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LEGAL BENEFITS OF HOMEOWNERSHIP

By Nino C. Monea*

The law prizes expensive, single-family homes above all other forms of housing. This Article details the many ways that the law benefits homeowners and distains renters, mobile-home owners, and the homeless. There are seven topics: (1) zoning laws mandate single-family homes and ban localities from requiring affordable housing, (2) the Tax Code allows homeowners to write off innumerable expenses but virtually nothing for renters, (3) lenders seeking to foreclose on a mortgage must surmount many hurdles, but landlords may act with nearly a free hand to evict, (4) federal, state, and local institutions all work to support the housing market and give homeowners disproportionate power and opportunities, (5) courts extend far more privacy to homes, especially large ones, and give homeowners more authority to defend their properties, (6) owners of manufactured housing, also known as mobile homes, have few protections against abusive landlords, and (7) the homeless are actively targeted by the law and punished for merely existing. Overall, the wealthier the homeowner, the more benefits the law grants them.

INTRODUCTION

In 2019, over two million Americans became first-time homebuyers.¹ They have many reasons to celebrate. By purchasing a home, they achieved a core tenant of the American dream and likely made the biggest investment of their lives. Perhaps the greatest advantage that they gained was admittance into the exalted legal class of homeowners—for the law showers privileges on those who own real estate.

Homeowners receiving favorable legal treatment is the result of many years and many actors. Such actors include not only private parties or the invisible hand, but also the public sector. The legislative, executive, and judicial branches work together at the federal, state, and local level to drive policy that favors homeowners. All forms of law, from the United States Constitution to local ordinances contribute to elevating homeownership above all other types of shelters.

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1. Tian Liu, *First-Time Homebuyer Market Report*, GENWORTH, <https://miblog.genworth.com/first-time-homebuyer-market-report/>.

Carrots and sticks are both employed in such policy. All stages of buying, living in, and losing a home are supported. This comes in the form of agencies that support homebuyers, pampered treatment in the Tax Code, and ample protection against foreclosure. The bigger the better. Large, expensive, and suburban homes enjoy outsized tax benefits, and courts afford them greater privacy from agents of the state. Because most white families own homes, but most black and Hispanic families do not, the advantages of homeownership typically benefit only a certain segment of the population.²

The riches accompanying homeownership are not shared equally, even among homeowners. Generally, poor people and black people, regardless of class, are less likely to benefit from federal tax subsidies for housing.³ Black homebuyers are steered into areas with declining equity, contributing to prevalent segregation, and black homes also appreciate more slowly and are worth less than white homes even when controlling for age, social class, central city residence, household structure, and region.⁴

The law can be vicious toward anyone who attempts to buck convention and live in anything other than a ritzy, single-family home. Tax benefits are withheld, judicial protections reneged, and agencies become deaf, dumb, and blind. The law punishes people living in mobile homes, apartments, and to a lesser extent, modest homes. Worst of all, those without homes—living on the streets or in shelters—may find their very existence criminalized. Homeless people are also attacked, and governments and private actors often are *disabled* from helping.

The law affords substantial benefits to homeowners despite the fact that they, as a group, are far wealthier than people living in other arrangements. The average homeowner has a net worth of \$195,400, which is thirty-six times higher than the \$5,400 that comprises the average net worth of renters.⁵ People living in mobile homes earn below the median income, and in comparison with the average site-built home which costs \$345,000, the average mobile home costs \$65,300.⁶ Homeless individuals have presumably little to no wealth.

Americans are keenly aware that their culture prizes homeownership. Two recent studies found that eighty-six percent of Americans believe that homeowners are better off than renters, and eighty percent identified the traditional single-family home with a yard as the ideal place to live.⁷ These beliefs likely arise from, among other things, the government's disparate treatment of living arrangements.

2. Matthew Desmond, *How Homeownership Became the Engine of American Inequality*, N.Y. TIMES (May 9, 2017), <https://www.nytimes.com/2017/05/09/magazine/how-homeownership-became-the-engine-of-american-inequality.html>.

3. Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329, 333 (2009).

4. *Id.* at 359 & n.122.

5. Desmond, *supra* note 2.

6. Jared A. Clark, *Out of House and Home: The Disparate Application of Louisiana's Eviction Laws to Mobile Home Owners*, 77 LA. L. REV. 1115, 1118 (2017).

7. William T. Mathias, *Curtailing the Economic Distortions of the Mortgage Interest Deduction*, 30 U. MICH. J.L. REFORM 43, 59 (1996).

The government's use of eminent-domain power to seize private land destroys homes and evokes outrage.⁸ Some jurisdictions permit landlords to personally kick out commercial tenants but impose extra protections for residential tenants.⁹ International law, too, recognizes the importance of the home.¹⁰

Homeowner culture is not new. A century ago, President Herbert Hoover articulated the relationship between homes and other forms of shelter: "The sentiment for home ownership is so embedded in the American heart that millions of people who dwell in tenements, apartments, and rental rows of solid brick have the aspiration for wider opportunity in ownership of their own home."¹¹ America's love affair with the home goes back farther than a century.

Arguably the biggest beneficiaries of the Bill of Rights, as a class, have been and continue to be homeowners. The First Amendment protects the freedom of speech, but this right is curtailed if it infringes on the home.¹² The Second Amendment's protection of firearm possession is at its zenith when the bearer is at home.¹³ The Third Amendment protects against soldiers being "quartered in any house, without the consent of the Owner." The Fourth guarantees the "right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures, shall not be violated." The Takings Clause of the Fifth Amendment protects owners of real estate from having their property seized, but gives no claim to people who lose certain other forms of property, such as wages.¹⁴ The right to privacy cobbled together from various Amendments is strongest at home.¹⁵

Before World War II, there were many barriers to homeownership. Banks required large down payments—sometimes as much as sixty percent—interest rates were high, and mortgages had to be paid back on a tight timeline—such as three to

8. See John Fee, *Eminent Domain and the Sanctity of Home*, 81 NOTRE DAME L. REV. 783, 784 (2006).

9. Megan J. Ballard, *Legal Protections for Home Dwellers: Caulking the Cracks to Preserve Occupancy*, 56 SYRACUSE L. REV. 277, 289–90 (2006).

10. *Id.* at 295–96.

11. Priya S. Gupta, *The American Dream, Deferred: Contextualizing Property After The Foreclosure Crisis*, 73 MD. L. REV. 523, 534 (2014).

12. *Rowan v. U.S. Post Office Dep't*, 397 U.S. 728, 738 (1970) (limiting the ability to send unwanted mailing to a person's home).

13. *District of Columbia v. Heller*, 554 U.S. 570, 628–29 (2008). This tracks many state courts granting protection for weapons at home. *E.g.*, *State v. Kessler*, 614 P.2d 94 (Or. 1980) (billy clubs allowed in the home); *State v. Stevens*, 833 P.2d 318, 320 (Or. App. 1992) (switchblades allowed in the home). Also, many state's constitutional provisions that protect the right to bear arms explicitly mention the right to defend the home. *E.g.*, DEL. CONST. art. I, § 20; W. VA. CONST. art. III, § 22.

14. See JOHN J. DINAN, *THE AMERICAN STATE CONSTITUTIONAL TRADITION 190–91* (2006). Throughout history and at present, some state constitutions expressly protect real property. *E.g.*, FLA. CONST. art. X, § 6; ARK. CONST. of 1864, art. II, § 10.

15. See *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (speaking of the constitutional protections against government invasions "of the sanctity of a man's home.") (citation omitted); *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("if the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."); *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (allowing a consensual sexual relationship at home).

six years.¹⁶ Homeownership rates were stuck at around forty percent.¹⁷ By 2004, such rates would exceed sixty-nine percent.¹⁸

Americans today spend lavishly on their homes, even modest ones.¹⁹ But no one spends more lavishly than Uncle Sam. After the 2008 financial crisis, Congress passed a \$787 billion stimulus package.²⁰ It provided tens of billions of dollars to the housing market.²¹ One expert believes that, collectively, federal tax benefits boost housing consumption as much as twenty percent.²² This has not, however, appreciably lifted rates of homeownership over approximately the last forty years.²³ This may be because tax subsidies have little effect encouraging people to become homeowners, but such subsidies raise the price of homes which makes becoming a homeowner difficult.²⁴

This Article makes three central arguments. First, the law broadly and heavily favors owners of homes, especially expensive, single-family homes. Second, the owners of such homes receive much more privileges than do people in other living arrangements: apartments, multi-family homes, mobile homes, or homelessness. Third, these legal distinctions entrench inequality by hoarding benefits for those who are already in the best socioeconomic position.

The Article has eight Parts. Part I looks at zoning laws and how they have driven everything but single-family homes out of town. Additionally, some states have laws that prohibit localities from trying to rebalance living arrangements.

Part II considers tax benefits given to homeowners. Such benefits stretch into the hundreds of billions, and some tax benefits cannot readily be calculated. Most of these benefits extend only to wealthy homeowners.

Part III analyzes foreclosure protections. Laws go to great lengths to ensure that homeowners are not tossed to the street because they cannot make their mortgage payments. Renters and mobile-home owners receive much less protection against foreclosure and eviction.

Part IV surveys the many different public institutions that support the housing market. It shows that the government has aided housing for the poor with far less vigor than for the affluent.

Part V is about privacy. Owners of spacious houses receive the most privacy; they have more rights to defend their property, and such rights trump First-Amendment freedoms. People who live in public housing are, conversely, subjected to demeaning violations of privacy as a precondition of receiving aid—preconditions that do not exist for government handouts to wealthy homeowners.

16. Gupta, *supra* note 11, at 533.

17. *Id.*

18. Paul Wiseman, *Feds rethink policies that encourage home ownership*, USA TODAY (Aug. 13, 2010), https://usatoday30.usatoday.com/money/economy/housing/2010-08-11-housing11_cv_N.htm.

19. Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511, 511–512 (2007).

20. Olatunde C. A. Johnson, *Stimulus and Civil Rights*, 111 COLUM. L. REV. 154, 174 (2011).

21. *Id.* at 174–77.

22. Mathias, *supra* note 7, at 63.

23. Brown, *supra* note 3, at 337.

24. *Id.* at 333.

Part VI explores manufactured housing, better known as mobile homes. Mobile-home residents often own their dwellings, but they rent the land upon which their abodes are stationed. This distinction empowers the trailer-park owners who control the land to deprive mobile-home owners of most of the benefits of homeownership.

Part VII addresses homelessness. Those unlucky souls who have no dwelling must confront a bramble of laws that can ensnare almost every facet of their existence and precludes people from assisting the homeless.

Part VIII concludes by highlighting the glaring disparities in U.S. housing.

I. ZONING LAWS

Zoning is known as the “the most pervasive and familiar form of local government control over land use.”²⁵ First employed comprehensively by New York City in 1916, zoning laws are now used by more than ninety-eight percent of cities that have populations over 10,000.²⁶ The Supreme Court in 1926 ruled that zoning was constitutional as long as municipalities had a rational basis.²⁷ Oftentimes, zoning rules appear mundane. They govern buildings’ maximum height, bulk, or floor area; zoning laws set the percentage of a lot that a building may occupy or place minimum parking requirements.²⁸ They can also be engines of inequality.

a. Single-Family Zoning

Dense development allows for more environmentally friendly living and more economically efficient businesses.²⁹ It also makes housing more affordable by increasing supply.³⁰ Dense development has many advantages for communities, yet incumbent homeowners have an incentive to reduce density.

Homeowners have pushed for sparse development because scarcity increases the value of their properties.³¹ Efforts to reduce development density have been wildly successful. Median home prices have soared, and many commuters are forced to drive ninety minutes or more each way to work because housing is so spread out.³² Zoning has been key to this.

In the early twentieth century, industrial cities were booming, and neighborhoods near the downtown area became crowded and noisy.³³ Residents of these once-serene neighborhoods fled to the suburbs and started adopting zoning

25. Andrew J. Cappel, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 *YALE L.J.* 617, 617 (1991).

26. *Id.* at 618 n.5.

27. *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

28. *E.g.*, TAMPA, FLA., CODE OF ORDINANCES ch. 27, art. 1, div. 2, § 27-9.

29. Josh Barro, *Homeowners: The Cartel Next Door*, *FORBES* (Feb. 29, 2012), <https://www.forbes.com/sites/joshbarro/2012/02/29/homeowners-the-cartel-next-door/#2277a3476b5b>.

30. *See id.*

31. *Id.*

32. Diana Budds, *Will upzoning neighborhoods make homes more affordable?*, *CURBED* (Jan. 30, 2020), <https://www.curbed.com/2020/1/30/21115351/upzoning-definition-affordable-housing-gentrification>.

33. Jorge O. Elorza, *Absentee Landlords, Rent Control and Healthy Gentrification: A Policy Proposal to Deconcentrate the Poor in Urban America*, 17 *CORNELL J. L. & PUB. POL’Y* 1, 8 (2007).

ordinances to preserve the sorts of housing patterns to which they had become accustomed.³⁴ Also, people who stayed in rapidly growing cities passed zoning laws to stave off new development.³⁵

Originally, zoning laws regulated things like preventing factories from being constructed near houses.³⁶ New York's ground-breaking 1916 zoning law did not include single-family zoning.³⁷ That soon changed. The single-family home "was put on a pedestal" and at times was the only new residential structure that was allowed.³⁸ Some cities would strike agreements with developers to limit the construction of rentals in a single-family community.³⁹ Other cities banned single-family homeowners from renting out their property.⁴⁰ The modern impact of such zoning is that many cities' residential lots are zoned for single-family, detached homes. As a result, eight-in-ten lots in Charlotte are zoned this way, nine-out-of-ten in Arlington, Texas, and nineteen-out-of-twenty in San Jose.⁴¹

To further cement the supremacy of single-family homes, towns instituted minimum lot sizes, restricted on the number of residential units on a lot, and barred the construction of low-income housing.⁴² Other zoning laws limit or forbid the construction of mobile-home parks, which are an affordable alternative to site-built homes.⁴³ The collective impact of such zoning make affordable housing impossible by law.

Some local ordinances also give cartel rights to homeowners which authorizes them to object to requests for zoning changes—a right typically withheld from renters.⁴⁴ East Lansing, Michigan, allows a community to petition the city council for rental restrictions if two-thirds of property owners sign a petition, and at least thirteen neighborhoods have exercised this authority.⁴⁵ Thus, homeowners can effectively block certain types of housing uses and exclude people that alternative homes might attract. Incumbent homeowners may also sue to block alternative housing options if the new construction is a departure from the status quo. People

34. *Id.*

35. Cappel, *supra* note 25, at 634.

36. Budds, *supra* note 32.

37. Emily Badger & Quoc Trung Bui, *Cities Start to Question an American Ideal: A House With a Yard on Every Lot*, N.Y. TIMES, (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html>.

38. Budds, *supra* note 32.

39. Ngai Pindell, *Home Sweet Home? The Efficacy of Rental Restrictions to Promote Neighborhood Stability*, 29 ST. LOUIS UNIV. PUB. L. REV. 41, 58 (2009).

40. *Id.* at 56.

41. Badger & Bui, *supra* note 37.

42. Elorza, *supra* note 33, at 8–9. Some zoning laws have an explicitly racial bias. Budds, *supra* note 32 (noting that the man who drew up St. Louis' zoning code said that his goal was to prevent "finer residential districts . . . by colored people.>").

43. Clark, *supra* note 6, at 1122–23; Rory O'Sullivan & Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 GONZ. L. REV. 285, 290 (2013).

44. See A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always a Good Thing*, 84 IND. L.J. 189, 195 (2009).

45. Pindell, *supra* note 39, at 57–58.

have sued to stop the construction of a mobile-home park,⁴⁶ apartment buildings,⁴⁷ or mixed-use housing.⁴⁸ Residents may also litigate proposed exceptions to minimum lot sizes or on-site parking requirements.⁴⁹

Many cities essentially give homeowners a direct role in shaping policy. Around the 1970s, the federal government funded localities that had an official neighborhood-planning process.⁵⁰ Today, ninety-seven percent of local governments have some form of local meeting.⁵¹ Citizen Advisory Councils in Raleigh, North Carolina, was one such system. Started in 1974 and continued for nearly fifty years, they informed the city planning commission's zoning decisions, and homeowners dominated these councils.⁵² Though well-intentioned, at a meeting where nearly 100,000 people were eligible to attend, only ten to twenty typically did.⁵³ From this system, the city produced a zoning system that prevented townhomes, a more affordable housing option, in eighty percent of the city.⁵⁴

Many cities have adopted these homeowner-dominant, local-planning committees, entrenching a low-density sprawl. Seattle's Neighborhood District Councils date back to the 1980s and have fought against high-density policy changes.⁵⁵ Even when neighborhood councils are not official, homeowners can still wield outsized power at city council meetings to oppose measures that would make the community more welcoming.⁵⁶ At city council meetings, a homeowner has argued that a two-story building should be opposed because its shade would hurt her vegetable garden, a cycling advocate was shoved in a meeting about bike lanes, and

46. Fish Hook Ass'n, Inc. v. Grover Bros. P'ship, 417 N.W.2d 692, 693 (Minn. Ct. App. 1988).

47. Stickelber v. Board of Zoning Adjustment, 442 S.W.2d 134, 135 (Kan. City Ct. App. 1969); Douglaston Civic Ass'n, Inc. v. Galvin, 36 N.Y.2d 1, 4 (N.Y. 1974); Filanowski v. Zoning Bd. of Adjustment, 266 A.2d 670, 671 (Pa. 1970).

48. Center Bay Gardens, L.L.C. v. City of Tempe City Council, 153 P.3d 374, 375 (Ariz. Ct. App. 2007).

49. Serban v. Zoning Hearing Bd., 480 A.2d 362, 363 (Pa. Commw. Ct. 1984).

50. See Sarah Holder, *Raleigh Wants to Raze and Rebuild the Community Meeting*, BLOOMBERG CITYLAB (Feb. 6, 2020, 10:27 AM), <https://www.citylab.com/equity/2020/02/raleigh-community-planning-citizen-advisory-councils-housing/605770/>.

51. Patrick Sisson, *Public Meetings Are Broken. Here's How to Fix Them*, CURBED (Feb. 12, 2020, 11:30 AM), <https://www.curbed.com/2020/2/12/21132190/neighborhood-development-democracy-city-council-local-meeting>.

52. Holder, *supra* note 50.

53. *Id.*

54. *Id.*

55. Erica C. Barnett, *How Seattle Is Dismantling a NIMBY Power Structure*, NEXT CITY (Apr. 3, 2017), <https://nextcity.org/features/view/seattle-nimbys-neighborhood-planning-decisions>; Daniel Person, *The Death of Neighborhood Councils, as Told by Wallingford*, SEATTLE WKLY. (July 18, 2016, 1:30 AM), <https://www.seattleweekly.com/news/the-death-of-neighborhood-councils-as-told-by-wallingford/>. See also Dylan Thomas, Raising the bar for neighborhood organizations, SW. J. (Feb. 1, 2019, 9:37 AM), <https://www.southwestjournal.com/news/2019/02/raising-the-bar-for-neighborhood-organizations/> (describing how Minneapolis' neighborhood system over-represents homeowners).

56. Richard Florida, *NIMBYs Dominate Local Zoning Meetings*, CITYLAB (Sept. 6, 2018, 12:46 PM) <https://www.citylab.com/life/2018/09/nimbys-dominate-local-zoning-meetings/569440/>; Audrey McGlinchy, *White Homeowners Dominate Input Over Austin's Land Code Rewrite. One Group Is Trying To Change That.*, KUT PUBLIC MEDIA STUDIOS (Dec. 9, 2019, 4:03 AM) <https://www.kut.org/post/white-homeowners-dominate-input-over-austins-land-code-rewrite-one-group-trying-change>.

a resident of Queens said in reference to a proposed homeless shelter, “I hope someone is going to burn the place down.”⁵⁷

Upzoning is a term for trying to fix urban sprawl. Some cities have been trying to change from building codes that allow only single-family housing to more tolerance for living arrangements like multi-story buildings, duplexes, triplexes, and apartments.⁵⁸ Minneapolis recently became the first city in the country to allow multifamily housing citywide.⁵⁹ Before that, a majority of the city was designated as single-family only, a force for “maintain[ing] both race and class segregation.”⁶⁰ Minneapolis is being sued over its reforms.⁶¹ Thus, even if a city manages to change the types of residential structures that its zoning laws permit, it may take a very long time to undo generations of contrary zoning.

b. Inclusionary Zoning

The rare attempts by the government to equitably rebalance the housing market are stymied. Inclusionary zoning is one such example; it is an umbrella term for policies that seek to increase the share of affordable homes in a community. These include requiring or encouraging developers to make a certain percentage of constructed units affordable housing, waiving limits on how many units the developer could ordinarily construct, or fast-tracking the developer to build more.⁶² The first inclusionary zoning program was established in 1972, and, by 2008, over 300 municipalities had them.⁶³

In general, real-estate developers oppose inclusionary zoning. A white paper from the National Association of Home Builders urged its members to “challenge proactively the practicality, feasibility, and effectiveness” of any proposed inclusionary zoning ordinances.⁶⁴ Several states have taken heed, passing laws that prevent localities from adopting inclusionary zoning.⁶⁵ When cities challenged these laws, courts sided with the states.⁶⁶ Preemption laws that block

57. Sisson, *supra* note 51.

58. Budds, *supra* note 32.

59. Sarah Mervosh, *Minneapolis, Tackling Housing Crisis and Inequity, Votes to End Single-Family Zoning*, N.Y. TIMES (Dec. 13, 2018), <https://www.nytimes.com/2018/12/13/us/minneapolis-single-family-zoning.html>.

60. *Id.*

61. *Id.* A judge recently froze implementation of the zoning plan. *Judge halts Minneapolis 2040 zoning plan amid environmental questions*, MPR NEWS (June 16, 2022), <https://www.mprnews.org/story/2022/06/16/judge-puts-halt-to-minneapolis-2040-plan-over-environmental-concerns>.

62. FURMAN CENTER FOR REAL ESTATE & URB. POL’Y & THE CTR. FOR HOUSING POL’Y, THE EFFECTS OF INCLUSIONARY ZONING ON LOCAL HOUSING MARKETS: LESSONS FROM THE SAN FRANCISCO, WASHINGTON DC AND SUBURBAN BOSTON AREAS 1 (2008), <http://furmancenter.org/files/publications/IZPolicyBrief.pdf>.

63. *Id.*

64. NAT’L ASS’N HOME BUILDERS, NATIONAL SURVEY OF STATUTORY AND CASE LAW AUTHORITY FOR INCLUSIONARY ZONING 2–3, (2007).

65. Nat’l Multifamily Housing Council, *Rent Control Laws by State*, (Sept. 20, 2019), <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/>.

66. *Town of Telluride v. Lot Thirty-Four Venture, LLC*, 3 P.3d 30, 32 (Colo. 2000); *Apartment Assoc. of South Central Wisconsin, Inc. v. City of Madison*, 722 N.W.2d 614, 616 (Wis. Ct. App. 2006).

municipalities from enacting inclusionary zoning help ensure that only expensive homes are built. This benefits incumbent homeowners and locks out those seeking affordable housing.

Relatedly, twenty-five states explicitly ban rent control,⁶⁷ and the trend has been for jurisdictions to remove rent control.⁶⁸ Only one state mandates rent control statewide, a policy that the apartment industry “urge[s] lawmakers to reject.”⁶⁹ Therefore, more states expressly prohibit this pro-renter policy than prescribe it.

Through zoning, single-family housing becomes the not only the most advantageous type of real estate under the law, but the only type. Zoning laws can prevent any other type of housing from being built. The following sections show the benefits that accrue to homes once they are constructed.

II. THE TAX CODE

Homeowners enjoy preferred treatment in the Tax Code. These perks reach into every facet of ownership: buying, selling, and renting the home. Few if any of these boons are shared with renters.

Homeowners are not taxed on imputed rental income, the implicit value of their home that they could earn from renting it.⁷⁰ Up to \$10,000 in state, local, and foreign real-property taxes are all deductible.⁷¹ Chief among tax benefits is the home-mortgage-interest deduction.

The home-mortgage-interest deduction operates as follows. In general, the Tax Code does not allow taxpayers to deduct personal interest.⁷² However, interest on home equity debt and debt incurred from acquiring, constructing, or improving a house are exceptions.⁷³ These provisions allow for over \$1 million in deductions for homeowners.⁷⁴ Additionally, mortgage-insurance premiums are treated as interest.⁷⁵ In some circumstances, closing costs of purchasing a home—known as “points”—points on a home-improvement loan, and some points on a second home may be deducted.⁷⁶ The mortgage-interest deduction also applies to secondary homes, which does not help moderate- or low-income homebuyers.⁷⁷

67. Nat'l Multifamily Housing Council, *supra* note 65 (three more states and the District of Columbia have rent control in some areas).

68. D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 285 (2006).

69. Nat'l Multifamily Housing Council, *supra* note 65.

70. Brown, *supra* note 3, at 338.

71. I.R.C. §§ 164(a), 164(b)(6).

72. I.R.C. § 163(h).

73. I.R.C. §§ 163(h)(2)(D), 163(h)(3)(A), 163(h)(3)(B)(i).

74. I.R.C. § 163(h)(3)(B)–(C). It was reduced \$750,000 for tax years 2018 to 2025. I.R.C. § 163(h)(3)(F)(i)(II).

75. I.R.C. § 163(h)(3)(E).

76. *Publication 936 (2019), Home Mortgage Interest Deduction*, INTERNAL REVENUE SERV. https://www.irs.gov/publications/p936#en_US_2019_publink1000229939; I.R.C. § 461(g)(2).

77. A. Mechele Dickerson, *The Uselessness of the Mortgage Interest Deduction*, N.Y. TIMES (Apr. 14, 2015), <https://www.nytimes.com/roomfordebate/2015/04/14/the-worst-tax-breaks/the-uselessness-of-the-mortgage-interest-deduction>.

The home-mortgage-interest deduction has been called “the most inequitable” tax expenditure provision in the Tax Code.⁷⁸ It is almost perfectly designed to funnel money to the rich and exclude the poor. The bottom twenty percent derive no benefit from the deduction at all, and the bottom seventy percent get only about ten percent of the benefits.⁷⁹ The mortgage-interest deduction alone increases the price of housing by ten percent.⁸⁰ It is far larger than necessary to encourage first-time-home buying.⁸¹

Owners of suburban homes receive outsized benefits as well.⁸² Average prices of suburban housing are higher than in central-city areas, meaning bigger mortgages and mortgages-interest deductions.⁸³ Suburban residences have also appreciated far faster than urban residences.⁸⁴ This means that owners of suburban houses benefit more from the Tax Code provision that allows people to deduct gains realized from the sale of their home.⁸⁵ Realizing this, homebuilders construct eighty percent of new units in the suburbs, contributing to the sprawl that envelops the country.⁸⁶ Suburban-home sprawl is further subsidized by trillions of dollars spent to support the use of private automobiles.⁸⁷

The home-mortgage-interest deduction, for all its glory, is only a deduction. It thus applies only if a taxpayer opts to itemize their taxes rather than taking the standard deduction. Only one-third of taxpayers choose to itemize, but more than two-thirds of *wealthy* taxpayers itemize, making them the only ones who can utilize the deduction with confidence.⁸⁸

Beyond the mortgage-interest deduction, homeowners can reap huge benefits when selling their homes. In the 1990s, the Tax Code allowed a taxpayer to sell his principal residence for a profit and avoid any tax on the sale if they purchase a more expensive principal residence within two years.⁸⁹ And a person who is fifty-five or older could sell their principal residence and keep up to \$125,000 of the gain tax-free, regardless of whether they purchased a new residence.⁹⁰ Then in 1997, Congress decided that the policy was not generous enough and exempted almost all

78. Daniel Hemel & Kyle Rozema, *Inequality and the Mortgage Interest Deduction*, 70 TAX L. REV. 667, 667 (2017).

79. *Id.* at 683.

80. Brown, *supra* note 3, at 333.

81. See Stephen C. Cecchetti & Kermit L. Schoenholtz, *Why the Mortgage Interest Tax Deduction Should Disappear, But Won't*, MONEY & BANKING (June 8, 2015), <https://www.moneyandbanking.com/commentary/2015/6/3/why-the-mortgage-interest-tax-deduction-should-disappear-but-wont>.

82. Mark Andrew Snider, *The Suburban Advantage: Are the Tax Benefits of Homeownership Defensible?*, 32 N. KY. L. REV. 157, 158 (2005).

83. *Id.* at 164.

84. *Id.* at 167.

85. I.R.C. § 121.

86. Thomas J. Sugrue, *The New American Dream: Renting*, WALL ST. J. (Aug. 14, 2009), <http://online.wsj.com/article/SB10001424052970204409904574350432677038184.html>.

87. See Gregory H. Shill, *Should Law Subsidize Diving?*, 95 N.Y.U. L. REV. 498 (2020).

88. Dickerson, *supra* note 77.

89. Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751, 773 (1996).

90. *Id.*

gains from home sales.⁹¹ Tax breaks for house-flipping thus became “almost too good to be true” in the words of one lobbyist,⁹² as short-term homebuyers and real-estate speculators alike can cash-in on the taxpayer’s dime.⁹³

If property sold is a long-term capital asset, it is taxed at a favorable rate. Ordinary income, like salary or wages, is taxed at a maximum of thirty-seven percent.⁹⁴ Yet capital gains, which come from the sale or exchange of long-term capital assets like real estate held over one year, are taxed at a maximum of twenty percent.⁹⁵ Depreciating assets, like real estate in poor areas, is less favored because losses on capital assets often cannot be deducted.⁹⁶ Mobile homes, a popular form of low-income housing, also tend to depreciate, meaning that their owners likely cannot take advantage of the tax law.⁹⁷

Estimates vary about the exact costs of these tax benefits for homeowners. In 2009, the federal government spent \$230 billion on homeowner subsidies, not counting \$389 billion spent to bailout Fannie Mae and Freddie Mac, which are federally-backed, home-mortgage companies.⁹⁸ Matthew Desmond stated that, in 2015, the government spent \$134 billion on housing subsidies, with \$71 billion going to the mortgage-interest deduction alone.⁹⁹ The 2017 tax law eliminated some benefits to homeowners but still expected to deliver \$75 billion in tax-based subsidies to them.¹⁰⁰ To put these numbers in perspective, it would cost an estimated \$1 billion a year to end family homelessness.¹⁰¹

Tax breaks for renters are puny. Rent is not deductible under the federal Tax Code.¹⁰² A handful of states offer tax benefits to renters, though they tend to be small and have tight restrictions on who qualifies.¹⁰³ California gives credits to taxpayers who make less than \$43,533, paid rent for at least half the year, did not live with someone who is claimed as a dependent, and the taxpayer’s spouse was not given a property-tax exemption.¹⁰⁴ After jumping through all of these hoops, a single

91. Lily Kahng, *Path Dependence in Tax Subsidies for Home Sales*, 65 ALA. L. REV. 187, 189 (2013). In today’s Tax Code, the exclusion of gains from the disposition of a home is capped at \$250,000 or \$500,000, depending on the taxpayer; I.R.C. § 121(b).

92. Kahng, *supra* note 91, at 189.

93. Dickerson, *supra* note 44, at 195.

94. *Key Elements of the U.S. Tax System*, TAX POL’Y CENTER, <https://www.taxpolicycenter.org/briefing-book/how-do-federal-income-tax-rates-work>.

95. *Topic No. 409 Capital Gains and Losses*, INTERNAL REVENUE SERV., (Feb. 3, 2022), <https://www.irs.gov/taxtopics/tc409>.

96. Moran & Whitford, *supra* note 89, at 762.

97. Katherine MacTavish, et al., *Housing Vulnerability Among Rural Trailer-Park Households*, 13 GEO. J. POVERTY L. & POL’Y 95, 99 (2006).

98. Paul Wiseman, *Feds rethink policies that encourage home ownership*, USA TODAY (Aug. 13, 2010), https://usatoday30.usatoday.com/money/economy/housing/2010-08-11-housing11_cv_N.htm.

99. Desmond, *supra* note 2.

100. Michelle D. Laysner, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 918 (2018).

101. Desmond, *supra* note 2.

102. I.R.C. § 164(a)(1); *see also* Brown, *supra* note 3, at 338.

103. Logan Allec, *Here Are the States that Give Renters a Tax Credit*, RENT.COM (Feb. 1, 2021), <https://www.rent.com/blog/states-with-a-renters-tax-credit/>.

104. *Nonrefundable Renter’s Credit*, CAL. FRANCHISE TAX BD. (last updated Dec. 30, 2021), <https://www.ftb.ca.gov/file/personal/credits/nonrefundable-renters-credit.html>.

person receives a measly tax credit of sixty U.S. dollars.¹⁰⁵ Massachusetts renters can deduct up to fifty percent of rent paid, capped at \$3,000.¹⁰⁶

Taxes are supposed to reflect society's values. They exert a powerful influence over how people collect and dispose of wealth. The values embodied in the U.S. Tax Code is unmistakable: buying a home is better than renting one.

III. REMOVAL PROTECTIONS

Losing a home is one of the worst things that can happen to someone. Not only do families lose their most intimate space, but their worldly possessions are also dumped unceremoniously onto the sidewalk.¹⁰⁷ Evicted families often face long periods of homelessness, desperately seeking shelter while moving from one temporary shelter to another.¹⁰⁸ Residential instability makes it harder for kids to do well in school.¹⁰⁹ Those who face eviction experience marital hardship and elevated rates of depression and suicide.¹¹⁰ Even an attempted eviction can damage credit, prevent access to federal housing assistance, or make it difficult to get a future rental.¹¹¹ Foreclosures also depress property values of homes as far as a quarter-mile away.¹¹² The law does far more to shield homeowners against this terrible fate than anyone else.

a. Mortgages Are More Closely Monitored than the Rental Market

If a homeowner gets put out on the street, it is likely because they could not pay their mortgage. The mortgage is an "ancient institution" that traces its lineage back to Rome.¹¹³ In modern America, a "substantial majority of states" follow the lien theory of mortgages, which means that the homeowner gets the right to possess the home and keep any rents or profits from the land.¹¹⁴ Virtually every aspect of the mortgage process "is handled by professionals and is regulated by state and federal law."¹¹⁵

This is a far cry from the rental market. Large swaths of the rental market are unregulated. Between 1990 and 2000 in New York City alone, 114,000 apartments were added that lacked certificates of occupancy, meaning people are

105. *Id.*

106. *Deductions on Rent Paid in Massachusetts*, MASS.GOV (last updated Mar. 26, 2020), <https://www.mass.gov/service-details/deductions-on-rent-paid-in-massachusetts>.

107. Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), <http://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html>.

108. *Id.*

109. *Id.*

110. *Id.*

111. Alieza Durana & Matthew Desmond, *A Massive Wave of Evictions Is Coming. Temporary Bans won't Help.*, WASH. POST (Apr. 8, 2020), <https://www.washingtonpost.com/outlook/2020/04/08/eviction-coronavirus-rent-homelessness/>.

112. Prentiss Cox, *Foreclosure Reform Amid Mortgage Lending Turmoil: A Public Purpose Approach*, 45 HOUS. L. REV. 683, 694 (2008).

113. 6 DEBTOR-CREDITOR LAW § 51.02(1)(b) (2022).

114. *Id.*

115. *Id.*

residing in a place not fit for living.¹¹⁶ Called the “underground market,” some dwellings give the phrase a literal meaning: more than 300,000 New Yorkers live in subterranean apartments that are not up to code.¹¹⁷

Even if units are not part of this black market, the different types of leaseholds can disadvantage renters. The most common renting arrangement is a “tenancy at will,” which can be made without any written lease.¹¹⁸ Thus, renters are denied protections that a written agreement would provide. Another common arrangement is a “month to month” tenancy, where the landlord can simply decline to renew, meaning that the specter of eviction hangs over every month. It is estimated that the majority of Los Angeles’ 4 million renters have such an agreement.¹¹⁹

b. It Is Slower and Harder to Kick Out a Homeowner than a Renter

Foreclosing a mortgage is a lengthy process. Under federal law, a lender of a federally backed mortgage may not file for foreclosure until the homeowner is 120 days delinquent on their mortgage.¹²⁰ Even then, homeowners have a menu of options to get back on track, known as “loss mitigation plans.” Examples include setting up a repayment plan, a reduction or cessation of payments for a period of time, modifying the terms of the mortgage, selling the home for less than it is worth to settle some of the debt, or returning the deed to the lender in exchange for debt forgiveness.¹²¹

Loss-mitigation plans offer potent protections for homeowners. If the homeowner submits a loss-mitigation application more than thirty-seven days before a foreclosure sale, the foreclosure process must halt.¹²² The lender must evaluate the loss-mitigation application and provide a written explanation of whether it will accept the plan.¹²³ If necessary documents are not in the homeowner’s control, the lender must exercise reasonable diligence to locate them and may not deny an application simply because such documents are missing.¹²⁴ Also, if the application is rejected, the homeowner has the right to appeal.¹²⁵ These sorts of protections apply more or less equally regardless of whether someone is a struggling family living in the home or an overleveraged investor who was simply playing the market.¹²⁶

116. Rachana Sheth & Robert Neuwirth, *New York’s Housing Underground: A Refuge and Resource*, PRATT CENTER FOR COMMUNITY DEVELOPMENT, 1 (2008), https://prattcenter.net/our_work/new_yorks_housing_underground.

117. Stefanos Chen, *The Underground Apartment Market*, N.Y. TIMES (Aug. 17, 2018), <https://www.nytimes.com/2018/08/17/realestate/the-underground-apartment-market.html>.

118. Michelle Rosin, *Terminating a Tenancy At Will—Not As Simple As It Seems*, MORIARTY TROYER & MALLOY LLC (Apr. 29, 2019), <https://www.lawmtm.com/terminating-tenancy-at-will.html>.

119. Cydney Adams, *How no-fault evictions are contributing to LA’s homeless crisis*, CBS NEWS (Feb. 24, 2019, 7:00 AM), <https://www.cbsnews.com/news/no-fault-evictions-priced-out-los-angeles-hidden-homeless-cbsn-originals/>.

120. 12 C.F.R. § 1024.41(f) (2022).

121. *Loss Mitigation*, FED. HOUS. FIN. AGENCY, <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Loss-Mitigation.aspx>.

122. 12 C.F.R. § 1024.41(g) (2022).

123. 12 C.F.R. § 1024.41(c)(1) (2022).

124. 12 C.F.R. § 1024.41(c)(4) (2022).

125. 12 C.F.R. § 1024.41(h).

126. Cox, *supra* note 112, at 728.

Other federal rules augment these protections. The Agriculture Department's Office of Rural Development requires that lenders it works with "avoid foreclosure to the extent possible and minimize losses."¹²⁷ Lenders must also take appropriate loss-mitigation actions and assess the homeowner's financial situation, reason for the default, and ability to cure it.¹²⁸ Special care must be taken to prevent foreclosure during times of natural disaster.¹²⁹

Under Veterans Administration (VA) regulations, loan servicers must employ staff who are trained in counseling homeowners on curing delinquencies, protecting their credit rating, and pursuing alternatives to foreclosure.¹³⁰ Lenders must evaluate the delinquency and foreclosure rates, compare them with the industry, and "take appropriate corrective action."¹³¹ A lender must also diligently report each step of the foreclosure process to the government.¹³² The VA goes even farther than asking lenders to *consider* loss-mitigation plans, it will pay hundreds or thousands of dollars to lenders who pursue alternatives to foreclosure.¹³³

These are simply the minimum legal requirements. Most lenders will not begin foreclosure proceedings until the borrower has missed three-to-six months of payments.¹³⁴ When all of the procedural protections are taken into account, along with sloppy recordkeeping and backlogs of foreclosures, it can take a year or more to complete a foreclosure.¹³⁵

"Judicial foreclosure," meaning that a court is involved, is one of the most significant foreclosure protections granted to homeowners. Judicial foreclosure places the burden on the bank to initiate the action, lets the homeowner argue in court, and ensures that homeowner's defenses will be heard.¹³⁶ One study found that having an attorney at foreclosure hearings, even if the representation is of limited scope, doubled the odds of beating the foreclosure.¹³⁷ Also, because a court is involved, the process is more expensive for the lender and takes much longer.¹³⁸ Overall, judicial foreclosure means that the homeowner gets to remain in their home longer, and the procedural roadblocks might make the lender give up or fail.

About twenty states require judicial foreclosure, with the rest being known as "power of sale" jurisdictions, which means that the lender need only send required notices.¹³⁹ Even in power-of-sale states, notice requirements can be onerous, such as requiring publication in a newspaper once a week for three consecutive weeks where

127. 7 C.F.R. § 3555.301(a) (2022).

128. 7 C.F.R. § 3555.301(b) (2022).

129. *See* 7 C.F.R. § 3555.307 (2022).

130. 38 C.F.R. § 36.4278(f)(2) (2022).

131. 38 C.F.R. § 36.4278(i)(3) (2022).

132. 38 C.F.R. § 36.4317(e) (2022).

133. 38 C.F.R. § 36.4319 (2021).

134. Walter Metzen, *How Long Does Foreclosure Take?*, NAT'L BANKR. F. (Oct. 6, 2021), <https://www.natlbkruptcy.com/how-long-does-foreclosure-take/>.

135. *Id.*

136. Patrick B. Bauer, *Judicial Foreclosure and Statutory Redemption: The Soundness of Iowa's Traditional Preference for Protection over Credit*, 71 IOWA L. REV. 1, 7-8 (1985).

137. James G. Mandilk, *Attorney for the Day: Measuring the Efficacy of In-Court Limited-Scope Representation*, 127 YALE L.J. 1828, 1833 (2018).

138. Cox, *supra* note 112, at 699.

139. *Id.* at 700.

the home is located¹⁴⁰ or put a notice in the office of the recorder for three months.¹⁴¹ State foreclosure laws vary, but even in less protective jurisdictions, foreclosure still takes multiple months between a missed payment by the homeowner and actual foreclosure.¹⁴²

Due process associated with mortgage foreclosures accomplishes three things. First, it slows everything down. This may be a godsend for a homeowner that is simply going through a rough patch and needs a little time to get money together or find a suitable replacement home. Second, loss-mitigation plans force the lender to try to work with the homeowner to discern whether any alternatives to foreclosure are available to pay the money owed. Third, the web of statutes and regulations is so complicated that it makes foreclosure almost impossible without a lawyer and great expense. Lenders must, therefore, strongly consider alternatives before foreclosing.

c. Eviction Protections Are Comparatively Weak

Evicting a tenant can be lightning quick and ruthlessly simple by comparison. Federal law gives tenants almost no protection. There are “few federal laws regarding eviction,” and the few that exist deal primarily with discriminatory practices in general.¹⁴³ Thus, tenants must rely on the benevolence of state and local law.

To initiate the process, some jurisdictions do not require a landlord to give any reason to evict.¹⁴⁴ In such jurisdictions, landlords have carte blanche authority to evict tenants and possibly shatter their lives. Landlords may kick tenants out to re-list the unit at a higher price,¹⁴⁵ or because they simply do not like certain tenants.¹⁴⁶ Landlords in Los Angeles evicted tenants en masse to subvert a tenant-protection law before it went into effect.¹⁴⁷ A landlord in Las Vegas evicted a nurse during the coronavirus pandemic because she was afraid that the nurse would spread COVID-19.¹⁴⁸

The most common reason that landlords evict tenants is the nonpayment of rent.¹⁴⁹ Though nearly ninety percent of landlords have attorneys, legal representation is generally not required because the eviction process is normally

140. ALA. CODE § 35-10-13 (2020).

141. CAL. CIV. CODE § 2924(a)(1), (2) (West 2019).

142. Cox, *supra* note 112, at 686.

143. *Eviction*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/eviction_

144. Shauna Sowersby, *Federal Way Made it Harder to Evict Renters Without “Good Cause.” The Entire State Might Do the Same*, CROSSCUT (Jan. 8, 2020), <https://crosscut.com/2020/01/federal-way-made-it-harder-evict-renters-without-good-cause-entire-state-might-do-same> (noting that only half of states have just-cause eviction requirements).

145. Adams, *supra* note 119.

146. Sowersby, *supra* note 144.

147. Matt Tinoco, *Los Angeles Approves Moratorium on No-Fault Evictions*, LAIST (Oct. 22, 2019), <https://laist.com/2019/10/22/los-angeles-emergency-eviction-moratorium.php>.

148. Emily Shugerman, *Coronavirus Heroes Are Getting Tossed From Their Homes by Scared Landlords*, DAILY BEAST (June 23, 2020), <https://www.thedailybeast.com/coronavirus-nurses-face-eviction-housing-discrimination-from-scared-landlords>.

149. Megan Bullock, *Top 5 Legal Reasons to Evict a Tenant*, APARTMENTS.COM (Sept. 9, 2019) <https://www.apartments.com/rental-manager/resources/article/legal-reasons-to-evict-a-tenant>.

simple enough that assistance is not required.¹⁵⁰ The state of Georgia has, for example, “an informal eviction process” which landlords can usually complete without an legal representation, and landlords need not inform their tenants in writing when the rent is due, nor wait for any specific notice period.¹⁵¹

Whatever deadly sins landlords might commit, sloth is not among them. State law accommodates this. Kentucky gives tenants a fifteen-day notice to pay late rent or move out before an eviction may be filed in court. Alabama gives fourteen days, Indiana gives ten, Georgia seven, Arizona five, and Texas and Florida three.¹⁵²

Oregon law in the 1970s allowed landlords to serve eviction notice ten days after tenants failed to pay rent, and the trial could be held in as little as two days following service.¹⁵³ At trial, the issues were limited to whether the grounds for eviction were true, but not whether the landlord had violated the law.¹⁵⁴ Also, tenants could appeal only a losing decision if they obtained two sureties, and if they lost on appeal, they had to pay double the value of the rental property during the time of the litigation.¹⁵⁵ The Supreme Court said that only the bond requirement was unacceptable.¹⁵⁶ Thus, a tenant could go from good standing to on-the-curb in less than two weeks. Today, Oregon gives tenants only between three to seven days to pay late rent.¹⁵⁷ Landlords can accept partial rent payment without waiving any eviction rights in many circumstances.¹⁵⁸

North Charleston, South Carolina, evicts ten families every week, a rate of 16.5 out of every 100 renters in the city, which is the highest eviction rate in the country—Richmond, Virginia is a distant second.¹⁵⁹ Why might this be? Demographics probably contribute to these high eviction rates. Half of North Charleston’s population lives in rental units; twenty percent live in poverty.¹⁶⁰ Or perhaps it is the miserly legal protections for renters.

North Charleston’s municipal code forbids landlords from evicting tenants based on their identities but contains no limitations on the eviction process.¹⁶¹ State law is hardly more generous. If a tenant fails to pay rent when due, “the tenant shall forthwith vacate the premises without notice.”¹⁶² The landlord may immediately petition the court for ejectment, which shall schedule a hearing within ten days after

150. See, e.g., Mass. Housing Court Department, Fiscal Year 2016 Statistics (2016) <https://www.mass.gov/doc/self-represented-represented-litigants-by-court-location-0/download>.

151. Eman Hamed, *The Top 7 Landlord Friendly States of 2020*, ROOFSTOCK (Dec. 14, 2021), <https://learn.roofstock.com/blog/landlord-friendly-states>.

152. *Id.*

153. *Lindsey v. Normet*, 405 U.S. 56, 63 (1972).

154. *Id.*

155. *Id.* at 63–64.

156. *Id.* at 64.

157. ORE. REV. STAT. § 90.394 (2021).

158. ORE. REV. STAT. §§ 90.414, 90.417 (2021).

159. *Eviction Rankings*, EVICTION LAB, <https://evictionlab.org/rankings/#/>.

160. *North Charleston, South Carolina*, EVICTION LAB, <https://evictionlab.org/map/#/2016?geography=cities&bounds=-80.521,32.571,-79.708,33.141&type=er&locations=4550875,-80.07,32.909>.

161. NORTH CHARLESTON, S.C., CODE OF ORDINANCES § 10-94(a) (Supp. 2021).

162. S.C. CODE ANN. § 27-35-140 (2021).

service.¹⁶³ A tenant who does not appear at the hearing automatically loses.¹⁶⁴ After the tenant loses, by any means, the court shall issue a writ of ejectment within five days. Tenants may appeal, but this does not stay the ejectment unless a bond is put up¹⁶⁵—an unlikely feat given that the tenant is probably being evicted because they did not have money to pay rent. All the while, the tenant’s debt increases as rent continues to accrue, and the landlord may freely accept such rent payment without waiving any ejectment claims.¹⁶⁶

Arkansas’ eviction laws are even more severe. Ten days from an alleged violation, a tenant may be physically removed from the premises and arrested. That is because, uniquely, Arkansas makes failure to pay rent a criminal offense.¹⁶⁷ Arkansas criminalized late rent payments at the time William McKinley was president, and based upon the efforts of the realtor, banking, and insurance lobbies, such law may be with us a good while longer. Over 2,000 people are prosecuted annually under the law, turning prosecutors into “personal attorneys” of landlords.¹⁶⁸ No investigations are performed to verify the amount of missed rent that the landlord claims is owed, just as no process exists for tenants to correct the record before arrest, and no extenuating factors are considered.¹⁶⁹ Courts are typically involved in the eviction process, but tenants can be evicted without a hearing if they fail to respond in writing,¹⁷⁰ which is common.¹⁷¹

State law may even authorize the use of force to effectuate an eviction. At early common law, a landlord had the right to enter the premises and seize control of it, even if doing so required the use of force.¹⁷² A minority of states have held onto this rule.¹⁷³ Also, even where it may be a crime for landlords to use force, dispossessed tenants may have no civil recourse; thus, they cannot reclaim their homes.¹⁷⁴

Jurisdictions often go out of the way to authorize poor treatment of tenants. Several states have no limits on late fees or security deposits.¹⁷⁵ Arkansas is also unique by having no warranty of habitability to ensure that tenants have humane

163. S.C. CODE ANN. §§ 27-37-10, -20 (2021).

164. S.C. CODE ANN. § 27-37-40 (2021).

165. S.C. CODE ANN. § 27-37-130 (2021).

166. S.C. CODE ANN. § 27-37-150 (2022).

167. Eli Hager, *Can You Go to Jail for Not Paying Rent?*, MARSHALL PROJECT (Apr. 16, 2015), <https://www.themarshallproject.org/2015/04/16/can-you-go-to-jail-for-not-paying-rent>. Florida did too, for a time, but repealed its law in 1973. *Id.* at n. 2.

168. Lynn Foster, *The Hands of the State: The Failure to Vacate Statute and Residential Tenants’ Rights in Arkansas*, 36 U. ARK. LITTLE ROCK L. REV. 1, 5, 11 (2013).

169. Hager, *supra* note 167.

170. Rebecca Burns, *Landlords Illegally Evicting Tenants, Despite Federal Restrictions*, AM. PROSPECT (Apr. 23, 2020), <https://prospect.org/coronavirus/landlords-illegal-evictions-tenants-cares-act/>.

171. *Id.*

172. *Spinks v. Taylor*, 278 S.E.2d 501, 503 (N.C. 1981).

173. P.A. Agabin, Annotation, *Right of Landlord Legally Entitled to Possession to Dispossess Tenant Without Legal Process*, 6 A.L.R.3d 177 § 2 (1966).

174. *See Spinks*, 278 S.E.2d at 504.

175. Hamed, *supra* note 151.

living conditions.¹⁷⁶ Oregon codifies the right of landlords to dump the personal property of evicted tenant in the trash.¹⁷⁷ South Carolina explicitly states that tenants are responsible for utilities.¹⁷⁸ In some states, tenants may not withhold rent, meaning that, even if a landlord violates a lease, the tenant has essentially no recourse.¹⁷⁹ This also bakes in a lopsided power dynamic. Landlords probably hold security deposits; thus, they do not need judicial intervention to wring money out of tenants, but tenants must go to court to seek recompense.

Public-housing authorities may evict tenants from public housing for any criminal activity, regardless of whether it occurs inside or away from the home.¹⁸⁰ A tenant's family members or guests who commit crimes can also cause the tenant to be evicted.¹⁸¹ Originally, the tenant's ignorance of others' criminal activity was a defense, but this exception was removed.¹⁸² A tenant who is evicted through this process is barred from public housing for three years.¹⁸³ These laws do not apply to other types of tenants receiving federal assistance, nor do such laws apply to homeowners receiving federal subsidies or possessing federally underwritten mortgages.¹⁸⁴

The Supreme Court has upheld certain harsh treatment of renters.¹⁸⁵ In *Department of Housing v. Rucker*, the tenant was a sixty-three-year-old woman who had lived in public housing for thirteen years with a mentally disabled daughter, two grandkids, and one great-grandchild.¹⁸⁶ The tenant's daughter was found with drugs three blocks away and without the knowledge or consent of the tenant.¹⁸⁷ The public housing authority told the tenant—along with a separate elderly couple who had no knowledge that their grandson had been smoking marijuana in the parking lot—to leave the premises within three days.¹⁸⁸ After the Supreme Court approved this strict liability for tenants sheltering family members who commit crimes, states followed suit.¹⁸⁹

A recent global crisis has not halted the harsh treatment of renters. The COVID-19 pandemic caused courts to close down, but they still found the time and willpower to process evictions by phone.¹⁹⁰ Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which, among other things, prevented people from being kicked out of their homes. But the type of home governed the

176. Foster, *supra* note 168, at 3.

177. OR. REV. STAT. § 90.425 (2022).

178. S.C. CODE ANN. § 27-33-50 (2022).

179. *E.g.*, N.C. GEN. STAT. § 42-44(c) (2021).

180. Ballard, *supra* note 9, at 299 (citing 42 U.S.C. § 11901 (2000)).

181. *Id.* (citing 42 U.S.C. 1437d(1)(6) (2000)).

182. Sarah Clinton, *Evicting The Innocent: Can the Innocent Tenant Defense Survive a Rucker Preemption Challenge?*, 85 BOS. UNIV. L. REV. 293, 298–99 (2005).

183. *Id.* at 297.

184. *See* Ballard, *supra* note 9, at 300.

185. *See* Dep't of Hous. and Urb. Dev. v. Rucker, 535 U.S. 125 (2002); *see also* Hous. Auth. of Pittsburgh v. Fields, 816 A.2d 1099, 1099 (Pa. 2003) (per curiam).

186. Clinton, *supra* note 182, at 301.

187. *Id.* at 301–02.

188. *Id.* at 302.

189. *Id.* at 310.

190. Burns, *supra* note 170.

amount of protection a person receives. For owners of single-family homes to receive foreclosure forbearance, all they needed to do was submit a statement “affirming that the borrower is experiencing financial hardship during the COVID-19 emergency.”¹⁹¹ They were entitled to 180 days of forbearance, which may be extended by another 180 days at the borrower’s request—a total of 360 days.¹⁹² Owners of multifamily homes must actually document—not merely affirm—their financial hardship, and the borrower is only eligible for up to thirty days of protection upon request, which may be extended twice for a total of ninety days.¹⁹³ For landlords covered by the law in general, there was a 120-day moratorium on eviction from the date of the law’s enactment, plus give thirty days’ notice of eviction.¹⁹⁴ Thus, a single-family homeowner was entitled to more than double the protection in comparison with any other kind of person.

And the law has not stopped landlords from filing evictions anyway. Congress did not bother to include an enforcement mechanism in the CARES Act, and neither agencies nor most courts took it upon themselves, so landlords and sometimes public housing authorities kept chugging along with evictions.¹⁹⁵ Well into the COVID crisis, states had a spotty track record of imposing their own eviction protections.¹⁹⁶

d. Right to Redemption

Redemption is another important right that homeowners possess. There are two kinds: equitable redemption and statutory redemption. Equitable redemption is a homeowner’s right “after default, but before a foreclosure sale, to pay the debt and have the title to the property restored free and clear.”¹⁹⁷ It is the far-older right of the two, deemed so important that the term “foreclosure” got its name because it “forecloses” the homeowner’s power to exercise their right of redemption to cure the default.¹⁹⁸ This is an inestimable benefit because, as noted above, foreclosure can take over a year.

If equitable redemption protects a homeowner up until the foreclosure sale, then statutory redemption kicks in thereafter.¹⁹⁹ About half of the states provide some

191. CARES Act of 2020, 15 U.S.C. § 9056(b)(1)(B).

192. *Id.* at § 9056(b)(2).

193. *Id.* at § 9057(c)(1).

194. *Id.* at § 9058(b).

195. Burns, *supra* note 170; Jeff Ernsthansen, Ellis Simani & Justin Elliott, *Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic*, PROPUBLICA (Apr. 16, 2020) <https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic>; Lynn Foster, *Arkansas Evictions from March 27 through April 17, 2020 and Additional Information* (Apr. 19, 2020) <https://237995-729345-1-raikfcquaxqncofqfm.stackpathdns.com/wp-content/uploads/2020/04/Evictions-from-March-27-through-April-17.pdf>.

196. Durana & Desmond, *supra* note 111.

197. 6 DEBTOR-CREDITOR LAW § 51.04 (Theodore Eisenberg, James M. Lawnczak, eds., 2020) (citing various authorities).

198. *See* Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC, 962 F. Supp. 2d 1222, 1229 (D. Nev. 2013).

199. DEBTOR-CREDITOR, *supra* note 197.

sort of statutory redemption rights.²⁰⁰ Statutory redemption lets the homeowner negate a foreclosure sale by simply paying the sale price, rather than having to go to court to prove that the sale price was “grossly” inadequate.²⁰¹

Renters are often denied redemption protections. In 2011, soon after the homeowner’s right to redemption came into existence, an effort was made in California to extend redemption rights to renters.²⁰² Without such rights, tenants who are late on rent payments could be tossed in as little as four days after missing rent. Whether renters are willing and able to pay outstanding rent, even if they have lived in the residence for years, is irrelevant.²⁰³ Landlord groups lobbied fiercely against renters receiving redemption rights, calling it “unfortunate” in the state with the second-highest rents in the nation, even though redemption rights already exist in California for property owners.²⁰⁴ Ultimately, the lobbyists succeeded, and renters still are entitled only to three days to make late rent.²⁰⁵

Only about a dozen states have a renter’s right to redemption.²⁰⁶ Similarly, if mobile-home owners miss a single rent payment in some states, then courts have the discretion to decide whether to allow the residents the opportunity to repay; otherwise, they have only an extremely short window to cure late rent.²⁰⁷ So renters and mobile-home dwellers alike, who tend to earn less, are expected to repay missed sums much more quickly, if given the chance at all.

e. Renters at Foreclosure

Suppose that a single-family home is occupied by a person who is renting the home, rather than the owner. If the mortgage-holder for the home defaults and the creditor forecloses, the home-renter might be kicked out through no fault of their own. Not only that, they could lose all of their property if they failed to find a new home quickly enough, and defaulting landlords often do not refund security deposits or pre-paid rent.²⁰⁸ Before 2009, renters had no federal protections against this situation.²⁰⁹ This meant that home-renters were at the mercy of state laws, and some states could be unmerciful indeed. In Arizona, for example, new owners were entitled to immediate possession of the foreclosed home, renters notwithstanding.²¹⁰ Most states gave only a few days’ notice.²¹¹ One tenant reported that the new owner

200. *Id.*

201. Bauer, *supra* note 136, at 8.

202. *Renters’ Right to Redemption Bill Moves Forward*, TENANTS TOGETHER (May 2, 2011), <http://www.tenantstogether.org/updates/renters%E2%80%99-right-redemption-bill-moves-forward>.

203. *Id.*

204. *Id.*

205. CAL. CIV. CODE § 1946.2(c) (West 2022); CAL. CIV. PROC. CODE § 1161(3) (West 2020).

206. *Renters’ Right to Redemption Bill Moves Forward*, *supra* note 202.

207. Clark, *supra* note 6, at 1115, 1135.

208. NAT’L L. CTR. ON HOMELESSNESS & POVERTY, EVICTION (WITHOUT NOTICE): RENTERS AND THE FORECLOSURE CRISIS 13 (2012), http://nlchp.org/wp-content/uploads/2018/10/Eviction_Without_Notice.pdf.

209. *Id.* at 6.

210. *Id.* at 7.

211. ELAYNE WEISS, NAT’L LOW INCOME HOUS. COAL., PROTECTING TENANTS AT FORECLOSURE, 6-19 (2018), https://nlhpc.org/sites/default/files/AG-2018/Ch06-S05_PTFA_2018.pdf.

changed the locks while they were at work and stole the renter's personal property in the home.²¹²

In 2009, Congress passed the Protecting Tenants at Foreclosure Act (PTFA) which grants renters a modicum of protection. Under the Act, home-renters have ninety days or the remaining term of the lease before being booted if the mortgage is foreclosed.²¹³ The law expired in 2014.²¹⁴ Four years later, the law was restored and made permanent.²¹⁵

Though the law is now a fixture, it has ended up being all gum, no bite. No federal agency is responsible for monitoring and enforcing the law, and there is no express private right of action, making enforcement something of a puzzle.²¹⁶ Exploiting this weakness, the law is commonly violated by homeowners, real estate agents, law firms, and banks.²¹⁷ The 40 million home-renters in the country, a quarter of whom are "extremely low income" according to categories of the Housing and Urban Development Department, are therefore left with little protection.²¹⁸

f. Bankruptcy Protections Are More Consistent for Homeowners

If a homeowner decides to file for bankruptcy, then they are protected there as well. If someone files for bankruptcy, it puts a stay on a foreclosure.²¹⁹ The homestead exemption protects the home against the sale to satisfy the claims of creditors.²²⁰ Some of these laws are more equitable than others. Under federal law, the exemption applies to both "real property or personal property that the debtor or a dependent of the debtor uses as a residence."²²¹ This would mean that someone living in a mobile home—which is usually considered personal property—could claim the exemption. But only about a third of states give exemptions for mobile homes.²²² And sometimes the amount protected may be low; Alabama gave only \$5,000 at one point.²²³

Some states also favor expensive homes in bankruptcy over modest ones. When the infamous Enron corporation went bankrupt in the early 2000s, its executives could rely on Florida and Texas law that shielded the full value of their primary residences from being taken by creditors, known as the unlimited homestead

212. EVICTION (WITHOUT NOTICE): RENTERS AND THE FORECLOSURE CRISIS, *supra* note 209, at 15.

213. Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702, 123 Stat. 1660, 1661 (2009).

214. WEISS, *supra* note 211, at 6-19.

215. *Congress Permanently Authorizes the Protecting Tenants at Foreclosure Act*, NAT'L LOW INCOME HOUS. COAL. (May 29, 2018), <https://nlihc.org/resource/congress-permanently-authorizes-protecting-tenants-foreclosure-act>.

216. EVICTION (WITHOUT NOTICE): RENTERS AND THE FORECLOSURE CRISIS, *supra* note 209, at 8.

217. *Id.*

218. SHAMBHAVI MANGLIK, NAT'L LOW INCOME HOUS. COAL., RENTERS IN FORECLOSURE: A FRESH LOOK AT AN ONGOING PROBLEM 14 (2012) <https://nlihc.org/sites/default/files/rentersinforeclosure2012.pdf>.

219. 11 U.S.C. § 362; 7 C.F.R. § 3555.306(b) (2020).

220. Julia Patterson Forrester, *Mortgaging the American Dream: A Critical Evaluation of the Federal Government's Promotion of Home Equity Financing*, 69 TUL. L. REV. 373, 401 (1994).

221. 11 U.S.C. § 522(d)(1).

222. O'Sullivan & Medrash, *supra* note 43, at 300.

223. *Id.*

exemption.²²⁴ Decadent mansions were thus safe, meaning that rich people have the potential to derive far more value from the homestead exemption than poor homeowners.²²⁵ Disgraced executives are wise to this loophole and have built palatial homes in Florida to insulate themselves from bankruptcy.²²⁶

g. Eminent Domain and Relocation Assistance Are More Generous to Houses

Imagine that instead of being forced out through a private eviction or foreclosure, a person is forced out by the government exercising eminent-domain power. To protect residents in this process, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Although the Act helps both homeowners and renters, it does not support them equally. The law authorizes a relocation payment of up to \$31,000 for a people who actually *own* their dwelling, plus title-search fees, recording fees, and other closing costs.²²⁷ Comparatively, renters receive only \$7,200, and they are not entitled to the additional fees authorized for homeowners.²²⁸ Rental payments may, at the discretion of the government, be meted out in periodic installments rather than all at once, but no such possibility exists for homeowner payments.²²⁹

Certain states offer relocation assistance, but such financial support may not exceed the amount specified in federal law—locking in the owner-renter disparity at the state level.²³⁰ Maryland has an even broader gulf: up to \$45,000 for homeowners, but only \$10,500 for renters.²³¹ Connecticut gives up to \$15,000 to homeowners and \$4,000 to renters.²³² Colorado,²³³ North Carolina,²³⁴ and Wyoming²³⁵ all cap payments at \$22,500 and \$5,250 for homeowners and renters, respectively. Similarly, Louisiana gives up to \$22,500 to homeowners but only \$4,000 to renters.²³⁶ In Wisconsin, homeowners receive \$25,000, and renters get \$8,000.²³⁷ Government agencies occasionally may exceed these limits, but homeowners still on average receive more relocation assistance than do renters.²³⁸

224. Philip Shenon, *Congress Panel Agrees to Limit Home Shield in Bankruptcy*, N.Y. TIMES (Apr. 24, 2002), <https://www.nytimes.com/2002/04/24/business/congress-panel-agrees-to-limit-home-shield-in-bankruptcy.html>.

225. *Id.* In total, five states have unlimited homestead exemptions. Ryan P. Rivera, *State Homestead Exemptions and Their Effect on Federal Bankruptcy Laws*, 39 REAL PROP., PROB. & TR. J. 71, 73 (2004).

226. Rivera, *supra* note 225, at 86–89.

227. 42 U.S.C. § 4623.

228. 42 U.S.C. § 4624.

229. 42 U.S.C. §§ 4623, 4624.

230. *E.g.*, ALASKA STAT. §§ 34.60.050, 34.60.060 (2018).

231. MD. CODE ANN., REAL PROP. §§ 12-202(a)(1), 12-204(b)(1)(i) (West 2007).

232. CONN. GEN. STAT. §§ 8-269(a), 8-270(a) (2007).

233. COLO. REV. STAT. §§ 24-56-104(1), 24-56-105(1) (2022).

234. N.C. GEN. STAT. §§ 133-9(a), 133-10(a) (1989).

235. WYO. STAT. ANN. §§ 16-7-104(a), 16-7-105(b) (2021).

236. LA. REV. STAT. ANN. § 38:3105(A), (B)(1) (1988).

237. WIS. STAT. § 32.19(4)(a), (b)(1) (2017).

238. *See, e.g.*, Nicole Stelle Garnett, *The Neglected Political Economy of Eminent Domain*, 105 MICH. L. REV. 101, 122 (2006) (citing an Arizona study showing that homeowners received \$17,950 in relocation expenses, compared to \$13,725 for renters).

Other state relocation laws may display a subtler homeowner bias. In Texas, the development authority in charge of acquiring land tried to avoid giving any moving expenses to a tenant, until a court forced it to.²³⁹ Georgia's relocation statute specifically provides compensation for "expenses incident to the transfer of real property acquired by the department, prepayment of mortgage penalties, and a pro rata portion of real property taxes on real property."²⁴⁰ No specific mention is made for special costs renters might incur, such as pre-paid rent, move-out fees, and so forth. Oregon law does not expressly provide for the payment of just compensation for the taking of a mobile home; the law says only that the tenant should be given information about an unspecified tax credit.²⁴¹

In theory, tenants are entitled to compensation if their leasehold interest is damaged by eminent-domain power.²⁴² But to the extent a tenant has a protected interest, this is typically only for long-term, commercial leases.²⁴³ Month-to-month, residential tenants will normally get left out in the cold.²⁴⁴

Sanitized economic analysis shows how this is possible. As one article describes it, if a tenant has a six-month lease at \$500 per month, and the lease is terminated due to eminent domain, the tenant loses \$3,000 in value but is released from a \$3,000 obligation over the next six months.²⁴⁵ In this accounting, the tenant is made whole, and the law has nothing left to compensate. But this analysis fails to acknowledge related costs to the tenant of having to find a new home, pack, move, unpack, and settle in.²⁴⁶

Even tenants who have a recognized economic interest might find their recompense lacking because landlords often are able to gobble up the tenants' compensation. Leases will sometimes contain termination clauses which condemnation proceedings trigger—meaning that the tenants will have no property interest for which they may be compensated.²⁴⁷ Other times, leases will simply say that the landlord gets any windfall.²⁴⁸ Plenty of courts have upheld such contractual

239. *G.P. Show Prods. v. Arlington Sports Facilities Dev. Auth.*, 873 S.W.2d 120, 120–21 (Tex. App. 1994).

240. GA. CODE ANN. § 32-8-1(a)(2)(A) (1988).

241. OR. REV. STAT. § 90.650 (2019).

242. *E.g.*, *United States v. Gen. Motors Corp.*, 323 U.S. 373, 377–78 (1945); *City of Vista v. Fielder*, 919 P.2d 151, 155 (Cal. 1996); *City of Roeland Park v. Jasan Tr. (In re Acquisition of Prop. by Eminent Domain)*, 132 P.3d 943, 948 (Kan. 2006).

243. Victor P. Goldberg, Thomas W. Merrill & Daniel Unumb, *Bargaining in the Shadow of Eminent Domain: Valuing and Apportioning Condemnation Awards Between Landlord and Tenant*, 34 UCLA L. REV. 1083, 1088 (1987).

244. *See, e.g., id.* at 1088–90; *State ex rel. Mo. Highway & Transp. Comm'n v. Muegge*, 842 S.W.2d 192, 198 (Mo. Ct. App. 1992); *Fort Worth Concrete Co. v. State*, 416 S.W.2d 518, 521 (Tex. Civ. App. 1967).

245. Goldberg, Merrill & Unumb, *supra* note 243, at 1089.

246. Nor does it contemplate the cost of potentially lengthening a commute, shifting school districts, losing neighbors, or being farther away from one's place of worship.

247. *In re Condemnation by the Dep't of Transp.*, 871 A.2d 896, 900 (Pa. Commw. Ct. 2005).

248. *In re John C. Lodge Highway*, 65 N.W.2d 820, 822 (Mich. 1954); *City of Manhattan v. Galbraith*, 945 P.2d 10, 14 (Kan. Ct. App. 1997).

provisions.²⁴⁹ Some contracts even let the landlords keep the value of fixtures or improvements that the tenant made to the land.²⁵⁰

The law should be extremely weary of removing people from their home, given the traumatic consequences. It throws many obstacles in the way of disturbing homeowners, whether a bank or the government is trying to remove them. Unfortunately, the law is mostly unconcerned with those who rent. Failure to pay rent is treated as a simple violation of a contract, hardly different from breaching an agreement to deliver goods. The result is that tenants can be shown as little compassion as a box of foodstuffs.

IV. GOVERNMENT AGENCY SUPPORT FOR HOUSING

a. Massive Support for the Housing Market

A constellation of federal agencies works to prop up the housing, but not rental, market. As the name implies, the Department of Housing and Urban Development is in charge of federal-housing policy. It is responsible for, among other things, overseeing “public housing, housing-choice vouchers, and project-based Section 8 rental assistance.”²⁵¹ Together, these programs have subsidized 4.4 million housing units.²⁵² This is merely a slice of the government’s full efforts to support the housing market.

Aside from providing housing for military and veterans, the federal government “was not involved in providing housing assistance until World War I,” and even then, the government simply assisted in financing housing for shipbuilding and defense workers.²⁵³ Once the war ended, the government sold off the housing as quickly as possible.²⁵⁴ During the Great Depression, President Hoover took some actions to protect homeowners from foreclosure, but such efforts were “modest and relatively ineffective.”²⁵⁵

The New Deal changed the game. In 1937, the United States Housing Act established the first national housing program, which had the goal of providing “a

249. *United States v. Petty Motor Co.*, 327 U.S. 372, 376 (1946); J.M. Zitter, Annotation, *Validity, Construction, and Effect of Statute or Lease Provision Expressly Governing Rights and Compensation of Lessee Upon Condemnation of Leased Property*, 22 A.L.R.5th 327 §§ 3, 8 (1994).

250. *United States v. 1.357 Acres of Land*, 308 F.2d 200, 203–04 (7th Cir. 1962) (upholding a lease that contracted away the right to condemnation compensation; also, the dispossessed party could not recover for loss of fixtures); *Douglas Cnty. v. Brown*, 587 P.2d 504, 505 (Or. Ct. App. 1978) (same); *Village of Palatine v. Palatine Assocs.*, 942 N.E.2d 10, 16 (Ill. App. Ct. 2010) (same); *Fort Worth Concrete Co. v. State*, 416 S.W.2d 518, 523 (Tex. Civ. App. 1967) (holding that tenant was not entitled to compensation for improvements to the land).

251. John J. Infranca, *Housing Resource Bundles: Distributive Justice and Federal Low-Income Housing Policy*, 49 U. RICH. L. REV. 1071, 1071 (2015).

252. *Id.* at 1081.

253. Florence Wagman Roisman, *National Ingratitude: The Egregious Deficiencies of the United States’ Housing Programs for Veterans and the “Public Scandal” of Veterans’ Homelessness*, 38 IND. L. REV. 103, 116 (2005).

254. *Id.* at 116–17.

255. *Id.* at 117.

decent home in a suitable environment for every American Family.”²⁵⁶ Before long, both the Federal Housing Administration (FHA) and the Veterans Administration (VA) were providing low-interest financing for mortgages.²⁵⁷ In the first forty years of the FHA, it provided \$119 billion in home-mortgage insurance, enabling many Americans to become first-time homebuyers.²⁵⁸

Also during the New Deal, President Franklin Delano Roosevelt created the Federal National Mortgage Association (better known as Fannie Mae).²⁵⁹ Fannie Mae bought mortgages from lenders, freeing up capital for use elsewhere.²⁶⁰ These actions also stabilized the mortgage market by bundling the purchased mortgages and selling them to private investors.²⁶¹ Fannie Mae kept growing until it was made a quasi-private entity in the 1960s, at which time the Federal Home Loan Mortgage Corporation (Freddie Mac) was created with a similar purpose to prevent Fannie Mae from becoming a monopoly.²⁶² Around that time, the Government National Mortgage Association (Ginnie Mae) was also created to guarantee mortgage-backed securities issued by approved lenders.²⁶³ What this means is that, if a homeowner misses a payment, Ginnie Mae will step in to honor it.²⁶⁴ During the Great Depression, Fannie Mae had \$1 billion to play around with; by the Great Recession, Fannie and Freddie held or guaranteed \$5 trillion in debt,²⁶⁵ while Ginnie Mae carried a mortgage-backed-security portfolio of \$2 trillion in fiscal year 2018.²⁶⁶

The Department of Agriculture may primarily deal with food, but it too plays a role in housing. It provides financial support to farmers or people living in rural areas who seek to construct, improve, alter, repair, replace, or purchase homes.²⁶⁷ This is accomplished through the Farmers Home Administration.²⁶⁸ At its peak, it held over 40 percent of all agricultural loans, and today doles out \$16 billion in grants, guarantees, and program loans; and has a total loan portfolio of \$86 billion.²⁶⁹

Likewise, the Department of Health and Human Services is not thought of when housing comes to mind, but it plays its part too. It runs the Assets for

256. Marcia Johnson, *Will the Current Economic Crisis Fuel a Return to Racial Policies that Deny Homeownership Opportunity and Wealth?*, MOD. AM., Fall 2010, at 25, 26.

257. *Id.*

258. Elorza, *supra* note 33, at 9–10.

259. Kate Pickert, *A Brief History of Fannie Mae and Freddie Mac*, TIME (July 14, 2008), <http://content.time.com/time/business/article/0,8599,1822766,00.html>.

260. *Id.*

261. Dickerson, *supra* note 44, at 193.

262. Pickert, *supra* note 259.

263. Julia Kagan, *Government National Mortgage Association (Ginnie Mae)*, INVESTOPEDIA, <https://www.investopedia.com/terms/g/ginniemae.asp> (Oct. 31, 2021).

264. *Id.*

265. Pickert, *supra* note 259.

266. GINNIE MAE, 2018 ANNUAL REPORT 3 (2018), https://www.ginniemae.gov/about_us/what_we_do/Annual_Reports/annual_report18.pdf.

267. 42 U.S.C. § 1471(a).

268. *Block v. Neal*, 460 U.S. 289, 290 (1983).

269. Jamie Johnson, *What Is the Farmers Home Administration?*, THE BALANCE (Dec. 14, 2021), <https://www.thebalance.com/what-is-the-farmers-home-administration-5200202>.

Independence program which helps elevate poor families out of poverty.²⁷⁰ The program operates through providing matching funds to special savings accounts that may be used to obtain post-secondary education, support a business, or purchase a first-time home.²⁷¹ Over the history of the program, it supported nearly 18,000 home buyers.²⁷²

The Federal Reserve also does its part. To react to bad economic signs, the Federal Reserve can slash interest rates. This has the effect of cheapening adjustable-rate mortgages. Home equity lines of credit also get less expensive when rates are lowered.²⁷³ The Federal Reserve, along with the Treasury Department, also implicitly guarantees Fannie Mae and Freddie Mac against default, ensuring that the mortgages around the country stay afloat.²⁷⁴

Servicemembers can take advantage of Veterans Administration's home loans. The VA serves the mortgage lender and backs up a loan from the private market.²⁷⁵ If the borrower defaults, the VA covers the losses.²⁷⁶ There is less risk for the lender, and that means they give better terms.²⁷⁷ The result is that ninety percent of VA-backed home loans are made without a down payment.²⁷⁸

State agencies are involved in the housing market as well. The massive federal spending on the housing market has been jointly financed by state and local sources.²⁷⁹ Local, public-housing authorities determine whether and how public housing would be constructed.²⁸⁰ In 1941, the National Association of Real Estate Boards dreamed up a plan where states would use eminent domain to buy up property, raze it, build it back up, and then sell it to private developers at a loss, subsidized by the federal government.²⁸¹ Over time, states began to pass laws authorizing such development.²⁸² Finally, although not directly arms of the state, states may empower homeowners' associations to affect the housing market.

Homeowners' associations may be granted special rights by law to influence housing. California has a broad set of rules to protect homeowner-members

270. *About Assets for Independence*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <https://www.acf.hhs.gov/ocs/programs/afi/about> (last visited May 3, 2020).

271. *AFI Fact Sheet*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Nov. 2018), <https://www.acf.hhs.gov/ocs/resource/afi-fact-sheet>.

272. *See Key Data from the Assets for Independence (AFI) Program Report to Congress for Federal Fiscal Year (FY) 2016*, U.S. DEP'T OF HEALTH & HUMAN SERVS., https://www.acf.hhs.gov/sites/default/files/documents/ocs/rpt_afi_rtc_key_data_infographic_fy2016.pdf.

273. Natalie Campisi, *How the Fed's second emergency rate cut affects mortgage rates*, BANKRATE (Mar. 15, 2020), <https://www.bankrate.com/mortgages/federal-reserve-and-mortgage-rates/>.

274. Pickert, *supra* note 259.

275. *VA Home Loan Types*, U.S. DEP'T VETERANS AFFAIRS, <https://www.va.gov/housing-assistance/home-loans/loan-types/> (last updated Apr. 12, 2020).

276. *Id.*

277. *Id.*

278. *Id.*

279. Johnson, *supra* note 20, at 161.

280. *Id.* at 170.

281. Thomas W. Joo, *Urban Renewal And Sacramento's Lost Japantown*, 92 CHI.-KENT L. REV. 1005, 1012 (2017).

282. *Id.* at 1012-13.

which include regulating how meetings may take place,²⁸³ notice for the meetings,²⁸⁴ right for members to attend meetings,²⁸⁵ and how official actions may be taken.²⁸⁶ Members are given the power to sue to enforce these provisions,²⁸⁷ so they have a real say in how their lives are managed. In such communities, the landlord-tenant relationship is much more like a monarchy than a democracy.

b. Half-Hearted Support for the Poor

Efforts to help the humble have not been as strenuous. The Public Works Administration did provide rental-housing assistance during the Great Depression, but it was opposed by the lending, insurance, and real estate industries, and never took off in a big way.²⁸⁸ President Harry Truman signed legislation for the rapid construction of low-cost housing for veterans, but it too was opposed by the real-estate lobby and quickly died out.²⁸⁹

The Housing Act of 1949 authorized construction of 810,000 public-housing units, but it took the next quarter of a century to build them.²⁹⁰ Real-estate lobbyists criticized the program as socialism, and construction projects were shunted into less desirable areas and segregated by race.²⁹¹ Urban-home buyers had more difficulty obtaining loans under the FHA than did their suburban counterparts, and when they did, it was under less-favorable terms.²⁹²

Most aggressively, the government used eminent domain to seize land in Detroit to build hundreds of low-cost homes during the Great Depression.²⁹³ The housing in the condemned tracts of land was old and dilapidated, lacked sanitary plumbing, was rank with disease, and much of it was unfit for human habitation.²⁹⁴ Both the City of Detroit and State of Michigan requested the federal government to clear the slums and build new homes for public use.²⁹⁵ The landowner challenged this as an inappropriate use of eminent domain.²⁹⁶ The United States District Court for the Eastern District of Michigan agreed, holding that this was not a “public use,” thus killing the program.²⁹⁷ A similar program in Louisville, Kentucky, ended the same way.²⁹⁸

283. CAL. CIV. CODE § 4910.

284. CAL. CIV. CODE § 4920.

285. CAL. CIV. CODE § 4925.

286. CAL. CIV. CODE § 4930.

287. CAL. CIV. CODE § 4955.

288. Roisman, *supra* note 253, at 119.

289. *Id.* at 126–27.

290. Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878, 895–96 (1990).

291. *Id.* at 896.

292. Elorza, *supra* note 33, at 10.

293. *United States v. Certain Lands in Detroit*, 12 F. Supp. 345, 346 (E.D. Mich. 1935).

294. *Id.* at 346–47.

295. *Id.* at 347.

296. *Id.* at 346.

297. *Id.* at 348.

298. *United States v. Certain Lands in Louisville*, 78 F.2d 684, 687–88 (6th Cir. 1935). When World War II began, the government was authorized to use its eminent-domain power to build housing for

Like many other government programs, these agencies did not help black families. Local Veterans Affairs centers denied black veterans access to GI benefits, and banks would deny loans to non-white neighborhoods because the FHA refused to insure mortgages there, a policy that continued until 1968.²⁹⁹ Indeed, the FHA “virtually demand[ed] use of racially restrictive covenants as a precondition before granting loan guarantees,”³⁰⁰ and even provided samples of racially restrictive covenants.³⁰¹ These regulations have worked hand-in-hand with realtors, insurance agents, and real-estate developers.³⁰²

Homeowners associations were in on the scheme too. They pressured banks and other lenders to restrict credit to blacks, requested rules to forbid residents from housing domestic workers as a means of keeping minorities out of the neighborhood, and terrorized black families with cross burnings, death threats, and vandalism.³⁰³ If anyone dared to cross the racial line and sell to a black person, homeowners’ associations would publicize it in newspapers.³⁰⁴

In the 1980s, the government dramatically cut housing programs designed to help the poor but left the home mortgage-interest deduction alone.³⁰⁵ Federal-mental assistance exists but is chronically underfunded, so much so that only a quarter of eligible families actually receives it.³⁰⁶ Among the remaining programs is the Low-Income Housing Tax Credit, which helps with the construction and renovation of low-income rental housing.³⁰⁷ Since its inception in 1986, it has supported a total of 2 million units.³⁰⁸ Although such tax credit results in only \$9 billion of annual benefits, which is far less than many programs that benefit wealthy homeowners, it is still “by far the largest federal program encouraging the creation of affordable rental housing for low-income households.”³⁰⁹

national-defense workers and their families. *United States v. Certain Parcels of Land*, 54 F. Supp. 943, 944 (W.D. Pa. 1944); *United States v. 11.355 Acres of Land*, 51 F. Supp. 752, 754–55 (N.D. Tex. 1943).

299. Desmond, *supra* note 2. GI benefits included home loans, education assistance, job training, and health care. *Servicemen’s Readjustment Act (1944)*, NAT’L ARCHIVES (Jan. 7, 2022), <https://www.ourdocuments.gov/doc.php?flash=false&doc=76>.

300. Elorza, *supra* note 33, at 10.

301. Brown, *supra* note 3, at 373.

302. See KEVIN BOYLE, *ARC OF JUSTICE: A SAGA OF RACE, CIVIL RIGHTS, AND MURDER IN THE JAZZ AGE 9–10* (Henry Holt and Co. ed., 2004). Currently, black homebuyers are still shown seventeen percent fewer houses than are whites. See Jonathan Zasloff, *The Secret History of the Fair Housing Act*, 53 HARV. J. ON LEGIS. 247, 277 (2016).

303. Daria Roithmayr, *Racial Cartels*, 16 MICH. J. RACE & L. 45, 74–75 (2010).

304. *Id.* at 76.

305. Desmond, *supra* note 2; *Why Are People Homeless?*, NAT’L COAL. FOR THE HOMELESS (Dec 15, 2011), <http://www.nationalhomeless.org/factsheets/why.html>; Christina Hoag, *Low-Income Housing Funds Are Drying Up All Over America*, TAKEPART (Jan. 13, 2015) <http://www.takepart.com/article/2015/01/13/low-income-housing>.

306. Durana & Desmond, *supra* note 111.

307. U.S. Dep’t of Hous. and Urb. Dev., *Low-Income Housing Tax Credits*, OFF. OF POL’Y DEV. AND RSCH., <https://www.huduser.gov/portal/datasets/lihtc.html> (May 24, 2019).

308. Urb. Inst. ET AL., *What is the Low-Income Housing Tax Credit and how does it work?*, TAX POL’Y CTR., <https://www.taxpolicycenter.org/briefing-book/what-low-income-housing-tax-credit-and-how-does-it-work> (May 1, 2020).

309. *Id.*

The Department of Housing and Urban Development have provided approximately one million units of public housing which public-housing authorities administrate.³¹⁰ Like many other government programs that assist the poor, this public-housing program has been underfunded for decades and has received no funds to build new units since the 1990s.³¹¹ Matching funds are supposed to be available for poor families to purchase their first homes, but that part of the program has not been funded since the fiscal year of 2016.³¹² During the COVID-19 pandemic, the federal government pumped billions of dollars into the rental market, but this was a one time shot-in-the-arm, not a sustained program.³¹³ The Fair Housing Act, passed to try to stamp out discrimination in the housing market, has been called “empty and underfunded to the point of being ‘toothless.’”³¹⁴ Major cities around the country have a waiting list for Section 8 rental-assistance vouchers stretching a decade or more.³¹⁵ Washington closed its waiting list indefinitely.³¹⁶

Homeownership is a worthy goal for the government to support. But not everyone can put up large sum of money required to purchase a home. For the legion of renters who cannot afford anything else, the government largely leaves them to fend for themselves.

V. PRIVACY

a. Fourth Amendment Protections

The Fourth Amendment reads in part “The right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures, shall not be violated.” The Supreme Court has applied special protections to the home with vigor.³¹⁷ In *Katz v. United States*,³¹⁸ Justice John Marshall Harlan’s oft-cited concurrence sets forth a two-part formulation to determine if the Fourth Amendment is violated: it depends on whether a person has a subjectively reasonable expectation of privacy, and, objectively, society must regard this expectation as reasonable.³¹⁹ Although this two-part test is commonly used, the Court has said that “the traditional

310. *Public Housing*, NAT’L HOUS. L. PROJECT, <https://www.nhlp.org/resource-center/public-housing/> (May 1, 2020).

311. *Id.*

312. *AFI Fact Sheet*, *supra* note 271.

313. H. RULES COMM., 117TH CONG., TEXT OF H. AMEND. TO S. AMEND. OF H.R. 133 (Comm. on Rules Print 116–68). This is still puny compared to how much is given to homeowners. State level rental assistance programs were also set up, but they proved inadequate to the task at hand. *E.g.*, Greg Hilburn, *Louisiana COVID Rental Assistance Program Suspended After “Overwhelmed” with Applicants*, TENNESSEAN, (July 19, 2020, 7:01 PM), <https://www.tennessean.com/story/news/2020/07/19/louisiana-covid-rental-assistance-program-suspended-after-overwhelmed/5469637002/>.

314. Zasloff, *supra* note 302, at 248 (quoting CLAY RISEN, *A NATION ON FIRE: AMERICA IN THE WAKE OF THE KING ASSASSINATION* 215 (2009)).

315. Desmond, *supra* note 2.

316. *Id.*

317. *United States v. Karo*, 468 U.S. 705, 714 (1984) (“Private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant. . . . Our cases have not deviated from this basic Fourth Amendment principle.”).

318. *See generally Katz v. United States*, 389 U.S. 347 (1967).

319. *Id.* at 361 (Harlan, J., concurring).

property-based understanding of the Fourth Amendment,” still reigns.³²⁰ This means that one’s constitutional protection still hinges on how much property a person owns.

The Supreme Court has said that the home has a paramount privacy interest, as no “zone of privacy [is] more clearly defined than when bounded by the unambiguous physical dimensions of an individual’s home.”³²¹ Entry into a home is the “chief evil” that the Amendment protects against.³²² Absent a search warrant, police having a valid arrest warrant does not grant them access to any house that a suspect occupies.³²³ Performing a heat scan on a house is impermissible.³²⁴ A search incident to a lawful arrest ordinarily allows police great leeway, but it does not permit them to search a whole house.³²⁵ Warrantless entry into a house can not only scuttle a criminal prosecution but can subject the officers to civil liability.³²⁶

Case law has emphasized that a search is less likely to be reasonable when a person has taken more steps to ensure the privacy of the area.³²⁷ As a consequence, the more land and security devices a person can afford, the more protection the law affords them.

Beyond the confines of the house, the curtilage—or immediate surrounding area—is sacred too. The curtilage “enjoys protection as part of the home itself.”³²⁸ Bringing a drug-sniffing dog near the front door of a house is impermissible without a search warrant.³²⁹ While several factors go into determining if something is part of the curtilage, one is “the steps taken by the resident to protect the area from observation by people passing by.”³³⁰ An example would be privacy fences.³³¹ Information gathering by law enforcement on an “open field” does not offend the Fourth Amendment’s command of reasonableness.³³²

And simply being present in a house does not grant protection. One must *own* the home to assure they can invoke the Fourth Amendment.³³³ A person must have “owned or possessed the seized property or to have had a substantial possessory

320. *Florida v. Jardines*, 569 U.S. 1, 11 (2013).

321. *Payton v. New York*, 445 U.S. 573, 589 (1980).

322. *Id.* at 585.

323. *Steagald v. United States*, 451 U.S. 204, 216 (1981) (finding insufficient arrest warrant used in the search of the petitioner’s home as no more reasonable than it would have been if conducted without a warrant at all).

324. *Kyllo v. United States*, 533 U.S. 27, 40 (2001).

325. *Chimel v. California*, 395 U.S. 752, 768 (1969).

326. *E.g.*, *Hopkins v. Bonvicino*, 573 F.3d 752, 760 (9th Cir. 2009).

327. Christopher Slobogin, *The Poverty Exception to the Fourth Amendment*, 55 FLA. L. REV. 391, 400 (2003).

328. *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

329. *Id.* at 9.

330. *United States v. Dunn*, 480 U.S. 294, 301 (1987).

331. *Id.* at 303.

332. *Oliver v. United States*, 466 U.S. 170, 183 (1984).

333. *See Rakas v. Illinois*, 439 U.S. 128 (1978) (holding that petitioners’ Fourth Amendment claim failed because they “asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized” and “made no showing that they had any legitimate expectation of privacy in the glove compartment or area under the seat of the car in which they were merely passengers”); *United States v. Salvucci*, 448 U.S. 83, 85 (1980) (holding “that defendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated”).

interest in the premises searched” to have standing to challenge Fourth Amendment violation.³³⁴ Although renters may be able to claim some protections, as the next section shows, they are significantly less.

b. Diminished Privacy for Renters

Apartments, by their nature, are tightly packed together. Courts have focused on this fact to rob apartment renters of much of their privacy rights. Police may search a home based upon the consent of the suspect’s roommates, and that search can incriminate the absent co-tenant. At first, the Supreme Court said that only the targeted individual could give valid consent to search a dwelling.³³⁵ When this proved too burdensome for law enforcement, the standard became “the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared.”³³⁶ And after that, it was broadened to include consent of a person with apparent authority over the dwelling,³³⁷ and situations where a person objected but then left and the co-inhabitant consented, even though it was the police who removed the objecting party in the first place.³³⁸

This means that the more co-inhabitants a person has, the easier for them to have their privacy waived. Although homeowners might have co-inhabitants, one expects these to be family members who would protect them. On the other hand, one expects apartment co-inhabitants to include simple roommates not bound by blood.

Even a mistake by law enforcement will be forgiven. When police have a warrant to search an apartment that directly adjoins another, either may be searched, even if only one is listed on the warrant, so long as the “objective facts” make distinguishing between the two difficult.³³⁹

In *Minnesota v. Carter*,³⁴⁰ the defendant was in an apartment bagging cocaine. A police officer approached the apartment window and looked through the blinds for several minutes.³⁴¹ The Supreme Court ruled against the defendant because, even though he occupied the apartment, it was not his home.³⁴² Furthermore, even though the police officer entered a “grassy area” in front of the apartment window, “climbed over some bushes,” placed his face “12 to 18 inches from the window,” and peered through the blinds, Justice Stephen Breyer said that this was not an “unreasonable search” because “[o]ne who lives in a basement apartment that fronts a publicly traveled street, or similar space, ordinarily understands the need for care. . . .”³⁴³ Apartment dwellers must, therefore, must simply grit their teeth and bear the burden of state-sanctioned violations of privacy.

334. *Jones v. United States*, 362 U.S. 257, 261 (1960).

335. *Stoner v. California*, 376 U.S. 483, 487–90 (1964).

336. *United States v. Matlock*, 415 U.S. 164, 170 (1974).

337. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).

338. *Fernandez v. California*, 571 U.S. 292, 294 (2014).

339. *Maryland v. Garrison*, 480 U.S. 79, 88 (1987).

340. *Minnesota v. Carter*, 525 U.S. 83 (1998).

341. *Id.* at 85.

342. *Id.* at 90.

343. *Id.* at 103–05 (Breyer, J., concurring).

Unlike owners of site-built houses, mobile-home owners might not receive heightened privacy protections. The Supreme Court in *California v. Carney* held that a mobile home may in certain circumstances be treated more like a car than a home, and, consequently, police may conduct a warrantless search.³⁴⁴ This was because a mobile home “lends itself easily to use as an instrument of illicit drug traffic and other illegal activity.”³⁴⁵ The fact that some mobile-home residents might use their dwellings for crime justifies diminished protections for all of them. Mobile-home dwellers are not the only people whose living arrangements result in lessened privacy.

Public housing tenants are subjected to numerous rules and regulations. Able-bodied adults who do not work, must “either participate in an economic self-sufficiency program, or ‘contribute [eight] hours per month of uncompensated community service (not including political activities) within the community in which that adult resides.’”³⁴⁶ Housing authorities may even select tenants based upon whether applicants are employed at the time of applying for public housing.³⁴⁷

Poor people are also forced to open their homes for police in exchange for government services in a way that wealthy beneficiaries of government largess are not. San Diego County implemented a program in the 1990s called Project 100%. Under the program, all welfare applicants had to agree to an intrusive, unannounced home visit by an investigator from the District Attorney’s Office who would snoop around to make sure that their worldly possessions match up with what they put down the application.³⁴⁸ Investigators can spend up to an hour rifling through closets and cabinets, and should the applicant reject the intrusion, all benefits are terminated immediately.³⁴⁹ It never produced a single prosecution for welfare fraud.³⁵⁰

Nevertheless, the United States Court of Appeals for the Ninth Circuit in *Sanchez v. County of San Diego* held that these home visits were not even a search under the Fourth Amendment, and were reasonable besides.³⁵¹ Also, the Supreme Court allowed government agents to nose around the homes of poor families seeking public assistance without regard for the Fourth Amendment.³⁵²

344. *California v. Carney*, 471 U.S. 386 (1985).

345. *Id.* at 394.

346. Ballard, *supra* note 9, at 300 (citing 42 U.S.C. § 1437j(c)(1)(A)).

347. Ballard, *supra* note 9, at at 301–02.

348. *Sanchez v. Cnty. of San Diego*, 464 F.3d 916, 918–19 (9th Cir. 2006).

349. *Id.* at 919.

350. *Id.*

351. *Id.* at 922–23, 925. Nor does the Fourth Amendment prevent law enforcement from accessing welfare records to investigate crimes without need for probable cause or reasonable suspicion. Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 668–69 (2009).

352. *Wyman v. James*, 400 U.S. 309 (1971). Also, probationers have diminished protections in their homes when the state searches for contraband. *Griffin v. Wisconsin*, 483 U.S. 868, 873–76 (1987). Business owners may, on the other hand, insist on a warrant before the government can conduct health and safety inspections in their companies. *Camara v. Mun. Ct. of City & Cty. of San Francisco*, 387 U.S. 523 (1967); *see also* *G. M. Leasing Corp. v. United States*, 429 U.S. 338, 359 (1977) (IRS must get a warrant before entering a business to seize assets to satisfy tax obligations).

The City of Little Rock had an ordinance that called for systemic inspection of residential properties to determine if code violations exist.³⁵³ Plaintiffs claimed that it targeted only low-income rental properties, and thus only low-income-property owners had to choose between compliance or condemnation.³⁵⁴ Owner-occupied structures and higher-income rental structures were not systematically inspected.³⁵⁵ The United States District Court for the Eastern District of Arkansas said that the law was facially neutral; low-income people were not a “suspect class,” and it did not matter that low-cost apartments were targeted since on paper any unit could be inspected.³⁵⁶

Criminal law may deem that violating the sanctity of a renter’s home is less worthy of reproach than a similar offense against a homeowner. The traditional rule is that burglary laws exist to give “the security of the habitation rather than the security of property.”³⁵⁷ To this end, burglary laws are “not limited to the house itself, but extended to certain outbuildings, even though these might be physically separated from the house. . . .”³⁵⁸ But burglars who break into non-residential portions of apartment buildings are liable for lesser offenses than if they broke into a non-residential portion of a home.

For example, in *Commonwealth v. Waters*,³⁵⁹ the defendant broke into the basement of an apartment building. The tenants did not have access to the basement, and it was not designed for overnight accommodation, so the court said that the crime should be treated as second-degree burglary, not first-degree.³⁶⁰ Tenants may still be terrified at the idea of their building being broken into by a burglar, but the law does not recognize this harm to the same degree as it would for a homeowner. Conversely, courts have held that breaking into a house’s basement that was not connected to the inside of the house and contained no bed *was* a dwelling house, meaning that a higher level of burglary applied.³⁶¹

c. First Amendment Exception for Homeowners

The First Amendment places great value on the freedom of speech. In pursuit of this freedom, the Supreme Court has upheld unlimited spending of corporate interests,³⁶² okayed the Ku Klux Klan’s speeches urging violence,³⁶³ and

353. *Berry v. City of Little Rock*, 904 F. Supp. 940, 943 (E.D. Ark. 1995), *aff’d*, 94 F.3d 648 (8th Cir. 1996).

354. *Id.* at 944.

355. *Id.*

356. *Id.* at 948–49.

357. *Stewart v. Commonwealth*, 793 S.W.2d 859, 860 (Ky. Ct. App. 1990).

358. *Id.*

359. *Commonwealth v. Waters*, 988 A.2d 681 (Pa. Super. Ct. 2009).

360. *Id.* at 684.

361. *Burgett v. State*, 314 N.E.2d 799, 802–03 (Ind. App. 1974); *Mitchell v. Commonwealth*, 11 S.W. 209, 210 (Ky. 1889); *State v. Maykoski*, 583 N.W.2d 587, 588–89 (Minn. 1998); *see also Smalls v. State*, 973 So. 2d 630, 631 (Fla. Dist. Ct. App. 2008) (a detached garage may qualify as part of the dwelling house).

362. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

363. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

allowed Neo-Nazi marches through Jewish neighborhoods.³⁶⁴ But the Court drew the line at the home.

*Frisby v. Schultz*³⁶⁵ took place in a small residential suburb of Milwaukee. Two anti-abortion activists started picketing outside the home of a doctor who performed the procedure.³⁶⁶ Though generally peaceful, it generated great controversy, and the city passed an ordinance restricting picketing in residential areas.³⁶⁷ Though the Court said that the ordinance went to the “core of the First Amendment,” it acknowledged that the protection afforded to speech depended on the “place” of the speech.³⁶⁸ Preserving the tranquility of the home was of “highest order” importance, so the town was within its rights to stop picketing that targeted an individual resident at home in an offensive way.³⁶⁹ This rule does not extend to targeted, offensive speech at other intimate settings, such as a funeral.³⁷⁰

d. Right to Use Deadly Force

A homeowner may even have a license to kill. Sir William Coke popularized the phrase “a man’s home is his castle” to describe the right to defend one’s home with deadly force.³⁷¹ The “castle doctrine” still endures.³⁷² Ordinarily, a person has a duty to retreat before using deadly force, but the castle doctrine removes that requirement when a person is at home.³⁷³

Apartment dwellers face conviction for using deadly force in their homes. Paul L. Cushinberry was sitting in the stairwell landing of his apartment landing when someone confronted him and demanded money.³⁷⁴ Cushinberry asked for a jury instruction invoking a self-defense statute but was denied it.³⁷⁵ On appeal, the Colorado Court of Appeals said that the statute only applied to a “dwelling,” and the common area of an apartment did not qualify.³⁷⁶ The defendant likely would have received the jury instruction, and perhaps an acquittal, if his home had been a house.

Many other cases have reached the same result. Defendants who were in apartment lobbies, parking lots, and even doorways to their own apartment units

364. Nat’l Socialist Party of Am. v. Vill. of Skokie, 432 U.S. 43 (1977).

365. *Frisby v. Schultz*, 487 U.S. 474 (1988).

366. *Id.* at 476.

367. *Id.* at 474.

368. *Id.* at 479.

369. *Id.* at 484, 486.

370. *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (allowing Westboro Baptist Church to protest at a grieving family’s funeral).

371. *Fee*, *supra* note 8, at 787.

372. *E.g.*, COLO. REV. STAT. § 18-1-704.5 (2018); DEL. CODE ANN. tit. 11, § 469 (1995); IND. CODE ANN. § 35-41-3-2 (2019); KAN. STAT. ANN. § 21-5223 (2011); LA. REV. STAT. ANN. § 14:20 (2014); ME. REV. STAT. tit. 17-A, § 104 (2007); MINN. STAT. ANN. § 609.06 (2021).

373. Stuart P. Green, *Castles and Carjackers: Proportionality and the Use of Deadly Force in Defense of Dwellings and Vehicles*, 1999 U. ILL. L. REV. 1, 9 (1999).

374. *People v. Cushinberry*, 855 P.2d 18, 19 (Colo. App. 1992).

375. *Id.* at 18.

376. *Id.* at 19.

were all denied affirmative defenses.³⁷⁷ In contrast, the Supreme Court has held as far back as 1895 that a defendant outside of his house, but still on the premises, could use deadly force to defend himself.³⁷⁸ More recently, a Minnesota defendant was given a jury instruction on an affirmative defense after shooting someone on the porch of his house.³⁷⁹ Under the cohabitation rule, a person might not be able to use deadly force against co-inhabitants of a home, meaning that communal living arrangements would diminish a person's right to self-defense.³⁸⁰

Putting all this together, one can see why scholars have written of a "poverty exception" for the Fourth Amendment.³⁸¹ But the same sort of exceptions apply to various other legal rights. This is the inescapable corollary of tying one's legal protections to their property.

VI. DEGRADING MANUFACTURED HOUSING

a. The Manufactured Housing Market

The popularity and prevalence of mobile homes soared after the Second World War. Housing shortages around the country spurred many people to consider mobile homes as an affordable alternative.³⁸² Back in those days, mobile homes were travel trailers, often homemade, that were hitched onto the back of a car and intended as temporary housing.³⁸³ As the name implies, they were highly mobile.³⁸⁴ By 1950, ninety percent of all trailers were used as primary, permanent residences and became harder to move.³⁸⁵ Over the years, mobile-home construction became highly

377. See also *State v. Spangler*, 350 P.3d 1137 (Kan. Ct. App. 2015) (holding that the defendant was not entitled to an affirmative defense after using force against a person in a hallway of an apartment building); *State v. McConnell*, 264 P.3d 1058 2011 WL 6413620, at *5–6 (Kan. App. 2011) (concluding that the defendant was not entitled to defense of dwelling argument where victim was invited into an apartment by the defendant's roommate), *rev. denied*, 296 Kan. 1133 (2013)); *State v. Devens*, No. A12-2065, 2013 Minn. App. Unpub. LEXIS 1089, 2013 WL 6389594, at *2 (Minn. App. 2013), *aff'd*, 852 N.W.2d 255, 259 (Minn. 2014) (similar); *State v. Blomme*, No. A09-1302, 2010 Minn. App. Unpub. LEXIS 905, at *10 (Aug. 31, 2010) (holding that the defendant was not entitled to an affirmative defense after using force against a person in the parking lot of an apartment building); *People v. Aiken*, 828 N.E.2d 74, 79 (N.Y. 2005) (deciding that an affirmative defense is not appropriate when the altercation occurred in the indoor doorway of an apartment unit); *People v. Hernandez*, 774 N.E.2d 198, 203 (N.Y. 2002) (no affirmative defense for apartment lobby). *But see* *Cupello v. State*, 27 N.E.3d 1122, 2015 Ind. App. LEXIS 144 (Ind. Ct. App. 2015) (justifying a use of force when an intruder places one foot into defendant's apartment).

378. *Beard v. United States*, 158 U.S. 550, 563–64 (1895); see also *State v. Countryman*, 48 P. 137 (Kan. 1897) (justifying a man's use of lethal force in his home against non-violent people mocking him in his yard).

379. *State v. Penkaty*, 708 N.W.2d 185, 207 (Minn. 2006); see also *Smith v. State*, 403 N.E.2d 869, 875 (Ind. Ct. App. 1980) ("There is no question that . . . '[a homeowner's] front porch is part of her premises, upon which that right to defense can arise' is a correct statement of the law.>").

380. Catherine L. Carpenter, *Of the Enemy Within, the Castle Doctrine, and Self-Defense*, 86 MARQ. L. REV. 653, 671 (2003).

381. Slobogin, *supra* note 327.

382. Clark, *supra* note 6, at 1117.

383. O'Sullivan & Medrash, *supra* note 43, at 288.

384. *Id.*

385. *Id.* at 288–89.

regulated, and “manufactured housing” became a common synonym.³⁸⁶ By 1992, the Supreme Court recognized that the “term ‘mobile home’ is somewhat misleading” because they are difficult to relocate and only one in one hundred ever will.³⁸⁷

Mobile homes cost far less than on-site built homes, a difference of \$65,300 to \$345,800.³⁸⁸ Unsurprisingly, mobile-home dwellers tend to make less money than the median income for the area, and a substantial portion are above retirement age.³⁸⁹ Manufactured housing is has come to be known as “*the* housing for rural Americans of modest means,” and “a significant portion of rural homeownership growth, particularly among low-and very low-income households.”³⁹⁰ It is also the largest chunk of unsubsidized, affordable housing in the country.³⁹¹

Owners of manufactured homes occupy an odd niche in the housing market. Much of the oddity stems from the fact that people typically own the mobile home but rent the land upon which they are living.³⁹² Half of mobile homes are clustered in manufactured-housing communities, better known as trailer parks.³⁹³ The park owner is the one who owns the land in this scenario.³⁹⁴

Common sense would suggest that manufactured homes—a residence fixed to the ground—should be considered real property. Alas, this is not always the case.³⁹⁵ As of 2000, only one-in-five mobile homes were titled as real estate.³⁹⁶ Because mobile-home owners do not own the land, most state laws and lenders do not consider manufactured homes to be real estate. They are treated more like personal property such as cars.³⁹⁷ Personal property is taxed as a depreciable asset rather than based upon its market value, which likely results in higher property values.³⁹⁸

And when mobile homes are not treated as real estate, many of the laws that protect houses do not apply. As one report said, “manufactured-housing finance remains an area in which the range of permissible loan terms and tactics extends beyond what would pass muster in the conventional mortgage market.”³⁹⁹ Mobile-home residents usually get financing through the retailer, not a mortgage from a bank, and pay double the conventional mortgage rate, or more.⁴⁰⁰ Eighty-five percent

386. *Id.* at 289.

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

388. Clark, *supra* note 6, at 1118.

389. Clark, *supra* note 6, at 1118.

390. MacTavish, *supra* note 97, at 95 (emphasis in original).

391. Paul Bradley & George McCarthy, *Manufactured Housing: The Homeowners No One Thinks Of*, DEMOCRACY (2012), <https://democracyjournal.org/magazine/26/manufactured-housing-the-homeowners-no-one-thinks-of/>.

392. *Id.*

393. MacTavish, *supra* note 97, at 95.

394. Bradley & McCarthy, *supra* note 391.

395. MacTavish, *supra* note 97, at 112.

396. NEIGHBORHOOD REINVESTMENT CORP., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY-AND ASSET-BUILDING STRATEGY 11 (2002), <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-agnar-et-al.pdf>.

397. Bradley & McCarthy, *supra* note 391.

398. MacTavish, *supra* note 97, at 113.

399. NEIGHBORHOOD REINVESTMENT CORP., *supra* note 396, at 13.

400. Bradley & McCarthy, *supra* note 391.

of mobile-home owners purchase their homes with a personal-property loan rather than a mortgage, and they often receive financing from sub-prime lending companies.⁴⁰¹

To lack a mortgage is to lack a host of legal protections. The Real Estate Settlement Procedures Act (RESPA) requires disclosure of settlement costs and prohibits kickbacks or referral fees for mortgage brokers, but park retailers who make personal-property loans are not so encumbered.⁴⁰² Federal law requires that mortgage issuers ensure that borrowers have “an ability to repay” before making a loan.⁴⁰³ In the manufactured-housing industry, lenders acknowledged giving loans to people who could not afford them.⁴⁰⁴ The Fair Housing Administration may underwrite mobile loans in some instances, but it often does not due to the manner in which the program is administered.⁴⁰⁵ And because many states do not allow manufactured units to be classified as real estate, even if the land is owned by the homeowner, the FHA cannot participate.⁴⁰⁶ Even proposals to modernize the Fair Housing Administration’s lending mechanisms would not help those who are forced to rely on personal-property loans.⁴⁰⁷

Technically, the Veterans Administration, which serves 200,000 borrowers annually, could finance mobile homes, but it has “not served a single manufactured-home buyer in recent years.”⁴⁰⁸ Its manufactured-home financing program still exists, but it has “effectively zero usage.”⁴⁰⁹ State-housing agencies often assist low-income homebuyers by providing mortgage-revenue bonds, but few state agencies offer manufactured-housing finance assistance.⁴¹⁰ Nor have Fannie Mae and Freddie Mac supported manufactured homes that are classified as personal property.⁴¹¹

To the extent mortgages are available for mobile homes, they are offered on less favorable terms than for similarly situated, site-built housing.⁴¹² In addition to high-interest loans, mobile-home owners face “exploitative lot rents or eviction, capricious park management, the sale of park land for a ‘higher use,’ rent-to-own home sale arrangements, and high utility costs.”⁴¹³

b. Evictions

In some ways, mobile-home owners have it even harder than renters when it comes to evictions. Few states regulate individual mobile-home evictions, meaning

401. MacTavish, *supra* note 97, at 98.

402. NEIGHBORHOOD REINVESTMENT CORP., *supra* note 396, at 12.

403. 15 U.S.C. § 1602(dd)(2)(E)(iii); 15 U.S.C. § 1639c.

404. MacTavish, *supra* note 97, at 99.

405. NEIGHBORHOOD REINVESTMENT CORP., *supra* note 396, at 14.

406. *Id.*

407. MacTavish, *supra* note 97, at 112.

408. NEIGHBORHOOD REINVESTMENT CORP., *supra* note 396, at 15.

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.* at 12 (noting that manufactured homeowners paid higher interest rates than single-family homeowners).

413. MacTavish, *supra* note 97, at 98.

that they occur without due process.⁴¹⁴ For example, manufactured-home dwellers often are not entitled to notice of an eviction.⁴¹⁵ If evicted, such owners have little choice but to abandon their homes since they cannot be easily picked up and moved.⁴¹⁶ There is also a special sort of eviction unique to mobile homes.

Rather than evicting a single mobile-home owner, park owners may decide to close down their park, effectively evicting everyone. This may enrich the owner⁴¹⁷ but devastate hundreds of residents. The Venetian Motor Home Court in St. Petersburg, Florida provided affordable housing to residents for over seventy years.⁴¹⁸ Abruptly, a developer bought the trailer park and ordered all residents to leave within a few months—many with no affordable alternatives. The developer spent \$10 million to kick out the fifty-five residents, and the land could support townhomes that would fetch \$300,000 or more.⁴¹⁹ But the residents would not share in this wealth. They were set to the wind with nothing to help them on their way but \$1,375 for single-wides, \$2,750 for double-wides, and the chance to apply for up to \$6,000 more.⁴²⁰

Other states allow park owners to shut down and repurpose parks while residents get little more than bread crumbs. Oregon allows park closure with either a year's notice or after payouts to residents, but only six months' notice if the trailer park is converted into a subdivision.⁴²¹ The payouts are \$6,000 for single-wides, \$8,000 for double-wides, and \$10,000 for triple-wides.⁴²² This is not too far off from other states.⁴²³ Moving and replanting a mobile home can cost over \$10,000, old units might not be suitable for moving at all, and due to restrictive, anti-mobile-home zoning laws and lack of mobile-home lots, there may be no place to move to.⁴²⁴

Washington state used to require park owners who shuttered parks to pay for the full cost of relocation expenses because they were the ones responsible for them.⁴²⁵ It was later amended to only one-third of expenses, and only for low-income

414. *Id.* at 99.

415. Richard Dahl, *What Rights Do Mobile Home Park Tenants Have?*, FINDLAW (July 8, 2021, 12:33PM), <https://www.findlaw.com/legalblogs/law-and-life/what-rights-do-mobile-home-park-tenants-have/>.

416. MacTavish, *supra* note 97, at 99.

417. *Holiday Hills Trailer Resort, Inc. v. Lincoln Cnty. Assessor*, No. TC-MD 130102N, 2013 Ore. Tax LEXIS 151, at *27 (Or. T.C. Aug. 23, 2013) (determining that a 79 unit trailer park had a real market value of \$2 million).

418. Susan Taylor Martin, *Another Tampa Bay mobile home park will make way for redevelopment*, TAMPA BAY TIMES (Feb. 6, 2018) https://www.tampabay.com/news/business/real-estate/Another-Tampa-Bay-mobile-home-park-will-make-way-for-redevelopment_165213668/.

419. *Id.*

420. *Id.*

421. OR. REV. STAT. § 90.645 (2022).

422. *Id.*

423. *E.g.*, ARIZ. REV. STAT. § 33-1476.01(D) (2018) (pays \$8,000 upfront for a single-wide, and \$13,300 for a double-wide); MINN. STAT. § 327C.095, subd. 13 (2020) (pays \$7,000 for a single-wide, and \$12,500 for a double-wide).

424. O'Sullivan & Medrash, *supra* note 43, at 290.

425. See Lauren Malpica, *Move it or Lose it: Washington State's Mobile Home Park Conversion Process and its Failures*, 16 SEATTLE J. SOC. JUST. 487, 511 (2017).

residents.⁴²⁶ This was still unacceptable to park owners, and they filed suit.⁴²⁷ The Supreme Court of Washington said that the law was “unduly oppressive [to park owners] and violates substantive due process.”⁴²⁸ The rights of the residents who would be forced to leave without compensation were not discussed.

In another case, the Supreme Court said that “[w]e do not denigrate the importance of decent, safe, and sanitary housing . . . [b]ut the Constitution does not provide judicial remedies for every social and economic ill.”⁴²⁹ The Constitution does, however, appear to provide remedies to wealthy park owners who wish to render their residents homeless and not pay a dime to help them find their way.

c. Mobile-Home Banishment Laws

Many communities are unhappy with the idea of mobile homes moving in. So they do all they can to keep them out. Urban zoning excludes trailer parks.⁴³⁰ Trailer parks are often relegated to the edge of town near railroad tracks, highways, junkyards, and water treatment plants.⁴³¹

Most extreme of all, a few towns in Arkansas have decided to simply criminalize affordable mobile homes. Critics call it little more than a thinly veiled attempt to ban the poor from the community.⁴³² Regardless, Newark, Arkansas, passed an ordinance forbidding anyone from living in a mobile home worth less than a certain amount.⁴³³ Originally, it banned any mobile home with a value of less than \$15,000.⁴³⁴ When this proved inadequate to rid the city of undesirables, the city raised the limit to \$25,000. This too did not work, so it was again raised to as much as \$35,000.⁴³⁵ If that was not enough, the city council gave itself the power to deny trailer park permits “for other reasons.”⁴³⁶ It did not matter that one trailer had dozens of interested renters since it was worth less than Newark’s limits.⁴³⁷

About an hour’s drive from Newark sits McCrory, Arkansas, population 1,729.⁴³⁸ McCrory’s major industry was building toilet seats and adhesive labels;

426. *Id.*

427. *Guimont v. Clarke*, 854 P.2d 1, 5 (Wash. 1993).

428. *Id.* at 16.

429. *Lindsey v. Normet*, 405 U.S. 56, 74 (1972).

430. *MacTavish*, *supra* note 97, at 97.

431. *Id.*

432. See *Stopping Home Banishment*, EQUAL JUST. UNDER LAW, <https://equaljusticeunderlaw.org/home-banishment-1>.

433. *Id.*

434. *Id.*

435. *Id.*

436. *Id.*

437. *Kilpatrick v. City of Newark*, EQUAL JUST. UNDER LAW, <https://equaljusticeunderlaw.org/kilpatrick-v-city-of-newark>.

438. Erik De La Garza, *Arkansas City Accused of Targeting Poor*, COURTHOUSE NEWS SERV. (Jan. 10, 2017), <https://www.courthousenews.com/arkansas-city-accused-of-targeting-poor-residents/>.

surrounding farms grow rice, corn, and soybeans.⁴³⁹ About a third of the town never finished high school, and a quarter of the county was below the poverty line.⁴⁴⁰

One December, the police chief told a few of the town's poor residents that they had to leave "after the holidays."⁴⁴¹ For the town passed a trailer-banishment ordinance which forbade anyone within the city from residing in a mobile home or trailer worth less than \$7,500.⁴⁴² This came after the city already passed laws to harass people living in mobile homes, such as minimum lot sizes, minimum widths, and caps on density.⁴⁴³ Those who did not move out could be fined \$500 per day.⁴⁴⁴ The fact that people paid rent and kept a trailer up with city health and safety codes was irrelevant.⁴⁴⁵ Poor residents could not plea indigence as justification since the law offered no defense for non-willfulness. The city claimed that the law was passed to provide relief from overcrowding and promote good health and orderly growth.⁴⁴⁶ But when threatened by the lawsuit by the nonprofit Equal Justice Under Law, the city repealed it within forty-eight hours.⁴⁴⁷

At least with the banishment statutes, the cities could be sued and the policies overturned. But the huge disadvantages that manufactured-home dwellers face are much tougher knots to cut through. It is the definition of mobile homes as personal property, the absence of laws, the fact that lot owners control the land, and plain old unequal treatment. The result is placing manufactured housing on a much lower plane than site-built homes.

VII. PUNISHING HOMELESSNESS

Homeless encampments have risen 1,342 percent in recent years.⁴⁴⁸ Matching this trend, there has been a dramatic spike in anti-homelessness laws. In the last decade, we have seen surges in bans on camping in public, begging, standing around, sitting or lying down in public, and sleeping in cars, with increases ranging from 43 to 143 percent.⁴⁴⁹ It is common practice for large cities to lack adequate shelter space for the homeless, yet resort to punitive measures anyway.⁴⁵⁰ Santa Cruz,

439. James Asher, *Lawsuit raises question: Can communities outlaw poverty?*, INJUSTICE WATCH (Jan. 9, 2017), <https://www.injusticewatch.org/news/2017/lawsuit-raises-question-can-communities-outlaw-poverty/>.

440. *Id.*; De La Garza, *supra* note 439.

441. *Id.*

442. *Watlington v. City of McCrory*, EQUAL JUST. UNDER LAW, <https://equaljusticeunderlaw.org/case-buffin-v-san-francisco-1>.

443. Complaint at 8, *Watlington v. City of McCrory*, No. 2:17-cv-2-DPM, 2017 U.S. Dist. LEXIS 122319 (E.D. Ark. Jan. 5, 2017), <https://static1.squarespace.com/static/5aab27d96e76f3205f18a55/t/5abd2a6d8a922d2f16ef2da1/1522346611847/1-2017-01-05-P-Complaint.pdf>.

444. *Watlington v. City of McCrory*, *supra* note 443.

445. *Id.*

446. De La Garza, *supra* note 439.

447. *Watlington v. City of McCrory*, *supra* note 443.

448. Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 110 (2019).

449. *Id.* at 108–09.

450. See Donald Saelinger, *Nowhere to Go: The Impacts of City Ordinances Criminalizing Homelessness*, 13 GEO. J. POVERTY L. & POL'Y 545, 545–46 (2006).

California, for instance, provides access to shelters for only one-in-five homeless.⁴⁵¹ Small towns, too, have laws like this.⁴⁵² These laws may carry with them penalties as harsh as months of confinement or civil fines as high as \$5,000 that morph into criminal offenses if the homeless person does not pay (an exceedingly likely outcome).⁴⁵³ Loitering laws enable police to arrest homeless people for basically no reason at all.⁴⁵⁴ And if a homeless person escapes formal punishment, they may face other hardship from law enforcement. Eighty-one percent of homeless people report being harassed by the police for sleeping in public, fifty percent have been cited, and thirty percent have been arrested.⁴⁵⁵ These laws are also unevenly applied.⁴⁵⁶

Enforcement of anti-homelessness laws is strictest in cities that have the largest income-inequality gap.⁴⁵⁷ Motivation for these sorts of laws can be callous. Politicians may wish to “clean up the streets.”⁴⁵⁸ Hawaii’s governor was blunter. In a meeting with the Chamber of Commerce, he said “How long will the condos across from Ala Moana Park retain their \$750,000 value if the homeless people in the park multiply? . . . How long will the tourists come when they find homeless people living on the beach?”⁴⁵⁹

When not being outright criminalized, cities may try to make the lives of the homeless more unpleasant. To make it harder for homeless people to sleep peacefully, cities have done everything from placing spikes on the ground, extra handlebars on benches, and even designing benches to be uncomfortable in general.⁴⁶⁰ Oftentimes anti-homeless design features are so subtle that people might not even notice them.⁴⁶¹

Sometimes, the homeless may even be legally barred from getting a home. In 2004, New York City decided that homeless families living in shelters would not be allowed to apply to federal rent vouchers or public housing.⁴⁶² Although the city planned to replace current aid with a combined local-state-federal grant program, it

451. NAT’L L. CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 8 (2014), https://homelesslaw.org/wp-content/uploads/2019/02/No_Safe_Place.pdf.

452. Justin Olson & Scott MacDonald, *Washington’s War on the Visibly Poor: A Survey of Criminalizing Ordinances & Their Enforcement* ii, 9 HOMELESS RIGHTS ADVOCACY PROJECT I, I–II (2015).

453. *Id.* at ii.

454. Robert Rosenberger, *How Cities Use Design to Drive Homeless People Away*, ATLANTIC (June 19, 2014), <https://www.theatlantic.com/business/archive/2014/06/how-cities-use-design-to-drive-homeless-people-away/373067/>.

455. NAT’L CENTER ON HOMELESSNESS & POVERTY, *supra* note 452, at 17.

456. See Erin Bell, *Increasing number of laws target cities’ homeless population*, SCRIPPS HOWARD FOUND. WIRE (Aug. 14, 2014), <http://www.shfwire.com/node9426/>; see also Dilara Yarbrough, *Enforcement of Anti-Homeless Laws Targets People of Color, Trans People*, STREET SHEET (Sept. 1, 2015), <http://www.streetsheet.org/?p=1764>.

457. Rankin, *supra* note 449, at 109.

458. Olson & MacDonald, *supra* note 453, at 11.

459. Saelinger, *supra* note 451, at 554.

460. Rosenberger, *supra* note 455.

461. *Id.*

462. Leslie Kaufman, *Homeless Families Blocked from Seeking U.S. Housing Aid*, N.Y. TIMES (Oct. 20, 2004), <https://www.nytimes.com/2004/10/20/nyregion/homeless-families-blocked-from-seeking-us-housing-aid.html>.

did not have firm commitments on funding for the state or all of the details of the program before rolling it out.⁴⁶³ The Big Apple has also tried to oust homeless families from shelters and place their children in supervised care if they refuse to accept public housing that is offered, even if it is inadequate for their family's situation or the offered home is in a high-crime area.⁴⁶⁴

Not only are the homeless themselves targeted, so too are those who seek to help them. A survey of 187 cities found that nine percent prohibited people from giving food to the homeless.⁴⁶⁵ Take Arnold Abbott. During World War II, he fought the Axis Powers; as a middle-aged man, he clashed with the Ku Klux Klan when he helped register black voters in the South; in his golden years, he took up a different crusade.⁴⁶⁶ In 1991, Mr. Abbott started feeding the homeless along the beaches of his hometown of Fort Lauderdale, Florida, and he supported his cause by founding the Love Thy Neighbor Fund.⁴⁶⁷ Over the next thirty years, taking him well into his nineties, the city tried to stop him, sicced the police on him, arrested him, and passed an ordinance to criminalize his acts of compassion.⁴⁶⁸ He kept the fight going until his death at ninety-four-years old.⁴⁶⁹

It is not enough that homeowners get so many benefits, policymakers have gone out of their way to penalize those do not have a place to live. Simply trying to exist is a crime for the homeless, as is trying to help them. This is perhaps the most explicit way that the law favors those with homes above those without.

VIII. CONCLUSION

It is hard to justify why laws do not extend the same protections and privileges of homeownership to those in apartments, mobile homes, and no roof at all. And yet, as this Article has shown, there is no comparison between single-family houses and everything else. Zoning laws ensure that only single-family homes can be built. Numerous government agencies prop up the housing market through direct support, tax breaks, and removal protections for homeowners. Criminal law grants more and stronger rights to those who own property. Not only is significantly less done for mobile homes or the homeless, sometimes the law may even target them for their mode of dwelling. All of the perks for homeowners exist despite the fact that they tend to be richer, and their homes tend to be appreciating assets.

The law's disparate treatment of homeowners versus non-homeowners elicits many questions. Why provide so many benefits to those who already possess the most wealth? Why allow vast deductions for home mortgages, but nothing at all for rent? Why give homeowners a year or more to correct missed payments for

463. *See id.*

464. *See* Leslie Kaufman, *Shelter Seek to Oust Families Who Keep Rejecting Housing*, N.Y. TIMES (Sept. 16, 2002), <https://www.nytimes.com/2002/09/16/nyregion/shelters-seek-to-oust-families-who-keep-rejecting-housing.html>.

465. NAT'L CENTER ON HOMELESSNESS & POVERTY, *supra* note 452, at 8.

466. Howard Cohen, *He Spent Years Fighting for the Right to Feed the Homeless. Arnold Abbott Dies at 94*, MIAMI HERALD (Feb. 23, 2019), <https://www.miamiherald.com/news/local/obituaries/article226679224.html>.

467. *Id.*

468. *Id.*

469. *Id.*

mortgages, but only a few days to make up for missed rent? Why impose so few limitations on how landlords may mistreat their tenants and evict them? Why spend hundreds of billions of dollars subsidizing the housing market when the cost of eliminating homelessness would be far less? Why place so many strings on poor people who receive government assistance, but none at all on the wealthy beneficiaries of government aid?

The army of lobbyists fighting for the real-estate industry and landlords likely explains much of these questions. As this Article documents, these factions fought voraciously to create many pro-single-family housing policies. No less voracious was their opposition to attempts to provide aid to those who need it most desperately. The poor have no voice to contest this. But so long as lawgivers continue to reward those who scream loudest, these disparities will persist.