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# SQUASHING THE SQUATTING CRISIS: A PROPOSAL TO REFORM SUMMARY EVICTION AND IMPROVE CASE MANAGEMENT SERVICES TO STOP THE SQUATTER SUPPLY

## ABSTRACT

*On a single night in January of 2016, 549,928 people in the United States were homeless. While some of these homeless individuals utilized shelters and transitional housing services, others broke into vacant properties in search of shelter. The United States is currently experiencing a housing crisis that exacerbates homelessness and home vacancy, leaving properties ripe for squatter break-ins and forcing property owners to foot the bill to remove the squatters. Despite a number of existing homeless assistance programs, property squatting persists.*

*This Note proposes a two-pronged solution to the short- and long-term challenges that are presented by the squatting crisis. A reform to the summary eviction process allows for the quick removal of property squatters, while improvement in case-management services works to stop the flow of squatters at the source. While this Note does not endeavor to craft a solution to the comprehensive problem of homelessness in the United States, by targeting the squatting crisis at the community level, this Note attempts to solve the squatting crisis as one step of many to reduce, and one day eliminate, homelessness.*

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## I. INTRODUCTION

A modern-day squatter is an individual “who settles on property without any legal claim or title” to the land or the structures thereon.<sup>1</sup> Throughout history, the perception of squatters has changed from that of revered settlers of the West to indigent property thieves.<sup>2</sup> This change in perception is the cumulative result of the urbanizing landscape of the twenty-first century United States, failed economic policies, and legislative actions that fail to protect the property interests of landowners or strike a balance between policies of fairness and economic efficiency.<sup>3</sup> While perceptions of squatting have changed throughout history, it remains clear that squatting presents challenges that will require systematic reforms and improvements in order to restore the balance between fairness and economic efficiency in housing.<sup>4</sup>

This Note will highlight the shortcomings of current squatting laws in Iowa as well as propose workable solutions to those problems in the state of Iowa and beyond. Part I defines modern-day squatting and describes the current squatting crisis. Part II provides a historical background of squatting and Part III describes general property laws. Part IV explores current remedies available in the United States including self-help, police involvement, summary eviction, and criminal charges while Part V discusses the broader implications of homelessness. Part VI proposes a two-pronged solution that (1) calls for a reform of the summary eviction process and (2) proposes improvements to current case-management services to connect homeless squatters to existing housing programs to address the broader issue of homelessness. Finally, Part VII concludes that the proposed two-pronged solution addresses both the short-term

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1. *Squatter*, BLACK’S LAW DICTIONARY (10th ed. 2014).

2. *See infra* Part II.

3. *See infra* Part II.

4. *See infra* Part VI.

challenges created by the squatting crisis, as well as broader policy reforms aimed at housing the homeless to stop the squatting crisis at its source.

## II. THE HISTORY OF SQUATTING

### A. *What is a Squatter?*

Historically, a squatter was defined as “[s]omeone who settle[d] on public land under a government regulation allowing the person to acquire title upon fulfilling specified conditions.”<sup>5</sup> In contrast, a present-day squatter is defined as an individual “who settles on property without any legal claim or title”—quite contrary to the historical definition.<sup>6</sup> To better understand the transition from government-regulated squatting to illegal squatting, one must understand the historical implications that crafted the disdain towards modern-day squatters.

### B. *Historical Background: The Era of Encouragement and the Present Predicament*

While squatting has existed for centuries,<sup>7</sup> this Note begins its analysis at the onset of squatting in the United States during the nineteenth century. In contrast to the present-day disenchantment with squatting, the act of squatting was historically a legal and encouraged form of settling the nation.<sup>8</sup>

#### 1. *The Era of Encouragement*

Squatting was widespread on the frontier of the American West during the nineteenth century.<sup>9</sup> Settlers, unable to afford land at market

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5. *Squatter*, BLACK’S LAW DICTIONARY, *supra* note 1.

6. *Id.*

7. Brian Gardiner, Note, *Squatters’ Rights and Adverse Possession: A Search for Equitable Application of Property Laws*, 8 IND. INT’L & COMP. L. REV. 119, 123 (1997).

8. See An Act to Secure Homesteads to Actual Settlers on the Public Domain, ch. 75, 12 Stat. 392 (1862) (codified as amended at 43 U.S.C. §§ 161–302) (repealed 1976).

9. See, e.g., HANNAH DOBBZ, NINE-TENTHS OF THE LAW: PROPERTY AND RESISTANCE IN THE UNITED STATES 51–52 (2012) [hereinafter DOBBZ, NINE-TENTHS OF THE LAW]; Eduardo M. Peñalver, *Homesteaders in the Hood*, SLATE (Mar. 25, 2009),

[http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2009/03/homesteaders\\_in\\_the\\_hood.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2009/03/homesteaders_in_the_hood.html) (recounting the history of property squatting and examining the relationship between squatting, homelessness, and absentee property ownership).

price, simply occupied the land that was owned by Native American tribes and Eastern speculators, the latter of which were only “interested in free-riding on rising property values.”<sup>10</sup> Local officials in the United States viewed this as a win-win arrangement.<sup>11</sup> The settlers acquired property and engaged in productive land development while the local governments were able to collect property taxes and enjoy the fruits of the settler-built infrastructure that had been neglected by the far-away Eastern speculators.<sup>12</sup> Local governments facilitated this squatter-settling process by easing the requirements for obtaining title through adverse possession<sup>13</sup> in shortening the amount of time required for squatting to become ownership.<sup>14</sup>

While this arrangement worked favorably for the land owned by Eastern speculators, the squatter-settling extended to land owned by the U.S. government as well.<sup>15</sup> After years of using the U.S. Army to chase squatters off of government-owned land, Congress created a legal avenue for squatters to become landowners: the 1862 Homestead Act.<sup>16</sup> President Abraham Lincoln signed the Homestead Act into law on May 20, 1862, encouraging Western settlement by providing settlers with 160 acres of surveyed government land in exchange for: (1) the payment of a small filing fee, (2) improvement of the land through building a dwelling and cultivation, and (3) five years of continuous residency on the land.<sup>17</sup> After the five-year residency period, the homesteader could file for a patent, or deed of title, to that land.<sup>18</sup> In addition, title could be acquired after six months of residency provided the homesteader purchased the land from the government for \$1.25 per acre.<sup>19</sup>

Nearly two million settlers attempted to acquire title to land using the Homestead Act, but ultimately, only approximately 783,000 were able to fulfill the Act’s requirements.<sup>20</sup> Settlers, attracted to the prospect of

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10. Peñalver, *supra* note 9.

11. *Id.*

12. *Id.*

13. *Adverse Possession*, BLACK’S LAW DICTIONARY (10th ed. 2014).

14. Peñalver, *supra* note 9.

15. *Id.*

16. *Id.*; An Act to Secure Homesteads to Settlers on the Public Domain, ch. 75, 12 Stat. 392 (1862) (codified as amended at 43 U.S.C. §§ 161–302) (repealed 1976).

17. An Act to Secure Homesteads to Settlers on the Public Domain.

18. *Id.*

19. *Id.*

20. *The Museum Gazette: The Homestead Act of 1862*, NAT’L PARK SERV.,

essentially free land, were often met with treeless grasslands and no access to water—complicating their ability to build a dwelling as required by the Homestead Act.<sup>21</sup> In addition, droughts plagued the prairie, destroying crops and blowing away valuable topsoil, and natural disasters such as prairie fires, grasshopper plagues, blizzards, and subzero temperatures decimated the crops.<sup>22</sup> “Between 1888 and 1892, half the population of western Nebraska moved back to Iowa and Illinois.”<sup>23</sup>

In 1935, President Franklin D. Roosevelt withdrew the remainder of the available homesteading land from the public domain in order to prepare for a nationwide conservation program in the wake of the Dust Bowl, essentially putting an end to the homesteading era.<sup>24</sup> While the Homestead Act was imperfect, it served as an important mechanism for settling the Western frontier and solidified squatting as a legitimate method of property acquisition.<sup>25</sup> The Homestead Act was eventually repealed in 1976,<sup>26</sup> long after the homesteading boom of the western frontier had tapered off—only to be replaced with a new wave of squatting: urban squatting.<sup>27</sup>

## 2. *Squatting in the City: The 1970s Resurgence*

Nearly a century after the Homestead Act was signed into law, “squatting went urban.”<sup>28</sup> The combination of a recession, suburban white flight, redlining,<sup>29</sup> and riots led to the collapse of the housing market.<sup>30</sup> This collapse resulted in increased vacancies in apartments, homes, and other

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<http://www.nps.gov/jeff/learn/historyculture/upload/homestead.pdf> (last visited June 25, 2017).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. See DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 51; *Homestead Act*, HISTORY, <http://www.history.com/topics/homestead-act> (last visited June 25, 2017).

26. *About the Homestead Act*, NAT'L PARK SERV., <http://www.nps.gov/home/learn/historyculture/abouthomesteadactlaw.htm> (last visited June 25, 2017).

27. DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 68–69.

28. Peñalver, *supra* note 9; *see also id.* at 68.

29. *Redlining*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining redlining as “[c]redit discrimination . . . by an institution that refuses to provide loans or insurance on properties in areas that are considered to be poor financial risks or to the people who live in those areas”).

30. Peñalver, *supra* note 9; *see also* DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 67.

buildings—leaving the structures ripe for squatters to take over.<sup>31</sup> The urban squatting movement marked the end of squatting as a legitimate form of settlement and contributed to today’s negative perception of squatting.<sup>32</sup>

City governments took different approaches to address the influx of squatters—some governments cracked down on the squatters by forcibly removing them, while others took a more “measured approach” by creating programs that allowed urban “homesteaders” to acquire the vacant housing through “sweat equity.”<sup>33</sup> The sweat equity programs allowed urban homesteaders to create financial equity in a property by using their own labor to improve the property.<sup>34</sup>

### *3. Recession Revival: Squatting in the Present Era*

History is repeating itself as the Great Recession of 2008 continues to affect the housing market through increased unemployment, increased homelessness, and increased home vacancies.<sup>35</sup> The combined increase of homelessness and home vacancy makes for ideal squatting conditions—empty homes and people who need them.

Presently there are nearly 19 million vacant homes in the United States—enough for every homeless person to have six homes.<sup>36</sup> So why don’t the homeless simply move into the vacant homes, simultaneously solving both the homelessness and squatting crises? As it turns out, some cities are encouraging that very solution,<sup>37</sup> but the reality is that homeless squatters continue to face arrest and are otherwise removed from many

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31. Peñalver, *supra* note 9.

32. *See id.*

33. *Id.*

34. *Sweat Equity*, BLACK’S LAW DICTIONARY (10th ed. 2014).

35. *See The Great Recession*, ST. WORKING AM., <http://stateofworkingamerica.org/great-recession/> (last visited June 25, 2017).

36. *18,600,000 Vacant Homes in the United States. Enough for Every Homeless Person to Have Six!*, MIND UNLEASHED (Feb. 27, 2014), <http://themindunleashed.org/2014/02/18600000-vacant-homes-united-states-enough-every-homeless-person-six.html>.

37. SAM TSEMBERIS, HOUSING FIRST: THE PATHWAYS MODEL TO END HOMELESSNESS FOR PEOPLE WITH MENTAL HEALTH AND SUBSTANCE USE DISORDERS 11 (2010); *see* John M. Glionna, *Utah is Winning the War on Chronic Homelessness with ‘Housing First’ Program*, L.A. TIMES (May 24, 2015), <http://www.latimes.com/nation/lana-utah-housing-first-20150524-story.html#page=1> (describing “Housing First,” a pioneering program in Utah that places the homeless in vacant apartments and provides them with drug rehabilitation and other social services).

public and private spaces.<sup>38</sup>

### C. *The Present Predicament*

Over the last century, public perception of squatting has become increasingly negative, pitting desperate resourcefulness against legal ownership.<sup>39</sup> The accessibility of technology has resulted in broader awareness of squatting.<sup>40</sup> This awareness has exacerbated the clash of ideals between squatters and property owners, contributing to the negative perception of squatting in the twenty-first century, while simultaneously providing resources for squatters to make squatting more accessible and difficult to manage.<sup>41</sup> Many squatters contribute to online forums by sharing tips and resources for how to be a squatter,<sup>42</sup> as well as various tips on how to evade eviction through forged leases and other actions.<sup>43</sup> On the other hand, technology has exposed these stories to a wider audience of property owners, thus creating growing concern and contempt towards the act of squatting.<sup>44</sup>

#### 1. *A National Epidemic*

Recently, stories of squatters throughout the United States have

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38. See Glionna, *supra* note 37.

39. See DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 64 (“An intrinsic component of the political economy of neighborhood change is the definition and presentation of the neighborhood’s existing status as *problematic* . . . .” quoting CHRISTOPHER MELE, SELLING THE LOWER EAST SIDE: CULTURE, REAL ESTATE, AND RESISTANCE IN NEW YORK CITY 18 (2000)); MARY MANJIKIAN, SECURITIZATION OF PROPERTY SQUATTING IN EUROPE 66 (2013).

40. See David C. Stevens & Richard Gunderman, *How Libraries Became the Front Line of America’s Homelessness Crisis*, WASH. POST (Aug. 19, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/08/19/how-libraries-became-the-front-line-of-americas-homelessness-crisis/>.

41. See DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 124–27.

42. See, e.g., *Squatter’s Handbook—Online*, SQUAT NET, <http://archiv.squat.net/squatbook1/index.html> (last visited June 25, 2017).

43. See, e.g., *Around the Campfire*, SQUAT PLANET, <https://squattheplanet.com/around-the-campfire/> (last visited June 25, 2017); *WikiHow to Squat in Abandoned Property*, WIKIHOW, <http://www.wikihow.com/Squat-in-Abandoned-Property> (last visited June 25, 2017).

44. See Caitlin Dewey, *36 Ways the Web Has Changed Us*, WASH. POST (Mar. 12, 2014), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2014/03/12/36-ways-the-web-has-changed-us/> (discussing the ways the internet has changed daily life, including that “[w]e’re more socially connected”).

made local and national news, highlighting the prevalence of squatting and some of the difficulties faced both by squatters and by the lawful property owners who attempt to remove them. In Oregon, a homeless woman broke into and lived in the garage of a home going through the foreclosure process, and police were unable to remove her because the house itself had not been broken into.<sup>45</sup> In North Carolina, a man “backed up a moving van, unpacked his belongings and changed the locks” on an \$800,000 home, filing a bogus deed and claiming ownership of the property.<sup>46</sup> Ultimately, the man was convicted of a felony and sentenced to over five years in prison for “obtaining property by false pretenses.”<sup>47</sup> In Florida, where squatting is rampant due to the number of vacant homes in the wake of the housing crash,<sup>48</sup> squatters have figured out a way to “outsmart the system” by “whip[ping] out a fake lease when confronted by law enforcement.”<sup>49</sup>

While not all squatting operations involve the mild sophistication of fake leases and online communities, those that do have complicated the squatter-removal process. Obtaining a fake lease only requires a simple Google search,<sup>50</sup> and once the document is printed out and filled in, it may be enough to stop the police from immediately removing a squatter.<sup>51</sup>

Finally, it is important to note that squatting can occur in a variety of settings including residential single-family homes, apartments, commercial spaces, abandoned properties, and more. Most striking are the stories above in which homeowners return from an absence to find a stranger living in their home, but squatting frequently arises in other contexts

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45. Anna Griffin, *Squatters in Vacant Houses Cause Big, Hard-to-Cure Headaches in Portland Neighborhoods*, OREGON LIVE (July 10, 2014), [http://www.oregonlive.com/portland/index.ssf/2014/07/post\\_474.html](http://www.oregonlive.com/portland/index.ssf/2014/07/post_474.html).

46. Associated Press, *State Supreme Court Takes Look at Squatter Scam from Housing Crisis*, TIMES-NEWS (Aug. 29, 2015), <http://www.thetimesnews.com/article/20150829/NEWS/150828658>.

47. *Id.*

48. Elizabeth Behrman, *Legal Changes, Better Economy Helping Reduce Number of Squatters*, TBO (Mar. 10, 2015), <http://www.tbo.com/news/crime/legal-changes-better-economy-helping-reduce-number-of-squatters-20150310/>.

49. Shannon Behnken, *Hillsborough Detectives Offer Tips After Squatters Take Over Gibsonton Woman's Home*, WFLA (Sept. 11, 2015), <http://wfla.com/2015/09/11/hillsborough-detectives-offer-tips-after-squatters-take-over-gibsonton-womans-home/>.

50. A Google search of “property lease agreement” yielded 3,200,000 results in 0.5 seconds. *See* GOOGLE, <https://www.google.com/#q=property+lease+agreement> (last visited Apr. 24, 2017).

51. *See* Behnken, *supra* note 49.

including in abandoned buildings and even vacant rental properties.<sup>52</sup>

## 2. *Iowa is Not Immune*

In the spring of 2015, a Des Moines, Iowa landlord, Bill Moyer, discovered a woman squatting in one of his rental properties.<sup>53</sup> The squatter, Jody Engstrom, came to Moyer's office looking for a place to rent.<sup>54</sup> Moyer informed Engstrom of a property in Des Moines that was not yet ready to live in, but Engstrom asked to view the property anyway.<sup>55</sup> According to Moyer, he "never thought any more about it" and assumed Engstrom would simply drive by the property to look at it.<sup>56</sup> About three days later, Moyer visited the property and discovered that Engstrom had moved in.<sup>57</sup> Upon discovering Engstrom squatting in his rental property, Moyer demanded that Engstrom "get out of [his] house now," but Engstrom simply looked at him and said "[e]vict me."<sup>58</sup> While Moyer was eventually able to evict the squatter from his property, "the whole process took two months and cost him thousands of dollars in clean up costs, lost rent, and fees," and Moyer could not comprehend "how someone [could] break into his property, live there for months, and he ha[d] to pay the price for it."<sup>59</sup>

Moyer's story highlights the pitfalls of current Iowa law when it comes to dealing with squatters. While the situation seems expressly unfair to Moyer, the policies behind the difficult eviction process are firmly rooted in the legislative goal of fairness, making the situation especially troublesome to repair.

### III. GENERAL PROPERTY LAWS

The resolution of the present-day squatting dilemma depends on a thorough understanding of the definition of squatting and how that definition can be distinguished from other areas of property law. Property

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52. See, e.g., Associated Press, *supra* note 46.

53. Aaron Brillbeck, *Landlord Loses Thousands of Dollars to Get Squatter Out of Rental Property*, WHOTV (July 14, 2015), <http://whotv.com/2015/07/14/landlord-loses-thousands-of-dollars-to-get-squatter-out-of-rental-property/>.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

law encompasses a myriad of topics from real property to intellectual property, to the acquisition, transfer, and control of property, and beyond. At issue here is the acquisition (and potential loss) of real property rights.

Real property consists of land and anything that is attached to or erected on it.<sup>60</sup> This definition excludes movable or intangible items of personal property,<sup>61</sup> but includes structures such as buildings and homes “which are permanent additions to the land upon which they stand.”<sup>62</sup>

Ownership of real property is accompanied by a group of rights—typically referred to as the “bundle of sticks”—which govern a property owner’s interests in relation to those rights.<sup>63</sup> While the exact rights constituting the bundle of sticks are debated,<sup>64</sup> a generally accepted list of rights includes: the right to possess, the right to use, the right to exclude others, the right to transfer, and the right to modify or destroy.<sup>65</sup> These rights may be divided among several individuals or retained by a single owner, but regardless of who owns what stick, there are implications for the owner in respect to the rights associated with the stick(s) he or she possesses.<sup>66</sup>

No express hierarchy of property rights exists, but among the most valued rights of property owners is the right to exclude others.<sup>67</sup> The importance of the right to exclude others from one’s property has been noted as the centerpiece of property ownership since William Blackstone’s eighteenth century *Commentary*.<sup>68</sup> As Blackstone stated:

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other

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60. *Real Property*, BLACK’S LAW DICTIONARY (10th ed. 2014).

61. *Personal Property*, BLACK’S LAW DICTIONARY (10th ed. 2014).

62. WILLIAM J. GRANGE, *REAL ESTATE: A PRACTICAL GUIDE TO OWNERSHIP, TRANSFER, MORTGAGING, AND LEASING OF REAL PROPERTY* 3 (1937).

63. JERRY L. ANDERSON & DANIEL B. BOGART, *PROPERTY LAW: PRACTICE, PROBLEMS, AND PERSPECTIVES* 31 (2014).

64. *Id.* at 32.

65. *See, e.g., id.* at 31.

66. *Id.* at 31–32.

67. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982) (quoting *Kaiser Aetna v. U.S.*, 444 U.S. 164, 176 (1979)) (calling the right to exclude “one of the most essential sticks in the bundle of rights”).

68. *See* 2 WILLIAM BLACKSTONE, *BLACKSTONE’S COMMENTARIES ON THE LAWS OF ENGLAND* \*2.

individual in the universe.<sup>69</sup>

Under Blackstone's essentialist theory, the right to exclude is defined as the "critical element . . . that make[s] up the irreducible core of property in all its manifestations."<sup>70</sup> Thus the right to exclude "is both a necessary and sufficient condition of property."<sup>71</sup> Because of the importance of the right to exclude, a cause of action for trespass naturally arose to punish those in violation of that right.<sup>72</sup>

In addition to the bundle of sticks, a number of policy goals underlie property laws, property distribution, and the outcomes of property disputes.<sup>73</sup> These policies include: economic efficiency, fairness, certainty, personhood, and democracy.<sup>74</sup> In the context of squatting, the most relevant policies include economic efficiency—the protection of property that results in an incentive to produce—and fairness, or the granting of property rights solely because a person labored over the property and thus deserves ownership of it.<sup>75</sup> Like the bundle of sticks theory, no single policy goal is the deciding factor, but rather each policy is considered and weighed against the others to resolve property conflicts.<sup>76</sup>

### A. Trespass

#### 1. Defined

Trespass is defined as "[a]n unlawful act committed against the person or property of another; esp[ecially], wrongful entry on another's real property."<sup>77</sup> At common law, any unauthorized entry onto the property of another was considered an actionable trespass, regardless of whether the trespass was intentional or the property was damaged.<sup>78</sup> However, the modern law against trespass states that an intruder is only

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69. *Id.*

70. Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 734 (1998).

71. *Id.*

72. See ANDERSON & BOGART, *supra* note 63, at 32.

73. *Id.* at 8.

74. *Id.* at 8–9.

75. *Id.* at 9–10, 13–14.

76. *Id.* at 8.

77. *Trespass*, BLACK'S LAW DICTIONARY (10th ed. 2014).

78. ANDERSON & BOGART, *supra* note 63, at 32.

liable for a harmless entry when that entry is intentional.<sup>79</sup> There is both a civil and criminal cause of action for trespass.<sup>80</sup> In a civil action, the landowner may seek damages for the intrusion; in a criminal action, an intruder may be charged if he knows he is not privileged or authorized to be on the property and has been told to leave, or the land is enclosed in such a way as to know his presence is not authorized.<sup>81</sup>

## 2. *Distinguished*

If a line exists between squatting and trespass, it is a thin one. For all intents and purposes, most property squatters can be considered trespassers because, under criminal trespass laws, the squatter “knows he is not authorized or privileged to be on the property,”<sup>82</sup> and under civil trespass laws, the squatter has made an unauthorized entry upon the land of another.<sup>83</sup> Thus, drawing an exact distinction between a trespasser and a squatter is less clear in terms of labeling but has strong implications on how the putative squatter is treated when actions are taken to remove or punish the individual.

The complications that arise from the difficulty in distinguishing a trespasser and a squatter are exemplified in the following hypothetical sets of facts: In situation one, a police officer is called to respond to a report from a neighbor that an individual has climbed over a fence onto private property and has entered a private dwelling. The police officer arrives and finds the individual walking around inside the private dwelling with a flashlight. In situation two, a police officer is called to respond to a report from a landlord that an individual has moved his or her belongings into a privately owned, vacant apartment. When the police officer arrives, he finds the individual setting the table for dinner. While, by definition, both hypothetical situations could be considered a trespass, the police response may be the true distinguishing factor.

When a police officer has a witness for the initial entry (as in hypothetical situation one), he is more likely to treat the situation as a criminal trespass and take action to remove the trespasser.<sup>84</sup> In

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79. *Id.* at 32–33; RESTATEMENT (SECOND) OF TORTS § 158 (AM. LAW INST. 1965).

80. ANDERSON & BOGART, *supra* note 63, at 32.

81. *Id.*

82. *Id.*

83. *See Trespass*, BLACK’S LAW DICTIONARY, *supra* note 77.

84. *See, e.g.*, CONN. GEN. STAT. ANN. § 53a-214 (West 2017); PHILA., PA., CODE § 9-1603 (2009) (prohibiting a landlord from self-evicting a lawful tenant without judicial

hypothetical situation two, a police officer is more likely to treat the dispute as a civil matter to be resolved through the formal summary eviction process.<sup>85</sup> Without a witness to the initial entry, police are often hesitant to remove a putative squatter out of concern that the individual may actually be a lawful tenant.<sup>86</sup> In fact, many states specifically prohibit police from taking action in a situation such as the one presented in hypothetical situation two.<sup>87</sup> In short, the police would likely treat the individual in hypothetical situation one as a trespasser, and the individual in hypothetical situation two as a putative squatter.

Additionally, in hypothetical situation two, the police are less likely to remove the individual, as removing a lawful tenant might violate a person's Fourth Amendment<sup>88</sup> protection against unreasonable searches and seizures and thus could result in civil liability for the police officer<sup>89</sup> if the actions taken during removal are especially egregious.<sup>90</sup> Without evidence of, or a witness to, an initial entry, the police simply have no evidence to rely upon when making the distinction between trespasser and lawful tenant, thus the police may be deterred from removing the putative squatter.<sup>91</sup>

Given only the definition of trespass, one might (mistakenly) assume that squatters have no legal claim or right to be present on the property of another. But that is not the case. Because the laws of property depend upon various and competing policy interests, the right to exclude is not

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process); CHI., ILL., MUNICIPAL CODE § 5-12-160 (1990).

85. See, e.g., *Landlords, Tenants, and Police Civil Liability*, 6 AELE MONTHLY L.J. 101, 110 (2009), <http://www.aele.org/law/2009all06/2009-06MLJ101.pdf> ("It is not the job of an officer to resolve landlord tenant disputes. . . . [They] are civil disputes, and the parties can be reminded that there are courts to resolve those disputes.").

86. See, e.g., Austin Stewart, *Squatters' Rights?*, ADVOCATE, Jul. 2002, at 11, 11.

87. For example, in Connecticut, the *Landlord/Tenant Disputes Training Manual* advises police officers that a "tenant" includes "all occupants of dwelling units" including those "who the landlord did not realize were living there," thus a squatter is protected by summary eviction procedures for tenant removal, and the police will not intervene without a court order for eviction. OFFICE OF THE CHIEF STATE'S ATT'Y, LANDLORD/TENANT DISPUTES TRAINING MANUAL 6 (2009), [http://www.ct.gov/cachm/lib/cachm/Police\\_manual\\_-\\_final\\_as\\_adopted\\_by\\_State's\\_Attorney.pdf](http://www.ct.gov/cachm/lib/cachm/Police_manual_-_final_as_adopted_by_State's_Attorney.pdf).

88. U.S. CONST. amend. IV.

89. See *Soldal v. Cook Cty.*, 506 U.S. 56, 61–62, 72 (1992).

90. See generally *Landlords, Tenants, and Police Civil Liability*, *supra* note 85, at 102, 105 (examining cases in which police officers faced civil liability for their responses to landlord–tenant disputes).

91. See Stewart, *supra* note 86, at 11.

absolute.<sup>92</sup> While trespass provides a cause of action for the observant landowner, the property policies of certainty, economic efficiency, fairness, and personhood may override that interest for landowners who are not persistent in its exercise.<sup>93</sup> Those policies sometimes favor the granting of property rights to a long-term trespasser over the actual landowner who failed to keep watch over or efficiently utilize his property.<sup>94</sup> So, while the right to exclude others is powerful, it is also fragile.

### B. *Adverse Possession*

Understanding the predicament faced by property owners who discover squatters in their homes requires a review of the law of adverse possession. “[A]dverse possession sounds, at first blush, like title by theft or robbery, a primitive method of acquiring land without paying for it.”<sup>95</sup> In reality, adverse possession serves important property interests such as ensuring clear title to land and rewarding a possessor who puts the land to good use, while punishing the true owner for “sleeping on his rights.”<sup>96</sup>

#### 1. *Defined*

Adverse possession is “[t]he enjoyment of real property with a claim of right when that enjoyment is opposed to another person’s claim and is continuous, exclusive, hostile, open, and notorious.”<sup>97</sup> A claim of adverse possession is similar to a statute of limitations in that it prescribes a length of time after which, if all other elements are satisfied, an action for ejectment or recovery of possession by the true owner cannot be made.<sup>98</sup> In Iowa, a claim for ejectment or recovery of possession is barred after 10 years.<sup>99</sup> Additionally, Iowa requires that a possessor of land claiming title by adverse possession have a good faith belief that he owns the property in

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92. ANDERSON & BOGART, *supra* note 63, at 39–40 (explaining that, while the right to exclude is of high, situations exist that may trump this right, including privileged entry, such as a pilot’s need to make an emergency landing in a person’s private field or a fireman’s need to run across a person’s private lawn to rescue a person in a burning home).

93. *See id.* at 117–18.

94. *See id.*

95. Henry W. Ballantine, *Title by Adverse Possession*, 32 HARV. L. REV. 135, 135 (1918).

96. ANDERSON & BOGART, *supra* note 63, at 118.

97. *Adverse Possession*, BLACK’S LAW DICTIONARY, *supra* note 13.

98. ANDERSON & BOGART, *supra* note 63, at 115.

99. IOWA CODE ANN. § 564.1 (West 2017).

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question—something a squatter would certainly not have.<sup>100</sup>

## 2. *Distinguished*

Adverse possession differs from squatting in that it acts as a statute of limitations requiring the possessor to establish the elements of adverse possession for the statutory period.<sup>101</sup> Essentially, one who occupies land without the legal right to do so is considered a trespasser until the statute of limitations for adverse possession has run.<sup>102</sup> Once the statute of limitations for adverse possession has run, the true owner loses his or her right to remove the trespasser, and the trespasser has become an adverse possessor, thus granting the trespasser legal title to the property.<sup>103</sup> Less clear is the period in between trespasser and adverse possessor.

## C. *Squatter*

### 1. *Defined*

A present-day squatter is broadly defined as an individual “who settles on property without any legal claim or title.”<sup>104</sup> This definition is not to be confused with a “squatter holdover” which is an actual tenant with a legal right to occupy who remains in possession of the premises after the lease has expired.<sup>105</sup> A squatter holdover is more commonly referred to as a “holdover tenant” and is treated under existing landlord–tenant laws for tenancy at sufferance.<sup>106</sup>

Additionally, while present-day squatters are typically homeless individuals, there exists a faction of squatters who engage in squatting as part of a broader social movement.<sup>107</sup> This Note’s proposed solution to the

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100. See e.g., *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982) (noting that, in Iowa, “a claim of right must be made in good faith”).

101. ANDERSON & BOGART, *supra* note 63, at 115.

102. *Id.*

103. *Id.*

104. *Squatter*, BLACK’S LAW DICTIONARY, *supra* note 1.

105. *Holdover Tenant*, BLACK’S LAW DICTIONARY (10th ed. 2014).

106. ANDERSON & BOGART, *supra* note 63, at 319–20. Tenancy at sufferance occurs when “a tenant remains in his premises after his term has expired[.]” *Id.* at 319. A tenant at sufferance, also referred to as a holdover tenant, is considered the legal possessor of the premises until the landlord elects to treat the tenant at sufferance as either a tenant under a new lease or a trespasser. *Id.* at 319–20.

107. See DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 127 (describing various squatter social movements including a group called Take Back the Land which

squatting crisis will target the unique situations and needs of homeless squatters, but will necessarily apply to all forms of squatters.

## 2. *Distinguished*

As characterized in Parts III.A and III.B above, a squatter can be categorized neither as a trespasser nor as an adverse possessor.<sup>108</sup> A squatter usually will not be punished as a trespasser due to the absence of evidence of the squatter's initial entry, but, on the other hand, the squatter usually cannot be awarded title as an adverse possessor because the squatter likely cannot remain in possession of the property long enough to satisfy the statutory time requirement, and, in Iowa, the squatter would not have the requisite good-faith belief that he or she legally possessed the property.<sup>109</sup> As such, the punishments and protections that exist under trespass and adverse possession laws simply do not apply to squatters, which has only exacerbated the present-day squatting crisis.<sup>110</sup>

## IV. CURRENT REMEDIES

Despite a number of different approaches, the solution to the modern-day squatting crisis has proven to be evasive. Like the squatting crisis itself, the approaches to solving the squatting crisis have evolved. From self-help to summary eviction, squatting solutions have failed to adequately solve the crisis. As homelessness continues to be an issue of great national concern,<sup>111</sup> the squatting crisis will only grow, making it

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held public demonstrations and quiet move-ins in order to acquire property and bring awareness to housing issues).

108. See *supra* Parts III.A, III.B.

109. See *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982); *Adverse Possession*, BLACK'S LAW DICTIONARY, *supra* note 13; *Trespass*, BLACK'S LAW DICTIONARY, *supra* note 77.

110. See generally *Adverse Possession*, BLACK'S LAW DICTIONARY, *supra* note 13; *Trespass*, BLACK'S LAW DICTIONARY, *supra* note 77.

111. See MEGHAN HENRY ET AL., THE 2015 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 4, 8 (2015), <https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf> (noting a point-in-time estimate that 564,708 individuals were homeless on a single night in January 2015 in the United States and promoting "unprecedented collaborations" to provide communities with guidance in their housing assistance efforts). According to the 2016 point-in-time estimate, on a single night in January 549,928 people in the United States were experiencing homelessness. Sixty-eight percent of homeless individuals resided in "emergency shelters, transitional housing programs, or safe havens, and 32 percent were in unsheltered locations." MEGHAN HENRY ET AL., THE 2016 ANNUAL HOMELESS

especially crucial to create and implement a prompt solution. This Part will examine the positive and negative components of both past and present squatting solutions including: self-help, the police, summary eviction, and criminal charges.

### A. *Self-Help*

When a property owner discovers a stranger living in his or her property, the immediate inclination may be to physically remove that person, change the locks, or take other measures to remove the squatter or prevent re-entry. However, under current summary eviction laws in Iowa<sup>112</sup> and several other states,<sup>113</sup> this is not a practical option.<sup>114</sup>

#### 1. *History of Self-Help*

Historically, in both England and the United States, “might made right” when it came to removing squatters.<sup>115</sup> Early in each country’s legal history, the law was not concerned with how landlords chose to evict tenants, making self-help a popular and efficient method to remove squatters.<sup>116</sup> However, after centuries of self-help evictions in England, and thereafter in the United States, it became clear that unbridled self-help contributed to severe abuses by landlords as well as breaches of the peace.<sup>117</sup>

While early U.S. common law did not hold landlords civilly liable for self-help evictions, the frequent violence that accompanied these evictions caused several states to enact forcible entry and detainer (F.E.D.) statutes. These statutes required eviction to occur through a formal civil proceeding rather than by self-help and held landlords liable for forcibly ousting another from possession of real property, as well as provided a judicial

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ASSESSMENT REPORT (AHAR) TO CONGRESS 1, 8 (2016), <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf>.

112. See IOWA CODE ANN. § 648.1 (West 2017) (providing a summary remedy for an action for forcible entry and detainer).

113. See, e.g., 765 ILL. COMP. STAT. ANN. 735/1.4 (West 2017); MINN. STAT. ANN. § 504B.375 (West 2017).

114. See IOWA CODE ANN. § 562A.26

115. See, e.g., Randy G. Gerchick, Comment, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 773 (1993).

116. *Id.* at 773, 775.

117. *Id.* at 776. See, e.g., 765 ILL. COMP. STAT. ANN. 735/1.4; IOWA CODE ANN. § 562A.26; MINN. STAT. ANN. § 504B.375.

remedy for tenants who were wrongfully ousted.<sup>118</sup> These F.E.D. actions provided the landlord with an alternative method of evicting tenants who were unlawfully possessing the property: summary judicial proceedings.<sup>119</sup>

## 2. *Self-Help Today*

Today, self-help eviction is illegal in many jurisdictions,<sup>120</sup> including Iowa.<sup>121</sup> Self-help evictions include actions such as forcibly removing the squatter, excluding the squatter by changing the locks, or other actions including cutting off utility services like electricity, gas, and water.<sup>122</sup> In jurisdictions where self-help is permissible, the property owner must use peaceable means of re-entry and may not resort to violence in order to remove the squatter.<sup>123</sup> While a minority of jurisdictions allow self-help eviction,<sup>124</sup> the majority remain critical of self-help eviction,<sup>125</sup> arguing that history has proven it is nearly impossible to remain peaceable and to avoid violent encounters when using self-help.<sup>126</sup> In most jurisdictions that allow self-help today, any use of physical force or assault against the squatter's person is prohibited.<sup>127</sup>

While some jurisdictions allow self-help, the practical effects of self-help removal of putative squatters can be devastating.<sup>128</sup> For instance, changing the locks on a property can, as intended, bar an individual from entry, but it can also bar the individual from accessing their property stored

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118. See, e.g., Gerchick, *supra* note 115, at 776.

119. *Id.* at 777.

120. See, e.g., CONN. GEN. STAT. ANN. § 53a-214(a) (West 2017); CHI., IL., MUNICIPAL CODE § 5-12-160 (1990); PHILA., PA., CODE § 9-1603 (2009).

121. See IOWA CODE ANN. § 562A.26; *Evictions 101*, IOWA LEGAL AID, <http://www.iowalegalaid.org/resource/evictions-101> (last visited May 31, 2017).

122. See, e.g., IOWA CODE ANN. § 562A.26.

123. See Adam B. Badawi, *Self-Help and the Rules of Engagement*, 29 YALE J. ON REG. 1, 23-24 (2012).

124. Gerchick, *supra* note 115, at 779.

125. See *id.* at 783.

126. *Id.* at 776.

127. *Id.* at 779-80.

128. See, e.g., Eric Bonzar, *Lorain Tenant Shoots Landlord in Alleged Self-Defense*, MORNING J. (Aug. 19, 2015), <http://www.morningjournal.com/article/mj/20150819/NEWS/150819467>; Diane Bukowski, *Statement: Long, Jr. Acted in Self-Defense in Piedmont Killings; Took Wounded Girl to Hospital*, VOICE DETROIT (Jan. 5, 2015), <http://voiceofdetroit.net/2015/01/05/statement-long-jr-acted-in-self-defense-in-piedmont-killing-took-wounded-girl-to-hospital/>.

inside, which may include life-sustaining medication.<sup>129</sup> Cutting off heat in the middle of winter can result in death for occupants of the home.<sup>130</sup> Avoiding conflict in any of these situations is an overly optimistic prediction for a situation that is sure to breed conflict and even violence.<sup>131</sup>

### B. *The Police*

When self-help fails or is prohibited, the next line of defense for a property owner who discovers a squatter on his or her property is to call the police to remove the squatter. Unfortunately, police often refuse to remove the putative squatter based on the policy of deferring to protection that favors the squatter<sup>132</sup> (as demonstrated by hypothetical situation two above), or police may be deterred from removing a putative squatter out of concern for incurring civil liability.<sup>133</sup>

If there is a witness to the squatter's initial entry or evidence of a break-in or other property damage, police may be able to make a valid arrest based on trespass or other charges.<sup>134</sup> However, in the absence of any evidence, the police are forced to make an on-the-spot determination of property ownership, a job that is reserved for a judge.<sup>135</sup> Furthermore, if an

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129. See NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 26 (2014), [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place) [hereinafter NO SAFE PLACE] ("In the case of *Kincaid v. City of Fresno*, for example, a City of Fresno police officer destroyed the asthma medication and nebulizer machine which a homeless plaintiff, Jeannine Nelson, needed to breathe."); Cathy Bussewitz, *Honolulu Hit With Lawsuit Over Homeless Camp Sweeps*, AP (Sept. 17, 2015), <https://apnews.com/f34e0e31874047b6a0ac452a055003c2/honolulu-hit-lawsuit-over-homeless-camp-sweeps> (stating that the families lost medication, important documentation, and valuables during police sweeps).

130. See, e.g., Daniel Simmons-Ritchie, *As Utility Shutoffs Have Risen in PA, Are More People Dying?*, PENN LIVE (Feb. 25, 2016), [http://www.pennlive.com/news/2016/02/as\\_utility\\_shutoffs\\_have\\_risen.html](http://www.pennlive.com/news/2016/02/as_utility_shutoffs_have_risen.html).

131. See generally Bonzar, *supra* note 128 (describing an incident where an individual shot the landlord after the landlord refused to grant entry into the dwelling).

132. See, e.g., Aaron Brillbeck, *Squatting Case May Lead to Changes in State Law*, WHOTV (July 15, 2015), <http://whotv.com/2015/07/15/squatting-case-may-lead-to-changes-in-state-law/>.

133. See generally Soldal v. Cook Cty., 506 U.S. 56, 57–62, 72 (1992) (holding that the Fourth Amendment still applies during eviction proceedings).

134. See HEALTH AND SAFETY, PREMISES AND ENVIRONMENT WORKPLACE LAW HANDBOOK 2012 at 681 (Alex Davies ed., 2012).

135. See *Move Out in Three Days? Are They Serious? The Meaning of Eviction Notices*, IOWA LEGAL AID, <http://www.iowalegalaid.org/resource/move-out-in-three->

arrest is made that is later found to be invalid, the arresting officer could be subject to civil liability.<sup>136</sup> As such, police are deterred from making an arrest and instead defer to the existing summary eviction laws to remove a squatter.<sup>137</sup>

### *C. Summary Eviction*

The outlawing of self-help evictions led to the rise of the summary eviction process, which is the majority rule for evictions today.<sup>138</sup> The summary eviction process typically requires notice to the occupant, the opportunity for the occupant to respond, a court hearing, a court ruling, and the actual eviction.<sup>139</sup> Summary eviction procedures respond to the historical concerns of self-help by: (1) preventing violence by minimizing confrontation between landlord and tenant, (2) promoting fairness to the tenant by giving the tenant a day in court, and (3) ensuring a smooth eviction process by requiring that someone trained in the handling of violent situations attempt to remove the squatter.<sup>140</sup> Finally, the summary eviction process was intended to be a more efficient remedy to remove unwanted property squatters.<sup>141</sup>

In theory, summary eviction is the ideal process for removing a tenant in violation of their lease agreement from a property. It respects the needs of the tenant by ensuring fair treatment and protection against the landlord illegally removing the tenant, and it respects the concerns of the landlord by providing clear eviction procedures that are intended to be efficient.<sup>142</sup> While the summary eviction process remains an effective approach for the removal of *actual* tenants in violation of their lease, the balance breaks down when a squatter who does not have, and never did have, any legal claim to the property is the subject of the eviction.

#### *1. Summary Eviction in Iowa*

Iowa utilizes the summary eviction process to resolve landlord–tenant

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days-are-they-serious-the-m (last visited May 31, 2017) (discussing a judge’s role in evictions).

136. *See Soldal*, 506 U.S. at 61–62, 72.

137. *See* Brian Sullivan, *Invasion of the House Snatchers*, A.B.A. J., Jan. 2013, at 71.

138. *See* Gerchick, *supra* note 115, at 777–78.

139. *See id.* at 792.

140. *Id.* at 783.

141. *Id.* at 841.

142. *See id.* at 841–42.

disputes under its forcible entry and detainer (F.E.D.) statute.<sup>143</sup> In order to begin the summary proceeding, a landlord must first provide the putative squatter with a three-day Notice to Quit.<sup>144</sup> After this notice has been given and three days have passed, the landlord may file an F.E.D. action.<sup>145</sup>

To file an F.E.D. action, the landlord must complete the Original Notice form<sup>146</sup> provided by the court.<sup>147</sup> Once complete, the landlord must submit the form to the clerk of court along with an \$85 filing fee.<sup>148</sup> Next, the putative squatter must be informed of the lawsuit by receiving the Original Notice.<sup>149</sup> This can be accomplished through service by a sheriff, personal delivery, or posting the Original Notice to the door of the premises and mailing the notice through both regular and certified mail.<sup>150</sup> Once the landlord has filed the case, the court will set a hearing date within eight days of the filing date.<sup>151</sup> At the hearing, both sides are permitted to produce proof in support of their positions, and the court will render a decision or judgment.<sup>152</sup> If the landlord wins the eviction case, the tenant may be ordered to leave the premises immediately, and if the tenant wins, the request to evict the tenant will be dismissed.<sup>153</sup> A party that is dissatisfied with the decision may appeal within 20 days, and a party that is not happy with the outcome of the appeal may ask the Iowa Supreme Court to review the case, although review is not a matter of right for small

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143. IOWA CODE ANN. § 648.1 (West 2017).

144. *Evictions 101*, *supra* note 121.

145. *Id.*

146. *eForm 3.6: Original Notice and Petition for Forcible Entry and Detainer*, IOWA COURTS, <http://www.iowacourts.gov/wfdata/files/EDMS/eFormsOctober2012/eForm3.6ONPetFED102412.pdf> (last visited June 25, 2017) (providing an example of the Original Notice form in Iowa).

147. *Instructions for Filing a Petition for Forcible Entry and Detainer*, IOWA JUD. BRANCH, <http://www.iowacourts.gov/wfdata/files/EDMS/Smallclaimsforms/Instructions/Forcible%20Entry%20&%20Detainer%2009%2013%2012.pdf> (last visited June 25, 2017).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* A recent amendment to Iowa F.E.D. law provides that if a defendant-tenant or his or her attorney appears at the eviction hearing, the defendant-tenant may not raise technical arguments regarding insufficiency of notice, as the appearance at the hearing suggests notice was sufficient. H.F. 146, 87th Gen. Assemb. (Iowa 2017). However, a defendant-tenant may still raise other objections at the hearing. *See id.*

153. *Evictions 101*, *supra* note 121.

claims cases.<sup>154</sup>

## 2. Summary Eviction Criticisms

In its current form, the application of summary eviction to squatters has been ineffective, unfair, and costly. For landlords, the chief argument against the summary eviction process is that it is fundamentally unfair and costly to remove illegal squatters who have no legal claim to the property.<sup>155</sup> The monetary fees landlords incur may include lost rent, legal fees, and even cleaning and repairs in some cases.<sup>156</sup> Furthermore, landlords have little protection to recoup from losses they incur from illegal squatters.<sup>157</sup>

In addition to financial costs, the eviction process costs landlords significant time, with a U.S. Government Accountability Office report stating that it takes an average of 114 days to remove a tenant through the summary eviction process.<sup>158</sup> In typical rental agreements between landlords and tenants, landlords can protect themselves from losses or property damage through a number of mechanisms including screening their tenants based on credit history and criminal background, or drawing from security deposits.<sup>159</sup> However, these options simply do not exist when landlords are faced with squatters, leaving landlords financially vulnerable.<sup>160</sup>

Homeowners forced to oust a squatter face the same time and financial challenges as landlords, making the summary eviction process fundamentally unfair in the squatter-removal context.<sup>161</sup>

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154. *Small Claims Information*, IOWA JUDICIAL BRANCH, [http://www.iowacourts.gov/Court\\_Rules\\_Forms/Small\\_Claims\\_Forms/](http://www.iowacourts.gov/Court_Rules_Forms/Small_Claims_Forms/) (last visited June 25, 2017).

155. See Gerchick, *supra* note 115, at 791.

156. See *id.*; Brillbeck, *supra* note 53.

157. See Gerchick, *supra* note 115, at 806, 859 (proposing the use of security deposits as a method of landlord protection; however, this method of protection is not available in the squatter context).

158. U.S. GEN. ACCOUNTING OFFICE, DISTRICT OF COLUMBIA: INFORMATION ON COURT ORDERED TENANT EVICTIONS 2 (1990), <http://www.gao.gov/assets/220/213590.pdf>.

159. Gerchick, *supra* note 115, at 806, 854.

160. See *id.* at 859.

161. See, e.g., IOWA CODE ANN. § 648.1 (West 2017); *Evictions 101*, *supra* note 121.

### 3. *Alternatives to Summary Eviction*

Due to the monetary and temporal costs associated with the summary eviction process, landlords may try to negotiate a solution with tenants or squatters outside of court. This negotiation could be an informal agreement made between the two parties without legal representation, or it could be a more formal mediation or other method of alternative dispute resolution.<sup>162</sup> In some instances, a tenant may agree to leave provided the landlord assists the tenant in relocating to a new rental property.<sup>163</sup> While these options present an attractive alternative to landlords hoping to avoid the judicial process, landlords must be careful to ensure any agreed-upon terms are not in violation of their jurisdiction's landlord-tenant laws, as a court may refuse to enforce unconscionable provisions if tenants challenge them.<sup>164</sup>

#### D. *Criminal Charges*

A majority of states treat squatting as a civil matter requiring use of the summary eviction process in order to remove a squatter.<sup>165</sup> However, the combination of the 2008 housing crisis and subsequent increase in squatting, as well as the shortcomings of the summary eviction process, have caused some jurisdictions to change their approaches to squatting by criminalizing the act.

While this idea has been slow to catch fire in the United States, in 2012, faced with a growing squatting crisis, the United Kingdom enacted a law criminalizing the act of squatting.<sup>166</sup> More recently, this trend has trickled into the United States, namely in Michigan, which recently amended its laws to make squatting a criminal offense and to enable the use of force and self-help to recover possession of the property.<sup>167</sup>

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162. See IOWA CODE ANN. § 562A.7 (authorizing the creation and enforcement of voluntary rental agreements).

163. See Kelsey Cooke, *Tenant Defenses to Evictions in Arkansas*, NOLO, <http://www.nolo.com/legal-encyclopedia/tenant-defenses-eviction-notice-arkansas.html> (last visited June 25, 2017).

164. See IOWA CODE ANN. § 562A.7.

165. See Gerchick, *supra* note 115, at 764.

166. Legal Aid, Sentencing and Punishment of Offenders Act 2012, c. 10, § 144 (Eng.), <http://www.legislation.gov.uk/ukpga/2012/10/section/144/enacted>.

167. Sarah Cox, *There Are Some New Squatters Laws on the Books in Michigan*, CURBED DETROIT (Aug. 18, 2014), <http://detroit.curbed.com/archives/2014/08/there-are-some-new-squatters-laws-on-the-books-in-michigan.php>.

### 1. Michigan

The city of Detroit, Michigan, filed for bankruptcy in 2013 after decades of economic decline and, more recently, falling victim to a severe foreclosure crisis.<sup>168</sup> The national housing crisis in 2008 only exacerbated Michigan's problems,<sup>169</sup> and in the 10-year span between 2005 and 2015, more than one in three Detroit properties were foreclosed upon.<sup>170</sup> As a result, tens of thousands of Detroit homeowners experienced foreclosure, entire neighborhoods were abandoned, and crime rates rose making conditions prime for squatters.<sup>171</sup> In an effort to revitalize the city, tens of thousands of vacant Detroit homes have been set for demolition,<sup>172</sup> and other homes have been set for auction at prices of \$1,000<sup>173</sup> or less, but squatters have proven to be a severe impediment.<sup>174</sup>

In September of 2014, new laws went into effect criminalizing the act of squatting in Michigan.<sup>175</sup> Previously, an action for summary eviction was necessary to remove a squatter, however, Public Act 223 created an exception to the eviction process to allow for the use of force and self-help in the removal of squatters.<sup>176</sup> Public Act 223 amended the existing law to allow a landlord to use force and self-help to recover possession of a

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168. Nancy Kaffer et al., *Detroit Files for Bankruptcy Protection*, USA TODAY (July 18, 2013), <http://www.usatoday.com/story/news/nation/2013/07/18/detroit-prepares-bankruptcy-filing-friday/2552819/>.

169. Debra Watson & Anne Moore, *Housing Crisis Accelerates Blight in Detroit Neighborhoods*, WORLD SOCIALIST WEB SITE (Oct. 21, 2008), <https://www.wsws.org/en/articles/2008/10/fore-o21.html>.

170. Joel Kurth & Christine MacDonald, *Volume of Abandoned Homes "Absolutely Terrifying"*, DETROIT NEWS (May 14, 2015), <http://www.detroitnews.com/story/news/special-reports/2015/05/14/detroit-abandoned-homes-volume-terrifying/27237787/>.

171. *Id.*

172. Corey Williams, *Squatters Slow Detroit's Plan to Bulldoze Vacant Homes*, DETROIT FREE PRESS (Jan. 29, 2015), <http://www.freep.com/story/news/local/michigan/detroit/2015/01/29/detroit-squatters-blight/22516137/>.

173. Kate Abbey-Lambertz, *Detroit is Auctioning Off Incredible Old Homes for \$1,000, But There's a Big Catch*, HUFFINGTON POST (Apr. 14, 2014), [http://www.huffingtonpost.com/2014/04/14/cheap-detroit-houses-auction\\_n\\_5148152.html](http://www.huffingtonpost.com/2014/04/14/cheap-detroit-houses-auction_n_5148152.html).

174. Williams, *supra* note 172 (noting instances of feces stored in a bedroom in a bucket and the risk of danger during property showings).

175. H.B. 5069-71, 97th Leg., Reg. Sess., 2014 Mich. Pub. Acts 223-25.

176. Mich. H.B. 5069.

property from a squatter.<sup>177</sup> While the Michigan legislature did not define what force is permissible, the legislative analysis indicates that the Act allows for forcible entry to regain possession but does not permit the use of assaultive force against the squatter.<sup>178</sup> The exception for forcible entry is narrow and only applies to squatters, thus the eviction process remains intact for tenants in violation of their lease, tenants remaining after their lease has expired, and tenants or homeowners who remain in their foreclosed property.<sup>179</sup> Furthermore, landlords may still choose to use the summary eviction process to remove a squatter as opposed to the newly enacted forcible entry statute.<sup>180</sup>

In addition, Public Act 224 made squatting in a single-family home or duplex a misdemeanor with a maximum fine of \$5,000 and maximum 180-day prison sentence for the first offense, with increased penalties for second and subsequent offenses.<sup>181</sup> This law effectively criminalized squatting.<sup>182</sup>

Finally, Public Act 225 added the second and subsequent offenses of squatting to the list of felonies with a maximum sentence of two years.<sup>183</sup> While this law is described as “tougher,” the intended effect is to make it easier to revitalize Michigan neighborhoods by allowing “owners to take over foreclosures and auction properties . . . [without having] to proceed through the whole eviction process for every new property they acquire.”<sup>184</sup>

## 2. *United Kingdom*

A year before Michigan amended its laws to criminalize squatting, the United Kingdom enacted section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 (LASPO), which allows for criminal punishment of residential squatters.<sup>185</sup> Prior to the creation of the criminal cause of action, property owners had to remove a squatter by filing a civil

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177. *Id.*

178. SUSAN STUTZSKY & ROBIN RISKO, LEGISLATIVE ANALYSIS: SQUATTING: LANDLORD/OWNER REGAINING POSSESSION 2–3 (2014), <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-5069-6B5192E9.pdf>.

179. *See* Mich. H.B. 5069.

180. STUTZSKY & RISKO, *supra* note 178, at 3.

181. Mich. H.B. 5070.

182. *See id.*

183. Mich. H.B. 5071.

184. Cox, *supra* note 167.

185. Legal Aid, Sentencing and Punishment of Offenders Act 2012, c. 10, § 144 (Eng.), <http://www.legislation.gov.uk/ukpga/2012/10/section/144/enacted>.

action, much like the summary eviction process followed by a majority of U.S. jurisdictions.<sup>186</sup> The former civil action laws were riddled with the same complaints the U.S. summary eviction process receives: inefficient, unfair, and ineffective.<sup>187</sup> Under the new law, the act of squatting became a criminal offense punishable by a fine of €5,000,<sup>188</sup> prison time, or both.<sup>189</sup>

While the enactment of section 144 of LASPO was met with significant opposition from groups claiming to have “squatters rights,” the criminalization of the act of squatting minimized potential legal claims from squatters.<sup>190</sup> The substance of the law states that a person commits a criminal offense of squatting if: “(a) the person is in a residential building as a trespasser having entered it as a trespasser, (b) the person knows or ought to know that he or she is a trespasser, and (c) the person is living in the building or intends to live there for any period.”<sup>191</sup> Like Michigan’s law, U.K. law does not apply to holdover tenants—those who remain on the property after the expiration of a valid lease.<sup>192</sup>

The criminalization of squatting in the U.K. quickly proved its short-term effectiveness with 69 individuals charged and 1 individual jailed for violating the law within the first year of its enactment.<sup>193</sup>

### 3. *Criticizing the Criminalization Argument*

In a nation engaged in a growing decriminalization movement<sup>194</sup> that is backed by strong research and bipartisan support, proposing a solution to the squatting crisis that involves criminalizing a desperate attempt to

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186. Criminal Law Act 1977, c. 45, § 6 (Eng.), <http://www.legislation.gov.uk/ukpga/1977/45>.

187. Daniel Martin, *Squatters to Face Six Months in Prison as Laws Giving Them Rights Are Scrapped*, DAILY MAIL (Aug. 30, 2012), <http://www.dailymail.co.uk/news/article-2196058/Squatters-face-months-prison-laws-giving-rights-scrapped.html>.

188. At the time of publication, €5,000 is equivalent to \$5,830.55 USD.

189. Legal Aid, Sentencing and Punishment of Offenders Act 2012 § 144.

190. CRIMINAL LAW & LEGAL POLICY TEAM, OFFENCE OF SQUATTING IN A RESIDENTIAL BUILDING 6 (2012), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220062/squatting-circular.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220062/squatting-circular.pdf).

191. Legal Aid, Sentencing and Punishment of Offenders Act 2012 § 144.

192. *See id.*

193. Tom Moseley, *Squatting Law, a Year on: 69 Charged and One Jailed for 90 Days*, HUFFINGTON POST U.K. (Aug. 31, 2013), [http://www.huffingtonpost.co.uk/2013/08/30/squatting-law\\_n\\_3843266.html](http://www.huffingtonpost.co.uk/2013/08/30/squatting-law_n_3843266.html).

194. *See* NO SAFE PLACE, *supra* note 129, at 16.

seek shelter is counterintuitive and perpetuates a cycle of homelessness.<sup>195</sup> In fact, there is an abundance of evidence that indicates criminalization of squatting is the wrong answer to this crisis and will only serve to exacerbate the underlying causes of the squatting crisis.<sup>196</sup>

In the United Kingdom, “[t]he fact that [squatting] has been made illegal does not blind people to the empty buildings or to the use of squatting as a tactic.”<sup>197</sup> Furthermore, some squatters in the U.K. have simply moved their activities to commercial rather than residential properties, only serving to push the crisis downstream.<sup>198</sup> In Michigan, it is unclear whether the criminalization laws will have a significant impact or if the efforts will be in vain since many putative squatters in the rundown neighborhoods of Detroit are families remaining on their property postforeclosure, and thus the law would not even apply to them.<sup>199</sup> Based on these criticisms, it is clear that the criminalization of squatting is not sufficient to solve the squatting crisis. To avoid exacerbating the crisis through criminalization, it is important to understand and target the source of the crisis: homelessness.

#### V. BROADER CONSIDERATIONS: TARGETING THE SOURCE

The squatting crisis is fueled, in part, by an ironic combination of increased home vacancies and increased homelessness.<sup>200</sup> In the 2015 Annual Snapshot of Service and Shelter Use in Iowa, 12,918 Iowans were homeless during that year, and 8,147 Iowans were at risk of homelessness.<sup>201</sup> Since the 2008 housing crisis, the national home vacancy rate has been an estimated 14 percent—a number that far exceeds the

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195. *Id.* at 9.

196. *See id.* at 16.

197. *Squatting in England: Heritage & Prospects*, CRIMETHINC. (May 13, 2014), <http://www.crimethinc.com/blog/2014/05/13/squatting-in-england-heritage-prospects/>.

198. *See, e.g.*, Harry Wallop, *Squatters Take a Commercial Break*, TELEGRAPH, (Nov. 6, 2012), <http://www.telegraph.co.uk/finance/newsbysector/constructionandproperty/9658410/Squatters-take-a-commercial-break.html>.

199. *See generally* DOBBZ, NINE-TENTHS OF THE LAW, *supra* note 9, at 120 (stating that one of the effects of the foreclosures were that many who experienced foreclosures became “squatters in their own homes”).

200. *See 18,600,000 Vacant Homes in the United States*, *supra* note 36.

201. INST. FOR CMTY. ALLS., ANNUAL SNAPSHOT 2015 OF SERVICE AND SHELTER USE 1 (2015), <https://static1.squarespace.com/static/54ca7491e4b000c4d5583d9c/t/58222bad3e00be7d112f6517/1478634425807/Annual+Report+2015+%282+up%29.pdf>.

number of homeless individuals.<sup>202</sup>

Based on the number of homeless people and the number of vacant homes, it is clear that a disconnect exists. While homelessness is a very complicated issue that could be mitigated through a number of policy and legislative solutions beyond the scope of this Note, this Note attempts to craft a solution to address the squatting crisis by recognizing it as a symptom of homelessness—the elimination of which can end the squatting crisis.

### A. *Homelessness*

While not all squatters are homeless, evidence suggests that a vast majority of squatters in the United States are homeless or low-income individuals.<sup>203</sup> Logically, those who are without a home are likely to seek some form of shelter, whether it be a homeless shelter, transitional housing, or occupancy of a vacant property. The issues surrounding homelessness are numerous and complex and encompass matters from drug use, to domestic violence, to mental illness, and beyond.<sup>204</sup> These complicated issues often perpetuate one's homeless status and serve as a barrier to the use of existing resources.<sup>205</sup> Furthermore, homelessness is costly to society.<sup>206</sup>

#### 1. *Cost of Homelessness*

No matter the cause of one's homeless status, indigence is expensive. Local emergency shelters, intended to be a short-term housing solution, lose their cost effectiveness when homeless individuals stay for extended periods of time.<sup>207</sup> Because homeless individuals lack the resources to obtain regular, preventative health care, they frequently use costly

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202. DOBBZ, *NINE-TENTHS OF THE LAW*, *supra* note 9, at 117.

203. See JAYME DAY ET AL., *COMPREHENSIVE REPORT ON HOMELESSNESS* 19–20 (2014), <https://jobs.utah.gov/housing/scso/documents/homelessness2014.pdf>.

204. See *NO SAFE PLACE*, *supra* note 129, at 12.

205. See *id.* at 39–40.

206. See *Cost of Homelessness*, NAT'L ALLIANCE TO END HOMELESSNESS, [http://www.endhomelessness.org/pages/cost\\_of\\_homelessness](http://www.endhomelessness.org/pages/cost_of_homelessness) (last visited Apr. 24, 2017).

207. See TECH. ASSISTANCE COLLABORATIVE, INC., *HOMELESS ACTION PLAN FOR DES MOINES AND POLK COUNTY* 10 (2009), <https://www.polkcountyiowa.gov/media/127037/Homeless-Action-Plan-for-Des-Moines-and-Polk-County.pdf> [hereinafter *HOMELESS ACTION PLAN*].

emergency room visits and services.<sup>208</sup> In addition, costs are incurred by local law enforcement when calls are made for loitering and other disturbances.<sup>209</sup> Homeless individuals cost taxpayers approximately \$40,000 per year by utilizing these costly public resources.<sup>210</sup>

Furthermore, “Homelessness has a human cost.”<sup>211</sup> Not only is the community affected by the high costs of homelessness, the homeless individuals themselves incur costs in the form of their health and overall quality of life.<sup>212</sup> The average life expectancy in the United States is close to 80 years, but this drops to between 42 and 52 years for the homeless population.<sup>213</sup> This population is more susceptible to diseases including HIV, malnourishment, and mental diseases, and experiences higher rates of sexual and physical assault.<sup>214</sup> All members of society, including the homeless population, are burdened by the costs of homelessness.

## 2. Cost of Criminalization

Not only is homelessness costly, the efforts taken by many communities in response to the plights of homeless individuals are costly—namely, the criminalization of homelessness.<sup>215</sup> Criminalization of human activities such as sleeping, sitting, or sharing food in public disproportionately affects the homeless population, which is forced to do these activities in public.<sup>216</sup> These measures “do nothing to address the underlying causes of homelessness and, instead, only worsen the problem.”<sup>217</sup> Furthermore, arresting homeless individuals is only a temporary solution.<sup>218</sup> Once homeless individuals return to their community, they still have nowhere to live and now have the additional burden of court fees they cannot afford to pay and criminal convictions that may “create barriers to obtaining critical public benefits, employment,

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208. *Id.*

209. *Id.*

210. *Id.*

211. NO SAFE PLACE, *supra* note 129, at 27.

212. See Vivian Le & Andrea Munford, *Homelessness in Iowa: A Hidden Issue*, BEST OF SNO (Feb. 24, 2016), <http://www.bestofsno.com/13529/news/homelessness-in-iowa-a-hidden-issue/>.

213. HOMELESS ACTION PLAN, *supra* note 207, at 10.

214. Le & Munford, *supra* note 212.

215. See NO SAFE PLACE, *supra* note 129, at 16.

216. *Id.* at 12, 16.

217. *Id.* at 9.

218. *Id.*

or housing,” perpetuating the cycle of homelessness.<sup>219</sup>

Based on a study by the Utah Housing and Community Development Division, Utah spends \$16,670 annually on emergency room visits and jail stays for an average homeless individual.<sup>220</sup> In contrast, it costs only \$11,000 to provide an apartment and a social worker to a homeless individual.<sup>221</sup> A housing program in Albuquerque, New Mexico, saw savings of \$615,920.49—a 31.6 percent reduction in spending—after only one year of operating the housing program in lieu of criminalization strategies.<sup>222</sup> The city attributed its savings to the dramatic reduction in emergency health care and criminal justice costs.<sup>223</sup> Notably, the city’s jail costs were reduced by 64 percent.<sup>224</sup>

Proponents of criminalization often view homelessness, or the actions that resulted in one’s homelessness, as a choice and view criminalization methods as “necessary to protect the public interest” by removing homeless individuals from a city’s commercial and tourist areas, under the assumption that criminalization is the “best method for improving the economic health of those areas.”<sup>225</sup> These proponents of criminalization ignore irreproachable causes of homelessness such as disability,<sup>226</sup> mental illness,<sup>227</sup> domestic violence,<sup>228</sup> and other sympathetic causes. By acknowledging and seeking to understand these concerns, communities throughout the country have been able to provide compassionate, sensible solutions to the homelessness crisis rather than throwing members of this

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219. *Id.*

220. *Id.* at 30.

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.* at 16.

226. See *People With Disabilities and Homelessness*, DISABLED WORLD TOWARDS TOMORROW (Mar. 29, 2010), <http://www.disabled-world.com/editorials/political/disability-homeless.php> (stating that more than 40 percent of homeless individuals have disabilities as well).

227. See National Coalition for the Homeless, *Mental Illness and Homelessness*, NATIONALHOMELESS.ORG (Jul. 2009), [http://www.nationalhomeless.org/factsheets/Mental\\_Illness.html](http://www.nationalhomeless.org/factsheets/Mental_Illness.html) (“20 to 25% of the homeless population in the United States suffers from some form of severe mental illness.”).

228. See *Domestic Violence*, NAT’L ALLIANCE TO END HOMELESSNESS, [http://www.endhomelessness.org/pages/domestic\\_violence](http://www.endhomelessness.org/pages/domestic_violence) (last visited June 25, 2017) (stating that a Massachusetts study “found that 92 percent of homeless women had experienced severe physical or sexual assault at some point in their lives”).

vulnerable population in jail.<sup>229</sup>

### B. State Efforts to Combat Homelessness

#### 1. Utah: Combating Homelessness Through Housing First

In 2005, Utah took action against homelessness, implementing a statewide “Housing First” program that prioritized giving homes to the homeless before addressing other issues like substance abuse or mental illness.<sup>230</sup> The idea behind the program was that rather than arresting people for sleeping in public spaces<sup>231</sup> or banning people from giving food to the homeless,<sup>232</sup> Utah would give them what they needed most—a home.<sup>233</sup>

Prior to the Housing First program, many homeless individuals were barred from homeless shelters due to overcrowding or substance abuse.<sup>234</sup> Housing First took a different approach by first providing shelter, then focusing on other issues—the idea being that the stability of a home would foster more successful efforts for substance abuse and mental illness treatments.<sup>235</sup>

Once housed, the program utilizes case managers to identify and address the unique needs of Housing First participants so they can work toward long-term healing.<sup>236</sup> The provision of an apartment and social work through the Housing First program resulted in approximately \$6,000 in annual savings per homeless individual.<sup>237</sup> To help cover costs of the program, Housing First clients pay either \$50 per month or 30 percent of their income, whichever is more.<sup>238</sup> In Utah, the Housing First program has not just been a compassionate approach to solving the housing crisis, “it’s cheaper.”<sup>239</sup>

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229. See NO SAFE PLACE, *supra* note 129, at 35–42.

230. Glionna, *supra* note 37.

231. See NO SAFE PLACE, *supra* note 129, at 19.

232. See *id.* at 24.

233. Glionna, *supra* note 37.

234. See NO SAFE PLACE, *supra* note 129, at 19.

235. See TSEMBERIS, *supra* note 37, at 11–12.

236. DAY, *supra* note 203, at 24.

237. See NO SAFE PLACE, *supra* note 129, at 30.

238. Glionna, *supra* note 37.

239. *Id.*

## 2. Wisconsin: Tiny Houses

Madison, Wisconsin, took a unique approach to combating homelessness by establishing a village of “tiny houses.”<sup>240</sup> The site of the tiny-house village is owned by a nonprofit organization, Occupy Madison, Inc., that advocates against income inequality and corporate culture, and built the village to shelter formerly homeless individuals.<sup>241</sup> As of fall 2015, the village finished constructing three of the nine planned tiny houses at 98 square feet each for a cost of approximately \$3,500 per unit.<sup>242</sup> Madison’s tiny-house village is one of many nationwide tiny-house projects that provides courses on homeownership and financial management, as well as case managers to connect occupants with supportive services.<sup>243</sup>

## 3. Oregon: Dignity Village

The city of Portland, Oregon, operates a community for the homeless that provides year-round shelter for up to 60 people each night.<sup>244</sup> The village contains 43 dwelling units mostly made from recycled and reclaimed materials.<sup>245</sup> Each unit includes a bed and propane heater, but no utilities.<sup>246</sup> Those residing in the village share two sinks, one shower, and several porta-lets.<sup>247</sup> Each villager pays \$35 per month, and all other expenses are covered by revenues from the village’s microbusinesses as well as private donations.<sup>248</sup>

The Dignity Village Intake Committee screens potential residents to learn more about the potential villagers’ needs, assesses contributions

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240. Doug Erickson, *One Year In, Madison’s Village of Tiny Houses Wins Over Many Neighborhood Critics*, WIS. ST. J. (Sept. 27, 2015), [http://host.madison.com/wsj/news/local/one-year-in-madison-s-village-of-tiny-houses-wins/article\\_6d1a54cc-343a-5775-b3de-5fa341677580.html](http://host.madison.com/wsj/news/local/one-year-in-madison-s-village-of-tiny-houses-wins/article_6d1a54cc-343a-5775-b3de-5fa341677580.html).

241. *Id.*

242. *Id.*

243. See Steven Girardi, “Tiny Houses” Help St. Pete Tackle Challenge to House Homeless Veterans, TAMPA BAY ONLINE (Dec. 12, 2015), <http://www.tbo.com/pinellas-county/tiny-houses-help-st-pete-tackle-challenge-to-house-homeless-veterans-20151212/>.

244. *About*, DIGNITY VILLAGE, <http://dignityvillage.org/about-2/> (last visited June 25, 2017).

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

villagers could make to the community, and discusses the village's rules.<sup>249</sup> The intake committee maintains an organized application and waitlist process and has a probationary period for newly welcomed villagers.<sup>250</sup>

#### 4. Iowa's Efforts to Combat Homelessness

Several programs exist throughout Iowa to combat homelessness. The greater Des Moines area alone is served by a number of programs including, but not limited to: Central Iowa Shelter & Services,<sup>251</sup> Primary Health Care,<sup>252</sup> YMCA Supportive Housing Campus,<sup>253</sup> Joppa,<sup>254</sup> and Iowa

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249. *Village Intake Committee*, DIGNITY VILLAGE, <http://dignityvillage.org/services/village-intake-committee/> (last visited June 25, 2017).

250. *Id.*

251. *See Who We Are: Mission & History*, CENT. IOWA SHELTER & SERVS., <http://www.centraliowashelter.org/who-we-are/mission.html> (last visited Apr. 25, 2017). Central Iowa Shelter & Services provides shelter and meals to homeless adults at no cost. *Id.* The shelter contains 207 beds, a health clinic, food pantry, clothing closet, and classroom, as well as access to shower and laundry facilities, group counseling, individualized case management, and referrals to other community services and benefits. *Id.*

252. *See About Us*, PRIMARY HEALTH CARE, <http://www.phciowa.org/about/> (last visited Apr. 25, 2017). Primary Health Care (PHC) is a nonprofit community health center that serves those who experience barriers to receiving the health care they need. *Id.* PHC's services include Homeless Support Services & Centralized Intake, which utilizes a team of specialists and case managers who evaluate each individual in need of help and determine the best course of action to achieve housing stability, a source of income, and more. *Id.*

253. *See YMCA Supportive Housing Campus*, YMCA, <http://www.dmymca.org/locations/ymca-supportive-housing-campus/> (last visited Apr. 25, 2017). YMCA Supportive Housing Campus is a Housing First program that provides permanent, supportive housing to homeless individuals. *Id.* The program provides housing and supportive services to 140 men and women. *Id.* Services include: case management, food, clothing, and hygiene pantries, rent assistance, and more. *Id.* There is a constant wait list for YMCA's Supportive Housing Campus, which "demonstrates the need for affordable housing in the community." *Id.*

254. *See About Joppa*, JOPPA, <http://www.joppa.org/about-joppa/> (last visited Apr. 25, 2017). Joppa is a faith-based organization that attempts to fill the gaps for homeless individuals who cannot find a bed at existing shelters or who do not qualify for other forms of transitional housing. *Id.* Joppa's efforts include providing donations of food and clothes to homeless individuals, as well as developing and advocating for long-term solutions to homelessness such as safe homeless camps, tiny houses, and affordable homes. *Id.* (Joppa in 60 Seconds video); *see also Transitional Tiny Home Village*, JOPPA, [www.joppa.org/tiny-home-villages/village-type-2-transitional/](http://www.joppa.org/tiny-home-villages/village-type-2-transitional/) (last visited June 1, 2017).

Finance Authority.<sup>255</sup> These programs work both independently and together to address concerns specific to homeless Iowans. However, despite the existence of these programs, many Iowans remain unsheltered—Why? To explain the discrepancy between the existence of housing programs and the perpetuation of homelessness, a closer analysis reveals a gap between planned provision of services and their actual implementation.<sup>256</sup> This gap can be filled by improving and expanding case-management resources for homeless individuals.

### *C. Identifying Issues and Suggested Solutions*

#### *1. Ineffective Implementation*

Despite the number of programs providing support to Iowa's homeless population, homelessness persists due to the difficulty of connecting homeless individuals with the programs they need. In the last decade, a number of institutions have developed comprehensive plans aimed at ending homelessness in Iowa's communities.<sup>257</sup> These plans detail a variety of methods to achieve housing stability, from zoning land for homeless campsites,<sup>258</sup> to acquiring and refurbishing vacant properties to serve as low-income housing,<sup>259</sup> and beyond. Common among all of these plans is a strong endorsement of case management.

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255. See *Homelessness Programs*, IOWA FINANCE AUTHORITY, <http://iowafinanceauthority.gov/Programs/Homelessness> (last visited Apr. 25, 2017). The Iowa Finance Authority manages and allocates state and federal funds to homelessness programs throughout the state of Iowa. *Id.*

256. See POLK CTY. HOUS. TR. FUND, HOUSING TOMORROW: CHOICES FOR A GREENER GREATER DES MOINES 6 (2015), [http://www.mayorsinnovation.org/images/uploads/pdf/6\\_-\\_Housing\\_Tomorrow\\_Greater\\_Des\\_Moines.pdf](http://www.mayorsinnovation.org/images/uploads/pdf/6_-_Housing_Tomorrow_Greater_Des_Moines.pdf).

257. In 2009, the *Homeless Action Plan for Des Moines and Polk County* outlined five strategies to prevent and end homelessness in the region: (1) create new permanent housing opportunities, (2) incorporate innovative best practices into emergency shelters, (3) prevent homelessness, (4) develop a unified intake and referral system, and (5) increase community awareness and relationships. HOMELESS ACTION PLAN, *supra* note 207, at 4–5, 21–42. In addition, in 2015 *Housing Tomorrow: An Affordable Housing Plan for Central Iowa* developed a regional plan and compiled best practices from programs throughout the nation that have successfully addressed housing issues. POLK CTY. HOUS. TR. FUND, *supra* note 256, *passim*.

258. See POLK CTY. HOUS. TR. FUND., *supra* note 256, at 7.

259. See *id.* at 26.

## 2. Case Management

Without case managers, homeless individuals are left on their own to navigate through multiple housing programs to acquire and complete applications for housing services.<sup>260</sup> “As such, there is a clear need to collect, coordinate, and make uniform the information about available resources, eligibility criteria, application documents and processes . . . .”<sup>261</sup> Case managers meet this need.

Case management can be described as “a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet the client’s health and human service needs. It is characterized by advocacy, communication, and resource management and promotes quality and cost-effective interventions and outcomes.”<sup>262</sup> In the housing context, a case manager identifies homeless or at-risk individuals, assesses their unique needs, plans and acquires resources to achieve housing stability, and serves as the individual’s trusted support team.<sup>263</sup> In short, case managers bridge the gap between homeless individuals and access to the programs designed to assist homeless individuals.<sup>264</sup>

Housing programs in Utah, Wisconsin, Oregon, Iowa, and many other states all utilize some form of intake or case management to identify homeless individuals and connect them with the resources they need to achieve housing stability.<sup>265</sup> Case managers reduce the long-term cost of homelessness to society by intervening in the homeless cycle and providing an avenue to leave the cycle and enter housing stability.<sup>266</sup> Furthermore, case managers provide personalized services that generate better outcomes than the alternatives such as judicial intervention or no intervention could provide.<sup>267</sup>

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260. HOMELESS ACTION PLAN, *supra* note 207, at 39.

261. *Id.*

262. *Definition and Philosophy of Case Management*, COMM’N FOR CASE MANAGER CERTIFICATION, <https://ccmcertification.org/about-ccmc/about-case-management/definition-and-philosophy-case-management> (last visited June 25, 2017).

263. U.S. DEP’T OF HOUS. & URBAN DEV., CASE MANAGEMENT—HOMELESSNESS PREVENTION AND RAPID RE-HOUSING 1 (2009), [https://www.hudexchange.info/resources/documents/HPRP\\_CaseManagement.pdf](https://www.hudexchange.info/resources/documents/HPRP_CaseManagement.pdf).

264. *See id.*

265. *See supra* Part V.B.

266. *See* U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 263, at 1.

267. *See id.*

While case managers are essential to positive outcomes for homeless individuals, existing case managers do not currently meet the needs of the entire homeless population.<sup>268</sup> Additionally, case-management programs often work independently of other case-management programs, creating gaps in information and missed opportunities to best serve the homeless population.<sup>269</sup> Developing formal information-sharing procedures can close these gaps and ensure homeless individuals receive the most comprehensive care.<sup>270</sup>

### 3. Case Management in Iowa

Primary Health Care (PHC) is a “nonprofit community health center dedicated to serving those that experience barriers to receiving care” in central Iowa.<sup>271</sup> In addition to providing medical and dental services, PHC offers a Homeless Outreach program, which “collaborate[s] with area homeless, family and domestic violence shelters as well as a variety of other non-profit agencies to provide timely, efficient and compassionate services through a program called Centralized Intake.”<sup>272</sup>

During the Centralized Intake process, PHC’s case managers evaluate the unique situation facing each individual or family and then determine the best course of action to assist them.<sup>273</sup> This course of action may include securing housing placement, uncovering potential sources of income, or making a referral to another agency in the community that can provide the care an individual or family needs.<sup>274</sup>

PHC’s Centralized Intake process has already bridged the gap between displaced homeless individuals and housing placement

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268. HOMELESS ACTION PLAN, *supra* note 207, at 17 (“Unfortunately, these services and programs have not completely offset the effects of a national recession that has created an affordable housing crisis . . .”).

269. *See id.* at 39.

270. *Id.* One such example of an effective, formal information-sharing procedure is Polk County Health Services’ (PCHS) arrangement with a local jail. *Id.* Under this arrangement, the local jail checks its bookings each day, identifies any PCHS clients, and makes “a note in the system that automatically generates an email to the PCHS case manager informing him/her that the PCHS consumer is in jail.” *Id.*

271. *About Us, supra* note 252.

272. *Services: Medical, Dental, Behavioral, Pharmacy, Outreach, The Project*, PRIMARY HEALTH CARE, <http://www.phciowa.org/services/> (last visited June 25, 2017).

273. *Id.*

274. *Id.*

programs.<sup>275</sup> During the summer of 2014, the city of Des Moines took action against homeless camps for encroaching on vacant, city-owned land along the Des Moines and Raccoon Rivers.<sup>276</sup> Before Des Moines placed eviction notices at the homeless camps, staff from PHC visited the campsites to speak with the homeless individuals to identify their needs, connected them with available services, and followed up with the affected individuals after the eviction.<sup>277</sup>

In addition, Polk County Health Services (PCHS) sponsors a Network of Care for Mental Health and Disability Services.<sup>278</sup> This program has compiled information on local services for housing, transportation, health care, and more.<sup>279</sup> PCHS utilizes case management to help disabled individuals “find safe, affordable, accessible, and acceptable housing” to allow them “to meaningfully and fully participate in their community.”<sup>280</sup> While PCHS targets its services at those with disabilities, information-sharing can benefit the homeless population by allowing other agencies such as PHC and Central Iowa Shelter & Services to access and utilize data collected by PCHS.<sup>281</sup>

These examples of coordinated intake and referral efforts exemplify “best practices that can be replicated and expanded” to bridge the gap between homeless individuals and homeless resources to eliminate the squatting crisis.<sup>282</sup>

## VI. PROPOSED SOLUTION: A TWO-PRONGED APPROACH

Fix homelessness, fix squatting—it sounds simple, right? The knee-jerk solution to the squatting crisis is to forcibly remove squatters, send

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275. See Regina Zilbermints, *Homeless River Dwellers Face Eviction by City—Again*, DES MOINES REG. (June 11, 2014), <http://www.desmoinesregister.com/story/news/2014/06/12/des-moines-homeless-river-dwellers-face-eviction-reporter-regina-zilbermints/10359189/>.

276. *Id.*

277. *Id.*

278. See *Polk County: Mental Health and Disability Services*, NETWORK OF CARE, <http://polk.ia.networkofcare.org/mh/index.aspx> (last visited Apr. 25, 2017).

279. *Id.*

280. HELEN A. SCHATZ & LEEANN MCCOY, LAW, HEALTH POLICY & DISABILITY CENTER, POLK COUNTY HEALTH SERVICES CASE MANAGEMENT OUTCOME EVALUATION 3–4 (2011), <https://www.legis.iowa.gov/docs/publications/IH/15237.pdf>.

281. HOMELESS ACTION PLAN, *supra* note 207, at 39.

282. *Id.*

them to jail, or fine them for their wrongdoing. However, those are short-term solutions that only offer immediate relief. In addition to those short-term solutions, a strategy to combat the squatting crisis must “treat squatting as a symptom of a simultaneous failure of both the market and the government.”<sup>283</sup> When a squatting crisis is viewed as a symptom of a larger market and governmental failure rather than a criminal act, a more compassionate solution may be achieved by viewing squatters “as law-abiders instead of renegades,” thus allowing indigent people to find the housing they desperately need without piling on to their outcast status.<sup>284</sup>

To restore the balance between fairness and economic efficiency in the property squatting context, the current summary eviction process must be expedited, and existing case-management programs must intervene. By more efficiently connecting homeless individuals to the resources they need to achieve housing stability, the need for individuals to engage in property squatting can be eliminated, and, more broadly, the homeless population can be reduced in Iowa and beyond. As such, this Note suggests a two-pronged solution to address the squatting crisis in both the short and long term.

#### *A. Prong One: Restoring Balance Through Summary Eviction Reform*

To restore the balance between the interests of landlords and squatters, the summary eviction process must be expedited and the cost must be reduced. This can be done by providing an alternative to the summary eviction process: case-managed voluntary vacation of the premises (CMVVP).

##### *1. What is Case-Managed Voluntary Vacation of the Premises?*

CMVVP is a form agreement providing for a putative squatter’s voluntary vacation of the premises in exchange for the landlord’s relinquishing of her right to file an F.E.D. action in small claims court. CMVVP is a novel creation based on mutual agreements to vacate the premises found in many U.S. jurisdictions.<sup>285</sup> In general, these agreements

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283. Peñalver, *supra* note 9.

284. *Id.*

285. *See, e.g.*, ARK. CODE ANN. § 18-17-104 (West 2017) (allowing a claim or right arising under the Arkansas Residential Landlord-Tenant Act of 2007 or rental agreement to be settled by agreement); IOWA CODE ANN. § 562A.7 (West 2017) (authorizing the creation and enforcement of voluntary agreements to waive or forego a claim or right under Iowa’s landlord-tenant law or under a rental agreement so long

are predrafted forms that simply require the parties to fill in specific information such as names, the address of the property, and the date by which the party must vacate.<sup>286</sup> In addition, these forms may include terms referencing inspection, property condition, fees owed, and liability of the parties.<sup>287</sup>

CMVVP is a voluntary process that occurs entirely outside the judicial and legislative systems. The legal foundation for a CMVVP form is based on the ability of parties to make out-of-court agreements so long as the terms of the agreement are not unconscionable.<sup>288</sup>

## 2. How Does CMVVP Work?

*a. Access.* The CMVVP form will be maintained by local case-management services.<sup>289</sup> A landlord may access the form electronically by paying a fee<sup>290</sup> to the case-management service. Upon payment of the fee, the CMVVP form will be immediately available to the landlord for download.

*b. Notice & Case Manager Intervention.* The landlord may complete the required information on the CMVVP form and present it to the putative squatter along with the three-day Notice to Quit.<sup>291</sup> The CMVVP form must accompany, and is not a substitute for, the required three-day Notice to Quit and must be presented to the putative squatter in accordance with the three-day Notice to Quit requirements.<sup>292</sup> Once the landlord has paid for and downloaded the CMVVP form, a case manager will be immediately notified that a CMVVP form has been issued. This will

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as the result is not unconscionable).

286. See *Agreement to Vacate Premises*, FORECLOSURE FORUM, [http://www foreclosureforum.com/forms/agreement\\_to\\_vacate.pdf](http://www foreclosureforum.com/forms/agreement_to_vacate.pdf) (last visited June 1, 2017); *eForm 3.6: Original Notice and Petition for Forcible Entry and Detainer*, *supra* note 146.

287. See *id.*

288. IOWA CODE ANN § 562A.7 (West 2017) (authorizing the creation and enforcement of voluntary agreements to waive or forego a right so long as the result is not unconscionable).

289. CMVVP could be implemented in Polk County through Polk County Health Services' Network of Care. *Polk County: Mental Health and Disability Services*, *supra* note 278.

290. This Author suggests a \$40.00 fee.

291. See *Evictions 101*, *supra* note 121; *The Eviction Process*, IAREIA, [https://www.iareia.com/library/education/evictions/Rent-Iowa\\_Eviction.pdf](https://www.iareia.com/library/education/evictions/Rent-Iowa_Eviction.pdf) (last visited June 15, 2017).

292. See *The Eviction Process*, *supra* note 291.

activate the involvement of the case manager who will then make contact with the putative squatter during the three-day notice period.

*c. Making Contact.* The case manager must attempt to make contact with the putative squatter during the three-day Notice to Quit period. If the case manager is unable to make contact with the putative squatter, the case will proceed as an F.E.D. action if filed by the landlord. If the case manager is able to make contact with the putative squatter, she will discuss the contents of the CMVVP form and evaluate the options together with the putative squatter.

The goal of this conversation is to encourage the squatter to voluntarily vacate the property and agree to work with the case manager to achieve housing stability.<sup>293</sup> However, the case manager should be mindful that a putative squatter may have a valid claim to the property, in which case the case manager should balance the options with the putative squatter to decide whether to sign the CMVVP and vacate or remain on the property and wait for an F.E.D. action to be filed.<sup>294</sup>

*d. Voluntariness.* Because CMVVP is a voluntary process, the putative squatter may choose to ignore the form if it is presented; however, this will subject the squatter to any consequences resulting from an F.E.D. action.<sup>295</sup> Additionally, a landlord may choose not to utilize the form and may proceed with an F.E.D. action.

### 3. *Benefits of CMVVP*

Case-managed voluntary vacation of the premises streamlines the squatter-removal process by removing the squatter in three days or less, and costs less than summary eviction.<sup>296</sup> Furthermore, if the process is unsuccessful, landlords are no more burdened than they were under the current summary eviction process. Because CMVVP is more efficient and cost effective, and adds no additional costs if unsuccessful, landlords have an incentive to utilize the CMVVP process rather than summary eviction. This may result in fewer F.E.D. actions and a reduced case load for small

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293. See *supra* Part V.C.2.

294. See generally *Agreement to Vacate Premises*, *supra* note 286; *Small Claims Information*, *supra* note 154 (providing various materials regarding how to start a small claims case as well as how to defend small claims cases).

295. See generally *eForm 3.6: Original Notice and Petition for Forcible Entry and Detainer*, *supra* note 146 (providing a form to begin the F.E.D. process).

296. The cost to file a case in small claims court is \$85. *Instructions for Filing a Petition for Forcible Entry and Detainer*, *supra* note 147.

claims courts.

Involving a case manager will result in fewer repeat offenders and can reduce the societal costs of homelessness.<sup>297</sup> Perhaps most importantly, CMVVP, if successful, has the potential to increase the number of homeless individuals who are able to achieve housing stability, and it may mitigate the homelessness crisis.<sup>298</sup>

#### 4. *Potential Criticisms of CMVVP*

While there are many benefits to implementing a program like CMVVP, there are barriers to overcome. Such a program would require additional case managers in order to have the resources to intervene in a short, three-day time period. This problem can be overcome by providing opportunities for students studying social work or law students to get involved as case managers to provide hands-on experience while reducing the strain on case-management resources.<sup>299</sup> Additionally, such a program would likely reduce the number of F.E.D. actions filed in small claims court, which would mean a reduction in filing fees for the court.<sup>300</sup> However, any lost filing fees would likely be outweighed by savings in medical and jail costs.<sup>301</sup>

Despite these challenges, the implementation of a program like CMVVP is easily integrated into existing case-management resources.<sup>302</sup> And if successful, such a program would bridge the existing gap between homeless individuals and existing housing resources, which would provide

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297. See U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 263.

298. See *id.*

299. See CITY OF ST. LOUIS DEP'T OF HUMAN SERVS., MOVING FORWARD: POLICIES, PLANS & STRATEGIES FOR ENDING & PREVENTING CHRONIC HOMELESSNESS 20–21 (2012), <https://www.stlouis-mo.gov/government/departments/human-services/homeless-services/documents/upload/Moving-Forward-2nd-Edition-2012.pdf>.

300. The proposed fee for the CMVVP form is \$40. If CMVVP is successful, no action will be filed in small claims court, thus the court will receive no money because no action was filed. Also, because the cost of filing a claim in small claims court is \$85, and because a landlord would only pay the difference (\$45) to file an F.E.D. action if the CMVVP route were unsuccessful, it is likely that small claims court would experience a reduction in filing fees received. See *Instructions for Filing a Petition for Forcible Entry and Detainer*, *supra* note 147.

301. See NO SAFE PLACE, *supra* note 129, at 30.

302. See HOMELESS ACTION PLAN, *supra* note 207, at 39 (describing current integration of case-management services and jail bookings as well as the potential to expand these integrated practices to other organizations).

immense societal benefits in terms of the reduced costliness and strained resources, and the well-being of members of our communities.<sup>303</sup>

### *B. Prong Two: Bridging the Gap Through Case Management*

In the squatting context, case managers begin their involvement upon notification from a CMVVP form request, but their involvement does not stop there. Iowa's existing case-management services must be expanded and improved through streamlined processes and information-sharing between services.<sup>304</sup> To bridge the gap between homeless individuals and access to programs designed to assist them, existing case-management services must collaborate and streamline the services they provide to homeless individuals.

Existing data-collection resources, such as Iowa's Homeless Management Information System (HMIS), can expand the amount of information collected about homeless individuals and improve accessibility to HMIS for programs aiding the homeless.<sup>305</sup> Existing case-management service providers can coordinate and share information with other case-management service providers and help integrate case managers into more programs aiding the homeless.<sup>306</sup> Furthermore, case-management services can engage in efforts to implement their services in regions of Iowa without existing services.<sup>307</sup>

### *C. A Coordinated Solution*

Viewed independently, each prong of the two-pronged approach above has shortcomings. While summary eviction reform expedites the removal of a squatter, there is still a small cost to the landlord.<sup>308</sup> Additionally, only maximizing the efficiency of case management fails to

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303. See NO SAFE PLACE, *supra* note 129, at 30.

304. See HOMELESS ACTION PLAN, *supra* note 207, at 39.

305. INST. FOR CMTY. ALLS., IOWANS EXPERIENCING HOMELESSNESS: ANNUAL SUMMARY OF SERVICE AND SHELTER USE 1 (2014), [http://static1.squarespace.com/static/54ca7491e4b000c4d5583d9c/t/55c4d7e8e4b0e4f967d8118f/1438963688345/2014+Annual+Report\\_Updated.pdf](http://static1.squarespace.com/static/54ca7491e4b000c4d5583d9c/t/55c4d7e8e4b0e4f967d8118f/1438963688345/2014+Annual+Report_Updated.pdf).

306. See HOMELESS ACTION PLAN, *supra* note 207, at 39.

307. See IOWA INST. FOR CMTY. ALLS., *Homeless Management Information System: Policies & Procedures*, IOWA FINANCE AUTHORITY 3–4, <http://www.iowafinanceauthority.gov/File/DownloadFile/3681> (last visited June 2, 2017) (describing the collection of homelessness data and its allocation to subscribers of the HMIS).

308. See Gerchick, *supra* note 115, at 764.

address the short-term needs of true property owners in removing the squatter. As such, both prongs must occur in concert to achieve a more compassionate, practical approach to solving the squatting crisis. Such a result can be achieved through simultaneously reforming the summary eviction process and improving the case-management system to connect squatters and other homeless individuals to the resources they need to achieve housing stability.

## VII. CONCLUSION

Existing solutions to the squatting crisis have failed to solve the problem due to inefficiency and the failure to target underlying systematic problems. This Note proposes a solution that allows property owners to more efficiently enforce their legal right to their property while offering compassion and a practical solution targeting the source of squatters. Individually, summary eviction reform and case management each have shortcomings, but the two-pronged approach combines both short- and long-term solutions to effectively restore the balance in property disputes and stop the squatting crisis at the source.

*Shannon Holmberg\**

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\* B.A., University of Iowa, 2013; J.D., Drake University Law School, 2017. A special thank you to my Drake Law Review colleagues for their outstanding editing work and camaraderie, and most importantly to my family for their love, support, and willingness to serve as a sounding board in the early stages of writing.