

**Mobile Home Park Helpline
Report
Prof. Linda F. Smith
Jennifer Leo, Mobile Home Park Helpline Fellow**

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Executive Summary

This Report and attached Appendix describes the calls received by the Helpline during the fourteen months from September 1, 2015 to October 31, 2016, and makes recommendations.

Part I of the Report provides data about the calls. The typical caller was a mobile home owner and a senior citizen in a low-income household. More calls came from Salt Lake County than from any other county, but calls were received from ten different counties.

Most of the calls dealt with topics covered by the Mobile Home Park Residency Act (the “Act”). The 123 callers raised 240 issues. The most frequent issues raised were rules and rule enforcement, with rent being the second most typical issue. The most serious issue, raised by seventeen callers, was a park’s refusal to allow a home owner to sell the home to a new resident. It was usually not possible to tell if the Act had been violated simply from the caller’s account. On only a couple occasions was the Helpline asked to share information about the Act with the respondent. As a result, it is impossible to know whether our information helped resolve problems.

Part II of the Report provides a description of representative calls organized by topic, and a discussion of how the Act may apply to the caller’s concern. The Appendix provides a narrative about each call as well as certain other data.

The Helpline also researched literature and best practices about mobile home parks. Part III of the Report discusses the economics of mobile home ownership, vulnerabilities and protection. Part III relies substantially upon research and recommendations by the American Association of Retired Persons and National Consumer Law Center, and compares these recommendations to the Utah Act. The Utah Act provides many of rights and procedural protections suggested by the NCLC and AARP, but no enforcement mechanism and few substantive protections.

Part IV of the Report provides recommendations about the Act in light of our research and the calls received. We recommend that Utah adopt enforcement mechanisms, either by a public agency or through enhanced private enforcement. The Legislature should consider adopting some of the substantive rights recommended, for example long-term leases and market-based rent increases. The Legislature should study the procedural rights and consider whether they should be more robust, for example by providing longer time to cure late rent payment and to sell home after eviction. At a minimum the Utah Legislature should ask the Office of Legal Research and General Counsel or the Helpline to review the Act and propose changes to enhance clarity (especially with regard to notices and deadlines) and readability. We do not recommend continuing the Helpline after this fiscal year, but establishing an enforcement body instead.

Introduction

The Mobile Home Park Helpline was established by statute¹ “to assist a resident, a mobile home owner, or a park owner with disputes related to the act [Mobile Home Park Residency Act].”² The Helpline is charged to “respond to calls” and inform callers “of the rights, responsibilities and remedies described by the act” and “create a record of each call.”³ By November 30, 2016, the Helpline is charged with submitting a report regarding calls received and to make “recommendations regarding changes to the helpline or the act.”⁴ This Report complies with that charge.

I. Data from MHPHL Activities

The Mobile Home Park Helpline (“MHPHL” or “Helpline”)⁵ began taking calls on September 1, 2016. The MHPHL received calls and emails from mobile home owners, mobile home renters, park managers, park owners, and parties interested in moving into mobile homes. The purpose of this section of the report is to summarize the data that the MHPHL team has collected through these contacts. To respect the privacy of the callers and address the mobile home park residents’ fears of park management retaliation, this report will keep all caller names and mobile park residencies anonymous and will describe the subject of the calls in ways that should not identify the caller.

From September 1, 2015 through October 31, 2016, (fourteen months) the MHPHL received 123 calls or emails from different individuals. (See Chart below showing call numbers each month.)

The majority of the callers who identified their locations were Salt Lake County residents. Residents of ten different counties contacted the MHPHL, although approximately ¼ of the callers did not identify their locations. (See Chart below showing caller’s county of residence.)

¹ Utah Code Ann. § 57-16a-101 et seq. (2015).

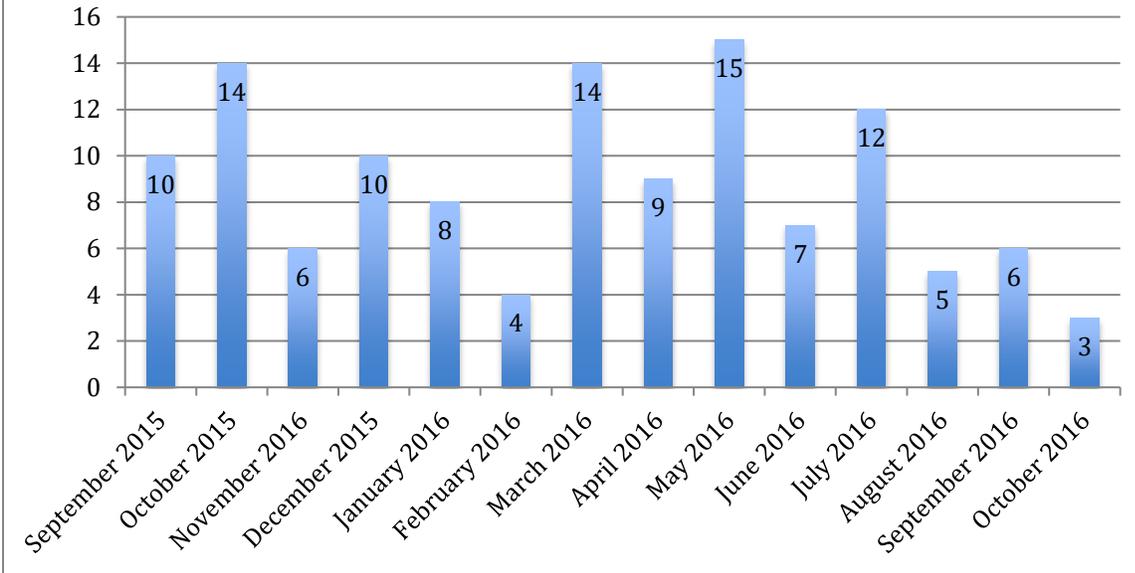
² Utah Code Ann. § 57-16a-202.

³ *Id.*

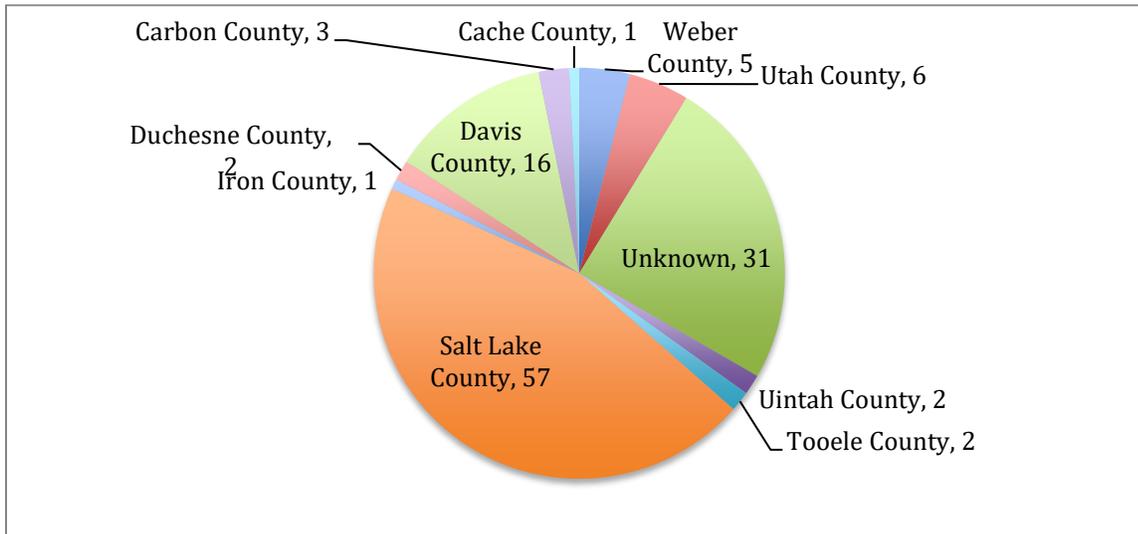
⁴ *Id.*

⁵ The MHPHL team has consisted of two staff attorneys, one supervising faculty member, and as many as nine students who have participated during different semesters and contributed to writing the Appendix. Contributors to this Report also include staff attorney Jessica Samowitz and students Cameron Platt and Christian Barbiero.

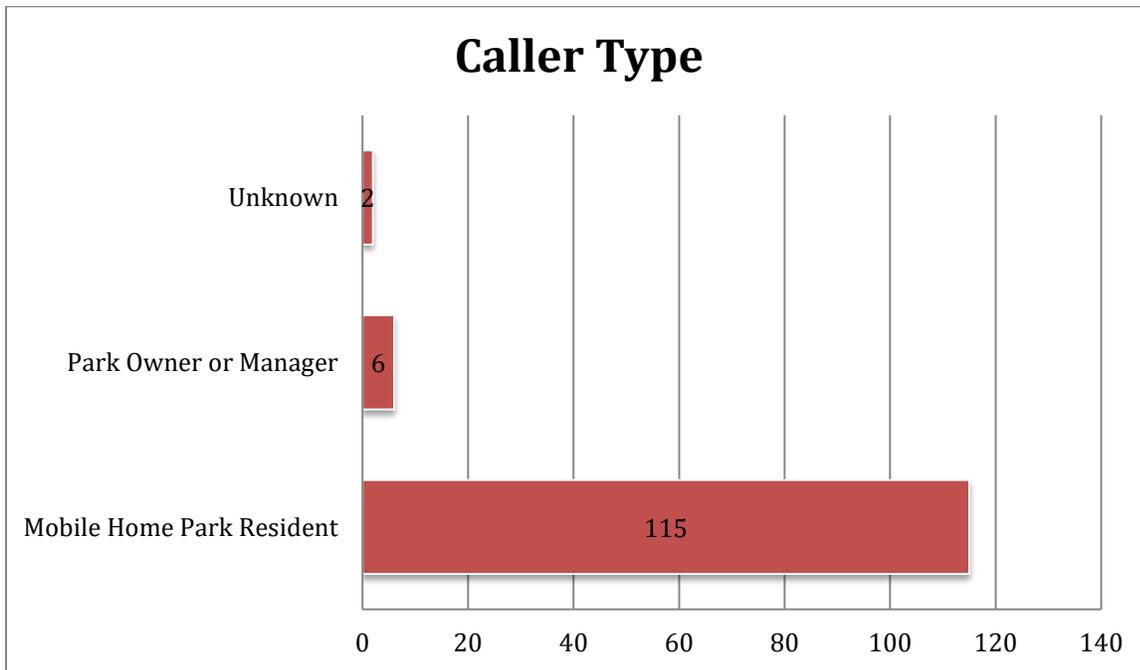
Number of Calls or Emails Received



Residents of ten different counties contacted the MPHL. The majority of the callers who identified their locations were Salt Lake County residents.

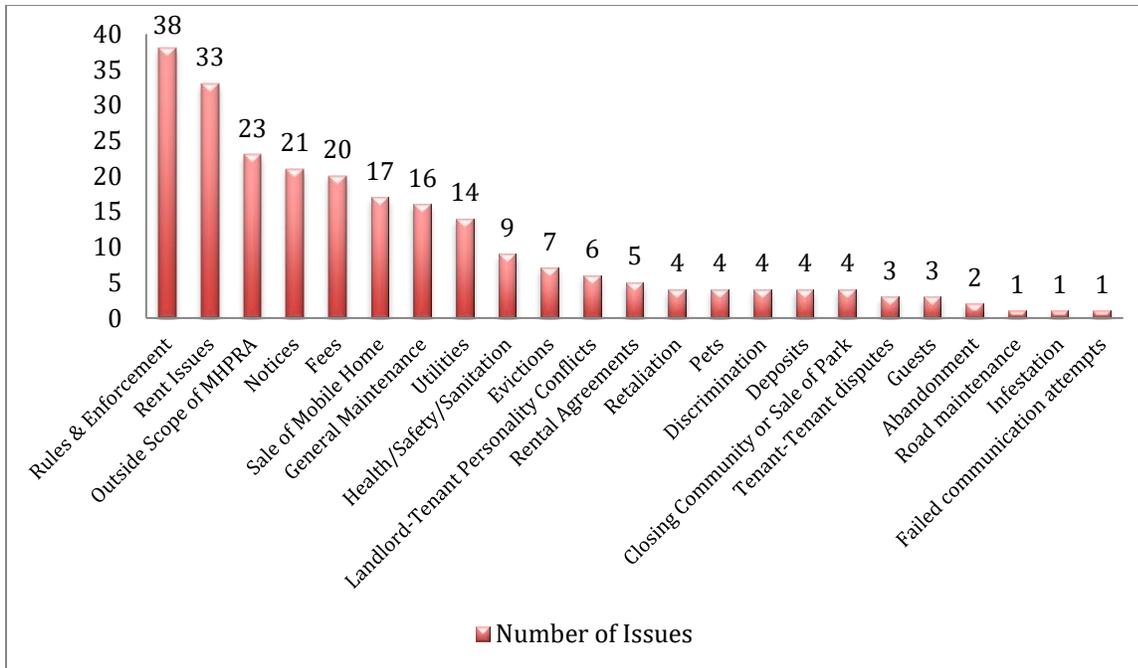


The typical caller was a mobile home owner, but mobile home renters and park owners or managers also contacted the Helpline. (See Chart below regarding caller type.)



Not all callers were willing to share their demographics, however, the majority of the callers were English speaking. The majority of the callers who were willing to share their age reported that they were over the age of 60. The household sizes ranged from one person to seven people. Thirty-seven of the callers were willing to respond to questions about household income. Of those, twenty-one callers reported annual household incomes below \$25,000. The highest household income reported was less than \$50,000.

The callers raised many different concerns, and some callers raised more than one concern, so the 123 callers raised 240 issues in total. Most of the concerns were about issues addressed by the Act. The most common issue was about the park rules and the enforcement of rules. Concern about rent (increases, changed due dates, etc.) was the second most common issue. The chart below sets forth the categories of topics and the number of calls on each topic.



Appendix A provides “a brief summary of each call”⁶ including the caller type, the subject of the call, and whether the caller alleged violation of the Mobile Home Park Residency Act. Often the topic of the call was covered by the Act (e.g. enforcement of rules), but it was impossible to know if the Act was violated without having a copy of the relevant rules or lease.

All callers were given information or information and referrals. Only two callers asked Helpline staff to contact the respondent⁷ to provide information about the law. Some of the callers expressly declined this option, because they feared retaliation. The Helpline did not regularly get updates from callers as to how their matters were resolved. We do not have substantial information as to whether the Helpline facilitated resolutions for the callers.

⁶ Appendix A comports with the Mobile Home Park Helpline Act which requires a summary that includes type of caller, subject of call, nature of service and outcome (Utah Code Ann. § 57-16a-202(5)(b)) and a record of whether the caller alleged a violation of the Mobile Home Park Residency Act and whether the respondent was contacted.

⁷ The statute suggests that such contact is appropriate by requiring “if the call alleges a violation of the act, information regarding whether the respondent was contacted.” Utah Code Ann. § 57-16a-202(d)(iii).

II. Description of Representative Calls

A. Calls Alleging Violations of Caller's Rights

1. Purchase and Sale of Mobile Homes

As should be clear from Appendix A, most of the calls alleged violations of the Act. The most serious violations were Parks' alleged unreasonable refusals to approve purchasers of mobile homes.⁸ One caller reported that the Park manager stated they would not approve any outside purchaser, as the Park wanted to buy the home (and then rent it out). Another caller complained that the Park failed to take timely action to approve a purchaser, so the sale was lost. Another was concerned that the Park disapproved a purchaser without giving any reason for doing so. A related concern was that purchasers may be disapproved because they did not follow the correct process for seeking and obtaining approval, where that process is confusing.⁹

Other issues arose regarding the sale and purchase of mobile homes within the Park -- one purchaser reported being charged back rent and back utilities that the former owner had failed to pay. The caller did not understand how these charges could be justified. Here we could inform the caller that the Act requires the lease provide full disclosure of all rent, service charges and fees charged on a regular basis,¹⁰ and these charges would not be legal unless covered in the lease or in contractual documents they signed with the Park seeking approval to purchase the home. It was impossible to know whether this caller's rights were violated without reviewing the lease and contractual documents. However, exactly the same scheme was followed in a reported case in which the Park wrongfully prevented the mobile home purchaser from moving the mobile homes he had purchased because the purchaser refused to pay late fees and service charges accrued by the prior owner.¹¹

2. Utilities

The Act deals with service charges for utilities, which may be passed through to the residents so long as the Park includes "a full disclosure on the resident's utility bill of the resident's utility charges" and so long as the charges paid to the Park "do not exceed the actual cost to the mobile home park of providing the services."¹² One caller alleged that the Park was charging residents a higher amount than the actual cost of the utilities; the caller reported the Park provided refunds

⁸ The Act provides that a park "may reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident [but] may not unreasonably withhold that approval." Utah Code Ann. § 57-16-4(5).

⁹ The Act confusingly provides that a park: "may require proof of ownership as a condition of approval; or may unconditionally refuse to approve any purchaser of a mobile home who does not register before purchasing the mobile home." Utah Code Ann. § 57-16-4(5)(b)(iii) and (iv).

¹⁰ Utah Code Ann. § 57-26-4(3).

¹¹ *Ortega v. Ridgewood Estates LLC*, 379 P.3d 18, 22 (Ut. Ct. App. 2016).

¹² Utah Code Ann. § 57-16-4 (4)(c) and (11).

after he complained. Other callers said they did not receive enough information to understand how their share of the utilities was calculated, and felt the charges were unfair. The Act does not address how such charges are to be fairly apportioned (e.g. per lot or per capita). It might be necessary to review the caller's lease to know how such apportionment should be made. Another caller complained that residents were charged \$5 each month for the Park to read their individual meters. This charge would be justified only if it actually cost the park \$5 for each meter to be read.

The Act further permits the Park to pass through "maintenance costs related to these utilities."¹³ Some callers were surprised that the monthly utility bill went from a couple dozen dollars a month to hundreds in a month, perhaps due to major maintenance expenses. The Act does not address how the Park should recoup major maintenance costs; the lease may. Other callers complained that the Park refused to pay the cost of repairs for backed-up sewer lines and broken water lines, even though the problems were in the Park's common system and outside the caller's mobile home.

3. Park Rules or Lease Provisions

Various callers were concerned about selective or discriminatory enforcement of Park rules. One caller alleged racial discrimination in rule enforcement; another caller alleged residents were targeted for rules violations when the Park and the resident had had disagreements.

Many callers were concerned about the substance of certain Park rules or policies (that might be in a lease.) Many of these calls dealt with legal issues that are not answered by reference to the Act alone. Often we needed to refer the caller to the lease or the Park rules so that the caller would know if his rights were being violated by the other party enforcing a lease provision or "rule" that had not actually been promulgated. It appeared that many callers did not have access to their leases or to park rules.

Park rules may address "health, safety and appropriate conduct of residents" and "maintenance and upkeep" of the Park.¹⁴ Rules that are properly promulgated may be enforced so long as they are not "unconscionable."

Various calls concerned parking. Some callers alleged the Park failed to provide adequate parking for visitors, which was particularly problematic when the caller relied upon a care-giver. Another caller complained that the Park initiated a separate charge for parking. Other callers complained that the Park towed their vehicles with no notice, where the Act would appear to require a 15-day notice to cure a rule violation.¹⁵

Another concern of callers was turnover in management, with existing rules being suddenly enforced in a new way, and new rules and procedures being implemented.

¹³ Utah Code Ann. § 57-16-4(4)(d).

¹⁴ Utah Code Ann. § 57-16-7(1)(a).

¹⁵ Utah Code Ann. § 57-16-5(2).

Callers complained that they were given oral notices with regard to maintenance, or signs were posted announcing a park-wide “clean-up” day. Callers were concerned about the need to comply with these oral directives or signs, where the Act provides for written notices and time periods to cure for rule violations.¹⁶

One caller complained that he received a notice of rent increase that was less than the statutorily required 60 days.¹⁷ When he complained, the Park agreed that he need not pay the increased rent until after 60 days, but the Park did not extend that “courtesy” to the other residents.

One caller complained that the lease did not include the name and address of the Park owner, as required by the Act.¹⁸ A few callers complained that they were unable to contact the Park owner or manager within a reasonable time to address problems (e.g. plumbing) that needed prompt action.

B. Calls Seeking Information about Notices

Another concern raised by callers (both residents and Park managers) was the time and manner for serving various types of notices. The Act has a variety of different provisions regarding giving notice, which itself may be confusing. It is unclear whether the Act refers to business or calendar days for some of the notice provisions. When the notice must be mailed, it is unclear what should happen when mail is returned as undeliverable. In some cases the time begins to run when the resident receives notice, in others when the notice is sent. In some instances, the Act requires notice but does not say how notice is to be given.¹⁹ Where there was ambiguity in the Act, it was difficult to provide definitive useful information to the caller.

C. Calls with Concerns Not Governed by the Act.

1. Rent

Many calls were concerned with increases in rent for the mobile home park space. These callers (mobile home owners) felt that rent was raised as high as (or higher than) the market would bear and without any reference to increased costs or inflation. Some callers complained that amenities were taken away even as rents were raised. Some complained of a combination of increased rent, new fees, and/or the Park beginning to charge for utilities. Many of the callers were seniors, living on fixed incomes, and financially stressed by such increases. One caller alleged that the rent in her Park was far higher than neighboring parks, and that many empty lots were left unfilled due to the Park’s choice to charge rental above what the market (for new residents) would bear.

¹⁶ Utah Code Ann. § 57-16-5.

¹⁷ Utah Code Ann. § 57-16-4(4)(a).

¹⁸ Utah Code Ann. § 57-16-4(3).

¹⁹ Notice of meeting about changing Park Rules, see Utah Code Ann. § 57-16-7(1)(c).

A related concern was a Park changing its due date to the 1st or 3rd of the month, where the residents received their social security checks on the 5th. One caller reported needing to pay late fees every month since the change, as he had no savings to begin paying rent before he received his check. Two callers were over five days late with their rent payments due to understandable problems, and sought to tender rent checks later in the month. The Parks rejected their tendered rent, telling them to wait until the lawyer had served them with legal papers. Presumably these Parks intended to evict these residents.²⁰

The Act requires a lease, but does not specify the length of the initial lease. Presumably a long-term lease could lock in rent for a number of years.

The Act does provide that rent and fees can be increased 60 days after notice of the increase is mailed to the resident.²¹ Similarly, service charges for utilities can be newly imposed on tenants with such notice. New rules may be promulgated with 60 - 120 days' notice, depending upon the cost to the tenant of complying with the rules.²² Thus, a mobile home owner could initially rent a space in a Park for seniors, with amenities such as a club house, and with utilities paid for by the Park; then, after notices, find himself in a Park open to all, and facing a new requirement to pay his share of all park utilities, new fees or fines, new rules about costly physical improvements to the home exterior, the elimination of all amenities, and a large increase in rent.

2. Conditions

Other calls dealt with conditions of the park that could affect the residents' health and safety, including uneven sidewalks, missing or burnt out streetlights, and roads or driveways needing repair. It may be that these issues were dealt with in the lease. It might also be that these issues would be dealt with by local ordinances. However, the Act does not address the physical condition of the Park or provide a warranty of habitability.

3. Refinancing

A few callers asked about how to borrow against their mobile homes, in order to have funds for medical treatment or to repair or upgrade the home.

Mobile homes are initially considered personal property (vehicles) and in Utah can be converted to real property only if the home owner owns the land on which the mobile home is permanently affixed or rents the land and has a federally insured mortgage or loan.²³

The National Consumer Law Center advocates that manufactured homes be permitted to be converted to real property where the home owner either owns or rents the land and where the

²⁰ Utah Code Ann. § 57-16-5(1)(d) permits eviction for “nonpayment of rent, fees, or service charges for a period of five days after the due date.”

²¹ Utah Code Ann. § 57-16-4 (4).

²² Utah Code Ann. § 57-16-7.

²³ Utah Code Ann. § 70D-2-401.

home is permanently affixed.²⁴ The Uniform Law Commission has drafted a uniform law to permit such conversion.²⁵ Adopting these or similar provisions would improve the owner's ability to refinance the home and might provide tax benefits.

III. Economics of Mobile Home Ownership, Vulnerabilities and Protections

A. Mobile Homes as Affordable Housing

Mobile homes (or manufactured homes) “are a major source of affordable housing for low- and moderate-income families.”²⁶ They are much less expensive than conventional single-family homes.²⁷ In 2005 “approximately 3.3 million (48 percent) of manufactured homes were occupied by persons age 50 or older”²⁸ and around 44 percent of these older persons lived in mobile home parks.²⁹ The median income for these households was \$22,000 (compared to \$44,000 of 50-plus residents in conventional single-family housing).³⁰ In 2001 the median household income of all manufactured home owners leasing spaces in parks was only \$25,000.³¹ Thus, “limited financial resources make residents of manufactured housing particularly vulnerable to increases in park rents and unexpected home repair costs.”³²

Housing in a mobile home Park is “unique, because residents have a blended set of advantages and disadvantages from being both owners (of a home) and renters (of land). . . . [T]he cost and risk of moving a manufactured home from one rental community to another creates significant barriers to owners who need or want to move. These barriers make it possible for a segment of community operators to adopt exploitive rules and practices that are unique to this type of housing arrangements.”³³

²⁴ National Consumer Law Center, *Manufactured Housing Resource Guide: Titling Homes as Real Property* available at: http://www.nclc.org/images/pdf/manufactured_housing/cfed-titling-homes.pdf.

²⁵ See Uniform Manufactured Housing Act available at: <http://www.uniformlaws.org/Act.aspx?title=Manufactured%20Housing%20Act>.

²⁶ AARP Public Policy Institute, *Issues in Manufactured Housing*, p.1 (2007) available at: http://assets.aarp.org/rgcenter/il/fs16r_housing.pdf.

²⁷ *Id.* Median sales price for manufactured homes was \$62,600 in 2005 compared to \$297,000 for single-family homes in the USA.

²⁸ *Id.* citing 2005 American Housing Survey.

²⁹ *Id.*

³⁰ *Id.* This would be \$29,991 in 2016 dollars, according to the Consumer Price Index Inflation Calculator maintained by the Bureau of Labor Statistics.

³¹ Andrew Kochera, AARP Public Policy Institute, Introduction, in *MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER*, 3 (2004) available at: http://assets.aarp.org/rgcenter/consume/d18138_housing.pdf.

³² AARP, *Issues in Manufactured Housing*, p. 1, *supra* note 26.

³³ AARP, *MANUFACTURED HOUSING COMMUNITY TENANTS* at 1, *supra* note 31. The cost of moving a mobile home were then estimated to be \$5000 to \$10,000 in 2004. *Id.* at 2.

Misleadingly named “mobile homes” are hardly ever moved after being placed on a lot, first because they are subject to damage and secondly because of the high cost of moving the home.³⁴ Owners of mobile homes located in Parks are much less mobile than are apartment tenants³⁵ who incur minimal cost in moving into a new apartment if the rent is raised or other changes made to the lease. For these reasons a free market will be much more effective in establishing fair rental prices for apartments than for mobile home lots. If a mobile home owner can no longer afford the higher rent, utilities, or fees the Park is charging, the home owner will need to sell the home in order to recoup any value from his investment in the home. If the Park has set rent above market rates, the home owner will have difficulty selling the home in place and recouping his investment.

At the same time that low-income individuals look to mobile home ownership as an approach to affordable housing, national concerns such as the Mobile Home University advertise Park ownership as an attractive investment.³⁶

B. AARP and NCLC Best Practices

In light of these vulnerabilities, the American Association of Retired Persons (AARP) contracted with the National Consumer Law Center (NCLC) to study the issues and develop a model statute. That model statute was first published in 1991 and was most recently updated in 2004.³⁷

The AARP and the NCLC recommend certain best practices for balancing the rights and interests of mobile home owners and Parks.³⁸ Utah has adopted many of these recommendations. For example, Utah has a specialized statute regulating mobile home parks.

The National Consumer Law Center identifies four basic protections: freedom of association and speech, freedom from retaliation, freedom from eviction without good cause, and protection of the right to sell the home in place.³⁹ Consistent with the NCLC recommendations, the Utah Act protects the rights to form resident associations, and prohibits retaliation against residents for participating in these associations.⁴⁰ The Helpline did not receive any calls complaining the Parks interfered with or retaliated against resident associations.

³⁴ *Id.* at 2.

³⁵ *Id.* at 3-4.

³⁶ Gary Rivlin, *The Cold, Hard Lessons of Mobile Home U.*, THE NEW YORK TIMES MAGAZINE, March 13, 2014 available at: http://www.nytimes.com/2014/03/16/magazine/the-cold-hard-lessons-of-mobile-home-u.html?_r=0

³⁷ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 31 at 4-5.

³⁸ *Id.* Also see National Consumer Law Center, Protecting Fundamental Freedoms in Communities, available at: http://www.nclc.org/images/pdf/manufactured_housing/cfed-freedoms_guide.pdf.

³⁹ NCLC, Protecting Fundamental Freedoms in Communities, *supra* note 38.

⁴⁰ *Id.* See Utah Code Ann. § 57-16-16.

Utah is among thirty-five states that require some cause for eviction as recommended by the NCLC.⁴¹ We did not receive calls that residents were evicted without cause.

Similarly, Utah is among twenty-eight states that prohibit arbitrary denial of the right to sell a manufactured home in place.⁴² The NCLC advises that some Parks insist, as a condition of the lease, on an option to purchase the home on resale, which denies the home owner the value of his investment. The NCLC recommends that Parks be able to purchase homes only if price is determined by a “qualified, neutral third party . . . or based on the first offer of a bona fide purchaser for value.”⁴³ They similarly recommend that Parks must reject prospective purchasers within 14 calendar days and provide written notice of the reasons for rejection which are limited to inability to pay rent, a hazard to the safety or peaceful enjoyment of the park, or proposed residency that violates occupancy requirements.⁴⁴ The Utah statute does not have these additional protections regarding sale of the home.

C. AARP Model Statute -- Compared to Utah Statute

The AARP Public Policy Institute has published a model statute for mobile home parks (manufactured housing communities) together with an Introduction, Executive Summary, and discussion of each recommended provision.⁴⁵ The following provisions are not currently in the Utah Act and would address problems raised by Helpline callers.

1. Rental Charges -- Sec. 104

“Frequent, large, and unpredictable rent increases are one of the most pressing problems facing manufactured home residents. This problem is especially serious for older persons living on fixed incomes.”⁴⁶ Accordingly, the model statute proposes renewable long-term leases for two years during which time rents cannot be increased or fees added except as may be expressly disclosed in the lease and as are not unreasonable.⁴⁷ The model act further proposes that if the tenant does not accept a rent increase at the end of the two-year term, a binding arbitration process be available to determine the fair market value of the lot rent and other charges.⁴⁸ The Park would be able to set any rent it wanted for new owners moving into the community, and those prices would help establish a fair market rate for longer-term residents facing renewals.⁴⁹

⁴¹*Id.* See Utah Code Ann. § 57-16-4.

⁴² *Id.*

⁴³ *Id.* Appendix A, Sec. 4 (d).

⁴⁴ *Id.* Sec. 4 (f).

⁴⁵ AARP Public Policy Institute, MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER, (2004) available at:

http://assets.aarp.org/rgcenter/consume/d18138_housing.pdf.

⁴⁶*Id.* at 14.

⁴⁷ *Id.* at 12. The discussion points out that commercial leases are generally of long terms as the tenant similarly has a significant investment in the lease, and that California and Florida leases are currently for 5 or 10-year periods. *Id.* at 15.

⁴⁸ *Id.* at 13-14.

⁴⁹ *Id.* at 17.

The model act further provides that if the Park decreases any services agreed to in the lease, the Park will reduce the rental amount accordingly.⁵⁰

Utah's statute does nothing to stabilize rent, fees, utilities or other expenses for mobile home owners. Utah's statute permits simultaneous reduction in services and increase in rents.

Although mobile homes are widely considered "affordable housing" for low- and moderate-income seniors and families, it is worth noting home owners who are Park residents cannot benefit from governmental programs that subsidize rental housing (e.g. Section 8 housing supports) or tax relief for home owners (e.g. for low-income seniors).

2. Community Rules -- Sec. 106

"In the absence of a state law to the contrary, community management can arbitrarily change the terms and conditions of living in the community."⁵¹ The model statute proposes that no rule be "unreasonable, unfair or unconscionable"⁵² and that no new rule be enacted unless a "bona fide resident association" approves it or a state regulator approves it.⁵³

The Utah statute prohibits "unconscionable" rules (but not unfair or unreasonable rules) and requires notice and a meeting prior to a new rule going into effect.⁵⁴ However, the resident's association has no right to vote on a rule and no state regulator reviews or approves rules. Various calls complained of certain rules or policies being unfair or unreasonable.

The model statute also provides that all rules must apply uniformly and be enforced uniformly.⁵⁵ The Utah statute does not require uniform enforcement of rules.⁵⁶ Various calls complained of non-uniform and discriminatory enforcement of rules.

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 23.

⁵² *Id.* at 22. Utah statute prohibits only "unconscionable" rules, and requires that the rules address "health, safety, and appropriate conduct or the residents" or "maintenance and upkeep." Utah Code Ann. § 57-16-7.

⁵³ *Id.* at 22 - 23.

⁵⁴ Utah Code Ann. § 57-16-7.

⁵⁵ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45 at 22. Utah statute does not require uniform application or enforcement of rules.

⁵⁶ The Utah Act prohibits enforcing rules in an "unreasonable or nonuniform way . . . in retaliation" for a resident complaining to the park administrator or to a governmental agency or filing a law suit or testifying in a proceeding. Utah Code Ann. § 57-16-16(11)(a). The model act takes a further step in presuming retaliation if the Park seeks eviction within six months of a resident complaint unless the eviction is for nonpayment of rent. AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 32.

3. Warranty of Habitability -- Sec. 108

“The lack of community maintenance is one of the chief complaints of manufactured housing community residents. Local departments of health usually have enforcement responsibility, and the quality of such enforcement can vary. . . .”⁵⁷ The model statute imposes the requirement that the Park maintain common areas, streets, lighting, and utilities to the hook-ups to each unit. The model statute provides for self-help or suggests other remedies.

The Utah statute does not address habitability of the Park, although local ordinances may. Various calls concerned unhealthy or unsafe conditions or a Park’s refusal to pay for repairs to Park utilities.

4. Eviction -- Grounds, Time, Process -- Sec. 110

“An eviction could cost the consumer many thousands of dollars in moving costs, plus possible damage to the home.”⁵⁸ Because mobile home park evictions are much more like foreclosures than evictions from an apartment, the AARP/NCLC recommend that evictions be for limited reasons and with adequate time to cure violations or late payments.⁵⁹

The Utah statute does require cause for terminating a lease.⁶⁰ However the model statute would grant the mobile home owner 45 days to cure a late payment of rent⁶¹ while the Utah statute provides only a five-day cure period for nonpayment of rent.⁶² The Helpline received two calls where residents tendered rent less than one month late and the Park refused to accept it and referred the residents to the Park’s attorney.

The model statute also recommends the home owner have 120 days to sell the home in place after an eviction.⁶³

The Utah statute does not provide any time to sell the home in place after an eviction beyond the 15-day period between entry of the judgment and enforcement of the order for restitution (or a longer period if agreed to by the parties).⁶⁴

5. Sale of Home; Assignment of / Sublease of Lease -- Sec. 111

The home owner may need to sublet or sell his mobile home to a new person. The NCLC/AARP model statute notes that “the ability to transfer the home and tenancy is critical. . . .”⁶⁵ The

⁵⁷ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 30.

⁵⁸ *Id.* at 37.

⁵⁹ *Id.*

⁶⁰ Utah Code Ann. § 57-16-5.

⁶¹ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 35.

⁶² Utah Code Ann. § 57-16-6(3)(c).

⁶³ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 36.

⁶⁴ Utah Code Ann. § 57-16-15(1)(e).

NCLC/AARP report notes that the Park “might refuse permission in order to . . . force the resident to sell the home to the [Park].”⁶⁶ The model statute provides that the mobile home owner has the right to sublet or sell the home and assign the lease to the purchaser, and the Park may disapprove the purchaser (or sublease) only if the Park gives the home owner written reasons within seven days of the application, and only if the disapproval is based upon financial inability to pay rent or an unreasonable hazard to the community.⁶⁷

The Utah statute requires that the Park not “unreasonably withhold approval”⁶⁸ of a prospective purchaser/resident, but does not provide any more explicit protections nor any time for the decision. A number of callers raised problems with Parks refusing to approve sales, providing no reason, not responding in a timely fashion, or wanting to purchase the home for the Park. A recent Utah case dealt with a Park refusing to approve a purchaser of a mobile home and then unlawfully preventing the purchaser from removing the mobile home from the Park.⁶⁹

“The ability to transfer the home and tenancy is critical. . . .”⁷⁰to avoid the home owner’s loss of equity, given the high cost and risks of damage with moving the home.

6. Changed Land Use -- Sec. 112

The model act recommends a two-year notice before a Park may be converted to another use.⁷¹ The Utah statute requires a nine-month notice and notice of any governmental hearing that is required to approve the change in use.⁷² The model act also provides for Relocation Payments and provides that a resident association representing at least 51% of residents have a right to purchase the park following a binding appraisal process.⁷³ The Utah statute does not provide for relocation benefits⁷⁴ or for a right to purchase the Park.

The model act recommends that rent increases be prohibited “within a set period of time prior to applying for any kind of permit to change the use of the community land” in order to prevent

⁶⁵ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 42.

⁶⁶ *Id.* at 42.

⁶⁷ *Id.* at 41.

⁶⁸ Utah Code Ann. 57-16-4(5)(b)(ii). The Utah Supreme Court held that a park did not unreasonably withhold approval where, after a credit check, the park was unable to verify applicant’s income and employment. *Brookside Mobile Home Park Ltd. v. Peebles*, 48 P.3d 968 (Utah 2002). The Utah statute also provides the Park “(iii) may require proof of ownership as a condition of approval; or (iv) may unconditionally refuse to approve any purchaser of a mobile home who does not register before purchasing the mobile home” which two standards could be confusing.

⁶⁹ *Ortega v. Ridgewood Estates LLC*, 379 P. 3d 18 (Ut. Ct. App. 2016).

⁷⁰ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 42.

⁷¹ *Id.* at 45.

⁷² Utah Code Ann. § 57-16-18.

⁷³ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 45-46.

⁷⁴ Utah law does permit cities and counties to provide relocation assistance.

constructively evicting home owners by escalating their rent rates.⁷⁵ The Utah statute prohibits rent increases between notice of the change and the date the resident is required to vacate the park.⁷⁶

7. Sale of Park -- Sec. 113

The model statute similarly provides a right of first refusal to purchase the Park by a resident's association representing 51% of residents if the Park owner intends to sell the Park.⁷⁷ Converting the Park to a resident-owned cooperative can address many of the most serious concerns including rental and fee increases, unreasonable rules, and Park closures. The NCLC has also studied the issue of establishing resident-owned cooperatives to purchase mobile home parks, and complied state statutes that provide for this option.⁷⁸

Utah's statute does not provide residents with any rights to purchase the Park. However, in 2011 the first resident-owned coop in Utah was established, with assistance from Salt Lake County Housing Authority and Salt Lake Community Action Program.⁷⁹ Today a nonprofit agency, Utah Resident Owned Communities, exists to help mobile home owners purchase their Parks.⁸⁰

8. Remedies and Enforcement -- Sec. 116 and 117

The model statute provides for both enhanced private causes of action and state enforcement of the law governing mobile home parks. It provides that a resident or resident's association may sue for violations of the act and the Park held liable for:

- “(a) (i) any actual damage, including any emotional distress . . .
- (ii) in the case of an individual action, twice the monthly rental amount; in the case of a class action, one month's rent for each class member; in the case of an action by a resident association, the sum of \$2000;
- (iii) the resident or resident association's reasonable attorney's fees and costs, including an upward multiplier. . . . The court shall have authority to order temporary and permanent injunctive relief.

⁷⁵ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 50.

⁷⁶ Utah Code Ann. § 57-16-18(4).

⁷⁷ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 50-55.

⁷⁸ National Consumer Law Center, Compendium of Existing Laws that Foster Resident Ownership of Manufactured Home Communities (2013) available at:

http://www.nclc.org/images/pdf/manufactured_housing/cfed-freedoms_guide_appendix.pdf

⁷⁹ See: Patty Henetz, *Ownership is Sweet for Salt Lake County Mobile-Home Park Residents*, Salt Lake Tribune, April 11, 2011 available at:

<http://archive.sltrib.com/story.php?ref=/sltrib/news/51591380-78/park-says-residents-lake.html.csp>

⁸⁰ <http://www.uroc.coop/>

(b) Where the court determines that . . . a violation is willful or reckless, . . . the court shall award at least treble actual damages in addition . . . and may in its discretion award punitive damages greater than the treble actual damages.”⁸¹

The model act further provides that these remedies do not replace other possible remedies (e.g. consumer fraud) available under state law.⁸²

The AARP discussion notes: “private enforcement is difficult where only actual damages can be recovered” and “attorney fees for prevailing residents are essential if residents are to have any hope of obtaining legal representation.”⁸³

The 2004 AARP report states that thirty-three states provide for such enhanced private remedies. Utah is not among them.⁸⁴

The model act also provides for governmental enforcement (by the Attorney General or district attorney) in order to obtain injunctive relief, civil penalties of \$10,000 per violation, and restitution on behalf of residents.⁸⁵ The model act further provides that a state agency “monitor compliance and facilitate implementation” of the act, including responding to complaints, investigating alleged violations, and mediating grievances between Parks and mobile home owners.⁸⁶

The 2004 AARP report state that nineteen states provide for state remedies and eighteen identify the enforcement authority; Utah is not among them.⁸⁷

The Utah statute and states that “the rights and remedies granted by this chapter are cumulative and not exclusive”⁸⁸ implying that Parks and home owners may rely on other law (e.g. consumer protection). The Utah statute further states that it “does not prevent a city, county, or municipality from mediating and enforcing state statutes governing a mobile home park.”⁸⁹ We received no information that any local governmental entity was actively mediating or enforcing the Utah statute.

The Utah statute does not provide for any governmental agency or law enforcement officer to monitor compliance with the act or take steps to ensure compliance with the act. Similarly, while any individual could file a private law suit seeing specific performance of any legal right

⁸¹ AARP, MANUFACTURED HOUSING COMMUNITY TENANTS, *supra* note 45, at 56. If the court finds the resident’s action was brought in bad faith and for harassment, the court shall award the Park its reasonable attorney’s fees. *Id.* at 57.

⁸² *Id.* at 57.

⁸³ *Id.* at 58.

⁸⁴ *Id.* at 70 and 135.

⁸⁵ *Id.* at 59.

⁸⁶ *Id.*

⁸⁷ *Id.* at 70 and 135.

⁸⁸ Utah Code Ann. § 57-16-11.

⁸⁹ Utah Code Ann. § 57-16-17.

or actual damages for violation of a legal right, the Utah statute does not provide for any fines, treble damages or attorney's fees to make such legal proceedings actually viable.

While the Utah statute does have some of the rights recommended by the model statute, the absence of any enforcement mechanism -- either governmental or private -- means the statute operates more like a list of "best practices" than a law establishing legal rights worthy and capable of enforcement.

IV. Recommendations

In light of the right to own property, the Mobile Home Park Resident Act recognizes that parks need "speedy and adequate remedies against those who abuse the terms of a tenancy."⁹⁰ The Act also recognizes the vulnerability of mobile home owners:

"The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction."⁹¹

The purpose behind the Mobile Home Park Residency Act is balance -- "to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks."⁹²

In light of the calls and inquiries received over these past months, the Mobile Home Park Helpline makes the following recommendations to better achieve the intended balance:

- Utah statute should establish enforcement mechanisms for the Act, which could include governmental enforcement or private enhanced enforcement or (ideally) both.
 - *While the Utah statute does provide some substantive protections (right to sell home, right to be free of unconscionable rules) for mobile home owners / park residents, these do not function as "rights" without any enforcement mechanism included in the law.*
 - *Most other state provides for enforcement mechanism -- 33 for enhanced private remedies and 19 for state enforcement*
 - *Telling callers what rights the law gave them was not shown to solve many problems.*
 - *The most serious enforcement issue regards apparent violations of the law when residents seek to sell their mobile homes, resulting in major financial losses.*
 - *Other issues that that may violate the Act (e.g. \$5 monthly charge to read meters) are too small to be enforced without a governmental enforcement regime or enhanced penalties for private enforcement*

⁹⁰ Utah Code Ann. § 57-16-2.

⁹¹ *Id.*

⁹² *Id.*

- The Utah Legislature should study the AARP Model Statute provisions that grant mobile home owners / park residents substantive rights, and consider adopting such provisions
 - *Utah's Act provides primarily procedural protections (rights to notice and to discuss) but few substantive rights*
 - *Utah should consider adding substantive rights (e.g. long-term lease, market-based rent, warranty of habitability, HOA approval of rules, uniform enforcement of rules, right to be free of unfair or unreasonable rules, HOA right to purchase park)*
 - *The most serious concerns were that residents of some parks were captive to unlimited rent increases, new fees, new utilities charges, and diminished amenities with no or limited ability to relocate their homes and where these charges were higher than market rates.*

- The Utah Legislature should study the AARP Model Statute provisions that grant procedural rights, and consider adopting such provisions
 - *Utah's procedural protections are far less robust (only 5 days rather than 24 days to cure late rent; only 15 days rather than 145 days to sell a mobile home after eviction) than the model statute; with the result that mobile home owners risk losing all their investment in their home.*
 - *Utah's substantive rights to sell the mobile home in place do not have the procedural protections (time limits to approve purchaser, limited reasons for denial) that the model statute has.*

- The Utah Legislature should ask the Office of Legislative Research and General Counsel or the Helpline to review the Act and propose drafting changes to enhance clarity (especially with regards to notices and deadlines) and readability, at a minimum.

- The Utah Legislature should replace the Mobile Home Park Helpline with an agency empowered to investigate and enforce the Act, and to provide periodic reports and recommendations to the Legislature.