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PARK WATCH

™ LEGAL DEVELOPMENTS NEWSLETTER

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California's "Split Roll Initiative" and Tax Pass-Throughs: Bullet-Proofing Your Rent Revenue Against the Blue Tide

-How a Park Owner May Bullet-Proof Property Tax Pass-throughs, even under Rent Controls, Against Future Challenges from Sacramento's Veto-Proof Political Power, Without A Fight

By: Terry R. Dowdall., Esq.

UPSHOT

California Democrats have a veto-proof majority in California. That super-majority is required for the two-thirds vote to raise taxes, override a veto, overcome procedural hurdles or pass certain types of bills. And they intend to use it. "Power is by definition fleeting," Senate President *Pro Tem* Darrell Steinberg told an opening session of the super-Democratic Senate. "Misuse it and you lose it. Fail to use it and it withers away."

It takes two-thirds of the Legislature to propose amendments to the California constitution. Democrats could use their new super-majority to ask voters to remove some of the super-majority requirements, such as a constitutional amendment that would allow a simple majority of the Legislature to ask voters to approve a tax increase.

One of the measures being mentioned, again, after decades of silent deep rest, is the *"split roll initiative."* If property taxes on commercial property (such as mobilehome parks) could be unleashed to exceed the 2% cap applicable to all other properties, operating expense for long-held properties may go through the roof. Perhaps such a damaging action to California business can be stopped. Maybe not. Being prepared to cope is another matter. Well-prepared leases universally provide for tax increase pass-throughs. Rent controls allow for consideration of tax increases, but do not mandate dollar-for-dollar pass-throughs. Perhaps you can do so despite local rent controls and without leases.

BACKGROUND AND THE PROBLEM

At a WMA luncheon decades ago, I was seated next to Denny Amundson, then Executive Director of the WMA. We were discussing issues and problems of the park owner in California. Foremost on his mind was long term concern with the stability of Proposition 13, and a possible move to discriminate against commercial and business owners by the contemplation of a "split roll initiative," which would eviscerate Proposition 13's tax relief for business owners.

> California voters just voted to increases taxes on themselves. Do you think they would hesitate to vote new taxes on someone else's business property?

Now, there is new talk of the split roll initiative for California. The proponents of the split roll initiative argue that business is enjoying a "huge" loophole by escaping reassessment on change in control of business entities which does not result in the change in title to the real property. In our world, mobilehome parks, are also often held for decades, without change in title and hence immune from exposure to reassessment. The risk of an exemption from the tax limitations of Proposition 13 should be considered serious and real. *California voters just voted to increases taxes on themselves. Do you think they or the new Blue super-majority would hesitate to vote new taxes on someone else's business property?*

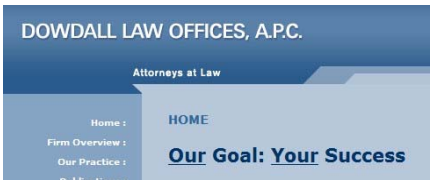
Creative Solutions, Efficient, Practical Representation, Profitable Parks

Dowdall Law Offices A.P.C.

In this Issue:

Proudly Representing Mobilehome Park Owners since 1978

We recommend:
FEDERAL ARBITRATION CLAUSES;
MANDATORY MEDIATION;
BROAD 'FACILITIES RELEASES'



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In California, business people are often demonized. *Landlords?* Even more so. It will be deemed a noble cause to end the unfair tax advantage of business and landlords in this state. The remedial provisions of this greed-curbing reform will follow along these lines:

• Property will be assessed at current value. County assessors assess most non-residential property, including most business property, based on the property's "fair market value." There will no longer be a 2% per annum limit.

• County assessors would be required to survey commercial real property and other re-assessable property and determine the date at which the property was last reassessed. Within a few years, reassessments would begin probably starting with properties not reassessed for the longest period of time.

• Park owners with leases in place will pass along the increase in taxes. Some leases limit tax increase pass-throughs to "in excess of 2%" which excludes Proposition 13 tax increases. In such cases, the homeowners may be required to pay a prorated tax increase shared with the owner for the first 2% of the increase. In other leases, the full increase may be added to rents.

The reformers are not taking account of the reality that a split roll initiative will punish the consumer at the gas pump , in the grocery aisle, and in the clothing store. The reform punishes the property owner, instead of the commercial activity from which new revenue is generated.

EFFECT ON PARK OWNERS

When passed, Proposition 13 capped property tax rates at 1% of assessed value, and restricted that value from growing more than 2% a year. Only when ownership changes or new construction occurs may the value of the property be reassessed at more than 2%. These protections were extended to both residential and commercial properties under the 1978 landmark proposition.

The political appeal of the "split roll initiative," to an electorate already primed to be hostile to business and property rights, is that it seeks to distinguish the tax treatment of commercial and residential properties by removing Proposition13 protections from business, while leaving those protections intact for residential properties.

The "split roll initiative" effect on the park owner is like assuming the burden of all the new taxes imposed on a buyer of the park, but without selling. In real experience of representing new owners through the navigation of the initial re-assessment, the effect on the tenant is generally in the range of about $40.00 to $100.00 per space per month. In rent control areas, there is always a right to ask for such increases, but no assurance the increases will be granted. Often the municipality will disallow the tax increase on the ground that the park buyer was aware of the rent control law and the possibility that the reassessment of property tax would not be permitted to be passed on to the tenants. While this argument does not align with rationality of thought in the real life ownership, operation and commerce of real estate, neither does rent controls. But it is the world with which an unpopular minority must cope and it will not change any time soon, if ever, in California.

> . . . split roll initiative . . . is like taking on all the new taxes a buyer must pay. . . without selling. . .

LEASE PASS-THROUGHS PROTECT SPLIT ROLL INITIATIVE RE-ASSESSMENTS

Long term leases protect against the uncertainties in the future of business operation. Property tax pass-throughs are a common term in leases for precisely this purpose. An example of such a pass-through provision is this:

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"If Park Owner's property taxes increase by more than two percent (2%) over those in any calendar year, then only the amount in excess of two percent (2%) will be passed on at the time the increase occurs on a prorata basis. The term "Property Taxes" include all general and special real estate taxes, personal property taxes, bonds, fees, charges and surcharges and assessments, including any taxes, assessments or charges for onsite improvements or in lieu of real property taxes. Property taxes also includes any gross receipts or excise tax on rents or any such other tax however described which is levied or assessed against Park Owner."

Civil Code § 798.17 provides an exemption from local rent controls. Any well-drafted lease contains the flexibility to adjust rents keyed to various economic changes. This is far preferable to the year to year adjustment in rents which requires no advance analysis or precision, or safeguards against sudden spikes in costs, which a lease can reasonably control over an extended term. Hence, leases are preferable for owners and residents alike.

PASS-THROUGHS PROTECTED BY ARBITRATION – EVEN IN RENT CONTROL JURISDICTIONS?

What about rent controls, where leasing is more difficult? First, leasing can be successful in rent control jurisdictions. Owners too frequently dismiss the chances of leasing success. That said, the tax pass-through is a specific cost of operation which may be able to be imposed in any jurisdiction, including areas under rent controls. Some ordinances allow tax-pass-throughs. Almost all allow consideration of tax -pass-throughs. However, *consideration* is not enough. In virtually any rent control area, the disallowance of a tax re-assessment in whole or part will occur. From a planning standpoint, it would be grossly imprudent to expect a rent board–any rent board–to allow a full pass through of a tax increase merely because the owner did not cause it and does not profit from it. Most likely, the rent board will hide behind a finding that the park, as a whole, is earning a return above unconstitutional confiscation, and hence, is fair and reasonable without allowance for all of a tax increase, especially on sale. The chances on appeal are not good either, because the city will retain some individual to offer "substantial evidence" to

sustain such a finding. And such a costly exercise benefits no one in the long run except attorneys and the economists. Even a court victory means another round of administrative hearings so subjection to a different method of unfair treatment can be accorded.

A process should be considered which, without intervention of experts, lawyers or rent boards, the pass-through can be analyzed alone and decoupled from the rate of return. It involves the amendment of rent agreements to provide for the pass-through along with an arbitration of disputes for any disagreement about its calculation, on a dollar-for-dollar basis for all park spaces. The argument for the strategy is that federal arbitration trumps local interference, including rent controls. If there is an contractual disagreement as to the tax pass-through, federal arbitration would prevail.

AT&T v. Concepcion. FAA Arbitration is favored and NO local or stat e law may impede

Amid state and federal cases striking down arbitration and reference clauses, the U.S. Supreme Court held, 5-4, that an arbitration clause barring class action proceedings is enforceable and must be honored to uphold Congressional intent favoring arbitration. If there is an agreement to arbitrate the amount of a tax pass-through, it should be enforced despite the provisions of a local rent control law.

● **Facts:** AT&T Mobility v. Concepcion, was filed as a class action based on a claim that a "free" cell phone was not free, as the customer had to pay a $30.00 tax. Vincent and Liza Concepcion claimed fraud due to the sales tax. The contracts provided for arbitration, which barred any class proceeding. The complaint was consolidated with a class action in federal district court. AT&T sought arbitration on an individual basis. The 9th Circuit Court of Appeals affirmed the trial court's denial of arbitration.

● **Ruling**: The Supreme Court held that the Federal Arbitration Act preempts California law, which snubs class arbitration waivers. The Court held that California law "interferes with arbitration" as provided by federal law. This decision comes a year after Stolt-Neilsen v. Animalfeeds International, which held that if parties to an arbitration agreement did not intend to allow class claims, arbitrators have no power to impose class-wide arbitrations under agreements "silent" on the issue. Says opinion-author Justice Scalia:

> *". . . requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA."*

The majority held that rules dictating the procedures for arbitration may vitiate the expectancies of informality in arbitration so much as to essentially nix the possibility of arbitration. For example, rules which arise from the effort to avoid a finding of unconscionability (as often so held in California) could actually thwart the federal policy favoring arbitration. Examples stated are the Federal Rules of Evidence to apply, or judicially-supervised discovery. These might unacceptably frustrate the intended expediency that arbitration is supposed to provide. Justice Thomas wrote separately that California may only strike arbitration clauses on grounds such as fraud or duress where contract formation is challenged.

So the majority held that laws requiring such procedural rules in arbitration are barred by the FAA, whether or not stemming from applicable rules of contract law such as unconscionability doctrine. This throws much of California law on arbitration into doubt and warrants careful review and thought. Here, the Court struck down former opinions because they were "inconsistent" with federal law, unduly interfering with arbitration by requiring the availability of class proceedings in arbitration. Put differently, requiring class proceedings in arbitration would end the availability of arbitration for any dispute due to the risks to AT&T from a proceeding of that nature. Class proceedings are dangerous due to the multiplier effect, elimination of confidentiality, and issues concerning binding absent parties. In light of such large amounts at stake, the absence of appeal is also a reason why AT&T would not offer arbitration for class proceedings. Since such class arbitrations are irrational, it is not unreasonable to exclude them from arbitration.

Justice Scalia wrote that the *"dissent claims that class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system, . . .[b]ut states cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons."* This suggests that the amount at stake is not a basis for the striking of the arbitration clause; nor that hardships imposed by arbitration are reasons to refuse to enforce such clauses. It is suggested that excluding incongruous forms of claims (like class actions), and perhaps providing procedures to facilitate arbitration (requiring individualized procedures), will be upheld and invulnerable from challenge under federal arbitration laws.

Justice Breyer dissented, and was joined by Justices Ginsburg, Sotomayor, and Kagan. He chided the majority, stating that the decision forces federal substantive law on the states, which overreaches the authority of the Court. He wrote *"Indeed, the progenitors of this opinion, in all fairness, reflect that the federal courts are on a wrong-headed path in this decision. That said, it is nearly legend for the court to reach out in jurisprudentially contorted ways to impact the law. Even Justice Scalia has stated he would overturn the line of cases if a majority would join him; until then, he will no longer dissent."* Justice Breyer notes that federal law allows the states to regulate and review arbitration clauses "upon such grounds as exist at law or in equity for the revocation of any contract."


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● **Impact:** According to the Court, any state case law or statute that stands in the way of arbitration is invalid. Recently, the California Courts have refused to enforce even valid reference and arbitration clauses. Now, arbitration is a real possibility, and can be a force to trump local rent controls where price and rents are agreed to be subject to arbitration. Tested? No. However, the language from the cases, then and since 2011 when the case was decided, point to enforcement of arbitration clauses where California Courts would not do so before.

● **Advice:** Amend clauses to refer to *AT&T* holdings. In light of this precedent, it would be terribly frustrating to use an outdated form; a good time to review your clause, obtain a separate agreement ("stand alone"), and offer it to your residents with incentives for mutual agreement.

What has not yet been expressly answered is whether or not a rental agreement amended on notice, as per *Civil Code* section 1946, can include

a federal arbitration clause. Accepted legal reasoning is simple. If a tenant has not accepted a lease and prefers a month to month agreement, it can be amended on notice, 30 days in advance of the amended term taking effect. If the resident chooses to stay in place and continue the tenancy after notice of the amendment, the tenant has accepted the new terms and is bound by them. If the amendment is the addition of an arbitration clause, tenant, similarly, accepts the clause by continued tenancy after the 30 day period has come and gone.

The arbitration clause can be limited to determining real property tax prorations and pass-throughs, or "failure to maintain" actions, or "slip and fall" actions for that matter. Every park owner has the control over the content and the breadth of the clause. It could be limited to the determination of a tax pass-through if the resident disagreed with the calculation of the park owner. Since such a pass-through does not add to profit, is not driven by the actions of the park owner, and is paid directly to the government, it cannot be within the scope or purpose of rent controls, which are designed to stop exploitive rent increases driven by the existence of a housing shortage. In fact, therefore, there is no conflict between the purposes of rent control and the intentions of rent controls.

● **Comment:** A city cannot interfere with the Federal Arbitration act. An FAA arbitration clause should be enforced, as against a rent control law with which it interferes. Entering into arbitration clauses now, to cover disputes involving a split roll initiative increase, is simple, currently not controversial, and likely enforceable. It is a way to protect against prohibition of tax increases resulting from a "split roll" initiative.

IS AN AMENDMENT TO A RENT AGREEMENT CONTAINING AN ARBITRATION CLAUSE ENFORCEABLE?

The issue for the courts will be whether an amendment, or new rental agreement containing an arbitration clause is enforceable. Must it be signed? Must it be conspicuous? Or will mere constructive notice or opportunity to read the clause in some other document suffice? Just what is required for an enforceable contract to arbitrate?

The arbitration clause must be entered into. Arbitration does require an agreement. But that agreement does not require express "initialing" or expression or manifestation of assent by affirmative action. The agreement to arbitrate can be reached in any variety of ways in California law. A recent case involving an internet contract highlights the many-varied ways an arbitration clause can be entered into.

> If a rent increase is a reasonable contract modification, why not a procedure to assure a *precise calculation* of a rent increase based on documented and unavoidable cost of operation?

In *Schnabel V. Trilegiant Corporation & Affinion, Inc., Docket No. 11-1311-cv, United States Court of Appeals, Second Circuit(September, 2012)* the Court denied defendants' motion to compel arbitration because the email sent to the plaintiffs did not provide sufficient notice of the arbitration clause, but left open a question whether or not a hyperlink containing the clause might suffice for adequate notice. A few rules come into play, and should be considered when planning a park owner's program of including arbitration in offers and leases.

The Act places arbitration agreements "upon the same footing as other contracts." But it "does not require parties to arbitrate when they have not agreed to do so."[1] So what will and will not work for us here in California?

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■ The touchstone is an outward manifestation of assent. "Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties."

■ "To form a contract, a manifestation of mutual assent is necessary. . . . Mutual assent may be manifested by written or spoken words, or by conduct."[2]

■ A contract is formed by assent through "written or spoken words or by other acts or by failure to act."

■ The conduct manifesting such assent may be words or silence, action or inaction, but "[t]he conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents."[3]

■ The mere acceptance of a benefit. . . may constitute assent, but only where the "offeree makes a decision to take the benefit with knowledge [actual or constructive] of the terms of the offer . . . ."[4]

■ ". . . where the purported assent is largely passive, the contract-formation question will often turn on whether a reasonably prudent offeree would be on notice of the term at issue. In other words, where there is no actual notice of the term, an offeree is still bound by the provision if he or she is on inquiry notice of the term and assents to it through the conduct that a reasonable person would understand to constitute assent.

■ "Inquiry notice is actual notice of circumstances sufficient to put a prudent man upon inquiry. . . In making this determination, the "[c]larity and conspicuousness [of the term is] important . . . ."

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[1] *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 478 (1989); *accord E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 293 (2002).

[2] *Binder v. Aetna Life Ins. Co.*, 75 Cal.App.4th 832, 850, 89 Cal.Rptr.2d 540, 551 (1999)

[3] Restatement (Second) of Contracts § 19(2).

[4] The Court refers here to a commentator (Williston's treatise) who observes, "one who accepts the benefit of services rendered may be held to have impliedly made a promise to pay for them . . . [if] the offeree . . . knew or had reason to know that the party performing expected compensation." 2 RICHARD A. LORD, WILLISTON ON CONTRACTS § 6:9 (4th ed. 1991)

■ A person can assent to terms even if he or she does not actually read them, but the "offer [must nonetheless] make clear to [a reasonable] consumer" both that terms are being presented and that they can be adopted through the conduct that the offeror alleges constituted assent. [5]

■ "[A]n offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he is unaware, contained in a document whose contractual nature is not obvious." [6]

In the *Schnabel* case, the consumer won and was not required to arbitrate ("We do not think that an unsolicited email from an online consumer business puts recipients on inquiry notice of the terms enclosed in that email and those terms' relationship to a service in which the recipients had already enrolled, and that a failure to act affirmatively to cancel the membership will, alone, constitute assent").

According to the defendants, the arbitration provision was made available through a *hyperlink* appearing on the page the plaintiffs would have seen before enrolling in a service offered by the defendants and an email sent to the plaintiffs after their enrollment. However, the lawyers failed to raise this issue in the trial court and were deemed to have waived the point on appeal. The strategy (assuming there *was* a strategy) behind forsaking this argument is not known. Much like an addendum or park policy which is referred to and incorporated by reference, or maintained in a park office, the ability to apprise oneself of important terms with a mouse click should be a very low hurdle to clear.

● **Process:** Amending the terms of a rental agreement is a relatively simple task. A notification, given thirty days in advance, is required to amend the terms of a month to month rental agreement in most cases. If the tenant stays in possession and does not quit the property by the time the notice and amendment have matured, the amendment is binding. This process is repeated each year with every rent increase notice that is served on a tenant. [7] The process can be used to amend and add other provisions. Among them, a pass-through for non-discretionary costs such as property taxes?

● **Comment:** The courts have not decided whether imposing arbitration in this manner will constitute an enforceable amendment. However, arbitration clauses are judged in the same manner as any other contract term. *If a rent increase is a reasonable contract modification, why not a procedure to assure a precise calculation of a rent increase based on documented and unavoidable cost of operation?* If enforceable, the issue is taken from the rent board and decoupled from the analysis of just and fair return, or MNOI analysis, where the rejection of the tax pass-through will be buried in a conclusory opinion of fair return on the enterprise as a whole. This strategy poses a very simple way to bring fairness to a park industry beset with regulatory overkill.

2013: New Laws. A Calm Before the Storm?

By: Terry R. Dowdall, Esq.

UPSHOT:

2012 was a busy year in the legislature. Here is a summary run down of the laws that matter to park owners. The new year presages many challenges and opportunities. Much of the legislative effort will be devoted to working with all concerned groups to achieve fair results in any consideration of new legislation. As always, please feel free to contact us with additional questions and comments.

ASSEMBLY BILLS

AB 317 (Calderon) - Second homes in mobilehome parks (Chapter 337)

1. An act to amend Section 798.74.5 of the *Civil Code*, relating to mobilehomes.

2.This bill adds language to an existing disclosure form that the management of a mobilehome park must provide to prospective homeowners stating that purchasers who do not occupy the mobilehome as their principal residence may be subject to rent levels that are not governed by rent control.

(Some spaces are governed by an ordinance, rule, regulation, or initiative measure that limits or restricts rents in mobilehome parks.) "These laws are commonly known as 'rent control.' Prospective purchasers who do not occupy the mobilehome as their principal residence may be subject to rent levels which are not governed by these laws. (*Civil Code* §798.21)"

AB 1623 (Yamada) - Weights and measures: inspection fees (Chapter 234)

1. An act to amend Sections 12240 and 12246 of the *Business and Professions Code*, relating to weights and measures.

2. This bill increases the weights and measures inspection fees for mobilehome parks as follows: $2 per space for water, electric to $3 per space, and gas to $4 per space.

AB 1694 (Fuentes) - Gas pipeline safety inspections (Chapter 112)

1. An act to amend Sections 4353 and 4453 of the *Public Utilities Code*, relating to gas pipeline safety.

2. This bill permits the California Public Utilities Commission (PUC) to inspect mobilehome parks and propane suppliers at least once every

[5] *E.g., Guadagno v. E*Trade Bank*, 592 F.Supp.2d 1263, 1271 (C.D. Cal. 2008). People who accept an offer assume the risk of unread terms that may prove unwelcome.

[6] *Windsor Mills, Inc. v. Collins & Aikman Corp*., 25 Cal.App.3d 987, 993, 101 Cal.Rptr. 347, 351 (1972).

[7] *Civil Code* §798.30. Of course, rent increases in mobilehome park tenancies require 90 days advance written notice.

seven years utilizing a risk-based assessment schedule.

3. This bill requires that if the operator demonstrates compliance with the initial inspection, additional inspections be made at least once every seven years pursuant to a risk-based inspection schedule adopted by the commission.

AB 1830 (Perez) - Water service: mobilehome parks (Chapter 539)

1. An act to amend Section 2705.6 of the *Public Utilities Code*, relating to mobilehome parks, where the park operator supplies well water.

2. This bill provides that if a complaint is filed with the Public Utilities Commission (PUC) by tenants of the mobilehome park that represent 10% or more of the park's water service connections during any 12-month period, claiming that the water rates charged by the park are not just and reasonable or that the service is inadequate, the commission has jurisdiction to determine the merits of the complaint and would require the commission to determine whether the rates charged are just and reasonable and whether the water service provided is adequate.

3. The bill provides that for any complaint filed after December 31, 2012, if the commission finds, after investigation, that the mobilehome park is charging water rates that are unjust or unreasonable, the commission would be required to order the mobilehome park to reimburse the complainants and any other current and former tenants affected by the rate, if no discrimination will result from the reimbursement.

4. A person is not eligible to file a complaint against a mobilehome park if that person has not resided in that mobilehome park within the last five years.

5. The bill requires a mobilehome park to provide written notice to each of the mobilehome park's tenants to inform those tenants of their right to, and how to, file a complaint with the commission about the water rates charged or the service provided by the mobilehome park, using a standard notification prepared by the PUC.

6. Mobilehome parks are required to provide the notice to new tenants at the time the tenants establish residence and notify tenants each time the mobilehome park changes water rates or service.

7. This bill establishes civil penalties between $500-**$20,000** for failure to provide rate notices to tenants.

AB 1865 (Alejo) - Residential tenancies: eviction: notices (Chapter 241)

1. An act to amend Section 1161.2 of the Code of Civil Procedure, relating to eviction.

2. Expands court-provided notice to defendants in eviction cases to provide information about lawyer referral programs operated by nonprofit local bar associations.

3. This bill requires the mandatory court notice sent to each defendant in an unlawful detainer action to contain: 1) the name and phone number of the county bar association; 2) the name and telephone number of any entity that requests inclusion on the notice and demonstrates to the satisfaction of the court that it has been certified by the State Bar as a lawyer referral service and maintains a panel of attorneys qualified in the practice of landlord-tenant law pursuant to the minimum standards for a lawyer referral service, as specified; and, 3) a specified statement providing the telephone number and Web site address of the State Bar.

AB 1938 (Williams) - Mobilehomes: rental agreements (Chapter 477)

1. An act to amend Sections 798.17 and 798.39.5 of the *Civil Code,* relating to mobilehomes.

2. This bill requires the management of a mobilehome park that offers a long term lease to either give a 72-hour rescission period after a homeowner's executes their portion and is provided a copy at that time, or give a homeowner a 72-hour rescission period after a fully executed version by both parties has been provided to the homeowner.

3. AB 1938 also clarifies that management may not charge or impose a fee or rent increase for damages (fine, forfeiture, penalty, money damages) upon a homeowner unless a registered owner was initially responsible.

AB 2150 (Atkins) Mobilehome parks (Chapter 478)

1. An act to amend Sections 798.14 and 798.15 of the *Civil Code*, relating to mobilehomes.

2. This bill creates a new notice that would have to be included with any new rental agreement in a mobilehome park and be provided to all homeowners prior to February 1 of each year.

3. The new notice (listed below) provides a summary of homeowners' and park management's key rights and responsibilities under the MRL. The notice specifies that it does not serve as a legal interpretation of the law and that for authoritative information, homeowners must read and understand the actual text of the laws.

AB 2272 (Wagner)-Mobilehomes: injunctions (Chapter 99)

1. An act to amend, repeal, and add Section 798.88 of the *Civil Code*, and to amend, repeal, and add Section 85 of the *Code of Civil Procedure*, relating to mobilehomes

2. This bill, introduced by WMA (based on a proposal of and drafted by Terry R. Dowdall, Esq.) until January 1, 2016, authorizes the management of a mobilehome park to file a petition for an order to enjoin violations of a reasonable rule or regulation of the mobilehome park within the limited jurisdiction of the superior court.

SENATE BILLS

SB 149 (Correa) - Mobilehome and special occupancy parks: permit invoice: notice (Chapter 307)

1. An act to amend Sections 18506 and 18870.7 of the *Health and Safety Code*, relating to mobilehome and special occupancy parks.

2. This bill requires HCD or a local enforcement agency to include on the annual invoice for a permit to operate a mobilehome park or special occupancy park notice of the Mobilehome Residency Law and the Recreational Vehicle Park Occupancy Law.

SB 1055 (Lieu) - Landlord and tenant: payments (Chapter 268)

1. An act to amend Section 1947.3 of the *Civil Code*, relating to landlord and tenant.

2. This bill provides that a landlord shall allow a tenant to pay rent and deposit of security by at least one form of payment that is neither cash nor electronic funds transfer. The bill defines the term "electronic funds transfer" for these purposes.

ADDITIONAL LEGISLATION OF INTEREST

AB 1679 (Bonilla) - Security Deposits (Chapter 557)

1. An act to amend Section 1950.5 of the *Civil Code*, relating to landlord-tenant relations.

2. This bill is sponsored by the California Apartment Association (CAA) and, according to CAA, allows property owners to deposit any remaining portion of the security deposit directly to a bank account designated by the tenant and allows property owners to provide a copy of the itemized security deposit statement along with supporting documents to an email account provided by the tenant.

AB 2521 (Blumenfield) - Tenant Abandoned Personal Property (Chapter 560)

1. An act to amend Sections 1946, 1946.1, 1950.5, 1983, 1984, 1985, 1987, 1988, and 1990 of the *Civil Code*, relating to landlord and tenant.

2. This bill increases the value of a former tenant's unclaimed personal property from $300-$700, a threshold that requires an owner to take additional steps before disposing of the personal property (storage or public sale). If the property is valued at below $700, the landlord may dispose of or retain the property.

3. Requires notices to quit (termination of tenancy) to contain new language as follows:

"State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that the property belonging to you was left behind after you moved out."

SB 1038 (Committee on Budget and Fiscal Review) - State Government (Chapter 46)

1. SB 1038 allows the Department of Fair Employment and Housing to be granted reasonable attorney's fees and costs, including expert witness fees, when it is the prevailing party.

2. Disbands the Fair Employment and Housing Commission.

3. Requires Mediation before Filing Complaint.

SB 1186 (Steinberg) - Building Accessibility for the Disabled (Chapter 383) -Effective immediately

1. An act to amend, repeal, and add Section 6106.2 of the *Business and Professions Code*, to amend Sections 55.3, 55.52, 55.53, 55.54, and 55.56 of, to add Sections 55.31, 55.545, and 1938 to, and to add, repeal, and add Section 55.32 of, the *Civil Code*, to add Section 425.50 to the *Code of Civil Procedure*, to amend Sections 4459.8 and 8299.05 of, to add Chapter 7.5 (commencing with Section 4465) to Division 5 of Title 1 of, and to repeal and add Sections 8299.06, 8299.07, and 8299.08 of, the *Government Code*, and to add and repeal Section 18944.5 of the *Health and Safety Code*, relating to disability access, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

2. The bill prohibits an attorney, or other person from issuing a demand for money to a building owner or tenant, or an agent or employee of a building owner or tenant, on the basis of one or more construction-related accessibility violations.

3. This bill requires a commercial property owner to state on a lease form or rental agreement executed on or after July 1, 2013, if the property being leased or rented has undergone inspection by a certified access specialist.

SB 1229 (Pavley)- Animals at Rental Property (Chapter 596)

1. An act to add Section 1942.7 to the *Civil Code*, relating to rental property.

2. This bill prohibits a landlord who allows tenants or occupants to have animals on the premises from doing any of the following: (1) advertising the property in a way that discourages individuals from applying because their animal is not declawed or devocalized; (2) refusing to allow, negotiate, or make the property available for occupancy because of a person's refusal to declaw or devocalize an animal; or (3) requiring a tenant or occupant to declaw or devocalize an animal that is allowed on the premises. This bill permits a city or district attorney, other law enforcement prosecutorial entity to enforce these provisions and sue for declaratory relief, injunctive relief, or imposition of a civil penalty of $1,000 for every violation.

SB 1403 (Yee)-Domestic violence: permanent restraining orders and elder abuse orders (Chapter 516)

1. An act to amend Section 1946.7 of the *Civil Code*, and to amend Section 1161.3 of the Code of Civil Procedure, relating to domestic violence.

2. This bill adds elder and dependent adult abuse to the list of crimes that permit a tenant-victim to terminate a tenancy with proper notice and documentation. In addition, existing law requires a tenant to attach to the termination notice either a "temporary restraining order" or an "emergency protective order" in order to document the abuse; this bill would additionally allow the tenant to submit a copy of a "protective order" to meet this requirement.

Kasey C. Phillips, Esq.
Joins Dowdall Law Offices, A.P.C.

We are pleased to announce the association of Ms. Kasey C. Phillips, as an associate attorney. Ms. Phillips will be assisting in the growing unlawful detainer practice and litigation research and writing. Her strength in research and writing will bolster cost effective delivery of services in all realms of our practice.

Ms. Phillips grew up in the San Francisco bay area and attended law school in Orange County, which she now calls home. In 2007, she graduated Magna Cum Laude from Chapman University (B.S., Business Administration). Ms. Phillips attended Chapman University School of Law, where she served on the Law Review as Editor and later as Senior Symposium Editor. Her scholarly article, *"Drug War Madness: A Call for Consistency Amidst the Conflict"* appears in the Chapman University Law Review, Fall 2010. Additionally, Ms. Phillips served as an Academic Fellow for Legal Research and Writing.

You may contact her at 714.532.2222 and *kcp@dowdalllaw.net*.

Please feel free to contact Terry R. Dowdall, Esq. for further information and questions.

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SEASONS GREETINGS FROM DOWDALL LAW OFFICES!!

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