Preserving Homeownership In Manufactured Home Communities

A Review of State Rent Stabilization Statutes and Best Practices for Pennsylvania

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EXECUTIVE SUMMARY

Manufactured home communities ("MHCs", sometimes called mobile home parks) have long been an important option for affordable homeownership for Pennsylvanians. However, the fact that MHC residents do not own the land upon which their home is attached, combined with the near impossibility of moving a manufactured home once it has been installed, makes residents of MHCs uniquely vulnerable to exploitation.

MHC residents have come under unprecedented stress lately as institutional investors buy up communities, drastically increase rents and reduce investment in maintenance and repairs. This sea change in ownership structure threatens the affordability of this vital source of housing, strips value from residents' homes, and places homeowners at risk of eviction and forfeiture of their homes.

One effective way to avoid the harmful effects of the institutional investor business model is to place reasonable limits on rent increases. Several state and local governments have implemented MHC rent stabilization laws, which protect residents from exorbitant rent increases while preserving the community owner's ability to operate the community and receive a reasonable return on investment. The purpose of this paper is to review the MHC rent stabilization policies in other states and identify best practices in order to facilitate the development of an effective policy for Pennsylvania.

RHLS reviewed 12 state laws that regulate rent increases in manufactured home communities. A list of those statutes can be found in Attachment A to this paper.[1] There are also well over 100 local ordinances restricting rent increases in manufactured home communities.[2] Our review was limited to state laws and did not include local ordinances. What follows is an overview of policy features and decision points that should be considered when drafting a state-wide rent stabilization policy for Pennsylvania.

This paper was written for the Coalition of Manufactured Home Communities of Pennsylvania (CMHC), a grassroots non-partisan coalition of residents in manufactured home communities throughout the state, which formed in response to exorbitant increases in lot rent following the acquisition of many communities by institutional investors. At the time of this writing, CMHC represents residents in 60 MHCs in 19 counties.

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[1]The statutes reviewed in this paper often use terminology that is different from that used by the Pennsylvania Manufactured Home Community Rights Act (MHCRA). For clarity and consistency, this paper will use MHCRA terminology throughout (e.g., "manufactured home community" or "community" to refer to the property; "owner" to refer the person who owns the community and leases out individual lots; and "resident" to refer to the owner of a manufactured home who rents lots in a manufactured home community).

[2]California, Massachusetts and New Jersey in particular have numerous municipal rent stabilization ordinances. A list of California MHC rent stabilization ordinances is available online at https://mhphoa.com/ca/rso/.

I. OUTLINE OF MHC RENT STABILIZATION POLICY FEATURES

Type of policy

- ❖ Absolute cap
- ❖ Require owner justification
- ❖ Allow resident challenge

Remedies

- ❖ Amount over cap/unjustified is barred (typical of all programs)
- ❖ Court may modify (NY)
- ❖ Statutory penalty (OR: 3 months' rent)
- ❖ Owner pays relocation expenses (AZ: CPI +10%)

Basis for Cap or Justification

- ❖ Consumer Price Index (CPI)[3]
  - "The" CPI = CPI for Urban Consumers. Since "urban" is defined as areas with populations over 10,000, the CPI covers 93% of the US.
  - Regional CPIs are issued for 4 US regions, 9 Census regions, and 23 metro areas (in PA, only Philadelphia)
  - CPI classifications – all consumer goods; housing; energy; other products and services
- ❖ Modifications to CPI
  - Many states add a CPI enhancement, ranging from CPI+1% (VT) to CPI+10% (AZ)
  - OR has a not-to-exceed cap (lower of 10% or CPI+7%).
  - DE uses a formula cap that ranges from a low of 3.5% + ½ of the 24-month CPI to a high of 6.1% + ½ of the 24-month CPI above 6.1%.
- ❖ Flat percentage required for justification or challenge
  - NY: 3%
- ❖ No minimum required for justification or challenge
  - FL and RI

Charges Covered

- ❖ Lot rent only (RI and OR)
- ❖ All mandatory charges (DE, FL, NY and VT)
- ❖ Not specified (generally, the resident-challenge states)

Capital Improvements

- ❖ Most states include the cost of capital improvements within the cap or justification criteria
- ❖ VT allows a temporary surcharge (residents can challenge the same as a rent increase)

Health and Safety

- ❖ DE: Owner may not increase rent if an unsafe condition currently exists or if the owner was cited 3 or more times for the same or similar condition within a 12-month period; the owner must undertake repairs and provide a surety bond to a state agency, which a receiver may use to complete the repairs if the owner fails to do so
- ❖ NY: Court may condition a rent increase on fixing health and safety violations

[3] https://www.bls.gov/cpi/overview.htm

Rent Justification Process

Who can request a review?
- ❖ Any resident
- ❖ A majority of residents

What is the process? (may include more than one step)
- ❖ Meeting with owner
- ❖ Mediation by state agency
- ❖ Arbitration (binding or non-binding)
- ❖ File in court

What information must the owner provide to residents? (depends on what charges are covered in the statute)
- ❖ Operating costs
- ❖ Comparable market rents

Are there costs to the residents?
- ❖ Mediation costs covered by state agency
- ❖ Arbitration costs split by parties
- ❖ Court costs covered by losing party
- ❖ Legal representation by the state (VT)

Other protections
- ❖ DE: Reduced rent for residents who are elderly or disabled
  - Eligibility: residents who are eligible for Social Security Disability or Supplemental Security Income benefits or who are 62 years of age or older
  - Monthly rent is capped at 30% of household income
  - Rent increases are also capped at a reduced percentage based on income
  - Income and asset limits apply

II. DETAILED SUMMARY OF RENT STABILIZATION STATUTES

Type of policy

One state (Oregon) imposes a fixed cap on rent increases, three states (Florida, Vermont and Rhode Island) require a community owner to justify the reasonableness of a proposed rent increase to a neutral third party, and two states (Delaware and New York) have a hybrid system that imposes caps with a limited ability to justify higher rents. Seven states allow residents to sue to prevent a rent increase or defend against an action for eviction or rent collection on the grounds that the increase is unconscionable.[4]

It can be possible for more than one type of stabilization mechanism to co-exist. Arizona allows residents to challenge in court (based on unconscionability) and requires owners to pay

[4] Unconscionability occurs where a contract has "terms so one-sided as to oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity." Rizzio v. Surpass Senior Living LLC, 459 P.3d 1201 (Ariz. Ct. App. 2020).

relocation expenses if the increase is over a fixed cap. Delaware allows any resident to request arbitration if the owner exceeds the base rent (i.e., an increase to market rent, phased in over 7-10 years, or an increase as necessary to cover certain extraordinary expenses).

Remedies

Typically, if a rent increase exceeds a rent cap, fails justification criteria or is shown to be unconscionable or unreasonable, the owner will be barred from collecting it. In addition, Oregon imposes a statutory penalty of 3 months' rent and Arizona requires the owner to pay relocation expenses if a resident moves as a result of an excessive rent increase.

Basis for Cap or Justification

The maximum cap or the minimum increase that triggers a justification requirement is typically based on a percentage of the Consumer Price Index (CPI). CPI is a measure of the average change over time in the prices for selected consumer goods and services. It is published monthly by the Bureau of Labor Statistics.

States that use the CPI do so in a variety of ways. Delaware uses a complex formula that gives owners a minimum annual increase of 3.5% during periods of low inflation and a maximum increase that is lower than the CPI during periods of high inflation:

a. If the 24-month CPI-U is equal to or below 6.1%, then the cap is 3.5% plus 50% of the 24-month CPI-U up to an amount that does not exceed 6.1%.

b. If the 24-month CPI-U is between 6.1% and 8%, then the cap is 6.1%.

c. If the 24-month CPI-U exceeds 8%, then the cap is 6.1% plus 50% of the 24-month CPI-U above 6.1%.[5]

Oregon's fixed cap is relatively high: the lower of 10% or CPI+7%.[6] Justification states vary on the minimum to trigger justification: Florida and Rhode Island have no minimum.[7] New York uses a flat 3% (base rent) or 6% (temporary increases due to extraordinary hardship).[8] Vermont uses CPI+1%.[9] Arizona uses a very high trigger for relocation expenses, CPI+10%.[10]

There are also variations among states as to how to measure the CPI:

- Oregon uses the most recent annual increase in the Consumer Price Index for All Urban Consumers for all items for the 13-state West Region.[11]

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[5] Del. Code Ann. tit. 25 § 7052A.

[6] Ore. R.S. §§ 90.600 and 90.324. California, which imposes a fixed cap on rental properties (but not on lot rents) also uses a high cap: the lower of 10% or CPI+5%. Cal. Civ. Code § 1947.12.

[7] Fla. Stat. § 723.033 and §§ 723.037 to 723.0381; R.I. Gen. Laws § 31-44.1-2.

[8] NY Real Prop. Law § 233-b.

[9] Vt. Stat. Ann. tit. 70, § 6252.

[10] Ariz. Rev. Stat. Ann. § 33-1476.04.

[11] Ore. R.S. § 90.323.

- California uses the most recent annual increase in the regional Consumer Price Index for the region where the residential real property is located or, if there is no regional CPI, the California Consumer Price Index for All Urban Consumers for all items.[12]
- Delaware uses the average annual increase in the Consumer Price Index for All Urban Consumers for all items for the metropolitan area over the most recently available 24-month period.[13] (Using the 24-month CPI effectively "smooths out" annual fluctuations.)
- Vermont uses the most recent monthly Consumer Price Index for all Urban Consumers, Housing Component.[14]

What charges are included?

Delaware,[15] Florida,[16] New York[17] and Vermont[18] cover the combined increase in all mandatory charges under the lease, not just lot rent, while Rhode Island[19] and Oregon[20] apply only to lot rent. In Oregon, if the community is served by its own water or wastewater system, the cost of operating those systems is included in the lot rent (and therefore subject to the cap on rent increases).[21] For utilities that are provided to the owner by a utility supplier and subsequently supplied to the residents, the owner must pass through the actual charge, either pro rata, by submetering or by some other fair method specified in the lease.[22] The states that allow a tenant to challenge the enforceability of a rental charge or any other lease term on unconscionability grounds do not specify the type of rent or other charge that can be challenged.[23]

Capital improvements

Vermont treats charges that are needed to cover the cost of capital improvements separately from base rent increases that tend to be motivated by increased operating expenses.[24] The rationale for this seems to be that many capital improvements can be financed over a relatively short period of

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[12] Cal. Civ. Code § 1947.12.

[13] Del. Code Ann. tit. 25 § 7052A.

[14] Vt. Stat. Ann. tit. 70, § 6252.

[15] Del. Code Ann. tit. 25 § 7003(20): Rent includes lot rent, late fees for rent, other fees and charges, including utility charges, and the tenant's share of the Delaware Manufactured Home Relocation Trust Fund assessment.

[16] Fla. Stat. §§ 723.003(6) and (8): "Lot rental amount" means all financial obligations which are required as a condition of the tenancy. It does not include nonessential optional services provided by or through the owner.

[17] NY Real Prop. Law § 233-b(2): Rent means all costs, including all rent, fees, charges, assessments, and utilities.

[18] Vt. Stat. Ann. tit. 70, §§ 6201(10) and 6238: "Lot rent" means a charge assessed on a mobile home park resident for the occupancy of a mobile home lot, but does not include charges for home placement or site preparation.

[19] R.I. Gen. Laws § 31-44.1-2.

[20] Ore. R.S. §§ 90.100(38) and 90.562: "Rent" means any payment made to the landlord in exchange for the right to occupy a dwelling unit to the exclusion of others and to use the premises. It does not include security deposits, fees or third-party utility or service charges.

[21] Ore. R.S. § 90.562.

[22] Id.

[23] See, e.g., Ariz. Rev. Stat. Ann. § 33-1411.

[24] Vt. Stat. Ann. tit. 70, § 6251.

time, while base rent increases tend to be permanent.[25] For any lot rent increase that includes a surcharge for capital improvements, the owner must give the Commissioner of Housing and Community Development (but not the residents) an affidavit that states the estimated cost of the capital improvements and the proposed duration of the surcharge.[26] The process for resident challenges is the same as base rent increases.

Health & safety

Delaware[27] prohibits owners from increasing the rent if an unsafe condition currently exists or if the owner was cited 3 or more times for the same or similar unsafe condition within a 12-month period. In addition, the owner must undertake repairs and provide a surety bond to a state agency in an amount equal to or greater than 150% of the estimated cost of repairs. If the owner fails to make the repairs and a receiver is appointed, the receiver may use the bond to complete the necessary work.[28]

In New York, a court that approves a rent increase (see below) may condition that approval on the redress of adverse health and safety conditions.[29]

Review process. The rent justification process varies greatly from state to state. What follows are summaries of four critical components: who can request a review, who conducts the review, what information must the owner provide to the residents (and when) and is there a cost to residents.

Who can request a review? In New York and Delaware, if the owner exceeds the base rent), any affected resident can request a review.[30] In Rhode Island and Vermont, only a majority of residents may request mediation or arbitration.[31] In Florida, a majority of residents is required for state agency mediation, arbitration and judicial review.[32]

What review process is available? In Florida and Vermont, a state agency either mediates or provides a mediator to attempt to resolve the dispute informally. If mediation is unsuccessful,

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[25] See, e.g., Rehoboth Bay HOA v. Hometown Rehoboth Bay, LLC, et al., 252 A.3d 434 (Del. 2021) (the short-term cost of improvements does not justify a multi-year rent increase which results in the community owner receiving multiple recoveries of the same cost).

[26] Vt. Stat. Ann. tit. 70, § 6251.

[27] Del. Code Ann. tit. 25, § 7051A.

[28] These provisions remain in effect until July 1, 2025. If they are not extended, the former § 7051A will go into effect. Under that law, owners may not increase rent if a health and safety violation that has continued for 15 or more consecutive days existed during the previous 12 months, except in circumstances designed to correct the violation: The owner must (1) post a bond or letter of credit in an amount sufficient to fund 100% of the total rent increase on all affected residents, (2) document how the violation will be corrected, and (3) commit to correcting the violation by a specific date, which cannot be more than one year from the date of the violation. If the owner fails to document that the violation has been corrected by the date specified, the state agency will use the bond or letter of credit to reimburse residents for the amount of increased rent paid.

[29] NY Real Prop. Law § 233-b.7.

[30] Del. Code Ann. tit. 25, § 7053 (dispute resolution by state agency); NY Real Prop. Law § 233-b.6 (court review).

[31] R.I. Gen. Laws § 31-44.1-2 (arbitration); Vt. Stat. Ann. tit. 70, §§ 6252 (mediation) and 6253 (judicial appeal).

[32] Fla. Stat. § 723.033 (court review), §§ 723.037 and 723.038 (negotiation and mediation) and § 723.0381 (arbitration and judicial appeal).

residents can request judicial review. In Florida,[33] a committee designated by a majority of affected residents may request an informal meeting with the owner, where the owner is required to disclose and explain the reason for the proposed increase. After the informal meeting, a majority of affected residents, or the owner, may petition a state agency (the Department of Business and Professional Regulation's Division of Florida Condominiums, Timeshares, and Mobile Homes) to mediate the dispute. Mediation is intended to be an informal settlement discussion. After mediation, either party may file an action in the Circuit Court (Florida's trial court of general jurisdiction). The Circuit Court will refer the action to nonbinding arbitration. The arbitrator's decision may be appealed.

In Vermont,[34] if the owner proposes a rent increase greater than CPI+1%, a majority of residents may petition the Commissioner of Housing and Community Development to appoint a mediator. Although the purpose of the mediation is to meet with both parties and attempt to resolve the dispute, it is the owner's burden to show that the proposed increase is reasonable. If mediation is unsuccessful, a majority of residents may file an action with the Superior Court (Vermont's trial court of general jurisdiction) to abate some or all of the rent increase.

In Delaware and Rhode Island, residents can request arbitration by a neutral third party. In Delaware,[35] for base rent increases, the Delaware Manufactured Home Relocation Authority must certify that an increase is in compliance with the formula before the owner can give residents notice of the increase. If an owner invokes an exception to increase rent above the CPI formula, the owner must first hold a meeting with residents. After that meeting, any resident may petition DEMHRA to appoint an arbitrator. The arbitrator will conduct a hearing and issue a written decision. Any resident may appeal the arbitrator's decision to the Superior Court (Delaware's trial court of general jurisdiction), but the court's scope of review is limited to whether the arbitrator's decision is supported by the record and whether it is free from legal error.

In Rhode Island,[36] a majority of residents may request arbitration by the American Arbitration Association. The arbitrator will hear the dispute, perform an analysis of the owner's need for a rent increase and the services provided to the community, and issue a decision. The decision is binding and not appealable.

In New York, if a proposed rent increase exceeds 3%, any resident may file an action in the City Court or the Town and Village Justice Court seeking a declaratory judgment that the increase is unjustifiable.[37] These courts are similar to Pennsylvania's Magisterial District Courts except that City Court judges must be legally trained.

Of the rent justification states, New York appears to be the least likely to have a rent increase reviewed by a person who has the necessary property management expertise to critically evaluate

[33] Fla. Stat. §§ 723.037 to 723.0381.

[34] Vt. Stat. Ann. tit. 70, §§ 6252 and 6253.

[35] See generally Del. Code Ann. tit. 25 Subch. VI; specifically, §§ 7053 and 7054.

[36] R.I. Gen. Laws § 31-44.1-2 (arbitration).

[37] NY Real Prop. Law § 233-b.7.

an owner's statement of operating costs. In Florida, Vermont and Delaware, a state regulatory agency either mediates or assists in the selection of a mediator or arbitrator. Rhode Island provides for arbitration by the American Arbitration Association, which recognizes the value of using arbitrators that have expertise in the same trade or industry as the one in which the dispute has arisen.[38]

What information must the owner provide to residents, and when?

Delaware requires the owner to provide detailed information well in advance of the effective date of a rent increase.[39] If the owner asserts an exception due to unexpectedly high allowed expenses (taxes, insurance, utility charges and on-site employee costs), the owner must give all residents written documentation of the actual cost of each of the allowed expenses.[40] In both cases the information must be given 90-120 days before the effective date of the increase. In addition, prior to the meeting with residents, the owner must, in good faith, "disclose in writing all of the material factors resulting in the decision to increase the rent." If market rent is a factor, the written disclosure must include:

- The range of rental rates in the relevant market, including when relevant the mean and median rents.
- Whether comparable rents were determined at arm's length and whether the owner or a related party has an ownership interest in a comparable property.
- The time relevance of the rent data.
- Financial and other pertinent documents and information supporting the reasons for the rent increase.[41]

In Florida, *if the residents form a negotiating committee and request a meeting*, then at the meeting (which must be at least 60 days prior to the effective date of the increase), the owner must disclose and explain to the committee all material factors resulting in the decision to increase the rent and how those factors justify the proposed increase; for example:

- If the reason is increased operating costs, the owner must disclose the item or items which have increased, the amount of the increase, any similar item or items which have decreased, and the amount of the decrease.
- If an increase is based upon the lot rent charged by comparable communities, the owner must provide, in writing, the name, address, lot rent, and any other relevant factors relied upon by the owner, such as facilities, services, and amenities at the comparable communities.[42]

New York and Rhode Island do not require the owner to provide any information or documentation to the residents to justify the need for a proposed rent increase. If a resident in

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[38] See American Arbitration Association, *The Code of Ethics for Arbitrators in Commercial Disputes* (Effective March 1, 2004).

[39] Del. Code Ann. tit. 25, § 7051A.

[40] Del. Code Ann. tit. 25, § 7052B.

[41] Del. Code Ann. tit. 25, § 7053.

[42] Fla. Stat. § 723.037(4).

New York challenges a rent increase in court, then presumably the owner must provide the court with information sufficient to justify the increase and additional information may be obtained by the residents through discovery. Likewise, if a majority of the residents in Rhode Island request arbitration, then presumably the owner must provide any information and documentation requested by the arbitrator as necessary to render a decision.

In Vermont, the type of information that the owner must provide depends on whether the increase includes a temporary surcharge to cover capital improvements or is solely a (non-temporary) base increase in lot rent. For rent increases that do not contain a capital improvements surcharge, *if a majority of the residents request mediation*, then:

- The owner must give the mediator and the residents' representative "all documents and information that the owner considers relevant to support the proposed lot rent increase."
- The mediator (*but not the residents*) may also request additional documents or information.[43]

Is there a cost to the residents?

In the states that provide for a mediation process (Florida and Vermont), the costs of mediation are borne by the state agency.[44] The states that provide for arbitration (Delaware, Rhode Island and Florida) each treat costs differently. In Delaware, the residents and the owner each pay $250 toward the arbitrator's fee, and DEMHRA covers all direct arbitration costs over $500.[45] In Rhode Island, the cost of arbitration is borne by the losing party.[46] In Florida, the parties share the cost of arbitration equally as long as neither file for a court hearing. If a party does request a trial, and if the judgment upon the trial is not more favorable to that party than the arbitration decision, the party is assessed all arbitration costs, court costs, and other reasonable costs of the opposing party, including attorney's fees, incurred after the arbitration hearing.[47] In Vermont, the Commissioner of Housing and Community Development may provide for legal representation for affected residents who file a legal challenge.[48]

Review criteria

Review criteria vary greatly from state to state. Delaware and Rhode Island have the strictest, most well-defined criteria, while the standards used in Florida, New York and Vermont are more loosely defined and subjective. Owners tend to prefer greater flexibility, while residents tend to prefer greater certainty to avoid the risk that an unaffordable increase will cause them to lose their homes. Stricter, well-defined criteria are also preferrable from a public policy standpoint because they help protect against the harmful effects of a business model that is focused on short-term profit over the long-term stability of residents and communities.

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[43] Vt. Stat. Ann. tit. 70, § 6252.

[44] Fla. Stat. § 723.038; Vt. Stat. Ann. tit. 70, § 6252.

[45] Del. Code Ann. tit. 25, § 7053(f).

[46] R.I. Gen. Laws § 31-44.1-2 (arbitration).

[47] Fla. Stat. § 723.0381.

[48] Vt. Stat. Ann. tit. 70, § 6253.

Delaware is a justification state that allows owners to increase the rent above the CPI formula in two narrowly defined circumstances. The first is if the aggregate increase of allowed expenses over a 12-month period is larger than the 24-month CPI-U. Allowed expenses are:

- Taxes
- Insurance
- Utility charges or service
- Onsite employee costs (including benefits and employment taxes, but excluding salaries or wages)

It is the owner's burden to provide documentation that allowed expenses exceed the 24-month CPI-U.[49]

Owners in Delaware may also invoke an exception to bring the rent up to market, phased in over a 7- to 10-year period.[50] "Market rent" is defined as "that rent which would result from market forces absent an unequal bargaining position between the community owner and the homeowners. In determining market rent, relevant considerations include rents charged to recent new homeowners entering the subject manufactured home community or by comparable manufactured home communities, or both. To be comparable, a manufactured home community must be within the competitive area and must offer similar facilities, services, amenities, and management." [51]

In Rhode Island,[52] a rent increase may not be "excessive," which is defined as "unreasonable based on the park owner's or operator's total expenses, including debt service and a reasonable return on the park owner's investment or equity in the park." Debt service must be directly related to acquisition or capital management of the community. To determine whether a proposed increase is excessive, the arbitrator must perform an analysis of the community owner's need for rent increase and services provided to the community for a period of at least 3 years prior to the application for rent increase. The analysis expressly may not include "any debt service incurred using the mobile home park as collateral or other security for investment, enterprises, businesses or similar ventures separate and apart from the mobile home park."

In Florida,[53] the court, arbitrator and mediator use the following factors to determine whether an increase is unreasonable:

- The meaning and purpose of the proposed increase, the relationship of the parties, and "other relevant factors to aid the court in making the determination."
- Whether the proposed rent is in excess of the market rent in the competitive area. The definition of market rent and the standard for determining whether another community is

[49] Del. Code Ann. tit. 25, § 7052B.

[50] Del. Code Ann. tit. 25, § 7052A(d).

[51] Del. Code Ann. tit. 25, § 7003. Note that "rents charged to recent new homeowners entering the subject manufactured home community" would not be a relevant factor in Pennsylvania, because § 398.4 of MHCRA requires that all rental charges be uniformly applied to all occupants of the same or similar category.

[52] R.I. Gen. Laws § 31-44.1-2 (arbitration).

[53] Fla. Stat. § 723.0381.

comparable are similar to Delaware (without the reference to the rent charged to new residents). A lot rent in excess of the market rent is *per se* unreasonable.
- The court "may consider economic or other factors," including, but not limited to, increases or decreases in the consumer price index, increases or decreases in operating costs (*which are not defined*) or taxes, and prior disclosures.

In New York, [54] for increases more than 3%, but not exceeding 6%, the court is directed to consider:

- Increases in operating expenses (*not defined*)
- Increases in property taxes
- Increases in costs which are directly related to capital improvements

The court may also grant a temporary hardship exemption to increase lot rent by more than 6%, by taking into account the following hardship factors:

- The three criteria specified above;
- The amount of increase being sought;
- The ability of the resident to pay the increase;
- The amount of time and notice the resident needs in order to pay the increase;
- The duration of the temporary rent increase;
- The cause of the hardship, including whether it was due to owner negligence and malfeasance;
- The ability of the owner to utilize other means to alleviate the hardship;
- The likelihood of foreclosure if a temporary rent increase above 6% is not granted;
- "Any other factor that will jeopardize the ability of the park to legally operate."

In Vermont the court may abate all or part of a rent increase it if is "clearly excessive." A clearly excessive rent increase is one that is "unreasonable based upon the owner's total reasonable or documented expenses" (*undefined*), "including consideration of debt service and a reasonable return to the mobile home park owner on investment with consideration being given to comparable investments." A lot rent increase is exempt from the "clearly excessive" limitation if it resulted from a completed sale of a community, was a condition of a bona fide purchase and sales agreement, and notice was given at least six months before the effective date of lot rent increase.[55] The evaluation criteria and the exceptions to coverage in Vermont's rent justification law seem particularly favorable to the private equity fund business model.

Other protections

Delaware's Lot Rental Assistance Program[56] limits the amount of rent that an owner may charge residents who are eligible for Social Security Disability or Supplemental Security Income benefits or who are 62 years of age or older. Monthly rent is capped at 30% of household income. The program also protects eligible residents from community-wide rent increases. An

[54] NY Real Prop. Law § 233-b.7.

[55] Vt. Stat. Ann. tit. 70, § 6253.

[56] Del. Code Ann. tit. 25, §§ 7022 through 7022B.

owner may only charge eligible residents a percentage of any rent increase, ranging from 24.25% to 90.5%, based upon income. Eligibility requirements include an income cap (40% of the county median income) and asset limitations.

III. OUTLINE OF PENNSYLVANIA BILLS INTRODUCED IN 2024

	HB 805	**SB 861**
Type of policy	Challenge/Justification	Absolute Cap
Remedies	MDJ can order reduction	Excess rent is uncollectable
Basis for Cap/Justification	12-month CPI-U "for PA"	Unspecified 12-month CPI
Charges Covered	Rent (undefined)	Rent or "payables" (undefined)
Capital Improvements	In justification criteria	Included in cap
Health and Safety	Not a prerequisite	Manufactured Housing Construction and Safety Standards Authorization Act (doesn't cover habitability)
Rent justification process:		
Who can request a review?	Any resident	N/A
What is the process?	File w/MDJ	N/A
Review criteria	- increased operating costs - increased park taxes - debt service: acquisition - debt service: improvements - return on owner equity - sampling of rents in region - other relevant costs	N/A
What information must the owner provide	180 days' notice of rent increase	Must disclose increase before executing new lease (MHCRA)
Are there costs to residents?	MDJ filing fee, expert help	No
Other Protections	N/A	N/A

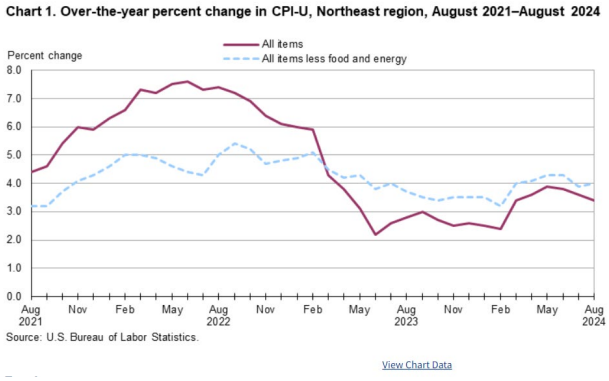
IV. RECOMMENDATIONS FOR RENT STABILIZATON IN PENNSYLVANIA

1. Rent justification with a modest annual by-right increase and the ability to set a higher rent if necessary to offset increased operating expenses, with advance documentation provided to residents and review/approval by a competent third-party

We suggest using a "rent justification" approach to stabilizing rents, whereby community owners seeking to increase rent and other charges above a base amount would be required to justify the reasonableness of the proposed increase to a neutral third party. Five of the states we reviewed use such an approach. For Pennsylvania, we recommend that the policy include the following features:

- ***A modest annual by-right increase/justification threshold*** like New York (3%) or Delaware (CPI-U based formula with a 3.5% minimum). Providing for a modest base rent increase by-right, beyond which the owner must provide justification, gives owners and residents some measure of predictability and is less administratively burdensome than the alternative approach - a 0% threshold with justification contingent upon a resident challenge (e.g., Florida and Rhode Island). A 0% threshold challenge-based approach deprives owners and residents of predictability and places a burden either on residents, to organize a challenge without having access to the information they need to determine whether the increase is reasonable, or on the owner, to provide documentation supporting the need for higher rents no matter how modest the increase. When setting the base rent, however, it is important to consider the balance of harms: a modest base rent merely requires owners to justify the need for a rent increase above that amount, while setting the base rent too high could cause residents to be unable to afford basic necessities or even to lose their homes.

  If a CPI-based formula is used to establish the justification threshold, the legislation should specify that the relevant measure is the Consumer Price Index for All Urban Consumers for all items (CPI-U) in the Northeast Region, which includes Pennsylvania. The 12-month CPI-U has fluctuated between 2.2% and 7.6% for the last 4 years (August 2021 through August 2024).



  If a CPI-based formula is used, it should be combined with a reasonable not-to-exceed cap to protect residents in periods of very high inflation. Using the highest 12-month CPI-U in the last 4 years as an example, a 7.6% increase in rent on top of a 7.6% increase in the cost of living would make it extremely difficult for many residents to make ends meet. By contrast, with a modest cap on base rent, owners who experience a higher increase in operating costs would have the ability to justify the need for a higher rent.

  If a CPI-based formula is used, we also recommend using the 60-month CPI-U for the Northeast Region. Using a longer CPI average reduces volatility and results in a stable, predicable threshold that nevertheless bears a relationship to changes in the cost of consumer goods. For 2024, the 60-month CPI-U has ranged from 3.7% to 3.9% (by contrast, the 12-month CPI-U range for 2024 was 2.4% to 3.9%). We also recommend establishing a minimum allowable base rent increase for times of low inflation and a maximum base rent increase for times of high inflation.

- ***Carefully designed justification criteria*** for increases in excess of the base rent (similar to Delaware, though less strict). These should be based on documented increases in the owner's operating expenses, such as taxes, insurance, utility charges, onsite employee costs and property maintenance costs. To discourage leveraged buyouts and other exploitative practices, costs related to acquisition, debt service or increases in the owner's return on equity should be ineligible. Capital improvements should be treated separately (see below). Sample market rents in the region should not be a factor, due to the difficulty in determining whether owner-provided samples are truly comparable in terms of amenities and market conditions.

- ***Review by a qualified professional***. Owner assertions of increased operating costs should be reviewed by a professional who has the ability to critically evaluate the assumptions behind those assertions. The reviewer should be able to understand an operating pro forma and should have a working knowledge of the cost to operate a manufactured home community. We recommend that this function be performed by the Pennsylvania Attorney General's Bureau of Consumer Protection, which is responsible for enforcing the Manufactured Home Community Rights Act (MHCRA).

- ***Advance documentation to residents*** of the need for a rent increase higher than the base rent. This should include sufficient information to enable the residents and any experts they consult to determine whether to intervene in the review process. A good standard is Florida, which requires the owner to "disclose and explain all material factors resulting in the decision to increase the lot rental amount … including how those factors justify the specific change proposed." The Florida statute provides the following example: "if the reason for an increase in lot rental amount is an increase in operational costs, the park owner must disclose the item or items which have increased, the amount of the increase, any similar item or items which have decreased, and the amount of the decrease." At a minimum, the owner should provide the residents operating budgets and documentation of increased expenses along with the notice of the proposed rent increase.

- ***The reviewer's decision should be subject to judicial review***. Regardless of whether the review is conducted by the Attorney General or by some other neutral third party, residents and the owner should both have the right to appeal the decision, and residents should have an opportunity to use the discovery process, if necessary to their challenge (that process is not available in Magisterial District Court).

- ***Funding to cover expert assistance for residents***. Residents will normally not have the expertise needed to determine whether they should challenge a rent increase, nor the ability to hire legal counsel and a property management expert. At the very least, Pennsylvania should follow Vermont's lead and cover the cost of legal representation.

2. Include increases in all rent, fees, service charges and assessments

The prevailing practice among states that have adopted rent stabilization policies is to include all mandatory fees and charges within that protection. Section 398.6 of MHCRA requires owners to

disclose all “rent, fees, service charges and assessments” in advance. Pennsylvania’s rent stabilization law should use identical language.

3. Capital improvements

A rent stabilization policy should not constrain owners from making necessary or desired capital improvements. At the same time, owners should not be permitted to use a short-term capital improvement cost to justify a permanent rent increase. Pennsylvania should consider following Vermont’s policy of allowing a temporary surcharge for capital improvements based upon documented terms of financing. Because capital improvements ultimately benefit the owner by increasing asset value, surcharges should be refunded to residents in the event of a sale or refinancing of the community or credited to them if they exercise an opportunity to purchase the community. Because residents are the ones who will finance the improvements, surcharges should only be imposed if they are approved by the residents or to the extent necessary for the correction of health and safety conditions. To ensure that the combined effect of any rent increase and capital improvements surcharge is not unaffordable, the amount of the surcharge should be subject to a reasonable cap.

4. Health & safety

Owners that fail to maintain the community in decent, safe and sanitary condition should not be rewarded with increased rents. Pennsylvania should follow Delaware’s approach and bar owners from increasing the lot rent if there is a current health and safety violation (as determined by a local code official, the Department of Environmental Protection or other enforcement entity) and ensure that any surcharge to pay for health and safety repairs is used to bring the property into compliance. This should include providing a state agency (we recommend the Attorney General) with a surety bond or letter of credit in the full amount of the surcharge, which surety can be used to complete the repairs and/or reimburse the residents if the owner fails to correct the health and safety violations within a reasonable time.

5. Resident opportunity to purchase

In addition to rent stabilization, Pennsylvania should ensure that residents receive advance notice and a reasonable opportunity to purchase their community if the owner desires to sell or close it. Resident opportunity to purchase laws provide additional protection to residents and promote stability while ensuring that the community owner receives the same market-set price for the property, whether it is sold to the residents or a third-party buyer. MHCRA requires owners to consider any offer to purchase the community made by a resident association or resident-endorsed nonprofit organization, but does not establish a process for making and considering such an offer and only applies in the case of a proposed closure of the community.

CONCLUSION

The forgoing recommendations draw upon the best practices of other states to reach a balance between protecting the homeownership rights of residents, the health, safety and long-term viability of manufactured home communities, and the ability of community owners to realize a

reasonable return on investment. As institutional investors have become increasingly active in Pennsylvania's market for manufactured home communities, and residents of those communities have come under unprecedented stress, protections such as those outlined in this paper are urgently needed.

Attachment A
MHC Rent Stabilization Comparison Chart

	Fixed Cap	Justification to Neutral Party	Justification Criteria	Resident Can Challenge in Court
Arizona	Ariz. Rev. Stat. Ann. § 33- 1476.04 (owner must pay relocation costs if increase > CPI +10%)			Ariz. Rev. Stat. Ann. § 33-1411 (court can modify/refuse to enforce any unconscionable lease term)
California	Hundreds of local ordinances			
Delaware		Del. Code Ann. tit. 25 §§ 7050-7056 (formula-based cap w/narrow exceptions; any resident may ask state agency to arbitrate; appealable)	• Taxes • Insurance • Utility charges or service • Onsite employee costs (incl. benefits and payroll taxes, but not salaries or wages)	
Florida		Fla. Stat. §§ 723.037 to 723.0381 (can't be unreasonable; majority of residents may petition state agency for mediation/arbitration; appealable)	• The purpose of the increase • Market rents in the area • Other factors, e.g., increases in CPI, operating costs, taxes	Fla. Stat. § 723.033 (similar to Arizona)
Iowa				Iowa Code § 562B.8 (same as Arizona)
Kansas				Kan. Stat. Ann. § 58-25,104 (same as Arizona)
Massachusetts	Numerous local ordinances			
Nebraska				Neb. Rev. Stat. § 76-1473 (same as Arizona)
New Jersey				NJ Stat. Ann. §2A:18-61.1(f) (resident can't be evicted for failure to pay unconscionable rent increase)
	Numerous local ordinances			
New York		NY Real Prop. Law § 233-b (if >3%, must be justified by increase in operating, property taxes or capital repairs; if >6%, must be temporary and due to demonstrated hardship; any resident can file court challenge if >3%)	• Operating expenses • Property taxes • Costs directly related to improvements Hardship: includes resident ability to pay and the viability of the community w/out the increase	

	Fixed Cap	Justification to Neutral Party	Justification Criteria	Resident Can Challenge in Court
Ohio				Ohio Rev. Code § 4781.48 (similar to Arizona)
Oregon	ORS 90.600 as amended by SB 611 of 2023 (lower of 10% or CPI + 7%)			
Rhode Island		R.I. Gen. Laws § 31-44.1-2 (can't be excessive; majority of residents may petition the American Arbitration Association for arbitration; costs shared by owner and residents)	• Total expenses, including debt service and a reasonable return on investment • Services provided to the community over the prior 3 years • May not include any debt service incurred to support other business ventures	
Vermont		Vt. Stat. Ann. tit. 70, §§ 6251, 6252 (mediation if increase >CPI +1; majority of residents must petition state agency; takes majority to appeal)	• Total reasonable or documented expenses, including debt service and a reasonable return on investment • An increase resulting from the sale of the community is exempt	