017); MD. CODE ANN., REAL PROP. § 8A-1101 (West 2017); MASS. GEN. LAWS ch. 140, § 32J (2016); MICH. COMP. LAWS ANN. § 600.5775 (West 2016); MINN. STAT. ANN. § 327C.09 (West 2017); MONT. CODE ANN. § 70-33-433 (West 2017); NEV. REV. STAT. ANN. § 118B.200 (West 2016); N.H. REV. STAT. ANN. § 205-A:4 (2017); N.J. STAT. ANN. § 2A:18-61.1 (West 2017); N.M. STAT. ANN. § 47-10-5 (West 2017); N.Y. REAL PROP. LAW § 233(b) (McKinney 2017); OHIO REV. CODE ANN. § 4781.37 (West 2016); OR. REV. STAT. ANN. § 90.630 (West 2016); 68 PA. STAT. AND CONS. STAT. ANN. § 398.3 (West 2016); 31 R.I. GEN. LAWS § 31-44-2 (West 2016); S.C. CODE ANN. § 27-47-530 (2016); UTAH CODE ANN. § 57-16-5 (West 2016); VT. STAT. ANN. tit. 10, § 6237 (West 2017); VA. CODE ANN. § 55-248.50:1 (West 2017); WASH. REV. CODE ANN. § 59.20.080 (West 2017); see W. VA. CODE ANN. §§ 37-15-3, 37-15-6 (West 2016) (requiring good cause to evict for the first 12 months of tenancy for single-wide homes and for the first five years of tenancy for double-wide or triple-wide homes); WIS. STAT. ANN. § 710.15(5m) (West 2017).

122. Sullivan, *supra* note 24, at 476.

or occupant of the mobile home situated in the park to be qualified as a tenant or occupant of the home.<sup>123</sup> Ultimately, if the landowner's reason for eviction does not fit within one of the five criteria listed in the statute, such as the landowner's simple desire to stop leasing to a particular tenant, the landowner will not be able to evict the mobile home owner.<sup>124</sup>

### 2. *New York*

New York provides the landowner more freedom than Florida by providing six grounds for eviction instead of five.<sup>125</sup> The grounds constituting good cause are the following: (1) the mobile home owner continuing in possession of the premises after expiration of the lease term without the permission of the park owner; (2) nonpayment of rent; (3) the mobile home owner's use of the premises for prostitution; (4) the mobile home owner's violation of a federal law, state law, or local ordinance that may be deemed detrimental to the safety and welfare of other park residents; (5) the mobile home owner's violation of a lease term or park rule continuing after ten days of the park owner's written demand to cease such violation; and (6) a change in use of the land from a mobile home park to some other use.<sup>126</sup> New York also requires a park owner to offer the mobile home owner a written lease with a term of at least one year upon entry to the park.<sup>127</sup> If the mobile home owner is in good standing 90 days before the term ends, New York requires the park owner to offer a subsequent lease for a term of one year.<sup>128</sup>

### 3. *Michigan*

Michigan provides even more freedom for the landowner than both Florida and New York by providing 11 grounds that constitute good cause for eviction.<sup>129</sup> Many of Michigan's provisions for good-cause eviction are similar to those of Florida and New York, such as nonpayment of rent, the mobile home owner's violation of a law or ordinance, and a change in use

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123. FLA. STAT. ANN. § 723.061.

124. *See id.*

125. *Compare* N.Y. REAL PROP. LAW § 233(b), *with* FLA. STAT. ANN. § 723.061.

126. N.Y. REAL PROP. LAW § 233(b).

127. *Id.* § 233(e)(1).

128. *Id.* § 233(e)(2).

129. MICH. COMP. LAWS ANN. § 600.5775 (West 2016).

of the land.<sup>130</sup> Other provisions are more unique, however. For example, Michigan allows a landowner to evict a mobile home owner when the mobile home owner engages in conduct on the park premises that “constitutes a substantial annoyance to other tenants or to the mobile home park.”<sup>131</sup> Michigan also finds good cause for eviction when the mobile home owner fails to maintain the mobile home or the mobile home site in a reasonable condition consistent with the aesthetics of the park.<sup>132</sup> Finally, good cause for eviction exists for a mobile home owner’s “[i]ntentional physical injury . . . to the personnel or other tenants of the mobile home park, or intentional physical damage . . . to the property of the mobile home park or of its other tenants.”<sup>133</sup> Considering the vast differences between Florida, New York, and Michigan, the amount of freedom a landowner has to evict a mobile home owner varies widely depending on the applicable good-cause statute. However, other jurisdictions have protected the interests of mobile home owners without enacting good-cause statutes.<sup>134</sup>

#### *B. Extension of Notice*

Some jurisdictions have taken a different approach in addressing the unique circumstances of mobile home owners by simply extending the period of notice required for eviction instead of passing a good-cause statute.<sup>135</sup> At least four jurisdictions have taken this approach.<sup>136</sup> Many provide even longer periods of notice in cases of park closures.<sup>137</sup> Ultimately, these statutes provide landowners with more freedom by allowing them the ability to evict a tenant without showing good cause, as long as the landowner complies with the statute’s extended notice requirements.<sup>138</sup>

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130. Compare FLA. STAT. ANN. § 723.061, and N.Y. REAL PROP. LAW § 233(b), with MICH. COMP. LAWS § 600.5775.

131. MICH. COMP. LAWS § 600.5775(g).

132. *Id.* § 600.5775(h).

133. *Id.* § 600.5775(d).

134. See discussion *infra* Part III.B.

135. See, e.g., N.C. GEN. STAT. ANN. § 42-14 (West 2016).

136. *Id.*; TEX. PROP. CODE ANN. tit. 8, § 94.052 (West 2015); IOWA CODE ANN. § 562B.10(5) (West 2016); KAN. STAT. ANN. § 58-25,105(d) (West 2017).

137. See, e.g., N.C. GEN. STAT. ANN. §§ 42-14, 42-14.3.

138. Compare FLA. STAT. ANN. § 723.061 (West 2017), with N.C. GEN. STAT. ANN. §§ 42-14.

### 1. North Carolina

Initially, the North Carolina legislature contemplated enacting a good-cause statute similar to many other states.<sup>139</sup> North Carolina ultimately decided against a good-cause statute<sup>140</sup> and instead opted for a regime that extends the notice required to evict a mobile home owner.<sup>141</sup> North Carolina allows landowners to terminate a mobile home owner's tenancy as long as they give mobile home owners 60 days' notice to vacate, regardless of the term of the tenancy.<sup>142</sup> If the mobile home owner must relocate because the landowner wishes to change the use of the land from a mobile home park to another use, however, the landowner must give the mobile home owner notice of the intended change of the land use at least 180 days before the mobile home owner must vacate.<sup>143</sup> Extended periods of time like this are essential for mobile home owners to gather the resources they need to finance the move of the home.

### 2. Texas

In Texas, should the landowner wish to terminate the lease, the landowner need only give notice to the mobile home owner no later than 60 days before the date of the expiration of the lease, regardless of the term of the lease.<sup>144</sup> Should the landowner wish to change the use of the land from a mobile home park to another use, however, the landowner must give 180 days' notice to vacate, similar to North Carolina's statute.<sup>145</sup> Also, like New York, Texas has a requirement of a term, but not a year-long term.<sup>146</sup> Instead, Texas requires the landowner to offer the mobile home owner a lease with an initial term of at least six months, unless the mobile home owner requests a lease agreement with a longer or shorter lease period.<sup>147</sup>

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139. H.R. Journal, 2005 Legis., 1st Sess. 808 (N.C. 2005).

140. H.R. Journal, 2005 Legis., 1st Sess. 972 (N.C. 2005).

141. H.R. Journal, 2005 Legis., 1st Sess. 998 (N.C. 2005); *see also* N.C. GEN. STAT. ANN. §§ 42-14, 42-14.3, 42-3.

142. *Id.* § 42-14.

143. *Id.* § 42-14.3.

144. TEX. PROP. CODE ANN. tit. 8, § 94.052(b) (West 2015).

145. *Id.* § 94.204; *see also* N.C. GEN. STAT. ANN. § 42-14.3.

146. *Compare* N.Y. REAL PROP. LAW § 233(e)(1) (McKinney 2017), *with* TEX. PROP. CODE ANN. tit. 8, § 94.052(a).

147. TEX. PROP. CODE ANN. tit. 8, § 94.052(a).

### 3. Iowa

Iowa, like North Carolina, considered a good-cause statute to address the precarious circumstances of mobile home owners.<sup>148</sup> Iowa also ultimately decided against a good-cause statute<sup>149</sup> and instead chose a regime that extends the period of notice required to evict a mobile home owner.<sup>150</sup> In Iowa, land leases for mobile home owners are for a term of one year unless specified otherwise in the lease agreement.<sup>151</sup> To cancel the lease, landowners must give mobile home owners 60 days' written notice.<sup>152</sup> Unlike North Carolina and Texas, Iowa does not contain any special provision extending further notice in cases of park closures, resulting in the same 60-day notice requirement should the landowner decide to change the use of the land.<sup>153</sup>

### 4. Kansas

In Kansas, mobile home lot tenancies are for a month-to-month term unless agreed otherwise in the lease.<sup>154</sup> Kansas law requires both the landowner and the mobile home owner to give 60 days' written notice should either party desire to terminate the lease.<sup>155</sup> However, Kansas allows the parties to freely contract to a different period of notice.<sup>156</sup> Considering the prevalence of low vacancies in mobile home parks results in limited options for mobile home placement,<sup>157</sup> landowners will be in a better bargaining position to negotiate shorter periods of notice to terminate the lease.<sup>158</sup> Furthermore, Kansas does not have any provision extending further notice for cases involving a landowner's change in use of the land from a mobile home park to another use, as Iowa does.

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148. S. File 87-252, at 5 (Iowa 2011), <http://coolice.legis.iowa.gov/CoolICE/default.asp?Category=BillInfo&Service=Billbook&menu=text&ga=84&hbill=SF252> [<https://perma.cc/Q5UM-7ECY>].

149. *Id.*

150. IOWA CODE ANN. § 562B.10(5) (2016).

151. *Id.*

152. *Id.*

153. Compare N.C. GEN. STAT. ANN. § 42-14.3 (2016), and TEX. PROP. CODE ANN. tit. 8, § 94.204 (West 2015), with IOWA CODE ANN. § 562B.10(5).

154. KAN. STAT. ANN. § 58-25,105(d) (West 2017).

155. *Id.*

156. *Id.*

157. See discussion *supra* Part I.C.4.

158. See generally *Belcher v. Kier*, 558 So. 2d 1039, 1042 (Fla. Dist. Ct. App. 1990).

Therefore, mobile home owners in Kansas are less protected in cases of park closures than those who reside in Texas or North Carolina.<sup>159</sup>

### *C. Right to Cure Late Rent*

In addition to addressing notice to terminate a mobile home owner's lease of the land, at least 30 jurisdictions have provided mobile home owners a statutory right to cure late rent to prevent a lease from terminating.<sup>160</sup> The delay period each jurisdiction provides for mobile home owners to cure late rent varies widely. California, Idaho, Iowa, Kansas, and New Mexico provide mobile home owners with three days to pay late rent after the landowner gives notice that the rent has not been paid when due.<sup>161</sup> Colorado, Florida, Illinois, South Carolina, Utah, Washington, and Wisconsin provide for a five-day delay to pay late rent upon notice from the landowner of the late rent before the landowner can terminate the lease.<sup>162</sup> Minnesota, North Carolina, Nevada, and Texas

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159. Compare N.C. GEN. STAT. ANN. § 42-14.3 (2016), and TEX. PROP. CODE ANN. tit. 8, § 94.204 (West 2015), with KAN. STAT. ANN. § 58-25,105.

160. ALASKA STAT. ANN. § 34.03.220(b) (2016); ARIZ. REV. STAT. ANN. § 33-1476(E) (2016); CAL. CIV. CODE § 798.55(c) (West 2017); COLO. REV. STAT. ANN. § 38-12-204(1) (West 2017); CONN. GEN. STAT. ANN. § 21-80(b)(3)(B) (West 2017); DEL. CODE ANN. tit. 25, § 7010A(b)(3) (West 2017); FLA. STAT. ANN. § 723.061(1)(a) (West 2017); IDAHO CODE ANN. § 55-2010(1)(b) (West 2017); 765 ILL. COMP. STAT. 745/22 (West 2016); IOWA CODE ANN. § 562B.25(2) (West 2016); KAN. STAT. ANN. § 58-25,120(b); ME. STAT. tit. 10, § 9097(2)(B)(1) (2017); MD. CODE ANN., REAL PROP. § 8A-1701(e) (West 2017); MASS. GEN. LAWS ch. 140, § 32J (2016); MICH. COMP. LAWS ANN. § 600.5714(1)(a) (West 2016); MINN. STAT. ANN. § 327C.09(2) (West 2017); MONT. CODE ANN. § 70-33-433(3) (West 2017); NEV. REV. STAT. ANN. § 118B.200(1)(a) (West 2016); N.H. REV. STAT. ANN. §§ 205-A:4, 205-A:3 (2017); N.M. STAT. ANN. § 47-10-6 (West 2017); N.Y. REAL PROP. LAW § 233(b)(2) (McKinney 2017); N.C. GEN. STAT. ANN. § 42-3; 68 PA. STAT. AND CONS. STAT. ANN. § 398.3(b)(2)(i) (West 2016); 31 R.I. GEN. LAWS ANN. § 31-44-2(b) (West 2016); S.C. CODE ANN. § 27-47-530(A)(4) (2016); TEX. PROP. CODE ANN. § 94.206; UTAH CODE ANN. § 57-16-5(1)(d) (West 2016); VT. STAT. ANN. tit. 10, § 6237(a)(2)(B) (West 2017); WASH. REV. CODE ANN. § 59.20.080(1)(b) (West 2017); WIS. STAT. ANN. § 710.15(5r) (West 2017).

161. CAL. CIV. CODE § 798.55(c); IDAHO CODE ANN. § 55-2010(1)(b); IOWA CODE ANN. § 562B.25(2); KAN. STAT. ANN. § 58-25,120(b); N.M. STAT. ANN. § 47-10-6.

162. COLO. REV. STAT. ANN. § 38-12-204(1); FLA. STAT. ANN. § 723.061(1)(a); 765 ILL. COMP. STAT. 745/22; S.C. CODE ANN. § 27-47-530(A)(4); UTAH CODE ANN. § 57-16-5(1)(d); WASH. REV. CODE ANN. § 59.20.080(1)(b); WIS. STAT. ANN. § 710.15(5r).

provide a mobile home owner with a ten-day delay to cure late rent after notice that the rent is late.<sup>163</sup> Massachusetts requires the landowner to give the mobile home owner at least 15 days' notice to cure the late rent before the landowner can terminate the lease.<sup>164</sup> Finally, Connecticut, Maine, New Hampshire, New York, and Rhode Island provide the most protection. Before the landowner can terminate the lease, these jurisdictions require the landowner to give the mobile home owner 30 days to pay late rent after the mobile home owner has notice that the rent is late.<sup>165</sup> These provisions are useful tools for mobile home owners because they provide extra time to pay late rent to avoid the larger burden of paying to move the home.<sup>166</sup>

#### IV. BALANCING THE INTERESTS OF THE LANDOWNER AND THE MOBILE HOME OWNER

The relationship between the mobile home owner and the landowner is not one of a typical landlord and tenant, but rather involves a hybrid of property interests that should be balanced reciprocally and harmoniously.<sup>167</sup> If the landowner has free reign, the mobile home owner is unprotected against speedy evictions that can result in enormous moving costs and possibly even homelessness.<sup>168</sup> If an eviction regime bolsters the protections of mobile home owners too heavily, however, property developers may be discouraged from investing in mobile home park properties because of the

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163. MINN. STAT. ANN. § 327C.09(2); N.C. GEN. STAT. ANN. § 42-3; NEV. REV. STAT. ANN. § 118B.200(1)(a); TEX. PROP. CODE ANN. § 94.206.

164. MASS. GEN. LAWS ch. 140, § 32J.

165. CONN. GEN. STAT. ANN. § 21-80(b)(3)(B); ME. STAT. tit. 10, § 9097(2)(B)(1); N.H. REV. STAT. ANN. §§ 205-A:4, 205-A:3; N.Y. REAL PROP. LAW § 233(b)(2); 31 R.I. GEN. LAWS § 31-44-2(b).

166. See discussion *supra* Part I.C.2.

167. *Stewart v. Green*, 300 So. 2d 889, 892 (Fla. 1974); see also *Stubbs*, *supra* note 19, at 219.

Development costs of mobile home parks are already substantial; legislation that would increase these costs while decreasing the park owner's freedom of action might discourage the development of such parks and restrict the amount of park space available. Mobile homes satisfy a significant portion of the demand for low-cost housing. A statutory scheme which seeks to protect park tenants will do more harm than good if it has the effect of making mobile homes unavailable to large numbers of people who might seek to live in them. The tenant's need for protection against landlord abuses must be balanced against the tenant's need for available, low-cost housing.

*Id.* at 234.

168. See discussion *supra* Part II.A.

multifarious restrictions placed on their freedom with the land.<sup>169</sup> Consequently, even lower vacancy rates than currently exist may result from the failure of newly constructed parks to compensate for the closures of older parks.<sup>170</sup> Therefore, both to protect mobile home owners and foster economic development in the state, Louisiana should adopt an eviction regime tailored to the landowner's interest in the land and the mobile home owner's interest in the home.

#### A. Shortcomings of Good-Cause Regimes

Legislatures typically draft good-cause statutes for the purpose of rectifying housing shortages.<sup>171</sup> The theory is that if affordable housing is largely unavailable, then it is prudent to protect current tenants by ensuring that they are able to retain the housing they have for as long as possible.<sup>172</sup> The easiest way to accomplish this goal is to restrict landowners from evicting their tenants absent good cause.<sup>173</sup> Additionally, proponents of good-cause statutes argue that they create a "security of tenure" such that they allow mobile home owners to make financial and psychological investments in their mobile homes and communities without fear of being involuntarily evicted.<sup>174</sup>

Although many good-cause statutes have provisions that are helpful guidance, such as a statutory right to cure late rent or extended notice in cases of park closures,<sup>175</sup> the fundamental flaw of these statutes lies in the good-cause requirement itself. Essentially, the requirement of good cause produces a contrary effect to the very purpose for which it was promulgated: to rectify housing shortages.<sup>176</sup> Indeed, good-cause regimes have resulted in less vacancies and a plethora of park closures.<sup>177</sup>

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169. See discussion *infra* Part III.A.

170. See Fichtner, *supra* note 10, at 191; see also Thomas G. Moukawsher, *Mobile Home Parks and Connecticut's Regulatory Scheme: A Takings Analysis*, 17 CONN. L. REV. 811, 832 (1985); see also discussion *supra* Part I.C.4.

171. Carroll, *supra* note 120, at 430.

172. *Id.* at 447.

173. *Id.* at 447–48.

174. Anderson, *supra* note 81, at 599 (citing Florence Wagman Roisman, *The Right to Remain: Common Law Protections for Security of Tenure: An Essay in Honor of John Otis Calmore*, 86 N.C. L. REV. 817, 820 (2008)).

175. See, e.g., FLA. STAT. § 723.061 (West 2017).

176. Carroll, *supra* note 120, at 430.

177. See Moukawsher, *supra* note 170, at 830–32.

The main reason behind the shortcomings of good-cause statutes lies in their strict limitation on the landowner's ability to evict tenants.<sup>178</sup> Although good-cause regimes provide a "security of tenure" for mobile home owners, this same security is a major red flag for investors because it prevents them from disposing of the property and gaining access to the capital of the property at the most opportune moment.<sup>179</sup> Furthermore, the inability to evict the tenants controls the market value at which a landowner can sell the land.<sup>180</sup> As a result, when parks close, none will open to take their place because investors will be dissuaded from pursuing these ventures.<sup>181</sup> Ultimately, although "security of tenure" might encourage the mobile home owner to invest in the mobile home and community financially and psychologically,<sup>182</sup> there might not be a mobile home or community to invest in as a result of these regimes. Even further, some evidence suggests that mobile home owners are not interested in financially or psychologically investing in their homes or communities, but rather have an attitude of transience such that they do not wish to live in mobile home parks for very long.<sup>183</sup>

Last, the requirement of good cause to evict a tenant is contrary to traditional notions of ownership in the civil law context.<sup>184</sup> In the civil law, ownership is absolute such that it "consists in the attribution of a thing to

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178. See Robert G. Lee, *Rent Control—The Economic Impact of Social Legislation*, 12 OXFORD J. LEGAL STUD. 543, 552 (1992).

179. *Id.*

180. Carroll, *supra* note 120, at 450.

181. See Lee, *supra* note 178, at 552.

182. Anderson, *supra* note 81, at 599 (citing Florence Wagman Roisman, *The Right to Remain: Common Law Protections for Security of Tenure: An Essay in Honor of John Otis Calmore*, 86 N.C. L. REV. 817, 820 (2008)).

183. MacTavish et al., *supra* note 34, at 106–07.

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 . . . [A] 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."

*Id.*

184. See 1 MARCEL PLANIOL, *TREATISE ON THE CIVIL LAW* 378 (La. State Law Inst. trans. 1959) (1939).

a given person to the exclusion of all others.”<sup>185</sup> Moreover, the essential quality of ownership is the owner’s ability to dispose of the thing owned.<sup>186</sup> Good-cause requirements hamper the landowner’s ability to dispose of the land because they obligate the landowner to continue leasing to the lessee absent good cause to terminate the lease.<sup>187</sup> Therefore, Louisiana should avoid adopting a good-cause statute to be consistent with traditional civil law notions of ownership.

### *B. Workable Solutions for Louisiana*

If enacting a good-cause statute constitutes one extreme on the spectrum of providing relief for mobile home owners, Louisiana’s current eviction regime certainly constitutes the opposite extreme by providing no particularized protection for mobile home owners in the context of eviction. By enacting legislation addressing the notice required to evict a mobile home owner, granting a minimum term, and providing a statutory right to cure late rent, Louisiana would provide mobile home owners with more security in the placement of their homes.

#### *1. Notice*

Instead of following the trend of the majority of states that have addressed eviction in the context of mobile home communities by enacting good-cause statutes, Louisiana should follow the trail blazed by North Carolina, Texas, Iowa, and Kansas by adopting a statute that extends the period of notice required to evict a mobile home owner.<sup>188</sup> Unlike Kansas, however, Louisiana should not allow the parties to contract freely for different periods of notice.<sup>189</sup> The superior bargaining position of the landowner could force the mobile home owner to accept a shorter period of notice to avoid facing long waiting lists at other parks.<sup>190</sup> Louisiana should instead implement a substantial mandatory notice period, the length of which could be six months, similar to Texas’s and North Carolina’s notice periods in cases of park closures.<sup>191</sup> Given the financial status of

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185. *Id.*; see also Carroll, *supra* note 120, at 475.

186. See PLANIOL, *supra* note 184, at 380.

187. See, e.g., MD. CODE ANN., REAL PROP. § 8A-1101 (West 2017).

188. N.C. GEN. STAT. ANN. § 42-14 (West 2016); TEX. PROP. CODE ANN. § 94.052 (West 2015); IOWA CODE ANN. § 562B.10(5) (West 2016).

189. KAN. STAT. ANN. § 589-25,105(d) (West 2016).

190. See discussion *supra* Part I.C.4; see also discussion *supra* Part III.B.4.

191. See TEX. PROP. CODE ANN. § 94.204; see also N.C. GEN. STAT. ANN. § 42-14.3.

most mobile home owners,<sup>192</sup> and the costs of moving the home,<sup>193</sup> a six-month period would give mobile home owners ample time to gather the resources necessary to move the home.

Unlike Texas and North Carolina, however, Louisiana should not limit the requirement of six-months' notice to only a change in land use.<sup>194</sup> Whether the landowner wishes to change the use of the land or simply to stop leasing the land to a particular tenant, the mobile home owner will incur significant cost in removing the home.<sup>195</sup> Therefore, a landowner who wishes to evict an innocent mobile home owner who pays timely rent should give that mobile home owner six months' notice of eviction, whether eviction is because the landowner wishes to change the use of the land or no longer wishes to lease the land to that particular mobile home owner.

## 2. Requirement of a Term

In addition to extending notice, a requirement of a term is a good measure to prevent the mobile home owner from being evicted too soon after entering a park. Evidence suggests that most mobile home owners do not have a written lease, resulting in a tenancy "at will" under which the landowner can evict the mobile home owner at any time.<sup>196</sup> In many of these instances, the mobile home owner is a month-to-month tenant,<sup>197</sup> which under current Louisiana legislation would only require the landowner to give the mobile home owner as little as ten days' notice to vacate the premises.<sup>198</sup> Like New York and Texas,<sup>199</sup> Louisiana can combat this issue by requiring a minimum written term upon the mobile home owner's entry into the park. Louisiana should require a minimum term of one year, similar to New York, and if the landowner fails to give notice of the intent not to renew the lease at least six months before the

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192. See discussion *supra* Part I.B.

193. See discussion *supra* Part I.C.2.

194. See FLA. STAT. ANN. § 723.061(1)(d)(2) (West 2017).

195. See discussion *supra* Part I.C.2.

196. Stubbs, *supra* note 19, at 219; see also Hirsch & Hirsch, *supra* note 22, at 438–39; see also *Stewart v. Green*, 300 So. 2d 889, 891 (Fla. 1974) (stating that mobile home owners are typically month-to-month tenants).

197. *Stewart*, 300 So. 2d at 891.

198. LA. CODE CIV. PROC. art. 4701 (2017); see also LA. CIV. CODE. art. 2728 (2017).

199. N.Y. REAL PROP. LAW § 233(e)(1) (McKinney 2017); TEX. PROP. CODE ANN. § 94.052(a) (West 2015).

end of the term, Louisiana should require that the lease be automatically renewed for another year.<sup>200</sup>

### 3. *Right to Cure Late Rent*

Louisiana's current scheme only allows a mobile home owner an opportunity to cure late rent within the discretion of the court,<sup>201</sup> which makes this remedy uncertain because reasonable minds could differ concerning which circumstances justify allowing additional time to pay.<sup>202</sup> Considering the precarious circumstances of mobile home owners, Louisiana should provide a statutory right to cure for these tenants so that they can avoid the enormous costs of moving the home should the lease terminate by simply paying the late rent. However, a statutory right to cure late rent should not displace judicial control. Rather, it should supplement judicial control such that if the statutory time period to pay late rent has expired, the judge would still have discretion to prevent the lease from terminating.

The range of delay required to cure late rent varies widely among jurisdictions,<sup>203</sup> with some requiring the landowner to wait only three days after serving written demand for late rent before evicting the tenant<sup>204</sup> and others requiring as long as 30 days.<sup>205</sup> To cure late rent, 15 days is a fair amount of time for the mobile home owner.<sup>206</sup> This allows a mobile home owner who collects income on a bi-weekly schedule an opportunity to pay the late rent with the second paycheck.

### CONCLUSION

As mobile homes have evolved to become more complex and more difficult to move, they have also outgrown the landlord-tenant laws applicable to typical apartment dwellers.<sup>207</sup> The hybrid ownership between the landowner's ownership of the land and the mobile home owner's ownership of the home requires legislation specifically addressing this

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200. See N.Y. REAL PROP. LAW § 233(e)(1).

201. LA. CIV. CODE art. 2013.

202. See discussion *supra* Part II.B.2.

203. See discussion *supra* Part III.C.

204. See, e.g., CAL. CIV. CODE § 798.55(c) (West 2017).

205. See, e.g., N.Y. REAL PROP. LAW § 233(b)(2).

206. See Stubbs, *supra* note 19, at 235 (arguing that a mobile home owner should have 15 days to pay late rent); see also MASS. GEN. LAWS ch. 140, § 32J (2016) (providing a 15-day delay for the mobile home owner to pay late rent).

207. See *Stewart v. Green*, 300 So. 2d 889, 892 (Fla. 1974).

unique landlord–tenant relationship. Without such legislation, mobile home owners are vulnerable to the same speedy eviction procedures of apartment dwellers, a class of tenants not concerned with the enormous cost of moving a large structure such as a home upon eviction.<sup>208</sup>

Unfortunately, Louisiana has not yet joined the myriad of states that have acted to protect the precarious circumstances of mobile home owners.<sup>209</sup> Instead of following the trend of many states in enacting good-cause statutes, Louisiana should instead promulgate legislation particular to mobile home owners that extends the period of notice required for eviction, provides a minimum term, and grants a statutory right to cure late rent. This regime best balances the rights and interests of both parties. It allows the landowner the freedom to evict a mobile home owner without the requirement of proving a statutory good reason for doing so, thereby preventing a seemingly perpetual lease to the tenant.<sup>210</sup> At the same time, it provides the mobile home owner with ample time to gather the resources needed to move the home or cure the late rent. Louisiana should act quickly to protect mobile home owners before more individuals lose their homes to speedy evictions.

*Jared A. Clark\**

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208. See discussion *supra* Part I.C.2.

209. See discussion *supra* Part III.

210. Carroll, *supra* note 120, at 450.

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