Because the Boston metro area stretches into New Hampshire, a Policy Snapshot has been drafted with more detail on New Hampshire’s state, local and municipal policies related to manufactured housing. The policies assessed within this Snapshot only cover policies within the state of Massachusetts and the local areas that constitute the Boston metro area within Massachusetts.

Overall, the state and local policy environments in Massachusetts are generally favorable for the development and preservation of manufactured housing communities. The state has strong consumer protection and anti-harassment laws and residents of manufactured housing communities are provided with a right of refusal to purchase or lease the community from the owner.

However, there is some room for improvement on other policies—particularly those that provide funding streams for homeowners through state programs. For instance, the state housing finance agency does not allow their products to finance the purchase of manufactured homes, state affordable housing programs restrict or prohibit the use of program funds for manufactured housing and the state law governing affordable housing production does not consider resident-owned coops in its count of affordable housing. Moreover, residents who wish to purchase or upgrade their communities have no readily available source of state subsidized funding.

Note: The geographic area within which the local and municipal policies were assessed includes the following seven counties in Massachusetts that make up the MetroFuture regional definition: Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, Worcester. MetroFuture is the long-term regional plan and vision for the Boston metro region, which includes 164 municipalities, eight planning areas and seven counties. Because of the concentration of manufactured homes in fringe counties around metropolitan areas, we also included the two counties in New Hampshire that are typically included in the Boston MSA definition, Rockingham and Strafford. This regional definition accounts for both the reach of key Metropolitan Opportunity Unit grantees and the boundaries within which decision-making occurs.

LAWs PROTECTING HOMEOWNERS IN MANUFACTURED HOME COMMUNITIES

A manufactured home community can be a vibrant neighborhood that is an asset to the community at large. However, because the residents own their homes but not the land on which the homes sit, they are uniquely vulnerable—to confiscatory rent increases, arbitrary rule enforcement, failure to maintain the roads, utilities, and common areas, and even closure of the community. If the community closes, the neighborhood disappears and many residents have to abandon their homes. Most states, including New Hampshire, have special laws protecting residents of manufactured home communities. New Hampshire’s laws provide many critical protections for owners of manufactured homes living in communities, but also feature some key weaknesses.

KEY

| STRONG PROTECTION | WEAK PROTECTION | NO PROTECTION |

AFFIRMATIVE PROTECTIONS FOR FUNDAMENTAL FREEDOMS.

Massachusetts provides strong protections for residents of manufactured housing communities, including the fundamental right of free movement, speech and assembly or association. Residents have freedom from interference by community owners or operators when they meet or solicit membership or dues for the resident association.

PROTECTION AGAINST RETALIATION.

Even states that do not provide affirmative protections for residents’ fundamental freedoms often prohibit community owners from retaliating against residents for exercising their legal rights. Massachusetts broadly prohibits retaliation against community residents for asserting any right or engaging in any activity protected by law, being a member of a homeowners’ association, or reporting violations of the law to the appropriate governmental authorities. In addition, the Attorney General’s model community rules, which govern residents’ use of the site and common areas in a manufactured housing community, call for the enforcement of community rules in a non-selective, non-discriminatory manner.
NOTICE BEFORE COMMUNITY CLOSURE. About half the states require a substantial notice period before a manufactured home community closes. Massachusetts provides one of the longest notice periods; each resident is entitled to a minimum two years notice if the owner decides to discontinue the community or use of the property for some other purpose. There is also a local permitting process in some communities, but not in the Boston metro area.

PURCHASE OPPORTUNITY. Massachusetts is one of eighteen states with a policy on the books to require or encourage community owners to give residents the opportunity to purchase the land on which their homes sit. If the community owner decides to sell or lease the community, residents or their homeowners’ association have a right of first refusal to purchase or lease the community from the owner. The policy is one of the strongest nationwide, and requires notice of the community owner’s mere intent to sell the community.

PROTECTION AGAINST ARBITRARY EVICTION. Homeowners in manufactured home communities are protected from arbitrary eviction or nonrenewal of their lease. Residents cannot be evicted unless they failed to pay the lot rent, violated a rule or a law, or the community is discontinued.

RIGHT TO SELL HOME IN PLACE. Community owners can effectively prevent homeowners from selling their homes by reserving the right to reject any potential buyer as a resident. Massachusetts limits the owners’ ability to reject an application for residency so long as the applicant meets the rules of community and provides evidence of their ability to pay the rent.

RELOCATION EXPENSES. Massachusetts is one of approximately 15 states that have programs, usually funded at least in part by community owners, to pay the costs of moving homes if a manufactured home community closes. In addition, in lieu of payment for relocation costs, the state allows community owners to purchase homes at their appraised value if the homes’ owners do not wish to move the homes.

ADMINISTRATIVE COMPLAINT PROCEDURE. Some states offer a simple administrative procedure for resolving residents’ complaints about their manufactured home community. Massachusetts offers several options for resolving residents’ complaints, including a Manufactured Housing Commission set up for this purpose.

REQUIREMENT THAT COMMUNITY OWNER MAINTAIN THE COMMUNITY. Massachusetts regulations specifically require manufactured home community owners to maintain common areas, utility service, and other services so that they are clean, safe, and in good working order.

RESIDENT ABILITY TO ENFORCE THE LAWS. In Massachusetts, residents have the right to enforce the manufactured home community protections through the state’s strong consumer protection and tenant protection laws. The state’s consumer protection law, for example, provides for triple monetary damages.

RIGHT TO TREAT MANUFACTURED HOMES AS REAL PROPERTY

The way in which a state governs the titling of manufactured homes, especially when homes may be converted from personal property to real property, has major implications for owners and purchasers. Although a modern manufactured home may be indistinguishable from a traditional stick-built home, the way in which a state treats manufactured homes as real property can significantly affect property rights and the ability to transfer ownership.

Note: The source for data on communities in the Boston metro area is the MA Manufactured Homes Survey—which only indicates how many spaces exist in communities, not how many homes are actually sited—and records maintained by the New Hampshire Community Loan Fund.
from a site-built home to many observers, it is typically considered personal property, like a car or a television set, rather than real property, absent some sort of conversion to real property. This classification as personal property, along with other issues common to manufactured housing, often keeps homeowners from enjoying the same security and potential for wealth creation enjoyed by owners of site-built homes.

Massachusetts is one of a minority of states that does not use a certificate to title manufactured homes that are personal property. Rather than a certificate of title, ownership is proven and liens recorded pursuant to the Uniform Commercial Code.

Homes on owned land may become a part of the real property when they have been affixed and attached to the land and may be financed along with the land through the use of fixture filings. There is no statutory conversion process which clearly defines when a home is personal property and when it is real property. This common law approach to conversion and the lack of a statutory conversion process leaves homeowners in land-lease communities without any effective way of classifying their homes as real property. As a result, these homeowners are limited to high-cost chattel financing.

STATE POLICIES AND PROGRAMS THAT AFFECT NONPROFIT MANUFACTURED HOUSING DEVELOPERS

LICENSING ISSUES FOR NONPROFIT MANUFACTURED HOUSING DEVELOPERS
Licensure and regulation of manufactured home dealers is almost exclusively a state function. However, in Massachusetts no special license is required to sell or deal in manufactured homes.

STATE WEATHERIZATION PROGRAMS AND OTHER MANUFACTURED HOUSING PROGRAMS
The Massachusetts weatherization and utility programs treat manufactured homes as comparable to site-built homes. The state’s weatherization assistance program (WAP) serves families living in manufactured homes under the same processes and rules as any other household. There are no programs targeted specifically to manufactured housing.

The major utilities serving Massachusetts are NSTAR (providing electric and natural gas service), National GRID (also providing electric and natural gas service), and Columbia Gas. In their low-income energy efficiency programs, those living in manufactured homes would be eligible on exactly the same terms as those living in more traditional homes since the utility funding generally “piggy-backs” on WAP (adding more funding to the available WAP funding), allowing WAP to serve more homes. In the regular (non-low-income) residential programs, those living in manufactured homes would also, in general, be treated the same as those living in more traditional housing.

PUBLIC FINANCING
Consumers and nonprofit housing developers in Massachusetts have access to a number of publically-financed programs for the purchase or rehabilitation of affordable housing. However, some of these programs limit the use of funds for manufactured housing. MassHousing, the state’s nonprofit public agency which provides funding for consumers and developers of affordable housing, does not allow the MassHousing Mortgage product to be used with manufactured homes. Other affordable housing programs offered by the state do use federal HOME funding, and state policies regarding the manufactured housing must abide by federal regulations which govern the use of those program funds. In addition, nonprofits can leverage the financial innovations and expertise of neighboring New Hampshire, which is the nation’s leader in successful conversions to limited-equity resident-owned communities.

LAWS ENCOURAGING AFFORDABLE HOUSING PRODUCTION
The Massachusetts Comprehensive Permit Act, commonly referred to as “40B” because of its designation in the Massachusetts General Laws, encourages the production of affordable homes by allowing developers to bypass certain municipal zoning bylaws and other requirements in exchange for a promise to set aside at least 25% of the proposed new development as affordable in the long-term. The law allows the state to overturn a local zoning board’s denial of a qualified proposal. However, if a town can demonstrate that 10% of its existing homes qualify as affordable, then its zoning board is permitted to deny 40B-related permit requests. Over the years a number of towns have petitioned the state government to have 40B regulations modified to allow manufactured homes that have been in use for over 20 years to count towards the 10% affordable home stock requirement. To date all of these petitions have failed. The definition of what constitutes affordable housing for the purposes of the 40B count has some nuanced implications in different fields within the area. Though towns and municipalities that have to adhere to 40B and manufactured housing advocates striving to embed encourage acceptance of manufactured housing as an important component of the affordable housing stock may embrace the inclusion of manufactured housing in the affordable housing count, affordable housing advocates and developers might, instead, express concern. These stakeholders might worry that opponents would use a higher count—inflected by the inclusion of manufactured housing—to make an argument that more affordable housing development is not needed. In 2010, there was a state ballot initiative to repeal 40B, but the law was upheld by voters by a wide margin of 58% to 42%.
LOCAL ZONING AND FEE SIMPLE MANUFACTURED HOMES
In the cities of Quincy and Boston, manufactured homes are generally permitted in all residential districts and zoning classifications in which similar site-built housing is permitted. There is no state law which specifically prohibits localities from restricting the placement of manufactured homes in areas designated for residential housing. A decades-old decision by the state’s highest court has given localities such leeway, though it appears that the cities and towns in the MSA have not imposed such restrictions.

LOCAL ZONING AND PRESERVING MANUFACTURED HOME COMMUNITIES
State law does not specifically regulate the location of manufactured housing communities, except to designate any tract of land with three or more homes as a community. In the past, towns through the permitting process or local zoning by-laws have sought to restrict the placement of manufactured housing communities. A local restriction imposed by a zoning by-law was upheld by a court. The state created a Manufactured Housing Commission specifically to address the concerns of community owners and residents regarding zoning, local taxation and other issues.

MORATORIUMS ON CLOSURE OR REDEVELOPMENT OF MANUFACTURED HOUSING COMMUNITIES
A court’s decision allows local municipalities to exercise the authority to impose a moratorium on the closure or redevelopment of manufactured housing communities.

LOCAL TAX & OTHER FINANCIAL INCENTIVES
In the local jurisdictions identified in this MSA there are no tax or other financial incentives which would specifically encourage landowners to sell or transfer the community to residents.

LOCAL RENT CONTROL
Although most rent control was abolished in 1995, manufacturing housing communities were specifically exempted from that law. Under most local rent control schemes, tenants have the right to object to a proposed rent increase and apply for rent decreases. A certificate of eviction is required by most local rent control boards before a resident is evicted from the community. About twenty communities statewide have established rent control. Though none of the cities in the MSA currently have rent control, they are not precluded from passing such an ordinance.¹

MANUFACTURED HOUSING INCLUSION IN CONSOLIDATED PLANNING, MUNICIPAL PLANNING AND COMPREHENSIVE PLANNING
The policies that guide the development and preservation of affordable housing — including manufactured housing — are developed on the state and local level. These policies and goals are articulated in planning documents which outline use of the land and funding resources. State law does not require manufactured homes to be included in comprehensive plans for land use. At the state level, the 2010-2014 Consolidated Plan and annual updates does not highlight the role of manufactured housing in the state’s affordable housing initiatives.

LOCAL STAKEHOLDERS
The state and local policy environment in Massachusetts is generally favorable for the development and preservation of manufactured housing communities. The state has strong consumer protection and anti-harassment laws and residents of manufactured housing communities are provided with a right of refusal to purchase or lease the community from the owner. However, financing the purchase or rehabilitation of manufactured homes is more challenging. State affordable housing programs restrict or prohibit the use of program funds for manufactured housing. Moreover, residents who wish to purchase or upgrade their community have no ready source of state subsidized funding.


Note: The content in this Policy Snapshot was collected by the National Consumer Law Center.