

Thinking Big in Thinking Small: Are Tiny Homes the Solution to Our Housing Crisis?

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Lisa T. Alexander, [Community in Property: Lessons From Tiny Homes Villages](#), 104 *Minn. L. Rev.* 385 (2019).

Our nation's housing situation gets worse by the day. Even before the pandemic, subprime lending, exclusionary zoning, and modern-day redlining forced millions of households into unstable, unsafe, or unaffordable living situations. Now, with the pandemic wiping away jobs, we appear to be on the verge of an unprecedented national housing crisis that will start when the evictions and mortgage relief end. We need creative solutions now more than ever.

That's why Lisa Alexander's most recent law review article, *Community in Property: Lessons from Tiny Homes Villages*, is such a timely, significant contribution. Her work focuses on "tiny homes," which she defines as being units of 400 square feet or less.

Given their small size, these homes will not be a year-round solution for everyone, but Alexander focuses on their utility for the unhoused. She notes that a tiny house can be quickly created. It can be affordably built. It offers privacy not offered by other housing types, such as homeless shelters. I'll add to Alexander's list that a tiny home uses fewer material resources both during construction and over the course of its life, through more compact development that uses less land, and a smaller physical footprint that uses less water and energy than a traditional home.

While Alexander recognizes the benefits of individual tiny homes, she believes the real power lies in many such homes arranged in communal villages. She draws from theories about progressive property, personhood, and the urban commons¹ to assert that tiny homes villages can help model a new type of relationship with real property: stewardship.

Currently, property law prioritizes relationships with land that are rooted in title and in exclusive ownership and control. Alexander's conceptual claim is that property law must recognize short-term, informal relationships that privilege sharing and co-management.

To support her push for law to evolve, Alexander shows that these villages have already sprung up in 39 different states. Residents do not simply contribute one-time "sweat equity" (typical for programs like Habitat for Humanity), and they do not get an interest in the form of fee simple ownership.

Rather, residents are required to contribute to ongoing community management, renovation, and decision-making, in exchange for a stable tenure in, and a right to exclude from, their housing unit. Particularly for the homeless, this structure allows meaningful participation in a communal setting—which, according to Alexander, restores their dignity and sense of community. As stewards, they have limited transfer rights: they cannot sublease or rent their interest, or give it to anyone outside the community without the permission of the community.

Although villages are emerging, the concept of stewardship is not yet fixed in property law. For that, we have the formalistic tendency of property law—and the obsession with the *numerus clausus*, the set of fixed forms of ownership—to blame.

Alexander persuasively explains why the tenures of the residents of tiny homes villages created for the unhoused do not fit neatly into traditional categories, including tenancy, condominiums, cooperatives, and other similar arrangements. (For example, the participation requirement goes beyond what would be expected of an ordinary

tenant.) She pushes theorists and policymakers alike to go beyond an essentialist view of property, drawing from an important article by Kirsten A. Carpenter, Sonia K. Katyal, and Angela R. Reilly, which discusses among other things stewardship on indigenous land.²

Introducing flexibility into state law definitions of property and modifying zoning laws to allow tiny homes villages may be easier said than done. The Not-In-My-Backyard mentality, undertaken by owners of detached, single-family homes, has largely resisted making this kind of housing legal. The “invasion of your suburbs” dog whistle used repeatedly during the presidential campaign attempted to rally the NIMBY crowd to vote. Alexander is optimistic about the emerging Yes-In-My-Backyard (YIMBY) movement.

I hope she’s right. The YIMBYs have been gaining steam, although many groups are focused on perhaps the lower-hanging fruit of trying to legalize accessory dwelling units and transit-oriented development.³ I personally believe that zoning reform is a common-sense, nonpartisan issue. But if, given his campaign rhetoric, a vote for President Trump was a vote against inclusionary housing, then we as a nation have a long way to go. Let’s hope Lisa Alexander—whose terrific article explains why thinking small *is* thinking big—can help us get there.

1. See, e.g., Gregory S. Alexander et al., *A Statement of Progressive Property*, 94 **Cornell L. Rev.** 743 (2009); Margaret Jane Radin, *Property and Personhood*, 34 **Stan. L. Rev.** 957 (1982); Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 **Yale L. & Pol’y Rev.** 281 (2016).
2. See Kristen A. Carpenter et al., *In Defense of Property*, 118 **Yale L.J.** 1022 (2009).
3. See, e.g., [Desegregate Connecticut](#) (which I helped develop).

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