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 4: PESP HOUSING POLICY PRIMER

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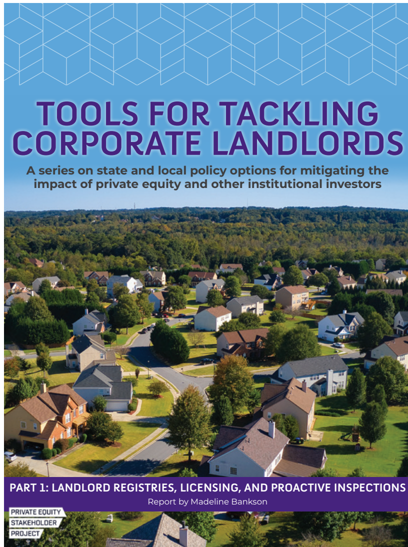
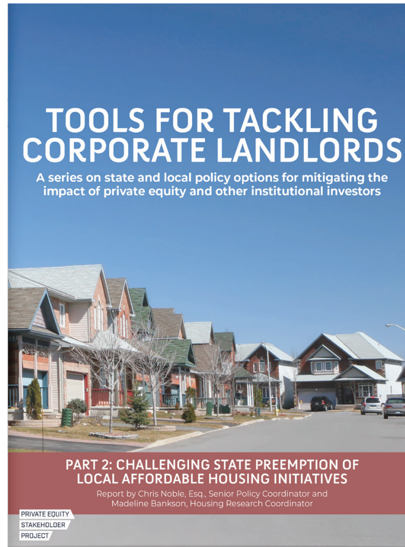
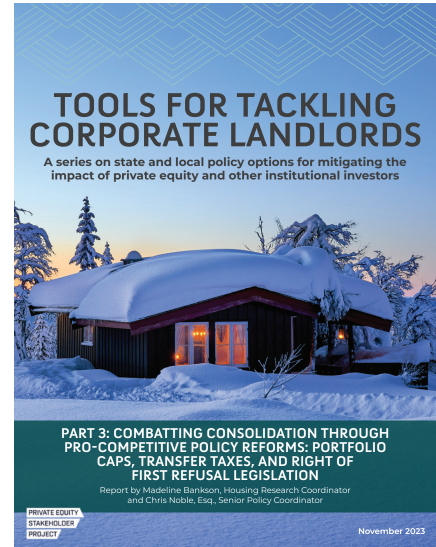
ABOUT THIS REPORT SERIES

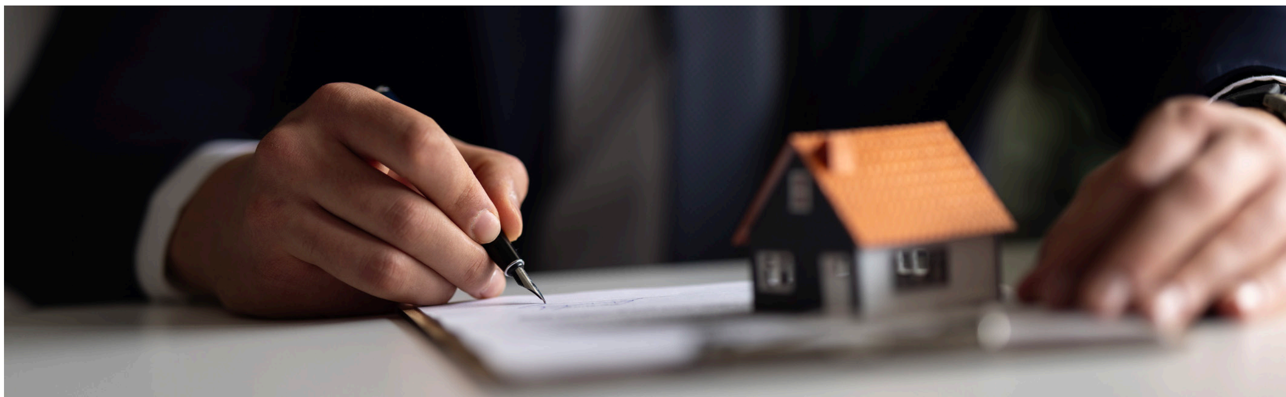






The Private Equity Stakeholder Project's Tools for Tackling Corporate Landlords policy analysis report series aims to elevate model strategies for addressing the harm caused by corporate landlords, examining policy frameworks, and showcasing successful past measures. This report, the fourth in the series, is intended to complement previous installments exploring the topics of landlord licensing and rental inspections (part 1) with state preemption of housing justice measures (part 2) and pro-competitive housing policy reforms (part 3).

INTRODUCTION



With at least 1.6 million housing units in the United States owned by private equity, it is clear that government intervention is needed to keep people in safe, affordable, and accessible housing. At multiple levels – including federal, state and local governments – policymakers are trying to come to grips with how to reign in the increasing corporate domination of our housing markets, while at the same time protecting tenants and prospective homeowners from the consequences of corporate housing investments.

The private equity business model poses a particular challenge to affordable housing due to the need to generate high returns on a short timeline. Private equity firms typically seek to generate returns of at least 15% for their investors, about double the return rate of other asset classes. Firms usually strive 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.

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. Part 4 of this series, **PESP Housing Policy Primer**, consolidates many of the emerging policy solutions proposed and enacted by affordable housing advocates. While many roadblocks exist, including an incoming conservative majority at the federal level, state preemption, and well-funded landlord opposition, 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.

TRANSPARENCY AND DISCLOSURE

STATE AND LOCAL RENTAL REGISTRIES

A rental registry is a database of rental properties that includes detailed information about their owners and the rental properties themselves.

According to PolicyLink,[1] rental registration systems should include information about the direct property owners, such as:

1. up-to-date contact information of key individuals involved with the management and maintenance of the property,
2. emergency contact information for someone who can be contacted 24 hours a day,
3. the number of units owned
4. the occupation status of those units,
5. information and documentation regarding the last property inspection of each unit,
6. how much has been and is currently being charged for rent for each unit,
7. rate of eviction filings attributed to the property owner, and
8. any violations of federal, state, or local laws.

Additionally, beneficial ownership information should be collected through required disclosures so that public advocates, lawmakers and regulators can ascertain the ultimate ownership of LLCs relating to property ownership and management. The federal government and New York State have taken steps towards obtaining beneficial ownership information from private companies through the Corporate Transparency Act (CTA)[2] and LLC Transparency Act (LTA),[3] respectively.

The CTA and LTA both require that private companies disclose information relating to the ultimate ownership or control of private companies to the relevant government entity (FinCEN for the CTA, and the New York Department of State for New York). However, in addition to certain exemptions to reporting, both laws also prevent such beneficial ownership information from being publicly disclosed and only allow access for law enforcement purposes. A registry must provide public access to beneficial ownership information so that advocates, tenants, policymakers and others concerned about housing justice can accurately assess the impact of corporate investors in their housing markets.

State and local governments should be free to gather any additional information needed to address a community's unique housing challenges, such as a property's connections to water and electricity, monthly utility costs, or any non-rent fees being charged to tenants.[4]

Registries must be paired with appropriate regulatory enforcement (e.g. penalties) to be effective, and the federal government can help facilitate the rapid proliferation of state registries by creating a model registry that states can replicate.[5]

EXAMPLE

CA SB 1201:[6] California currently requires that businesses operating within the state regularly submit documents with the Secretary of State that list the company's name and address, along with those of its top managers and anyone responsible for receiving legal filings on the company's behalf. Introduced in February 2024, SB 1201 would have added an additional disclosure requirement, requiring the names and home or business addresses of "beneficial owners" — defined as anyone who "exercises substantial control" or owns at least 25% of a company.

This beneficial ownership disclosure would have applied to companies that have real estate investments as well, making it easier for tenants, policymakers and affordable housing advocates to identify the ultimate ownership of problematic landlords.[7]

FEDERAL REGISTRIES

Landlord Complaint database

A landlord complaint database could help tenants and regulators identify problem landlords. Additionally, if landlords are required to submit beneficial ownership information at the state level, such information can be used to determine whether recurring problem landlords have common ownership.

The Consumer Financial Protection Bureau (CFPB) complaint database is a possible model for how a federal agency could collect information on corporate landlords/ property owners.[8] There, consumers are able to file complaints based on consumer protection violations by lenders, debt collectors and others. Importantly, the subjects of the complaints, and information related to the CFPB's investigation of the same, are made available to the public.

If implemented and made available to the public, a landlord complaint database would help bring transparency to the exploitative business practices often associated with private equity and other corporate landlords.

FHFA funding

The FHFA should develop a rental registry where multifamily property owners that receive FHFA financing are required to provide the following information:[9]

a. ownership type (including information about any beneficial owners),
b. address,
c. management company,
d. number of units,
e. whether units are subsidized and subsidy sources,
f. rent prices at time of financing,
g. rental payments,
h. eviction filings and judgments, and
i. any violations of federal, state, or local laws

This information should be made publicly available and include tenant protection information for both multifamily property owners and tenants. Additionally, the Tenant Union Federation's National Tenant Policy agenda provides further insight on how the FHFA can better incorporate tenant protections in its work.[10]

JUST CAUSE EVICTIONS

Just cause eviction protections are designed to prevent arbitrary, retaliatory, or discriminatory evictions by landlords. Such laws require landlords to have a specific reason (or "just cause") for initiating an eviction action, such as failure to pay rent or criminal activity.[11]

In many cities and states, landlords can evict tenants or simply not renew leases without providing a reason. Just cause eviction laws (also known as "good cause laws") are important policies that promote tenant stability by prohibiting arbitrary and/or exploitative eviction filings by landlords, including corporate landlords.[12]

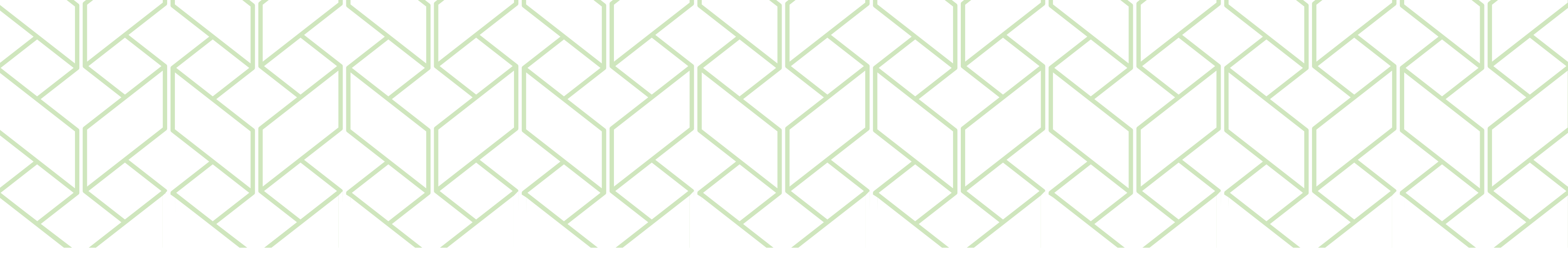
Corporate landlords have garnered media attention due to their use of evictions as a strategy to increase profits, such as by evicting existing tenants and raising the rents significantly for new ones. They have also been criticized for neglecting tenant concerns about habitation and maintenance requests, and tenants have suffered retaliatory evictions for making complaints.

Although just cause eviction legislation differs depending on the state or locality, they should contain the same core elements. According to a 2022 report by the National Low Income Housing Coalition, the core elements of effective just cause legislation include the following:[13]

(1) crafting a specific, rather than broad, definition of the legal grounds for eviction,

(2) placing limits on rent increases, and

(3) the enhancement of written notice requirements.



Just cause eviction laws centered on the aforementioned elements are important policy tools that can protect tenants from private equity and other corporate landlords.

EXAMPLES

California - CA Civ Code § 1946.2 (2023)

New Hampshire - NH Rev Stat § 540:2 (1996 through Reg Sess)

New Jersey - NJ Rev Stat § 2A:18-61.1 (2013)

Oregon - OR Rev Stat § 90.427 (2023)

Washington - WA Rev Code § 59.18.650 (2023)

RENTAL LICENSING AND INSPECTIONS[13]

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. Furthermore, 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.

In addition to increasing transparency and regulating domestic health and safety, landlord licensing has the potential to limit the number of homes each landlord can legally rent out. In some US cities, individual corporate landlords own hundreds, or even thousands, of single family homes. In such cases, 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 time. Similar policy structures have already been enacted in some localities to limit the number of short term rentals one entity can own, with some placing the limit extremely low (just two short term rentals per entity are allowed in Atlanta, for example). In 2015, Santa Monica, California passed its Home Share Ordinance, banning short term rentals entirely by outlawing leases shorter than thirty days, and New York City passed a similar law in 2022 (Local Law 18). But like most other aspects of housing law, regulations of this sort may be subject to state preemption limitations and judicial contestation.

RIGHT OF FIRST REFUSAL[14]

The right of first refusal is a legal arrangement that allows one party to participate in a business deal before anyone else can do so. In housing, the right of first refusal (also known as Tenant Opportunity to Purchase or TOPA) is typically discussed regarding the rights of tenants to purchase the homes they live in when those homes go up for sale. Other right of first refusal policies have been used to grant similar priority to local governments and nonprofits. These policies constitute a crucial component of the movement to combat the corporate landlord housing takeover.

Since corporate landlords do not have to wait for long time periods to secure loans (unlike most individual home buyers), generally have larger budgets, and use technology to constantly scan real estate listings and sometimes even make offers, they have an unfair advantage in the home buying process. As a result, many regular people become shut out of the home buying process. This undermines their ability to build equity and undermines community stability. Right of first refusal legislation is crucial for combatting this problem. Policies have been introduced in a diverse range of states, often with buy-in from politicians who otherwise generally champion tenant rights.

EXAMPLES

California
-SB 1079 (2020)
- AB 1837 + AB 2170 (2023)

Ohio - SB 334

Texas - HB 1057

Colorado
-HB 23-1190
-HB22-1287

TENANT RIGHT TO COUNSEL

While the United States Constitution guarantees the right to legal counsel in criminal cases, that is not the case for civil, including eviction, cases. Low-income tenants must typically represent themselves against landlords who are able to afford legal representation.[16]

By providing a right to legal assistance for low-income renters facing eviction, policymakers can intervene to help stabilize households facing the many vulnerabilities that come with evictions. Even though no such right exists at the federal level, state and local governments may choose to provide their citizens with such protection.

EXAMPLE

Washington SB 5160 (2021): Requires the court to appoint counsel for indigent tenants at the initial hearing and at trial and for the state to pay the costs of such legal services subject to amounts appropriated.

STATE PREEMPTION [16]

Given states' resistance to equitable housing policies at the local level, housing advocates focused on changing local housing policies should dedicate substantial efforts to rolling back or mitigating preemption on certain housing issues at the state level. Due to the varying character of state preemption laws, these efforts will no doubt look different depending on the state. However, lobbying for legislation at the state level will not be enough where state legislatures are dominated by policymakers that are hostile to housing protections.

Building and growing political coalitions is the first step to acquiring the political power necessary to pressure state legislators to abrogate various preemption measures related to housing. Without action at the state level, there is very little local governments can do to address the nation's housing crisis outside of emergency situations (and even then, their abilities are often restrained). Therefore, while local initiatives and actions by government officials do what they can to alleviate the country's housing woes, housing advocates should see changes to preemption at the state level as a north star and major aim of their campaigns.

In a time where state governments are increasing their power over local decisions in different ways, it is essential that communities be able to govern themselves and enact policies that serve their constituents and fit their specific contexts.

RENT STABILIZATION

Rent stabilization policies are designed to limit a tenant's rent to a specific dollar amount and/or the percentage the rent can be increased after the tenant vacates the premises. Although rent stabilization is not a new concept, there has been a notable increase in their implementation on the local and state levels..[18]

An effective rent stabilization policy should contain methods to determine the size of an increase a landlord in a particular geography can impose in a given year. They generally provide a cap on the maximum amount for such an increase, though different jurisdictions may vary in their methodology.[19]

These limitations should be determined according to a given set of criteria, such as changes in the Consumer Price Index (CPI) or other proxies for landlords' cost increases. In addition to such fixed caps, regulatory schemes may allow for additional increases based upon building or unit improvements, tenant vacancies, or other circumstances. Rent increases after tenant vacancies should be similarly indexed to a stable set of criteria rather than being allowed to rise indefinitely.[20]

Private equity and other corporate landlords have raised rents at extraordinary rates, to the detriment of current and prospective tenants alike. They have also spent substantial sums of money lobbying against state rent stabilization measures across the country.

Given their inherent threat to exploitative rent increases, rent stabilization policies are an important tool in combating corporate exploitation in tenant housing. While such policies may be effective at the local level in cities like New York, it is important to implement rent stabilization measures at the state level to avoid preemption challenges.

EXAMPLES

California Tenant Protection Act[21] (2019) - The Tenant Protection Act caps rent increases for most residential tenants in California. Landlords cannot raise rent more than 10% total or 5% plus the percentage change in the cost of living – whichever is lower – over a 12-month period. If the tenants of a unit move out and new tenants move in, the landlord may establish the initial rent to charge.

In addition to the statewide limit, local rent control laws may further restrict how much a landlord can increase rent annually. Tenants and landlords should consult local resources to see whether their city or county has rules that may offer additional protection to tenants.

Oregon SB 608[22] (2019) - By September 30 of each year, the Oregon Office of Economic Analysis is responsible for calculating and publishing the maximum annual rent increase percentage allowed by law for the following calendar year. This amount is 7% plus the Consumer Price Index for All Urban Consumers, West Region (All Items), as most recently published by the Bureau of Labor Statistics, or 10%, whichever is lower.

DECONSOLIDATION[22]

FEDERAL

Since 2022, members in both chambers of Congress have introduced legislation seeking to curb housing stock consolidation by corporate investors. Though none of these bills have passed, they constitute early examples of possible interventions at the federal level.

EXAMPLES

End Hedge Fund Control of American Homes Act (S.3402 & H.R. 6608):
In December 2023, Sen. Jeff Merkley (D-OR) and Rep. Adam Smith (D-WA) reintroduced the End Hedge Fund Control of American Homes Act in both chambers of Congress. The goal of this bill was to end Wall Street ownership of residential real estate by prohibiting hedge funds and private equity firms from owning and controlling large parts of the American housing market, and in turn dedicate revenue from this bill for down payment assistance to homebuyers. Right of first refusal-style legislation has been pursued in some locations under the name Tenant Opportunity to Purchase Act, or TOPA.

The bill sought to accomplish its goal by establishing a $20,000 federal tax penalty for each single family home owned by a single company and its affiliates over 100 homes. However, it would have allowed companies with large portfolios to sell homes over several years to come into compliance to allow for an orderly exit. It also included incentives to make sure buyers of divested homes are individuals who plan to live in the home. The tax penalties collected would have been used to provide down payment assistance to individual homebuyers.

Stop Predatory Investing Act (S.2224): Introduced by senators Brown, Wyden, Smith, Reed, Merkley, Fetterman, Warren, and Baldwin in July 2023, the Stop Predatory Investing Act "[r]estrict[ed] the ability of private equity companies and other large investors to take advantage of tax breaks that give them an unfair advantage in the housing market." The bill utilizes a series of tax reforms, including one measure that prohibits investors with 50 or more single family rental homes from deducting interest or depreciation on those properties. Large investors can deduct interest or depreciation for the year if they sell the property in question to a homebuyer or nonprofit. The deduction prohibition does not apply to properties that utilize the Low Income Housing Tax Credit (LIHTC).

The Senate Committee on Banking, Housing, and Urban Affairs held a hearing on the bill in April 2024.

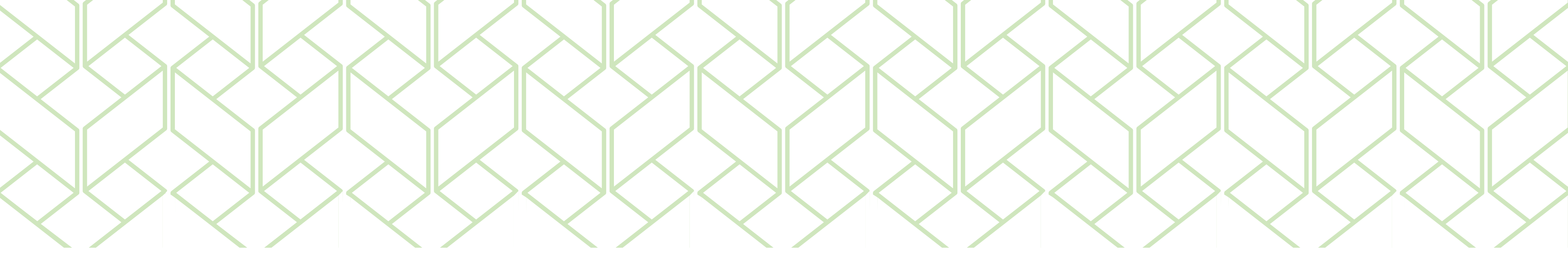
Stop Wall Street Landlords Act of 2024 (HR 9246): First introduced in October 2022, and reintroduced in 2024, by Rep. Ro Khanna (D-CA), Rep. Katie Porter (D-CA) and Rep. Mark Takano (D-CA), HR 9246 aimed to deter institutional investors from participating in the SFR market by introducing a bundle of pro-competition reforms. For one, it would have prevented investors from taking advantage of homeowner tax breaks like the mortgage interest deduction. Additionally, the bill aims to prohibit government-sponsored enterprises (Fannie Mae, Freddie Mac, and Ginnie Mae) from assisting certain large investors in financing. Perhaps most crucially, the Stop Wall Street Landlords Act would impose a new transfer tax on corporate landlord acquisitions.

This 2022 version of this bill was strongly opposed by private equity and corporate landlord lobbying organizations, including through the American Investment Council and National Rental Home Council, and subsequently died in committee.

STATE

Limiting Landlord Portfolio Size through Licensing Requirements[24]

Landlord licensing requirements (e.g., laws that mandate that landlords register and apply for permission in order to rent out units) are already used by a few municipalities around the country to increase transparency and regulate residential health and safety. However, landlord licensing has the potential to be leveraged for a much more powerful purpose: limiting the number of rental homes each landlord can legally operate. While policies that outright ban a business entity from purchasing or owning property are generally found to violate the constitutional right to pursuit of property, the right to rent out property 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 25 single family homes at any given time. Limiting the number of licenses allowed per landlord could apply to the properties the landlord already owns, not just new acquisitions.

When it comes to regular rental properties with longer term leases, it appears that no state or municipality has tried to place a cap on the number of rental licenses each landlord is allowed to maintain. However, this avenue could be a legally viable mechanism for enforcing market deconsolidation, perhaps even more so than outright ownership caps.

Though any government that tries licensing caps is likely to be sued by landlord interest groups, the regulations could likely hold up depending on location and legal precedent. While so far underutilized, limiting the number of licenses each landlord is allowed to maintain has the potential to be a powerful deconsolidation method.

Portfolio Caps and Conversion Bans[25]

Policymakers in some jurisdictions have taken bold steps to limit corporations' ability to acquire and lease properties. A North Carolina bill sought to ban corporate property hoarding by capping the number of homes any one entity can own at 100 in some counties. In Minnesota, another bill attempted to bar corporations from converting housing to rental property. And across the country, some homeowners associations have banned corporate landlords from operating in their neighborhoods.

Still, other jurisdictions could benefit from yet-to-be-tried policies that cap portfolio sizes by limiting the number of licenses any one landlord may maintain at a given time. While it is both legally complex and politically challenging to prevent business entities from buying and renting out properties, these policies together demonstrate a trend of governments attempting to curtail America's corporate landlord problem.

EXAMPLES

North Carolina H114 (February 2023) - The "Home Ownership Market Manipulation Act" sought to cap the number of single family homes a landlord may own at 100 properties within North Carolina's most populous counties (those with over 150,000 residents). This includes the key urban centers of Asheville, Charlotte, Wilmington, Fayetteville, Greenville, as well as the Research Triangle and Triad regions.

In terms of enforcement, the bill's text included a civil penalty measure that could add up to $100 per day for every home that exceeds the 100 property cap, as well as court fees and damages. The bill also would have allowed county residents or a county's board of commissioners to take corporate landlords to court for violating the limit. Crucially, the 100-property cap would have applied to both parent companies and their subsidiaries.

Understanding the full scope of a corporate rental company's holdings is notoriously challenging due to their use of elaborate networks of limited liability corporations (LLCs). In order to ensure that landlords are not able to hide their holdings by making new LLCs, the bill sought to grant the state attorney general the power to conduct investigations into corporate land holdings. H114 would not have required corporations to sell properties they already own, so landlords who already have substantial market power in areas like Raleigh and Charlotte would not see their existing holdings reduced. By limiting ownership in areas most affected by the housing crisis, this legislation would have prevented corporate landlords from dominating the housing market and driving up rents, increasing competition and making homeownership more accessible for residents. This bill ultimately died in committee.

Minnesota HF685 (January 2023) - HF 685 sought to "prohibit corporate entities, developers, and contractors from converting single-family homes into rental property units." If landlords were found to be in violation of this prohibition, they would have one year to sell the violating property. If they failed to sell the violating property within a year, it would be put up for public sale. Unlike many rental regulations, this bill covered new construction as well as older housing. HF 685 did include other exemptions, however. Under the bill's parameters, homes could be exempted from the rental conversion prohibition on a case-by-case basis if the conversion of the home "would have no impact on the availability of affordable housing" and "does not contradict the purpose of [the law]." It's unclear what sorts of cases this might apply to. In introducing HF 685, Minnesota had an opportunity to enact one of the most comprehensive housing deconsolidation policies ever attempted by a state legislature. This bill ultimately died in committee.

Homeowners Association Bans on Corporate Landlords[26]

Several cities across the United States have seen homeowners associations (HOAs) attempt to create rules that limit corporate single family landlord activity in their neighborhoods. This comes as some neighborhoods have seen the majority of their homes being quickly bought up by outside investors, undermining the ability of people in the community to have a safe and affordable place to live. Furthermore, HOAs have been motivated by the reality that lenders may be hesitant to underwrite mortgages in communities with a large share of investor-owned properties, making it harder for residents to sell.

While these measures can make an overall positive impact, especially when provisions are tailored specifically to thwart large corporate landlords, it is important to note that some HOAs are motivated by anti-renter sentiment that sometimes carries racist and classist undertones. For example, some accounts from HOA members involved in these initiatives mention the idea that homeowners are inherently better neighbors than renters by virtue of their behavior or dedication to the community. The reality is that many different stakeholders oppose corporations buying up single family homes, and their motivations are equally diverse.

Though states should explicitly protect the right of HOAs to create rules that limit the presence of corporations in their neighborhoods, it is crucial that these rules are carefully crafted to deter the consolidation of wealth and property rather than to promote it by privileging homeownership.

Limiting Consolidation through Taxes and Penalties[27]

In contrast to the strict rental property limitation policies outlined above, other jurisdictions have attempted to combat corporate consolidation by heavily taxing landlords whose portfolios surpass a certain number threshold. Ohio's SB 76 proposed imposing a heavy tax on landlords with over 50 homes in any one county, essentially undermining landlords' ability to turn a profit on all homes acquired beyond the allowable number. A California bill similarly would have placed a tax on landlords owning as few as 10 homes. The prohibitions in such bills successfully tackle corporate consolidation and are potentially more legally durable than outright bans.

EXAMPLE

Ohio SB 76 - Senate Bill 76 would have levied a tax on any landlord that owns 50 or more one-, two-, or three-unit houses in a single county. The bill imposed the tax monthly at a rate of $1,500 for each such house owned. Failure to file or pay the tax would lead to a penalty equal to the number of taxable houses owned multiplied by 5% of the median Ohio home price. The tax would only apply to homes acquired after the bill's passage.

Under the bill, taxpayers would be required to provide information on their income tax or commercial activity tax returns about any taxable house that gave rise to taxable income or gross receipts. The bill also imposed a criminal penalty for filing a fraudulent refund claim, classified as a fifth-degree felony and punishable by a fine of up to $750,000. In addition, "commonly owned or controlled persons" would be required to file and pay the tax as a combined taxpayer group.

Pass-through entities (businesses that pass income straight to their owners) are also required to provide county auditors with contact information related to each taxable house the entity owns or transfers. This tackles some of the portfolio transparency issues mentioned previously in this report. The revenue generated by this bill would have been used for public purposes, divided equally between the Low- and Moderate-Income Housing Trust Fund and the Local Government Fund.

SB 76 would have done much to counteract the consolidation of single-family homes by corporate landlords and would also bring much needed transparency to the ownership structure of such properties. Unfortunately, though the bill received bipartisan support, it never made it out of the Ohio Ways and Means committee.

CONCLUSION

As housing affordability and security continue to be major hurdles for the average American, there are solutions at the federal, state and local levels that have been employed to various degrees of success. Although there are additional policy considerations that factor into this discussion (such as how to provide people with the means to afford housing in the first place), curbing housing consolidation by corporate landlords, and protecting the residents that live in properties owned by them are essential parts of such an endeavor. We hope this primer serves as a useful resource for housing advocates and policymakers interested in this issue.

If you have any questions about the PESP Housing Policy Primer, please contact PESP's Policy Director, at chris.noble@pestakeholder.org.

ENDNOTES

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