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# YALE LAW & POLICY REVIEW

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## Tenant Union Law

Greg Baltz\*

*Tenant unions organize rent strikes, compel landlords to collectively bargain, orchestrate mass eviction defense networks, and even take control of buildings. Although there is no overarching statutory or regulatory framework detailing the rights and obligations of tenant unions, there is a web of intersecting laws governing relationships among tenants, their unions, landlords, lenders, developers, and government. This Article identifies these laws as tenant union law and illustrates how tenant unions organize in the shadow of this law to build power.*

*This Article excavates the relevant legal architecture by analyzing ten modern tenant union campaigns from across the United States. The*

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*campaigns highlight where the absence of a single overarching framework governing tenant unions left the unions strategically flexible to respond to changing politico-economic conditions, like during the foreclosure crisis or the COVID-19 pandemic.*

*This Article extrapolates from the campaigns three dimensions of how tenant unions organize in the shadow of the law. The first dimension addresses how the law shapes the internal form and obligations of tenant unions. The second dimension, tactics and strategy, focuses on the laws tenant unions employ at the building or neighborhood level to win concrete changes to tenants’ material conditions. The third dimension discusses scale, illustrating how the law informs how tenants organize across portfolios, cities, states, or the whole country. This Article reveals how tenant union law gives both form and flexibility to tenant unions’ internal structure, creates leverage and protections for organized tenants, and enables them to scale their advocacy.*

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## INTRODUCTION

Tenant union organizing is surging.<sup>1</sup> Since the start of the COVID-19 pandemic, tenant unions have engaged in rent strikes to win demands from landlords and policymakers,<sup>2</sup> built eviction defense networks blocking landlords from removing renters from their homes,<sup>3</sup> barricaded courthouse doors,<sup>4</sup> and reoccupied housing from which tenants were evicted.<sup>5</sup> None of these tactics are novel—nor are tenants’ goals. There is a century-long

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1. See Rose Lenehan & Tara Raghuvver, *The Future of Housing Organizing: Tenant Unions*, IN THESE TIMES (July 23, 2024), <https://inthesetimes.com/article/housing-crisis-tenant-unions-debt-collective> [<https://perma.cc/426R-67LP>] (describing campaigns led by the Los Angeles Tenants Union and KC Tenants); Charlotte Alter, *Renters Are in Revolt. This Tenant Union Plans to Get Them Organized*, TIME (Oct. 23, 2023), <https://time.com/6325516/kc-tenants-union-time-documentary> [<https://perma.cc/7A5V-8PXW>]; Shelby R. King, *Organized Tenants Are Baaaaack*, SHELTERFORCE (Nov. 21, 2022), <https://shelterforce.org/2022/11/21/organized-tenants-are-back> [<https://perma.cc/R24N-PEF5>]; Conor Dougherty, *The Rent Revolution Is Coming*, N.Y. TIMES (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html> [<https://perma.cc/5H77-P2RP>].
  2. See Marika Dias, *Paradox and Possibility: Movement Lawyering During the COVID-19 Housing Crisis*, 24 CUNY L. REV. 173, 191-200 (2021) (describing the ideological impetus for the Cancel Rent Campaign in New York State as well as the movement strategy and movement-lawyer support for mass rent strikes and legislation to Cancel Rent); Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 112 (2020) (describing Cancel Rent as a “non-reformist reform”).
  3. Jonah E. Bromwich, *The Evictions Are Coming. Housing Activists Are Ready*, N.Y. TIMES, <https://www.nytimes.com/2020/12/23/style/rent-evictions-new-york.html> [<https://perma.cc/GN7Q-PRL2>] (June 23, 2021) (describing organized tenants’ efforts to form a blockade against eviction in Rochester, New York).
  4. Michelle Conlin, *‘This Is Not Justice.’ Tenant Activists Upend U.S. Eviction Courts*, REUTERS (Feb. 8, 2021), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112> [<https://perma.cc/RQ86-AHCE>].
  5. See, e.g., Julie Gilgoff, *Pandemic-Related Vacant Property Initiatives*, J. AFFORDABLE HOUS. & CMTY. DEV. L. 203, 215 (2020) (describing how Moms 4 Housing, a group of unhoused mothers in West Oakland, California occupied a property that was foreclosed on and left vacant for the prior year while they were unhoused).

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history of tenant unionism in the United States.<sup>6</sup> But despite the long history of tenant unionism, scholars have yet to examine the extent to which it is underpinned by a legal architecture that helps tenants organize at a building or neighborhood level while scaling to win movement and policy goals.<sup>7</sup>

Tenant union law structures the legal relationships between tenants, tenant associations, tenant unions, landlords, lenders, developers, and government. Tenant union law governs what tenant unions can and cannot lawfully do (e.g., legal rent strikes or affirmative lawsuits), and also influences the structure of such unions and the manner in which they scale their advocacy. Tenant union law creates, reproduces, and undermines the politico-economic power of organized tenants.<sup>8</sup>

This is a crucial moment to understand the dimensions of tenant union law. New laws recognizing the rights of tenant unions are being proposed,

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6. See, e.g., ROBERT M. FOGELSON, *THE GREAT RENT WARS, NEW YORK, 1917-1929* (2013) (describing rent strikes in New York City during the 1920s); Mark Naison, *From Eviction Resistance to Rent Control: Tenant Activism in the Great Depression*, in *THE TENANT MOVEMENT IN NEW YORK CITY, 1904-1984*, at 94, 101 (Ronald Lawson ed., 1986) (describing how Communist-led Unemployment Councils would move the furniture of evicted families back into their apartments and defend the families if marshals returned); Tova Indritz, *The Tenants' Rights Movement*, 1 N.M. L. REV. 1, 1 (1971) (describing a rent-strike wave across the United States in the 1960s); Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968) (describing the efforts to organize tenant unions and negotiate collective-bargaining agreements in Chicago in 1966); Eric Hirsch & Peter Wood, *Squatting in New York City: Justification and Strategy*, 16 N.Y.U. REV. L. & SOC. CHANGE 605, 606 (1987-1988) (detailing the Association of Community Organizations for Reform Now's ("ACORN") squatting campaign in East New York in rem properties, resulting in the sale of these properties to the Mutual Housing Association of New York); Valerie Schneider, *Property Rebels: Reclaiming Abandoned, Bank-Owned Homes for Community Uses*, 65 AM. U. L. REV. 399, 409 (2015) (describing the Occupy Our Homes Movement in the wake of the foreclosure crisis).
  7. For purposes of this Article, I borrow Michael Grinthal's definition of organizing as "the processes by which people build and exercise power by collecting and activating relationships" and "power" as the ability to accomplish one's goals. Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 34 (2011).
  8. See Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1820 (2020).

debated, and passed across the United States.<sup>9</sup> However, without a comprehensive analysis of the foundations on which these laws are developed, there lies the risk of fighting for legal reforms that inadvertently constrain rather than empower tenant unions.

This Article examines this underexplored body of law through the role that it has played in tenant union campaigns. Part I defines key terms before analyzing ten campaigns in a survey that encompasses privately owned as well as government-subsidized housing, cities with strong tenant legal protections as well as those with almost no protections, and politico-economic conditions varying from gentrifying to financially distressed.

The campaign analysis reveals three dimensions of tenant union law that together determine the forms tenant unions take and the powers they wield. Part II examines the first dimension of tenant union law: how law structures the form of tenant associations and unions. As tenant associations and unions are not separate, recognizable legal entities in most jurisdictions, their functions are governed by the same common law or statutory framework that govern unincorporated associations and incorporated non-profits. Whether or not a tenant association or union incorporates, their members' decision-making may be further constrained by opting into a limited subset of laws, including certain lawsuits, collective bargaining frameworks, and formal recognition. In the limited jurisdictions that expressly recognize, create processes to form, and impose internal democracy requirements on tenant associations, the formalized structure may overshadow the purpose of a tenant union as a vehicle for building power.

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9. See, e.g., *National Tenants Bill of Rights*, NAT'L HOUS. L. PROJECT, NAT'L LOW INCOME HOUS. COAL. & TENANT UNION FED'N 34 (2024) [hereinafter *National Tenants Bill of Rights*], <https://nlihc.org/sites/default/files/TBOR-Final.pdf> [<https://perma.cc/ACU3-8GMY>] (urging for the requirement of "mandatory bargaining a set number of times per year between landlords and tenants and includ[ing] provisions that penalize non-compliant landlords by expressly permitting tenants to reduce their rent payments"); S.F., CAL., ADMIN. CODE § 49A (2024) (requiring landlords in San Francisco to recognize and bargain with tenant unions); NEW HAVEN, CONN., CODE OF ORDINANCES tit. 3, § 12<sup>3</sup>/<sub>4</sub>-9 (2024) (granting standing to tenant unions to file complaints before the city's Fair Rent Commission); NEWARK, N.J., REVISED GENERAL ORDINANCES ch. 19:2, § 13.5 (2024) (allowing tenant union representatives to assist parties to present evidence and develop their position before a rent control board).

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Where strategy is the overarching plan that guides a tenant union's efforts, tactics are the actions taken to achieve those plans. Part III extrapolates from the ten campaigns to highlight how tenant unions make tactical decisions in the shadow of the law. Where tenants enjoy strong possessory rights, they can leverage their occupation of their apartments. Beyond possession, tenants leverage rent withholding, affirmative lawsuits, government enforcement powers, and direct action to extract concessions from landlords. Tenant unions extract these concessions in jurisdictions that do not have collective bargaining frameworks as well as in those that do. Laws protecting tenant organizers' access to property, as well as tenant associations' right to meet in public spaces, are necessary for organizing. Finally, the Part concludes by illustrating how the law shapes tenant unions' access to information about their targets. While strong laws are not a precondition for success, this Part illustrates how they can fundamentally alter the balance of power with a landlord.

While buildings or neighborhoods are frequently the initial site of tenant organizing, many tenant unions pursue strategies uniting organized tenants across portfolios, cities, states, or even the whole country. Part IV discusses the third dimension: how the law shapes how tenant unions scale their organizing. Where local governments are preempted from passing strong tenant union protections, organized tenants need to coordinate across states and even nationwide to win legislation. Once won, rent control laws can include meeting requirements that incentivize tenants to mobilize as a sector on a recurring basis. Where tenant unions seek to influence market dynamics driving displacement, they have looked to land use procedures. Where tenant unions are focused on impacting many properties with different owners, they have leapfrogged landlords as targets and moved to lenders, whose loan agreements have deep implications for the rents charged and the expectations for repairs at a property. Lastly, the Article examines the general rent strike, a mass movement of renters withholding their rent most recently embodied by the Cancel Rent campaign, which is both informed by, but also rejects, the presently available legal outcomes.

As law and political economy scholars have noted, the last century has seen a disaggregation of the economy from politics.<sup>10</sup> It could likewise be said that it has seen a disaggregation of housing from the lives and struggles

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10. See Britton-Purdy et al., *supra* note 8, at 1790.

of tenants.<sup>11</sup> This Article introduces concrete examples of laws already undergirding tenant union organizing into the discussion about how the law might facilitate collective action amongst relatively powerless groups including tenants, debtors, and welfare recipients.<sup>12</sup> This Article relies on the access-to-justice scholarship that decries the emphasis on efficiency over justice in eviction courts while evaluating both eviction processes and affirmative tools used by individual tenants.<sup>13</sup> It builds on the work of

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11. TRACY ROSENTHAL & LEONARD VILCHIS, *ABOLISH RENT: HOW TENANTS CAN SOLVE THE HOUSING CRISIS* 11 (2024) (“The frame of ‘housing crisis’ trains our attention away from the fundamental power imbalance between landlords and tenants. It suggests that to solve the crisis, we should focus on the people who design housing, who build housing, who profit from housing, not the people who live in it. It encourages us to think about abstract, interchangeable ‘housing units’ and not about power, or about people and the constraints that shape their lives.”).
  12. *See, e.g.*, Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 581 (2021) (analyzing how the law may develop to facilitate organization of mass-membership organizations, including tenant unions, to generate countervailing power among low-income and working-class people); John Whitlow, *Law and Countervailing Tenant Power in the Real Estate State*, LPE PROJECT (June 6, 2022), <https://lpeproject.org/blog/law-and-countervailing-tenant-power-in-the-real-estate-state> [<https://perma.cc/SV77-8CCN>] (discussing how landlord-tenant collective bargaining could develop countervailing power for tenants); Duncan Kennedy, Karl Klare & Michael Turk, *A Wagner Act for Tenant Unions*, LPE PROJECT (June 15, 2023), <https://lpeproject.org/blog/a-wagner-act-for-tenant-unions> [<https://perma.cc/K87V-HU5D>] (proposing a model for landlord-tenant collective bargaining); Greg Baltz & Shakeer Rahman, *Why Should Tenant Unions Look to Labor Law?*, LPE PROJECT (Sept. 26, 2023), <https://lpeproject.org/blog/why-should-tenant-unions-look-to-labor-law> [<https://perma.cc/NZ5K-RCDD>] (expressing skepticism toward a Wagner Act for tenant unions); Kelly Hogue & Heather K. Way, *The Role of the Law in Protecting Tenant Organizing: Opportunities for Local and State Legal Reforms*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 391 (2023) (analyzing bedrock laws impacting tenant organizing).
  13. *See, e.g.*, Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 402 (2022) (arguing that eviction courts enforce the hierarchical relations between landlords and tenants); Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. L. & POL’Y REV. 97, 135 (2019) [hereinafter Sabbeth, *(Under)Enforcement*] (illustrating how tenants can use the law as a sword rather than a shield to alter power relations); Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145,



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scholars investigating how both the law of, and the environment of, eviction courts impact and are shaped by tenant organizing.<sup>14</sup> The point here is not to reify the law as a determinative factor in tenant organizing, but to acknowledge how it creates norms and social relationships that impact tenant unions' power, placing tenants as a political force at the center of housing law.

### I. ORGANIZING IN THE SHADOW OF THE LAW

#### A. Defining Tenant Union Law

Tenant union law is the study of the legal relationship between tenants and their unions, landlords, lenders, developers, and government. Absent an overarching legal framework outlining their corporate form, tactics, and mechanisms for scaling, tenant unions organize in the shadow of existing laws. Accordingly, there is no monolithic model of tenant organizing or tenant unionism. Nevertheless, as a starting point for understanding tenant union law, it is necessary to define the actors whose legal relationships are in question.

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- 53 (2020) [hereinafter Summers, *Limits*] (demonstrating the operationalization gap between tenants with meritorious warranty of habitability claims and tenants who actually received a rent abatement); Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847, 888 (2023) [hereinafter Summers, *Civil Probation*] (detailing a shadow legal system with separate procedural and substantive rules for eviction proceedings established through settlements).
14. Emily A. Benfer, *Housing Is Health: Prioritizing Health Justice and Equity in the U.S. Eviction System*, 22 YALE J. HEALTH POL'Y, L. & ETHICS 49, 103 (2024) (applying Jamila Michener's health-justice framework for power building among those burdened by structural racism and health inequity in an examination of the eviction system); Jamila Michener, *Civil Justice, Local Organizations, and Democracy*, 122 COLUM. L. REV. 1389 (2022) (identifying tenant organizations as institutional nodes within the civil legal infrastructure of housing court); John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1124 (2019) (arguing that legal rights can be deployed to target the material sources of tenants' deprivation and to assist in the formation of new political solidarities).

By tenants, I refer to renters, subtenants, assignees, and occupants of housing who do not own that housing but have a contractual or other legal right to possession.<sup>15</sup>

Tenant associations are groups of tenants, generally living in the same building or development, who organize to advocate collectively for themselves when dealing with their landlord, lenders, or government.<sup>16</sup> With the exception of certain long-standing tenant associations in public and federally subsidized housing, tenant associations often form in what is known in the labor context as “hot shops”: buildings where tenants are agitated over evictions, rent increases, conditions, or some other treatment by a landlord. Generally, each tenant association is left to devise its own membership structures, decision-making processes, and goals, procedurally unconstrained by explicit laws.<sup>17</sup> Working independently as neighbors or coordinating with outside organizers, tenant associations decide on internal decision-making, tactics, and goals. While tenant associations may affiliate with a wider tenant union, they may also organize completely independently and never scale their organizing beyond a single building.

Tenant unions are membership-based organizations of tenants who collectively organize across multiple properties or geographic regions to fight for material changes in their own homes and then scale their advocacy to make collective demands of landlords, lenders, developers, and government officials.<sup>18</sup> Tenant unions often draw membership from tenant

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15. This definition of “tenant” is narrower than the more sweeping, solidaristic definition popularized by the Los Angeles Tenants Union as “anyone who doesn’t control their own housing,” including the unhoused, the imprisoned, and indebted homeowners. ROSENTHAL & VILCHIS, *supra* note 11, at 12.

16. L.A. TENANTS UNION, TENANTS ASSOCIATION HANDBOOK 2 (2020), <https://latenantsunion.org/en/2021/06/25/tenants-association-handbook> [<https://perma.cc/H7ZH-FQL9>].

17. The key exceptions to this rule are tenant organizations in project-based Section 8 housing, discussed further *infra* Section I.B.4, and resident councils in public housing, discussed further *infra* Section I.B.10.

18. Neither tenant associations nor tenant unions have a consistent legal definition. I do not have a semantic preference and use the terms as defined herein for consistency in this Article. I have focused on the level at which the organizing occurs rather than on the characteristics of the organizing. *Cf.* Jamila Michener & Mallory SoRelle, *Politics, Power, and Precarity: How Tenant Organizations Transform Local Political Life*, in INTEREST GROUPS IN U.S. LOCAL POLITICS 31 (Sarah Anzia ed., 2023) (acknowledging the contested nature of

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associations and either organize those associations themselves or provide them with technical support to self-organize.

Tenant unions may join in coalitions with other tenant unions that span a particular city or state, or even the entire country. These coalitions develop their own campaigns and decision-making processes.<sup>19</sup>

Tenant organizers are individuals who seek to activate relationships between tenants to support them in building power. Tenant organizers may agitate tenants to become involved in a campaign, support individual tenants' development as leaders, and advise on or devise extralegal strategies to win concrete demands. Tenant organizers may be tenants within their own buildings, third party volunteers working independently of a particular tenant union, or affiliates or employees of a tenant union or coalition.

In opposition to tenants, tenant associations, tenant unions, coalitions, and tenant organizers are landlords, lenders, and developers. In this Article, landlords refer generally to individual or corporate owners of the properties in which tenants live and management companies employed to render maintenance services and collect rents. Landlords are also highly organized, with their own associations engaged in lobbying at all levels of government.<sup>20</sup>

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definitions and offering the following characteristics of tenant organizations: "they emphasize power building over advocacy, autonomy over financial security, and deep organizing over superficial activism").

19. A non-exhaustive list of these coalitions includes the Autonomous Tenants Union Network, Homes Guarantee Campaign of People's Action, the National Alliance of HUD Tenants, Renters Rising of the Center for Popular Democracy, the Right to the City Alliance, and the Tenant Union Federation. *See About ATUN*, AUTONOMOUS TENANTS UNION NETWORK, <https://atun-rsia.org/tenant-unions> [<https://perma.cc/S6FA-ZBAC>]; *Homes Guarantee!*, PEOPLE'S ACTION, <https://peoplesaction.org/campaigns/housing-justice> [<https://perma.cc/9YJM-5BJX>]; *Formed so Tenants Can Speak for Themselves*, NAT'L ALL. OF HUD TENANTS, <https://www.saveourhomes.org/about> [<https://perma.cc/Z4T8-NPA2>]; *Who We Are*, RENTERS RISING, <https://www.renters-rising.org/about> [<https://perma.cc/4F8T-HCRX>]; *Who We Are*, RIGHT TO THE CITY <https://www.righttothecity.org/who-we-are> [<https://perma.cc/UN99-DRFF>]; *About*, TENANT UNION FED'N, <https://tenantfederation.org/about> [<https://perma.cc/6YHK-AA76>].
20. These groups include the Bipartisan Housing Caucus, the National Apartment Association, the National Association of Realtors, the National Multifamily Housing Council, and the National Rental Home Council. *See* Patrick Sisson, *As Housing Crisis Gains National Attention, Real Estate Lobbies Look to D.C.*,

Lenders provide landlords with the financing to acquire or borrow against a building. Lenders may be banks or other institutions not subject to the same regulations as the banking sector, like private equity. Lenders are secondary targets for tenant organizers because a sizable portion of rents that tenants pay to landlords are passed on to lenders as debt service.<sup>21</sup> Lenders also have mortgage agreements with landlords that include terms concerning to tenants, like the landlord's obligation to maintain conditions at a property.<sup>22</sup> Lenders, like landlords, are heavily regulated and active in government lobbying efforts.

Developers construct and sell housing. They purchase land, secure private financing and public subsidies, seek changes in land use, design, build, market, and sell properties.

Government actors play a variety of roles in the terrain of tenant struggle. At any given time, tenant unions may rely on a city inspector to fine a landlord for poor building conditions; a public housing authority to oversee rental voucher payments; a legislator to pass beneficial laws; and a regulator, such as the Federal Housing Finance Agency ("FHFA"), to exercise oversight over the Government-Sponsored Enterprises ("GSEs") that backed a loan. The courts, particularly eviction courts, are also sites of struggle, whether through tenants defending themselves from eviction, or tenant unions using the space to connect with potential members or engage in direct action.<sup>23</sup> Finally, law enforcement are often called on by landlords

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BISNOW (May 29, 2024), <https://www.bisnow.com/national/news/top-talent/as-housing-crisis-gains-national-attention-real-estate-industry-invests-more-in-dc-124469> [<https://perma.cc/49XD-EFK3>].

21. Investors in lending institutions are also secondary or tertiary targets. *See, e.g.*, Roshan Abraham, *People Are Organizing to Fight the Private Equity Firms Who Own Their Homes*, VICE (May 16, 2023), <https://www.vice.com/en/article/jg5pek/people-are-organizing-to-fight-the-private-equity-firms-who-own-their-homes> [<https://perma.cc/PD76-WZ7Z>].
22. *See, e.g.*, *Loan Documents*, FANNIE MAE, <https://multifamily.fanniemae.com/communications-documents-forms/loan-documents> [<https://perma.cc/YAD2-6BN4>] (providing the downloadable Multifamily Loan and Security Agreement, or "Form 6001.NR," which in § 14.01(a)(10) defines failure to complete repairs related to "fire, life, or safety issues" as an "automatic Event of Default").
23. *See* Amna A. Akbar, *Justice from Below: Affirmative Organizing in the Lower Courts*, N+1 (2023), <https://www.nplusonemag.com/issue-46/politics/justice-from-below> [<https://perma.cc/TEJ3-N4ET>]; *see also* Michener, *supra* note 14, at 1399 (describing how tenant organizations draw on courts, lawyers, and legal problems as a basis for mobilizing and power building).

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to disperse tenant meetings, to remove protesters and occupiers from property, and to execute evictions.<sup>24</sup>

A nuanced understanding of landlords, lenders, and government actors also appreciates that these categories can collapse. Lenders may become landlords if they foreclose on a property. Government can tacitly back the lender where Fannie Mae or Freddie Mac, which are in government conservatorship, back a loan. Government can become the landlord if they foreclose on a tax lien on a property. Government may also be the landlord if they subsidize the housing. Tenant union law must take into account these sometimes overlapping actors as entities holding and contesting political and economic power.<sup>25</sup>

### B. Campaigns

This Section examines ten campaigns employing various forms, tactics, and strategies to scale their advocacy, to see how tenant unionism manifests in relation to the underlying public and private laws making up tenant union law. This Section argues that the law profoundly impacts tenant organizing while also not essentializing the role of law. These examples also illustrate that creative organizing, leadership development, and the courage of those willing to transgress laws has a marked impact on the success of a campaign.

#### 1. Pandemic Rent Strikes in Oakland

The rent strike is the prototypical tenant union tactic, with tenants refusing to pay rent while maintaining possession of their homes to exert leverage against their landlord in negotiations. Equally classic is the use of rent strikes as part of a general effort to induce the government to change policies impacting tenants. The COVID-19 Cancel Rent movement showcased both versions of the rent strike.<sup>26</sup> Tenants retained the right to continue living in their apartments, relying on eviction moratoria. They first

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24. Shirin Sinnar, *Civil Procedure in the Shadow of Violence*, in *A GUIDE TO CIVIL PROCEDURE: INTEGRATING CRITICAL LEGAL PERSPECTIVES* 32 (Brooke Coleman et al. eds., 2022) (discussing the state violence in the summary-eviction process); Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 297-298.

25. Homeowners play an important role in the overall advocacy terrain where tenant unions organize, but they are rarely the direct target of tenant union organizing. See Sarah Schindler & Kellen Zale, *The Anti-Tenancy Doctrine*, U. PA. L. REV. 171, 267 (2022).

26. See Dias, *supra* note 2.

denied landlords rent payments, then government-provided rental assistance, to induce negotiations.<sup>27</sup> Rent strikes evidence a primary mechanism through which tenants bargain collectively with landlords and exert systemic leverage to provoke legislative change.

At the start of the pandemic, residents of the Ivy Hill and Alice Street complexes in Oakland, California, which shared a common landlord, began to organize tenant associations with the support of the Tenant and Neighborhood Councils (“TANC”).<sup>28</sup> Meeting over Zoom amidst the COVID-19 pandemic, the tenant associations initially emailed building management requesting a rent reduction.<sup>29</sup> Ownership responded with an offer that included a 20% reduction in rent for March and April 2020, on the condition that the remaining 80% would be paid on time.<sup>30</sup> The associations’ members rejected that offer.<sup>31</sup>

On March 27, 2020, Oakland City Council enacted an eviction moratorium prohibiting evictions for nonpayment of rent if the tenant faced a substantial loss due to the pandemic and barring all rent increases.<sup>32</sup> The moratorium covered the Ivy Hill and Alice complexes. Oakland’s Just Cause for Eviction Ordinance, which entitles tenants to a renewal lease unless a landlord can demonstrate a just cause to remove them, and the Oakland Rent Adjustment Ordinance, a rent control law, also applied to the apartments.<sup>33</sup>

With the backstop of the eviction moratorium, members of the tenant associations withheld their rent. Not every tenant who withheld rent had lost income due to the pandemic; they went on rent strike in solidarity, acting in concert with their neighbors.<sup>34</sup> This served both to support those who were in arrears and to increase the leverage against the landlord to

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27. *See id.*

28. Zack Haber, ‘We’re Your Neighbors, and We’re Organized.’ *An Oakland Tenant Union Rises in the Pandemic*, OAKLANDSIDE (Mar. 22, 2022), <https://oaklandside.org/2022/03/22/how-the-pandemic-helped-birth-an-oakland-tenant-union> [<https://perma.cc/7228-ZJAN>].

29. *Id.*

30. *Id.*

31. *Id.*

32. Oakland, Cal., Ordinance 13,589 (Mar. 27, 2020), *extended by* Oakland, Cal., Ordinance 13,594 (May 19, 2020).

33. OAKLAND, CAL., CODE ch. 8.22 (2024) (providing just-cause eviction protections and regulating rents).

34. Haber, *supra* note 28.

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secure a win for everyone who might benefit. In July and August 2020, members of the union had a “phone zap,” calling the management office and the private phone numbers of the landlords, asking them to negotiate collectively with the tenants.<sup>35</sup> With many tenants withholding or unable to pay rent, the union was deliberately vague about whom they represented.<sup>36</sup>

A few months later, Congress passed two separate rental assistance packages comprised of direct payments to landlords to cover rental arrears.<sup>37</sup> While the funds would pass to landlords directly, in California, it was incumbent on tenants to apply for the funds. Here, the notion of the rent strike expanded beyond tenants refusing to make rental payments out of their own accounts. Rather than accept the government’s rental relief funds without conditions, the Ivy Hill-Alice Tenant Union negotiated an agreement whereby tenants who qualified for the assistance would receive a 10% rent abatement and those who did not would receive a 30% abatement.<sup>38</sup> The association members insisted that the agreement apply to all tenants, not just the sixty-five who participated in the rent strike.<sup>39</sup>

In the end, tenants who qualified for state or local rent relief agreed to apply for that assistance.<sup>40</sup> Those who did not qualify agreed to repay 70% of their accrued rent over a yearlong period, contributing at least \$500 per month, starting immediately.<sup>41</sup> Even after reaching this agreement, the tenant union has stayed engaged, including hosting an event where tenants could file maintenance complaints together.<sup>42</sup>

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35. *Id.*

36. *Id.* (“Casey said she used the nebulous size of the union as a tool. During negotiations, she never disclosed exactly how many people were involved in the rent strike.”).

37. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 501(a)(1), 134 Stat. 1182, 2070 (2020) (providing \$25 billion for rental assistance); American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201(a)(1), 135 Stat. 4, 54 (2020) (providing \$21.55 billion for rental assistance). Payments could also be made directly to tenants if a landlord or utility company refused to accept the funds.

38. *Oakland Rent Strike Organized by Tenant Union Ends in Concessions, IT’S GOING DOWN* (Sept. 4, 2021), <https://itsgoingdown.org/tenant-union-rent-strike-oakland-ends> [<https://perma.cc/B44N-BC7U>].

39. *Id.*

40. *See* Haber, *supra* note 28.

41. *See id.*

42. *See id.*

Tenants in the Ivy Hill-Alice Tenant Union leveraged legal protections implemented during the pandemic while also enjoying a background of strong anti-eviction mechanisms. Even if the emergency eviction moratorium had been lifted, tenants would still have had a right to a trial in eviction court and only needed to pay the balance of arrears after trial.<sup>43</sup> Following the rent strike, the tenants continue to enjoy their right to live in the apartments. Since their properties are covered by Oakland's just cause eviction and rent control ordinances, their landlord is statutorily required to renew their leases and prevented from increasing the rent so much that they would need to move. Furthermore, even if the landlord should fail to renew their leases, the tenants would still maintain their right to live in their apartment after the leases expire.<sup>44</sup>

## 2. Red State Organizing in Kansas City

Where tenants lack strong possessory rights and enjoy fewer resources for legal defense, they have developed direct action and lobbying strategies focused on government in addition to pressuring landlords as a means to secure their rights.<sup>45</sup> KC Tenants has garnered more press than most tenant unions for their success organizing in Missouri, a red state with few tenant protections.<sup>46</sup> Recognizing the limits of local organizing due to state preemption of local tenant protections, KC Tenants worked to force the federal government to implement changes that would impact Missouri

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43. See CAL. CIV. CODE § 1941 (West 2024).

44. See OAKLAND, CAL., CODE § 8.22.360 (enumerating permissible causes for eviction).

45. Jamila Michener has investigated how direct pressure tactics “[a]re particularly vital for tenants who live[] in states and localities perceived as hostile to racially marginalized populations, particularly in the South.” Jamila Michener, *Racism, Power, and Health Equity: The Case of Tenant Organizing* 42 HEALTH AFFS. 1318, 1321 (2023).

46. See sources cited *supra* note 1. While “red state” is an imperfect designation for all states with weak tenant protections, a review of the states that have preempted and barred rent control correlates with Republican-controlled legislatures. See *State Preemption of Local Equitable Housing Policies*, LOCAL SOLS. SUPPORT CTR., <https://www.supportdemocracy.org/housing-map-2020> [<https://perma.cc/5Y7S-52N>].



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renters living in properties with Fannie Mae and Freddie Mac mortgages through the Homes Guarantee Campaign.<sup>47</sup>

Rent strikes are logistically onerous, with Missouri case law permitting a judge hearing a nonpayment of rent eviction to require tenants to post all back rent as a bond before considering any conditions-related claims.<sup>48</sup> However, if the tenant successfully posts the funds, the court will then hear the tenant's claims, which can yield substantial damages.<sup>49</sup> Missouri law does not entitle tenants to renewals at the expiration of a lease, does not cap rent increases, and does not protect against retaliation for participation in a tenant union.

In this tenant-unfriendly climate, KC Tenants first attempted organizing politically at a local level. They weighed in on a mayoral race, arguably playing a decisive role in the election of Quinton Lucas, a Democrat running on a pro-tenant rights platform.<sup>50</sup> KC Tenants organized rallies, put pressure on the City Council, and ultimately secured passage of the Kansas City Tenants Bill of Rights in December 2019.<sup>51</sup> The Bill of Rights included protections related to conditions, discrimination, and retaliation for participating in a tenant union.<sup>52</sup> The Bill of Rights also committed the

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47. See Steve Dubb & Tara Raghuvver, *"The Rent Is Too Damn High!"—The Rise of a National Tenants' Movement*, NONPROFIT Q. (Dec. 13, 2023), <https://nonprofitquarterly.org/the-rent-is-too-damn-high-the-rise-of-a-national-tenants-movement> [<https://perma.cc/AQD3-NRY3>].

48. Kohner Props., Inc. v. Johnson, 553 S.W.3d 280, 285 (Mo. 2018).

49. See King v. Moorehead, 495 S.W.2d 65, 76 (Mo. Ct. App. 1973) ("[T]he tenant's damages are reasonably measured by the difference between the agreed rent and the fair rental value of the premises as they were during occupancy by the tenant in the unhealthful or unsafe condition.").

50. See *KC Mayor Quinton Lucas Signs 'Tenants Bill of Rights'*, Fox 4 (Dec. 13, 2019), <https://fox4kc.com/news/kc-mayor-quinton-lucas-to-sign-tenant-bill-of-rights> [<https://perma.cc/2RSN-YCAB>]. This approach was replicated by tenant unions in relatively more conservative states like Montana, where Bozeman Tenants United member, Joey Morrison, was elected mayor of the city of Bozeman in November 2023. See Joseph Bullington, *Can Tenants Take Back Bozeman?*, IN THESE TIMES (Apr. 1, 2024) <https://inthesetimes.com/article/tenants-bozeman-union-developments-city-hall-homeless> [<https://perma.cc/EN48-VHFM>].

51. *Committee Substitute for Resolution No. 190934*, KCMO.GOV (Dec. 12, 2019), <https://www.kcmo.gov/home/showpublisheddocument/5360/637262617325600000> [<https://perma.cc/M3PN-MA5B>].

52. *Id.*

Mayor and City Council to create a Division of Housing and Community Development (though KC Tenants had to subsequently advocate for the agency to be funded).<sup>53</sup>

In addition to mobilizing around local elections and lobbying, during the pandemic, KC Tenants staged a protest demanding a statewide eviction moratorium, while parking along I-70 between Kansas City and St. Louis.<sup>54</sup> Multiple times throughout the pandemic, KC Tenants members chained themselves to the eviction court's doors, interrupted online eviction proceedings, and held a "Zero Eviction January" in 2021, during which they employed these tactics on a daily basis until the courts shut down.<sup>55</sup> While organized tenants elsewhere in the country engaged in eviction blockades of individual properties, some commentators thought such tactics were unlikely to be successful in a "Red State".<sup>56</sup>

During the pandemic, KC Tenants also advocated at the federal level for the right to renewal leases among other protections in housing with federally backed mortgages.<sup>57</sup> As part of the People's Action Homes Guarantee campaign, KC Tenants joined organized tenants from across the country to demand that President Biden issue an executive order to

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53. Lisa Rodriguez, *Tenant Advocates Say Kansas City Mayor Lucas Has Left Them 'A String of Broken Promises'*, KCUR (Mar. 11, 2020), <https://www.kcur.org/government/2020-03-11/tenant-advocates-say-kansas-city-mayor-lucas-has-left-them-a-string-of-broken-promises> [<https://perma.cc/TPX5-E4E7>].
  54. Jesse Bogan & Jack Suntrup, *Statewide Protest Calls Attention to Plight of Missouri Renters Amid Coronavirus Outbreak*, ST. LOUIS POST-DISPATCH (Apr. 20, 2020), [https://www.stltoday.com/news/local/metro/statewide-protest-calls-attention-to-plight-of-missouri-renters-amid-coronavirus-outbreak/article\\_5ed065c4-85a7-5e75-8a24-427767b982b7.html](https://www.stltoday.com/news/local/metro/statewide-protest-calls-attention-to-plight-of-missouri-renters-amid-coronavirus-outbreak/article_5ed065c4-85a7-5e75-8a24-427767b982b7.html) [<https://perma.cc/4FWP-G3LV>].
  55. See Savannah Hawley, *KC Tenants Celebrate Major Victory as Protests Result in City-Wide Eviction Halt*, PITCH (Jan. 11, 2021), <https://www.thepitchkc.com/kc-tenants-celebrate-major-victory-as-protests-result-in-city-wide-eviction-halt> [<https://perma.cc/BW9Z-7ZMG>].
  56. Sam Russek, *The Southern Tenant Union Playbook*, SCALAWAG (Mar. 12, 2021), <https://scalawagmagazine.org/2021/03/housing-eviction-organizing-resistance> [<https://perma.cc/CGR6-U9LF>] ("Blockades in this part of the country are very, very unlikely to be effective, because the cops get called in two minutes and they have no problem escalating and arresting everyone.").
  57. Yaël Bizouati-Kennedy, *Inflation-Fueled Rent Hikes Have Tenant Unions Asking Biden to Declare State of Emergency*, YAHOO! (Aug. 10, 2022), <https://www.yahoo.com/video/inflation-fueled-rent-hikes-tenant-144545099.html> [<https://perma.cc/EJS8-JVVK>].

promote housing stability in properties with Fannie Mae or Freddie Mac mortgages.<sup>58</sup> The Biden Administration released the *Blueprint for a Renters Bill of Rights*, and KC Tenants had an audience with the Secretary of Housing and Urban Development and senior White House officials.<sup>59</sup> While not going as far as the Homes Guarantee Campaign demanded, the FHFA announced in July 2024 that landlords would be required to give tenants 30 days' notice before raising rents or ending leases in properties with federally financed mortgages.<sup>60</sup>

KC Tenants' strategy developed in relation to their members' lack of underlying possessory rights to their apartments. Rent strikes under conditions where tenants were in substantial arrears and unable to post bond could have led to swift evictions. Direct action tactics, as well as the decision to bypass the Republican-controlled state legislature and go to the Biden Administration, reflected those legal realities.

### 3. Eviction Blockades, Occupations, and Acquisitions in Boston

Rent strikes, direct action targeting the courts, and lobbying are not the only strategies employed by organized tenants. In the aftermath of the 2008 foreclosure crisis, neither state nor federal governments stepped in to stop

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58. Press Release, People's Action, Homes Guarantee Campaign Demands Federal Action on Rents; Brings 100 Tenants to DC to Present President Biden with Rent Executive Order (Nov. 14, 2022), <https://peoplesaction.org/homes-guarantee-campaign-demands-federal-action-on-rents-brings-100-tenants-to-dc-to-present-president-biden-with-rent-executive-order> [https://perma.cc/QR5A-PBBL]. For more on the initial Homes Guarantee campaign, see *A National Homes Guarantee Briefing Book*, PEOPLE'S ACTION (Sept. 5, 2019), [https://homesguarantee.com/wp-content/uploads/Homes-Guarantee-\\_Briefing-Book.pdf](https://homesguarantee.com/wp-content/uploads/Homes-Guarantee-_Briefing-Book.pdf) [https://perma.cc/Y7CL-5SZ3].

59. Domestic Pol'y Council & Nat'l Econ. Council, *The White House Blueprint for a Renters Bill of Rights*, WHITE HOUSE (Jan. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf> [https://perma.cc/6Q5H-63XM]; Ramenda Cyrus, *The Tenants Who Went to Washington*, AM. PROSPECT (Feb. 9, 2023), <https://prospect.org/power/2023-02-09-tenants-rental-housing-policy> [https://perma.cc/CL5Y-UJT9].

60. *FHFA Announces New Multifamily Tenant Protections as Part of Commitment to Advance Resident-Centered Practices at Enterprise-Backed Properties*, FED. HOUS. FIN. AGENCY (July 12, 2024), <https://www.fhfa.gov/blog/insights/new-multifamily-tenant-protections> [https://perma.cc/8RXG-DJP4].

wholesale evictions as they did during the COVID-19 pandemic.<sup>61</sup> In the absence of stringent protections, homeowners and tenants alike relied on court processes and direct action to secure and maintain shelter. In Boston, Massachusetts, this took the form of mass eviction defense, eviction blockades, and the re-occupation of vacant homes.<sup>62</sup>

The non-profit tenant union City Life/Vida Urbana commenced a campaign to keep homeowners and tenants alike in their homes, including after foreclosure. Partnering with community members, attorneys, and law students, City Life canvassed newly foreclosed properties, relying on public notices of foreclosure to find the addresses.<sup>63</sup> Canvassers invited homeowners and tenants to meetings at City Life, where members joined their Bank Tenants Association and shared their stories of common struggle and learned about organizing strategies, such as direct action tactics and eviction defense proceedings, described as the “sword and the shield.”

The shield included both eviction defense in court and eviction blockades. The collective determination of the Bank Tenants Association’s members to assert every available defense in eviction court created a bottleneck in the Boston eviction court system, leading to massive bureaucratic costs on the court as well as the law firms contracted to bring these eviction proceedings.<sup>64</sup> Where an eviction case progressed to a judgment of possession for the new building owners, the Bank Tenants Association members did not defer to the decision.<sup>65</sup> Members formed

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61. The furthest the federal government went was passing the Protecting Tenants at Foreclosure Act, which required that tenants be provided with only ninety days’ notice to leave after foreclosure. Pub. L. No. 111-22, § 702(a), 123 Stat. 1632, 1660-61 (2009) (codified as amended at 12 U.S.C. § 5220).

62. The author was part of clinical team that coordinated with City Life/Vida Urbana’s organizers and represented its members as a student attorney with the Harvard Legal Aid Bureau between 2013 and 2015. He canvassed foreclosed properties through Project No One Leaves with other student volunteers from 2012 to 2015. The author wishes to credit City Life’s members and organizers, and all of the students, attorneys, and professors supporting their work, for the strategies described herein, developed through the efforts of many committed individuals.

63. Nicholas Hartigan, *No One Leaves: Community Mobilization as a Response to the Foreclosure Crisis in Massachusetts*, 45 HARV. C.R.-C.L. L. REV. 181, 197 (2010).

64. *Id.*

65. See Steve Meacham, *A Conversation on Organizing Models for Social Justice Struggles in the City*, in USES OF A WHIRLWIND: MOVEMENT, MOVEMENTS, AND

eviction blockades, surrounding the affected properties.<sup>66</sup> Inviting press and cameras, they sought to convey the immorality of removing low-income Black and brown homeowners and tenants, victims of systemic financial fraud, during a time of economic crisis.<sup>67</sup> Even where a blockade was unsuccessful, organizers reoccupied the empty home, illustrating the depravity of evicting homeowners and tenants only to leave a property vacant.<sup>68</sup>

The shield created time for the sword, the Bank Tenants Association's advocacy and negotiations with policymakers and lenders, to play out. City Life, in coalition with the Right to the City Alliance, called on the FHFA to negotiate with neighborhood non-profits and community banks to keep more homeowners and tenants in their homes.<sup>69</sup> As a result of the FHFA negotiations, some Bank Tenants Association members negotiated loan modifications and bought back their foreclosed homes.<sup>70</sup> Some lenders sold foreclosed properties to the Boston Neighborhood Community Land Trust, which employed deed restrictions and subsidies to make the properties

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CONTEMPORARY RADICAL CURRENTS IN THE UNITED STATES 84 (Team Colors Collective ed., 2010) (“[I]t challenges the system because people are taking direct action, they’re not simply going through legal channels, but are going outside of legal channels to defend an individual or a family’s home, and insisting on their moral right to take those actions.”).

66. See Micah Uetricht, *Home Is Where the Fight Is*, IN THESE TIMES (Mar. 7, 2011), <https://inthesetimes.com/article/home-is-where-the-fight-is> [<https://perma.cc/3TYV-3UXJ>].
67. Similar tactics were employed in Minneapolis and Detroit. Alexandra Bradbury, *Home Is Where the Fight Is*, LABOR NOTES (Mar. 5, 2013), <https://labornotes.org/2013/03/home-where-fight> [<https://perma.cc/WX3X-A7BN>].
68. Claire McNeill, *Protestors Occupy Vacant House, Rally for Housing*, BOS. GLOBE (June 8, 2014), <https://www.bostonglobe.com/metro/2014/06/07/protestors-occupy-vacant-house-and-rally-for-affordable-housing/tONgSS9pnRtpATqGvetz5N/story.html> [<https://perma.cc/3B92-X9GL>]; see also Schneider, *supra* note 6, at 409 (describing the Occupy Our Homes Movement in the wake of the foreclosure crisis).
69. Chris Faraone, *City Lifeline: Will Boston Lead the Country out of Foreclosure?*, CITY LIFE VIDA URBANA, (June 17, 2014) [https://www.clvu.org/city\\_lifeline\\_will\\_boston\\_lead\\_the\\_country\\_out\\_of\\_foreclosure](https://www.clvu.org/city_lifeline_will_boston_lead_the_country_out_of_foreclosure) [<https://perma.cc/248F-9LGF>].
70. See, e.g., Eloise Lawrence, *When We Fight, We Win: Eviction Defense as Subversive Lawyering*, 90 FORDHAM L. REV. 2125, 2141-2142 (2022).

permanently affordable.<sup>71</sup> While only a small portion of foreclosed properties were ultimately added to the Community Land Trust, nearly ten years later these properties remain affordable for former homeowners and tenants, secured through City Life's sword and shield strategy.

#### 4. Privately Owned, Federally Subsidized Foreclosure in Chicago

Contrary to the experience in Boston, there are times when tenant unions may seek the appointment of an independent receiver to take over property and even provoke foreclosure to secure a change in ownership in cases where the landlord has allowed property conditions to degrade.<sup>72</sup> In the case of the Ellis Lakeview Tenant Association in Chicago, Illinois, organized tenants partnered with the Tenant Education Network to pursue these remedies in a privately owned building with federally subsidized rents.<sup>73</sup> Notably, project-based Section 8 buildings are subject to federal regulations that explicitly outline the rights and responsibilities of tenant associations.<sup>74</sup> However, the Ellis Lakeview Tenant Association recognized the limitations of the federal framework for tenant organizing and succeeded in putting pressure on the landlord's lenders through receivership and foreclosure.

The Ellis Lakeview Apartments are privately owned, publicly subsidized project-based Section 8 apartments purchased by Apex Chicago

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71. *Id.* at 2149. For more discussion of community land trusts, see generally James J. Kelly Jr., *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69 (2009).

72. Tenants organizing with Inquilinos Unidos por Justicia in Minneapolis, Minnesota won such a receivership, evicting their landlord. Matthew Desmond, *The Tenants Who Evicted Their Landlord*, N.Y. TIMES MAG. (Oct. 13, 2020), <https://www.nytimes.com/2020/10/13/magazine/rental-housing-crisis-minneapolis.html> [<https://perma.cc/TU4U-ZFAH>]. A similar legal tactic has been employed by New York City tenant associations since 1967. See Greg Baltz, *Resurrecting the Rent Strike Law: A Bridge from Neglect to Social Housing for New York State*, 26 U. PA. J.L. & SOC. CHANGE 1 (2023).

73. Alejandra Cancino, *In Rare Move, Freddie Mac Files Suit Against South Side Landlord*, INJUSTICE WATCH (Aug. 8, 2023), <https://www.injusticewatch.org/news/housing/2023/ellis-lakeview-freddie-mac-lawsuit> [<https://perma.cc/8SUA-2FDV>].

74. 24 C.F.R. § 245.100 (2024) (detailing the right of project-based Section 8 housing tenants to organize).

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in 2019.<sup>75</sup> Apex receives federal rent subsidies tied to each of the 110 apartments in this eleven-story building.<sup>76</sup> The landlord further received financing to purchase or refinance the property through Freddie Mac.<sup>77</sup>

Unlike most tenants across the United States, the Ellis Lakeview tenants and all other tenants living in project-based Section 8 housing have a legal regime for tenant organizing.<sup>78</sup> Federal regulations govern the creation, internal governance, and powers of these federally recognized “legitimate tenant organizations.”<sup>79</sup> Tenants, whether or not they have established a “legitimate tenant organization,” enjoy a right to organize.<sup>80</sup> After having elected “legitimate tenant organizations,” building management is required to “[g]ive reasonable consideration to concerns raised by legitimate tenant

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75. Christian Belanger & Marc Monaghan, *Tenants at Kenwood Apartments Call for New Ownership, Say That Building Has Been Severely Neglected*, HYDE PARK HERALD (Mar. 4, 2021), [https://www.hpherald.com/evening\\_digest/tenants-at-kenwood-apartments-call-for-new-ownership-say-that-building-has-been-severely-neglected/article\\_fd61e65e-7c79-11eb-92df-cfaf48500939.html](https://www.hpherald.com/evening_digest/tenants-at-kenwood-apartments-call-for-new-ownership-say-that-building-has-been-severely-neglected/article_fd61e65e-7c79-11eb-92df-cfaf48500939.html) [<https://perma.cc/5KQ7-CNMN>].
76. *Id.* As part of the receipt of subsidies, project-based Section 8 contracts require that the landlord will “maintain the unit and premises in accordance with the [Housing Quality Standards].” *Tenancy Addendum: Section 8 Project-Based Voucher Program, Form HUD 52530.c*, U.S. DEP’T OF HOUS. & URB. DEV. (Apr. 2023), <https://www.hud.gov/sites/dfiles/OCHCO/documents/52530CENG.pdf> [<https://perma.cc/L5VC-J3QL>]; *see also* 24 C.F.R. § 5.703 (2024) (establishing standards for the condition of U.S. Department of Housing and Urban Development (“HUD”) housing).
77. Mortgage from Apex Chicago Ill. LLC to Jones Lang LaSalle Multifamily LLC, Cook Cnty. Recorder Doc. No. 1921434148 (Aug. 2, 2019) (on file with author); Assignment of Security Instrument from Jones Lang LaSalle Multifamily LLC to Federal Home Loan Mortgage Corp., Cook Cnty. Recorder Doc. No. 1921434149 (Aug. 2, 2019) (on file with author).
78. The National Alliance of HUD Tenants, which fought for these regulations, has affiliates in twenty-eight states and the District of Columbia organizing in project-based Section 8 housing and public housing that has undergone Rental Assistance Demonstration (“RAD”) conversions. *NAHT Network*, NAT’L ALL. OF HUD TENANTS, [https://www.saveourhomes.org/naht\\_network](https://www.saveourhomes.org/naht_network) [<https://perma.cc/2F9N-5FAQ>].
79. 24 C.F.R. § 245.110 (2024). For the sake of consistency, I will refer to building-based groups organizing in project-based Section 8 housing as tenant associations throughout this Article except when referring specifically to this regulation.
80. 24 C.F.R. § 245.100 (2024).

organizations.”<sup>81</sup> If a landlord fails to maintain the property or honor tenants’ organizing rights, the tenants may file an underenforced complaint with the U.S. Department of Housing and Urban Development (“HUD”) seeking the owner’s debarment from the subsidy program.<sup>82</sup>

The Ellis Lakeview Tenant Association initially attempted to use the remedies available to them under federal regulations, demanding that HUD withdraw rental subsidies based on the conditions of the premises.<sup>83</sup> That demand led HUD to send Apex a letter requesting repairs and compliance.<sup>84</sup> Seeing no results, in spring 2021, the Tenant Association put pressure on the City of Chicago to initiate suit against Apex for code violations. Then, deciding such a measure would be insufficient, the Tenant Association pivoted to demanding the appointment of a rental receiver, an independent third party to collect rents and manage the property.<sup>85</sup> In August 2021, the Tenant Association won the support of elected officials in their call for the City of Chicago to file a receivership suit, which the City ultimately did.<sup>86</sup>

The receivership suit did not succeed, and the court instead ordered Apex to replace its apartment manager and fund the repairs itself.<sup>87</sup>

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81. 24 C.F.R. § 245.105 (2024).

82. 24 C.F.R. § 245.135 (2024). In 2019, tenants celebrated the first instance of HUD issuing a notice to any landlord who interfered with the right to organize. Sandy Rollins, *HUD Finally Puts a Landlord on Notice for Interfering with the Right to Organize*, SHELTERFORCE (July 24, 2019), <https://shelterforce.org/2019/07/24/after-19-years-hud-finally-puts-a-landlord-on-notice-for-interference-with-the-right-to-organize> [<https://perma.cc/BY46-MD56>].

83. Belanger & Monaghan, *supra* note 75.

84. *Id.*; Christian Belanger, *Kenwood Tenants Say They’re Still Fighting Dangerous, Unsanitary Living Conditions*, HYDE PARK HERALD (Jan. 4, 2022), [https://www.hpherald.com/news/local/kenwood-tenants-say-theyre-still-fighting-dangerous-unsanitary-living-conditions/article\\_8b3235e6-6cd0-11ec-83a8-f7c32e4190ca.html](https://www.hpherald.com/news/local/kenwood-tenants-say-theyre-still-fighting-dangerous-unsanitary-living-conditions/article_8b3235e6-6cd0-11ec-83a8-f7c32e4190ca.html) [<https://perma.cc/U8ZW-BF6W>].

85. Belanger, *supra* note 84. The Tenant Association was represented by the Shriver Center on Poverty Law.

86. Maxwell Evans, *Ellis Lakeview Tenants, Elected Officials Demand Independent Property Manager After 2 Years of Failed Inspections*, BLOCK CLUB CHI. (Aug. 11, 2021), <https://blockclubchicago.org/2021/08/11/ellis-lakeview-tenants-elected-officials-demand-independent-property-manager-after-2-years-of-failed-inspections> [<https://perma.cc/4LKE-4R54>].

87. Wendy Rosen, *Tenants Living in South Side Affordable Apartments Continue Their Fight for Receivership*, STREETWISE CHI. (Mar. 12, 2023),



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However, on at least two occasions Apex failed to replenish the fund designated for repairs.<sup>88</sup> In August 2022, Tenant Association members filed a class action suit against Apex for failure to maintain the premises, failure to pay interest on security deposits, negligence, and breach of the warranty of habitability.<sup>89</sup>

Operating on multiple fronts, the Tenant Association refocused its advocacy on Freddie Mac, one of two GSEs that effectively underwrite private mortgages and which held the mortgage note on the property.<sup>90</sup> The Tenant Association decided to push for foreclosure as a mechanism to completely remove the offending landlord from the equation.<sup>91</sup> The Tenant Association sought the support of government officials to apply pressure on Freddie Mac as a uniquely positioned party that could shift their campaign.<sup>92</sup> On August 6, 2023, Freddie Mac filed for foreclosure and sought appointment of a receiver.<sup>93</sup> Crucially, nowhere in its filing does Freddie Mac allege that Apex failed to make monthly mortgage payments. Instead, the alleged default is based on a breach of the mortgage terms requiring the owner to maintain the collateral in good repair.<sup>94</sup>

On January 12, 2024, the judge in the receivership case initiated by the City of Chicago, not in Freddie Mac's foreclosure action, ordered the appointment of a receiver to the Ellis Lakeview Apartments.<sup>95</sup> The Ellis Lakeview Tenant Association's struggle to secure repairs remains ongoing

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[https://issuu.com/StreetWise\\_CHI/docs/mar6-12\\_2023\\_issuu/s/19962404](https://issuu.com/StreetWise_CHI/docs/mar6-12_2023_issuu/s/19962404)  
[<https://perma.cc/X7FQ-B9UU>].

88. *Id.*

89. Complaint at 1, *Hammond v. Apex Chicago Ill. LLC*, No. 2022CH08404 (Ill. Cir. Ct. Aug. 25, 2022).

90. Cancino, *supra* note 73.

91. *Id.*

92. *Id.*

93. *Id.*

94. This is a standard provision of no-recourse loans, whether government-backed or not.

95. Maxwell Evans, *Troubled Ellis Lakeview Apartments Get New Operator After Owner 'Abandoned the Property,' Feds Say*, BLOCK CLUB CHI. (Jan. 12, 2024), <https://blockclubchicago.org/2024/01/12/troubled-ellis-lakeview-apartments-get-new-operator-after-owner-abandoned-the-property-feds-say> [<https://perma.cc/U8RT-LA54>].

as they wait to see whether the receiver performs the work the owner would not.<sup>96</sup>

##### 5. Private Lender Portfolios and Coalition Building in New York City

Even where a mortgagee is not a GSE, tenant unions may scale their organizing beyond one common landlord by organizing buildings across one lender's portfolio. In 2016, the Stabilizing NYC Coalition in New York City, a coalition of tenant unions, advocacy organizations, and legal services providers, initiated a campaign against Signature Bank to alter its lending practices for properties with different owners.<sup>97</sup>

Signature Bank was the mortgagee for one-third of the 100 landlords on the New York City Public Advocate's annual Worst Landlord Watchlist, the vast majority of whose properties were rent stabilized.<sup>98</sup> After identifying Signature Bank as a target, Stabilizing-affiliated tenant unions drew on their existing membership from the building-based tenant association campaigns they had already led, and focused new organizing on buildings with Signature-originated mortgages. The tenants lived in rent stabilized units,

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96. Alejandra Cancino & Maya Dukmasova, *Few Wins for Tenants Suing Landlords*, INJUSTICE WATCH (Aug. 7, 2024), <https://www.injusticewatch.org/project/tenant-trap/2024/tenant-class-action-lawsuits> [https://perma.cc/PEE4-HG33].

97. The author was a staff attorney with the Housing Justice team at TakeRoot Justice (formerly the Community Development Project at the Urban Justice Center) from 2017 to 2021, where he represented individual tenant associations organized by Stabilizing NYC affiliates. The author wishes to credit the incredible bloc of tenants, organizers, researchers, and legal services providers who developed the strategies described herein.

98. Rosalind Adams & Bianca Pallaro, *How the Sale of Signature Bank's Huge Mortgage Portfolio Could Change the Lives of NYC's Tenants*, CITY (Oct. 12, 2023), <https://www.thecity.nyc/2023/05/03/signature-bank-mortgages-tenants-rent-stabilized-worst-landlords> [https://perma.cc/2EEB-XRT8]. Signature Bank was one of the largest lenders for rent stabilized properties in New York City and provided \$4.5 billion in financing for multifamily properties in 2016 alone. *The Top 5 Commercial Lenders in New York*, JANOVER COM. REAL ESTATE LOANS, <https://www.commercialrealestate.loans/top-5-commercial-lenders-in-new-york> [https://perma.cc/6XTA-8R5B] (Oct. 24, 2022). Tenant unions across the country are increasingly targeting lenders and their investors. *See, e.g.*, Abraham, *supra* note 21.

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and that specific regulatory framework incentivized harassment.<sup>99</sup> Although rent stabilization guaranteed a renewal lease and limited annual rent increases, baked into its legal framework were mechanisms to raise rents and deregulate apartments by displacing tenants.<sup>100</sup>

As part of their overarching strategy, these tenant unions flooded landlords with Signature-originated loans with a mass of tenant-initiated summary proceedings in eviction court demanding repairs based on housing code violations,<sup>101</sup> Article 7-A actions to win the appointment of an independent receiver to manage their buildings,<sup>102</sup> and administrative claims under New York’s rent stabilization laws based on illegal reductions in services or renovations-based rent increases.<sup>103</sup> The unions also provided the New York State Attorney General’s Office with information necessary to file suit.<sup>104</sup>

Stabilizing also mobilized members to advocate directly with Signature’s shareholders. At one shareholder meeting, Stabilizing members protested outside while one tenant who had purchased Signature stock participated in the meeting as a shareholder.<sup>105</sup> He delivered a letter demanding that Signature implement higher underwriting standards so

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99. New York State’s rent regulations differentiate between “rent stabilized” and “rent controlled.” This Article uses the term “rent stabilized” when referring to properties in New York City, and otherwise consistently uses the general term, “rent control.”

100. See Craig Gurian, *Let Them Rent Cake: George Pataki, Market Ideology, and the Attempt to Dismantle Rent Regulation in New York*, 31 *FORDHAM URB. L.J.* 339, 367 (2004) (detailing the 1997 effort to incorporate vacancy decontrol into New York State’s rent regulation laws, creating an incentive for landlords to remove long-term tenants).

101. See, e.g., N.Y. CITY CIV. CT. ACT § 110(c) (LexisNexis 2024); N.Y.C., ADMIN. CODE § 27-2115(h) (2024).

102. N.Y. REAL PROP. ACTS. LAW §§ 769-83 (McKinney 2024).

103. N.Y. COMP. CODES R. & REGS. tit. 9, § 2202.16 (2023).

104. Press Release, Letitia James, New York State Attorney General, Attorney General James Stops New York City Landlords that Harassed Rent-Stabilized Tenants and Lied to Bank (Aug. 5, 2022), <https://ag.ny.gov/press-release/2022/attorney-general-james-stops-new-york-city-landlords-harassed-rent-stabilized> [<https://perma.cc/LWK8-9EYM>].

105. *The Tenant Activism Behind Signature Bank’s New Lending Policies*, ASS’N FOR NEIGHBORHOOD & HOUS. DEV. (July 26, 2018), <https://anhd.org/blog/tenant-activism-behind-signature-bank%E2%80%99s-new-lending-policies> [<https://perma.cc/9MEQ-2EYJ>].

that the debt-funded purchase price of a rent stabilized property did not build into its valuation the expectation that the landlord would pursue a campaign of deregulation.<sup>106</sup> The coalition also signaled to regulators that Signature Bank's lending practices were not in compliance with the Community Reinvestment Act ("CRA"), the federal law governing banks' commitments to lower-income communities.<sup>107</sup> In July 2018, in response to this public and regulatory pressure, Signature Bank committed to best practices in multifamily housing lending included in the letter delivered at the shareholder meeting.<sup>108</sup>

Many of the same tenants who mobilized against Signature participated in three other successful coalitions at that time: the Rent Justice Coalition, the Right to Counsel Coalition, and Housing Justice for All. The Rent Justice Coalition ("RJC") organized every summer to put pressure on New York City's Rent Guidelines Board, the body that sets rent increase guidelines for the rent stabilized apartments where members lived.<sup>109</sup> RJC members

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106. Letter from Ass'n for Neighborhood & Hous. Dev. et al., to Joseph DePaolo, Chief Exec. Officer, Signature Bank & Bd. of Dirs., Signature Bank (Apr. 20, 2017), <https://anhd.org/wp-content/uploads/2017/04/Letter-to-Signature-Bank-Board-of-Directors-4-20-17.pdf> [https://perma.cc/C44F-8NL7]; *Best Practices in Multifamily Lending*, ASS'N FOR NEIGHBORHOOD & HOUS. DEV., [https://anhd.org/wp-content/uploads/2017/06/ANHD\\_Best-Practices-in-Multifamily-Lending.pdf](https://anhd.org/wp-content/uploads/2017/06/ANHD_Best-Practices-in-Multifamily-Lending.pdf) [https://perma.cc/H6P5-6PZ6].
107. *Bad Landlord, Bad Lending*, ASS'N FOR NEIGHBORHOOD & HOUS. DEV. (Dec. 13, 2016), <https://anhd.org/blog/bad-landlord-bad-lending> [https://perma.cc/9AAW-R9J8]. Although not directly related to Stabilizing's ultimate goal, including CRA federal regulators threatened to expand the scope of conflict.
108. *ANHD Applauds Signature Bank's Newly Released Commitment to Best Practices for Multifamily Real Estate Lending*, ASS'N FOR NEIGHBORHOOD & HOUS. DEV. (July 19, 2018), <https://anhd.org/press-release/anhd-applauds-signature-banks-newly-released-commitment-best-practices-multifamily> [https://perma.cc/VR4D-U86Q].
109. The Rent Guidelines Board is a tripartite rent board comprised of two tenant representatives, two landlord representatives, and five public representatives—all selected by the mayor. N.Y. UNCONSOL. LAW § 8626 (McKinney 2024); N.Y.C., ADMIN. CODE § 26-510(a) (2024). Every summer, the Board holds public meetings in each New York City borough before making a decision on the rent increase guidelines for rent stabilized apartments for the following year. N.Y.C., ADMIN. CODE § 26-510(h) (2024); *see, e.g.*, Naiesha Rose, *Queens Tenants Rally in Jamaica Against Rent Increase in Front of Stabilization Board Members*, QNS (June 8, 2017), <https://qns.com/2017/06/queens-tenants-rally-in-jamaica-against-rent-increases-in-front-of-stabilization->

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marshaled tenants to testify at the Board’s public meetings against rent increases and to demand rent rollbacks.<sup>110</sup> Some Stabilizing members also organized a city-wide effort to pass a right to counsel in eviction proceedings as an additional measure that would protect tenants.<sup>111</sup> Lastly, Housing Justice for All, a statewide coalition, and their legislative allies secured a major overhaul in rent stabilization laws across New York State called the Housing Stability and Tenant Protection Act.<sup>112</sup> This legislation stripped from the law many of the deregulatory incentives that organizers identified as incentives for predatory landlords and investors to displace and harass long-term, rent stabilized residents.<sup>113</sup> These efforts are illustrative of how tenant organizers engage in contestation at the building or tenant association level, while also scaling advocacy through lender portfolio organizing, sectoral mobilization, and organizing around state preemption.

### 6. Supportive Housing Tenants in New York City

Even in cities widely considered to have strong tenant protections, there are types of housing and individual tenants who may be excluded. On the margins of tenancy in New York City are the residents of supportive housing. The supportive housing model offers affordable housing with supportive social services for people who are unhoused or are at risk of becoming unhoused.<sup>114</sup> Chronically unhoused residents placed in supportive housing are entitled to on- and off-site caseworker services.

Service providers either lease an entire building or multi-unit property from a private landlord or lease multiple apartments scattered across multiple buildings, then place program participants in those units.<sup>115</sup> While

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board-members [<https://perma.cc/DX7B-EC3F>] (describing Queens borough tenants' efforts to prevent rent increases for rent stabilized apartments).

110. Rose, *supra* note 109. Recurring hearings—whether in a city council or administrative agency with direct control over rent setting or conditions—provide a basis for recurring tenant mobilization.

111. *See* Whitlow, *supra* note 12.

112. 2019 N.Y. Laws ch. 36.

113. *See id.*

114. *See* Hum. Res. Admin., *Supportive and Affordable Housing and Services*, N.Y.C. DEP’T OF SOC. SERVS., <https://www.nyc.gov/site/hra/help/supportive-housing.page> [<https://perma.cc/5AGD-UUH9>].

115. *See id.* (distinguishing congregate and scatter-site models).

New York State recommends that tenants in supportive housing receive a direct lease with their landlord, it is legally permissible for supportive housing tenants to sign a sublease with the providers, often in the form of an “occupancy agreement” that may be more restrictive than a typical lease agreement.<sup>116</sup> Nonetheless, supportive housing tenants residing in an apartment for more than thirty days are lawful occupants and enjoy the same legal protections as a tenant who signs their lease directly with the landlord.<sup>117</sup> However, some supportive housing caseworkers misinform tenants as to their rights, stating that they cannot organize or join a tenant association, request repairs, or make complaints to code enforcement.<sup>118</sup> As a result, bad-acting landlords allow the properties to deteriorate without the residents having a clear understanding of their rights to organize or demand repairs.<sup>119</sup>

In 2021, the Supportive Housing Organized and United Tenants (“SHOUT”) came together as a group of currently or formerly unhoused tenants and applicants navigating the New York City supportive housing system across disparate boroughs, buildings, and agencies.<sup>120</sup> SHOUT

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116. *Supportive Housing Guidelines*, N.Y. OFF. OF MENTAL HEALTH 13 (2022), [https://omh.ny.gov/omhweb/adults/supportedhousing/supportive\\_housing\\_guidelines.pdf](https://omh.ny.gov/omhweb/adults/supportedhousing/supportive_housing_guidelines.pdf) [<https://perma.cc/MQ8W-CN78>].

117. *See* N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 2024) (“A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. . . . No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding.”).

118. *E.g.*, Michael Gartland, *Bronx Woman Ordered to Stop Calling 311 with Complaints About Horrible Conditions—or Risk Losing Her Apartment*, N.Y. DAILY NEWS (Nov. 12, 2019), <https://www.nydailynews.com/2019/11/12/bronx-woman-ordered-to-stop-calling-311-with-complaints-about-horrible-conditions-in-her-subsidized-housing-or-risk-losing-her-apartment> [<https://perma.cc/GM37-9ELK>].

119. David Brand, *‘It’s Like a Slum’: Supportive Housing Tenants Cope with Violation-Filled Homes. Provider Blames Underfunding*, CITY LIMITS (July 13, 2022), <https://citylimits.org/2022/07/13/its-like-a-slum-supportive-housing-tenants-cope-with-violation-filled-homes-provider-blames-underfunding> [<https://perma.cc/X6RC-NTCA>].

120. Los Angeles tenants in similarly precarious states of housing organized as the Unhoused Tenants Against Carceral Housing (UTACH, pronounced “attack”), including residents of the Echo Park Lake encampment who were evicted by

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created space for members to meet online and connect with other tenants not based in the same building or neighborhood.

SHOUT's members led a legislative campaign and ultimately secured passage of the first supportive housing bill of rights, which mandates that city-funded supportive housing providers notify all residents of whether their unit is rent stabilized, their right to reside in a unit fit for human habitation, and their corresponding rights to file suit.<sup>121</sup> The bill of rights also requires the supportive housing provider provide tenants with the name of the government agency contracting their supportive housing program and how to file a complaint against the program.<sup>122</sup> SHOUT also won a new law requiring the New York City Department of Social Services to send the city council a detailed annual report on supportive housing

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the City of Los Angeles and moved into Project Roomkey, a supportive housing location. See Tracy Rosenthal, *Inside LA's Homeless Industrial Complex*, NEW REPUBLIC (May 19, 2022), <https://newrepublic.com/article/166383/los-angeles-echo-park-homeless-industrial-complex> [<https://perma.cc/ML3P-RVQ3>]; Zarina Khairzada, *Homeless Residents Say Project Roomkey Restrictions Feel Like 'Jail'*, SPECTRUMNEWS1 (May 20, 2021), <https://spectrumnews1.com/ca/la-east/homelessness/2021/05/20/unhoused-residents-say-project-roomkey-restrictions-feel-like--jail-> [<https://perma.cc/6PA9-TK6V>]. Earlier successes in organizing among the precariously housed in New York City include Picture the Homeless and three-quarter housing organizing. See Lynn Lewis, *The Picture the Homeless Oral History Project*, COLUM. ORAL HIST. MASTER OF ARTS, <https://oralhistory.columbia.edu/2018-the-picture-the-homeless-oral-history-project> [<https://perma.cc/8MY7-L5TS>]; *Banking on Vacancy: Homelessness and Real Estate Speculation*, PICTURE THE HOMELESS (Jan. 1, 2012), <https://search.issueab.org/resources/14899/14899.pdf> [<https://perma.cc/BBD3-GRBJ>]; Matthew Main, *Making Change Together: The Multi-Pronged, Systems Theory Approach to Law and Organizing that Fueled a Housing Justice Movement for Three-Quarter House Tenants in New York City*, 27 GEO. J. ON POVERTY L. & POL'Y 33 (2019) (providing a history of the three-quarter housing organization movement).

121. N.Y.C., ADMIN. CODE § 21-149 (2024); Jeanmarie Evely, *'Bill of Rights' Law for NYC Supportive Housing Tenants Went into Effect Last Week, But Word Isn't Getting Out*, CITY LIMITS (May 18, 2022), <https://citylimits.org/2022/05/18/bill-of-rights-law-for-nyc-supportive-housing-tenants-went-into-effect-last-week-but-word-isnt-getting-out> [<https://perma.cc/KHU8-46V4>].

122. N.Y.C., ADMIN. CODE § 21-149 (2024).

placement and applicant data, including the (often discriminatory) bases for denial from supportive housing placements.<sup>123</sup>

Following this victory, SHOUT members drew on the data obtained in the annual report to launch the Safe, Accountable, and Fair for Everyone Campaign (“SAFE”).<sup>124</sup> Through SAFE, SHOUT members demand reforms from the government agencies that monitor supportive housing providers as well as from the providers themselves. Demands include that supportive housing providers stop discriminating against applicants on the basis of disability, language, race, gender, or sexual orientation; provide high-quality repairs and services; stop renting from known slumlords; and stop evicting supportive housing tenants and, instead, support tenants to resolve any issues and maintain their housing.<sup>125</sup>

## 7. Formalized Collective Bargaining in San Francisco

Tenant unions in San Francisco, California pursued an alternative approach to portfolio-based organizing. In February 2022, at the urging of the Housing Committee of San Francisco and the Veritas Tenants Association (“VTA”), the San Francisco Board of Overseers passed the only current landlord-tenant collective bargaining statute in the country.<sup>126</sup>

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123. N.Y.C., Local Law 3 (Jan. 9, 2022); *Detailed Report on Supportive Housing Data*, N.Y.C. DEP’T OF SOC. SERVS. (Aug. 30, 2022), <https://www.nyc.gov/assets/hra/downloads/pdf/news/HRA-Local-Law-3-CFY2022-08302022.pdf> [<https://perma.cc/XY7Y-7KUL>].

124. Anita Coote et al., *It’s Time for Supportive Housing to Live Up to Its Name*, CITY LIMITS (Apr. 25, 2023), <https://citylimits.org/2023/04/25/opinion-its-time-for-supportive-housing-to-live-up-to-its-name> [<https://perma.cc/9QEY-8AEK>].

125. *S.A.F.E. Campaign*, SHOUT NYC, <https://shoutnyc.org/safe-campaign> [<https://perma.cc/67WY-V8HQ>].

126. S.F., CAL., ADMIN. CODE § 49A.4 (2024); Noah Arroyo, *SF Tenants Set to Gain New Powers in Negotiations with Landlords*, S.F. PUB. PRESS (Feb. 16, 2022), <https://www.sfpublishpress.org/sf-tenants-to-gain-new-powers-in-negotiations-with-landlords> [<https://perma.cc/5MET-PLVW>]; *San Francisco Approves Nation’s Strongest Set of Tenant Union Protections*, REAL DEAL (Feb. 17, 2022), <https://therealdeal.com/sanfrancisco/2022/02/17/san-francisco-approves-nations-strongest-set-of-tenant-union-protections> [<https://perma.cc/M6F9-WDVM>]. While it is the only current such statute, the Tenant Union Federation has included a similar provision in their proposed National Tenants Bill of Rights, co-authored by the National Housing Law



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In 2011, Veritas, a corporate landlord, acquired a large, rent controlled portfolio in San Francisco.<sup>127</sup> By 2017, tenants organized the VTA across multiple Veritas-owned properties with the support of the non-profit Housing Rights Committee of San Francisco (the “Housing Rights Committee”).<sup>128</sup> Initially, VTA focused on Veritas’s alleged business model of vacating rent controlled apartments through harassment and eviction and utilizing “vacancy decontrol” to bring those units up to market prices.<sup>129</sup> In 2018, 68 tenants in 30 buildings sued Veritas for unfair business practices<sup>130</sup> and crashed a benefit honoring Yat-Pang Au, the company’s CEO, carrying a “Spirit of Greed, Eviction and Harassment” trophy.<sup>131</sup> One-hundred additional tenants sued Veritas again in 2019.<sup>132</sup>

The spread of COVID-19 during March 2020 altered the VTA’s tactics. After passage of the American Rescue Plan Act of 2021, states obtained

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Project and the National Low Income Housing Coalition. *National Tenants Bill of Rights*, *supra* note 9, at 35. One such law was in place in Madison, Wisconsin from 1978 to 1981, but the author has not found any studies analyzing its efficacy. MADISON, WIS., Ordinance 6098 (Nov. 15, 1977).

127. Liza Veale, *S.F.’s Largest Landlord Sued over Alleged Efforts to Push Out Tenants*, S.F. PUB. PRESS (Oct. 4, 2018), <https://www.sfpublishpress.org/s-f-s-largest-landlord-sued-over-alleged-efforts-to-push-out-tenants> [<https://perma.cc/PBX9-R2G9>].
128. *Veritas Tenants Association*, S.F. TENANTS UNION (Dec. 26, 2022), <https://sftu.org/2022/12/26/veritas-tenants-association> [<https://perma.cc/57SH-GGQ3>].
129. Veale, *supra* note 127 (“A 2013 structural and collateral term sheet filed with the Securities and Exchange Commission for a loan financing 44 Veritas properties throughout San Francisco offers one window into Veritas’ business model. It shows just under 99 percent of the units were occupied when Veritas bought the buildings. It also shows that the company has achieved an annual turnover of 30.7 percent of total units. In other words, Veritas replaced nearly one third of its tenants in a year. When a unit turns over, the rent increases, on average, by 466 percent.”).
130. *See* Complaint, *Evander v. Veritas Invs., Inc.*, No. CGC-18-570435 (Cal. Super. Ct. Oct. 11, 2018).
131. Veale, *supra* note 127.
132. Jason Lalljee, *San Francisco Renters Are Unionizing Against Big Landlords as Frustration over Rent Prices and Alleged Harassment Reaches a Boiling Point*, BUS. INSIDER (Apr. 18, 2022), <https://www.businessinsider.com/san-francisco-renters-unions-organize-law-landlords-listen-tenants-veritas-2022-4> [<https://perma.cc/4GXF-HRSF>].

access to rental relief in the form of direct payments made to landlords.<sup>133</sup> VTA members decided to go on a debt strike around March 2021, refusing to sign the necessary forms for Veritas Investments to collect these government dollars unless Veritas forgave ineligible VTA members' rents as well.<sup>134</sup> In December 2021, Veritas Investments announced their decision to forgive back rent not covered by the relief program.<sup>135</sup> The Housing Rights Committee announced that in addition to forgiving the debt, Veritas agreed to waive an annual rent increase for 2022.<sup>136</sup> Veritas disputed this claim.<sup>137</sup>

Coming out of these negotiations, the Housing Rights Committee and VTA decided to pursue landlord-tenant collective bargaining legislation before the San Francisco Board of Supervisors.<sup>138</sup> Passed in 2022, this "Union at Home" ordinance recognizes tenant associations as groups

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133. See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 501(a)(1), 134 Stat. 1182, 2070 (2020) (providing \$25 billion for rental assistance); American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201(a)(1), 135 Stat. 4, 54 (2020) (providing \$21.55 billion for rental assistance).
134. Emily Landes, *Tenant Group Calls for "Debt Strike" Against One of San Francisco's Biggest Property Managers*, REAL DEAL (Oct. 4, 2021), <https://therealdeal.com/sanfrancisco/2021/10/04/tenant-group-calls-for-debt-strike-against-one-of-san-franciscos-biggest-landlords> [<https://perma.cc/KW3L-QCFD>].
135. *Veritas Investments Announces New Program to Forgive Uncovered Portions of Back-Rent Owed by Residential Tenants*, SFIST (Dec. 18, 2021), <https://sfist.com/2021/12/18/veritas-investments-announces-new-program-to-forgive-uncovered-portions-of-back-rent-owed-by-residential-tenants> [<https://perma.cc/N7DN-FZXU>].
136. Joe Kukura, *Veritas Tenants End Rent Strike After Winning Significant Concessions on Back Debt*, SFIST (Jan. 28, 2022), <https://sfist.com/2022/01/28/veritas-tenants-end-rent-strike-after-winning-significant-concessions-on-back-debt> [<https://perma.cc/JPA9-7QR4>].
137. Ted Andersen, *Monday Digest: Waymo Sues DMV; Tenants End Veritas Strike*, S.F. BUS. TIMES (Jan. 31, 2022, 9:07 PM), <https://www.bizjournals.com/sanfrancisco/news/2022/01/31/sfbt-digest-monday.html> [<https://perma.cc/ACD2-4REY>].
138. Lalljee, *supra* note 132 ("'It's a union at home,' Lenea Maibaum, a Veritas tenant and an organizer of the Veritas Tenants' Association, told Capital and Main. 'We're all workers who can unionize at work. Now we can unionize at work and at home.'").

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specific to a building with five or more rental units<sup>139</sup> and sets forth the processes for tenants to elect a tenant association.<sup>140</sup> The ordinance also specifies a tenant association's obligation to hold regular meetings open to all building residents and elect officers to serve two-year terms.<sup>141</sup> The law expressly protects certain organizing activities.<sup>142</sup>

The ordinance is particularly unique for the obligations it imposes on landlords to meet with a tenant association at least once per calendar quarter and generally to "confer with each other in good faith regarding housing, community life, landlord-tenant relations, and other issues of common interest or concern."<sup>143</sup> Upon violation, the remedy available to tenants is to request an arbitration before the San Francisco Rent Board where an administrative law judge may grant a reduction in rent.<sup>144</sup> There is no specific remedy for landlords should the tenant association fail to bargain in good faith.

As of this writing, implementation of the law is in its infancy. VTA has demanded that Veritas bargain across buildings, but Veritas points out that

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139. S.F., CAL., ADMIN. CODE § 49A.2 (2024) ("Tenant Association' shall mean a group specific to a building with five or more rental units that has a primary purpose of addressing housing conditions, community life, landlord-tenant relations, and/or similar issues of common interest or concern among tenants in the building.").

140. *Id.* § 49A.4.

141. *Id.* § 49A.4(b).

142. *Id.* § 49A.2 ("Organizing Activities' shall mean 1) initiating contact with tenants, including by conducting door-to-door surveys, to ascertain interest in and/or seek support for forming a Tenant Association; 2) joining or supporting a Tenant Association; 3) distributing literature, requesting or providing information, offering assistance, convening meetings (which may occur without a landlord or landlord representative present), or otherwise acting on behalf of one or more tenants in the building regarding issues of common interest or concern. The term 'Organizing Activities' shall include, but is not limited to, the operations of a Tenant Association. A person's participation or failure to participate in Organizing Activities shall have no effect on whether that person qualifies as a tenant.").

143. *Id.* § 49A.4. "Examples of conferring in good faith may include maintaining a designated point of contact, engaging in regular communications, responding to reasonable requests for information, allowing participation by non-resident advocates, and negotiating and putting agreements into writing." *Id.* § 49A.4(c).

144. *Id.* §§ 49A.5, 37.8.

the law does not require portfolio-wide bargaining.<sup>145</sup> On June 1, 2023, after Veritas Investments announced a plan to sell its related debt, VTA members declared a rent strike.<sup>146</sup> Veritas sold off debt on 20 apartment buildings in November 2023 and an additional 23 apartment buildings in February 2024.<sup>147</sup> The rent strike is ongoing.<sup>148</sup> As rent controlled tenants retain a right to their apartments even after sale, some VTA members have already begun to negotiate with the new owners of their buildings.<sup>149</sup>

#### 8. Bargaining Ownership in Washington, D.C.

In Washington, D.C., tenant unions have had access to a tool that has facilitated collective bargaining since 1980—the Tenant Opportunity to

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145. Roshan Abraham, *Massive Tenant Union Demands Its Corporate Landlord Bargain with Them*, VICE (Apr. 11, 2023), <https://www.vice.com/en/article/xgwzea/massive-tenant-union-demands-its-corporate-landlord-to-bargain-with-them> [<https://perma.cc/SNG4-UC2K>].
146. Emily Landes, *Veritas Tenants Try Rent Strike to Impact \$1B Debt Auction*, REAL DEAL (June 15, 2023), <https://therealdeal.com/sanfrancisco/2023/06/15/veritas-tenants-try-rent-strike-to-impact-1b-debt-auction> [<https://perma.cc/CC2C-FR5M>]. While the landlord-tenant organizing ordinance does not include any provisions connecting rent strikes with tenant associations or the landlord's bargaining obligations, David Popoola, *Tenants' Right to Organize: The Regulation of Tenants' Unions in San Francisco*, ONLABOR (May 13, 2022), <https://onlabor.org/tenants-right-to-organize-the-regulation-of-tenants-unions-in-san-francisco> [<https://perma.cc/X9QV-VTBY>], state law allows for rent withholding under specific circumstances, CAL. CIV. CODE § 1942.4 (West 2023).
147. Laura Waxmann, *S.F.'s Largest Landlord Sells Off Troubled Loans Tied to 20 Apartment Buildings in the City*, S.F. CHRONICLE (Nov. 28, 2023), <https://www.sfchronicle.com/realestate/article/veritas-sells-20-s-f-apartment-buildings-18518496.php> [<https://perma.cc/M3GG-F3C2>].
148. Heather Knight, *In San Francisco, Tenants Use Labor Tactics to Challenge Their Landlords*, N.Y. TIMES (Jan. 15, 2024), <https://www.nytimes.com/2024/01/15/us/san-francisco-rent-strike-labor-union.html> [<https://perma.cc/94D3-NX2N>].
149. Kevin V. Nguyen, *As San Francisco's Largest Landlord Falts, Tenants Are Banding Together and Winning*, S.F. STANDARD (Mar. 19, 2024), <https://sfstandard.com/2024/03/19/veritas-tenants-association-rent-strike-landlord> [<https://perma.cc/9T42-H9VF>].

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Purchase Act (“TOPA”).<sup>150</sup> TOPA offers tenant associations in multifamily buildings a right of first refusal to purchase when the landlord puts the building on the market.<sup>151</sup> Some tenant associations have used the law for this purpose, and others have used the right as leverage to bargain with current and prospective owners, even where the tenant association does not seek or cannot afford ownership. In recent years, Stomp Out Slumlords (“SOS”), a tenant organizing group born out of the Democratic Socialists of America, has employed TOPA in its building organizing campaigns.<sup>152</sup>

In the summer of 2021, SOS learned that five separate properties in which they were organizing were on the market, triggering TOPA protections.<sup>153</sup> SOS decided to take advantage of TOPA to vie for ownership as well as slow the sale proceedings and use the window to exert pressure on the owners. TOPA requires tenant associations (called tenant organizations) to incorporate, develop bylaws, and elect leaders within 45 days before submitting a proposal for purchase.<sup>154</sup> After submission, the tenant association has 120 days to vote on whether to purchase the building themselves, transfer their right to purchase to a third party, or allow the original buyer to acquire the property.<sup>155</sup> Washington, D.C. allocates

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150. D.C. CODE § 42-3404.01 (2024). Tenant Opportunity to Purchase laws are most common in regulations for manufactured home parks.

151. D.C. CODE § 42-3404.01 (2024). For proposals to expand the use of Tenant Opportunity to Purchase laws, see Julie Gilgoff, *Opportunity to Purchase Policies: Preserving the Affordability of Manufactured Home Communities*, 68 VILL. L. REV. 405 (2023), which discusses the use of Tenant Opportunity to Purchase laws in manufactured home parks; and Julie D. Lawton, *Tenant Purchase as a Means of Creating and Preserving Affordable Homeownership*, 20 GEO. J. POVERTY L. & POL’Y 55 (2012), which draws on personal experience representing tenant associations to propose expansion and reform of Tenant Opportunity to Purchase laws in jurisdictions outside of Washington, D.C.

152. Stomp Out Slumlords’ (“SOS”) reports describe their organizing campaigns in great detail. See STOMP OUT SLUMLORDS, NO JOB NO RENT: TEN MONTHS OF ORGANIZING THE TENANT STRUGGLE (Feb. 2021), <https://www.stompoutslumlords.org/wp-content/uploads/2021/02/No-Job-No-Rent-Stomp-Out-Slumlords-Feb-2021-Report-1.pdf> [https://perma.cc/T28B-8JXA]; STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS: HOW TO KEEP GOING—AND KEEP WINNING (Aug. 2023) [hereinafter STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS], [https://www.stompoutslumlords.org/wp-content/uploads/2023/08/SOS-2023-report\\_web.pdf](https://www.stompoutslumlords.org/wp-content/uploads/2023/08/SOS-2023-report_web.pdf) [https://perma.cc/APP2-6EYV].

153. STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS, *supra* note 152, at 18-22.

154. D.C. CODE §§ 42-3404.02, 42-3404.02a, 42-3404.11 (2024).

155. D.C. CODE § 42-3404.11 (2024).

Community Development Block Grant funds to ten separate non-profit organizations that provide technical assistance to tenant associations for TOPA purchases.<sup>156</sup>

SOS adopted labor union organizing techniques to engage members and use TOPA to secure tenant association wins. Non-profit affordable housing developers ultimately purchased three of the properties over the original buyer.<sup>157</sup> Non-profit ownership may be preferable for tenants who lack the financing or time to take on management, though nonprofit owners are not, of course, immune from disputes with their tenants.<sup>158</sup> One of the three purchased properties became a cooperative.<sup>159</sup> Another negotiated an agreement with a buyer to limit rent increases and make repairs.<sup>160</sup> TOPA sets up clear majority thresholds to drive organizing with a concrete reward, actual control over housing, as the result of success.

Most recently, SOS has lobbied the D.C. Council to maintain TOPA protections in response to reports that developers were lobbying to exempt buildings constructed in the last 25 years and those receiving government support from TOPA.<sup>161</sup>

## 9. Closing Manufactured Home Parks in Phoenix

Where tenants lack control over the sale of land or mass eviction, they may resort to land use mechanisms to save their homes. In 2022 and 2023,

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156. Julia Duranti-Martínez & David M. Greenberg, *Tenant and Community Opportunity to Purchase Policies: Implementation Lessons and Impact Prospects*, LOC. INITIATIVES SUPPORT CORP. 4 (March 2022), [https://www.lisc.org/media/filer\\_public/f6/da/f6daa209-4ea4-49ec-ae86-d46605409023/pub23\\_topa\\_brief\\_fin.pdf](https://www.lisc.org/media/filer_public/f6/da/f6daa209-4ea4-49ec-ae86-d46605409023/pub23_topa_brief_fin.pdf) [<https://perma.cc/U6ZY-X73F>].

157. STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS, *supra* note 152, at 23.

158. *Id.*

159. Abigail Williams, *Buena Vista Tenants Form Cooperative Under TOPA*, ST. SENSE MEDIA (Feb. 17, 2022), <https://streetsensemedia.org/article/buena-vista-tenants-form-cooperative-under-topa> [<https://perma.cc/XQ9Q-3H3X>]. SOS also describes the real limits of housing finance and the ability for tenants to manage or renovate after acquisition, which is beyond the scope of this Article. STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS, *supra* note 152, at 24.

160. STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS, *supra* note 152, at 23; Duranti-Martínez & Greenberg, *supra* note 156, at 3.

161. Sam P.K. Collins, *TOPA Under Siege, Tenant Advocates Say*, WASH. INFORMER (Mar. 13, 2024), <https://www.washingtoninformer.com/topa-under-siege-tenant-advocates-say> [<https://perma.cc/ZTP7-QUXX>].

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residents from three manufactured home parks in Phoenix, Arizona (Weldon Court, Las Casitas, and Periwinkle Park), engaged in a campaign to preserve their homes by attempting to change zoning overlays so that new buildings could not be constructed where their manufactured homes were located.<sup>162</sup>

Manufactured homes constitute some of the last remaining affordable housing in urban as well as rural areas. Despite their commonly used alternate name, “mobile homes,” most manufactured housing is tied to the land they occupy and not actually mobile. Moving the homes could irrevocably damage them and the move can be prohibitively expensive.<sup>163</sup> Generally, unit owners own a manufactured home while leasing the underlying land from a park owner, or tenants rent the home from either the manufactured home’s owner or the land developer. As land values have increased, these sizable parks offer opportunities for development into larger-scale residential or commercial properties.<sup>164</sup>

In April 2022, Grand Canyon University, the owners of Periwinkle Park, gave residents six months to move so they could capitalize on sale and development offers on vacant land.<sup>165</sup> Although manufactured home park tenants in Arizona generally enjoyed good cause eviction protections, they did not extend to changes in land use.<sup>166</sup> Arizona law requires mobile home park owners to give tenants 180 days’ notice of a change in land use, though no notice before sale is required.<sup>167</sup> The notice of closure affords residents a modicum of time to organize. However, physically relocating the

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162. Katya Schwenk, *Mobile Home Park Residents Plead for Phoenix to Stop Evictions*, PHX. NEW TIMES (Mar. 9, 2023), <https://www.phoenixnewtimes.com/news/phoenix-mobile-home-park-residents-call-for-city-action-to-stop-evictions-15729261> [<https://perma.cc/3KZ6-G2CE>].

163. Gilgoff, *supra* note 151, at 409.

164. *Id.*

165. Katya Schwenk, *Trailer Park Residents Battle Grand Canyon University Over Eviction Plans*, PHX. NEW TIMES (Sept. 21, 2022), <https://www.phoenixnewtimes.com/news/trailer-park-residents-battle-grand-canyon-university-over-eviction-plans-14501712> [<https://perma.cc/AE5Z-GH4U>].

166. ARIZ. REV. STAT. ANN. § 33-1476(B)(3) (2024).

167. *Id.* § 33-1476.01(A); Juliette Rihl, *Arizona Mobile Home Parks Are Disappearing. This Non-Profit Wants to Save Them*, ARIZ. CENT. (Nov. 1, 2023), <https://www.azcentral.com/story/news/local/phoenix/2023/11/01/mobile-home-parks-are-disappearing-this-non-profit-wants-to-save-them/70590653007> [<https://perma.cc/794H-RVC9>].

manufactured homes was not a viable option and most tenants would have needed to abandon them.<sup>168</sup>

Absent a legal right to stop displacement, tenants focused their attention on the Phoenix City Council and land use regulations. They demanded that the council change the zoning overlay of the parks so that new residential or commercial structures could not be built there, removing the incentive for their displacement.<sup>169</sup> The organized tenants met initial success with the Council's Community and Cultural Investment Subcommittee, which, after hearing organized testimony from park residents, voted to impose a moratorium on development to the full council.<sup>170</sup>

Ultimately, the City Council voted against the zoning overlay to preserve the parks. The municipal legislators cited to state law, Arizona Proposition 207, which requires the state to compensate a land owner for any diminution in value based on a new zoning rule.<sup>171</sup> The organized tenants cited a carveout for use of the land "for the protection of the public's health and safety," to no avail.<sup>172</sup> Following the City Council's decision, more residents moved out, accepting the limited relocation assistance, but others continued to negotiate.<sup>173</sup> Thwarted by state preemption and losing its

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168. Schwenk, *supra* note 162.

169. *Staff Report: Zoning Ordinance Text Amendment Z-TA-3-23-Y (Expansion of Nonconforming Mobile Home Developments)*, CITY OF PHX. PLANNING & DEV. DEP'T (Apr. 21, 2023), [https://www.phoenix.gov/pddsite/Documents/PZ/Z-TA-3-23-Y\\_Expansion%20of%20Nonconforming%20Mobile%20Home%20Developments.pdf](https://www.phoenix.gov/pddsite/Documents/PZ/Z-TA-3-23-Y_Expansion%20of%20Nonconforming%20Mobile%20Home%20Developments.pdf) [<https://perma.cc/9XEF-B9YA>].

170. Schwenk, *supra* note 162.

171. ARIZ. REV. STAT. ANN. § 12-1134 (2024).

172. ARIZ. REV. STAT. ANN. § 12-1134(B)(1) (2024) ("This section does not apply to land use laws that: 1. Limit or prohibit a use or division of real property for the protection of the public's health and safety . . ."); Joe Duhownik, *Phoenix City Council Eyes Rezoning to Prevent Mobile Home Evictions*, COURTHOUSE NEWS SERV. (Mar. 7, 2023), <https://www.courthousenews.com/phoenix-city-council-eyes-rezoning-to-prevent-mobile-home-evictions> [<https://perma.cc/3HBW-PCG6>] (citing arguments made by mobile-home residents and the city council).

173. Adriana Loya, *Residents of GCU-Owned Mobile Home Park Remain Without a New Home a Day After Move Out Deadline*, 12NEWS (May 29, 2023), <https://www.12news.com/article/news/local/valley/residents-face-uncertain-future-after-mobile-home-park-land-sold/75-33669bdd-77e2-4bb8-b9ea-84771f0c17ad> [<https://perma.cc/RP6L-X2J5>].



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organized base as manufactured tenants disbursed, the campaign ultimately failed.

### 10. Public Housing Closures in Jefferson Parish

A discussion of tenant unionism is incomplete without reference to public housing. The Marrero Tenants Organization (“MTO”) has organized and represented its members living in the Acre Road public housing development in Jefferson Parish, Louisiana since 1973.<sup>174</sup> As residents of Section 9-funded public housing, MTO members have the right to form a resident council and to be selected by the public housing authority (“PHA”) to sit on a resident advisory board.<sup>175</sup> According to court filings, “[i]n its five decades of existence, MTO has advocated for maintenance and repairs, protested rent and utility charges, organized against pollution and environmental conditions, participated in the civil rights movement, sued the Housing Authority of Jefferson Parish (“HAJP”) and HUD over restrictions to access to public meetings, and won a seat on the HAJP Board of Commissioners.”<sup>176</sup>

Properties owned and managed by PHAs are a declining resource in the United States. Since the passage of the Faircloth Amendment in 1999, the federal government has been forbidden from constructing any more public housing units than existed at that time.<sup>177</sup> Many PHA properties are

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174. Complaint at 12, *Anderson v. U.S. Dep’t of Hous. & Urb. Dev.*, 2024 WL 1701641 (D.D.C. Apr. 19, 2024) (No. 23-cv-01259).

175. 24 C.F.R. § 964.18(a)(7) (2024) (detailing this right for public housing authorities with 250 units or more); *see also* 24 C.F.R. § 964.18(b)(2)(iv) (2024) (for public housing authorities with fewer than 250 units). Resident council members are elected by other residents whereas resident advisory board members are chosen by the public housing authority. 42 U.S.C. § 1437c-1 (2018). Presently, while voucher holders enjoy a right to sit on resident advisory boards, they lack any federal regulatory protections over their tenant organizing rights. *But see* Tenants’ Right to Organize Act, H.R. 5827, 118th Cong. § 1 (2023) (proposing to grant housing-choice voucher holders rights to form a tenant organization).

176. Complaint, *supra* note 174, at 12. After the MTO won a resident seat on the Board of Commissioners, HUD rules were changed to mandate resident appointments to public housing authority boards. *Id.*

177. 42 U.S.C. § 1437g(g)(3) (2018). Passed as part of the Quality Housing and Work Responsibility Act of 1998, the Faircloth Amendment prohibits the use of federal funds to expand the number of public housing units. *Id.*

decrepit, with housing authorities opting to either change the source of rental subsidies and invite in private management through rental assistance demonstration (“RAD”) conversions or shut down existing sites and provide current residents with tenant protection vouchers through “streamlined voluntary conversions.”<sup>178</sup>

On October 23, 2022, HAJP submitted a streamlined voluntary conversion plan for Acre Road.<sup>179</sup> HUD approved the streamlined voluntary conversion plan on March 9, 2023, stating it would “improve the neighborhood by allowing the HAJP and its partners to redevelopment of [sic] the site as new housing, either through substantially rehabilitation [sic] of the existing units or demolition of the existing units and construction of new units.”<sup>180</sup> HUD’s March 9, 2023 approval authorized HAJP to apply for vouchers for the 199 units and issue 90-day notices to vacate to Acre Road residents.<sup>181</sup>

Although public housing residents typically have extremely strong anti-eviction protections, both as far as a right to a renewal lease and rents capped at thirty-percent of income, those rights do not extend to a decision to shut down the property.<sup>182</sup> In this particular instance, MTO had been engaging in a long-term struggle drawing attention to the deteriorating conditions at Acre Road. HUD relied on tenants’ complaints about conditions in the property, not to justify renewed investment or rental abatements, but as a basis to remove all the residents from the property.<sup>183</sup>

In May 2023, MTO, along with five member-plaintiffs, filed suit against HUD in the U.S. District Court for the District of Columbia for violation of the

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Congresswoman Ilhan Omar of Minnesota has repeatedly re-introduced the Homes for All Act, which would repeal the Faircloth Amendment and allow the federal government to reinvest in new public housing development. *See, e.g.*, H.R. 5244, 117th Cong. (2021).

178. 42 U.S.C. § 1437t (2018); 24 C.F.R. pt. 972 (2024).

179. Complaint, *supra* note 174, at 17.

180. *Id.* at 18-19.

181. *Id.* at 19.

182. 42 U.S.C. § 1437d (2018); 24 C.F.R. pt. 966 (2024).

183. The complaint alleges that the Housing Authority of Jefferson Parish has failed to engage in capital improvement projects despite its obligations under 24 C.F.R. § 5.703 and § 965.601. Complaint, *supra* note 174, at 17.

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Administrative Procedure Act and the Fair Housing Act.<sup>184</sup> The court granted MTO summary judgment in part and vacated HUD's decision to approve HAJP's streamlined conversion application.<sup>185</sup> While closure is temporarily averted, it is yet to be seen how or whether MTO will win necessary investments for Acre Road. MTO's experience of organizing and bringing suit is representative of many other public housing developments' tenant associations.<sup>186</sup>

From Oakland to Jefferson Parish, each of these tenant unions has deployed tactics—such as rent strikes, affirmative lawsuits, or direct actions—and scaled their organizing to maintain or win affordable and safe housing for their members. The variety of tactics and strategies deployed were informed by both the threat they faced and the existing laws available to them. Less visible, though no less important, were the laws shaping the form and democracy of each tenant union.

## II. FORM AND DEMOCRACY

As seen in the foregoing campaigns, tenant associations and unions employ a wide degree of organizational forms. Tenant unions organize individual tenant associations within buildings,<sup>187</sup> tenant unions organize

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184. *Id.* at 26-28. (citing violations of 5 U.S.C. §§ 553(b), 706(2)(A), 706(2)(C) (2018)). MTO was represented by Debevoise & Plimpton LLP, the Lawyers' Committee for Civil Rights Under Law, and Southeast Louisiana Legal Services. *Id.* at 30-31.

185. *Anderson v. U.S. Dep't of Hous. & Urb. Dev.*, 2024 WL 1701641, at \*19, \*37 (D.D.C. Apr. 19, 2024).

186. *See, e.g.*, Complaint, *Chavez v. Vilsak*, No. 1:24-cv-00572 (D.N.M. June 6, 2024) (describing a class action by La Vista Del Rio Apartments residents in New Mexico U.S. Department of Agriculture property). *But see* Elana Knopp, "Gentrification at Its Worst": Residents, Advocacy Groups Fight to Save Terrell Homes, IRONBOUND CMTY. CORP. (Oct. 12, 2017), <https://ironboundcc.org/gentrification-at-its-worst-residents-advocacy-groups-fight-to-save-terrell-homes> [<https://perma.cc/W3DG-DCBH>] (documenting efforts by Newark residents to fight the closure of a 275-unit public housing complex in the gentrifying Ironbound neighborhood).

187. *See* discussion *supra* Sections I.B.1 (Tenant and Neighborhood Councils and Ivy Hill Alice), I.B.4 (Tenant Education Network and Ellis Lakeview Apartments), I.B.7 (Housing Committee of San Francisco and the Veritas Tenants Union), I.B.8 (SOS).

tenants across disparate properties,<sup>188</sup> tenants form self-organized individual tenant associations,<sup>189</sup> and coalitions unite tenant unions, each with their own organizational structure.<sup>190</sup> However, with the exception of the Ellis Lakeview Tenant Association organizing in project-based Section 8 housing and the Marrero Tenants Organization in public housing, no tenant association or union's internal workings were shaped by a law explicitly governing "tenant associations" or "unions" as unique entities. In large part, the law does not specify who may be a member of a tenant association or union, how many or what percentage of tenants must participate, or what a tenant association or union's obligations are to their members.

Despite the fact that "tenant associations" and "tenant unions" are rarely explicitly defined by law, the law guides tenant associations and unions' corporate forms and internal decision-making. The first set of such laws deal with non-profit corporations, which govern tenant associations and unions whether or not they incorporate as non-profits. The second is a small subset of tenant protections and rights of action scattered across varied jurisdictions that require minimum thresholds of tenant participation before the rights attach. This minimal regulation allows tenant associations and unions the flexibility they presently enjoy in deciding across which geographic spaces to organize as well as how to shape their internal governance.

#### A. Tenant Unions as Non-Profits

The laws that govern non-profit corporate formation have implications for tenant associations and unions whether or not they file to incorporate. Unincorporated associations carry flexibility in decision-making, but also a greater risk of liability for individual members. Formal incorporation as a non-profit creates benefits such as liability shields and certain legal rights, like the ability to sign a contract or own property, while also imposing certain decision-making obligations.<sup>191</sup> Many tenant unions opt for a hybrid

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188. See discussion *supra* Sections I.B.2 (KC Tenants), I.B.3 (City Life/Vida Urbana), I.B.6 (SHOUT).

189. See discussion *supra* Sections I.B.9 (Phoenix), I.B.10 (Marrero Tenants Organization).

190. See discussion *supra* Section I.B.5 (Housing Justice for All, Rent Justice Coalition, and Stabilizing NYC).

191. I use the term "non-profit" to refer to a corporate entity. In tenant organizing circles, the term non-profit also functions as a catchall label for unaccountable

between the two, with tenant unions incorporating as non-profits while organizing tenant associations that remain unincorporated associations.<sup>192</sup>

### 1. Unincorporated Tenant Unions

Under common law and many state statutes, some minimum number of persons joined by mutual consent for a common lawful purpose, whether organized for profit or not, are identified as unincorporated associations.<sup>193</sup> The members of an unincorporated association need not take any steps beyond naming themselves to earn this status. Particularly where members are not hiring staff, renting office space, or accepting government or foundation grant funding, there can be fewer reasons to file for incorporation.

However, the default rules that apply to unincorporated associations, which vary state by state, have implications for how tenant unions structure internal decision-making, handle donations and dues, and advise their

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advocacy organizations; organizations that may prioritize their own funding and maintenance of paid positions over movement goals; and housing developers and landlords with a non-profit corporate status. See ROSENTHAL & VILCHIS, *supra* note 11, at 89; Holden Taylor, *Who Is for Tenants? Toward a City-Wide Tenant Union*, BROOKLYN RAIL (July/Aug. 2022), <https://brooklynrail.org/2022/07/field-notes/Who-is-for-Tenants> [https://perma.cc/6ZQT-WH3F]. This sweeping definition of non-profits stems from a broader critique of the non-profit industrial complex. See Ruth Wilson Gilmore, *In the Shadow of the Shadow State*, in *THE REVOLUTION WILL NOT BE FUNDED* 41, 42-43 (INCITE! ed., Duke Univ. Press 2017) (2007). A discussion of tenant unions as non-profits in this broader sense is outside the scope of this Article. *But see* Michener & SoRelle, *supra* note 18, at 13-16 (discussing “autonomous” tenant unions’ commitment to being financially independent from foundations and government agencies).

192. The terms “non-profit” and “501(c)(3)” are commonly conflated. A non-profit corporation is a legal entity formed under state law that holds rights and obligations separate from the individuals who comprise it. See *e.g.*, *Nonprofit Organizations*, OFF. OF THE TEXAS SEC. OF STATE, [https://www.sos.state.tx.us/corp/nonprofit\\_org.shtml](https://www.sos.state.tx.us/corp/nonprofit_org.shtml) [https://perma.cc/X6NK-VNG7]. A 501(c)(3) designation means that the Internal Revenue Service recognizes that the non-profit corporation’s revenue and donations should be exempt from federal income tax, making donations to the organization tax deductible. 26 U.S.C. § 501(c)(3) (2018). There are separate federal tax designations that can apply to non-profit corporations. See, *e.g.*, *id.* § 501(c)(4).

193. See, *e.g.*, CAL. CORP. CODE § 18035(a) (West 2024).

members of potential liability for their conduct.<sup>194</sup> If an unincorporated association creates bylaws, those may create additional legally enforceable obligations that must be employed within the organization.<sup>195</sup>

When it comes to collecting dues or other funds to spend, unincorporated associations are still subject to tax laws.<sup>196</sup> If they are processing a large amount of money, for example, mutual aid funds or dues, that is taxable income for the unincorporated association unless they have applied for and received a tax-exempt status.<sup>197</sup>

State laws vary as to whether an unincorporated association may sign a contract in its own name.<sup>198</sup> For example, if an unincorporated tenant union wishes to pay a church or community center for space to meet, the contract may be between the lessor and the individual signing on behalf of the tenant association. For small commitments, this is likely not a problem, but

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194. The Sustainable Economies Law Center is an invaluable resource for accessible materials geared for weighing questions around non-profit incorporation. *See, e.g., Mutual Aid Legal Toolkit*, SUSTAINABLE ECONS. L. CTR., [https://www.theselc.org/mutual\\_aid\\_toolkit](https://www.theselc.org/mutual_aid_toolkit) [<https://perma.cc/L6FW-U7RC>].

195. *See, e.g., Diamond v. United Food & Com. Workers Union Loc. 881*, 768 N.E.2d 865, 869-70 (Ill. App. Ct. 2002) (outlining the various ways an Illinois labor union's bylaws may be enforceable as a contract, including against its members).

196. *See, e.g., Morrissey v. Comm'r of Internal Revenue*, 296 U.S. 344, 360 (1935) (stating that unincorporated associations should be federally taxed as corporations).

197. During the height of the pandemic when some tenant unions were engaging in mutual aid, with individual members accepting large Venmo payments to then redistribute to those in need, some of their members were accused by the federal government of having received taxable income for funds they distributed. Mike Haber & Dean Spade, *Teach In: Money-Handling and Taxes for Mutual Aid Groups*, BARNARD CTR. FOR RSCH. ON WOMEN, <https://bcrw.barnard.edu/videos/money-handling-and-taxes-for-mutual-aid-groups> [<https://perma.cc/4UDR-8Z5B>]; Meghan G. Rankins, *We Keep Us Safe, Venmo Doesn't: The Impact on Peer-to-Peer Payment Apps on Mutual Aid and Community Organizing*, 27 N.C. BANKING INST. 240, 271 (2023).

198. *See, e.g., Miller v. Loyal Order of Moose Lodge No. 358*, 179 Md. 530, 536 (1941) (permitting an unincorporated association to sue for breach of contract); *I.W. Phillips & Co. v. Hall*, 99 Fla. 1206, 1213 (1930) (holding an individual who signed a contract on behalf of an unincorporated association personally liable for breach of contract because an unincorporated association in Florida is not permitted to contract in its own name).

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depending on the state, it can become increasingly risky for the individual as costs increase.

State laws also vary as to whether liability for actions taken in the name of an unincorporated association make their members individually liable.<sup>199</sup> If, for example, an organizer acting as the agent of an unincorporated tenant union posted a defamatory statement online using an organizational account, and the unincorporated association is sued for defamation or tortious interference with contract, individual members in some states could be held individually liable.<sup>200</sup> The law of unincorporated associations varies sufficiently across states that association members may unknowingly take on individual obligations when acting on behalf of the association.

### 2. Incorporated Non-Profit Tenant Unions

Tenant unions like KC Tenants, City Life/Vida Urbana, the Housing Committee of San Francisco, and the Tenant Education Network in Chicago have incorporated as non-profits under Missouri, Massachusetts, California, and Illinois laws, respectively. Non-profit incorporation laws vary by state, but generally include requirements dealing with the composition of their board of directors, the extent to which employees are permitted to participate on those boards, and obligations for written bylaws.<sup>201</sup> An incorporated non-profit may rent space for meetings, hire organizers, and apply for funding in its own name. Once incorporated, individual trustees, board members, officers, employees, or volunteers are generally not liable for the non-profit's liabilities or debts.<sup>202</sup>

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199. *See, e.g.,* *Martin v. Curran*, 303 N.Y. 276, 282 (1951) (explaining how the New York State legislature limits suits against unincorporated-association officers to cases where the individual liability of every single member can be alleged); *Fast v. Kahan*, 206 Kan. 682, 687 (1971) (stating that a member of an unincorporated association in Kansas is individually liable for tortious acts committed by the association's agents acting within the scope of their employment).

200. *Fast*, 206 Kan. at 687.

201. 26 U.S.C. § 501(c)(3) (2018).

202. Michael Haber, *The New Activist Non-Profits: Four Models Breaking from the Non-Profit Industrial Complex*, 73 U. MIA. L. REV. 863, 933-34 (2019). Board members are not protected if they breach fiduciary duties of care, loyalty, or obedience. *Id.*

Not all non-profit tenant unions are structurally the same. Even within non-profit corporations, there are opportunities to experiment with internal decision-making structures ranging from concentrating power in a board over whom tenant union members have no control, to creating mechanisms for enforceable accountability to a membership.<sup>203</sup> Accountability to a membership can be written into the enforceable bylaws of an unincorporated association or a non-profit corporation. These could include decision-making processes for whether and from whom to accept funding, whether or whom to hire, and whether to join coalitions, endorse campaigns, or otherwise decide to mobilize resources. Exploring the opportunities for nuance within non-profit tenant unions allows tenants to discern who is legally accountable to their base.

### 3. Hybrid Coalitions, Unions, and Associations

In practice, tenant associations and unions often opt into a combination of forms. As an example, Stabilizing is a coalition of over ten incorporated tenant unions.<sup>204</sup> The coalition itself was never incorporated and is comprised of members who are staff at incorporated tenant unions. In such a setup, those tenant unions likely draw their membership from tenant associations, organized by the unions' paid staff organizers. The tenant associations may themselves remain unincorporated associations. A tenant union that receives grant funding, has an office or meeting space, and has full-time, paid organizers may incorporate to limit liability, sign contracts, and process funds without them passing through an individual. A tenant association based in a building and made up of residents of the building which is not accepting or disbursing funds has little need for the formalities of incorporation.

#### B. Thresholds and Barriers to Participation

At a baseline level, all tenant associations and unions are either unincorporated or incorporated. Overlapping with these designations are laws that explicitly name tenant unions as well as laws that implicitly recognize collective tenant groups through participation thresholds for

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203. *See id.* at 863 (assessing non-profits pursuing non-hierarchical structures in light of governance constraints).

204. For a list, see STABILIZING NYC COAL., *THE PREDATORY EQUITY STORY: TENANT PERSPECTIVES ON SPECULATIVE LANDLORDS, DISPLACEMENT, AND FIGHTING FOR JUSTICE* 8 (2018).



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certain tenant-initiated lawsuits or bargaining practices. These few local, state, and federal laws grant tenant unions greater powers, but may more tightly regulate their composition and internal decision-making as the union works to meet the thresholds for the rights to accrue. This presents both opportunity and risk, as thresholds may create hurdles to organizing.

### 1. Anti-Retaliation Protections as Legal Recognition

The earliest acknowledgment of tenant associations and unions in statute is in the Uniform Residential Landlord and Tenant Act (the “URLTA”) from 1972: “Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after . . . the tenant has organized or become a member of a tenant’s union or similar organization.”<sup>205</sup>

The URLTA nowhere defines a tenant’s union. Most states that have adopted the URLTA have followed this trend.<sup>206</sup> Likewise, these state statutes do not create any prerequisites for the number or percentage of tenants or apartments in a given building or portfolio that must participate to be considered a tenant association.<sup>207</sup> These statutes do not specify which tenant union activities are protected and which are not. Most statutes are similarly silent about the internal decision-making of a tenant association.<sup>208</sup> This expansive, if vague, articulation of tenant associations and unions enables any number of formation of tenants to fall within the anti-retaliation protections of their state’s laws. This is what it can look like

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205. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101(a) (NAT’L CONF. OF COMM’RS ON UNIF. STATE L. 1974), <https://www.turbotenant.com/wp-content/uploads/2017/10/Uniform-Residential-Landlord-and-Tenant-Act.pdf> [<https://perma.cc/7U7X-4FDQ>].

206. *But see* 68 PA. CONS. STAT. AND CONS. STAT. ANN. § 250.102 (West 2024) (“‘Tenants organization or association’ means a group of tenants organized for any purpose directly related to their rights or duties as tenants.”).

207. *But see, e.g.*, MINN. STAT. ANN. § 504B.001, subd. 13a (West 2024) (“‘Tenant association’ means a group of tenants from two or more rental units that are owned or operated by the same landlord who form or maintain an organization, whether incorporated or unincorporated, to improve housing conditions, amenities, community life, or the contractual position of the member tenants.”)

208. *But see* MONT. CODE ANN. § 70-24-314 (1977) (“The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings.”).

when the law recognizes tenant unions explicitly, with zero thresholds, with no guidance on what the union has to exhibit to count under the law.

## 2. Litigation-Imposed Structure

Tenant unions that pursue litigation as a strategy may have a decision-making structure imposed on them by civil procedure or attorney ethics. One of the most developed areas acknowledging the rights of tenant unions in court is in the question of standing. Judges across the country have assessed whether a suit brought in the name of a tenant association rather than its individual members can be maintained.<sup>209</sup> Tenant unions are not generally able to bring individual claims specific to a single apartment, but their standing may be recognized when bringing claims related to an overall housing development, as with the Marrero Tenants Organization.

There are also procedural mechanisms, like class actions, that might theoretically simplify collectivity and decision-making. However, the types of litigation tenant union members seek to bring often do not qualify for the types of collective mechanisms contemplated under either state or federal rules of civil procedure.<sup>210</sup> For instance, tenant unions may wish to pursue litigation for an entire tenant association's members in cases where each individual tenant has been injured and holds claims related to apartment conditions where there is insufficient commonality of claims or not enough participants.<sup>211</sup> In such cases, the unions would not be able to pursue a class action, but may instead try to bring "mass actions," where tenants are each individually named in a suit.<sup>212</sup>

When members of an unincorporated tenant association pursue such a mass action, they each appear as a plaintiff. The association may have no internal rules and rotating leadership, with decisions made by whoever shows up. However, once a tenant association is represented by counsel in litigation, that attorney is required to follow rules of professional conduct that limit their ability to represent the group should a conflict arise.<sup>213</sup> For

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209. *See, e.g.,* *Tenants Ass'n. of Park Santa Anita v. Southers*, 272 Cal. Rptr. 361, 368 (Ct. App. 1990) (finding standing); *Bartley v. Walentas*, 434 N.Y.S.2d 379, 383 (App. Div. 1980) (finding no standing).

210. *See infra* Section III.B.3.

211. *See* FED. R. CIV. P. 23(a).

212. *See infra* Section III.B.3.

213. *See, for example,* MODEL RULES OF PRO. CONDUCT r. 1.13 (AM. BAR ASS'N 2024), which addresses representation of organization clients but does not

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example, in a mass action that has reached the point of deciding whether to continue to trial or accept a settlement, disagreement may arise between tenants, especially where an individual tenant may have stronger individual claims. This may create a conflict of interest that can require counsel to withdraw for the entire body.<sup>214</sup> For tenant associations that intimately understand that disagreements over such difficult questions are natural, and often resolvable with time, working with attorneys in a rigid court system can create additional tension and room for strategies to break down.<sup>215</sup>

### 3. Thresholds

In limited jurisdictions, there are laws requiring individual tenants to pass a certain threshold of participation to assert a cause of action through litigation or an administrative complaint. For example, under Article 7-A of the New York Real Property Actions and Proceedings Law, the rent receiver statute under which some tenant unions in Stabilizing sued landlords, one-third of tenants in a building must have joined the action to seek the appointment of a rent receiver, and tenants cannot seek this relief individually.<sup>216</sup> Thresholds such as this are not defined in terms of the

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contemplate organizations like tenant associations without clear decision-making structures. *See also* Michael Diamond & Aaron O'Toole, *Leaders, Followers, and Free Riders: The Community Lawyer's Dilemma When Representing Non-Democratic Client Organizations*, 31 *FORDHAM URB. L.J.* 481, 509 (2004) (highlighting ethical challenges and power dynamics that attorneys navigate when representing community organizations whose members participate and remain inactive to varying degrees).

214. *See* MODEL RULES OF PRO. CONDUCT r. 1.7 (AM. BAR ASS'N 2024).

215. Rules governing the unauthorized practice of law likewise prevent tenant organizers from advocating on behalf of tenants before most judicial bodies. *Id.* r. 5.5. *But see* NEW HAVEN, CONN., CODE OF ORDINANCES tit. 3, § 12-2 (2024) (defining a “tenants’ union representative” as “the person designated by the members of a tenants’ union to represent it in connection with any studies, investigations, and hearings involving that union or its members” and stating that “[s]uch person is not required to be a tenant or resident of the housing accommodation.”).

216. N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2024) (providing that “one-third or more of the tenants occupying a dwelling” may seek a rental receiver); *see also* N.J. STAT. ANN. §§ 2A:42-116, 2A:42-117 (West 2024) (providing that “any entity designated by more than 50 percent of the tenants living in the building as their representative” may seek the appointment of a rental receiver).

tenants joining or declaring themselves members of a tenant association but nonetheless require they coordinate in order to bring the action.<sup>217</sup>

These thresholds can create incentives for organization by requiring certain numerosity while also providing tenants with a legal frame to identify and envision themselves as a tenant association.<sup>218</sup> These same thresholds also impose an additional burden on litigants to demonstrate the ongoing support of all plaintiffs. They also incentivize landlords to dismiss the lawsuit by retaliating and picking off members to push participation below the required thresholds.

#### 4. Minimally Democratic Structures

In some federally subsidized, privately owned housing, public housing, and in some privately owned properties in San Francisco, the law adds thresholds and minimally democratic requirements for a tenant association's right to consult or bargain with a landlord to attach. Each law requires majority representation and leaves open-ended what democratic accountability within the tenant association might look like.

In project-based Section 8 housing as well as formerly PHA-managed properties that have gone through Rental Assistance Demonstration ("RAD") conversion,<sup>219</sup> federal law creates minimum standards for the internal governance of what are statutorily defined as "tenant organizations."<sup>220</sup> Tenant organizations formed within a property like the Ellis Lakeview Apartments require that the organization is representative of all tenants at a development, meets regularly, operates democratically,

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217. For example, in New Haven, Connecticut, tenant unions, defined in local law as such, have standing to assert conditions and rent-related claims in administrative hearings provided that a majority of tenants living at a given property agree to join the action. NEW HAVEN, CONN., CODE OF ORDINANCES tit. 3, § 12<sup>3</sup>/<sub>4</sub>-9 (2024). However, those tenants could also individually assert those claims. NEW HAVEN, CONN., CODE OF ORDINANCES tit. 3, § 12-5 (2024).

218. See Andrias & Sachs, *supra* note 12, at 587 (detailing the social-science literature emphasizing the importance of framing in developing laws to facilitate collective action).

219. Rental Assistance Demonstration ("RAD") gives public housing authorities the option to change the type of housing assistance tenants receive from Section 9 to Section 8 and borrow against that predictable revenue stream for capital improvements. See generally Kyle Giller, *The Fight for NYCHA: RAD and the Erosion of Public Housing in New York*, 23 CUNY L. REV. 283 (2020).

220. 24 C.F.R. § 245.110 (2024).

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and is independent of the landlord.<sup>221</sup> These tenant organizations are not required to incorporate, and they enjoy discretion in developing bylaws or processes specific to a given property provided that they meet these standards.<sup>222</sup>

Federal regulations outline separate requirements for tenant-created consultative bodies called resident councils in PHA-managed housing.<sup>223</sup> Tenants have a right to organize and elect a resident council to represent their interests, which the housing authority is required to recognize.<sup>224</sup> The form of resident councils is influenced by regulations stating that the PHA may only recognize one resident council at a given time, which can both funnel activists into this entity and stop direct dealing.<sup>225</sup>

In the private housing context, San Francisco's 2022 Union at Home ordinance creates a process by which landlords must recognize and bargain

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221. *Id.*

222. U.S. DEP'T OF HOUS. & URB. DEV., NOTICE H 2011-29: IMPLEMENTATION OF TENANT PARTICIPATION REQUIREMENTS IN ACCORDANCE WITH 24 CFR 245 SUBPART B AND HUD HANDBOOK 4381.5 REV-2 "THE MANAGEMENT AGENT HANDBOOK" (2011) ("The definition of legitimate tenant organization includes 'organizing committees' newly formed by residents, and does not require specific structures, written by-laws, elections, or resident petitions.").

223. These regulations apply to public housing that continues to receive Section 9 funding and not properties where housing assistance contracts are paid pursuant to Section 8 of the U.S. Housing Act of 1937. 24 C.F.R. § 964.3(a) (2024).

224. 24 C.F.R. pt. 964 (2024).

225. *Id.* § 964.18(a)(7) (providing such a regulation for public housing authorities (PHAs) with 250 units or more); § 964.18(b)(2)(iv) (for PHAs with fewer than 250 units). Separate from resident councils, PHAs are required to consider the recommendations of resident advisory boards, with members selected by the PHA, when developing five-year PHA plans. 42 U.S.C. § 1437c-1(e)(2) (2018). These plans deal with rules for how tenants are admitted and evicted, decisions on collecting and raising rents, residential programs like youth groups and job training, and decisions on spending money on maintenance, repairs, and other programs. § 1437c-1(d). *See also* Nicole Schmidt, *San Francisco Public Housing as an Avenue for Empowerment: The Case for Spirited Compliance with Tenant Participation Requirements*, 6 HASTINGS RACE & POVERTY L.J. 333 (2009) (discussing emergence—and under-resourcing—of resident advisory boards in San Francisco); Jaime Alison Lee, *Poverty, Dignity, and Public Housing*, 47 COLUM. HUM. RTS. L. REV. 97, 128-37 (2015) (examining resident advisory boards and resident councils as tools for residents to press for greater dignitary rights).

in good faith with a tenant association provided that over fifty percent of residents in a building sign a petition.<sup>226</sup> These laws likewise create a minimum threshold for the size of a building before tenants may aggregate to avail themselves of this law.<sup>227</sup> They also impose election requirements.<sup>228</sup>

These types of regulations facilitate the act of developing a tenant association by creating a clear set of steps one must follow to create a legally recognized tenant association. Particularly for tenants who are self-organized, this roadmap decreases reliance on an individual organizer or attorney to determine a potential structure. While the law gives form, it also can limit the imagination. Tenants who have not yet determined their relationship to management, their demands, or the tactics and strategies that may win those demands may fixate on electoralism: determinations of who will lead rather than leaderful organizations being run based on who shows up. Contestation over who will lead these organizations can also give rise to competing factions within a building, with lines often drawn along personal ties, shared racial and national categories, generations, or on who is perceived as a newcomer.

The existence of federal regulatory structures for tenant organizations, resident councils, or resident advisory boards does not make such conflict any more or less likely. However, it can give weight to form over demands. Some tenant associations will feel limited to the tools prescribed by the regulations. Where landlords are only required to meet with tenant associations and those associations lack any clear leverage to change the landlord's decision, it can lead to frustration. Where tenant associations cannot force a change, they may instead develop clientelist relationships with the landlord whereby they secure certain benefits for their members in exchange for an expectation they will not cause trouble. A focus on form

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226. S.F., CAL., ADMIN. CODE § 49A.4(a) (2024).

227. *Id.*; see also New HAVEN, CONN., CODE OF ORDINANCES tit. 3, § 12-2 (2024) (limiting tenants' unions to organizing in housing accommodations containing ten or more separate rental units and stating explicitly that "tenants living in an owner-occupied housing accommodation may not organize a tenants' union"); S.F., CAL., ADMIN. CODE § 49A.4 (2024) (excluding tenants of non-profit housing providers from provisions regarding tenant associations).

228. S.F., CAL., ADMIN. CODE § 49A.4(b) (2024) ("Tenant Associations shall hold regular meetings open to all building residents, and shall elect officers to serve for two-year terms. An officer may continue to hold over after the expiration of their term unless a resident requests an election, in which case an election shall be held within 60 days.").

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can distract from actual organizing to build the relationships and power to win concrete demands.

### 5. Incorporation for a Purpose

Incorporation as a tenant association is a prerequisite for invoking TOPA in Washington, D.C.<sup>229</sup> To invoke a tenant's right to purchase, SOS had to organize and incorporate a tenant association representing over fifty percent of the households at a property.<sup>230</sup> SOS described how this threshold led them to incorporate labor union organizing strategies similar to card check-off or labor union election campaigns to organize sufficient tenants for incorporation.<sup>231</sup>

In addition to illustrating how legal structure cannot supplant ongoing organizing, SOS's story of three separate TOPA campaigns demonstrates the limits of having an organization without a designated bargaining representative. Where tenant associations formed to negotiate a purchase, once they began bargaining with either purchasers or developers over the terms of a deal, individual members sometimes reached side deals without any law limiting their ability to do so.<sup>232</sup> If tenant unions are going to fight for laws that create thresholds to have their rights recognized, they may wish to tighten requirements on direct dealing or will need to be sure those rights are worth the limitations they are opting into.

## III. BUILDING AND NEIGHBORHOOD LEVEL TACTICS

This Part relies on the tenant union campaigns described above to demonstrate the range of ways the law informs tenant unions' tactical decisions at the building and neighborhood level. It illustrates that the strength of tenant union members' possessory rights helps determine whether they organize at the building level, or decide that doing so presents such a risk that they pursue alternate strategies, such as targeting government actors rather than landlords directly. It then illustrates the range of tools tenant unions may employ to gain leverage in and facilitate negotiations with landlords. This Part closes with an explanation of the

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229. D.C. CODE § 42-3404.11(1) (2024).

230. *See supra* Section I.B.8.

231. *See id.*

232. *See id.*

range of laws that impact tenant organizers' access to property as well as how the law shapes tenant unions' access to information about their targets.

#### A. Possession is Leverage

Tenants' legal right to continue to occupy their apartment even as they rent strike, advocate for repairs, or seek to bargain with their landlord is at the core of tenant union law. A tenant's right to possession is not an on-or-off switch. Rather, within tenant union law, there are degrees of rights to possession, each of which informs the extent to which tenant unions focus on the home as the site of organization. Where a tenant enjoys a legal right to possession and a landlord seeks to remove them, tenants' continued control of the apartment becomes a source of leverage anchored in the law. As tenants' possessory rights become more limited, tenant association strategies can become less directed at leveraging legal possession of the apartment with the landlord. They shift to either advocacy towards government actors or direct actions like eviction blockades and squats that lack legal authority.

##### 1. Strict Prohibitions on Eviction and Landlord Repossession

Tenants' possession is most secure where there are absolute legal prohibitions against eviction and landlord repossession.<sup>233</sup> The apex of a tenant's possessory right during the COVID-19 pandemic, for example, came with the federal, state, and local eviction moratoria. These were strict prohibitions on evictions, even when tenants had not paid rent.<sup>234</sup> As seen in both the Ivy Hill-Alice Tenant Union and VTA's rent strikes, the tenant association members capitalized on eviction moratoria to withhold rent and leverage government rental assistance to secure rent credits.<sup>235</sup>

However, an emergency eviction moratorium may be successfully challenged as overexpansive, particularly with regard to landlord interests. In the one-page shadow docket decision, *Chrysafis v. Marks*, the U.S. Supreme Court enjoined the enforcement of part of New York State's eviction moratorium, which allowed tenants to opt into the moratorium by self-certifying that they faced pandemic-related financial or health costs

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233. However, some landlords illegally lock out tenants.

234. *See, e.g.*, Center for Disease Control and Prevention Federal Eviction Moratorium, 86 Fed. Reg. 43244, 43245 (Aug. 6, 2021); COVID-19 Emergency Eviction and Foreclosure Prevention Act, 2020 N.Y. Laws ch. 381, pt. A.

235. *Oakland Rent Strike*, *supra* note 38.



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until the law expired.<sup>236</sup> The Court found that the total bar on evictions without landlords having the opportunity to challenge tenants' self-certification violated the landlord's due process rights.<sup>237</sup> The Court granted the injunction although the Second Circuit had not yet issued their merits decision.<sup>238</sup> The Court almost simultaneously ruled against the federal Center for Disease Control and Prevention ("CDC") eviction moratorium, but on different grounds, stating that imposing a nationwide eviction moratorium exceeded the CDC's statutory authority to "prevent the introduction, transmission, or spread of communicable diseases."<sup>239</sup> While eviction moratoria theoretically represent the outer limits of possessory rights that the law can provide, they also demonstrate how the more absolute and explicit the law in providing protections against eviction for tenants, the more susceptible they may be to legal challenge. This, and the fact that eviction moratoria arise in emergencies, makes strict eviction prohibitions a very small part of the larger picture of legal mechanisms for tenant possession.

### 2. Right to Lease Renewal

Outside of emergency provisions like the eviction moratorium, the next strongest legal entitlement to continued possession is the right to a lease renewal at the expiration of a lease term.<sup>240</sup> This right is alternately referred to as a statutory tenancy,<sup>241</sup> just cause eviction protections,<sup>242</sup> or

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236. *Chrysaifis v. Marks*, 141 S. Ct. 2482, 2482 (2021).

237. *Chrysaifis*, 141 S. Ct. at 2482 (referencing *In re Murchison*, 349 U.S. 133, 136 (1955) and *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993), which held that "due process generally requires a hearing").

238. *Id.* at 2483 (Breyer, J., dissenting).

239. *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 761 (2021).

240. *Ctr. Ave. Realty, Inc. v. Smith*, 624 A.2d 996, 999 (N.J. Super. Ct. App. Div. 1993) (observing that "[t]he effect of [the Anti-Eviction] Act is to create a perpetual tenancy, virtually a life interest, in favor of a tenant of residential premises covered by the Act as to whom there is no statutory cause for eviction").

241. *E.g.*, *Stern v. Equitable Tr. Co. of New York*, 144 N.E. 578, 578 (N.Y. 1924) (discussing how emergency rent laws suspended possessory remedies under a lease, creating statutory tenancies that alter the common-law understanding of the relationship between a landlord and tenant).

242. *E.g.*, OAKLAND, CAL., CODE OF ORDINANCES § 8.22.300 (2024).

good cause eviction protections.<sup>243</sup> Many state and local rent control programs couple the right to regulated rent with entitlement to a renewal lease.<sup>244</sup> Even outside of a rent control or stabilization scheme, a number of states and municipalities have guaranteed tenants' rights to a renewal lease with individualized assessments of the reasonableness of rent increases at the end of a lease term.<sup>245</sup> A right to a renewal lease is a stronger protection than an anti-retaliation provision because rather than forcing a tenant to assert retaliation as a defense in trial, right to renewal prohibits no-fault evictions altogether.<sup>246</sup> Such a guarantee of tenant possession gives a degree of security when embarking on a rent strike or other organizing.<sup>247</sup> This right to a renewal in privately owned housing is also presently under attack based on a novel and reactionary reading of the Fifth Amendment.<sup>248</sup>

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243. *E.g.*, N.J. STAT. ANN. § 2A:18-61.1 (West 2024).

244. *E.g.*, BERKELEY, CAL., CODE § 13.79.060 (2024); L.A., CAL., CODE OF ORDINANCES § 8.52.090 (2024); N.Y. COMP. CODES R. & REGS. tit. 9, § 2503.5 (2024); SANTA MONICA, CAL., CHARTER ch. 18, § 1806 (2024); ST. PAUL, MINN., CODE OF ORDINANCES § 193A.05 (2024); D.C. CODE § 42-3505.53 (2024); W. HOLLYWOOD, CAL., CODE § 17.52.010 (2024).

245. *E.g.*, N.J. REV. STAT. § 2A:18-61.1 (2022); OAKLAND, CAL., CODE OF ORDINANCES § 8.22.070 (2024); D.C. CODE § 42-3505.01 (2024); New York Rent Control Act, N.Y. UNCONSOL. LAW § 26-408 (McKinney 2024).

246. *See* OAKLAND, CAL., CODE OF ORDINANCES § 8.22.300 (2024).

247. Some scholars have argued that good-cause protections impede social housing goals by restricting supply. *See* Andrea B. Carroll, *The International Trend Toward Requiring Good Cause for Tenant Eviction: Dangerous Portents for the United States?*, 38 SETON HALL L. REV. 427 (2008).

248. The U.S. Supreme Court upended physical- and regulatory-takings jurisprudence in *Cedar Point Nursery v. Hassad* by holding that a right of farmworker organizers to access an employer's property at circumscribed times constituted a per se physical taking in violation of the Fifth Amendment. 594 U.S. 139, 149 (2021). In the aftermath of *Cedar Point*, there is a Circuit split regarding whether laws granting tenants ongoing use of a privately owned premises constitute unconstitutional physical or regulatory takings. *Compare* Cmty. Hous. Improvement Program v. City of New York, 59 F.4th 540 (2d Cir. 2023), *and* 74 Pinehurst LLC v. New York, 59 F.4th 557 (2d Cir. 2023) (affirming the district court's holding that landlords' challenge to New York State's rent stabilization law failed to state a claim for violation of the Takings Clause), *with* Heights Apartments, LLC v. Walz, 30 F.4th 720 (8th Cir. 2022) (reversing and remanding district court's decision, finding that landlords' challenge to Minnesota eviction moratoria sufficiently pled a Takings challenge in light of the U.S. Supreme Court's *Cedar Point* decision).

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These protections may persist even in circumstances like foreclosure or bankruptcy, where it would be expected that a lease would be abrogated. In Chicago, the project-based Section 8 tenants organizing at Ellis Lakeview could safely support a foreclosure initiated by Freddie Mac because their tenancies and subsidies would survive a foreclosure and change in ownership.<sup>249</sup> Likewise, the rent stabilized New York City tenants organizing against Signature Bank were able to act with the assurance that their tenancies would survive even in the case of the bank's collapse or the massive sell-off of the associated debt.<sup>250</sup> Even where the conditions in those New York City properties degrade and tenants are required to relocate, they enjoy a right of return.<sup>251</sup>

Unfortunately, even strong underlying possessory rights are not guarantees of increased leverage, where other particular factors are in play. As will be explored in greater detail below, public housing tenants like in the Marrero Tenants Organization and project-based Section 8 tenants like in the Ellis Lakeview Apartments in Chicago may enjoy a right to renewal but have difficulty leveraging that possession in organizing campaigns because they cannot easily suspend subsidy payments and face higher burdens and risks when withholding rent.<sup>252</sup> Similarly, rights to renewal may be extinguished in some circumstances by an external legally permissible act, such as the streamlined voluntary conversion attempts with the Marrero Tenants Organization, impairing tenant associations' ability to organize.<sup>253</sup>

### 3. Anti-Retaliation Protections

Following the right to a renewal lease, many state statutes provide organized tenants with anti-retaliation protections, making it illegal for a landlord to commence eviction proceedings against a tenant due to their involvement in organizing activities or placing calls to government

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249. *See supra* Section I.B.4.

250. *See* N.Y. DEBT. & CRED. LAW § 282(2)(a) (McKinney 2024).

251. DIV. OF HOUS. & CMTY. RENEWAL, N.Y. STATE HOMES & CMTY. RENEWAL, OPERATIONAL BULLETIN 95-2 (1995).

252. *See infra* Section III.B. Jurisdictions vary as to whether tenants may maintain implied warranty of habitability claims against public housing authorities and other subsidized tenancies.

253. *See supra* Section I.B.10.

agencies.<sup>254</sup> Tenants' right to organize with what are variously defined as tenant unions, tenant associations, or tenant organizations are statutorily protected in at least twenty-nine states.<sup>255</sup>

However, notably, in none of the ten campaigns described above are anti-retaliation defenses at the core of organizing. There are four flaws in overemphasizing anti-retaliation protections. First, where tenants organize against their own legally permissible evictions, eviction is the landlord's end rather than a means of retaliation. This was the case with the tenants living in homes post-foreclosure in Boston and the Marrero Tenant Organization fighting the federal government's shutdown of their public housing. In such circumstances, anti-retaliation defenses do not apply.

Second, the tenant association tactic most tied to evictions, the rent strike, is grounded in an act that provides cause for eviction: nonpayment of rent. No jurisdiction extends anti-retaliation protections to rent striking. To do so would set up a circumstance where tenant association members retain an ongoing right to possession of their apartments while they do not pay rent without a clearly defined mechanism for resolution, which brings us back to the due process limits of possessory rights discussed above.<sup>256</sup>

Third, while a landlord filing an eviction proceeding after a tenant has complained about conditions or contacted a government agency sets up a presumption of retaliation, landlords may rebut that presumption by digging up pretextual grounds for eviction, like delays in payment of rent or alleged lease violations the landlord was aware of and did nothing about. Especially with tenants that are highly surveilled or subjected to long lists of potentially minor lease violations, landlords may easily find legal bases

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254. For a complete list of state anti-retaliation laws, see Christopher Bangs, *A Union for All: Collective Associations Outside the Workplace*, 26 GEO. L. & POL'Y REV. 47, 125 (2018). Anti-retaliation protections have also been recognized in common law. *See, e.g.*, *Edwards v. Habib*, 397 F.2d 687, 691 (D.C. Cir. 1968).

255. States adopted these anti-retaliation protections from the Uniform Residential Landlord and Tenant Act: "Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after . . . the tenant has organized or become a member of a tenant's union or similar organization." UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101(a) (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 1974), <https://www.turbotenant.com/wp-content/uploads/2017/10/Uniform-Residential-Landlord-and-Tenant-Act.pdf> [<https://perma.cc/7U7X-4FDQ>]. Many state statutes are modeled after the Uniform Residential Landlord & Tenant Act § 5.101.

256. *See supra* Section I.B.1.

for eviction whenever desired.<sup>257</sup> It can be extremely difficult for tenants to meet the burden of establishing a retaliation defense.

Finally, anti-retaliation protections do not stop a landlord from commencing an eviction process nonetheless and dragging a tenant through months of litigation, forcing the tenants to deal with the threat of the loss of their home while simultaneously pulling away from work, childcare, and other obligations, even where the landlord has clearly retaliated. This is why a right to a renewal lease offers cleaner protection for organized tenants.

#### 4. Only a Judge Can Evict You

Even where tenants lack a right to renewal, tenants' right to notice and an opportunity to be heard to contest the basis of an eviction, as well as an opportunity to cure, create space for building-based organizing. These legal windows give tenants continued possessory rights until a final judgment of eviction. The pace at which tenants may fight their eviction is highly dependent on the procedure of a given state or locality, providing tenants with anywhere between days to multiple years of bought time to utilize in their organizing.

In Boston, City Life/Vida Urbana organizers repeated the same refrain at every meeting, “[o]nly a judge can evict you.”<sup>258</sup> The filing of an eviction case was the first step in a long process. In their eviction cases, members asserted all viable substantive and procedural defenses while availing themselves of all available answers, jury demands, and counterclaims in otherwise summary proceedings.<sup>259</sup> Tenants and homeowners learned intimately that they need not do the landlords or lenders any favors by moving voluntarily or by accepting lowball, “cash for keys” offers, regardless of pendency of an eviction case.

However, tenants in jurisdictions with strong procedural protections may not be able to assert them if they have signed away those rights in a

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257. See, e.g., Michelle Ewert, *The Dangers of Facial Recognition Technology in Subsidized Housing*, 25 N.Y.U. J. LEGIS. & POL'Y 665 (2023).

258. *Steve Meacham: Fighting Foreclosure* (PBS television broadcast May 1, 2009), <https://www.pbs.org/moyers/journal/05012009/profile2.html> [<https://perma.cc/ZB3N-SQKR>].

259. Lawrence, *supra* note 70, at 2141. Attorneys must meet their ethical obligation to represent their clients zealously. MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS'N 2024). However, dilatory practices are barred and the course of action must have some substantial purpose other than delay. *Id.* r. 3.2, cmt. 1.

prior settlement agreement. As Nicole Summers has studied, tenants who enter into payment plans or other settlement agreements after which they continue to live in the home subject to the suit, may be bound to a form of civil probation, where they have contracted away defenses.<sup>260</sup> Tenants weighed down with such prior arrangements may lose access to mechanisms that allow them to continue to enjoy possession while collectively organizing.

### 5. Legally Precarious Housing

Those who are precariously housed lack strong underlying possessory rights to leverage. These may include individuals not named on a lease, supportive housing tenants misled about the security of their housing,<sup>261</sup> recently incarcerated individuals living in halfway houses,<sup>262</sup> marginalized individuals living in structures like garages or basements where it is legally impermissible for them to stay,<sup>263</sup> and residents of hotels and some single-room occupancy buildings.<sup>264</sup> The legal precariousness of tenant possession can also inform organizing tactics for clarifying or regaining possession at the landlord-tenant level through unlawful occupations and eviction blockades.<sup>265</sup>

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260. Summers, *Civil Probation*, *supra* note 13, at 899.

261. See, e.g., David Brand, *'It's Like a Slum': Supportive Housing Tenants Cope with Violation-Filled Homes. Provider Blames Underfunding*, CITY LIMITS (July 13, 2022), <https://citylimits.org/2022/07/13/its-like-a-slum-supportive-housing-tenants-cope-with-violation-filled-homes-provider-blames-underfunding> [<https://perma.cc/X6RC-NTCA>].

262. See Main, *supra* note 120, at 47 (describing the frequency of self-help evictions employed in three-quarter houses).

263. See Mekonnen Firew Ayano, *Tenants Without Rights: Situating the Experiences of New Immigrants in the U.S. Low-Income Housing Market*, 28 GEO. J. ON POVERTY L. & POL'Y 159, 191 (2021) (highlighting the precarity of new immigrants living in informal housing).

264. See, e.g., Brian J. Sullivan & Jonathan Burke, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 CUNY L. REV. 113, 115 (2013).

265. See *infra* Section III.B.7.

B. Legal and Economic Weapons

Tenant association members have a broad array of legal and economic weapons to either compel their landlord to comply with the law or to enter negotiations. Where tenants enjoy the strongest possessory rights and control their own rental payments, they can deprive a landlord of both control of their apartments and rental revenue. Where tenant associations either lack control over rental payments or a clearly defined right to rent strike, affirmative lawsuits may be a primary source of leverage. Without access to these tools, tenant associations may put pressure on other actors with enforcement powers or their own affirmative causes of action. Even where there is no clear legal mechanism, tenant associations may create leverage through public protests, media attention, and direct action, including eviction blockades and illegal squatting. Particularly in housing with government-subsidized rents, strong underlying possessory rights do not necessarily contribute to greater leverage, as the inability of organized tenants to control government rent streams and the threat of losing a rent subsidy can have a disciplining impact.

1. Rent Strikes

Rent strikes are the time-honored tactic employed by tenant associations to win leverage based on material control of a property. Through collectively refusing to pay rent while retaining possession, tenants deny landlords rental income and use that pressure to demand that the landlord accept certain terms in negotiations, such as rent abatements, repairs, or changes in managerial decisions. Tenants may be—and certainly have gone—on rent strike where they are fully protected by an eviction moratorium, as with the Ivy Hill-Alice Tenant Union, as well as where they enjoy very few such protections.<sup>266</sup>

Absent a moratorium or other total bar on eviction procedures, rent strikes tend to be court-reliant strategies. As almost all jurisdictions ban lockouts without a court hearing, if tenants withhold rent, their landlords' option within the law is to commence a nonpayment of rent eviction suit.

Within the eviction proceeding, tenant unions may creatively utilize the court for their needs. Some jurisdictions even have mechanisms to

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266. See Haber, *supra* note 28.

consolidate rent strike eviction cases.<sup>267</sup> Many state statutes restrain the scope of defenses and counterclaims tenants may seek in a rent nonpayment case to those related to poor conditions.<sup>268</sup> As a result, in court, tenant unions may focus on raising conditions issues based on the implied warranty of habitability, even where the conditions are not the tenants' primary concerns or there are other demands not cognizable under the law.<sup>269</sup> However, damages in most jurisdictions are capped at just the amount of rent, no matter what the tenants have endured,<sup>270</sup> and the counterclaim is often contingent on whether the tenants are obligated to, and in fact are, putting rents in escrow during the pendency of their case.<sup>271</sup> Alternately, where tenants have a right to cure after receiving notice of nonpayment of rent, tenant associations have gone on rolling rent strikes,

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267. *See, e.g.*, N.Y. CITY CIV. CT. ACT § 110(b) (2021) (“On the application of . . . any party, or on its own motion, the housing part of the civil court shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.”); CIV. CT. OF THE CITY OF NEW YORK, CIVIL COURT DIRECTIVE, DRP-150-A § 5(e) (Apr. 1, 2018), <https://www.nycourts.gov/courts/nyc/SSI/directives/DRP/drp150A.pdf> [<https://perma.cc/UAV4-JSS6>] (explicitly directing court staff to assign related cases in a rent strike to the same judge).

268. *Lindsey v. Normet*, 405 U.S. 56, 56 (1972) (holding that summary proceedings and statutory limitations on claims that tenants can raise therein do not violate the Due Process or Equal Protection Clauses).

269. The implied warranty of habitability states that inherent in every lease agreement is not only an obligation for the landlord to maintain habitable conditions but also a commensurate right of the tenants to an abatement of a portion of the rent based on the landlord's failure to maintain such conditions. *See* David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 394 (2011); Summers, *Limits*, *supra* note 13, at 149 (providing empirical analysis of the gap between tenants' right to assert breach of warranty of habitability defenses in eviction proceedings and outcomes on rental abatements and actual repairs).

270. *See* Sabbeth, *(Under)Enforcement*, *supra* note 13, at 123 (arguing that “prevailing methods for calculating damages incorporate biases of class, race, and gender, and they underestimate the value of poor tenants' cases”).

271. *See, e.g.*, OHIO REV. CODE ANN. § 5321.07 (West 2023) (requiring tenants to deposit rents with the clerk of the court); *Kohner Props., Inc. v. Johnson*, 553 S.W.3d 280, 285 (Mo. 2018).



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stopping and then recommencing payment before an eviction judgment can be rendered, leading to dismissal of the case.<sup>272</sup>

Where tenants lack these legal defenses, the rent strike is not as easily deployed. In Kansas City, for example, Missouri case law grants judges discretion to require tenants to post back due rent as bond before asserting claims based on the implied warranty of habitability.<sup>273</sup> In the context of the COVID-19 pandemic, this seriously circumscribes tenant associations' ability to rent strike. In a few jurisdictions, tenants are not allowed to raise the implied warranty of habitability as a defense at all and must affirmatively sue.<sup>274</sup> The law is not determinative. Tenant associations may still pursue rent strikes as a tactic under such conditions, but will enjoy fewer legal protections. Likewise, a rent strike is not always an effective tactic where the landlord prefers to evict over collecting rent.

### 2. Subsidy Strikes

Where tenants on rent strike withhold their individual rent payments, tenants on subsidy strike prevent their landlord from collecting rental subsidies from a third party. However, tenants' receipt of emergency rental assistance or recurring rental subsidies may become a source of leverage or, conversely, undermine a tenant association's ability to effectively rent strike. A contradiction in the tenant organizing space is that due to tenants often lacking control over subsidies that third parties pay to landlords, proposals that emphasize the importance of rental assistance may inadvertently undermine tenant associations' leverage unless the subsidy is coupled with a right to withhold.<sup>275</sup>

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272. Ronald Lawson & Reuben B. Johnson III, *Tenant Responses to the Urban Housing Crisis, 1970-1984*, in *THE TENANT MOVEMENT IN NEW YORK CITY, 1904-1984*, at 212 (Ronald Lawson ed., 1986) (describing a tactic developed by Lester Evens and Richard Levenson, attorneys affiliated with the Metropolitan Council on Housing in New York City). This tactic is hampered by causes of action for evictions on the basis of chronically late rent payments.

273. *Kohner Props.*, 553 S.W.3d at 285.

274. *See e.g.*, N.C. GEN. STAT. ANN. § 42-44(c) (2024) ("The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.").

275. *See* Juliet M. Brodie & Larisa G. Bowman, *Lawyers Aren't Rent*, 75 STAN. L. REV. ONLINE 132, 134 (2023) (arguing that emphasis on right to counsel in eviction proceedings is misplaced where what tenants need is money to pay rent).

Tenant unions leveraging COVID-19 emergency rental assistance in ongoing rent strikes offer an accordingly complicated picture. In 2020 and again in 2021, the U.S. Congress passed \$46.55 billion in emergency rental assistance for qualifying tenants.<sup>276</sup> Each state passed its own enabling legislation to set up procedures to release these funds, each of which required tenants to apply for the rent relief to attach. For the VTA and the Ivy Hill-Alice Tenant Union, members' refusal to apply for and accept rental assistance granted them leverage.<sup>277</sup> Tenants eligible for rent relief chose to risk their own housing to win rent abatements for themselves and their neighbors. Tenants' direct control over whether their landlord would receive substantial sums of rental assistance represented an infusion of leverage, particularly in properties where tenants were in substantial arrears or had not escrowed rent during a rent strike.<sup>278</sup> As with the example of the Ivy Hill-Alice Tenant Union, tenants may effectively use a subsidy strike by preconditioning their funds' release on the landlord accepting certain terms, such as forgiving a portion of rental debt for all tenants. However, such direct tenant control over the rental subsidies is the exception rather than the rule.

Other rental subsidies, including place-based subsidies or vouchers, may rule out or cause difficulties in a subsidy strike, and limit the effectiveness of other tenant union tactics, such as rent striking. Because the Ellis Lakeview Tenant Association in Chicago did not have control over the flow of subsidies from HUD directly to the landlord, they could not engage in a subsidy strike. Rent striking was also unavailable as a tactic because, even if the tenants were to withhold their 30% share of the rent, the landlord would continue to receive the government's 70% share, and the tenants would risk losing their subsidized housing for their nonpayment. Accordingly, instead of a clearcut subsidy strike, or a rent strike, the Ellis Lakeview Tenant Association advocated for HUD to cut off payments to the landlord.<sup>279</sup>

In fact, vouchers consistently undermine tenants' collective leverage while providing individual renters with necessary financial support in

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276. *See supra* Sections I.B.1, I.B.7; *see also* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 501(a)(1), 134 Stat. 1182, 2070 (2020) (providing \$25 billion for rental assistance); American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201(a)(1), 135 Stat. 4, 54 (2020) (providing \$21.55 billion for rental assistance).

277. *See supra* Sections I.B.1, I.B.6.

278. *See supra* Section I.B.1.

279. *See supra* Section I.B.4.

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unaffordable housing markets. Vouchers—federal, state, or municipal programs comprised of direct rental payments to landlords in privately owned housing for tenants with qualifying incomes—are often coupled with obligations placed on the landlord.<sup>280</sup> For instance, in the federal Housing Choice Voucher (“HCV”) program, formerly referred to as Section 8, landlords accepting the vouchers are required to meet minimum condition thresholds.<sup>281</sup> Should a tenant report poor conditions, HCV may cut off the subsidy to the landlord until repairs are made, or offer the tenant a transfer voucher to seek another apartment.<sup>282</sup> However, the tenant cannot unilaterally decide to cease voucher payments.<sup>283</sup> This grants an individual tenant substantial leverage when they face poor conditions in their apartment, provided that the government agency agrees and moves quickly enough to adequately alleviate the tenant’s concerns. However, tenants’ inability to cease voucher payments unilaterally limits the extent to which they can participate in subsidy or rent strikes in coordination with their neighbors or leverage nonpayment to make demands unrelated to repairs.<sup>284</sup> In addition, voucher-holding tenants evicted for nonpayment of rent may lose their voucher for program noncompliance, incentivizing them to not pursue rent withholding as a strategy.<sup>285</sup>

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280. 24 C.F.R. pt. 982 (2024). *See generally*, EVA ROSEN, THE VOUCHER PROMISE: “SECTION 8” AND THE FATE OF AN AMERICAN NEIGHBORHOOD (2020) (examining the Section 8 Housing Program in the context of a Baltimore neighborhood).

281. 24 C.F.R. § 982.404 (2024).

282. 24 C.F.R. § 982.404(3) (2024) (“The PHA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction.”).

283. 24 C.F.R. § 982.407 (2024) (“Part 982 does not create any right of the family, or any party other than HUD or the PHA, to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA, for damages, injunction or other relief, for alleged failure to enforce the HQS.”).

284. *See* Dias, *supra* note 2.

285. 24 C.F.R. § 982.552(c)(ii) (2024) (authorizing a PHA to deny admission or terminate assistance if any member of the family has been evicted in the last five years).

### 3. Tenant-Initiated Damages and Injunctive Litigation

Rather than rely on rent or subsidy strikes, with the expectation of being hauled into court by the landlord in order to resolve tenant demands, some tenant unions organize around affirmative litigation. Michael Grinthal calls this organizing on the scaffolding of litigation.<sup>286</sup> Depending on the jurisdiction, tenants may affirmatively seek damages and injunctive relief for breach of contract, breach of the implied warranty of habitability, violation of consumer fraud laws, or discrimination.<sup>287</sup> In jurisdictions where administrative bodies deal with rent setting and conditions, tenants may also affirmatively file for rent reductions.<sup>288</sup>

In New York City, affirmative Housing Part (“HP”) lawsuits, as well as administrative actions over rent setting in rent stabilized buildings, were the primary strategy of individual tenant associations comprising the larger Stabilizing coalition. Tenant associations may raise these suits to secure the relief explicitly provided for by statute or leverage the underlying damages to bargain for remedies not contemplated by law. In New York City, HP repair actions are summary, like eviction proceedings, and do not include discovery or jury trials.<sup>289</sup> While the scope of relief is also limited, this means cases move forward on a faster track, which may make affirmative litigation a more attractive tool.

There are limits to collective, affirmative litigation. Particularly where tenants have individual claims for poor repairs, harassment, or discrimination, they may reasonably be reluctant to negotiate away their claims for a settlement that distributes an award across their co-plaintiffs in a tenant association. Furthermore, civil litigation brought in courts of general jurisdiction with years-long litigation tracks can make for poor

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286. Grinthal, *supra* note 7, at 52-58 (discussing the potential for group litigation as an organizing tool as well as the risks of such strategies undermining organizing goals).

287. See Sabbeth, *(Under)Enforcement*, *supra* note 13, at 111-15; Eric Sirota, *The Rental Crisis Will Not Be Televised: The Case for Protecting Tenants Under Consumer Protection Regimes*, 54 U. MICH. J.L. REFORM 667, 683-687 (2021) (detailing the extremely limited consumer protections extended to tenants).

288. See *e.g.*, NEW HAVEN, CONN., CODE OF ORDINANCES tit. 3, § 12<sup>3</sup>/<sub>4</sub>-5 (2023) (allowing tenants to file a complaint if an apartment does not meet health and safety requirements); N.Y. COMP. CODES R. & REGS. tit. 9, § 2202.16 (2023) (permitting tenants in rent stabilized housing to file for a rent decrease for reduction of services).

289. N.Y.C. ADMIN. CODE § 27-2115(h) (2024).

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organizing tools, where tenant demands and concerns need to be resolved on a much quicker timeline than the court's calendar allows. This could sometimes leave tenants engaged in protracted litigation long after the primary organizing issue is resolved.

### 4. Receivership

An alternative litigation approach is the pursuit of a receiver to take over management of a building. Receivers are court officers placed in control of a property, typically either due to the owner's failure to address conditions dangerous to health, life, and safety or through requests by a lender to take over management in the context of a foreclosure proceeding.<sup>290</sup> Receiver appointment orders require tenants to pay rent to the new manager, who by law may be permitted to compensate themselves from the rent rolls, and by judicial order may be required to dedicate funds towards making repairs or mortgage payments. Receivership bars the landlord and their agents from even entering a building or collecting rent, but does not usurp ownership.<sup>291</sup> Rather, receivers serve an interim role while the court determines whether a landlord may take back control or the property will be sold.

A major point of tenant association leverage is whether they have any say in when a receiver is relieved of management duties. In most foreclosures, the receiver ceases to manage a property as soon as it is sold.<sup>292</sup> Conversely, in rental receiverships initiated by tenants, a receiver may not be removed until conditions are addressed or unless agreed to by all parties, even with a new owner.<sup>293</sup> When tenant associations have the ability to negotiate over the release of a receiver in those circumstances, they may enjoy substantial leverage over a new owner as well.<sup>294</sup>

Receivership laws, like those employed by the City of Chicago at the Ellis Lakeview Apartments, and then sought by Freddie Mac in foreclosure at the same building, represent a serious financial threat to an owner, completely cutting off a revenue source. While a powerful tool, receivership has serious limitations. Tenant associations do not exercise control over receivers and may ultimately disagree with their decisions, which could include

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290. *See* Baltz, *supra* note 72, at 3.

291. N.Y. REAL PROP. ACTS. LAW §§ 769-83 (McKinney 2024); *see* Baltz, *supra* note 72.

292. *See, e.g.*, Baltz, *supra* note 72, at 14.

293. *See, e.g.*, N.J. STAT. ANN. § 2A:42-127(b) (West 2024).

294. *See, e.g.*, Baltz, *supra* note 72, at 14-15.

commencing evictions against tenants for nonpayment or other violations of their lease.<sup>295</sup> Furthermore, without outside infusions of capital funds from the government or a lender, the receiver may only be able to rely on monthly rent payments to make repairs and lack sufficient funding for large-scale, upfront expenditures.

### 5. Lobbying Third Parties

In some jurisdictions, tenant association members lack standing to affirmatively sue and instead need to lobby third parties to act. Most often, as with the Ellis Lakeview Tenant Association, this involves lobbying a government enforcement agency like a code enforcement department, city or district attorney's office, or state attorney general to exert their exclusively held legal pressure on a landlord. They may alternatively lobby the lender to pressure that landlord. Where government actors are reluctant, this advocacy constitutes discretion override, where organized tenants demand the government employ their resources at a particular property or against a particular actor rather than however else the government administrators would have employed their inspectors and attorneys. Where the government body is a willing partner with the tenant unions, this would result in co-enforcement.<sup>296</sup> For maximum effect, tenants win the assistance of a government body with expansive investigatory and prosecutorial powers. Even after doing so, tenants may be required to direct their organizing activity at the government body yet again for failure to proceed as the tenant union demands.

Tenants may also advocate for government enforcement agencies to attack the source of the landlord's financing and, thus, the landlord indirectly. Where a lender continues to provide financing to a landlord to purchase new buildings or refinance other loans despite that landlord's failure to maintain the building, namely, the asset underlying the loan, tenants may successfully alert financial regulators to thwart the lender's activities, thus putting the landlord in a precarious financial position and giving the tenants leverage to negotiate. For example, in New York City,

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295. See 735 ILL. COMP. STAT. 5/15-1704 (West 2024); N.J. STAT. ANN. § 2A:42-128(j) (West 2024).

296. See, e.g., Matthew Amengual & Janice Fine, *Co-Enforcing Labor Standards: The Unique Contributions of State and Worker Organizations in Argentina and the United States*, 11 REGUL. & GOVERNANCE 129 (2017) (describing partnerships between worker centers and wage- and hour-enforcement agencies in the labor and employment context).

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tenant unions, in addition to protesting Signature Bank directly, sent letters to regulators in charge of reviewing Signature's compliance with the Community Reinvestment Act.<sup>297</sup>

Tenant unions may provoke a landlord to comply with housing and safety standards by putting public pressure on government actors or lenders. However, tenant unions' lack of legal authority over regulatory investigations and enforcement inhibits their direct access to the levers of change, forcing them to lobby for others to act on their behalf, and leaving them out of the conversation when deals are made.<sup>298</sup>

### 6. Winning Time

In order to leverage possession, tenant union members need to be in a position to defend their possession. Where the government seeks to shut down a housing complex, and rent withholding, affirmative lawsuits, and government enforcement partnerships are off the table, tenants must turn to other causes of action that both seek to vindicate a right and have the effect of winning time.<sup>299</sup>

The case of the Marrero Tenants Organization exhibits some of the limits of leveraged bargaining or even direct action to secure a win. In Marrero, the tenants fought back against the closure of a housing complex that the federal government seemed ready to abandon, pushing tenants out onto the housing market with Tenant Protection Vouchers that many landlords are unwilling to accept.<sup>300</sup> Here, the Marrero Tenants Organization relied on arguments under the Administrative Procedure Act and the Fair Housing Act to make the case that the manner in which HUD chose to shut down this housing did not follow the necessary procedures.<sup>301</sup> They won. This did not offer a final resolution but did slow down HUD,

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297. See *supra* Section I.B.5; *The Tenant Activism Behind Signature Bank's New Lending Policies*, ANHD (July 26, 2018), <https://anhd.org/blog/tenant-activism-behind-signature-bank%E2%80%99s-new-lending-policies> [<https://perma.cc/L6DA-9MFS>].

298. See Sabbeth, *(Under)Enforcement*, *supra* note 13, at 131-34.

299. The attorneys must seek to vindicate a cause of action with a "basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." MODEL RULES OF PROFESSIONAL CONDUCT r. 3.1 (AM. BAR ASS'N 2024). Delay alone is not an ethically acceptable strategy. *Id.* r. 3.2.

300. See *supra* Section I.B.10.

301. See *supra* Section I.B.10.

requiring them to strictly comply with their regulatory obligations before attempting again to close the facility. It is yet to be seen how the Marrero Tenants will employ the time won for them in that lawsuit.

By contrast, the Phoenix manufactured home tenants did not have access to a cause of action governing how their park might be closed.<sup>302</sup> While they referenced laws in other states that provided manufactured home tenants a first right of refusal to purchase the property, no such litigation hook existed for them. They won time instead through public attention, but no legal argument presented itself to further delay as they advocated for land use changes with the Phoenix City Council.

### 7. Leveraging Unlawful Occupation and Eviction Blockades

A tenant's ability to remain on premises absent an underlying right is contingent both on a willingness to leverage actual possession in violation of civil and criminal trespass laws and their success in lobbying third party actors. The two most common forms of collective action viewed through this frame are squats and eviction blockades.

For example, squatting is a time-honored tactic to repossess vacant homes.<sup>303</sup> Only in a few jurisdictions may squatters successfully gain actual title through adverse possession given the up to ten-year period through which they must exercise open and notorious use of a property.<sup>304</sup> However, concerted squatting combined with active lobbying to secure authorization or permits to stay has resulted in homeowners and tenants gaining legal possession.<sup>305</sup>

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302. *See supra* Section I.B.9.

303. *See also* Cerise Castle, *This Land Was Made for You and Me*, THELAND (Oct. 29, 2021), <https://thelandmag.com/reclaim-rebuild-our-community-caltrans> [<https://perma.cc/M7GC-5294>] (describing Reclaim and Restore Our Homes' occupations of CalTrans properties); Madison Gray, *How the Philly #HousingNow Encampment Movement Prompts Us to Reimagine a Right to Contract*, LPE PROJECT (Nov. 16, 2020), <https://lpeproject.org/blog/how-the-philly-housingnow-encampment-movement-prompt-us-to-reimagine-a-right-to-contract-part-1> [<https://perma.cc/U4M5-A5PB>] (describing a Philadelphia encampment demanding housing for its residents).

304. *See generally* Nadav Shoked, *Who Needs Adverse Possession?*, 89 FORDHAM L.J. 2639 (2021) (discussing adverse possession's primary use for homeowners in boundary disputes).

305. *See, e.g.*, Schneider, *supra* note 6 (describing the Occupy Our Homes Movement in the wake of the foreclosure crisis); Lisa T. Alexander, *Occupying*



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The same may be said for eviction blockades employed after a tenant has received a final eviction order. Eviction blockades, rather than being a first line of defense, are most often employed by tenant unions after a tenant has asserted defenses in court and lost. They may also be used where the court is otherwise not available for redress, for instance, where tenants have received a default eviction order, faced an illegal eviction without court process, or are squatting and are not entitled to legal process.<sup>306</sup> KC Tenants' attempts to shut down courts by Zoom bombing and physically chaining themselves to courthouse doors are examples of eviction blockades designed to physically stop or frustrate evictions before a sheriff or marshal is outside a tenant's home to enforce eviction.

Both squatting and eviction blockades are difficult strategies to scale and pose risks to their participants. They are labor intensive, requiring individuals in and outside of the organizing tenant union to be willing to respond and physically and repeatedly block a marshal or sheriff. They also place their participants at risk of arrest and prosecution. The success of these strategies is highly reliant on leveraging the optics and moral force of the squat or blockade to induce government actors to intervene or shame private owners into submission.

### C. Collective Bargaining

Tenant associations may seek to bargain over rent setting, rent abatements, conditions, and managerial concerns. Such managerial concerns could range from day-to-day operations, like the availability of a superintendent for repairs, up through major financial decisions like the refinancing, sale, or shutting down of a property. While express landlord-tenant collective bargaining laws are the starting point in trying to understand collective bargaining in tenant union law, the dearth of legal schemes that require landlords to recognize and bargain with tenant

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*the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 271 (2015) (describing efforts by the Chicago Anti-Eviction Campaign to move families into vacant properties in the wake of the foreclosure crisis with their neighbors' support); Hirsch & Wood, *supra* note 6 (describing ACORN's successful Brooklyn squatting campaign in the 1980s).

306. See, e.g., Ben Verde, *Crown Heights Tenants Say Prominent Brooklyn Couple Tried to Illegally Evict Them*, BROWNSTONER (July 9, 2020), <https://www.brownstoner.com/real-estate-market/crown-heights-brooklyn-tenants-harassment-eviction-1214-dean-street-gendville-brooks-church> [<https://perma.cc/G6WB-AAZ5>] (detailing an instance in Brooklyn where organizers blocked an illegal eviction).

associations redirects inquiry to the underlying laws that permit collective bargaining. As tenant associations struggle with landlords over these conditions of tenancy, underlying law informs and cabins their power to win concessions at the bargaining table.

### 1. Right to Consultation

HUD-regulated properties have the longest-standing laws requiring management to meet with tenant associations, whether it is a public housing authority meeting with a tenant-elected resident council or a private landlord meeting with residents of a project-based Section 8 development.

The right to consultation can be utilized not only to beget actual meetings, but as a procedural safeguard against arbitrary and capricious decision-making. PHAs wishing to shut down or convert properties are required to provide resident advisory boards with adequate notice and opportunity for comment, and failing to do so may delay final approval of a public housing agency plan.<sup>307</sup> Relying on this, the Marrero Tenants Organization alleged failure to consult and brought suit pursuant to the Administrative Procedures Act.<sup>308</sup>

Even where a right to consultation exists, a tenant association may skip over triggering that right in the belief that such consultation would be of limited use. The Ellis Lakeview Tenant Association in Chicago offers a prime example of a tenant organization in project-based Section 8 housing that was entitled to “reasonable consideration to concerns raised,” but chose to pursue an angle of advocacy far outside of the bargaining process laid out by law.<sup>309</sup> At times, consultation structures can become a trap, where tenant associations see their consultation rights explicitly defined by the law as marking the outer limit of demands they may make of their landlord. Because the legally mandated meetings did not provide space for the tenant association to demand and then credibly enforce commitments made by the landlord, the Ellis Lakeview Tenant Association pursued other, more effective avenues to secure commitments.

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307. 42 U.S.C. § 1437c-1(f)(4) (2018).

308. *See supra* Section I.B.10.

309. 24 C.F.R. § 245.105(b) (2024).

## 2. General Ordinances for Bargaining in Good Faith

In San Francisco’s 2022 ordinance newly mandating bargaining between tenant associations and landlords, the scope of bargaining is broader. “Landlords and Tenant Associations shall confer with each other in good faith regarding housing, community life, landlord-tenant relations, and other issues of common interest or concern. Examples of conferring in good faith may include maintaining a designated point of contact, engaging in regular communications, responding to reasonable requests for information, allowing participation by non-resident advocates, and negotiating and putting agreements into writing.”<sup>310</sup> The ordinance also states that tenant association members may secure a rent reduction should the landlord fail to confer in good faith<sup>311</sup>—the only tenant leverage explicitly written into the ordinance.<sup>312</sup> As of this writing, no board has determined that a landlord failed to negotiate in good faith.<sup>313</sup>

## 3. Bargaining with Leverage

Tenant associations’ demands need not be limited by the remedies available at law. Tenant associations may reach settlements relying on the leverage detailed *supra*.<sup>314</sup> Unstructured negotiations can be particularly powerful when tenants have control over a decision with significant financial implications for a landlord, like agreeing to the release of a receiver.<sup>315</sup> The Ivy Hill-Alice Tenant Union is an example of a tenant union engaged in unstructured collective bargaining to resolve their rent strike.<sup>316</sup>

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310. S.F., CAL., ADMIN. CODE § 49A.4(c) (2024).

311. *Id.* § 49A.5.

312. *Id.* § 49A.4(c).

313. For greater context, see Hogue & Way, *supra* note 12, at 423 (arguing that a “meet and confer” requirement similar to San Francisco’s would enhance tenant organizing rights); Kennedy, Klare, & Turk, *supra* note 12 (arguing in favor of a Wagner Act for Tenants); and Baltz & Rahman, *supra* note 12 (explaining how clear statutory rights for tenants offer a better solution than collective bargaining mechanisms while emphasizing that good faith bargaining obligations might undermine mechanisms used by tenant unions to take over control of rental housing).

314. *See supra* Section III.B.

315. *See supra* Section III.B.4.

316. *See supra* Section III.B.1.

Tenant associations' unstructured bargaining position is at its strongest when the default terms of a statutory scheme are in their favor. The Tenant Opportunity to Purchase Act provides a prime example.<sup>317</sup> Unlike San Francisco tenants relying on the Union at Home ordinance, tenants in Washington, D.C. enjoy a clear statutory right to first refusal.<sup>318</sup> This presents the opportunity for tenants to purchase a property, but also to invite in a developer or try to secure certain commitments from a prospective purchaser in order to forfeit their right of purchase. However, tenant associations can only invoke TOPA at the point of sale, limiting when they may leverage it in bargaining. Regardless of whether tenants are working with a legally defined collective bargaining frame or engaging in unstructured bargaining, the quality of any deal will be grounded in the tenants' leverage and economic power.

#### D. Organizing Protections

Access to space for organizing and the ability to canvass or recruit are crucial for tenant associations.<sup>319</sup> With the rare exception of single-family homes, tenant organizers or tenant leaders rely on the ability to enter a building to make contact with and host meetings with tenants. Such individuals may also decide to use flyers or similar material to publicize or recruit for a tenant association. This immediately raises questions about trespass and an owner's right to exclude. However, as distinguished from other labor organizing, tenants enjoy baseline property rights via their leases that allow them to extend invitations to organizers to enter their homes.<sup>320</sup> Enhanced explicit rights provide tenant unions with even clearer protections for access, meeting, and information dissemination, which viscerally come into play when an individual landlord is telling a group

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317. See D.C. CODE § 42-3404.02 (2024); see also S.F., Cal., Ordinance 79-19 (Apr. 23, 2019), amended by S.F., Cal., Ordinance 228-20 (Nov. 3, 2020); MONTGOMERY CNTY., MD., CODE § 53A-4 (2024) (granting tenant organizations the right of first refusals); MICH. COMP. LAWS ANN. § 125.2721 (West 2024).

318. D.C. CODE § 42-3404.02 (2024).

319. See Andrias & Sachs, *supra* note 12, at 608 (emphasizing the importance of access to physical and virtual spaces for mass-membership organizations).

320. This is distinguishable from the labor-organizing context, where the U.S. Supreme Court has recently seriously circumscribed non-employee organizers' right to access an employer's property to speak with farmworkers. See *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 162 (2021).

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gathered in a lobby that they must disperse or take down flyers, or, in some contexts, that the landlord will call the police.

### 1. Guest Bans

In certain jurisdictions, landlords working in collaboration with local police forces have developed statutory rights to bar even invited guests to premises where they are accused of nuisance or criminal behavior.<sup>321</sup> In these jurisdictions, a landlord may successfully override the tenants' right to invite guests by calling the police to bar access to tenant organizers and tenant union members who do not live at a property, stating that they are trespassers. Landlords may demand an organizer leave or even enlist the participation of the police, and tenants lack the ability to affirmatively demonstrate on the spot to the arriving officers that their right to invite supersedes the owner's right to exclude.<sup>322</sup>

### 2. Guaranteed Tenant Association Access

Some states conversely ensure tenant unions' rights to use space on the premises to meet uninterrupted.<sup>323</sup> In California, non-tenant organizers are entitled to access a residential building.<sup>324</sup> In project-based Section 8 housing, organizers who do not live at the property are explicitly permitted to organize, and even where the property has a consistently enforced policy against canvassing, tenant organizers are permitted, provided that they are accompanied by a resident.<sup>325</sup> Tenants in California, New York, and Washington, D.C. are also entitled to access common spaces in buildings to hold meetings.<sup>326</sup>

Although tenant association members accompanied by a resident likely do have a right of access as invitees in most jurisdictions, owners and police

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321. Sarah L. Swan, *Exclusion Diffusion*, 70 EMORY L.J. 847, 863 (2021).

322. Marcela Mitaynes, *Landlords Use Police to Stop Tenants from Organizing*, JACOBIN (June 22, 2020), [jacobin.com/2020/06/nypd-landlords-tenant-organizing-housing](https://jacobin.com/2020/06/nypd-landlords-tenant-organizing-housing) [<https://perma.cc/RY2F-KHXC>].

323. N.Y. REAL PROP. LAW § 230(2) (McKinney 2024); D.C. CODE § 42-3505.06(d)(2) (2024).

324. CAL. CIV. CODE § 1942.6 (West 2024).

325. 24 C.F.R. §§ 245.125(b)-(c)(1) (2024).

326. D.C. CODE § 42-3505.06(b) (2024); N.Y. REAL PROP. LAW § 230 (McKinney 2024).

do not always appreciate that right. The ability to point to a statute when an owner calls the police on an organizer who is knocking on doors can be crucial, if at times practically insufficient.<sup>327</sup>

### 3. Posting and Flyering

As a baseline property rule, tenants do not enjoy an easement that permits them to hang posters or flyers in hallways or put flyers under individual unit doors. A lawsuit brought by tenant unions refused to extend California's free speech protections to the distribution of flyers.<sup>328</sup> Rather, activities such as flyer distribution must rely on express protections. Lease agreements, for example, may permit the distribution of noncommercial written material in apartment buildings.<sup>329</sup> In New York, Washington, D.C., and California, statutes protect the rights of residents to post flyers in hallways.<sup>330</sup> Permission for posting is also a condition of funding through Section 8 and is also protected in PHA-managed properties.<sup>331</sup>

#### E. Access to Information

Information regarding other tenants, landlords, and lenders is crucial for organizing effectively within a building, but also for scaling across multiple properties.<sup>332</sup> In order to initiate organizing, tenant unions may want to find commonalities across properties as well as identify the properties most likely to experience crisis. If engaged in negotiations, a tenant organizer may want to understand the finances of a building to determine exactly what an owner can and cannot afford as far as rent. As they scale organization, the tenant union may want to find commonality of ownership or lender.

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327. Mitaynes, *supra* note 322.

328. *Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n.*, 29 P.3d 797, 803 (Cal. 2001).

329. *E.g.*, *Inganamort v. Merker*, 372 A.2d 1168 (N.J. Super. Ct. Ch. Div. 1977).

330. CAL. CIV. CODE § 1940.4 (West 2024); D.C. CODE § 42-3505.06(b) (2024); N.Y. REAL PROP. LAW § 230 (McKinney 2024).

331. 24 C.F.R. §§ 245.115(a)-(b) (2024).

332. *See Andrias & Sachs, supra* note 12, at 610-12 (emphasizing the importance of access to information in organizing).

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### 1. Reactive Information Gathering

In jurisdictions with limited open records and no landlord registration laws, it can be incredibly difficult for tenants to ascertain who owns the property where they live to hold that actor accountable. Where tenant organizing happens in a crisis, tenant organizers and neighbors are often left scrambling to determine who their landlord is, where they are located, and how to put pressure on them. In these cases, tenants must rely on deed and mortgage documents as well as corporation filings to determine basic information about their properties' owners, which may be several where the owner or owners have formed single-asset limited liability corporations to own each individual property. Several jurisdictions have created building registration statutes that require owners to register an individual, physical address, and contact number for each property.<sup>333</sup> Outside of what is publicly available, discovery after civil litigation has been initiated is the primary mechanism to obtain additional information.

### 2. Proactive Information Gathering from Open Sources

While much tenant organizing occurs in response to an emergent event, tenant unions developing a campaign proactively may research potential targets to anticipate where such a crisis is likely. The existence of legally mandated or publicly available records from an array of differing data sources beyond title registrations makes such proactive information gathering possible. City Life/Vida Urbana in Boston was able to proactively identify and visit the homes of homeowners and tenants in properties facing foreclosure by checking the trade publication where foreclosure postings were required to be listed by law.<sup>334</sup> In New York City, members of Stabilizing in consultation with University Neighborhood Housing Program employed the Building Indicator Project Database, a privately developed aggregating tool which examined publicly available data to assess whether individual properties were likely to experience physical or financial distress.<sup>335</sup>

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333. *See e.g.*, N.J. STAT. ANN. § 46:8-28 (West 2024); N.Y.C., ADMIN. CODE § 27-2097 (2024).

334. *See supra* Section I.B.3.

335. *See supra* Section I.B.5. Other cutting-edge tools include JustFixNYC's Who Owns What Project. *See* Georges Clement, *JustFix and Building a 21st Century Tenant Rights Movement*, 5 GEO. L. TECH. REV. 111 (2021); Manissa M.

The ability to collect this information relies on public laws granting access. However, publicly available information in one context, such as eviction filing data used to discover the worst actors or to seek out and support tenants in immediate need, may be used by landlords and third parties to construct tenant blacklists.<sup>336</sup> These privately held blacklists prevent tenants living in already precarious circumstances after an eviction from securing new housing.<sup>337</sup> Accordingly, individual tenants and tenant unions may have countervailing interests when considering whether to make such information publicly accessible.

### 3. Mandatory Disclosures

Organized tenants have fought for mandatory disclosures to avoid what can be the time-intensive need for painstaking research across data sources. SHOUT secured passage of legislation that required that New York City-based supportive housing residents receive notices from the supportive housing management agencies informing them of their rights and for those same agencies to send public data to the city regarding applicants.<sup>338</sup> In the context of federally subsidized public housing, federal legislation requires HUD to examine the fair housing and affordable housing implications of any closure of a PHA development and share that information.<sup>339</sup> In New York City, landlords are required to affirmatively register with the City, providing

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Maharawal & Erin McElroy, *The Anti-Eviction Mapping Project: Counter Mapping and Oral History Toward Bay Area Housing Justice*, 108 ANNALS AM. ASS'N GEOGRAPHERS 380 (2018).

336. See Erin McElroy, *Dis/Possessory Data Politics: From Tenant Screening to Anti-Eviction Organizing*, 47 INT'L J. URB. & REG'L RSCH. 54 (2023) (illustrating the tension between the tenant-screening industry's data grabbing and tenant-made tools in the Anti-Eviction Mapping Project to illuminate evictor networks and organize anti-eviction campaigns).

337. See Kathryn A. Sabbeth, *Erasing the "Scarlet E" of Eviction Records*, APPEAL (Apr. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records> [<https://perma.cc/BDZ7-9J8T>] (detailing how eviction case filings, as well as judgments, are scraped and sold by private screening companies).

338. N.Y.C., Local Law 3 (Jan. 10, 2022); *Detailed Report on Supportive Housing Data*, *supra* note 123.

339. See *supra* Section I.B.10.



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an address and point of contact.<sup>340</sup> In Phoenix, notice of eviction provided to the manufactured home residents provided them with time to mobilize for change at the city council.<sup>341</sup> Likewise, the notices provided by the Housing Authority of Jefferson Parish gave residents time to countersue over the conversion of their homes.<sup>342</sup> These disclosure requirements shift the burden away from tenants to create the record establishing the racial justice implications of a shutdown while providing them the information to both publicize and bring suit.

#### IV. STRATEGIES TO SCALE ORGANIZING

Tenant unions scale their organizing activities from the building or neighborhood level both by expanding the number of properties where they organize and by influencing local, state, and federal policy decisions. While tenants engage in local organizing to deal with the material conditions of their own homes, many municipal governments lack the authority to change underlying laws informing those tenants' rights. This is due to state laws mandating that changes to landlord-tenant laws be passed at the state legislature rather than locally. This motivates tenant unions to form coalitions statewide, as well as nationally if it is deemed that the federal government could trump those state laws. Where tenant unions seek to influence market dynamics driving displacement, land use procedures may be one of the few remaining local controls they can tap into. Scaled mobilization may also occur where recurring municipal or administrative hearings, such as to set rents in rent controlled or rent stabilized properties, create a predictable basis to unite tenants across a broader sector. Tenant unions wishing to impact a huge number of properties have leapfrogged landlords as targets and moved to lenders, whose loan agreements have deep implications for the rents charged and the expectations for repairs at a property. Lastly, the Article looks at the general rent strike, a mass movement of renters withholding their rent with the goal of inducing a crisis and exacting concessions from landlords and the government alike.

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340. *See generally* N.Y.C., ADMIN. CODE §§ 27-2097, 27-2109.1 (2024) (requiring owners of buildings containing three or more dwelling units to register as well as one-and two-unit properties when one unit is not occupied by an owner or their family members).

341. *See supra* Section I.B.9.

342. *See supra* Section I.B.10.

## A. Organizing Around Preemption

The strictures of state and federal preemption regimes all but require tenant unions to explore organizing beyond their local jurisdiction if they want to change the laws underlying tenancies.<sup>343</sup> Organizing in response to preemption doctrine builds a tenant movement operating at a scale spanning huge numbers of renters. Simultaneously, scaling from tenant associations and tenant unions up through broad-based coalitions may give or create a sense (or reality) of individual tenant union members lacking any control over decisions.

### 1. Statewide Coalitions

In states where local governments have the authority to make decisions related to landlord-tenant regulations, like rent control, good cause eviction protections, housing codes, and causes of action against landlords, tenant union organizing may remain intensely local while continuing to win legislative gains.<sup>344</sup> Where municipal actors lack home rule authority to make such decisions or where state legislatures or constitutions have expressly preempted local authority to do so, decisions regarding these policies require votes of an entire state's legislature.<sup>345</sup> This, in turn, requires tenant unions to select a different target for their campaigns. In Phoenix, the tenant unions organizing around the manufactured home parks were thwarted in their legislative advocacy when the Phoenix City Council invoked state preemption as a basis for voting down proposed zoning changes for the manufactured home parks.<sup>346</sup>

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343. Kate Andrias & Benjamin I. Sachs, *The Chicken-and-Egg of Law and Organizing: Enacting Policy for Power Building*, 124 COLUM. L. REV. 777, 812 (2024) (discussing how social movements redirect legislative advocacy to navigate preemption regimes).

344. See, e.g., Kenneth K. Baar, *Rent Control in the 1970's: The Case of the New Jersey Tenants' Movement*, 28 HASTINGS L.J. 631 (1977) (detailing how tenant unions in New Jersey can advocate before rent control boards at a municipal level).

345. See *State Preemption of Local Equitable Housing Policies*, supra note 46.

346. See supra Section I.B.9. For a detailed description of state preemption as an obstacle to locally focused tenant union organizing in Durham, North Carolina, see Alex Prolman, Emerson Goldstein & Kristen Hefner, *One Building at a Time Won't Do: Tenant Organizing in a Red State*, CONVERGENCE MAG. (Aug. 17, 2023), <https://convergencemag.com/articles/one-building-at-a-time-wont-do-tenant-organizing-in-a-red-state> [<https://perma.cc/LA7Q-V6KJ>].

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State preemption may also inform the scale of the participating tenants and tenant unions. From 1997 to 2019, the New York State Legislature spent twenty-two years chipping away at rent stabilization laws in New York City with the support of legislators from outside of New York City.<sup>347</sup> This made imperative tenant unions' need to cooperate on a statewide level, and accordingly, it was Housing Justice for All, a coalition of tenant unions, advocacy organizations, and legal services providers across New York State, that organized to pass rent stabilization reforms at the state level in 2019.<sup>348</sup>

While the practicalities of state preemption doctrine can necessitate statewide coalition building, the size, scope, and experiences of the tenant unions and possibly of other advocacy organizations participating in the coalition's decision-making can become further removed from base-building organizations or tenant unions. This can be seen for instance with internal decision-making processes in such larger coalitions, where the decision-making structure may award votes not to individual tenant associations or individual tenants, but to participant member organizations.<sup>349</sup> Furthermore, the larger scope of organizing makes it even likelier than in smaller-scale organizing that there are groups who do not participate in the coalitions, whether through exclusion, lack of capacity, or opting out. These groups, who may otherwise have been interested participants in the campaign if not for the scale of organizing, may feel their interests are not represented or that the coalition itself should not exist and is inherently compromised.

### 2. Federal Coalitions

Just as tenant coalitions organize statewide to defeat state preemption, tenant unions also scale their organizing to the federal level where local and even statewide organizing could be deemed ineffective. Certain categories

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347. See, e.g., Guy McPherson, *It's the End of the World as We Know It (and I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society*, 72 *FORDHAM L. REV.* 1125, 1131 (2004) (charting the history of New York City's rent regulated system from the 1920s through the early 2000s); Gurian, *supra* note 100; Justin R. La Mort, *The Theft of Affordable Housing: How Rent-Stabilized Apartments Are Disappearing from Fraudulent Individual Apartment Improvements and What Can Be Done to Save Them*, 40 *N.Y.U. REV. L. & SOC. CHANGE* 351 (2016).

348. See *supra* Section I.B.5.

349. Taylor, *supra* note 191.

of tenants and tenancies may be more predisposed to federal-level organizing.

Public housing tenants and project-based Section 8 tenants organize at the federal level and enjoy some of the strongest individual tenant protections in the country under federal law.<sup>350</sup> Those rights often exceed those provided by state landlord-tenant laws, meaning that even in states where tenants enjoy few possessory rights or eviction protections, tenants living in federally subsidized housing enjoy greater rights.<sup>351</sup>

While tenants living in public housing authorities or project-based Section 8 housing most commonly scale their organizing to impact federal policy, it has proven difficult to scale this organization with tenants who lack a sense of connection to a local tenant union. Housing Choice Voucher holders are typically less involved with this level of coordination, lacking opportunities for local contestation that might drive their involvement in tenant associations and tenant unions.<sup>352</sup> Similarly, tenants living in Low Income Housing Tax Credit-financed properties enjoy no legal right to belong to a tenant organization comparable to that of those living in project-based Section 8 housing, and their affordable housing program is administered by the Internal Revenue Service (“IRS”) rather than HUD.<sup>353</sup> A focus on federal advocacy could alter the benefits for Housing Choice Voucher holders or tenant union members living in Low Income Housing Tax Credit-funded properties, laying the groundwork for greater engagement with national coalitions.

Tenant unions also effectively advocate at the federal level for policies that impact privately owned multifamily apartments financed by the GSEs, Fannie Mae and Freddie Mac.<sup>354</sup> Here, through the FHFA, the U.S. Congress or HUD may impose enhanced tenant protections on landlord borrowers as a condition of financing. In the wake of the foreclosure crisis, City Life/Vida

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350. However, even those individual protections have their limits, as seen in the case of the Marrero Tenants Organization. *See supra* Section I.B.10.

351. *See supra* Sections II.C, III.A.

352. *But see* Tenants’ Right to Organize Act, H.R. 5827, 118th Cong. § 1 (2023) (proposing to grant housing-choice voucher holders and Low Income Housing Tax Credit-financed housing residents the rights to form tenant organizations).

353. Hogue & Way, *supra* note 12, at 405.

354. Press Release, People’s Action, Homes Guarantee Demands FHFA Protect Tenants and Regulate Rents (Nov. 17, 2023), <https://peoplesaction.org/homes-guarantee-demands-fhfa-protect-tenants-and-regulate-rents> [<https://perma.cc/X9Q9-J99Q>].

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Urbana and other members of the Right to the City Alliance attended congressional meetings and put pressure on elected officials to advocate for Fannie Mae and Freddie Mac, who were and still are under conservatorship of the FHFA, to reduce principal for underwater homeowners, end all Fannie-Freddie evictions, sell foreclosed homes to occupants, and turn real estate owned properties into permanent affordable housing.<sup>355</sup>

More recently, KC Tenants, as part of People's Action's Homes Guarantee Campaign, pushed the Biden Administration on tenants' rights, resulting in the issuance of a Blueprint for a Renters Bill of Rights outlining principles such as the right to organize as well as the opening of a HUD notice-and-comment period on a rule to extend tenant rights.<sup>356</sup> KC Tenants have explicitly acknowledged that they pursued change in Washington, D.C. because the state house in Missouri was unlikely to yield results. Coalition building around federal preemption thus becomes a mechanism to win tenant protections foundational to further organizing.

### B. Fighting Over Land Use

Tenant unions may also seek to influence land use decisions for fear that neighborhood rezonings will alter rental market dynamics and lead to displacement. Home rule or state preemption of land use mechanisms remain hotly contested. Here, tenant associations and unions present themselves as a constituency, most often interested in land use decisions such as the construction of individual buildings or large public structures such as stadiums, or in rezonings of entire neighborhoods.<sup>357</sup> Tenant unions may seek to impose inclusionary conditions on the construction or rezoning through municipal land use processes or a Community Benefits Agreement, whereby a community-based organization secures set-asides of affordable apartments, jobs for community members, or some other terms acknowledging impositions on the community and addressing community

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355. *Fannie Mae and Freddie Mac, the "People's Banks," Have Been Hijacked by Corporate America*, CAUSA JUSTA / JUST CAUSE, <https://cjc.org/publication/fannie-mae-and-freddie-mac-the-peoples-banks-have-been-hijacked-by-corporate-america> [https://perma.cc/A3UN-DQAY].

356. *See* Cyrus, *supra* note 59; Domestic Pol'y Council & Nat'l Econ. Council, *supra* note 59.

357. These strategies are born of a perception that increased construction will increase the desirability of a certain area to higher-income tenants and contribute to an increase in demand for that neighborhood, which would lead to increased rents and displacement.

needs.<sup>358</sup> The union may also seek to stop development or rezonings altogether.

Land use decisions may need to be resolved defensively and urgently in response to a specific planned demolition or redevelopment, as when the manufactured home residents in Phoenix mobilized for the city council to change the land use of the parks where they lived.<sup>359</sup> Tenant unions may also proactively pursue land use changes, garnering support of tenant associations and other community members, to proactively demand protections or an analysis of potential implications of land use changes on existing communities.<sup>360</sup>

### C. Sectoral Mobilization

Mobilization, the act of bringing a group together to demand a particular change, often involves brief, intense commitments, like attending a lobby day or council meeting.<sup>361</sup> Local and state administrative law facilitates mobilization where boards make decisions related to rents or conditions as well as where tenant unions enjoy seats on those boards on a routine basis. This is most commonly the case in jurisdictions with rent control boards that exercise authority over rent increase setting.<sup>362</sup> Administrative procedures or legal requirements that certain boards,

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358. See, e.g., Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability*, 17 J. AFFORDABLE HOUS. & CMTY. DEV. L. 35 (2007); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679 (2020).

359. See *supra* Section I.B.9.

360. See, e.g., LOUISVILLE-JEFFERSON CNTY., KY., CODE OF ORDINANCES §§ 169.01-169.05 (establishing the Historically Black Neighborhoods Ordinance); Tressie McMillan Cottom, *What's Happening in Louisville Could Solve a Housing Crisis*, N.Y. TIMES (Aug. 6, 2024), <https://www.nytimes.com/2024/08/06/opinion/housing-louisville-tenants-union.html> [<https://perma.cc/YB5L-6BAR>] (describing the Louisville Tenants Union's campaign to win the Historically Black Neighborhoods Ordinance as a tool to fight displacement).

361. See JANE MCALEVEY, NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE 9-10 (2016) (distinguishing mobilizing from organizing, emphasizing that mobilization is important, but cannot be all that the labor movement does).

362. Rent control systems vary in how they set rent, with some having the legislature peg increases to a specific index wherein an agency, board, or other body determines the increases. Vicki Been, Ingrid Gould Ellen & Sophia House, *Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws*, 46 FORDHAM URB. L.J. 1041, 1059 (2019).

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bodies, or legislatures reconvene to address a tenant-implicated issue create a foundation for organizing.

The Rent Justice Coalition's mobilization before the New York City Rent Guidelines Board is a prime example. The Board is tasked with setting rental increases for rent stabilized tenancies for the next year. Throughout each summer, the Rent Guidelines Board holds hearings where tenants testify. In addition to possibly influencing the decision, these mobilizations present a recurring and predictable opportunity for tenants drawn from tenant associations across the city to meet with one another and develop demands together.

Although these meetings present a recurring and predictable opportunity to mobilize, tenant unions' actual impact on the proceedings is questionable. In the case of New York City's Rent Guidelines Board, for example, while there are two tenant representatives, two landlord representatives, and five government representatives, they are making administrative decisions with government representatives as tiebreakers rather than engaging in any kind of sectoral bargaining.<sup>363</sup> This kind of recurring mobilization can begin to take on the form of pageantry, which serves the purpose of bringing tenants together over a common cause but lacks a clear procedural connection between tenant participation and the ultimate decisions.<sup>364</sup> However, they also ensure that some subset of otherwise unorganized tenants do not take their legal protections for granted. Where tenants benefit from strong legal protections that an earlier movement won for them, they may not feel any pressure to join a tenant union and defend those rights, creating prime conditions for a countermovement to fight for their repeal.

### D. Portfolio Organizing

After organizing an individual building and starting to recognize a pattern in ownership, tenant unions may choose to organize a portfolio of buildings with common ownership or management as a means to exert

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363. N.Y. UNCONSOL. LAW § 8626 (McKinney 2024); N.Y.C., ADMIN. CODE § 26-510(a) (2024).

364. See Suzannah Cavanaugh & Kathryn Brenzel, *Rent Board Chair Denounces City Council Members for Disrupting Hearing: RGB's Nestor Davidson Raises Safety Concerns over "Chaotic Environment,"* REAL DEAL (May 4, 2023), <https://therealdeal.com/new-york/2023/05/04/rent-board-chair-denounces-city-council-members-for-disrupting-hearing> [https://perma.cc/4P5C-3QME].

broader pressure for their demands. In San Francisco, VTA focused their organizing on a common owner, Veritas,<sup>365</sup> while in New York City, Stabilizing focused on a common lender, Signature Bank, to exert pressure.<sup>366</sup> Portfolio organizing offers the promise of tenants engaging directly with the private actor managing the material conditions in which they live while scaling up beyond a single building.

Tenant unions engaged in portfolio organizing seek to scale the use of direct leverage tactics available to them, whether rent strikes, affirmative litigation, or government enforcement, to either win remedies outright in court or bargain an outcome with the landlord. Tenants across multiple properties rent striking or filing suit can quickly and dramatically restrict the landlord's rental income and impose litigation costs while eventually securing relief in court. The resource intensiveness of this approach puts dramatic financial pressure on owners. However, it is also a resource and time-intensive strategy for scaling, due to limitations imposed by corporations and civil procedure law.

For both the VTA and Stabilizing, the tenant unions organized individual buildings with known, common owners. Although the buildings were ultimately controlled by the same actors, each property was owned by a separate, single-asset limited liability corporation, as is standard practice across the country.<sup>367</sup> Where ownership interests do not publicly announce the buildings in their portfolio, researchers must pore over public records, where available, to cross-reference business or service addresses on deeds, certificates of incorporation, or property registrations, to ascertain the relationship.<sup>368</sup>

Furthermore, depending on the procedural laws of the jurisdiction, portfolio organizing can be very costly for tenant associations when they either defensively or affirmatively litigate. While rent striking does not initially necessitate court action, as described above, disputes are frequently resolved in court through nonpayment of rent eviction cases. Barring a complete eviction moratorium, rent striking tenants will eventually need to appear in court with or without counsel. If the court does not have a mechanism to consolidate cases across a building, that means a

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365. *See supra* Section I.B.8.

366. *See supra* Section I.B.5.

367. Grinthal, *supra* note 7, at 54 (discussing the anonymity of landlords who rely on a single mailbox address without a corresponding management office or storefront).

368. *See supra* Section III.E.



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separate court appearance for each tenant.<sup>369</sup> Where tenants rent strike across a portfolio with separate single asset limited liability corporations as the plaintiffs in eviction cases, there is no mechanism to consolidate the evictions, so tenants must either be prepared to defend themselves or have the assistance of attorneys for separate proceedings. Conversely, if a tenant union is well-resourced, such diffusion may be beneficial as it increases costs for the landlord.

Should tenant unions seek to affirmatively sue a landlord over conditions, rent setting, or other acts, just as they may not have access to class actions pursuant to FRCP Rule 23 and its state equivalents within a building, they may not at the portfolio level either. So, they again must litigate multiple cases that require time-intensive discovery if a summary affirmative proceeding is not available. Such resource strains may also apply to government enforcement agencies, decreasing their willingness to carry out a multifront investigation.

Challenges to portfolio organizing exist outside of litigation as well. Presently, the San Francisco collective bargaining law creates space where owners are required to meet with the tenant union and confer.<sup>370</sup> However, that law does not expressly provide that negotiations must happen at the portfolio level, and as of the most recent press account, Veritas refuses to meet beyond building-by-building meetings.<sup>371</sup>

When portfolio organizing against a lender, tenant unions need to address the issue of lack of commonality of ownership. The advocacy can be differentiated between how the lender treats current debtors and how it treats future debtors. For current debtors, it is most common for there to be “no recourse” loans, meaning that if the landlord violates the mortgage agreement, the lender’s only option is to foreclose. However, it is also standard practice for lenders to require a creditor to escrow funds for capital repairs, though that sum is rarely publicly available. Tenant unions

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369. *See, e.g.*, N.Y. CITY CIV. CT. ACT § 110(b) (2024) (“On the application of . . . any party, or on its own motion, the housing part of the civil court shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.”); CIV. CT. OF THE CITY OF NEW YORK, CIVIL COURT DIRECTIVE, DRP-150-A § 5(e) (Apr. 1, 2018), <https://www.nycourts.gov/courts/nyc/SSI/directives/DRP/drp150A.pdf> [<https://perma.cc/UAV4-JSS6>] (explicitly directing court staff to assign related cases in a rent strike to the same judge)

370. S.F., CAL., ADMIN. CODE § 49A.4 (2024).

371. Abraham, *supra* note 145.

engaged in lender organizing across a portfolio have to confront those blunt instruments.

If the portfolio organizing is happening at a stage where the tenant union is looking at a bank's underwriting policy, they could look prospectively at whether the sums lent reflect the actual rent roll or are dependent on the owner either decreasing inputs, like making repairs, or evicting and replacing tenants with new renters who will pay a higher rent. Changing lenders' policies can have future benefits but may not address material conditions on the ground.

Even where successful, portfolio organizing campaigns at the landlord or lender level run the risk of seeing their gains and the basis for their solidarity vanish before them upon any changes in the portfolio completely outside of the tenants' control. Absent an express law giving tenants opportunities to purchase properties upon foreclosure, owners may sell a portfolio of properties to multiple different owners, as Veritas has, without any notice to the tenant union.

#### E. The General Strike

The general rent strike is a strike carried across multiple properties with multiple landlords rather than a building- or portfolio-specific strike.<sup>372</sup> The goal of any general strike is to provoke a crisis. The Cancel Rent movement in 2020 and 2021 in reaction to the COVID-19 pandemic is the closest the United States has ever come to having a nationwide general rent strike.<sup>373</sup> Cancel Rent was joined by tenant associations already organizing with specific demands against their landlords, like Ivy Hill and Alice Street Tenant Unions, but also by sympathetic individuals disconnected from the broader movement.

General rent strikes have the potential to push debt-financed properties into distress all over the country. At the individual or tenant association level, the success of a general rent strike requires provoking an economic crisis far away from the interactions with individual landlords. Participating tenants are then subjected to the same local civil procedures for evictions as described above.<sup>374</sup> Tenants in Oakland, San Francisco, or New York might sustain long-term legal battles based on their underlying possessory

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372. ROSENTHAL & VILCHIS, *supra* note 11, at 59.

373. *See, e.g.*, FOGELSON, *supra* note 6 (describing rent strikes in New York City during the 1920s); Indritz, *supra* note 6 (describing the wave of rent strikes in the United States in the 1960s).

374. *See supra* Section II.A.

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and withholding rights while those in places like Kansas City may be quickly evicted. Tenants receiving subsidies may fail to make an impact either because the rental share they pay and could withhold was so small or because they place their subsidies at tremendous risk by withholding their share.

While it is clear that the rent strike was the tactic and “cancel rent” was the demand, no single entity negotiated on behalf of rent-striking tenants. There are coalitions of tenant associations, tenant unions, legal services providers, and civic advocacy groups that will claim that position, but lack any democratic connection or responsibility to an organized base.<sup>375</sup>

Meanwhile, countering the vacuum of structure for nationwide tenant organizing, there is no doubt that financial and lobbying interests for landlords and the financial institutions that support them are represented in conversations with legislators. The real estate industry has long scaled its advocacy around increased federal subsidies for housing development, rental assistance that pays market prices, and a supply-side, law and economics-driven narrative. If tenant unions do not grow and develop internally democratic mechanisms at scale, there will be no legitimate representation of tenants for the next crisis or general rent strike either.

The general rent strike is a tactic that, with the requisite mass participation, could make such a great impact, that the disparity in underlying laws does not ultimately change its power and scale. Absent such seismic mass participation, underlying laws dramatically impact the likelihood that an individual tenancy will survive the strike. Further, if the tenant movement does not build the necessary infrastructure, within or outside the law, to execute this tactic at scale, the tenant union movement will again lack a recognized voice, leaving space for the real estate industry to step in with their own solutions for the crisis.

## CONCLUSION

Legal doctrine has not recognized a distinct law of tenant unions. As seen across ten campaigns, the laws underpinning tenant unionism vary based on the statutory and regulatory framework applied to properties even within a jurisdiction. Tenant unions’ formation and decision-making, tactical planning, and mass campaign development occur in the shadow of these varied laws. Appreciating the scope of tenant union law does not just

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375. Dias, *supra* note 2, at 199-200 (describing legal services organizations pushing rental assistance and safe-harbor legislation instead of New York’s Cancel Rent bill).

help us understand these campaigns; it provides critical context and opportunity as movements work to better organize tenants across the United States.

As municipalities and legislatures debate and propose new tenant union laws, it is crucial that they understand the foundations on which they are building. When legislating the composition and internal decision-making of tenant associations, I urge caution. Presently, the law of tenant associations itself is incredibly sparse and encompasses formations ranging from tenants organizing against a landlord within an individual building through anti-eviction campaigns across multiple properties with multiple owners. Any legislative proposal must consider how it might undermine or divide other tenant formations.

When examining the laws that underlie tenant unions' tactics and strategies, there are tenant protections that clearly also support organizing, laws that have failed individual tenants but remain helpful for building power, and laws that offer protections to individual tenants but that may be in tension with collective action.

Just cause eviction protections are the clearest example of laws that benefit individual tenants and organized tenants alike. Stronger underlying possessory rights enable tenant unions to exert greater leverage, ranging from rent strikes to lawsuits, based on the fundamental idea that as long as tenants exert material control over their own housing, landlords cannot move in someone else from whom to collect rent. Just cause eviction protections are likely to remain the cornerstone of place-based tenant organizing even in a future where more jurisdictions adopt tenant organizing-specific laws.

Other laws, while flawed when employed by individual tenants, remain critical weapons in tenant unions' arsenals when deployed collectively. Many legal mechanisms to secure repairs in apartments, like asserting the implied warranty of habitability or seeking the appointment of a rental receiver, have not proven effective at achieving their intended purpose: forcing landlords to make repairs.<sup>376</sup> However, as tools to cut off rental payments to a landlord, they provide one of the strongest mechanisms for collective legal action. While these tools can certainly be improved, their lack of utility for individual tenants does not negate their benefits when strategically deployed.

Some of the most desirable rental subsidies may be in tension with building power. As tenant unions look to social housing as a goal of the tenant movement, it is necessary to analyze how the subsidy structures for

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376. Summers, *Limits*, *supra* note 13.

public and federally funded housing have impacted tenant organizing.<sup>377</sup> Public housing and project-based Section 8 tenants have won some of the clearest regulatory protections for tenant organizing in the form of petitioning, complaining about conditions, and meeting. These tenants have stayed organized even amongst the ebbs and flows of the rest of the tenant movement. However, while these tenants have strong possessory rights and associational protections, they lack leverage. In fact, having a rental subsidy in privately owned housing through a voucher can have a disciplining impact, where the threat of permanent loss of a subsidy prevents a tenant from risking retaliation and eviction, whatever the legal protections. Subsidies without tenant control will not resolve the issue of precarity.

As tenant unions seek to change laws, there is no workaround for state or federal preemption other than developing sufficient political power to influence a state legislature, federal agencies, or Congress. The nature of home rule and state preemption in the United States has left little room for purely local, widely impactful advocacy outside of land use.

Meanwhile, when the tenant movement does manage to win strong laws, sunseting laws and administrative boards making new determinations may counterintuitively provide a predictable, recurring basis for tenants to stay engaged. Where tenants enjoy the benefits of a good law without the threat of its loss, there can be a demobilizing impact.

Mass tactics, such as the general rent strike, could be the most powerful tool available to tenant unions to provoke a crisis leading to negotiation. But initiating a crisis to the real estate financial system does not create change on its own. The government has shown itself likely to step in to mediate a crisis, and the real estate industry already has its representatives lined up. The tenant movement needs to function at scale in a way that is accountable to its membership to ever hope to leverage such a mass tactic. An expanded tenant union legal structure need not, and likely should not, specify the frames and bounds of scaled tactics like the rent strike, but it could provide for stronger individual tenant protections that make it more possible for tenants to join and participate in a tenant union.

Finally, the law needs to look beyond landlords to the lenders and governments that prop them up. Perhaps within the process of real estate financialization exist more levers to challenge the holders of the asset that impact everyone who needs shelter. Tenant union laws fixating solely on

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377. *Building Our Future: Grassroots Reflections on Social Housing*, CTR. FOR POPULAR DEMOCRACY (2024), <https://www.populardemocracy.org/sites/default/files/Building%20Our%20Future%20Full%20Report%20%281%29.pdf> [<https://perma.cc/6K86-Z6Q3>].

tenants and landlords miss the wider political and economic structures driving tenants' precarity.

This Article is another step towards pushing back on the disaggregation of housing policy from the lives and struggles of tenants. This Article creates an overview for legislative drafters considering innovations in tenant union law as well as examples for tenant unions and their attorneys who may wish to explore new tactics or strategies based on the laws already available to them in the jurisdictions where they organize. There are undoubtedly nuances and contributions to each of the campaigns mentioned herein that are missing. Likewise, there are historic and current examples of tenant unionism within the United States and internationally absent from these pages. It is my hope that tenants, organizers, attorneys, and legal workers who do not see their experiences represented herein will take the next steps to more fully articulate and strengthen tenant union law.

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