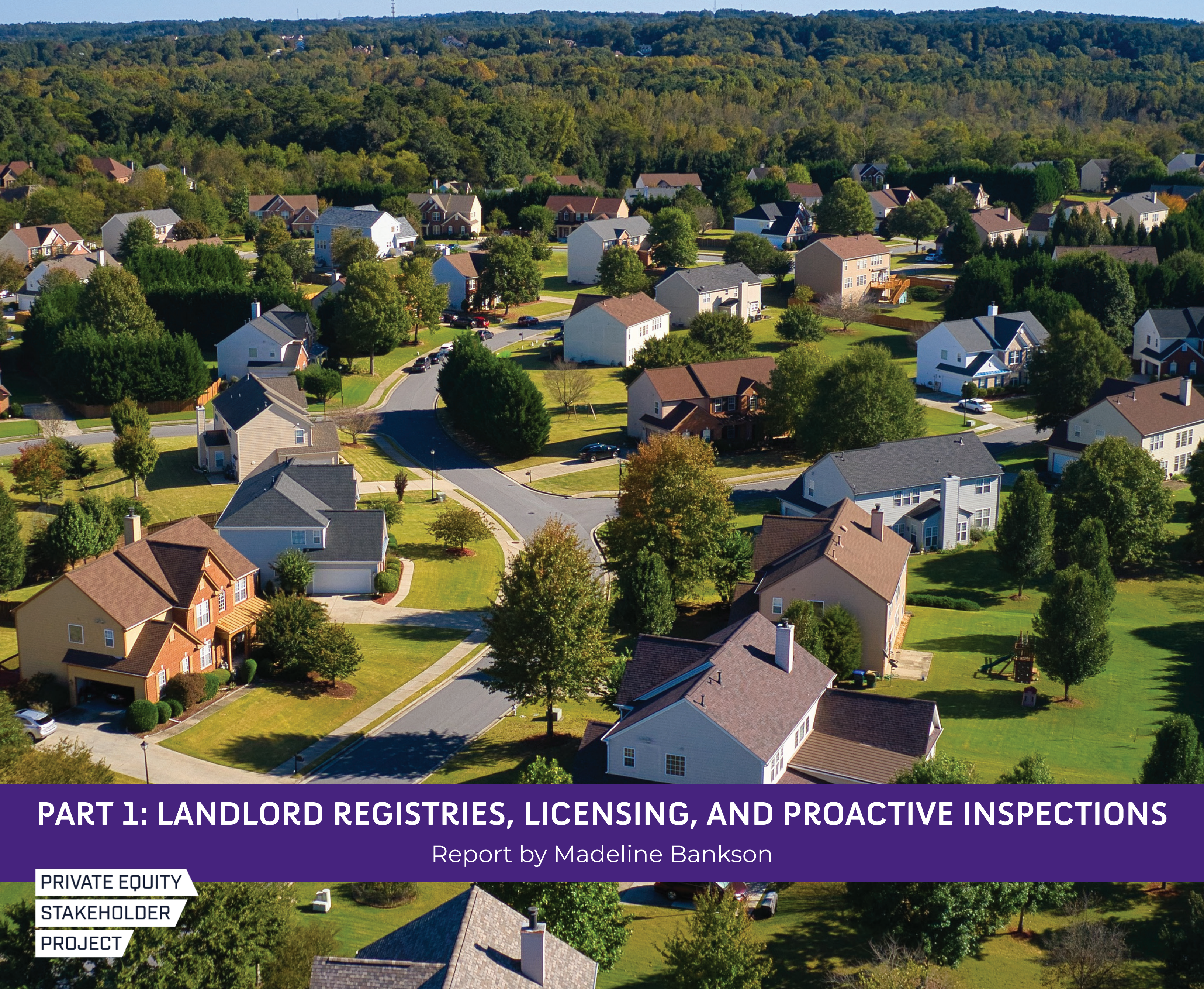
# TOOLS FOR TACKLING CORPORATE LANDLORDS

## A series on state and local policy options for mitigating the impact of private equity and other institutional investors



## PART 1: LANDLORD REGISTRIES, LICENSING, AND PROACTIVE INSPECTIONS

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PRIVATE EQUITY STAKEHOLDER PROJECT

# BACKGROUND


Tenant advocates and government officials are expressing increased concerns about the expansion of corporate investment in their communities' housing systems. Housing financialization accelerated following the mortgage crisis of 2007-2008 when Wall Street firms snapped up large batches of foreclosed homes. Recently, speculative housing investment skyrocketed even further during the onset of the COVID-19 pandemic as the residential sector was used as a reliable investment despite general economic precarity. In the period since, people across the political spectrum have sounded the alarm over housing affordability and renters rights.

Today, at least 1.6 million housing units in the United States are owned by private equity (though this number is almost certainly an undercount due to a lack of ownership transparency).[1] While this figure is concerning on its own, investor ownership is not evenly distributed throughout the country, with some neighborhoods and cities bearing the brunt of the effects. In Atlanta, large investors own more than 65,000 homes.[2] In Richmond, Virginia, Jacksonville, Florida, and Philadelphia, more than one in five homes sold are going to investors.[3] Similar dynamics persist throughout the country, particularly in the Sunbelt.

Analyses often focus on the legitimate reality that rising corporate housing investment creates unfair competition that effectively shuts out middle and working class families from homeownership. But it's also important to note that the impact of increased investor ownership is the most consequential for tenants, particularly those with very low incomes. Tenants of corporate landlords have reportedly experienced drastic rent increases, unfair or illegal eviction, increased fees, home maintenance neglect, and myriad other issues.

Even among other corporate landlords, private equity is particularly insidious due to the need to generate high returns on a short timeline. Private equity firms look to generate returns of at least 15% for their investors, about double the return rate of other asset classes. Firms typically seek to generate this return before exiting the business over a short timeline of just 3-5 years. This means private equity firms generally do everything possible to maximize revenue while minimizing input costs, including deferring maintenance, skirting regulations, and saddling tenants with junk fees. Millions of workers in the United States are at risk of increased instability under the financialized housing model. It is clear that government intervention is needed to keep people in housing that is safe, affordable, and accessible.

Regulating corporate landlords is difficult, but not impossible. Private Equity Stakeholder Project's policy toolkit series aims to illuminate possibilities for combatting corporate landlords by examining policy frameworks and showcasing examples of successful past measures. While many roadblocks including low political will, state preemption, and well-funded landlord opposition do exist, there are also underutilized legislative opportunities ready to be deployed in order to mitigate the harmful effects of increased corporate ownership in cities and states.

# LANDLORD REGISTRIES

## PURPOSE

A landlord registry is a municipally-maintained list of building and ownership details stored in one centralized database. Cities can use landlord registries to conduct assessments of their rental housing stock, perform code enforcement, and identify property owners.

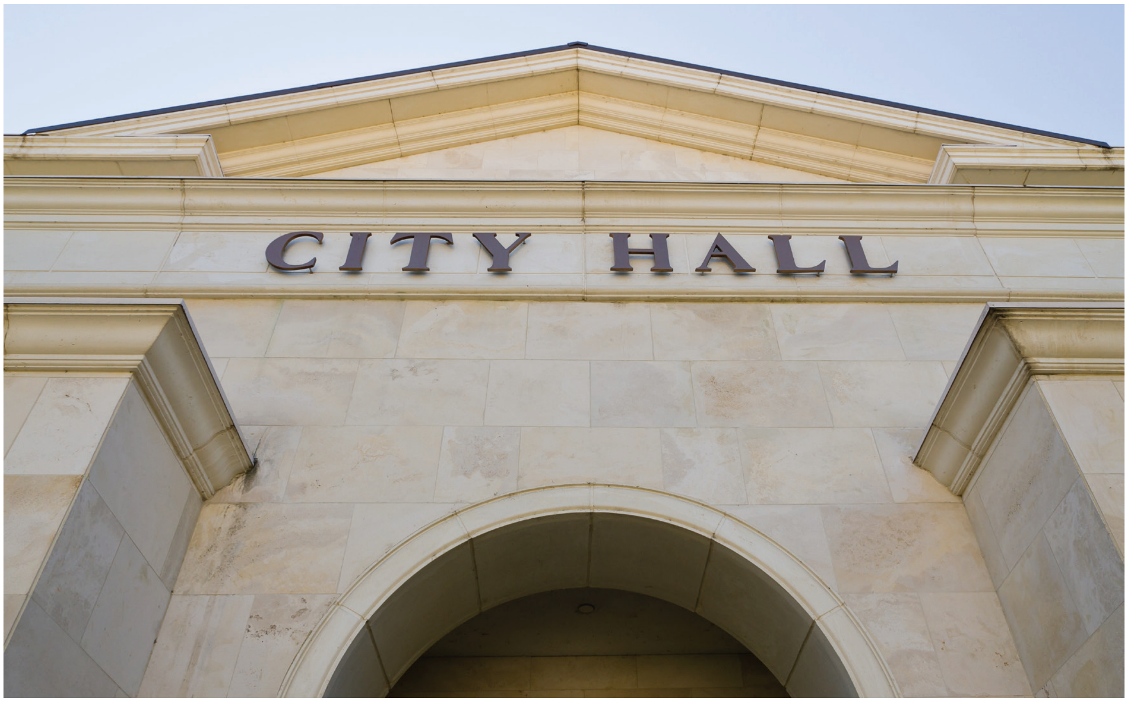
## INCREASING TRANSPARENCY

At present, most local governments collect very little data regarding rental housing, making it difficult to track beneficial ownership, vacancies, and other vital administrative information. Without a landlord registry, it can be particularly difficult for tenants to understand which party owns their buildings due to the use of shell LLCs. The most effective landlord registries require landlords to report each property's beneficial ownership (e.g. name the parent company that owns the shell LLC under which a property is registered). This increased transparency makes it so that governments can easily identify patterns of behavior across a landlord's entire portfolio, even if they utilize a large network of LLCs.

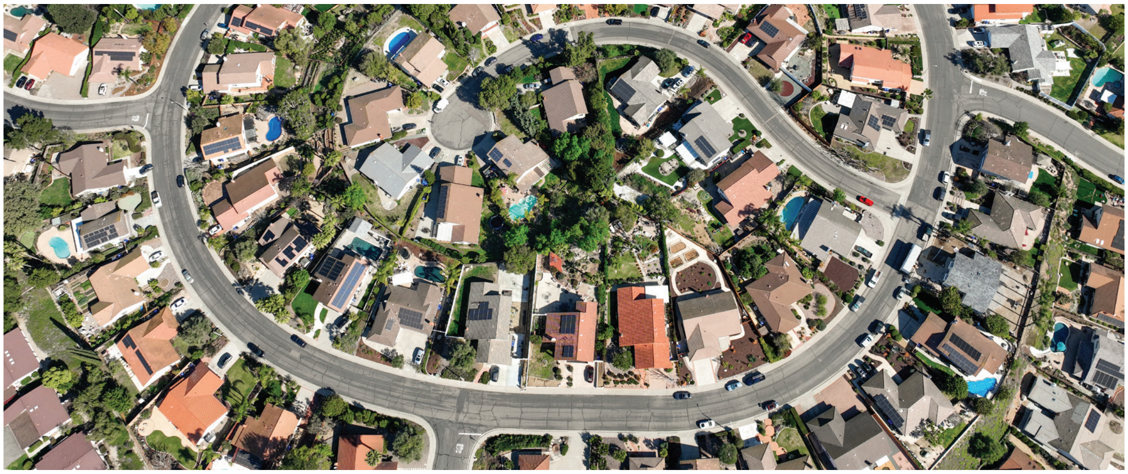
## STATE PREEMPTION

It's important to note that some states have preempted the ability of municipalities to create landlord registries and licensing altogether. North Carolina is one such state, with laws that bar municipalities from "adopting any ordinance that would require any owner or manager of rental property to obtain any permit...from the local government to lease or rent residential real property or to register rental property with the local government."[4] For this reason, and because corporate landlords operate on a national or international scale, landlord registration would be most effectively administered on the federal level. In places where the state does not preempt such a policy, a local or statewide registry is a good stop-gap.

While registries themselves create an environment of transparency that is vital for identifying patterns and ensuring accountability, they are not a sufficient policy tool on their own.[5] Registries are most powerful when combined with some sort of licensing requirement (see below).



# LANDLORD LICENSING



## PURPOSE AND BACKGROUND

Landlord licensing is a highly promising yet underutilized policy mechanism for mitigating the worst impacts of corporate housing investment on tenants. Establishing a licensing system has the potential to increase transparency and proactively address widespread and recurring habitability issues. What's more, some jurisdictions may be able to use licensing limits to cap the number of properties a single entity can operate altogether.

The administration of landlord licensing requirements is fairly straightforward. It typically combines a requirement for landlords to register their properties along with a regulatory procedure to ensure that the homes in question are fit for habitation and that the landlord is in good standing to conduct business in the municipality.

## CAPPING OWNERSHIP

In addition to increasing transparency and regulating domestic health and safety, landlord licensing has the potential for a much more impactful application: limiting the number of homes each landlord can legally rent out. In some US cities, corporate landlords own hundreds or even thousands of single family homes. While owning this many homes is widely considered to be problematic due to the effects on regional affordability, policies that bar an entity from purchasing or owning property are generally found to violate the constitutional right to pursuit of property. The right to rent out property, however, is not guaranteed in the same way by every state.

It may be feasible in some jurisdictions to deny the granting of any additional rental licenses to landlords with very large portfolios. A municipality could decide that any landlord with beneficial ownership over a certain unit count threshold would not be permitted to obtain any further rental licenses. For example, any given landlord would be permitted to rent out no more than 50 single family homes at any given time.

Similar policy structures have already been enacted to limit the number of short term rentals one person can own, with some placing the limit extremely low (just two short term rentals per person are allowed in Atlanta, for example)[6]. Santa Monica, California has banned them entirely by outlawing leases shorter than thirty days, and New York could soon follow.[7] But like most other aspects of housing law, regulations of this sort may be subject to state preemption limitations and judicial contestation.

Three United States Circuit Court of Appeals opinions recently addressed the question of whether city ordinances can restrict short-term rentals, all of which involve Airbnb as the plaintiff. However, the decisions in each case were not uniform in outcomes or justifications. Although the 3rd and 9th Circuit Courts upheld city ordinances that limited the duration of short-term rentals (Nekrilov v. City of Jersey City (2022))[8] and required the presence of a primary resident (Homeaway.com v. City of Santa Monica (2019)),[9] respectively, the 5th Circuit overturned an ordinance that restricted rental licenses to a person's primary residence as unconstitutional (Hignell-Stark v. City of New Orleans (2022)).[10] The key difference between the former cases and the latter is that the ordinances in the former allowed out of state property-owners to obtain rental licenses, while the ordinance in the latter did not, which the 5th Circuit argued interfered with interstate commerce.[11]

## REQUIRING HOUSING EQUITY FEES FOR LARGE PROPERTY OWNERS

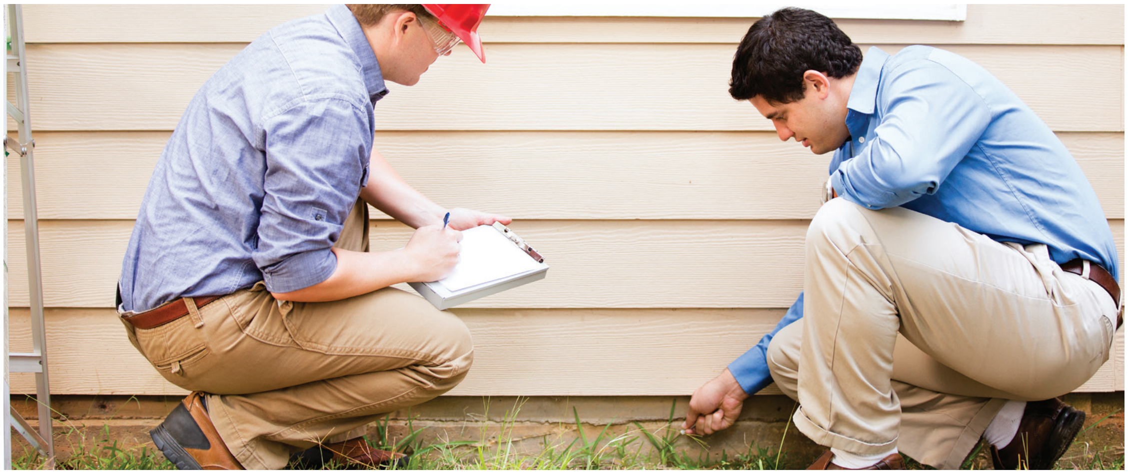
If for some reason a municipality decides not to pursue policies that ban licenses over a certain threshold entirely, another route could be to allow landlords to obtain unlimited licenses, but with the condition that every license obtained over the threshold cap would come with a large speculative investment tax or fee attached. This policy would discourage landlords from using homes as investment vehicles that could otherwise be operated by housing non-profits or purchased by owner-occupants, freeing up housing supply. Furthermore, the fees generated could be used to fund social housing, first time homebuyer assistance funds, foreclosure prevention, eviction diversion, or any number of other measures aimed at addressing the socioeconomic impacts caused by land hoarding.

## PROACTIVE INSPECTIONS AND HABITABILITY

Landlord licensing programs maximize protection for tenants when they are paired with a robust proactive inspection policy. Requiring landlords to obtain inspections prior to having their license approved for any given property would address habitability issues much more effectively than the complaint-based system that most cities use today. Under the complaint-based model, tenants who move into a unit with preexisting pest infestations, plumbing problems, mold, or other habitability issues may have difficulty getting their landlord to provide necessary fixes as required by law.

While code enforcement can theoretically motivate landlords to make repairs, many tenants are unlikely to report these issues for fear of landlord retaliation. In other cases, tenants understand that they could be forced to relocate in the case that their home is deemed legally uninhabitable, which many cannot afford. And in cases where tenants do report, many find that accountability systems are lacking. Landlords know that many local government inspectors do not have the capacity to follow through with every code complaint. The potential to profit from rental income is so high that the possibility that landlords would be forced to shell out for repairs or fines is often not a sufficient deterrent.[12] Requiring landlords to have their units cleared for human habitation prior to occupancy provides a clean slate, preventing tenants from having to live in unsafe and unsanitary conditions.

# EXAMPLE POLICIES



## CASE 1:
### PROACTIVE RENTAL INSPECTION IN MINNEAPOLIS

Minneapolis has had a landlord licensing and proactive inspection law in place since 1991. Landlords are required to obtain a city inspection prior to renting their units. Understanding that this would not be possible for most city code enforcement departments, Minneapolis funds the inspection process by requiring a per-unit fee paid by landlords.

If a landlord is found to be persistently noncompliant with city codes, the city reserves the right to revoke the license for a landlord's entire portfolio for up to five years at a time. This happens to 30-50 landlords a year, who typically respond by selling the investment property. Owners of well-maintained buildings pay less and go through inspections less often.[13]

A recent case from Minneapolis demonstrates how the landlord licensing policy structure could be leveraged against private equity landlords whose properties are found to have persistent habitability issues due to systemic neglect. In January of 2023, the Minneapolis

City Council declared that Progress Residential must adhere to a set of conditions for two years in order to continue operating its rental business in the city[14].

Minneapolis tenants of Progress Residential, the largest single family landlord in the country, previously reported that an assortment of persistent issues including leaking pipes, holes in the walls, clogged drains, and lingering mold had gone unaddressed by the corporate landlord.[15] The issues were severe enough that they previously motivated the Minnesota Attorney General Keith Ellison to sue Progress over alleged systemic neglect and deceptive trade practices.[16]

Several months later as part of unrelated legal process, the City declared that Progress would need to meet a list of conditions related to tenant rights and safety in order to keep its license, including but not limited to:

- Creating a preventative maintenance plan that includes a 24/7 tenant hotline, annual proactive inspections, providing repair timelines upon receipt of complaints, and creating a yard maintenance plan
- Ensuring that all repairs are made by licensed professionals
- Providing relocation assistance to all tenants who have to move due to unresolved code violations
- Giving rent receipts to every renter for every payment
- Attending a property management workshop
- Conducting all communications in writing, in the tenant's primary language
- Disclosing all properties of financial interest to Progress as well as naming all LLCs
- Paying a fine of $5,000 to the city for costs incurred
- Not retaliating against tenants who advocate for themselves
- Not acquiring any new properties until all these conditions are met for six months[17]

While the outcome of this process remains to be seen due to the ongoing status of Progress' affair with the city, this intervention represents a powerful win for corporate landlord accountability. By threatening to disallow the company from operating in their jurisdiction at all, the municipal government was able to force Progress to halt its widespread mistreatment of tenants. If private equity's first language is money, penalties must be severe enough to present a significant threat to their ability to generate returns.

## CASE 2:
### TORONTO'S PROACTIVE INSPECTIONS POLICY

Toronto has a similar proactive rental inspection program to Minneapolis, though Toronto's does not include any licensing component. Instead it requires property owners to register with the city and to pay a per-apartment fee that funds proactive inspections.

Toronto's policy is especially unique in that it requires landlords to post restaurant-style letter grades in building lobbies. In addition to providing transparency to all prospective and actual tenants, the policy creates a system wherein fees are charged for additional audits, ensuring that violations are remedied quickly.[18]

# ENDNOTES


**1** https://ourfinancialsecurity.org/wp-content/uploads/2022/06/AFR_Research_Memo_PEHousing_Hearing_6-28-22.pdf

**2** https://www.ajc.com/american-dream/investor-owned-houses-atlanta/

**3** https://drexel.edu/~/media/Files/nowak-lab/220923_InvestorHomePurchases_Final.ashx?la=en

**4** https://www.natlawreview.com/article/short-term-rentals-regulations-not-always-day-beach-municipalities

**5** For more information about proactive rental inspections, see https://nchh.org/resources/policy/proactive-rental-inspections/

**6** https://atlanta.capitalbnews.org/short-term-rental-atlanta/

**7** https://www.theguardian.com/us-news/2023/jan/26/nyc-airbnb-short-term-rental-new-law

**8** Nekrilov v. City of Jersey City, 528 F. Supp. 3d 252 (D.N.J. 2021), pg. 3, https://www.mrod.law/wp-content/uploads/2022/08/2022-8-16-Nekrilov-v-Jersey-City-Third-Circuit.pdf

**9** Homeaway.Com, Inc. v. City of Santa Monica, 918 F.3d 676 (9th Cir. 2019), pgs. 3-4, https://cdn.ca9.uscourts.gov/datastore/opinions/2019/03/13/18-55367.pdf

**10** Hignell-Stark v. The City of New Orleans, 46 F.4th 317 (5th Cir. 2022), pgs. 14-16, https://www.ca5.uscourts.gov/opinions/pub/21/21-30643-CV0.pdf

**11** Id. at pg. 11, fn. 16; Id. at pgs. 14-16, https://www.ca5.uscourts.gov/opinions/pub/21/21-30643-CV0.pdf

**12** https://gothamist.com/news/the-case-for-licensing-landlords

**13** https://gothamist.com/news/the-case-for-licensing-landlords

**14** https://minnlawyer.com/2023/01/13/minneapolis-lays-out-conditions-for-large-landlord-to-keep-renting-homes-in-city/

**15** https://www.bizjournals.com/twincities/news/2023/03/02/proposed-bill-single-family-homes-flip-rent.html

**16** https://www.ag.state.mn.us/Office/Communications/2022/docs/HavenBrookHomes_Complaint.pdf

**17** https://minnlawyer.com/wp-content/blogs.dir/1/files/2023/01/Landlord-Progress-Residential-conditions.pdf

**18** https://gothamist.com/news/the-case-for-licensing-landlords