Promoting the Promise Manufactured Homes Provide for Affordable Housing

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Introduction

Many Americans aspire to home ownership. This is because homes provide shelter, and, perhaps more importantly, they may provide status along with communal, emotional, and financial security.[1] However, home ownership can be one's greatest dream or worst nightmare.[2] This is especially true for owners of ''mobile homes,'' referred to as ''manufactured homes'' (collectively ''MHs'' in this Article) if built post-1976 in accordance with Department of Housing and Urban Development (HUD) codes.[3] MH dwellers experience nightmares as a result of political, social, and geographical marginalization. They often face difficulties associated with MH park living, weak MH safety standards, and predatory financing.[4] Some MH communities mimic so-called ''slums'' or ''inner-cities'' of rural areas.[5]

These difficulties harm the potential that MHs provide for easing the drought of housing that is affordable to those with very low incomes. MHs represent two-thirds of affordable housing units added to the stock in recent years.[6] The importance of protecting MHs' potential sparked the Neighborhood Reinvestment Corporation (NRC), in collaboration with the Joint Center for Housing Studies of Harvard University, to examine MHs.[7] This collaboration produced a 2002 report that called on policy makers to recognize the growth of MHs as a prime source for low-income home ownership.[8]

Meanwhile, Congress enacted the Manufactured Housing Improvement Act (MHIA) in 2000. This Act requires HUD to establish a streamlined process for updating and implementing installation standards, and for resolving disputes among MH manufacturers, retailers, and installers regarding responsibility for the repair of MH defects that are reported within one year of MH installation.[9] The MHIA also ensures that these minimum installation standards and dispute resolution programs would preempt any contrary state laws.[10] On March 10, 2003, HUD requested comments on all aspects of the MHIA, but has not yet established program requirements.[11]

This Article raises issues for HUD and other policy makers to consider with respect to MHIA programs and broader MH policies. It also seeks to spark public awareness about the potential that MHs provide for afford-

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able housing. The time is ripe for policy makers on federal and state levels to craft safety and financing regulations that take into account the unique character and complexities of MH transactions and MH ownership. Furthermore, the MHIA should ignite MH manufacturers, retailers, lenders, and consumer advocates to join forces to help alleviate burdens of MH ownership and provide MH dwellers with safe and affordable housing.[12]

I. MHs' Importance as a Prime Source of Housing for Low-Income Families

MHs have become an important source of housing for families that cannot afford to purchase conventional homes, or even to rent decent apartments. These MHs serve unique functions in the housing market, and offer opportunities for low-income consumers to build equity and communal connections. Indeed, the relatively high percentages of low-income and minority families living in MHs evidence the importance of MHs for affordable housing.

A. Unique Functions of MHs in the Housing Market

Only 24.1 percent of households in the United States can afford to purchase an average site-built home.[13] This should not be that surprising in light of average site-built home prices exceeding $200,000.[14] Families that cannot afford these conventional homes, however, may be able to buy MHs because they are generally much less expensive. This is because MHs are factory built on permanent chassis.[15] Factory production generates 20 to 30 percent cost savings over comparable site-built units, even taking into account MH transportation and installation costs.[16]

MHs also offer families opportunities to build connections with the community. Unlike apartments, MHs generally provide the privacy and amenities usually associated with conventional home ownership.[17] MHs are freestanding homes, but they are generally grouped in communities that include yard spaces and shared parks or meeting areas. This grouping allows families to forge more lasting connections with their communities. Indeed, MH owners generally are less transient than rental housing populations and grow roots in their MH communities.[18] Research indicates that after placing their MHs, owners very rarely move them due to the incredible difficulties (or impossibility) of moving unwieldy homes.[19]

In addition, many low-income families live in MHs because they cannot afford escalating apartment rental costs. Two minimum wage workers often cannot afford to share a two-bedroom apartment.[20] There is rising concern regarding the availability of apartment rental assistance and attendant costs of government housing programs to the public. MHs, on the other hand, may provide affordable housing that is more cost-effective from the public's perspective than other sources of low-income housing.[21] One study concluded ''that a substantial number of people are being adequately

housed in their own homes [through MHs] at values-per-unit that could not be duplicated in either private or public low-income housing markets.''[22] Accordingly, if policy makers do not protect this source of housing, the public will have to bear the costs of increasing government housing assistance and the availability of subsidized housing.[23]

MHs have become an especially important source for sheltering low-income families where rental and subsidized housing units are scarce.[24] In South Carolina, for example, MHs ''are now more than one-half of the new home sales.''[25] The lack of apartments and rental housing is particularly acute in rural areas.[26] ''Even though the federal government considers spending 30 percent of household income on housing to be 'affordable,' 65 percent of non-metropolitan home owners and 79 percent of non-metropolitan renters spend more than that amount.''[27] Moreover, federal and state policies often are so focused on urban housing problems that they neglect rural housing difficulties.[28]

B. Socioeconomic Composition of MH Communities

1. Prevalence of very-low-income families

The composition of MH communities evidences the importance of MHs in the affordable housing market.[29] Families living in MHs tend to be those with very low incomes, and, therefore, few housing options. These families generally have incomes of less than 50 percent of the area median.[30] In a study of MH borrowers in Maine, for example, the median MH borrower income was $29,922, which was well below the statewide family median.[31] Many of these low-income families, however, either cannot relocate or do not qualify for rental assistance programs.[32] This lack of choice makes MHs not only an attractive housing option but perhaps the only option for these families.

Of course, not all MH owners lack resources and options. Rising real estate prices and the emergence of high-end MHs are beginning to spark MH purchasing among more middle-income families.[33] Still, MH consumers ''are typically younger or older than owners of site-built homes.''[34] Low-income and single-parent households purchase MHs because of low costs and easy entry into the homebuyer market.[35] This easy entry can reap positive results. Financial difficulties and entrenched poverty, however, may escalate for MH owners when the complexities and burdens of MH ownership unexpectedly drain their limited resources.[36]

2. Growing minority and immigrant populations

High percentages of minority and immigrant families living in MHs further evidence the importance of MHs to our nation's housing market. There has been a surge in MH ownership by African-Americans and Latinos that far exceeds MH ownership growth among whites.[37] ''In fact, Latino and African-American manufactured-home ownership grew at compound annual growth rates of 6.1 and 4.6 percent, respectively, for the 1985–1999 period, well above whites' 2.3 percent.''[38] In Texas, for example,

nearly half of the state's MHs house Hispanic families.[39] One Texas MH retailer doubled his business and increased his Hispanic customer base to over 60 percent by advertising in Spanish on Spanish radio.[40]

Unfortunately, some MH dealers and lenders have been under investigation for misrepresenting actual MH costs to non-English-speaking consumers. Some dealers and lenders have misrepresented high interest rates, undisclosed insurance premiums, and extended warranty fees.[41] One Spanish-speaking consumer was told that his MH would cost a total of $26,000, but with interest, prepaid costs, added ''points,'' insurance, and extended warranty fees, the MH actually cost a total of $110,000, to be paid over thirty years.[42]

''Demographers have long documented the housing difficulties of racial minorities in the United States.''[43] Racial minorities in the United States have been victims of lending discrimination and housing restrictions.[44] Despite some advances, these difficulties persist. Conventional home ownership rates among Hispanic-Americans are slipping and rates among African-Americans have not increased. Indeed, conventional home ownership rates for both groups remained well below the rates for white Americans during the 1990s despite thriving economic periods.[45]

MH living also may be an attractive housing option for some noncitizens. Financial assistance for housing is extremely limited, if not eliminated, for most noncitizens. Noncitizens may be deprived of assistance otherwise available under the United States Housing Act, the National Housing Act, the National Affordable Housing Act, and the Housing and Urban Development Act.[46] This lack of financial assistance is constitutionally permissible and within Congress's broad power to make rules for aliens ''that would be unacceptable if applied to citizens.''[47] The U.S. Supreme Court has upheld statutes that deny aliens the right to even own real estate.[48]

II. Political and Economic Power of MH Insiders

Powerful MH manufacturers, lenders, retailers, and park owners (collectively referred to in this article as MH insiders)[49] wield significant control in the MH market, which may help them reap cost savings that they may share with consumers.[50] However, this control also perpetuates warranty and financing abuses by MH manufacturers and lenders.[51] Some MH park landlords further augment these abuses by imposing onerous expenses and living conditions on MH owners who generally must rent spaces for their homes in these parks.

A. MH Manufacturers', Lenders', and Retailers' Consolidation of Power

MH industry leaders have garnered political power through the establishment of groups such as the Mobile Home Institute (MHI), which ''represents manufacturers, retailers, insurers, financiers, and others with a financial interest'' in the MH industry.[52] Although there are other industry

and consumer groups involved in MH policy making, the MHI is a particularly powerful multimillion-dollar national association. It also has gained additional power through its state counterparts.[53]

The MHI and other MH insiders have joined forces to wield significant marketing power and to maintain a loud voice in HUD's establishment of MH manufacturing and installation standards.[54] The MHI's involvement in generating MH studies and standards may potentially promote safe and affordable MHs.[55] Its dominance, however, also tends to perpetuate pro-industry status quo, and perhaps stymies much-needed reform.[56] In 1990, for example, Congress created the National Commission on Manufactured Housing (NCMH) to establish reforms aimed at bridging the gap between industry and consumer power in the creation of warranty standards.[57] The NCMH's initial plan for a five-year warranty never came to fruition, however, because MH insiders joined forces to refuse proposals for transportation or installation warranties.[58]

During the same time, MH insiders integrated horizontally and vertically. Stronger companies acquired smaller firms within their trade, as well as complementary businesses within the MH industry (e.g., manufacturers acquired retailers, lenders, and MH parks).[59] Industry growth in the 1990s further fueled insiders' power. ''Lenders tripped over themselves'' to finance industry growth by easily extending credit to consumers and to dealers.[60]

In the midst of this growth, relatively few powerful MH manufacturers rose to the top. By 1998, a reported ten companies manufactured almost three-fourths of all MHs.[61] Weaker companies and their consumers went ''underwater,'' in that their debts greatly outgrew the value of the collateral (MHs) securing the debts. Consumers were left homeless after the resulting flood of repossessions. In 2000 alone, insiders repossessed an estimated 75,000 MHs.[62] For dealers and manufacturers, these repossessions created stockpiles of cheap, slightly used MHs.[63] Manufacturing stalled and weaker manufacturers and dealers closed their doors, leaving stronger companies to reign supreme in the MH industry.[64]

B. MH Park Landlords' Potentially Abusive Dominance

Most MH consumers must rent space for their MHs in MH parks, and ''virtually all'' MH park residents own their MHs.[65] These residents, therefore, lease the land underneath their homes from the park owners.[66] MH park owners, in turn, enjoy significant control over park conditions due to the absence of park regulations and tenants' generally weak bargaining power.[67] ''[P]eople who lease the land but own their home have neither the legal protections afforded home owners, nor those afforded conventional renters. They fall between the cracks.''[68]

Some MH park owners have used this power to impose excessive rent increases and additional charges that MH owners often believe are part of the park's basic services (e.g., water, refuse collection, grass cutting, sewer fees).[69] *Consumer Reports* (albeit a pro-consumer publication) found in a

1998 survey that many MH park tenants had fallen victim to sudden, and sometimes dramatic, rent increases.[70] In addition, reporters found that park owners often imposed extra utility charges once included in base rent, and forbade tenants from selling or renting their homes without the park owner's approval.[71] In Orange County, California, for example, a legislative hearing was called in April 2001 to address MH dwellers' complaints of ''shoddy utility service and overcharging''[72] by park owners.

The problem is augmented by the fact that it is very difficult for MH owners to move their MHs if they are unhappy with MH park costs or conditions. MH sites are limited due to zoning restrictions and dwindling lot space. Furthermore, MH park owners generally impose strict limitations on new MH admissions,[73] making it very difficult for MH owners to gain acceptance to a new park.

Moreover, even when MH owners have their MH accepted at a new location, they often cannot afford the moving costs. MH owners must move not only personal belongings, but also an unwieldy *home.* Expenses of moving an MH may exceed $10,000.[74] These expenses include replacement of skirting, porches, carports, land, and a variety of other amenities left at the site.[75] This financial burden is partly why only 3 to 4 percent of MHs are moved once originally placed.[76] Furthermore, most older MHs ''simply cannot be moved'' because of roadworthiness or strict age and condition restrictions on park admissions.[77]

Complexities and obstacles to relocating an MH leave park residents with few options in the wake of landlord abuses. MH park rent increases and unexpected charges often push MH owners to sell their homes at distressed prices to the landlords. In addition, the fairness of these purchases can be suspect in light of a park owner's affiliation with retail outlets.[78] In Texas, for example, large manufacturers are affiliated with owners of larger MH communities.[79] Nationally, there were roughly 50,000 MH parks in 1998, with 300 of these parks owned by four major companies.[80]

In light of MH park abuses, some MH owners have fought to convert parks to resident ownership. Legislative and financial constraints, however, make it difficult for MH dwellers to convert a park to resident ownership even when their landlord has placed the park on the market.[81] Instead, corporations that own MH parks often reside out of state, and fail to monitor park conditions. For example, residents in an MH retirement community in Florida were dismayed when their landlord, Merrill Lynch, passed on to residents sewer system costs of $2,292.86 per household. These costs became necessary after Merrill Lynch had failed to properly maintain the sewage system.[82]

Not all MH park landlords treat their tenants poorly. Furthermore, MH dwellers do have means for seeking redress for park owners' retaliatory action. Along with any contract and tort claims that MH park residents may have, they generally also have statutory or common law rights to seek redress for adverse actions taken against them in retaliation for reporting health and safety violations by MH park owners.[83] Forbidden retaliatory

actions may include dramatically increasing rent, decreasing services to residents, refusing to renew rental agreements, and seeking to repossess residents' premises or otherwise evict them from the MH park.[84] These remedies, however, often are meaningless for MH dwellers who cannot afford the costs of litigation or legal representation. MH insiders also curtail consumers' access to these remedies by imposing onerous arbitration provisions that may augment claimants' costs and diminish their procedural protections.[85]

III. Weak Federal Standards and Ambiguous State Law Governing MHs

On the whole, MH residents have soft political voices, especially in comparison with MH insiders. This difference has resulted in fairly loose federal regulation of MH quality and safety. State law, in turn, has not filled policy gaps. Instead, state law has generally failed to recognize the character and functions of MHs. In addition, local zoning boards have generally used negative assumptions about MH communities to justify restrictive zoning that pushes MHs to particularly poor or undesirable locations.[86]

A. Loose Federal Regulation of Housing Subject to Safety Concerns

Prior to 1974, manufacturers focused on quick assembly and cost savings, and the quality and safety of MHs went largely unregulated. The result was poor quality and unsafe dwellings.[87] Such lack of regulation also caused inefficiencies due to varying local codes. Accordingly, the federal government stepped in and implemented the 1974 Mobile Home Construction and Safety Standards Act (MHCSSA).[88] Pursuant to the Act, HUD developed fairly loose MH safety and construction standards that preempted contrary state standards.[89] HUD revised its standards over the years, but many criticized HUD for failing to address growing problems with installation and costly dispute resolution.[90] This criticism sparked Congress to enact the MHIA in 2000, aimed at providing a fair and efficient means for resolving warranty claims, regulations ensuring the safe installation of MHs, and clarification of the federal government's preemptive regulation of the MH industry.[91]

Pursuant to the MHCSSA, HUD's construction and safety standards for MHs have aimed to maintain the delicate balance of safety and cost effectiveness.[92] To that end, HUD has sought to ''cut out requirements that may add red tape and unnecessary costs in manufacturing [MHs].''[93] HUD's protection of cost savings, however, has been seen by some as a promotion of the MH industry, especially in light of HUD's adoption of roughly 85 percent of the industry's voluntary code.[94] Consumer groups complain that HUD caters to the MH industry and establishes standards that are particularly deficient in protecting MH dwellers with respect to fire and wind safety, energy efficiency, warranty regulation, and chemical usage in MH production.[95] Consumers also complain that they cannot obtain remedies for defects and deficient warranty service because of the ''blame game'' that dealers, manufacturers, and installers play against each other to escape

liability.[96] In other words, insiders make it difficult for consumers to obtain remedies against the parties responsible for fixing defects by augmenting time and expenses of dispute resolution with infighting and finger-pointing regarding such responsibility. The MHIA aims to alleviate some of these concerns by requiring states to institute programs by 2005 for resolving disputes among manufacturers, dealers, and installers regarding responsibility for the repair of defects reported within one year from the date of an MH's installation.[97]

Some states, along with HUD, have developed various programs for addressing state and federal regulatory requirements and for forwarding consumer complaints to responsible manufacturers. For example, Alabama policy makers established the Manufactured Housing Commission to develop a program for resolving disputes among manufacturers, retailers, and installers regarding the responsibility for new MH defects reported within one year of installation.[98]

The MHIA also created a private-sector consensus committee to recommend quality and manufacturing standards for MHs and to address escalating problems with faulty MH installations. The MHIA thus requires states to establish programs that meet HUD minimum installation standards.[99] HUD must establish these minimum standards with input from manufacturers to ensure that the standards are consistent with the manufacturers' current MH designs and installation instructions.[100] Again, HUD and the consensus committee are in the early stages of developing these installation standards.

B. State Laws' Disjointed Treatment of MHs

State law has generally failed to appreciate the unique nature of MHs. MHs fall between real and personal property. They are ''homes'' in that people live and seek shelter in them, and purchasing an MH is as emotionally and financially taxing as buying a conventional, dirt-bound house. Still, MHs are technically ''mobile'' in that they are factory built on a chassis.[101] Accordingly, courts generally hold that MH transactions involve the sale of ''goods,'' governed by states' adoption of Article 2 of the Uniform Commercial Code (UCC) instead of real estate law.[102] In addition, if MHs are placed on rented land or are not sufficiently affixed to purchased land, then their financing and attendant state recording requirements are governed by Article 9 of the UCC and/or state certificate-of-title laws instead of real estate mortgage and recording statutes.[103] MHs only become fixtures or real property when they are permanently affixed to land owned by the MH owner.[104] This treatment has led to ambiguities that leave insiders and consumers confused about their rights.[105]

1. Distinctions between real and personal property warranty protections

Personal property and real estate laws differ with respect to history and purpose. Although the U.S. Constitution does not guarantee a right to decent housing,[106] many have advocated a constitutional right to housing

and have promoted policies to protect housing safety.[107] State real estate law protecting health, safety, and welfare has shifted from ''caveat emptor'' to provide more protection for safe housing. Furthermore, federal and state programs seek to guard housing safety, and to increase real estate financing options.[108]

Meanwhile, the personal property legal regime governing MHs has not evolved in the same manner.[109] Instead, state law treats MH purchases like car purchases in many respects. Securing an MH loan is like fishing for car financing, and claims regarding MH defects, foreclosure, repossession, and resale are governed by UCC Articles 2 and 9, which are aimed at fostering the efficient exchange of general ''widgets.'' To be fair, UCC and real estate warranties both seek to protect safety.[110] For example, UCC § 2–314, addressing the implied warranty of merchantability, mimics the warranty of habitability under real estate law by protecting buyers from defective or unsafe MHs.[111] Furthermore, under both real estate and personal property laws, parties are free to create express warranties,[112] and sales agreements are subject to contract law defenses such as fraud and unconscionability.[113]

Nonetheless, unlike UCC warranties that are legislatively crafted to broadly cover all widgets, courts have established common law real property warranties aimed at ensuring safe and decent dwellings. Courts have established common law implied warranties of habitability in conventional home construction contracts, and have extended liability for breach of these warranties to parties beyond immediate sellers of a home.[114] The U.S. Supreme Court has held that a home owner who purchases a home through Farmers Home Administration (FmHA) financing may sue the FmHA for failure to properly inspect a house during its construction.[115] Courts also have allowed home owners to recover for both personal injury and economic losses due to latent home defects.[116] This warranty protection extends to second or subsequent purchasers, although the purchasers have no contract with the builder.[117] Also, it may be more difficult to disclaim warranties under state real estate law than under UCC Article 2, applicable to MH sales.[118] State real estate law may preclude a tenant from waiving the implied warranty that facilities vital to residential use are habitable, even if a tenant enters the lease with knowledge of a violating defect.[119]

Similarly, MH manufacturers and sellers may be liable to purchasers for personal and economic losses due to breach of implied warranties of merchantability and fitness for a particular purpose.[120] Furthermore, a manufacturer's warranty liability may extend to consumers who are not in contractual privity with aggrieved consumers.[121] However, many courts preclude a consumer from recovering against a manufacturer for economic losses due to breach of implied warranties under the UCC where the consumer does not share contractual privity with the manufacturer.[122] For example, an Arizona court denied MH consumers' recovery for economic losses against an MH manufacturer that was not a party to the consumers' purchase agreement with the dealer, although the consumers never moved in to the MH due to multiple defects.[123] In addition, lack of contractual

privity generally precludes MH consumers from recovering against manufacturers for economic losses due to unreasonably dangerous homes under strict liability in tort.[124]

Regardless of distinctions between real estate and personal property laws, it remains that policy makers should make safe and adequate housing a priority.[125] People buy or lease housing seeking a well-known package of goods and services—''a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.''[126] Furthermore, courts tailor the warranty of habitability to account for tenants' need for safe and decent housing, and their ''virtual powerless[ness] to compel the performance of essential services.''[127] People should enjoy premises that are safe, clean, and habitable.[128] Tenants may enforce the implied warranty of habitability not only through an action for damages measured by the tenant's lost rental value, discomfort, and annoyance, but also by withholding payment of rent to repair the defect and to account for the tenant's loss.[129] State law may also allow a real estate or MH tenant to collect punitive damages against a landlord who acts willfully or fails to repair a defect that threatens the health and safety of the tenant.[130] The problem is that anticonsumer form contracts and disjointed state law often prevent consumers from actually obtaining these remedies.

2. Distinctions between real and personal property financing

Distinctions between MH and real estate lending are particularly problematic.[131] State law generally allows a lender to quickly repossess or foreclose on an MH when an MH consumer stops making payments on a loan secured by the MH, even when the consumer withholds payment due to frustration with uncured home defects.[132] MH lenders may be especially eager to grab an MH as quickly after default as possible, in light of the perceived high risks of MH lending and fear that MHs decline in value while the loans that they secure go ''underwater.''[133]

Of course, foreclosure can be devastating for MH and conventional home debtors.[134] MH consumers, however, face unique obstacles because of their limited financing options.[135] Conventional home purchasers finance their homes with mortgages or deeds of trust, which must comply with real estate law and norms governing these instruments.[136] In addition, a strong secondary mortgage market has developed over time with the help of federal mortgage insurance programs and robust activity by national mortgage associations.[137] This secondary market helps to smooth out supply and demand for mortgage funds across the country and increase the accessibility and safety of real estate financing.[138]

In contrast, consumers generally finance MH purchases with chattel, or personal property, loans instead of conventional mortgages or deeds of trust.[139] In 2000, roughly 78 percent of new MHs were financed with chattel loans instead of conventional mortgages.[140] Therefore, MH financing is governed by run-of-the-mill contract law, coupled with state certificate-of-title

(COT) laws and/or UCC Article 9 (UCC 9).[141] COT laws generally apply to cars and boats, and UCC 9 covers secured transactions in personal property ranging from widgets to deposit accounts and securities.[142] UCC 9 aims to simplify and expand lenders' options for securing and collecting on personal property debt.[143] In addition, recent revisions to UCC 9 that have been adopted in all states and the District of Colombia expand Article 9's scope, simplify filing requirements, and enhance perfection and enforcement of security interests.[144] Furthermore, although there are limited federal programs for insuring MH loans, the secondary market has not embraced MH financing. Instead, MH financing is generally limited.[145]

Real estate and personal property financing also differ with respect to creditor and debtor rights and remedies available upon default. Real estate law generally requires a real estate creditor to follow judicial foreclosure procedures in order to obtain debt repayment from real estate securing a mortgage.[146] Real estate debtors in all states enjoy equity of redemption rights that allow mortgagors to redeem property at any time prior to sale of the property by paying amounts owed on a debt.[147] In many states, real estate debtors also enjoy statutory rights that allow them to reinstate a loan by paying the amount in arrears instead of the full loan amount.[148] These debtors also may enjoy rights to redeem property for a period of time *after sale* of the property by paying the purchaser the foreclosure sale price and expenses.[149] Furthermore, state legislatures have enacted laws extending redemption periods and protecting debtors from postforeclosure deficiency lawsuits.[150]

In contrast, lenders and dealers who advance credit to consumers to purchase MHs obtain liberal rights to repossess MHs under UCC 9 pursuant to the security interests that they generally take in the MHs.[151] Under UCC 9, a secured MH lender may privately repossess an MH if the lender can do so without breaching the peace.[152] The secured lender may then sell repossessed collateral in a private or public sale, apply proceeds to repayment of the debt and repossession/resale costs, and then return any surplus from the sale to the debtors.[153] Otherwise, UCC 9 and state replevin statutes allow lenders to use the courts to swiftly foreclose on MHs, hindered by fewer formalities and debtor rights than they would encounter under real estate foreclosure laws.[154] An MH is often worth less than the outstanding debt, and UCC 9 generally allows a secured party to seek the deficiency from the debtors.[155] In addition, UCC 9 generally requires that debtors may only reclaim their MHs by paying off the entire secured debt, assuming an acceleration clause, prior to sale or other disposition of the collateral.[156] Article 9 does not provide for postsale redemption or debt-reinstatement.[157]

Arbitration provisions can sometimes muddy the repossession and foreclosure waters. For example, many MH contracts' arbitration provisions give only the lender the option of proceeding directly in court to repossess and foreclose on an MH, while the MH debtor must arbitrate any warranty claims. Defaulting consumers in this instance may lose their MHs before

they have a chance to arbitrate warranty claims. Moreover, mass consumer collection practices in the MH industry are facilitated by the high percentage of default judgments against debtors in collection actions.[158]

C. Restrictive Zoning That Pushes MHs to Poor Areas

State zoning laws also treat MHs differently from conventional site-built homes. Zoning boards routinely push MH parks to undesirable, low-property-value areas.[159] Historically, zoning boards shunned MHs because they were taxed as vehicles and therefore drained community services without contributing to local property tax revenues in the same manner as real estate.[160] Although MHs are now taxed as real estate, policy makers continue to justify MH zoning restrictions based on MHs' inability to generate property tax revenues on par with conventional homes.[161]

Zoning boards also justify MH restrictions based on negative community perceptions of MHs that plague MH dwellers with ridicule and derogation.[162] Some view MH parks as a threat to nearby property values and neighborhood aesthetics, and as hotbeds for unsavory populations and activities.[163] As one judge noted in his dissent from a decision upholding a rural township's exclusion of all MH parks: ''Community distaste for trailer dwellers personally developed at a time when the traillerites were often considered footloose, nomadic people unlikely to make positive contribution to community life.''[164]

These strict zoning exclusions and restrictions survive despite increased tax revenues from MH communities and improved aesthetics and quality of newer MHs.[165] Perceptions are mixed, especially because there is such great disparity in the quality of MHs. The MH industry has pushed to improve consumer perceptions of MHs, and has spread a message that they are affordable and low maintenance.[166] Nonetheless, MH zoning restrictions persist, and courts generally uphold restrictions and exclusions of MHs ''on the assumption that such housing is detrimental to public welfare.''[167]

Such geographic marginalization helps keep MHs off of policy makers' radars. It also perpetuates the cycle of poverty for many MH dwellers. MH buyers generally enter the MH market with little information or counseling.[168] Zoning restrictions then push MH consumers to relatively low-property-value areas where tax revenue shortages lead to poor education funding. This process, in turn, contributes to poor-quality education.[169] Schools suffer in areas where basic public services such as law enforcement and fire protection usurp scant tax revenues.[170] These diminished services thwart low-income and marginalized consumers' attempts to escape the cycle of poverty and connect with the greater community through home ownership.[171]

IV. Resulting Safety and Financing Burdens on MH Dwellers

Despite the importance of MHs in the affordable housing market, federal and state policies have not adequately responded to burdens facing

MH consumers. Instead, MHs' potential may slip away with little attention. There are many complexities and burdens of MH ownership that threaten this potential. Two significant MH issues, however, are predatory financing and prevalent home defects. A reported 80 percent of MH owners suffer defect and warranty problems with their homes, and many MH consumers fall prey to predatory creditors.[172] Many of these consumers lack bargaining power to contractually escape warranty limitations and onerous financing terms that MH insiders impose in high-pressure package sales. In addition, MH consumers have generally failed to garner sufficient political power to counter MH insiders' virtual control of safety standards and warranties.

A. Predatory Financing of MHs

The pool of MH lenders has remained relatively small. HUD's 2001 list of lenders that specialize in subprime or MH lending included 178 subprime lenders and only twenty-one MH lenders.[173] This small number limits MH purchasers' financing options.[174] High risks associated with MH lending also limit purchasers' financing options. A reported 12 percent of all MH loans end up in default, which is four times the rate for conventional mortgage defaults.[175]

MH lenders often garner relatively strong bargaining power over consumers because consumers' housing and financing options are limited. Many of these MH consumers opt for MHs over site-built homes because they cannot qualify for conventional mortgages. In addition, MH financing may be especially one-sided because it has not been fueled by the secondary market in the same manner as conventional mortgage financing. The secretary of HUD is authorized to establish federal insurance programs aimed at promoting real estate and MH financing.[176] Nonetheless, most mortgage lenders have stayed out of the MH lending market due to relatively small loan sizes, less-qualified borrowers, reports of MH depreciation, and complexities of lending on leased land.[177]

To be fair, some lenders have tightened MH lending due to rising loan default rates beginning in the late 1990s.[178] For example, Green Tree Financial Services (now known as Conseco Financial Corporation) reported credit scores on its 2001 loans that were roughly the same as scores acceptable to conventional mortgage lenders.[179] Lenders have also circumscribed financing used MHs, which make up the bulk of the MH market.[180] In 1999, when new MH shipments were at a high, sales of used MHs exceeded sales of new MHs by one and one-half times.[181] A 2002 MH study in Maine revealed that resale financing of MHs accounted for three-quarters of the overall portfolio, and these units were an average of fifteen to seventeen years old.[182] This deluge of used and repossessed MHs on the market has also led to a rash of unlicensed MH sales and financing deals.[183]

Limited financing options have left many MH consumers vulnerable to a ''range of permissible loan terms and tactics [that] extends beyond what would pass muster in the conventional mortgage market.''[184] Some MH

lenders continually face consumer claims regarding questionable lending practices. In the three years prior to October 10, 2003, there were 133 MH cases reported on Westlaw involving just one MH lender, Green Tree Financial Services (now known as Conseco).[185]

One key term that lenders control to the detriment of consumers is the interest rate.[186] Interest rates on MH loans typically run two to five percentage points higher than those for conventional mortgages, and even higher for used and single-section MHs.[187] Furthermore, loans may appear to offer closing costs lower than those for conventional mortgages.[188] MH lenders add these costs to loan amounts, however, under the guise of ''points.''[189] The points are generally calculated as a percentage of the loan amount and have been known to exceed 5 percent.[190] These points augment loan amounts, and thus actual interest rates, because MH borrowers customarily finance these costs instead of paying them at closing.[191] Added points are particularly problematic for consumers where loan documents state an ''amount financed'' that does not account for these points.[192]

Lenders also may include other costs and add-ons in loan amounts.[193] For example, some lenders augment loan amounts with high insurance costs.[194] Some lenders impose these costs for property coverage, Homebuyer Protection Plans, Extended Service Warranties, and credit life insurance.[195] One consumer group found that lenders required consumers to pay an estimated $2.5 billion too much for credit insurance in 2000 alone.[196] Consumers often pay high costs for credit and property insurance because they purchase the insurance from MH dealers or lenders at elevated costs without realizing that they have the option of shopping around.[197] To make matters worse, some MH insurance programs are fairly useless. Homebuyer Protection Plans, for example, often cost between $480 and $580, although they do not cover existing defects and may be overly limited.[198]

Consumers also complain that lenders offer MH packages at costs above what the individual items are worth.[199] This is particularly problematic when these costs cut into home equity because, although lenders qualify consumers for loans based solely on the cost of the MHs, they don't explain to consumers how package costs will increase monthly loan payments.[200] With the relatively high interest charged on these loans, these additional package items often raise loan amounts well above the value of the collateral, the MH, leaving a consumer ''underwater'' (owing more than the MH is worth), and therefore liable to the lender for the deficiency remaining after the home is sold.[201] Indeed, ''[f]ees, points and overpriced, unneeded add-ons'' augment loan balances without adding to the value of the homes.[202] In other words, an MH loan may be underwater although the MH has not decreased in value.[203]

Many MH consumers cannot contract out of onerous financing provisions or otherwise avoid their enforcement.[204] This is generally true even when these financing terms appear in lenders' standard form contracts.[205] Although these forms are subject to general contract defenses, most courts enforce them as true ''agreements.''[206] Furthermore, consumers generally

cannot avoid repossession of their MHs when they cannot pay the high costs generated by these contracts.[207] In 2002 alone, an estimated 90,000 consumers lost their MHs through repossession or foreclosure.[208] One consumer, for example, obtained a $40,000 loan from Conseco to purchase a new MH even though he was on disability, had little income, and had filed for bankruptcy only a few years earlier. Unsurprisingly, he defaulted and lost his home within eighteen months.[209]

The law should permit lenders to recover unpaid debts, and guard their interests in collateral that secures debt payment. The problem is more complex in the MH context, however, when MH consumers lose their homes while attempting to pursue warranty claims. These problems also multiply when a defective MH draws a lower price in resale, making a debtor liable for the resulting deficiency.[210]

B. Illusory MH Warranty Rights

Consumers often find MH deals very daunting. ''[T]he mobile home sale can be much more like an old fashioned, high-pressure auto deal.''[211] MH shopping ''can combine all of the headaches of buying an automobile with the complexities of any housing purchase.''[212] However, consumers cannot test drive MHs. Instead, MH consumers often must make the financially and emotionally significant decision to purchase an MH based on catalog descriptions and small samples.[213] In contrast to the generally slow and contemplative process of purchasing a site-built home, the MH buying experience is often rushed. Dealers get consumers approved for financing and prepare purchase agreements in a matter of hours.[214] ''On some retailer lots, all things are possible and instant gratification is offered.''[215]

Defects can cause MH nightmares. Some MH manufacturers have allowed cost-effective construction to harm home quality and safety.[216] Some MH dealers have further sidelined safety by promoting MHs on floor plan and visual appeal rather than durability and quality.[217] ''In a [2002] nationwide survey of mobile-home owners conducted by Consumers Union, 6 out of every 10 people reported a major problem with their homes.''[218] The report concluded that MH owners have been left ''in the lurch'' by poor warranty repair service and weak HUD enforcement of federal construction and safety standards.[219]

In addition, the 2002 Summary of Complaints filed with the Council of Better Business Bureaus (BBB) reported 2,192 complaints against MH businesses in the categories of ''Parks,'' ''Services,'' ''Equip & Parts,'' ''Rent & Lease,'' ''Transporting,'' and ''Mobile/Modular/Manufactured Housing Dealers.''[220] ''Mobile/Modular/Manufactured Housing Dealers'' ranked eighty-fifth among the 1,103 business categories ranked by number of complaints processed by the BBB in 2002.[221] The table further indicated in this category that consumers were not satisfied with a resolution of their complaints in 23.4 percent of the cases, and that the businesses provided no response to 17.4 percent of the complaints.[222] Due to the prevalence of MH claims, the BBB is in the early stages of implementing a ''Right at Home''

program aimed at promoting informal resolution of consumers' warranty-related disputes against MH manufacturers.[223] At this stage, it appears that only two MH manufacturers have agreed to participate in the nonbinding program.[224]

Consumers often struggle to obtain remedies for these MH problems due to contract preclusions and limitations on warranties. It is common for manufacturers to exclude or limit consumers' rights to collect damages for MH defects. With their relatively strong bargaining strength, many manufacturers and dealers impose contract terms that exclude consequential damages for breach of warranty, severely cap direct damages, or limit consumers' remedies to the cost of repair.[225] Some warranties also exclude coverage of important items, including wall cracks, leaky faucets, and faulty doors and windows.[226]

These warranty exclusions have been particularly problematic with respect to defects caused in transit, during installation, or by improper site preparation.[227] While it may seem cliché to mention tornados' destruction of MHs, the reality is that MHs are vulnerable to severe storm damage because they often are not properly anchored to the ground during installation.[228] Although manufacturers are required to include installation manuals directing how their MHs must be anchored to the ground, regulators report that faulty installation accounts for over half of reported MH problems.[229] However, HUD has not yet developed federal installation guidelines and many states do not even license or certify installers. It is hoped that this situation will change after HUD establishes installation guidelines pursuant to the MHIA.[230]

Meanwhile, any warranties for used MHs are even scantier, if existent at all. It is common for used homes to be sold ''as is'' or with very limited warranties.[231] Some of these MH consumers, therefore, purchase ''extended warranties'' seeking to secure coverage for defects and costly repairs. These warranties, however, ''are often little more than high-priced insurance products issued by third party companies'' as part of ''package'' deals promoted by dealers and added to the MH financing at elevated costs.[232]

Conclusion

MHs provide great opportunities for low-income families to own their homes. MHs also may provide these families with affordable housing options where rental, subsidy, and other housing avenues are closed. Accordingly, policy makers cannot afford to ignore MH residents as mere ''trailer trash.'' Furthermore, the MHIA gives HUD the opportunity to take a strong stance on MH safety and warranty protections. Of course, this is a complex task because HUD must refrain from imposing overly onerous regulations that would jeopardize production cost savings that make MHs an affordable home ownership option. The time is also ripe for state policy makers to rethink the current application of personal property laws to MHs. Perhaps state law should treat MHs like site-built homes. At the least,

federal and state policies should recognize and protect the potential that MHs provide for affordable housing.

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1. *See* Teresa A. Sullivan et al., The Fragile Middle Class 199–200 (Yale Univ. Press 2000) (discussing the importance of home ownership and difficulties regarding homes in bankruptcy).

2. *See id.* at 199–237 (discussing devastation caused by housing purchases beyond consumers' means).

3. Neighborhood Reinvestment Corp. and the Joint Center for Housing Studies of Harvard University, An Examination of Manufactured Housing as a Community and Asset-Building Strategy 2 (Ford Found. 2002) [hereinafter NRC Examination]. These terms are often used interchangeably. However, ''manufactured homes'' are only those that are factory built in accordance with the HUD code created under the Federal Manufactured Housing Construction and Safety Standards Act (FMHCSSA), passed by Congress in 1974 to impose national quality and safety standards for these homes. *See id.* ''Mobile home'' technically refers to units built before 1976. *See id.* I collectively refer to both as ''MHs'' for convenience throughout this article. I do not include under this term ''modular'' or ''panelized'' homes built partially on-site, or ''trailer'' homes that can be hitched to an automobile and that are not built to HUD standards. *Id. See also* Lary Lawrence, *Secured Transactions, in* 11 Anderson on the Uniform Commercial Code § 9–102:72R (Oct. 2002) (defining ''manufactured home'' as specified in the FMHCSSA).

4. *See* Consumers Union Southwest Regional Office, Raising the Floor, Raising the Roof: Raising Our Expectations for Manufactured Housing, Executive Summary, at 1–3 (May 2003), *available at* http://www.consumersunion.org/other/mh/raising/raising-exe.htm (last visited Feb. 24, 2004) (noting these and other problems) [hereinafter Raising the Floor].

5. NRC Examination, *supra* note 3, at 3–10.

6. *Id.*

7. *Id.* at 1–59. Further information can be obtained through the NeighborWorks Program of the NRC, *at* http://www.nw.org (last visited Feb. 24, 2004).

8. *Id.* at 1.

9. *See* MHIA, Pub. L. No. 106–569, 114 Stat. 2944 (2000). The Act amended the FMHCSSA and is intended to benefit the industry and home owners by implementing a streamlined process for establishing and updating HUD manufacturing and installation standards for MHs, and by requiring states to develop programs for efficiently resolving disputes regarding defect repairs in order to end the ''hot potato'' problem that occurs when consumers are left with defective MHs while manufacturers, installers, and retailers continually shift blame to one another for the defect. *See id. See also* FMHCSSA, 42 U.S.C. §§ 5401–5426 (2003).

10. *See* FMHCSSA, 42 U.S.C. §§ 5401–5426 (2003).

11. *See* HUD, Manufactured Housing Dispute Resolution Program: Advance Notice of Proposed Rulemaking, 24 C.F.R. § 3286 (2003) [hereinafter HUD Notice].

12. *See* Raising The Floor, *supra* note 4, at 1–4 (emphasizing the opportunities for MH owners to build equity in their homes and enjoy the other benefits enjoyed by owners of conventional homes).

13. Manufactured Housing Research Alliance, Technology Roadmapping for Manufactured Housing 7 (Mar. 2003) [hereinafter Roadmapping].

14. *Id.* (noting a $212,300 average home price in 2001).

15. NRC Examination, *supra* note 3, at 2–3. A 1998 HUD study indicated that building a 2,000-square-foot MH costs 61% as much as a comparable site-built home. *Id.*

16. *Id.*

17. *See* Kevin Jewell, Manufactured Housing Appreciation: Stereotypes and Data 2 (Consumers Union Southwest Regional Office Apr. 2003) (undertaking study of MH appreciation in order to promote home ownership for low-income families) [hereinafter MH Appreciation]; Raising the Floor, *supra* note 4, at 1–3 (providing report to spark nonprofit involvement in addressing problems that prevent MHs from reaching their full potential for low-income families); Roadmapping, *supra* note 13, at 3, 7–9 (emphasizing the importance of MHs in providing housing to those who would otherwise be unable to own homes).

18. *See* Roger Colton & Michael Sheehan, *The Problem of Mass Evictions in Mobile Home Parks Subject to Conversion*, 8 J. Affordable Housing & Community Dev. L. 231, 233–34 (1999) (reporting study findings that ''upwards of 80%'' of MH park residents remain in their first MH, and only 1% of MHs are ever moved during their lifetimes).

19. *Id.* at 231.

20. *Id.*

21. *See id.* at 235.

22. *Id.*

23. *See id.*

24. *See* NRC Examination, *supra* note 3, at 6–7.

25. H. Guyton Murrell, *Mortgages on Mobile Homes: How Secure Is Your Secured Interest?*, 11-Feb. S.C. Law. 41, 42 (2000).

26. Debra Lyn Bassett, *Ruralism*, 88 Iowa L. Rev. 273, 319–21 (2003).

27. *Id.* at 319 (citation omitted).

28. *Id.* at 320–21.

29. *See id.* (noting MHs as key housing source for those with very low incomes).

30. NRC Examination, *supra* note 3, at 2–11. Between 1993 and 1999, MHs provided for 23% of home ownership growth among those with very low incomes overall, and 63% of such growth in the rural South. *See id.* at 3. Nonetheless, during this same time, MH ownership increased among those with median incomes; as the industry produces higher-end MHs, more owners are able to place their MHs on land that they own, and retirees choose to live in MHs in warm weather regions. *See id.* at 9–11 (discussing changing demographics). Still, very-low-income households occupy the great majority of MHs built before 1976, and these people with few housing options are left living in deteriorating units. *See id.* at 19. The median household income of MH dwellers in 1995 was $22,578, compared to $31,416 for all households nationally. Manufactured Housing Report, *Dream Home or Nightmare*, 63 Consumer Rep. 2, Feb. 1998, at 30, 32 [hereinafter *Dream Home*]. Note also that MH prices are lower than prices for modular homes, which are factory built but which are assembled on-site and installed on permanent foundations. *Id.* at 31 (further

noting that prices of modular homes ''can be similar to those of site-built homes'').

31. Richard Genz, *Mortgage Lending for Manufactured Homes: Maine State Housing Authority's Experiment,* Neighborhood Reinvestment Corp. Campaign for Home Ownership, at 11 (Sept. 2002), *available at* http://www.nw.org (last visited Feb. 24, 2004); *see* 2000 Alabama Facts, Alabama Manufactured Housing Institute (2000), *at* http://www.amhi.org//facts.html (last visited Feb. 24, 2004) (reporting in 2000 that 60% of MH owners in Alabama had an annual household income below $30,000, and 53% of MH dwellers were operators/laborers, craftsmen/repairmen, or students/armed forces). This figure presumably takes into account the owners of higher-end and higher-cost MHs used for winter getaways and vacations. *See id.*

32. *See* Genz, *supra* note 31, at 9. Furthermore, given the choice between living in a MH or in low-rent housing, many prefer MH living because of the increased privacy and access to open space. *See id.*

33. *See* NRC Examination, *supra* note 3, at 9–10.

34. *Id.*

35. *See id.*

36. *See* Cheryl P. Derricotte, *Poverty and Property in the United States: A Primer on the Economic Impact of Housing Discrimination and the Importance of a U.S. Right to Housing,* 40 How. L.J. 689, 700–01 (1997) (noting concern regarding MHs because they ''offer little in the way of wealth accumulation'').

37. NRC Examination, *supra* note 3, at 9–10.

38. *Id.* at 10.

39. Kathy Mitchell, *In Over Our Heads: Predatory Lending and Fraud in Manufactured Housing,* Consumers Union Southwest Regional Office Public Policy Series, Vol. 5, No. 1, at 16–17 (2002), *available at* http://www.consumersunion.org//mh (last visited Feb. 24, 2004) (discussing the ''booming'' market among those of Hispanic origin).

40. *Id.*

41. *Id.*

42. *Id.* at 16. This can be especially problematic when consumers are dismayed to learn that the contract they signed, but did not understand, bars them from backing out of the deal when a defective MH arrives. *See id.* (describing cases in which non-English-speaking MH consumers have been stuck with defective MHs that they did not realize they purchased).

43. Sullivan et al., *supra* note 1, at 231–33.

44. *See id.*

45. *Id.* (noting that Hispanic-American rates slipped from 42% to 39%, while African-American rates remained stable at 43%, with both significantly below 67.9% for white Americans).

46. 42 U.S.C. § 1436a (2003). Under federal law, the applicable secretary is barred from making financial assistance available for aliens unless they are residents lawfully admitted for permanent residence or fit another specified category listed in the Act. *See id.* In addition, the law further limits and conditions any federal assistance to aliens, and prescribes a strict eligibility verification scheme. *See id.*

47. Mathews v. Diaz, 426 U.S. 67, 79–87 (1976) (emphasizing Congress's broad power over naturalization and immigration, and holding that in exercising that broad power, Congress has no duty to provide all aliens with the

same benefits provided to citizens, let alone the same benefits available to aliens who have demonstrated greater affinity to the United States).

48. Graham v. Richardson, 403 U.S. 365, 372–73 (1971) (finding that states may discriminate in providing assistance and resources to noncitizens, but holding that states may not adopt exclusionary laws regarding citizenship that contravene the uniformity of federally supported welfare programs).

49. I use this for ease of reference, but recognize that all parties falling under this umbrella are not necessarily industry savvy, and do not necessarily enjoy strong bargaining power.

50. *See* NRC Examination, *supra* note 3, at 3–5 (discussing this integration, and noting how it facilitates mass production and cost savings).

51. *See id.*

52. Robert W. Wilden, *Manufactured Housing: A Study of Power and Reform in Industrial Regulation*, 6 Housing Pol'y Debate 523, 531 (1995).

53. *Id.*, at 534–35 (discussing MHI and other powerful industry groups that wield political power that overshadows that of consumer groups).

54. *Id.* at 531–36 (discussing role of MH industry associations, namely MHI, in establishing national policies). *See* NRC Examination, *supra* note 3, at 16 (discussing how MHI has promoted MHs as a means for affordable housing and touted their cost and efficiency benefits).

55. *See, e.g.*, Roadmapping, *supra* note 13, at ii (listing contributors to the Manufactured Housing Research Alliance (MHRA) report, including the project chair from Champion Enterprises, the largest of the nation's MH manufacturers). Interestingly, the MHRA report was produced for HUD, but HUD provides a disclaimer that the report does ''not necessarily reflect the views or policies'' of HUD. *Id.* However, many MHRA contributors are government and policy representatives, although the tone is pro-insider in touting how the ''manufactured housing industry will be far more diverse and more fully integrated into the fabric of the larger housing industry than it is today.'' *Id.* at 3.

56. *See* ASCE Proposes Amendment to Manufactured Housing Bill, *at* http://www.asce.org/pressroom/news/grwk/grwk0310_manufactured housing.cfm (last visited Feb. 25, 2004) (discussing ASCE's proposal to reform HUD's ''consensus committee'' approach to establishing MH safety standards in order to better ''provide protections for the buyers of manufactured homes'' and quell the MH industy's influence over the creation and enforcement of federal safety standards). Power imbalances breed static policies. Indeed, one commentator lamented in 1977 the ''surprising'' ''magnitude of unresolved difficulties'' confronting MH living, and proposed that if the market did not iron out these difficulties, the courts and legislatures would need to step in to resolve conflicts, namely those caused by ''imbalances of power.'' Bailey H. Kuklin, *Housing and Technology: The Mobile Home Experience,* Tenn. L. Rev. 765, 768–69 (1977).

57. Robert W. Wilden, *Manufactured Housing and Its Impact on Seniors, prepared for* Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century (Feb. 2002), *available at* http://www.seniorscommission.gov/pages/final_report/manufHouse.html (last visited Oct. 13, 2003).

58. *Id.*; *see* Wilden, *supra* note 52, at 533 (discussing a breakdown of the consensus and the unwillingness of both manufacturers and retailers to extend

warranties regarding MH installation—when many defects take root). The MH industry maintained a unified front against reforms, and even walked out of an NCMH meeting to end its move forward with legislation. *See id.* MH insiders also launched a successful lobbying effort that doomed the reform to failure. *See id.* at 533–34.

59. *Id.* at 531–34.

60. *Id.*; Kortney Stringer, *How Manufactured-Housing Sector Built Itself into a Mess,* WALL ST. J., May 24, 2001, at B4 (discussing the quick rise and devastating fall of the MH industry due to easy credit and untempered increases in manufacturing).

61. *Dream Home, supra* note 30, at 33.

62. Stringer, *supra* note 60, at B4.

63. *Id.* Champion Enterprises Inc., the largest MH manufacturer, closed nineteen plants and eighty-three retail stores from 1999 to 2001, and Fleetwood Enterprises Inc., another major manufacturer, cut 28% of its staff during that time. *See id.* Still, some of the southern manufacturers remained profitable, including Clayton Homes of Tennessee and Palm Harbor of Texas. *See id.*

64. NRC EXAMINATION, *supra* note 3, at 3–5 (generally discussing consolidation in the MH industry).

65. Colton & Sheehan, *supra* note 18, at 231.

66. *Dream Home, supra* note 30, at 34.

67. CONSUMERS UNION SOUTHWEST REGIONAL OFFICE, MANUFACTURED HOME OWNERS WHO RENT LOTS LACK SECURITY OF BASIC TENANTS RIGHTS (Feb. 2001), *available at* www.consumersunion.org/other/home/manu1.htm (last visited Feb. 25, 2004) [hereinafter HOME OWNERS WHO RENT].

68. *Id.* Specifically, the Consumers Union report concluded that MH owners suffered particular disadvantages because of the imbalance of power that results from limited options and the inability to move MHs without significant financial harm. *See id.*

69. *See* Bill Reed, *Our Readers' Views,* THE NEWS J., Apr. 21, 2002, at 12A (including letter complaining about landowners' ''obscene'' rent increases, and arguably improper pass-through charges).

70. *Dream Home, supra* note 30, at 34.

71. *Id.* One MH owner reported that she bought her first MH because she could not afford a site-built home, but when she attempted to sell her MH in order to move up to a site-built home, her landlord refused to approve any of the six people who offered to buy the $9,500 home. Meanwhile, the landlord bid $2,000 for the MH, causing the owner to pay $1,500 to have the MH moved to a new park until she sold it a year later for $7,000. *Id.* This inspired her to become chairwoman of the National Foundation of Manufactured Home Owners. *Id.*

72. *Matthew Ebnet,* L.A. TIMES, Apr. 13, 2001, at B1 (further explaining that park owners have unregulated control over residents' utility bills). If MH park tenants do not pay utility bills due to discrepancies, then they are evicted—home and all. *Id.*

73. *See* Judith Vandewater, *Mobile Home Ex-Residents Protest Law on Eviction,* ST. LOUIS POST-DISPATCH, Sept. 18, 1995, at 1; Colton & Sheehan, *supra* note 18, at 232–33.

74. Colton & Sheehan, *supra* note 18, at 232–33.

75. *Id.*

76. Neil Peirce & Patti Leitner, *Mobile Homes May Have Come of Age But Builders Say Regulations Haven't,* The Nat'l J., May 1982, at 913.

77. Colton & Sheehan, *supra* note 18, at 232–33.

78. *See id.* MH community owners have been reported to pressure consumers into buying MHs from retail outlets that they own, although some states prohibit such tying transactions. *See id.*

79. Home owners Who Rent, *supra* note 67. The 2001 report stated that Clayton ran seventy-five MH communities across the country, with twenty-six in Texas. *Id.*

80. *Id. But see* Adolfo Pesquera, *Mobile Homes Have Arrived; Manufactured Housing Now Comes with Better Quality, and Parks Offer More Amenities, Longer Leases,* San Antonio Express-News, May 6, 2001, at 1K (discussing how MH tenants' complaints ignited a campaign for legislation aimed at providing improved MH park conditions in Texas).

81. Marilyn Oliver, *Home for Good,* L.A. Times, Jan. 15, 1995, at K1 (because MH home parks have listing prices in the millions, purchasing the land can become a formidable task, especially for those with limited resources). Nonetheless, states such as California have enacted laws aimed at propelling the MH park conversion movement. *See id.*

82. Fred Hyneman & Connie Hyneman, *Park Sewage Charge Is Outrageous,* St. Petersburg Times, Feb. 25, 1992, at 2 (residents' complaints regarding Merrill Lynch's imposition of the $660,343.68 cost for a project that became necessary when the Department of Environmental Regulation cited Merrill Lynch for pollution and substandard conditions).

83. Retaliatory eviction statutes generally apply to personal property, including MHs, as well as real property. Furthermore, many states have statutes that protect MH park residents from park owners' retaliatory actions. *See, e.g.,* Ohio Rev. Code Ann. § 3733.09 (1987) (forbidding an MH park owner from retaliating against a resident who complained about housing, health, safety, or other violations); Iowa Mobile Home Act, Iowa Code § 562B.32 (2001) (providing protections for same activities). Other states also apply basic landlord-tenant statutes to MHs. *See, e.g.,* People *ex rel.* Higgins v. Peranzo, 579 N.Y.S.2d 453, 455–56 (1992) (applying general landlord-tenant law to MH owner's retaliatory eviction of tenants who complained of septic problems that constituted breach of the implied warranty of habitability). Other jurisdictions allow retaliatory eviction recovery under common law. *See, e.g.,* Glaser v. Meyers, 137 Cal. App. 3d 770, 775–76 (Cal. Ct. App. 1982) (applying common law retaliatory eviction defense).

84. *See, e.g.,* Ohio Rev. Code Ann. § 3733.09 (1987) (listing rent increases, service decreases, and repossession actions among forbidden retaliatory actions); Iowa Mobile Home Act, Iowa Code § 562B.32 (2001) (listing same).

85. *See, e.g.,* Green Tree Fin. Corp. v. Bazzle, 123 S. Ct. 2401, 2401–10 (2003) (involving form arbitration clause in MH contract that arguably precluded class relief); Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 91 (2000) (enforcing arbitration clause in form MH contract despite arbitration's additional expenses and questionable impact on Truth in Lending Act (TILA) claims).

86. *See* Wendy Schermer, *Zoning and Land Use Planning—Mobile Homes: An Increasingly Important Housing Resource That Challenges Traditional Land Use Regulation*—Geiger v. Zoning Hearing Board of North Whitehall, 60 Temp. L.Q. 583, 594–97 (1987) (discussing adherence to traditionally poor perceptions of MHs as aesthetically displeasing drains on public resources that should be

treated differently from conventional homes with respect to zoning).

87. Peirce & Leitner, *supra* note 76, at 913.

88. *Id.*

89. Gianakakos v. Commodore Home Sys. Inc., 727 N.Y.S.2d 806, 808 (N.Y. App. Div. 2001) (dismissing claim that MH violated state MH construction and safety regulations to the extent that the federal standards preempted state regulations).

90. *See* Consumers Union, Give Up Your Right to Sue? (May 2000), *available at* http://www.consumerreports.org/main/content/display_report.jsp?FOLDER%3C%3Efolder_id=347709&bmVID=1077748730296 (last visited Feb. 24, 2004) (lamenting weaknesses of HUD MH standards and HUD's failure to comprehensively review these rules for the past twenty-three years) [hereinafter Give Up].

91. *See* MHIA, Pub. L. No. 106–569, 144 Stat. 2944 (2000).

92. Give Up, *supra* note 90, at 2–3. HUD has struggled to maintain the balance between protecting cost savings for manufacturers and safety for consumers. *See id.*

93. Peirce & Leitner, *supra* note 76, at 913.

94. *Id.* (reporting emphasis on cost-savings pursuant to revisions that began in 1979); *see* Give Up, *supra* note 90, at 2–3 (lamenting the weaknesses of HUD's MH standards, and warning that proposed federal legislation has sought to shift HUD's focus ''from safety to promotion of the industry'').

95. Peirce & Leitner, *supra* note 76, at 913 (noting complaints that ''[w]hatever industry wants, industry gets'').

96. In the early 1980s, the Federal Trade Commission reported that warranty service problems were ''a persistent and widespread problem.'' Peirce & Leitner, *supra* note 76, at 913 (noting lack of warranty remedies for common defects such as leaky roofs, buckling walls, and sagging floors, as well as for major health concerns brought on by chemicals used in MH production that cause respiratory and other problems for MH dwellers).

97. *See* 42 U.S.C. § 5422(g) (2000); *see also* HUD Notice, *supra* note 11, at 1152 (describing general parameters of dispute resolution program, and calling for input regarding specifics).

98. Ala. Manufactured Hous. Comm'n ch. 535-X-18 (Jan. 10, 2003), pursuant to Ala. Code § 24–6-4 (1975). Per the regulation, the AMHC determines who is responsible for defects based on ''credible source[s],'' and it orders responsible parties to correct defects within a specified period, ''normally twenty (20) days after receipt.'' Ala. Reg. ch. 535-X-18.

99. 42 U.S.C. §§ 5422, 5404 (2003).

100. *See Summary of the Manufactured Housing Improvement Act P.L. 106–569, at* http://www.ctmha.com/Mfg%20Housing%20Improvement%20Act%202000.htm (last visited Feb. 25, 2004).

101. Lawrence, *supra* note 3, at § 9–102:72R (defining MHs as factory built on chassis).

102. Barkley Clark & Christopher Smith, *Warranties Under the UCC,* in 1 The Law of Product Warranties § 2:26 (Mar. 2003).

103. Lawrence, *supra* note 3, at § 9–102:76R 11; *see* Larry T. Bates, *Certificates of Title in Texas Under Revised Article 9,* 53 Baylor L. Rev. 735, 754–56 (2001) (discussing application of Texas certificate-of-title laws to MHs); George v.

Commercial Credit Corp., 440 F.2d 551, 553–54 (7th Cir. 1971) (applying Wisconsin law's tests for determining when MHs become realty, focusing on physical annexation to land, adaptation to that land, and parties' intent to affix personalty to the land).

104. Lary Lawrence, *Secured Transactions, in* 9 Anderson on the Uniform Commercial Code § 9–313:8 (June 2003) (explaining that MHs will not be treated as fixtures when placed on leased land in MH parks). Lenders' liens on MHs can be problematic, because it is often unclear if a person holding the lien should record a security interest in the real estate, UCC, or certificate-of-title office, and even when that person has properly recorded an interest, it is unclear whether a pre-affixation lien will retain priority if the MH later becomes a fixture. *See id.*

105. Murrell, *supra* note 25, at 41–43 (discussing ambiguous law governing MHs); Conseco Fin. Servicing Corp. v. Old Nat'l Bank, 754 N.E.2d 997, 1001–02 (Ind. App. 2001) (noting confusion due to MHs' classification as ''goods'' and realty, depending on affixation to land, and confronting complications regarding priority of liens due to application of certificate-of-title laws). Furthermore, MHs originally were taxed as cars. *See* Peirce & Leitner, *supra* note 76, at 913.

106. *See* Robinson v. Diamond Hous. Corp., 463 F.2d 853, 860–68 (D.C. Cir. 1972) (Judge Skelly Wright emphasizing real estate law aimed at protecting the ''vital'' right to adequate housing, and communities' unique capacity to decide real estate matters that involve ''a complex of moral and empirical judgments'').

107. *See* Derricotte, *supra* note 36, at 690–94, 705–08 (discussing right to housing in the 1965 U.N. International Convention on the Elimination of All Forms of Racial Bias, noting the ''crisis-level'' lack of safe and affordable housing in the United States, and calling U.S. policy makers to ''get on with the business of providing decent and affordable housing for residents at all income levels'' by the year 2000).

108. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1072–83 (D.C. Cir. 1970) (emphasizing policy requiring an implied warranty of habitability in all housing leases); Hilder v. St. Peter, 478 A.2d 202, 207–11 (Vt. 1984) (discussing evolution of real estate law to protect the overriding interest in ''safe, sanitary and comfortable housing''); Maine State Hous. Auth. v. Depositors Trust Co., 278 A.2d 699, 702–05 (Me. 1971) (finding that Housing Authorities Act aimed at eliminating unsafe and unsanitary housing and at making decent housing available to low-income families was a proper exercise of state's police power).

109. *See* George v. Commercial Credit Corp., 440 F.2d 551, 553 (7th Cir. 1971) (noting the ''dual nature'' of MHs because they are houses, but are also transportable) (citations deleted).

110. Clark & Smith, *supra* note 102, § 2:26 (stating that with respect to the warranties of merchantability under the UCC and of habitability under real estate law, ''[t]he legal results are pretty much the same'').

111. *Javins*, 428 F.2d at 1072–82 (establishing a common law implied warranty of habitability in the landlord-tenant context, and also recognizing a like warranty of fitness in home construction contracts); Gianakakos v. Commodore Home Sys. Inc., 727 N.Y.S.2d 806, 808 (N.Y. App. Div. 2001) (applying UCC Article 2 to contract for purchase of an MH).

112. UCC § 2–316 (1998); *see* Davis v. Tazewell Place Assoc., 492 S.E.2d 162 (Va. 1997) (holding enforceable an express warranty of workmanlike quality

regarding construction and sales of a town home); Rouse v. Brooks, 383 N.E.2d 666, 668–69 (Ill. App. Ct. 1978) (holding that express warranties in real estate purchase agreement did not merge with the deed).

113. *See* Snow v. Corsica Constr. Co., Inc., 329 A.2d 887, 888–90 (Pa. 1974) (noting that a contract to convey real estate may be unenforceable where there is evidence of ''fraud or imposition'' that would make it unjust to enforce the contract, but finding no evidence of fraud in this case).

114. *See* Bethamy v. Bechtel, 415 P.2d 698 (Idaho 1969) (applying such warranty in realty contract); Waggoner v. Midwestern Dev. Inc., 154 N.W.2d 803 (S.D. 1967) (same).

115. Block v. Neal, 460 U.S. 289, 293–99 (1983) (holding that such claim was not barred by the Tort Claims Act). Nonetheless, neither MH consumers nor most real estate purchasers will generally be able to recover against lenders for failing to inspect MHs for which they provide financing. *See* Henry v. First Fed. Sav. & Loan Ass'n, 459 A.2d 772, 774 (Pa. 1983) (holding that lender has no duty to inspect mortgaged property unless it has assumed a special duty to the mortgagor); Gardner Plumbing, Inc. v. Cotrill, 338 N.E.2d 757 (N.Y. 1975) (same).

116. Barnes v. Brown & Co., 342 N.E.2d 619, 620–22 (Ind. 1976) (rejecting contentions that a distinction should be drawn between personal and economic loss).

117. *Id.* Interestingly, the majority justifies its opinion as treating real estate like personal property. *Id.* However, as the dissent stresses, ''[n]o express or implied warranty is created by the UCC which would protect the plaintiffs here, had they purchased a used piano from a private party instead of a used house'').

118. Clark & Smith, *supra* note 102, at § 2:26 (noting that Article 2 defenses to warranty liability clearly apply to MH transactions). Although sellers may limit or exclude warranty liability under real estate law, the UCC may be clearer with respect to such limitations. *See* Rawson v. Conover, 20 P.3d 876, 886–87 (Utah 2001) (holding that implied and express warranties were destroyed when van purchase contract disclaimed all warranties, even if seller's statements regarding the safety and good repair of the van became part of the basis for the bargain); DeGrendele Motors, Inc. v. Reeder, 382 S.W.2d 431, 434–35 (Mo. Ct. App. 1964) (finding that express disclaimer of warranties in car purchase order prevented purchaser from recovering under implied warranty of fitness). *See also* Gianakakos v. Commodore Home Sys. Inc., 727 N.Y.S.2d 806, 808 (N.Y. App. Div. 2001) (finding that breach of UCC warranty claim in MH case was barred because valid one-year warranty limited to repair or replacement per the UCC had expired one year after delivery of the MH). Still, UCC § 2–316 requires that any waiver of the implied warranty of merchantability must mention ''merchantability'' and be conspicuous if in writing. *See* Hartman v. Jensen's, Inc., 289 S.E.2d 648, 648–49 (S.C. 1982) (denying enforcement of a warranty disclaimer in the sale of an MH because the disclaimer under the ''Terms of Warranty'' was so ambiguous that it would fail to alert consumers of the exclusion).

119. *See* Briarcliffe West Townhouse Owners Ass'n v. Wiseman Constr. Co., 480 N.E.2d 833, 834–38 (Ill. App. 1985) (holding that warranty disclaimer is invalid unless it is ''so clear and so conspicuous that no other reasonable conclusion could be reached but that the buyers read and understood the lan-

guage''); Schoeneweis v. Herrin, 443 N.E.2d 36, 41 (Ill. Ct. App. 1982) (finding that ''as is'' clause in real estate contract did not disclaim implied warranties of habitability where it did not refer to a particular warranty and was not explained in the text of the agreement); Hilder v. St. Peter, 478 A.2d 202, 208–09 (Vt. 1984) (further stating that implied warranty not waivable by express or oral agreement in the lease); *but see* Lenawee County Bd. of Health v. Messerly, 331 N.W.2d 203, 211 (Mich. 1982) (finding that ''as is'' disclaimer applied to defects unknown at the time of contracting and thus was enforceable as to a malfunctioning sewage system).

120. *See* Nobility Homes of Tex., Inc. v. Shivers, 557 S.W.2d 77, 80–81 (Tex. 1977) (finding that MH purchaser could recover for personal and economic losses suffered from defective workmanship and materials employed by the manufacturer).

121. *See id.* (extending liability for economic losses due to breach of warranty to manufacturer despite consumers' lack of privity with the manufacturer).

122. *See, e.g.,* Flory v. Slivercrest Indus., 633 P.2d 383, 387–89 (Ariz. 1981) (finding that privity of contract is not required under state law to recover for personal injuries suffered due to breach of implied warranties, but that lack of privity precludes recovery for economic losses). Courts have disagreed regarding the recovery for economic losses due to breach of implied warranties under the UCC in the absence of privity. *See id.* at 388–89 (gathering cases).

123. *Id.* at 385–87 (also noting that the home was repossessed by the retailer two years after the consumers filed their warranty claims, and failed to obtain any remedies from the manufacturer regarding the defects).

124. *Id.* (finding that privity of contract unnecessary under strict liability for recovery of physical injury to person or property is required to recover economic losses under that theory); *Nobility Homes,* 557 S.W.2d at 78–82 (finding that even if economic losses are recoverable for breach of implied warranty under the UCC without privity, such recovery is not available under strict liability).

125. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1074 (D.C. Cir.), *cert. denied,* 400 U.S. 925 (1970) (emphasizing policy in real estate context); King v. Brace, 552 A.2d 398, 399 (Vt. 1988) (finding an implied warranty that ensures safe, clean, and fit premises for habitation in MH case).

126. *Javins,* 428 F.2d at 1074.

127. Hilder v. St. Peter, 478 A.2d 202, 207 (Vt. 1984) (quoting *Park West Mgmt. Corp. v. Mitchell,* 391 N.E.2d 1288, 1292 (N.Y.), *cert. denied,* 444 U.S. 992 (1979)).

128. *See Hilder,* 478 A.2d at 208–10 (emphasizing that local housing authorities established a code in recognition of this same need for adequate housing that the warranty of habitability is aimed to protect).

129. *Id.* at 209–10 (adding that tenants must notify landlords of the defects and allow reasonable time for landlords to cure them before seeking a remedy).

130. *See id.* at 210–11 (also citing New York authority); *King*, 552 A.2d at 399–400 (finding that an MH tenant may recover punitive damages ''[w]hen a landlord, after receiving notice of a defect, fails to repair the facility that is essential to the health and safety of his or her tenant. . . .'') (citations omitted); *see also* Patarak v. Williams, 111 Cal. Rptr. 2d 381, 383–85 (Cal. Dist. Ct. App. 2001) (finding that under the state's Mobilehome Residency Law, a landlord may be assessed a statutory penalty for willful violation of the law).

131. *See generally* Mitchell, *supra* note 39 (discussing and reporting findings regarding predatory financing in the MH industry).

132. James J. White & Robert S. Summers, Uniform Commercial Code: Secured Transactions § 25, 884–914 (5th ed. 2000).

133. First Bank of Dothan v. Renfro, 452 So. 2d 464, 465–69 (Ala. 1984) (exemplifying an underwater MH loan where the MH that secured the loan was worth the same amount as it was ($115,325.07) when the consumer purchased it in 1981, but was worth only $3,000, much less than the outstanding debt, when the consumer filed for bankruptcy a few years later).

134. *See* Sullivan et al., *supra* note 1, at 199–237 (discussing the plight of home owners in bankruptcy who struggle to keep their homes during financial crisis).

135. *See* Genz, *supra* note 31, at 1–3 (discussing limited financing options of MH consumers).

136. *See generally* David S. Hill, Basic Mortgage Law: Cases and Materials 1–38 (2001) (providing an introduction to basic real estate transactions). As one commentator noted, by 1966 there was an effectively ''standardized'' pattern for real estate financing, and lenders demanded ''a more or less uniform product'' with the expectation that they would sell mortgages in a national market. *Id.* at 1 (citations omitted).

137. *See id.* at 35–38 (describing basics of secondary market).

138. *See id.*

139. Derricotte, *supra* note 36, at 701.

140. Genz, *supra* note 31, at 2 (stressing disadvantages caused by limited financing options).

141. Lawrence, *supra* note 3, at § 9–102:72R (defining MH transactions as secured transactions under UCC 9); Bates, *supra* note 103, at 754–56 (discussing application of Texas COT and UCC 9 to MHs).

142. Lawrence, *supra* note 3, at § 9–102:76R (discussing application of UCC 9 to MHs).

143. Rodney Clement, *Revised Article 9 & Real Estate Foreclosures,* 12-Oct. Prop. & Prop. 40, 40–41 (1998) (discussing how changes to UCC 9 ''clarify the rules for foreclosing on personal property and will provide the foreclosing lender with more certainty and flexibility in its remedies''); W. Christopher Barrier, *A Stitch in Time: Secured Lending Under Revised Article 9,* 36 Ark. L. Rev. 29, 32–33 (2001) (emphasizing increased ''flexibility and effectiveness'' of lender's remedies under revised Article 9, and stating that ''[a] secured party's collection remedy is expanded and clarified by RA 9''); Kenneth Misken, *Revised Article 9,* 24 U. Ark. Little Rock L. Rev. 415, 417–27 (2002) (also discussing the simplifications and pro-secured creditor changes of UCC 9).

144. *See generally* Edwin E. Smith, *An Introduction to Revised UCC Article 9, reprinted in* The New Article 9 Uniform Commercial Code 17–58 (2d ed. 2000).

145. *See* Derricotte, *supra* note 36, at 701 (lamenting the lack of banking industry or federal program attention to the limited and high-risk financing of MHs).

146. *See generally* Hill, *supra* note 136, at 199–289 (providing basic law regarding real estate mortgage defaults).

147. *See id.*; *see also* Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 7.1, 533–34 (4th ed. 2001).

148. *See* Nelson & Whitman, *supra* note 147, at 533–34; Joan M. Cambray, *Commercial Real Estate Financing: What Borrowers and Lenders Need to Know: Default and Foreclosure,* 2002 PRACTISING L. INST. 307, 320–22 (explaining the broad redemption and reinstatement rights provided to real estate debtors under California law).

149. *See id.*

150. *See* HILL, *supra* note 136, at 267–69 (discussing such protective measures).

151. *Id.* (explaining how creditors create purchase-money security interests in MH transactions).

152. UCC § 9–609(b); *see* Smith, *supra* note 144, at 53–58 (describing basic default rules of UCC 9 as recently revised). Generally, a secured party must sell repossessed collateral in a private or public sale, apply proceeds to repayment of the debt and costs of repossession, and then return any surplus from the sale to the debtors. *See id.*

153. *Id.* A secured party also has the option of retaining collateral in satisfaction of a debt, unless the collateral is consumer goods in the possession of the debtor, or consumer goods for which a significant portion of their purchase price has already been paid. *See* UCC § 9-620.

154. UCC § 9–601(f); *see also* Barrier, *supra* note 143, at 32–34 (noting pro-lender aspects of revised UCC § 9).

155. UCC §§ 9–608(b), 9–616. Article 9's consumer provisions merely protect a consumer debtor by requiring that the lender seeking a deficiency provide the consumer with an explanation of the calculation of the deficiency claim before demanding its payment. UCC § 9–616.

156. UCC § 9–623; Smith, *supra* note 144, at 56.

157. UCC § 9–623; WHITE & SUMMERS, *supra* note 132, at § 25.

158. *See* Samuel J.M. Donnelly & Mary Ann Donnelly, *Commercial Law Is a Humanism,* 53 SYRACUSE L. REV. 277, 296–300 (2003) (discussing how abuses ''grow up'' around collection practices, and how mass production of consumer collection practices is perpetuated through routine default judgments in roughly 90% of collection actions). Commercial law must facilitate and respond to common patterns of human relations, and, therefore, it is humanism. *See id.* at 278–79.

159. Schermer, *supra* note 86, at 594–97 (noting that courts uphold zoning restrictions that treat MHs differently from conventional homes).

160. Peirce & Leitner, *supra* note 76, at 913.

161. *See id.*

162. *See* Bassett, *supra* note 26, at 320.

163. MH APPRECIATION, *supra* note 17, at 13 (discussing segmentation of MH market due, in part, to the ''very real effect of societal stigma—historical stereotypes of 'trailer trash' make upper socioeconomic segments of the population uncomfortable with this product'').

164. Vickers v. Township Comm., 181 A.2d 129, 148–49 (N.J. 1962) (Hall, J., dissenting), *quoted in* Richard F. Babcock & Fred P. Bosselman, *Suburban Zoning and the Apartment Boom,* 111 U. PA. L. REV. 1040, 1088 (1963).

165. *See id.* As stand-alone products, MHs do not necessarily depreciate. For example, a study of 120,000 homes revealed that the average unit appreciated by 5% per year during 1979 and 1980. *See, e.g.,* Peirce & Leitner, *supra* note 76, at 913 (discussing incorrect perceptions regarding MH depreciation). It is the

high interest rates on MH loans, coupled with the added costs and ''package'' deals that cause MH debts to exceed MH values. Moreover, warranty problems and negative perceptions of MHs further impair MH values on the market. *See, e.g.,* Schermer, *supra* note 86, at 590–95 (discussing courts upholding restrictive zoning based on such findings).

166. *See* ROADMAPPING, *supra* note 13, at 35–37 (noting poor perceptions of MHs as unsafe, socially undesirable, and property value drains, and stating MH industry's vision to provide the public with ''a new understanding of, and appreciation for, HUD-Code housing [MHs]'').

167. Schermer, *supra* note 86, at 594 (also noting that this continued adherence to restrictive zoning seems ironic in light of growing importance of MHs for low-income households).

168. *See* ROADMAPPING, *supra* note 13, at 18–19, 27.

169. *See* Amy J. Schmitz, *Providing an Escape for Inner-City Children: Creating a Federal Remedy for Educational Ills of Poor Urban Schools,* 78 MINN. L. REV. 1639, 1641–47 (1994) (discussing inadequate and unequal education in poor areas due to lack of public funding from property tax revenues). Property-poor districts must tax at higher rates in order to generate amounts gathered at lower rates in property-rich districts. This is especially problematic for those who dwell in poor districts, because they are especially unwilling and unable to pay higher taxes. *See id.* at 1645.

170. *See id.* at 1645–46 (explaining ''municipal overburden'' and its effect on education). Education inadequacies arise not only in urban areas, but also in rural areas due to low property tax revenues. *See* McDaniel v. Thomas, 285 S.E.2d 156, 173 (Ga. 1981); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 144 (Tenn. 1993); *see also* Peter B. Edelman, *Toward a Comprehensive Anti-poverty Strategy: Getting Beyond the Silver Bullet,* 81 GEO. L.J. 1697, 1699–1736 (1993) (discussing low educational and vocational skills in poor areas, including rural areas, and other problems such as crime, violence, drug abuse, and few role models, associated with concentrated poverty).

171. *See infra* Part I.A. (noting importance of home ownership in providing links to schools and communities).

172. Charles Delafuente, *Manufactured Housing Law: An Untapped Specialty,* 26 A.B.A. J. E-REPORT 5 (2003); ROADMAPPING, *supra* note 13, at 13–14 (discussing energy cost burdens, liability suits, pollution problems, and defect disputes that plague the MH industry, and noting that a HUD survey found that ''79% of new home owners reported having had at least one problem with their home'').

173. HUD SUBPRIME AND MANUFACTURED HOME LENDER LIST 1–4 (updated Mar. 3, 2003), *available at* www.huduser.org/datasets/manu.html (last visited Feb. 25, 2004).

174. NRC EXAMINATION, *supra* note 3, at 11–14, 27 (emphasizing challenges).

175. *Id.* at 13.

176. 12 U.S.C. § 1703 (2003); *see* Peirce & Leitner, *supra* note 76, at 913 (noting that MHs had not been eligible for mortgage financing, but that some lenders now may finance an MH like a conventional home, and that HUD had attempted to spark lending by insuring lenders subject to limitations and restrictions).

177. Genz, *supra* note 31, at 2–3.

178. *See id.*

179. *Id.*; *see* Issac J. Bailey, *The Problem Credit Built,* THE SUN-NEWS (S.C.), Sept. 29, 2002, at A1 (discussing Conseco's purchase of Green Tree Financial, and Conseco's recent tightening of its lending, decreasing its share of MH loans from 30% to 18%).

180. Genz, *supra* note 31, at 3.

181. *Id.*

182. *Id.* at 8.

183. Bailey, *supra* note 179, at A1.

184. *Id.* In addition, the financing options are even more limited with respect to MH refinancing, resale, or renovation than they are with respect to new MH purchases. *See id.*

185. The search in Westlaw's ''ALLCASES'' database conducted on October 9, 2003, that reported the 133 cases showed the following: DA(AFT 10/10/2000) & (MOBILE MANUFACTUR!) W/3 HOME & (GREEN TREE CONSECO) (search record on file with author).

186. *See* Mitchell, *supra* note 39, at 12–13 (discussing high interest rates and excessive fees and insurance as indicators of ''predatory'' financing).

187. Genz, *supra* note 31, at 2–3; *see Dream Home, supra* note 30, at 33 (also reporting that a 1998 MH owner survey indicated a 10.4% average rate for bank loans and a 12.3% average rate for dealer loans); *see also* R. Kevin Dietrich, *Proposed Manufactured Home Regulations Debated,* THE STATE (Columbia, S.C.), Feb. 24, 2002, at F4 (discussing regulations to address predatory lending practices and onerous interest rates); Mitchell, *supra* note 39, at 2 (noting Consumers Union's finding that MH loans were typically issued to consumers at interest rates of 9% to 13% or above, at the time when conventional home loans ranged from 7% to 8.5%). A Texas study recently found MH loans ranging from 7.75% to 19%, at a time when thirty-year conventional home loans were ranging from 7% to 8.5%. *Id.*

188. Mitchell, *supra* note 39, at 14–16 (finding it common for lenders to collect would-be closing costs over the life of a loan, and lamenting down payment fraud).

189. *Id.*

190. *Id.* at 2, 12–16 (noting that in many of the loans reviewed, ''the points alone added more than three percent to the net price,'' and explaining how points augment the actual interest rate).

191. *See id.* at 16.

192. *Id.* at 1–3 (explaining how ''the bottom line'' is not truly the bottom line in MH loan documents). MH purchasers, however, typically do not enjoy the TILA three-day cooling-off period during which conventional home buyers can cancel a real estate loan, because MHs are generally financed as personal property. *See id.*

193. *See id.*

194. *Id.* at 18–19 (noting how insurance costs drive up loan amounts).

195. *Id.* at 21.

196. *Id.* (noting report by the Consumer Federation of America/Center for Economic Justice).

197. *Id.*

198. *Id.* at 22.

199. *See* MANUFACTURED HOUSING: BUYING GUIDE BROCHURE, CONSUMERS UNION'S TIPS ON MOBILE HOMES, CONSUMERS UNION 9 (2000), *available at* http://www.consumersunion.org/other/mh/brochure.htm (last visited Feb.

25, 2004) (noting that this is especially true with property insurance, and further explaining that with high interest rates on personal property loans covering MHs, the items will cost more than they are worth in the long run) [hereinafter TIPS].

200. *See* Mitchell, *supra* note 39, at 1–3 (discussing dealers' misrepresentations and failures to explain sales package terms, leading consumers to be ''underwater' and vulnerable to a deficiency balance'').

201. MH APPRECIATION, *supra* note 17, at 3 (consumers who have their home repossessed may have to pay thousands over the resale price to clear their note). ''Underwater'' in a loan means that the debtor owes more than the home is worth. *Id.* at 4.

202. *Id.* at 3–4 (explaining how onerous financing and added costs cause loans to be underwater).

203. *Id.* In 2002, for example, a major lender left the market complaining that it would get only twenty cents on the dollar for its used and repossessed MHs. *See id.* at 4.

204. *See* Mobile Am. Corp. v. Howard, 307 So. 2d 507, 507–08 (Fla. Dist. Ct. App. 1975) (holding that MH installment sales contract requiring 11.75% was not unconscionable per se because cost alone will not render an agreement unconscionable).

205. *See* PAPER TIGER MISSING DRAGON: POOR SERVICE AND WORSE ENFORCEMENT LEAVE MANUFACTURED HOME OWNERS IN THE LURCH, CONSUMERS UNION SOUTHWEST REGIONAL OFFICE MANUFACTURED HOUSING PROJECT, at 2–3, 8–12 (Nov. 2002), *available at* http://www.consumersunion.org/other/mh/paper-info.htm (last visited Feb. 25, 2004) (discussing boilerplate agreements used throughout the MH industry by insider retailers, manufacturers, and lenders) [hereinafter PAPER TIGER].

206. John J. A. Burke, *Contract as Commodity: A Nonfiction Approach,* 24 SETON HALL LEGIS. J. 285, 286–290, 308–09 (2000) (discussing true nature of standard form contracts used by sellers and manufacturers in mass market sales). *See Mobile Am. Corp.*, 307 So. 2d at 507–08 (reversing trial court and allowing for enforcement of MH installment sales contract requiring 11.75% interest); *but see* First Nat'l Bank of Maryland v. DiDomenico, 487 A.2d 646, 648–50 (Md. 1985) (finding that lender's misstatement of an MH debtor's rights in the notice of repossession and resale of the MH as collateral for the loan violated the UCC, and therefore prevented the lender from seeking a deficiency judgment where proceeds of the MH sale did not cover the outstanding debt).

207. Genz, *supra* note 31, at 2 (emphasizing repossession rates as high as 20% that is much higher than the rate for conventional mortgages).

208. Bailey, *supra* note 179, at A1 (lamenting the ''rash of repossessions'' in 2001 and 2002 due to loose lending practices).

209. *Id.*

210. It seems, however, that a consumer would have some recourse in a warranty action for damages suffered because the consumer became liable to a lender for a deficiency caused by MH defects.

211. Mitchell, *supra* note 39, at 2.

212. *Dream Home, supra* note 30, at 33.

213. *See id.* Furthermore, once an MH consumer navigates through the initial ''buyer's maze,'' the consumer must then face the daunting task of leasing a lot at an MH park or purchasing land in an area that actually permits MHs—a rare commodity due to restrictive zoning and resistance to MHs. *See id.*

214. *See* Tips, *supra* note 199, at 9 (warning consumers not to be rushed in the ''high-pressure'' atmosphere of MH sales).

215. Genz, *supra* note 31, at 3; *see* Mitchell, *supra* note 39, at 2 (warning consumers about ''dealer promises and too-good-to-be-true offers'' that can cause consumers to owe far more than their MHs are worth); *Dream Home, supra* note 30, at 30 (discussing how purchase of a ''dream home'' can become a nightmare for MH consumers).

216. *See* Raising the Floor, *supra* note 4, at 1–3.

217. *See id*.

218. Tips, *supra* note 199, at 1.

219. Paper Tiger, *supra* note 205, at 2–3, 8–12; *see* Study: Persistent Problems in Manufactured Home Warranty Service and Enforcement Provoke Customer Ire, Consumers Union, Dec. 4, 2002, *available at* http://www.consumersunion.org/other/mh/paper-pr.htm (last visited Feb. 25, 2004) (reporting high percentage of dissatisfied MH purchasers due to prevalent defects in and ''ineffective regulation of the manufactured housing industry'').

220. Council of Better Business Bureaus 2002 Summary of Complaints, *available at* http://www.dr.bbb.org/Drresults/2002WebComplaints_TOB.pdf (last visited Feb. 25, 2004). This table captures only a small fraction of total complaints, however, because it reports complaints filed only with the national organization. Furthermore, the table does not list an MH manufacturer category, perhaps because so many MH manufacturers impose their standard private arbitration clauses in consumer contracts. Of course, the table does not provide substantive information regarding the types and validity of claims filed.

221. *Id.*

222. *Id.* To the credit of the BBB, however, 69.7% of the complaints against this category were resolved in some manner, the specifics of which are not reported on the table. *See id.*

223. BBB Dispute Resolution, Right at Home, *available at* http://www.dr.bbb.org/programs/rah.asp (last visited Feb. 25, 2004). The BBB website includes very limited information regarding the program, and BBB representatives contacted knew very little about the program due to its limited use at this stage.

224. BBB Dispute Resolution, Dispute Resolution Opportunities, *available at* http://www.dr.bbb.org/programs/index.asp (last visited Feb. 25, 2004) (reporting that American Homestar has agreed to participate in nonbinding arbitration through ''Right at Home'' program in four states, and that Cavalier Homes participates in a mediation process in fifty states).

225. Tips, *supra* note 199, at 9–10 (reporting common warranty exclusions and limitations).

226. *Id.*

227. *See Dream Home, supra* note 30, at 31 (installation can be a serious safety issue for manufactured housing).

228. *See id*.; *see also* Tips, *supra* note 199, at 9 (noting items that may void warranties).

229. MHs are generally propped on piers and anchored to the ground with steel straps. *See Dream Home, supra* note 30, at 31.

230. *Id*.

231. *See* Tips, *supra* note 199, at 9.

232. *Id*.