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Steven G. Davison

*University of Baltimore School of Law*, [sdavison@ubalt.edu](mailto:sdavison@ubalt.edu)

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# AN ANALYSIS OF THE MARYLAND MOBILE HOME PARK ACT: A NEED FOR AMENDMENT

Steven G. Davison†

*The author analyzes the Maryland Mobile Home Park Act, concluding that, while it affords mobile home owners some significant protection against abusive practices of park owners, it leaves many questions unresolved. The author offers a series of suggestions for the Act's improvement.*

## I. INTRODUCTION

The mobile home<sup>1</sup> is becoming an increasingly popular form of housing in the United States<sup>2</sup> for Americans who cannot afford single family homes, condominiums, or rental apartments. Many mobile home owners are forced to reside in mobile home parks<sup>3</sup> either because local zoning ordinances permit mobile home owners to reside only in mobile home parks,<sup>4</sup> or because they are unable to

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† B.S., Cornell University, 1968; J.D., Yale Law School, 1971; Associate Professor, University of Baltimore School of Law; Member of the Colorado Bar.

The author is Reporter for the Maryland Governor's Commission on Landlord-Tenant Law Revision. This article is based on reports prepared by the author for the Commission, but the views expressed are the personal views of the author and are not the official views of the Commission or the Executive Department of the State of Maryland.

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1. "Mobile Home" is defined as any structure that is
  - (i) Transportable in one or more sections;
  - (ii) Eight or more body feet in width and 30 or more body feet in length;
  - (iii) Built on a permanent chassis; and
  - (iv) Designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities.
2. See generally Note, *The Necessity for Specific State Legislation to Deal With the Mobile Home Park Landlord-Tenant Relationship*, 9 GEORGIA L. REV. 212 (1974).
3. The Maryland Mobile Home Park Act defines "park" to include "any property leased or held out for lease to two or more residents or prospective residents." MD. REAL PROP. CODE ANN. § 8A-101(d) (Supp. 1978).
4. See, e.g., ANNE ARUNDEL COUNTY, MD., CODE § 12-1025 (1976); CALVERT COUNTY, MD., ZONING ORDINANCE § 19.05 (1974); HOWARD COUNTY, MD., COMPREHENSIVE ZONING PLAN § 111(A)(1) (1977); MONTGOMERY COUNTY, MD., CODE § 54-57 (1976); PRINCE GEORGE'S COUNTY, MD., CODE § 79-13 (1976).

Several Maryland counties generally restrict mobile homes to mobile home parks, but permit them in certain districts as residences, see, e.g., BALTIMORE COUNTY, MD., ZONING REGULATIONS § 415.1 (1975); CAROLINE COUNTY, MD., ZONING ORDINANCE § 5-2(20) (1976), or special exceptions, see, e.g., SOMERSET COUNTY, MD., ZONING ORDINANCE §§ 5(1)(c)(12), 5(3)(c)(13), 5(5)(c)(5), 5(6)(c)(5), 5(7)(c)(11) (1976).

Courts generally have upheld zoning ordinances that restrict residence in mobile homes to mobile home parks. See, e.g., *City of Colby v. Hurtt*, 212 Kan.

purchase individual lots upon which to place their mobile homes. Because of local zoning ordinances that exclude mobile homes altogether, limit the number of mobile home parks in a community, or prohibit the expansion of existing mobile home parks, there is, however, a shortage of mobile home park lots.

Many mobile home park owners<sup>5</sup> have taken advantage of lot shortages and the difficulty and high cost of moving mobile homes.<sup>6</sup> Park owners have imposed upon park residents<sup>7</sup> fees not reflective of actual supplies or services provided to the residents and oppressive rules and regulations unrelated to protection of the park owner's property or the health, safety, or welfare of park residents.<sup>8</sup> To protect mobile home owners against such fees, rules, and regulations, the Maryland General Assembly enacted the Maryland Mobile Home Park Act<sup>9</sup> (hereinafter the "Act") in 1976.

The Act affords mobile home owners significant protection against many abusive practices of park owners. Amendments to the Act are required, however, to clarify (1) the types of fees, charges, rules, regulations, and lease provisions that can be imposed upon park residents, (2) the grounds and procedures for eviction and ejection of mobile home owners and their mobile homes, and (3) the applicability of Maryland's landlord-tenant statutes<sup>10</sup> to the mobile home park owner/home owner relationship.

This article will review and analyze the provisions of the Act with particular emphasis on fees and charges imposed on mobile home owners, the grounds and procedures for eviction or ejection,

113, 509 P.2d 1142 (1973); *Ex rel. Wilkerson v. Murray*, 471 S.W.2d 460 (Mo.), cert. denied, 404 U.S. 851 (1971); *Napierkowski v. Township of Gloucester*, 29 N.J. 481, 150 A.2d 481 (1959).

5. The Maryland Mobile Home Park Act defines "owner" to include "any person who has [an] interest in the park." MD. REAL PROP. CODE ANN. §8A-101(c) (Supp. 1978).
6. The cost of moving a mobile home several miles may amount to hundreds of dollars. Note, *The Necessity for Specific State Legislation to Deal with the Mobile Home Park Landlord-Tenant Relationship*, 9 GEORGIA L. REV. 212, 218 n.29 (1974).
7. The Maryland Mobile Home Park Act defines "resident" to include "a mobile home owner or tenant who resides in the park." MD. REAL PROP. CODE ANN. §8A-101(h) (Supp. 1978). This definition includes a mobile home owner and his lessee.
8. See generally Note, *The Community and the Park Owner Versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship*, 52 B.U.L. REV. 810, 813-16 (1972); Note, *Mobile Home Park Practices: The Legal Relationship Between Mobile Home Park Owners and Tenants Who Own Mobile Homes*, 3 FLORIDA ST. L. REV. 103, 111-17 (1975); Note, *The Necessity for Specific State Legislation to Deal with the Mobile Home Park Landlord-Tenant Relationship*, 9 GEORGIA L. REV. 212, 218 (1974).
9. MD. REAL PROP. CODE ANN. §§8A-101 to -114 (Supp. 1978).
10. *Id.* §§8-101 through -501 (1974 & Supp. 1978).

the applicability of provisions selected from Maryland landlord-tenant statutes to the mobile home park owner/home owner relationship, and rules, regulations, and lease provisions applicable to park residents. Legislative schemes present in other jurisdictions will be discussed and amendments to the Maryland Mobile Home Park Act will be suggested.

## II. FEES AND CHARGES IMPOSED UPON MOBILE HOME OWNERS

The Act prohibits or limits certain fees and charges imposed upon mobile home owners by park owners. For example, the Act prohibits a park owner from collecting gratuities from mobile home owners that are designed to "facilitate, influence, or procure any advantage over other prospective residents in connection with the lease, use, or occupation of the premises."<sup>11</sup> A person charged an illegal gratuity may obtain a court judgment for double the amount of the gratuity, plus court costs.<sup>12</sup> The Act, however, does not prohibit a park owner from charging a mobile home owner an entrance fee because it is a fee required to be paid by a new resident *prior* to entering the park.

Presumably, the intent of section 8A-104 was to prohibit a park owner from collecting a fee from a prospective resident in exchange for favoring that applicant over others.

The Act also prohibits a park owner from collecting a commission in connection with the sale of a mobile home unless he has acted as an agent for either party to the sale.<sup>13</sup> The Act apparently intends to prohibit a park owner from charging a resident a sale or transfer fee when a mobile home owner sells his mobile home to another, and the fee is not, in fact, a sales commission for services actually rendered in the sale of the home. The Act, however, does not expressly limit the amount of commission that may be charged by a park owner who acts as an agent. The part of a sales commission that exceeds an amount reflecting the reasonable value of services actually rendered should be considered a charge by a park owner who is not acting as an "agent for either party to the sale."

Finally, the Act limits the amount of fees that a park owner can charge for late payment of rent.<sup>14</sup> The Act, however, does not regulate the actual amount of rent imposed.

The Act fails to regulate other fees and charges, such as exit fees, head fees for guests and children, and fees for recreational

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11. *Id.* § 8A-104(b) (Supp. 1978).

12. MD. REAL PROP. CODE ANN. § 8A-104(c) (Supp. 1978).

13. *Id.* § 8A-110(c).

14. *Id.* § 8A-109.

facilities and social clubs.<sup>15</sup> Amendments are necessary in order to prohibit park owners from imposing fees or charges unless they represent actual services rendered to the resident with his consent. A limitation on fees and charges would protect prospective residents against inordinate expenses, resulting from entrance fees when they move into a mobile home park, and from exit fees when they move out of the park. At the same time, a provision should ensure that a park owner be reimbursed for expenses actually incurred, such as the cost of towing a mobile home into the park and preparing a lot with a platform, tiedowns, and anchors. An amendment should extend this policy to all other fees and charges imposed by park owners. Although some state laws prohibit park owners from charging entrance<sup>16</sup> and exit fees,<sup>17</sup> other states' legislatures have recognized that park owners incur expenses when a mobile home is moved into or out of the park and thus some statutes allow the park owner to charge for expenses incurred in placing<sup>18</sup> and removing<sup>19</sup> the mobile home.

### III. RENT CONTROL

A provision limiting these miscellaneous fees and charges would be ineffective if a park owner could impose unlimited rent. Absent rent control, a park owner could recover through escalated rent an amount even greater than the amount lost from a prohibition on miscellaneous fees and charges. Supply and demand is unlikely to be effective in controlling rent because of lot shortages in mobile home parks and the high cost of moving a mobile home. Any statute regulating mobile home park fees and charges, therefore, should be accompanied by rent controls.

Although rent control in residential rental apartments is a controversial subject,<sup>20</sup> Maryland imposed statewide rent control

15. The Act provides that a park owner may increase a park fee if he delivers written notice of the increase to every park resident at least thirty days before its effective date. MD. REAL PROP. CODE ANN. § 8A-105(a) (Supp. 1978). It can be argued that this section implies that the park owner may impose any fees and charges not regulated by the Act.
16. *E.g.*, CAL. CIV. CODE § 789.8 (West Supp. 1978); COLO. REV. STAT. § 38-12-209 (Supp. 1976); DEL. CODE tit. 25, § 7008(b)(5) (1974); MICH. STAT. ANN. § 19.855(28)(1)(a) (Supp. 1978-79).
17. *E.g.*, MICH. STAT. ANN. § 19.855(28)(1)(c) (Supp. 1978-79).
18. *E.g.*, MINN. STAT. ANN. § 327.43(1) (West Supp. 1978); N.H. REV. STAT. ANN. § 205-A:2(I) (1977); N.J. STAT. ANN. § 46:8C-2(c) (West Supp. 1978-79). *See also* FLA. STAT. ANN. § 83.764(3)(b) (West Supp. 1978).
19. *E.g.*, FLA. STAT. ANN. § 83.764(3)(b) (West Supp. 1978).
20. *See* Baar, *Rent Control in the 1970's; The Case of the New Jersey Tenants' Movement*, 28 HASTINGS L.J. 631 (1977); Comment, *The ABC's of MBR: How to Spell Trouble in Landlord/Tenant Relations (Up Against the Crumbling Walls)*, 10 COLUM. J. LAW & SOC. PROB. 113 (1974); Comment, *The New York Rent Stabilization Law of 1969*, 70 COLUM. L. REV. 156 (1970); Comment, *Residential Rent Control in New York City*, 3 COLUM. J. LAW & SOC. PROB. 30 (1967).

between July 1, 1974, and June 30, 1975.<sup>21</sup> In addition, Maryland counties, including Prince George's<sup>22</sup> and Montgomery,<sup>23</sup> have imposed rent controls for brief periods. Rent control programs are criticized on the grounds that they deter construction of new housing,<sup>24</sup> stagnate the rental housing market because there is a lower turnover rate in rent control apartments,<sup>25</sup> and result in substandard housing because landlords either are unable to afford proper maintenance or abandon buildings because they lack a reasonable return on investment.<sup>26</sup> The programs are also said to be expensive and difficult to administer.<sup>27</sup>

Rent controls applicable to mobile home parks might aggravate the problem concerning lot shortages by deterring landowners from opening new parks, inhibiting current park owners from expanding the number of spaces in their parks, or by causing them to close down or abandon the parks. These consequences could be avoided, however, by ensuring that mobile home park owners receive a fair return on their investment. Establishing a rent that provides a fair return should be an easier task with respect to mobile home parks than for residential rental apartments. Regulation of mobile home park rents would not require consideration of factors such as depreciation of the building, building maintenance expenses, and utility costs.<sup>28</sup>

Florida has established an administrative agency to control increases in rent and service charges and decreases in services in mobile home parks that contain one hundred or more lots.<sup>29</sup> Maryland should follow Florida's lead by establishing an administrative agency to regulate mobile home park rents, and providing the agency with guidelines with respect to the amount of rent that a park owner can charge. One approach to mobile home park rent control standards would be to direct an administrative agency to

21. 1974 Md. Laws, ch. 741.

22. PRINCE GEORGE'S COUNTY, MD., CODE §§ 13-180.1 to -180.3 (1975).

23. MONTGOMERY COUNTY, MD., CODE §§ 29-47 to -75 (Cum. Supp. 1976).

24. Compare Comment, *Residential Rent Control in New York City*, 3 COLUM. J. LAW & SOC. PROB. 30, 61 (1967) with Comment, *The New York Rent Stabilization Law of 1969*, 70 COLUM. L. REV. 156, 157 (1970).

25. Comment, *Residential Rent Control in New York City*, 3 COLUM. J. LAW & SOC. PROB. 30, 60 (1967).

26. Comment, *The ABC's of MBR: How to Spell Trouble in Landlord/Tenant Relations (Up Against the Crumbling Walls)*, 10 COLUM. J. LAW & SOC. PROB. 113, 118-19 (1974).

27. Comment, *The New York Rent Stabilization Law of 1969*, 70 COLUM. L. REV. 156, 176 (1970).

28. See generally Willis, "Fair Rents" Systems, 16 GEO. WASH. L. REV. 104 (1947); Comment, *The ABC's of MBR: How to Spell Trouble in Landlord/Tenant Relations (Up Against the Crumbling Walls)*, 10 COLUM. J. LAW & SOC. PROB. 113 (1974); Comment, *Residential Rent Control in New York City*, 3 COLUM. J. LAW & SOC. PROB. 30 (1967).

29. FLA. STAT. ANN. §§ 83.770-.794 (West Supp. 1978).

establish, rather than limit, the rent for each park at an amount that would provide a park owner with a reasonable return on his investment. For example, a park owner could recover (1) expenses, including an amount for the real estate mortgage or amortization of the purchase price, (2) appreciation in the land's value since the date of purchase, (3) amortization of the capital improvements, (4) property taxes, (5) other maintenance and operating expenses, and (6) a percentage of the preceding factors as profit.<sup>30</sup> The amount paid by a mobile home park resident as rent would be the total of the preceding six factors (less any applicable fees collected from park residents) divided by the total number of lots in the park, less the average number of spaces vacant per month.<sup>31</sup>

Florida,<sup>32</sup> which regulates only increases in rent or service charges, rather than the base rent or service charges, requires a park owner to demonstrate that increases in rent or charges reflect increases in maintenance and operating costs, property taxes, capital improvements, or appreciation in land value. The Florida scheme might be easier to administer than a program that establishes and regulates the overall rent, if the Act is also amended to prohibit fees and charges; however, it might prevent a reasonable return on investment to a park owner who has been relying upon such charges as a significant part of his profit. Furthermore, park owners might escape regulation under the Florida scheme by raising rents and charges prior to the effective date of the amendment. This could be avoided if the administrative agency is vested with the authority to control rents beginning at the date the amendment is enacted, rather than at the date the amendment becomes effective.

A program that establishes and regulates the overall rent is preferable to the Florida scheme because it ensures a reasonable return on a park owner's investment. The Act must also be amended, however, to prohibit miscellaneous charges and fees, such as entrance and exit fees, which do not reflect expenses actually incurred by the park owner. The Florida scheme would not reduce rents that are unreasonably high initially, nor would it ensure park owners a reasonable return on their investment.

#### IV. RULES, REGULATIONS, AND LEASE PROVISIONS APPLICABLE TO MOBILE HOME PARK RESIDENTS

Although the Act authorizes a mobile home park owner to promulgate certain types of rules and regulations, it is not clear whether a park owner may enforce rules and regulations with

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30. See, e.g., FLA. STAT. ANN. § 83.784 (West Supp. 1978).

31. Rent could be adjusted at any time when the park owner's expenses increased substantially.

32. FLA. STAT. ANN. §§ 83.770-.794 (West Supp. 1978).

respect to subjects not addressed. The Act expressly grants the power to mobile home park owners to promulgate rules and regulations with respect to

- (1) the size, quality, or construction standards for any mobile home to be placed or retained after resale in the park;
- or (2) the maintenance standards for any mobile home in the park or immediate area surrounding the mobile home, in accordance with the state or county health laws or regulations.<sup>33</sup>

The authority under subsection (1) to establish size, quality, and construction standards appears to allow a park owner to refuse to permit a recently constructed and purchased mobile home to be placed in his park, even though the mobile home complies with federal<sup>34</sup> and state<sup>35</sup> design and construction standards. Granting a mobile home park owner such authority may be justifiable on the grounds that some park owners may want to establish elite communities comprised of only the highest quality mobile homes, and owners of expensive, high quality mobile homes may desire to reside in such parks. If a significant number of mobile home park owners adopted such high standards, many mobile home owners would be unable to find a park in which their mobile homes could be located; this is particularly true in light of the current lot shortage and the requirement in many communities that mobile homes be located only in mobile home parks.<sup>36</sup> There is no evidence, however, that such a situation has developed in Maryland, so there is no need for an amendment to this section of the Act at the present time.

Subsection (2) restricts mobile home park rules establishing maintenance standards to those that implement state or county health laws or regulations. Several counties in Maryland have ordinances that require mobile home park residents to dispose properly of sewage and waste water,<sup>37</sup> provide that garbage cans be kept in a sanitary condition,<sup>38</sup> prohibit animals from running at large in the park,<sup>39</sup> and prohibit park residents from having open fires.<sup>40</sup> These restrictions could be enforced by park rules and regulations pursuant to subsection (2).

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33. MD. REAL PROP. CODE ANN. § 8A-102(a) (Supp. 1978).

34. 42 U.S.C. §§ 5401-5426 (1976); 24 C.F.R. §§ 280, 3282 (1978).

35. MD. ANN. CODE art. 41, §§ 266EE-1 through -8 (1978).

36. See note 4 *supra*.

37. *E.g.*, ANNE ARUNDEL COUNTY, MD., CODE § 12-1010 (1976); MONTGOMERY COUNTY, MD., CODE § 54-51 (1976).

38. *E.g.*, ANNE ARUNDEL COUNTY, MD., CODE § 12-1011 (1976); MONTGOMERY COUNTY, MD., CODE § 54-52 (1976).

39. *E.g.*, ANNE ARUNDEL COUNTY, MD., CODE § 12-1013 (1976); MONTGOMERY COUNTY, MD., CODE § 54-54 (1976).

40. *E.g.*, ANNE ARUNDEL COUNTY, MD., CODE § 12-1012 (1976); MONTGOMERY COUNTY, MD., CODE § 54-53 (1976).



Another section<sup>41</sup> of the Act permits a park owner to restrict the installation, service, or maintenance of any electric or gas appliance in, or any interior or exterior improvement in or to, the mobile home if it is in violation of any applicable law or a rule established by the owner.<sup>42</sup>

The Act prohibits a park owner from requiring any resident or prospective resident to purchase a mobile home, material, or equipment, including equipment necessary for installation of the mobile home and required by applicable law, from any particular person.<sup>43</sup> A park owner is also prohibited from preventing a mobile home owner from selling his mobile home in the park, or from requiring a resident who has sold his home in the park to remove it after any sale.<sup>44</sup>

The Act allows a park owner to change any park rule if he delivers written notice of the change to every park resident at least thirty days before the effective date of the rule.<sup>45</sup> If the notice is not given, the new rule presumably could not be enforced, although the Act is silent on this point.<sup>46</sup>

A park owner is also required by the Act to disclose park rules and fees and to deliver a copy of the rules to a prospective resident prior to the time he signs the lease or occupies the premises.<sup>47</sup> In addition, a copy of any park rules must be posted in a conspicuous place in the park.<sup>48</sup>

The Act does not require that park rules be reasonable or limit the extent to which park rules can restrict or burden residents.<sup>49</sup> Under the common law, a landlord is able to impose any rules, regulations, or lease provisions that he desires.<sup>50</sup> Rules that are changed or adopted after a resident signs his lease or begins his

41. MD. REAL PROP. CODE ANN. § 8A-106 (Supp. 1978).

42. This section does not prohibit the park owner from imposing a fee for installation of electric or gas appliances by a park resident. Several states prohibit such fees. *E.g.*, FLA. STAT. ANN. § 83.764(2) (West Supp. 1978); N.J. STAT. ANN. § 46:8C-2(b)(1) (West Supp. 1978-79); N.Y. REAL PROP. LAW § 233(f)(3)(b) (McKinney Supp. 1978-79).

43. MD. REAL PROP. CODE ANN. § 8A-110(a) (Supp. 1978).

44. *Id.* § 8A-110(b) (Supp. 1978). A park owner is required to offer a mobile home buyer, who has purchased a mobile home from an existing park resident, "a new written lease for the remainder of the lease then in existence, but in no event, for a period of less than one year." *Id.* § 8A-105.

45. MD. REAL PROP. CODE ANN. § 8A-108(a) (Supp. 1978).

46. The Act expressly provides, however, that a park owner may not collect any fee increase from a park resident who failed to receive thirty days written notice of the increase. MD. REAL PROP. CODE ANN. § 8A-108(b) (Supp. 1978).

47. MD. REAL PROP. CODE ANN. § 8A-103(a) (Supp. 1978).

48. *Id.* § 8A-102(c) (Supp. 1978).

49. The Act, however, states that a park rule that requires park owner approval of a mobile home buyer who wishes to reside in the park must be reasonable. MD. REAL PROP. CODE ANN. § 8A-102(b)(2) (Supp. 1978).

50. See Note, *Landlord-Tenant Reform: Arizona's Version of the Uniform Act*, 16 ARIZONA L. REV. 79, 124 (1974).

tenancy, however, may be invalidated by a court if found to be unreasonable.<sup>51</sup> Mobile home park owners should not have the latitude granted by the common law because the park owner currently has the upper hand in negotiating leaseholds, as a result of lot shortages and requirements in many communities that mobile homes be located only in mobile home parks.<sup>52</sup>

Consequently, the Act should be amended to regulate the lease provisions and rules and regulations that a park owner can impose upon park residents. One legislative solution is to authorize Maryland courts to invalidate mobile home park lease provisions and rules that are found to be unconscionable, arbitrary, capricious, or unreasonable. Maine<sup>53</sup> and Massachusetts<sup>54</sup> statutes invalidate mobile home park rules that are unfair, unconscionable, or unreasonable. A New York<sup>55</sup> statute renders unenforceable mobile home park rules and regulations that are unreasonable, arbitrary, or capricious. Florida authorizes its courts to invalidate unconscionable mobile home park lease provisions<sup>56</sup> and allows only reasonable mobile home park rules to be enforced.<sup>57</sup> Arizona<sup>58</sup> also authorizes its courts to invalidate unconscionable lease provisions and rules.

The Maryland statute could regulate lease provisions and rules by prescribing that they are valid only if (1) "their purpose is to promote the convenience, safety or welfare" of park residents on their premises,<sup>59</sup> (2) they make "a fair distribution of services and facilities" held out for residents generally,<sup>60</sup> (3) they "are reasonably related to the purpose for which [they are] adopted,"<sup>61</sup> (4) they apply to all park residents "in a fair manner,"<sup>62</sup> (5) they "are sufficiently explicit in prohibition, direction or limitation" of the resident's conduct "to fairly inform [him] of what he must or must not do to comply,"<sup>63</sup> and (6) they "are not for the purpose of evading the obligations" of the park owner.<sup>64</sup>

An alternative, or supplementary, legislative approach would be to prohibit specific park lease provisions and rules in addition to those already prohibited by the Act.<sup>65</sup> Additional lease provisions or

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51. *Id.*

52. *See note 4 supra.*

53. ME. REV. STAT. tit. 30, § 4066-B(4) (1978).

54. MASS. ANN. LAWS. ch. 140, § 32L(1) (Michie/Law Co-op Supp. 1978).

55. N.Y. REAL PROP. LAW § 233(f) (McKinney Supp. 1977-78).

56. FLA. STAT. ANN. § 83.754 (West Supp. 1978).

57. *Id.* § 83.760(3).

58. ARIZ. REV. STAT. § 33-1411 (Supp. 1977-78).

59. *Id.* § 33-1452(A)(1).

60. *Id.*

61. *Id.* § 33-1452(A)(2).

62. *Id.* § 33-1452(A)(3).

63. *Id.* § 33-1452(A)(4).

64. *Id.* § 33-1452(A)(5).

65. MD. REAL PROP. CODE ANN. §§ 8A-109,-110 (Supp. 1978).

rules that should be prohibited by the Act include those prohibited in leases for residential property, such as confession of judgment and self-help eviction clauses,<sup>66</sup> assuming these provisions are not currently applicable to the park owner/home owner relationship. In addition, the Act should prohibit exculpatory clauses<sup>67</sup> and rules or lease provisions requiring tenants to provide permanent improvements to the park, such as concrete patios, platforms, tiedowns, and anchors.

A third alternative would be to establish a statutory model lease and model park rules applicable to all mobile home parks.<sup>68</sup> This approach is not recommended because of its inflexibility when applied to mobile home parks with differing problems and conditions.

Maryland statutes could contain provisions that authorize courts to invalidate unreasonable or unconscionable rules and lease clauses and, at the same time, provisions that prohibit certain enumerated rules and lease provisions. Provisions containing specific prohibitions should be enacted because they provide park owners and residents with precise guidelines. Provisions that authorize invalidation of unconscionable rules and lease clauses are insufficient, by themselves, to protect park residents. Residents may not want to risk breaching a lease clause and waiting for a judicial determination as to the clause's validity; an adverse decision may result in the resident's eviction.

## V. EVICTION OR EJECTMENT OF MOBILE HOME PARK RESIDENTS

### A. *Grounds for Eviction or Ejectment*

The Act provides in section 8A-107 that a park owner may "evict" a resident only for a failure to pay rent, a violation of "a federal, state or local law that is detrimental to the safety and welfare of other residents in the park," or a repetitive violation of any rule or lease clause.<sup>69</sup> The Act, however, fails to define the term "evict" and leaves unanswered the question of whether a park owner's failure to renew a written lease, or ejectment of a holdover<sup>70</sup> or periodic<sup>71</sup> tenant, constitutes an "eviction," which is permissible only for the reasons specified in section 8A-107. Maryland courts have defined "eviction" as an act of a landlord or his agent which

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66. *Id.* § 8-208 (Supp. 1978).

67. *Cf. id.* § 8-105 (1974) (exculpatory clauses that relieve landlords of liability for negligence or other misconduct are against public policy and void).

68. *See, e.g.*, CONN. GEN. STAT. ANN. §§ 21-82 through -84 (West Supp. 1978).

69. MD. REAL PROP. CODE ANN. § 8A-107(a) (Supp. 1978).

70. *See id.* § 8-402 (1974 & Supp. 1978).

71. *See id.* § 8-402(b)(4) (Supp. 1978).

deprives a tenant of the beneficial enjoyment of his premises.<sup>72</sup> The courts have not, however, indicated what acts constitute an eviction. An interpretation of section 8A-107 requires consideration of section 8A-103(t),<sup>73</sup> which provides that a park owner must offer a prospective year-round park resident a written lease for a period of not less than one year. If existing park residents, who wish to reside permanently in the park, are considered to be "prospective year-round residents" under this section, then a park owner would be required to renew their written leases for a period of one year, unless a resident violated section 8A-107.

Section 8A-107 should be interpreted to be a "good cause" eviction statute, that is a statute that limits the circumstances in which a park resident and his mobile home may be removed from the park. The present lot shortage and the difficulty and cost incident to moving a mobile home require such an interpretation. A Florida statute,<sup>74</sup> which limits the reasons for which a mobile home park owner may "evict" a park resident, has been interpreted as being applicable to a park owner's failure to renew a resident's written lease and an attempt to eject the resident after expiration of the term,<sup>75</sup> and to a park owner's attempt to eject a resident holding under an oral lease.<sup>76</sup>

The Florida statute provides a good cause ground for eviction of park residents not found in section 8A-107 — a change in the use of the park land. In addition, the Florida statute was interpreted by the Florida Supreme Court as permitting a park owner to terminate a park resident's tenancy after the resident had been in the park a "substantial duration," provided he gives the resident at least twelve months notice of the termination;<sup>77</sup> the Maryland statute has no such provision. The New Jersey eviction statute<sup>78</sup> also provides good cause grounds for eviction not found in the Maryland Act, including disorderly behavior of the tenant which destroys the peace and quiet of other tenants, damage or injury to the premises by willful or grossly negligent conduct of the tenant, and the park owner's desire to change the use of his property.<sup>79</sup>

The Maryland General Assembly should amend section 8A-107 of the Act by defining "evict" to include an act of the park owner or his agents that would permanently remove a park resident or his mobile home from the park. The definition would then encompass

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72. *City of Baltimore v. Latrobe*, 101 Md. 621, 638-40, 61 A. 203, 209 (1905).

73. MD. REAL PROP. CODE ANN. § 8A-103(b) (Supp. 1978).

74. FLA. STAT. ANN. § 83.759 (West Supp. 1978).

75. *Donovan v. Environs Palm Beach*, 309 So. 2d 561 (Fla. Dist. Ct. App. 1975).

76. *Palm Beach Mobile Homes, Inc. v. Strong*, 300 So. 2d 881 (Fla. 1974); *Holiday Plaza Inv. Corp. v. Clark*, 306 So. 2d 161 (Fla. Dist. Ct. App. 1975).

77. *Palm Beach Mobile Home, Inc. v. Strong*, 300 So. 2d 881, 888 (Fla. 1974).

78. N.J. STAT. ANN. § 2A:18-61.1 (West Supp. 1978-79).

79. *Id.* § 2A:18-61.1(b), (c), (g), (h), (k), (l).

situations in which a park resident is ordered by the park owner to remove his mobile home and to purchase a new one if he desires to continue to reside in the park. Section 8A-107 of the Act should also be amended to specify additional good cause grounds for eviction, such as those grounds provided in the Florida<sup>80</sup> and New Jersey<sup>81</sup> good cause eviction statutes. In addition, section 8A-107 should be amended to permit a park owner to require a park resident to remove a mobile home that is in a dilapidated, rundown or aged condition, provided that the park resident is permitted to continue to reside in the mobile home park in a mobile home that complies with park rules. Removal of rundown or dilapidated mobile homes is justified for health and safety reasons, while removal of old mobile homes may be desired by park owners in order to maintain or upgrade the appearance of the park. The average useful life span of a mobile home is approximately twenty years.<sup>82</sup>

### *B. Procedures for Eviction or Ejectment*

The Act, although specifying the grounds for eviction, fails to prescribe the procedures for eviction or ejectment of park residents. The reasons for this omission may be that the General Assembly presumed a park owner could evict a park resident who has failed to pay rent, pursuant to section 8-401 of the Real Property Article,<sup>83</sup> eject a holdover tenant, pursuant to section 8-402<sup>84</sup> and evict a resident who has substantially breached his lease, pursuant to section 8-402.1.<sup>85</sup> If section 8A-107 is not construed to be a "good cause" eviction statute, applying to any removal of a park resident from the park, then section 8-402 might be applicable to ejectment of a park resident who holds over after the expiration of the term.

Section 8-401 provides a "landlord," who has leased "property" to a "tenant," with a summary remedy for regaining possession of the "premises so rented" when the tenant fails to pay rent.<sup>86</sup> An order of eviction under section 8-401 is executed by removing "all [of] the furniture, implements, tools, goods, effects or other chattels of every description" belonging to the tenant from the property.<sup>87</sup> Section 8-402 provides a similar summary remedy to a "landlord" to regain possession of "leased property" from a "tenant" who holds

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80. FLA. STAT. ANN. §83.759 (West Supp. 1978).

81. N.J. STAT. ANN. §2A:18-61 (West Supp. 1978-79).

82. Note, *Mobilehomes: Present Regulation and Needed Reforms*, 27 STAN. L. REV. 159, 165 n.40 (1974).

83. MD. REAL PROP. CODE ANN. §8-401 (Supp. 1978).

84. *Id.* §8-402 (1974 & Supp. 1978).

85. *Id.* §8-402.1 (Supp. 1978).

86. *Id.* §8-401(a) (1974 & Supp. 1978).

87. *Id.* §8-401(d) (Supp. 1978).

over after notice to quit.<sup>88</sup> Under section 8-402.1, a "landlord" may regain possession of the "premises" from a "tenant" who has substantially breached his lease, after giving the tenant one month's notice of the alleged lease violation.<sup>89</sup>

"Landlord" and "tenant," within the meaning of sections 8-401, 8-402, and 8-402.1 are not defined by statute,<sup>90</sup> but a mobile home park resident who rents a lot in a mobile home park and the park owner satisfy the elements necessary for a common law landlord-tenant relationship. This relationship exists because there is (1) permission or consent by the park owner to occupancy by the mobile home owner, (2) subordination by the home owner to the park owner's title and rights, (3) a reversion in the park owner, (4) the creation of an estate in the home owner's lot, (5) transfer of possession and control of the lot to the home owner, and (6) either an express or implied agreement between the park owner and home owner to pay rent.<sup>91</sup>

The lot rented by a mobile home owner is within the common law definitions of "premises" and "property." "Premises" refers to land, as well as buildings, that are leased.<sup>92</sup> "Property" refers to land as well as personal effects.<sup>93</sup> Consequently, a leased mobile home park lot is included within the definitions of "premises" and "property" under sections 8-401, 8-402, and 8-402.1.

Removal of a mobile home, pursuant to section 8-401, is contingent upon two factors. The park resident must be delinquent in payment of rent and the mobile home must be included within the definition of "all . . . chattels of every description." The term "chattels" is not defined by section 8-401. Applying the doctrine of *ejusdem generis*,<sup>94</sup> it might be argued that a mobile home is not in the same class of property as "furniture, implements, tools, goods,

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88. *Id.* §§ 8-402(b)(1), (b)(4) (1974 & Supp. 1978).

89. *Id.* § 8-402.1 (Supp. 1978).

90. "Landlord" is defined to include "any landlord, including a 'lessor.'" MD. REAL PROP. CODE ANN. § 1-101(g) (1974). "Tenant" is defined to include "any tenant, including a 'lessee.'" *Id.* § 1-101(m) (1974).

91. 51C C.J.S. *Landlord and Tenant* § 2(1) (1968).

92. The Court of Appeals of Maryland has held that a lease of "premises . . . consisting of a one story building" included so much of the land as was necessary for the complete enjoyment of the building that was leased. *Jackson v. Birgfeld*, 189 Md. 552, 56 A.2d 793 (1948). Therefore, "premises" refers to land as well as buildings. The Act defines "premises" to include "any . . . lot, plot, or parcel in the park; or . . . [a] [b]uilding, structure, or mobile home in the park." MD. REAL PROP. CODE ANN. § 8A-101(f) (Supp. 1978).

93. *E.g.*, *Pollitzer v. Beinkemper*, 76 S.C. 517, 57 S.E. 475 (1907).

94. Under the doctrine of *ejusdem generis* in the construction of statutes, "where general words follow an enumeration of . . . things, by words of a particular and specific meaning, such general words, are not to be construed in their widest extent, but are to be held as applying only to . . . things of the same general kind or class as those specifically mentioned." BLACK'S LAW DICTIONARY 608 (4th ed. 1968).

[and] effects," which are types of personal property usually found within a dwelling or other building. On the other hand, section 8-401 refers to "all . . . chattels of every description," as well as to specific types of property. "Chattel" has been defined to include property with wheels, such as wagons and motor vehicles.<sup>95</sup> Therefore, "chattel" might include a mobile home.

For ordinary tax purposes, Maryland assesses and values mobile homes that are used for residential purposes and are permanently attached to the land or connected to water, gas, electric or sewage facilities in the same manner and to the same extent as other improvements to land.<sup>96</sup> This provision appears to reflect legislative policy that a mobile home, which is permanently attached to the land or connected to a public utility, is an improvement to real property and not therefore a chattel.

If sections 8-401, 8-402, and 8-402.1 are interpreted as being available to a mobile home park owner who seeks to evict a park resident and his mobile home from the park, the General Assembly should amend these sections to make them inapplicable to mobile home park evictions and ejections. Concomitantly, section 8A-107 of the Act should be amended to prescribe procedures by which a mobile home park owner may evict or eject a park resident and his mobile home. One reason for this recommendation is that section 8A-107 authorizes eviction of a park resident for failure to pay rent after thirty days notice from the park owner, which does not allow a park resident to cure his failure to pay rent. Sections 8-401(c)(5)<sup>97</sup> and 8-401(e)<sup>98</sup> of the Real Property Article, however, permit a tenant to avoid eviction for nonpayment of rent if he pays the landlord all "past due rent and late fees, plus all court awarded costs and fees, at any time before actual execution of the eviction order."<sup>99</sup> At the present time, a court might hold that section 8-401 is available to mobile home park owners, but that section 8A-107 supersedes the right to cure provisions contained in section 8-401. Such a holding would impose severe hardships on park residents because of the high cost of moving mobile homes and current lot shortages.

Another problem is presented when a mobile home park owner attempts to eject a mobile home park resident, under the procedures outlined in section 8-402, for a reason specified in section 8A-107 of the Act. Section 8-402 provides for ejection of holdover and periodic tenants without regard to the grounds for the ejection, while

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95. *E.g.*, *Detroit Trust Co. v. Detroit City Serv. Co.*, 262 Mich. 14, 31, 247 N.W. 76, 82 (1933).

96. MD. ANN. CODE art. 81, § 19(c) (1975).

97. MD. REAL PROP. CODE ANN. § 8-401(c)(5) (Supp. 1978).

98. *Id.* § 8-401(e) (Supp. 1978).

99. *Id.*

section 8A-107 specifies the grounds for eviction of a park resident. Section 8A-107 requires a park owner to give a park resident written notice of the violation at least thirty days before the resident is required to vacate the premises. One month's notice to quit must be given before a landlord can utilize section 8-402 if the tenancy is for a fixed term, month-to-month, or at will.<sup>100</sup> Section 8-402(b)(4), on the other hand, requires three month's notice to quit if the tenancy is year-to-year, and a week's notice to quit if the tenancy is week-to-week.<sup>101</sup>

The procedures for actual execution of eviction or ejection orders under sections 8-401 and 8-402 are inappropriate legal mechanisms for removal of mobile homes from mobile home parks. Section 8-401 requires that a sheriff execute an eviction or ejection order by removing a tenant's goods and chattels from the leased property or premises; the same procedure would probably be followed under sections 8-402 and 8-402.1.<sup>102</sup> Moving a mobile home even a few miles can cost several hundred dollars.<sup>103</sup> Heavy-duty trucks must be used to tow large mobile homes, and a mobile home may have to be prepared for towing. Expertise is required to prepare a mobile home for towing if it has skirting, tiedowns, anchors, and lacks wheels and has been placed on a platform or foundation. Sheriffs are unlikely to have the equipment, expertise, or funds to move a mobile home. Maryland presently authorizes a sheriff to recover only \$10 from a plaintiff to cover the cost of executing a judgment.<sup>104</sup>

Another problem facing a sheriff is determining a suitable location to which the mobile home can be moved. Sections 8-401 and 8-402 do not specify where a sheriff is to place a tenant's goods after removing them from the leased premises or property. Generally, if the tenant does not make arrangements for the disposition of his personal property, his goods will be placed on the nearest sidewalk, where they can be subject to vandalism or theft. If a mobile home is removed from a mobile home park and placed on the side of a road or highway, it may create a traffic hazard or interfere with the parking of automobiles. The mobile home might be stolen or vandalized. There also is the possibility that the owner or others might move into the mobile home, violating zoning ordinances that permit residence in a mobile home only in a mobile home park.<sup>105</sup> It would

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100. *Id.* § 8-402(b)(1) (1974).

101. *Id.* § 8-402(b)(4) (Supp. 1978).

102. These sections require the sheriff to execute judgment by restoring possession to the landlord, which implicitly authorizes the sheriff to remove the tenant's goods and possessions from the premises.

103. See note 6 *supra*.

104. MD. CTS. & JUD. PROC. CODE ANN. § 7-402(a)(2) (Supp. 1978).

105. See note 4 *supra*.



be costly and difficult for police and zoning officials to prevent such occurrences. An alternative would be to place mobile homes that have been removed from mobile home parks in a police impoundment lot or on other government property, but suitable sites may be either unavailable or insufficient in size.

The method of eviction and ejection under Maryland's landlord-tenant statutes<sup>106</sup> are unsuitable for the removal of mobile homes from mobile home parks. The Maryland General Assembly should enact legislation making these landlord-tenant statutes inapplicable to mobile home park evictions and ejections and providing for eviction or ejection of a mobile home by the mobile home park owner himself. Such eviction should be pursuant to a court order and under the supervision of a sheriff to ensure maintenance of peace and protection of property. A mobile home park owner is more likely than a sheriff to have the expertise, equipment, and personnel to prepare a mobile home for towing and to tow the mobile home from the park, particularly if the park owner is also in the business of selling mobile homes.

The mobile home owner should be required to pay the park owner or his agents, and the owner of the site to which the mobile home is moved, for the actual or reasonable costs of moving, storing, and protecting the mobile home. Persons who incur costs in moving, storing and protecting the home after ejection or eviction from a park should have a lien upon the mobile home, enforceable by a judicially ordered public or private sale if the mobile home owner fails to pay for these costs within a reasonable period of time.<sup>107</sup> A court order should specify the location to which the mobile home will be moved, such as another area in the park, a mobile home sales franchise owned by the parkowner, or an available impoundment lot to ensure that the mobile home will not be stolen, vandalized, or occupied. In addition, the court order should specify the date and time of ejection and be served upon the mobile home owner. If the mobile home owner were to fail to remove his home from the park by the date specified in the court order, the park owner could remove the mobile home from the park.

## VI. APPLICABILITY OF MARYLAND LANDLORD-TENANT STATUTES TO THE PARK OWNER/HOME OWNER RELATIONSHIP

The Act fails to state whether Maryland landlord-tenant statutes are applicable to the mobile home park owner/home owner relationship. The landlord-tenant statutes,<sup>108</sup> with one bare excepti-

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106. MD. REAL PROP. CODE ANN. §§ 8-401, -402 (1974 & Supp. 1978).

107. *Cf. Id.* §§ 8-301 to -332 (1974) (landlord may seize and sell tenant's personal property for rent due).

108. MD. REAL PROP. CODE ANN. §§ 8-101 *et seq.* (1974 & Supp. 1978).

on,<sup>109</sup> are silent on this point as well. It might be argued that the General Assembly did not intend that landlord-tenant statutes apply to the park owner/home owner relationship because only one statute expressly indicates such an application. In addition, it can be argued that landlord-tenant statutes that refer to "dwelling unit,"<sup>110</sup> "building,"<sup>111</sup> "improvements,"<sup>112</sup> and "premises"<sup>113</sup> are inapplicable to mobile home park residents who only rent a lot within the park. Many landlord-tenant statutes should be applicable to the park owner/home owner relationship because the rights conferred by the statutes are as important to mobile home park residents as to other lessees. For example, mobile home park residents should have the rights conferred by the security deposit,<sup>114</sup> exculpatory clause,<sup>115</sup> mitigation of damages,<sup>116</sup> void lease provisions,<sup>117</sup> and rent escrow<sup>118</sup> statutes.

## VII. CONCLUSION

Owners of mobile homes are usually required by zoning ordinances to live in mobile home parks, but lots in mobile home parks are scarce. Mobile home park owners take advantage of their superior bargaining position to levy exorbitant fees and charges and to impose unreasonable rules, regulations, and lease provisions. The Maryland Mobile Home Park Act provides park residents with protection against many abusive practices of park owners, but the Act should be amended to render it a "good cause" eviction statute and to establish procedures for the eviction of mobile home park residents and their mobile homes. The Act should also be amended to establish an administrative agency to regulate rents and fees charged by mobile home park owners; rents should be set at a level ensuring a park owner a reasonable return on his investment, while fees should be permitted only if they are for services or supplies provided to park residents with their consent. Finally, the Act should be amended to prohibit certain rules and lease provisions, and to clarify the applicability of Maryland's landlord-tenant statutes to mobile home parks.

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109. *Id.* § 8-208.1 (Supp. 1978).

110. *Id.* §§ 8-203.1, -204, -207, -211 (1974 & Supp. 1978).

111. *Id.* § 8-113 (1974).

112. *Id.* § 8-112 (1974).

113. *Id.* §§ 8-105, -114, -203.1, -204, -211, -301 to -332, -403 (1974 & Supp. 1978).

114. *Id.* § 8-203 (1974).

115. *Id.* § 8-105 (1974).

116. *Id.* § 8-207 (1974).

117. *Id.* § 8-208 (Supp. 1978).

118. *Id.* § 8-211 (Supp. 1978).