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RESIDENTIAL TENANCIES PROJECT

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MOBILE HOMES

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1. Introduction

The recent growth of the mobile home industry is beginning to transform the Canadian housing market. The main reason for this upsurge in the desirability and popularity of mobile homes is the relative low cost of units and the inability of many families to afford the purchase of traditional housing. Mobile home ownership represents a halfway point between owning and renting. The mobile home owner has many of the advantages of an owner-occupied house (single family dwelling) at a reduced cost in money, time and effort. With this growth, there has developed an awareness of the need to regulate the mobile home industry in general and the mobile home park owner-home relationship in particular.

This paper will assess the mobile home park owner-mobile home owner relationship, and will describe the ways in which various legislatures have dealt with it. Because the bargaining position of the mobile home owner is weaker, under present law and circumstances, than the position of the park owner, the paper places greater emphasis upon the problems of the former.

Terminology sometimes presents a problem. Throughout this paper the mobile home owner will be described as the "owner-tenant". The mobile home park owner will be referred to as the "park-landlord".

2. Problems in the Mobile Home Park-Landlord/Owner-Tenant Relationship

As noted above, mobile homes represent one possible solution to the pressing housing problem due to the low cost of such units. However, some communities oppose the location of such units within their jurisdiction. Such opposition is

often based on the misconception that mobile home residents are irresponsible "transients" who demand public services without paying a fair share of the taxes.

The literature, however, reveals an opinion that this attitude fails to reflect current reality. Once settled in a mobile home park most of the park residents never move their homes. Owners of mobile homes outside normally transient areas, such as college towns, do not move frequently. It seems that the average tenure in a mobile home park is approximately five years and increasing.

Nevertheless, many communities attempt to exclude mobile homes entirely or to severely limit the areas in which they may be placed. In large urban centres, mobile homes cannot be placed on single residential lots. Instead, they must be located in mobile home parks. As a result of such restrictive zoning, the mobile home owner is frequently forced to rent a space from a mobile home park operator. As park space within large urban areas becomes more scarce, the operator of a conveniently located park becomes increasingly able to dictate rental terms.

(1) <u>The Economic Problem</u>

Central to the owner-tenant's problem is the scarcity of available space. In urban areas, zoning bylaws often require the owner-tenant to lease space from a park owner, if mobile homes are permitted at all. Parks which are located near to the downtown area are oftentimes full to capacity and in some cases have a substantial waiting list. Furthermore, bylaws which require mobile homes to be located in parks also limit the number of parks thus compounding the location problems of the owner-tenant.

Many dealers believe that the potential purchaser's difficulties in locating an available space will impede sales. Accordingly, if a dealer owns his own park it might be possible to obtain a competitive advantage. This has resulted in the creation of "closed" parks which are restricted to those who have purchased a mobile home from the owner landlord. As land in urban fringe areas becomes much more scarce and expensive, this type of sales arrangement may increase.

(2) The Entrance Fee and Exit Fee

The purchaser of a mobile home sometimes finds that he must pay a non-refundable entrance fee before he can move his mobile home into a park. This fee may be substantial and is alleged to cover the cost of utility connections and the concrete slab upon which the trailer is placed.

Furthermore, when the owner-tenant seeks to sell his mobile home, he may be faced with an even costlier practice. Since the park-landlord has an unrestricted right to refuse an owner-tenant, he can require the owner-tenant to remove his unit and charge a substantial "exit fee" in the process. Alternatively, if a prospective owner-tenant has not purchased his mobile home from the park-landlord he may be required to pay a suitable "commission" which is considered by the park-landlord to be reimbursement for the "lost sale".

Because of the high cost of moving a mobile home and the difficulty of finding a new location, the owner-tenant has little choice but to pay the exit fee or commission.

The "closed" park, referred to above, together with the practices of requiring entrance, exit, and/or resale fees

may potentially tempt an unscrupulous park-landlord to evict his tenants in order to generate additional revenue. The problems of scarcity and restrictive zoning bylaws are compounded by the lack of clearly defined rental agreements. Surprisingly, most owner-tenants do not have a written lease. Accordingly, the park-landlord has a number of weapons at his disposal, and he can evict the owner-tenant whenever he wishes.

This creates an unusual burden on the owner-tenant which is not shared by ordinary apartment dwellers. The owner-tenant cannot simply vacate the premises. He must protect a substantial investment and accordingly, he must either move the unit and pay a substantial exit fee (if he can find another space), or he must find a buyer in which case he may have to pay a "resale commission" to the park-landlord. Either option means great expense to the owner-tenant.

(3) Park Rules

Evictions and exit fees both appear to be tied to violation of the park rules. The practice appears to be to make these rules available to the tenant after he moves into the park. However, they may be ambiguous or unduly restrictive thus making eviction at the park-landlord's whim a relatively simple matter.

Rules such as the following are not uncommon:

(1) "Improper conduct of any kind will not be tolerated";

(2) "The management reserves the right to evict anyone who persistently and deliberately speaks in a derogatory manner of the park"; and

(3) "The management reserves the right to eject without notice any objectionable person or persons who cause a disturbance or become a nuisance. The management shall be the sole judge of who is objectionable and what constitutes a disturbance or a nuisance".

More commonly, some park rules require fees for visitors or restrict the delivery of commodities such as dairy products to certain companies. Rules such as these may be necessary, but it has been argued that in the hands of an unscrupulous park-landlord they may be used as a pretext to evict tenants in order to increase profits by the collection of exit fees or resale commissions. Furthermore, the park-landlord often reserves the right to alter the rules at will. In a relationship where a lease is an exception and not the rule, the owner-tenant is afforded little protection against eviction.

(4) Restrictions on Services

The park-landlord's profit making potential is not limited to the fees which may be extracted from entering and departing owner-tenants. The park-landlord may reap additional profits if he requires that owner-tenants buy specified commodities only from certain dealers and participates in a kick-back arrangement with those dealers. Under such an arrangement, the park-landlord may receive services from the distributor or a portion of a higher cost paid by the owner-tenant. Such practices are compounded by the ever-present ability of the park-landlord to evict those owner-tenants who denounce such questionable practices.

(5) Summary

The mobile home owner predicament stemming from a problem of scarcity, is characterized by three particular issues: (1) the practice on the part of park-landlords of requiring various fees such as exit fees, entrance fees, and resale commissions; (2) the park-landlord oriented rules and regulations which may be unduly repressive of owner-tenants; and, (3) the practice, in most mobile home parks, of not requiring a written lease or agreement.

The fundamental problem with entrance fees is that the owner-tenant may lose his investment if the park-landlord decides to terminate the tenancy. Assume that *A*, a mobile home owner, wants to move into a community. Assume further that zoning bylaws require the placement of the mobile home in a park and that *B* owns the only mobile home park with a vacancy. As a condition of tenancy *B* requires a non-refundable $1,000 entrance fee. Furthermore, *B* does not offer a written lease (which is permissible since he is not required to do so). *A* accepts the vacancy and assumes occupancy, thereby establishing a tenancy at will which can be terminated by written notice through the unilateral action of either the park-landlord or the owner-tenant. If demand for available space is high, *A* has little choice but to comply with *B*'s terms if he is to live in the community. If, after six months or so, *B* decides to terminate the tenancy for any reason whatsoever, *A* has no remedy under the existing landlord-tenant law. Although *A* may have assumed that he could remain in the park so long as he paid rent and did not breach the park rules, he has now forfeited his entrance fee and has no lot for his mobile home. *A* also has to find a new mobile home park with a vacancy and it is not unlikely that he will have to pay another entrance fee and make other investments in the new park as well as pay the exit fee to *B*. If he sells

the mobile home then he may have to pay the resale commission.

In addition to the possibility of having to pay the various fees, upon moving into a mobile home park, for example, the owner-tenant may be required to pour a concrete patio (if one is not available), put up an awning, install skirting around the base of the mobile home and install anchors and tiedowns. Such park investments are a potential burden to the owner-tenant, because much of the investment will be lost if the tenancy is terminated.

Once in a mobile home park, an owner-tenant may, and usually is, required to comply with certain rules and regulations promulgated by the park-landlord. Theoretically, such rules are covenants to which the owner-tenant agrees upon assuming occupancy. Under traditional analysis, if the prospective owner-tenant found the rules too confining, he could always take his mobile home elsewhere. In reality, however, there is often no other space to move it.

As noted above, such rules may be oppressive. In addition, the owner-tenant must cope with the fact that some rules may be changed at the whim of the park-landlord. If new rules are adopted, they may require the outlay of additional money, as where the park owner decides that all mobile homes in the park must have an awning or a patio. In such a situation, the owner-tenant may be faced with the unpleasant choice of compliance with a rule he never agreed to or be evicted. Considering the potential cost of a forced move, few owner-tenants would choose to risk eviction.

Although mobile home park entrance fees, exit fees, resale commissions, and unreasonable rules and regulations serve as evidence of a park-landlord's opportunity to dominate

the owner-tenant, the park-landlord's unequal bargaining power is best exemplified by his ability to terminate the mobile home tenancy. This is principally due to the absence of any written lease or agreement regulating the relationship or, alternatively, any statutory conditions. Under the existing law, the owner-tenant is in a rather unique position--*while in most cases he owns his home, he rents his lot space.*

Although either party may terminate the tenancy at will, where mobile home park spaces are scarce termination of a tenancy upon short notice will be more onerous to the owner-tenant than it will be to the park-landlord. Such a conclusion is supported by a number of reasons. First, if the owner-tenant has made an investment in the park, either in the form of an entrance fee or additions to the park, he may be deprived of his investment if the park-landlord terminates the tenancy. Second, if the tenancy at will is terminated, the owner-tenant will have to find a new location for his home. Since the value of a mobile home is to a considerable extent dependant upon the availability of the lot space, termination of the tenancy can cause the owner-tenant's home to become nearly worthless unless a new lot space can be found. Third, finding a new site for the mobile home may be difficult due to the scarcity of land zoned for mobile homes, the high demand for mobile home sites, and the high cost of land. Fourth, even if an owner-tenant can find another park, relocating a mobile home is expensive. If required to move from one park to another, the owner-tenant may have to pay the owner of the new park an entrance fee, or be forced to install a patio, skirting and so forth. If the owner-tenant had not planned for such a move, it could come as a financial burden for which he is unprepared.

This summary shows that the bargaining position of the owner-tenant is weaker than that of the park-landlord

because the owner-tenant is unable to afford the high cost of other forms of housing, because of the inconvenience and loss involved in moving a mobile home, and because mobile home parks are scarce. It shows also that, because of the owner-tenant's weakness, it is open to the park-landlord to impose a one-sided relation upon him. That situation has brought about legislation in other jurisdictions, and we will now proceed to describe that legislation.

3. A Comparison of Statutory Responses

In the following sections a variety of statutory responses which have been adopted in the United States, the United Kingdom, and Canada will be examined. The method of analysis will not strictly be by jurisdiction. Rather, the various problems outlined above will be considered in further detail together with various legislative schemes which have been adopted in the three above-noted jurisdictions dealing with these problems.

(1) United States

Until 1972 only California had a comprehensive statutory scheme respecting the mobile home park landlord-tenant relationship. (See: Note, "The Community and the Park Owner versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship" (1972), 52 Bost. U. L. Rev. 810.)

However, since 1972, a number of other states have enacted legislation dealing to some extent with the unique problems of the mobile home park owner-tenant. These statutes are varied in their terms, as evidenced by the treatment each gives to particular problems of the mobile home park owner-tenant.

(i) Eviction

The statutory provisions in the state of Florida are representative of a current trend in the United States respecting eviction of tenants in a mobile home park setting. (Fla. Stat. Ann. s.83.69 [Supp. 1974].) Other provisions similar to the Florida statute have been adopted in California, Massachusetts and New Jersey. (See: Cal. Civ. Code s.789.5(d) [West Supp. 1974]; Mass. Gen. Laws Ann. Tit. 140, s.32 J (1974); N.J. Stat. Ann. s.46: 8 C-1 [Supp. 1974-75].)

The provisions of the Florida statute limit eviction to the following circumstances:

(1) Non-payment of rent;

(2) Conviction of a violation of some law or ordinance which is deemed detrimental to the health, safety, and welfare of the other mobile home owner-tenants;

(3) Violation of a reasonable rule or regulation of the park owner; and

(4) Change in the use of the mobile home park.

The states of Massachusetts and Delaware, while limiting the terms of eviction to non-payment of rent and the violation of park rules, specifically prohibit

retaliatory evictions. (See: e.g., Del. Code Ann. Tit. 25, s.7009 (e) [Noncum. Supp. 1972].)

It has been argued that the Delaware approach, strictly limiting eviction to the two enumerated grounds, is preferable. Having due regard for the relative imbalance of the relationship in the mobile home park setting, permitting other grounds to be established by written lease may provide an opportunity for overreaching by the park-landlord. The literature reveals a concern that the "violation of law" ground for eviction, adopted in Florida, may also be open to abuse in that a traffic violation, a safety matter, may be sufficient to meet the test. Accordingly, a broad discretion is given to the park-landlord by such a provision. (See: Stubbs, "The Necessity for Specific State Legislation To Deal With The Mobile Home Park Landlord-Tenant Relationship" (1974), 9 Ga. L. Rev. 212.)

Most of the statutes in jurisdictions in the United States dealing with eviction require that the owner-tenant be given written notice of a violation of park rules. Furthermore, he must be given a period of time in which to move from the park. In cases where non-payment of rent is at issue the period of time may be as short as five days such as in Delaware. In other cases, the usual period is from thirty to sixty days. Some states apply the general landlord-tenant law to the mobile home park setting, adopting the normal notice period for the termination of periodic tenancies or tenancies at will.

In that case where non-payment of rent is at issue the shorter period of notice may be justified insofar as the park-landlord needs to protect his income. However, it may be that five days is far too short a period of time and something in the vicinity of fifteen days would strike a more

equitable balance, together with a requirement that the owner-tenant pay any "holdover" rent.

One aspect of the eviction procedure which is significantly absent from most statutes in United States jurisdictions is that the owner-tenant is not always provided with a period of time during which he must cure his violation of the park rules. As a result, the park-landlord may evict an owner-tenant for a single violation of a minor regulation or rule. It would be preferable, therefore, that the owner-tenant be given some period of time to comply with the rules, thus avoiding the possibility of contrived evictions.

Most of the state statutes also require disclosure of all park rules and fees. If the park-landlord does not comply with the statutory requirement then his use of the undisclosed regulations will be barred. Some states, such as Massachusetts, limit eviction to the "substantial violation of any enforceable rule of the mobile home park". In order to be enforced, however, all such rules must be disclosed in writing prior to the rental of the lot. The implication of such requirements is that the penalty for nondisclosure is unenforcibility of the agreement. The Florida statute goes further in setting standards for determining reasonableness:

> "A mobile home park rule or regulation shall be presumed to be reasonable if it is similar to rules and regulations customarily established in other mobile home parks located in this state or if the rule or regulation is not immoderate or excessive." (Fla. Stat. Ann. s.83.69 (1) (c) [Supp. 1974].)

Most states permit the park-landlord to alter the rules and regulations provided he has given all owner-tenants a minimum of thirty days notice of any changes. Massachusetts

has a 45 day notice provision and there is an additional requirement that a copy of the notice must be filed with the Department of the Attorney General and Secretary of Communities and Development. (Mass. Gen. Laws Ann. Tit. 140, s.32L (5) [1974].)

The California statute provides that only the rules which were in effect at the commencement of the relationship, or subsequently amended with the onwer-tenant's consent, or amended without the owner-tenant's consent upon six months written notice, may serve as a basis for eviction. However, the California statute makes an exception for rules respecting recreational facilities. Such rules may be altered at the discretion of the park-landlord. (Cal. Civ. Code, supra, s.789.5(d)(3).)

(ii) Entrance, Exit and Resale Fees

As noted above, fees are often assessed when the owner-tenant enters into or terminates a relationship with a park-landlord. So as to protect owner-tenants from excessive charges, statutes in California and Delaware specifically prohibit entrance fees.

The Florida statute permits the requirement of an entrance fee but provides for their proration and return to the owner-tenant if he leaves the mobile home park within two years of the commencement of the relationship. One twenty-fourth (1/24) of the entrance fee is refunded for each month short of two years that a tenant remains in the park. The refund must be paid within fifteen days after the mobile home is physically moved from the park, and no new fee can be charged for a move within the same park. When the owner-tenant leaves before the expiration date of his lease or is evicted, no refund is required, but the sums due to the park-landlord by the owner-tenant may be offset against the balance that would have been due on the entrance fees.

It is unclear whether the park-landlord is required to offset the balance due on the entrance fee.

The Florida statute does not place limits on the amount of the fees nor does it require that the amount of fees be tied to services rendered.

The provisions of the Wisconsin statute go further than those in either Florida, Delaware, or California, in prohibiting any, "...entrance or exit fee or other side payments [which]... may be assessed over and above normal or customary charges for rent, or property, services or facilities sold or furnished by the operator." It may be desirable to prohibit even more clearly the charges for commission above the actual cost of this service since the "customary charges" language might allow excessive, although customary, amounts. (See: Wis. Admin. Code, Ch. Ag. 125.04(2) [1974].)

Resale fees or "commissions" charged by park-landlords are prohibited in California, Florida, Maine, Massachusetts, Minnesota, New Jersey, New York, and Wisconsin, unless the park-landlord actually acts as an agent and performs services for the owner-tenant. Some statutes which do not prohbit or limit such fees require, at least, their disclosure. The minimum requirement of disclosure, vis-à-vis an outright prohibition may leave too much opportunity for park-landlords to charge excessive fees since the owner-tenant may be forced by the scarcity of available mobile home sites to accept the disclosed fee even though it is exorbitant.

(iii) Restrictions on Sales and Suppliers

Most of the state statutes noted above prohibit the restrictions on sales of such items as dairy products, tie-

downs, bottled gas, and underskirting to certain dealers, unless such restrictions are necessary to protect the health, safety, or welfare of residents in the mobile home park. (See: e.g., N. J. Stat. Ann. s.46: 8C-2(a) [Supp. 1974-1975].)

However, such a provision may provide an opportunity to avoid the intention and purpose of the legislation. For example, the New Jersey provision referred to above, permits the park-landlord to determine the style or quality of mandatory mobile home equipment. He may thus indirectly restrict the dealers with whom owner-tenants may deal. Although the New Jersey statute prohibits the park-landlord from making kick-back arrangements, the issue of a "good faith requirement" has not been litigated.

The Massachusetts and Wisconsin statutes permit park-landlords to establish reasonable conditions relating to central fuel and gas meter systems in the mobile home park. However, it is provided that the charges assessed must not exceed the average prevailing rate within the locality for such services. Regardless of the provision, if the owner-tenant is not aware of the prevailing price or is forced due to the scarcity of available space to accept the rate, abuses may result, and the park-landlord may be able to indirectly restrict the owner-tenant's choice of suppliers.

(iv) Tie-in Sales

California, Maine, and Wisconsin prohibit the termination of a tenancy solely for the purpose of making a space available for a potential tenant who has purchased a mobile home from the owner of the park.

If the grounds for eviction are specifically

enumerated in the statute then such a provision may be redundant or unnecessary. However, since a presumption of reasonableness accompanies regulations customarily applied in other mobile home parks, such a provision may be worthwhile. In Florida, a presumption of reasonableness arises if a rule is customarily used in other mobile home parks.

Six states permit the owner-tenant to sell his unit to any person without being subject to having it removed from the park solely on the basis of such a sale, although an advance notice of the sale to the park-landlord may be required. Most of the states permit the park-landlord to approve or reject a new purchaser on the same basis as all other tenants are approved or rejected. Furthermore, such approval may not be unreasonably withheld. In Florida, approval must be given as a matter of course after a refusal by the park-landlord to accept three bona fide offers. Section 83.71 of the Florida statute provides as follows:

> "No mobile home park shall make or enforce any rule which shall deny or abridge any resident of such mobile home park...the right to sell said mobile home within the park or which shall require the resident or owner to remove the mobile home from the park solely on the basis of the sale thereof. The purchaser of said mobile home if said purchaser would otherwise qualify with the requirements of entry into the park under the park rules and regulations, may become a tenant of the park, subject to the approval of the park, but such approval may not be unreasonably withheld. If for any reason the park refuses permission to any resident to sell to a qualified buyer and prospective tenant after three bona fide offers, then the next offer may be accepted as a matter of course."

In Massachusetts, a park-landlord cannot refer prospective tenants to a certain dealer once he has sold a number of mobile homes equal to the number of spaces in a mobile home park.

The California statute gives the park-landlord the additional right to require the removal of certain old and dilapidated mobile homes already in the park after these homes are sold.

(v) Written Leases

Several states require a written lease in mobile home park tenancies. Furthermore, some of the states also specifically require that prospective owner-tenants must be provided with a copy of the park rules before the tenancy agreement is concluded. Some states have adopted the disclosure approach as an alternative to the mandatory lease requirement.

Most of the state statutes require that written leases contain at least the following provisions:

(1) A description of the premises;

(2) The monthly rent and the services and property provided by the park-landlord which it covers;

(3) The rights and duties of all parties and at the least those rules and regulations which could result in eviction from the park; and

(4) The security deposit and other fees or obligations imposed on the owner-tenant by the park-landlord.

Only three states--Delaware, New Jersey, and New York--provide for a minimum rental term. The strongest provisions in this area are those of New Jersey and New York. Both require the park-landlord to offer the owner-tenant a lease for a minimum period of one year. In New Jersey, if a mobile home is sold by the owner-tenant, the park-landlord must offer the approved purchaser the remainder of the rental agreement provided that the remaining period is not less than six months. In Delaware, a one-year rental agreement is automatically renewable unless the park-landlord gives the owner-tenant two months' notice, and leases for other terms are automatically renewed unless either party gives a minimum of two weeks notice.

(vi) Enforcement Procedures

The methods used to enforce mobile home legislation vary greatly from state to state. California and New Jersey leave the matter of enforcement to the private consumer. The Delaware legislation seems to recognize that private enforcement should be available but that it may be insufficient particularly in light of the fear of eviction which many tenants have. Accordingly, the Delaware legislation has adopted public enforcement procedures as an alternative to private remedies.

While the Delaware legislation permits certain private remedies, it also provides for enforcement through cease and desist orders issued by the state's Division of Consumer Affairs. The Wisconsin statute provides for enforcement through it Consumer Protection laws, which authorize fines

up to $5,000 or one year imprisonment or both, plus a $10,000 civil forfeiture to the state. In Michigan, the Consumer Protection Division has been given the power to seek up to a $10,000 penalty for any one violation of that state's laws concerning retaliatory eviction and the duty of park-landlords to maintain habitable surroundings. Other states provide for enforcement through the state Attorney General who is given authority to seek injunctive relief and civil penalties up to $25,000.

(vii) Other Matters

The Delaware legislation is the most elaborate and comprehensive mobile home code found in United States jurisdictions. It enumerates in considerable detail the rights, duties and remedies of both owner-tenants and park-landlords. The park-landlord's duties are particularly detailed. For example, he must prevent the accumulation of stagnant water; maintain all utilities, which he provides, in good working order and repair within 72 hours notice of a defect unless it is impossible; and, provide adequate parking space for each tenant to park two cars so as not to block the traffic in the mobile home park. The owner-tenant is permitted to repair defects in the premises and offset the repair cost against his rent. The owner-tenant may also treat as a constructive eviction any substantial violation of the park-landlord's duty to maintain a healthy and safe park.

Furthermore, some states also provide that the owner-tenant cannot be required to make permanent improvements as a condition of the tenancy.

Some of the state statutes such as Delaware, Florida, and New Jersey contain elaborate provisions respecting the

return of monies given as security deposits. In Delaware, the security deposit is regarded as a substitute for the entrance fee, but it is refundable, and limited to one month's rent.

(2) United Kingdom

The Mobile Homes Act 1975 received Royal Assent on August 1, 1975, and came into force on October 1, 1975. This Act amends the law in respect of mobile homes and residential caravan sites.

Section 1 of the Act imposes a duty on the owner of a protected site who intends allowing the siting of a mobile home there, to offer to enter into a written agreement with the occupant. Section 2 sets out the terms of the agreement and section 3 sets out particulars to be contained in all agreements. Section 4 deals with the procedure following a dispute. Section 5 stipulates that agreements made under the Act or granted by court order shall be binding on successive owners.

Unfortunately, at the date of this writing a copy of the legislation is not available. Nothing more than the preceding few comments can be stated.

However, the new Mobile Homes legislation in the United Kingdom is notable in at least two aspects. First, the park-landlord is required to offer a written lease to the owner-tenant. Whether or not this provision is adequate to offset some of the problems respecting the park-landlord/owner-tenant relationship is speculative. The park-landlord is only required to offer a written lease. The written lease is not mandatory. In the light of the one-sided relationship

as it now exists, in favour of the park-landlord, it is questionable whether a requirement that the park-landlord only offer to enter into a written agreement is sufficient. Prospective owner-tenants may be easily persuaded by the park-landlord that a written agreement is not necessary. Secondly, it appears that the new legislation contains particulars which must be contained in any agreement that is entered into between the parties. Such a requirement is not unlike the mechanism which has been adopted in some jurisdictions in the United States, particularly in the State of Florida. The incorporation of statutory conditions into all agreements is one method worthy of further consideration in the province of Alberta.

(3) Canadian Jurisdictions

Unlike the method of analysis adopted in other sections of this study, each of the Canadian provinces will not be examined in detail. Rather, consideration will first be given to those provinces which have legislation in which "residential premises" is defined to include mobile homes. The second section will consider the legislation in the other Canadian provinces.

(i) Specific Provisions Respecting Mobile Homes

The Residential Tenancies legislation in the provinces of Alberta, British Columbia and Saskatchewan, all contain provisions in the definition section wherein residential premises are defined to include mobile homes. Also, the 1974 New Brunswick Bill, the Residential Tenancies Act, contains a specific provision defining "mobile home".

In Alberta, section 16 of the Landlord and Tenant Act, as amended stats. Alta. 1971, c. 59, provides that "residential premises" means premises used for residential purposes or land leased as a site for a mobile home used for residential purposes, whether or not the landlord also leases that mobile home to the tenant.

In British Columbia, section 1 of the Landlord and Tenant Act defines "residential premises" to mean a dwelling unit used for residential purposes, and includes a mobile home.

In Saskatchewan, section 2 of the Residential Tenancies Act, 1973 defines "residential premises" to mean, among other things, land intended and used as a site for a mobile home used for residential purposes whether or not the landlord also supplies the mobile home.

The New Brunswick Landlord and Tenant Act does not define residential premises to include a mobile home. However, the 1974 Bill, the Residential Tenancies Act, defines "mobile home" to include any trailer that is designed or intended to be equipped with wheels, whether or not it is so equipped and constructed or manufactured to provide a residence for one or more persons. The word "premises" is defined to mean premises used for residential purposes and includes any land leased as a site for a mobile home used for residential purposes, whether or not the landlord also leases that mobile home to the tenant.

Since the Residential Tenancies legislation in these provinces defines in one way or another, "residential premises" to include a mobile home, it may therefore be concluded that the owner-tenant is afforded some legislative

protection--at least the same protection as tenants of other types of accommodation are given. However, this may produce inequities due to the peculiar relationship between the park-landlord and the owner-tenant which is not shared by tenants in a traditional landlord/tenant relationship. For example, since the Residential Tenancies legislation would apply to an owner-tenant in a mobile home park, then it would seem that a landlord could require the incoming owner-tenant to make a security or damage deposit. This would add an additional burden to the initial expenses of the owner-tenant in that he would then be required to pay, not only an entrance fee but also a security deposit. Of course, in some provinces, the security deposit is refundable when the owner-tenant leaves. However, in Alberta, the security deposit is not used as security for rent but really performs the functions of a damage deposit. Accordingly, in Alberta, the owner-tenant may not have any or all of the security deposit returned to him when he vacates the mobile home park.

The applicability of existing Residential Tenancies legislation would also seem to give rise to other problems. For example, is the owner-tenant responsible for repairs, and if so, what repairs? He is not in a relationship similar to a tenant who leases an apartment in a high rise complex. He owns his own accommodation in most cases. Of course, if he is leasing the mobile home as well as the pad upon which it is located then it would be reasonable to expect some regulation of the repairs for which he would be responsible.

If he owns his own mobile home, however, would he be responsible for repairs outside the home itself, i.e. to other parts of the mobile home site such as driveways, fences and so forth. Probably not, but nonetheless a definitive answer is conjectural.

Other aspects of the unique relationship in the mobile home setting will be considered in subsection (4) below.

(ii) Other Provisions

The Residential Tenancies legislation in the provinces of Ontario, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland, and Quebec do not define "residential premises" to include a mobile home or land leased as a site for a mobile home. However, most of the definitions in these provinces respecting "residential premises" are drafted in very broad language. Accordingly, it could be argued that the definition includes a mobile home.

In Ontario, subsection (c) of section 1 of the Landlord and Tenant Act defines "residential premises" to mean premises for residential purposes. The Nova Scotia Residential Tenancies Act defines "residential premises" to include any house, dwelling, apartment, flat, tenement or other place that is occupied or may be occupied by an individual as a residence. In Newfoundland, paragraph (f) of subsection (1) of section 2 of the Landlord and Tenant (Residential Tenancies) Act, 1973, defines "residential premises" to include any house, dwelling, apartment, flat, tenement or other place that is occupied or may be occupied by a natural person as a residence. The Newfoundland provision, practically speaking, is identical to the Nova Scotia provision.

It could be argued that such broad language as that contained in the Nova Scotia and Newfoundland definitions could be interpreted to include a mobile home. Of course, the problem is one of statutory interpretation. There does

not appear to have been any litigation respecting the question whether or not a mobile home is included by such definitions as "residential premises".

One rule of statutory construction enunciates the proposition that a general word takes it colour from the preceding specific words with which it is used. A second rule of construction would apply this proposition to general phrases. For example, a general phrase, such as "or other place" takes it colour from the preceding specific words or phrases. In this case, such words as "any house, dwelling, apartment, flat, tenement" are the words in question. Applying the rule, the words "or other place" really mean "or other places of the same sort", or "and all places of the same sort". The question therefore is" Is a mobile home another place of the same sort? Does the fact that a mobile home has wheels make any difference? Does the fact that most mobile homes are not really mobile, insofar as they are not regularly moved, materially affect the definition? In fact, it seems that most mobile homes become rather fixed for long periods of time."

A third rule of statutory construction enunciates the proposition that a general word or phrase takes it colour as well from the specific words or phrases which follow as from those which precede it. If this rule was applied to the question being considered here then the conclusion is inescapable that the express mention of one thing implies the exclusion of other things of the same class not mentioned, i.e., mobile homes are excluded by the general definition. However, the rule may lead to an entirely different result. The words "residential premises" may be used in the wide sense "all kinds of residential premises". Such things as house, dwelling, apartment, and so forth may have been mentioned in the definition only as examples of the wider class of "residential

premises". That is, such things as house, dwelling, apartment, and so forth may have been listed with the express purpose of preventing an understanding of "residential premises" in a narrow sense. Accordingly, the use of this rule as a tool of grammatical construction is unreliable.

If we ask the question "what is the meaning of 'residential premises'" when read against the background of that part of human conduct with which the legislation is dealing, it seems that mobile homes would be excluded from the definition and therefore the legislation. Residential Tenancies legislation in these provinces where broad definitions of "residential premises" have been adopted do not contemplate mobile homes anywhere in the statute. It would seem that such legislation is directed to such premises as apartments and not mobile homes.

Due to the obvious problems of statutory interpretation it is preferable to provide a definition of "residential premises" to include a mobile home or the land upon which the mobile home is situated. Of course, this would depend upon whether it is considered to be desirable to have the general residential tenancies legislation applicable to the mobile home park setting. It may be insufficient to do so unless adequate provision is made to deal with such practices as exit fees, entrance fees, resale commissions, and the other matters dealt with in section 2 above.

(iii) Recent Developments

Bill 26, an Act to amend the Landlord and Tenant Act, was recently introduced in the Ontario Legislature. It contains extensive provisions dealing with mobile home parks. Specifically, Bill 26 contains provisions regulating many of the problems considered above, such as entrance fees, exit fees and so forth.

Subsection (1) of section 111 provides that an owner-tenant has the right to sell, lease, or otherwise part with the possession of his mobile home while it is situated within a mobile home park. However, that provision does not apply to an owner-tenant of premises administered by or for the Government of Canada or Ontario or a municipality, or any agency thereof.

Subsection (3) of section 111 states that a tenancy agreement may provide that a right of an owner-tenant to sell, lease, or otherwise part with possession of his mobile home while it is situated in a mobile home park is subject to the consent of the park-landlord, and, where it is so provided, such consent shall not be arbitrarily or unreasonably withheld. A park-landlord may not make any charge for giving his consent, except his reasonable expenses thereby incurred.

Subsection (5) of section 111 provides that a park-landlord shall not act as the agent of the owner-tenant in any negotiations to sell, lease, or otherwise part with the possession of a mobile home situated in a mobile home park, except pursuant to a written agency contract.

Section 112 of Bill 26 prohibits entrance and exit fees, together with some other matters. It provides as follows:

> "112. A landlord shall not make any charge whatsoever in respect of,
>
> (a) the entry of a mobile home into a mobile home park;
>
> (b) the exit of a mobile home from a mobile home park;
>
> (c) the installation of a mobile home in a mobile home park;

(d) the removal of a mobile home from a mobile home park; or

(e) the granting of a tenancy in a mobile home park,

except to the extent of his reasonable expenses incurred thereby."

Subsection (1) of section 113 prohibits the park-landlord from restricting in any way the right of any owner-tenant to purchase goods or services from the person of his choice. Subsection (2) of section 113 gives the park-landlord the right to set reasonable standards for mobile home equipment.

Subsection (1) of section 114 of Bill 26 sets out the responsibilities of the park-landlord. It provides as follows:

"114.-(1) A landlord is responsible for,

(a) providing or ensuring the availability of a means for the removal or disposal of garbage in the mobile home park at reasonable intervals;

(b) maintaining mobile home park roads in a good state of repair;

(c) removing excess snow from mobile home park roads;

(d) maintaining the plumbing, sewage, fuel and electrical systems in the mobile home park in a good state of repair;

(e) maintaining the mobile home park grounds and all buildings, structures, enclosures and equipment intended for the common use of the tenants in a good state of repair; and

(f) the repair of damage to the tenant's property caused by the wilfull or negligent conduct of the landlord."

Subsection (2) of section 114 sets out the responsibilities of the owner-tenant. It provides as follows:

> "114.-(2) The tenant is responsible for ordinary cleanliness of the rented premises and for repair of damage to the landlord's property caused by his wilfull or negligent conduct or that of persons who are permitted on the premises by him."

The obligations imposed under section 114 may be enforced by summary application to a judge of the county or district court of the county or district in which the mobile home park is situated. The judge may, (a) terminate the tenancy subject to such relief against forfeiture as he sees fit; (b) authorize any repair that has been or is to be made and order the cost thereof to be paid by the person responsible to make the repair, such cost to be recovered by due process or by set-off; or, (c) make such further or other order as he considers appropriate.

Accordingly, the province of Ontario has incorporated provisions respecting mobile home parks into the Residential Tenancies legislation. Bill 26 also will amend the definition section of the existing legislation to include land intended and used as a site for a mobile home used for residential purposes, whether or not the landlord also supplies the mobile home, in the definition of "residential premises".

Sections 112 and 114 of the legislation are notable in that certain practices such as entrance and exit fees have been specifically prohibited. The proposed amendments also set out the various responsibilities of park-landlords and owner-tenants. Furthermore, Bill 26 also prohibits any restrictions of the owner-tenant's right to purchase goods or services from the person of his choice.

(4) Some Conclusions

(i) The Variety of Relationships

The mobile home produces a unique landlord/tenant relationship. For example, the owner-tenant may enter into three different types of agreements concerning the mobile home pad. He may rent, lease, or buy the pad. It seems that a common arrangement is for the owner-tenant to rent the pad monthly, thereby creating either a periodic tenancy or a tenancy at will. Since a lease is generally not required, the park-landlord may require the owner-tenant to sign a rental agreement setting out the powers of the park-landlord to terminate the tenancy, the obligations of the owner-tenant and the rules and regualtions of the park. If the owner-tenant leases the pad, the contents of the lease may, of course, be similar to those of a rental agreement. However, there may be a significant difference in the term of the lease. The lease may range from one to three or more years. Most leases do not provide for a right of renewal and, again, the rent is usually payable monthly. As noted above, mobile home owners are moving their homes less frequently. Accordingly, it may be anticipated that the third kind of relationship whereby the owner-tenant buys the pad may become of increasing significance.

Under most rental and lease arrangements, the common grounds and facilities, which may be very extensive, are maintained and controlled by the park-landlord. The park-landlord also assumes responsibility for providing the water, electricity, and gas hookups for the home. When the owner-tenant buys the pad, the common areas are usually either retained and managed by the park-landlord or owned and managed by a mobile home owners' association.

The third type of arrangement, buying the pad, is perhaps the least problematic relationship. In this instance the mobile home-ownership becomes very similar to real property ownership. Because there is no eviction from such a park and only a minimum of services to be provided, most areas of the traditional landlord/tenant law, such as eviction and duty to repair, do not apply. However, difficulties may arise when the laws associated with traditional landlord/tenant relationships are applied to mobile home rental and lease arrangements.

(ii) Differences Between the Mobile Home and Traditional Landlord/Tenant Relationship

In the case of apartments, the tenant purchases the exclusive right to the use and enjoyment of a certain part of a building for a specified period of time. On the other hand, the owner of a mobile home purchases the exclusive right to use a given area of land for a fixed or indeterminate period, and his interest in the mobile home structure is separate from his interest in the space it occupies. As a result of this difference, the services required of the park-landlord vary greatly from those required of the traditional landlord. In the rental of multiple-unit dwellings, the landlord is responsible for all those services that affect the habitability of the units, such as providing water, heat, and electricity, and assuring compliance with relevant health and safety laws. The mobile home-owner, on the other hand, assumes all the responsibilities associated with his individual home. The only services generally provided by the park-landlord are those related to the common areas and facilities of the park. These services do not affect the habitability of the mobile home, but only the enjoyment of facilities outside the dwelling unit.

Possibly the most striking difference between the landlord/tenant relationships of mobile homes and of apartments is the ramification of eviction. Although eviction may be traumatic for apartment dwellers, the consequences of evicting mobile home-owners are usually more upsetting. The evicted mobile home-owner must not only move himself, but must also move his home. The owner-tenant, in effect, faces the options of either abandoning the home, attempting to sell it, or moving it into storage until a new pad is obtained. All of these options may potentially destroy the mobile home-owner's equity in his unit.

(iii) Some Requirements for Effective Legislation

Before any legislation is proposed to deal with the unique problems in the mobile home setting, it is necessary to establish that the legislation will meet the need and achieve beneficial results. It can be argued that mobile home park legislation is unnecessary since many park-landlords deal fairly with the public and since a large number of mobile homes and parks are not located in urban areas where the abuses considered above are most prevalent.

Furthermore, it is not clear whether the net effect of such legislation would be beneficial. Some tenant remedies, such as mandatory leases, have been opposed by owner-tenants in the United States as being too restrictive. Development costs of mobile home parks are already substantial and legislation which might increase such costs while decreasing the park-landlord's freedom of action might discourage the development of such parks and furthermore restrict the amount of available park space in the future.

Mobile homes satisfy a significant portion of the public demand for low cost using. Legislation which seeks to protect owner-tenants may do more harm than good if it has the effect of making mobile homes unavailable to large numbers of people who might seek to live in them. If the practices of requiring exit fees and entrance fees are prohibited, will park-landlords then raise the cost of purchasing a mobile home as well as the rent in the mobile home park in order to offset the lost revenue. If such a result occurs then mobile homes may become unavailable to large segments of the population. The owner-tenant's need for protection against park-landlord abuses must be balanced against the owner-tenant's need for available, low cost housing.

On the other hand, abuses by park-landlords are a potential problem, if not an existing problem in urban centres and cause sufficient harm to owner-tenants to warrante legislative attention. Zoning bylaws appear to have given park-landlords almost complete control of mobile home rental sites. Such control may be the principal cause of some of the abuses noted in section 2 above. Since municipal government, through restrictive zoning, has inadvertently contributed to the problem, it would seem that it has a duty to protect helpless tenants from any resulting overreaching by park-landlords.

New legislation, if any is passed, is likely to restrict the freedom of park-landlords to impose unduly onerous burdens on owner-tenants. The questions which must be addressed are whether and to what extent legislation is needed so as to achieve fairness to both sides, and whether legislation designed to achieve that fairness will have an adverse effect on the supply of mobile home sites.

4. Issues

(1) Should the law prohibit the operator of a mobile home park from restricting tenants to those who have purchased a mobile home from the park operator?

(2) Should the law prohibit the operator from requiring a mobile home owner, who is a tenant of a mobile home park, to pay a non-refundable entrance fee before moving into the park?

(3) Should the law prohibit the operator from requiring a tenant to pay him a "commission" or "exit fee" when the tenant sells the mobile home to another person who wishes it to remain in the mobile home park?

(4) Should the law regulate the rules which the operator may make so as to ensure that they will be clear and will not be unduly restrictive?

(5) Should the law prohibit the operator from requiring that tenants buy specified commodities only from certain dealers?

(6) Should the law require that the operator and a tenant enter into a lease in every case?

(7) If the law requires written leases, should it also require that all leases contain the following provisions:

(i) a description of the premises;

(ii) the monthly rent and the services and property provided by the lessor which it covers;

(iii) the rights and duties of all parties and at the least those rules and regulations which could result in eviction from the park; and

(iv) the security deposit and other fees and obligations imposed on the tenant by the lessor?

(8) Should the law require the operator to offer each tenant a lease lasting one year or some other fixed term? If a tenancy is to be terminable by notice, what period of notice should be required?

(9) Should the law prohibit retaliatory eviction from a mobile home park? If so, should eviction be permitted only in certain circumstances such as:

(i) non-payment of rent;

(ii) conviction of a violation of some law or ordinance which is deemed detrimental to the health, safety, and welfare of the other mobile home park tenants;

(iii) violation of a reasonable rule or regulation of the park owner; and

(iv) change in the use of the mobile home park?

(10) If the law regulates the causes for eviction, should the parties be permitted to agree to additional grounds for eviction.

(11) Should the operator be required to give a tenant written notice of a violation of park rules? Should the law allow the tenant a period of time in which to comply with the rules or to move his mobile home? If so, what period of notice should be given? Should it be shorter for non-payment of rent?

(12) Should the law require the operator to give each tenant a copy of all park rules and fees or otherwise make full disclosure? Should the law prohibit him from enforcing a rule which is not disclosed.

(13) Should the law regulate the power of the operator to make rules and regulations? Should it provide that only those rules in effect at the beginning of the tenancy or amended with the tenant's consent or upon some period of notice such as six months shall be enforceable.

(14) Should the operator be required to give the purchaser of a tenant's mobile home the remainder of the rental period up to six months?

(15) Should the law leave the tenant to enforce his rights against the operator of the mobile home park? Alternatively should it provide statutory penalties or a power in a government agency to require the operator to cease and desist from prohibitive practices, with the provision for injunctions and fines?

(16) Should a tenant be permitted to repair defects in the premises and off-set the repair costs against his rent? Should the tenant be permitted to treat as a constructive eviction any substantial violation of the operator's duty to maintain a healthy and safe park? (The phrase "constructive eviction" is used here to refer to those circumstances whereby an operator by not fulfilling his obligations may force the tenant to leave.)

(17) Should the law prohibit the operator from requiring the tenant to make permanent improvements as a condition of the tenancy?

(18) What provisions of the law relating to the residential landlord-tenant relationship should apply to the mobile home park operator-tenant relationship.