

PARK WATCH

LEGAL DEVELOPMENTS NEWSLETTER

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THIS NEWSLETTER CONVEYS GENERAL INFORMATION, NOT LEGAL ADVICE: CONSULT AN ATTORNEY BEFORE RELYING HEREON

2015: TIME TO REVIEW ANNUAL NOTICES AND DISCLOSURES TO ALL RESIDENTS

—What You Need to Know for 2015

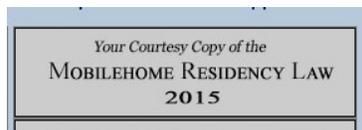
By Terry R. Dowdall, Esq.

● Synopsis

Each year, park owners must provide all residents with certain notices and disclosures.

The *Mobilehome Residency Law* was not significantly amended this year, obviating the need to provide notice of availability of the 2015 code. Having copies of the 2015 code on hand is important for purposes of attachment to the rental agreement for new tenancies.

Complimentary copies of the Mobilehome Residency Law can be downloaded from my home page here: <http://www.dowdalllaw.com/> (click this button):



Violations: Recall that violations of the Mobilehome Residency Law specify penalties of up to \$2,000.00 per willful violation, per tenant. According to many tenants, any violation of the MRL is a willful violation. It is strongly advised that attention to detail be given. Let's avoid errant or late notices so not to provide an opportunity upon which the



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Mobilehome Park Owners
since 1978*

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In this Issue

*for "General Audience:**

- Annual notices, disclosures, policy updates

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avaricious may try to seize at your needless expense.

Renewed Enforcement of Rules, Policies: The new year is a good time to evaluate policies or standards the enforcement of which have been inconsistent or uneven. Despite well-written anti-waiver clauses for use defensively, the advance announcement of the intention to enforce policies, rules, regulations and requirements may help to resurrect sound practices with least disruption. *The beginning of the year is a good time to take such actions.* For example, if management has not regularly enforced "no street parking" or "guest parking only" violations, the announcement of renewed enforcement can generate compliance.

In 'older persons' parks, if management wishes to fill long standing vacancies with up to 20% of all age applicants, or

allow tenancy for survivors who are underage, or provide for visitation of grandchildren, whether by announcement of an interpretation of existing policy or amendment of the rules, the beginning of the year is a good time for change.

It is a good time to take stock of operations and decide how and if things need to be changed for the better.

Here is a list of notices and disclosures to consider.

Management must notify the homeowners if there are “significant” changes to the Mobilehome Residency Law for the forthcoming year. This requirement does “not” apply for 2015.

Civ. C. §798.15 states that a copy of the MOBILEHOME RESIDENCY LAW must be provided on request, if there are significant changes to it. If there are significant changes, the residents must be alerted.

New homeowners: Park owners are required to provide a copy of the MOBILEHOME RESIDENCY LAW to each new homeowner, so a few copies on hand is sound practice. The code says the owner is to provide:

(c) A copy of the text of this chapter shall be provided as an exhibit and shall be incorporated into the rental agreement by reference.

Existing homeowners: Management shall do one of the following prior to February 1 of each year, if a significant change was made in this chapter by legislation enacted in the prior year:

(1) Provide all homeowners with a copy of this chapter.

(2) Provide written notice to all homeowners that there has been a change to this chapter and that they may obtain one copy of this chapter from management at no charge. Management shall provide a copy within a reasonable time, not to exceed seven days upon request.

Do you provide notice this year? There is a typographical correction of one section, with absolutely no legal modification of meaning or intent.

The answer is “no.”

You may obtain a new copy of the 2014 MOBILEHOME RESIDENCY LAW free by visiting www.dowdalllaw.com and clicking on the button marked **“Your Courtesy Copy of the Mobilehome Residency Law 2015.”**

**“Notice of Rights and Responsibilities”:
This Notice must Be Provided to All Homeowners Each Year on or Before 2/1/2015.**

Civ. C. §798.15(i) requires service of the following notice prior to February 1 of each year. Even if you just qualified a new tenant in December and already provided a copy, do it again. A free copy of the notice can be downloaded from here:

ANNUAL STATEMENT OF RIGHTS
AND RESPONSIBILITIES, SERVE BY
FEBRUARY 1

<http://www.dowdalllaw.com>. Just click on this button on the home page:

The notice must make disclosures already well known to the experienced homeowner. *So we are sure they do not know more than we do*, let’s review the disclosures given to the homeowner:

- *“Written notice of any rent increase at least 90 days before the date of increase. (Civ. C. Section 798.30);*
- *Anti-waiver provisions per Civ. C. §§ 798.19, 798.77);*
- *Good cause termination requirements per Civ. C. §§ 798.55, 798.56);*
- *Notice of vacating of tenancy requires 60 days notice (Civ. C. §798.59);*
- *Homeowners must comply with the rental agreement including the reasonable rules and regulations - failure to comply could be grounds for eviction from the park. (Civ. C. §798.56);*
- *Failure to pay rents could be grounds for eviction (Civ. C. §798.56);*
- *Right to peacefully assemble and freely communicate with for any lawful purpose;*
- *Homeowners may not be charged a cleaning deposit in order to use the park clubhouse for meetings of resident organizations or for other lawful purposes, such as to hear from political candidates, so long as a homeowner of the park is hosting the meeting and all park residents are allowed to attend.*
- *Homeowners may not be required to obtain liability insurance in order to use common facilities unless alcohol is served. (Civ. C. §§ 798.50, 798.51)*
- *If a home complies with certain standards, the homeowner is entitled to sell it in place in the park. Management may require certain upgrades.*
- *Management may not require a homeowner to sell his or her home to the park, may not charge a transfer or selling fee, and may not require a homeowner to use a broker or dealer approved by the park.*

- Management may deny approval of a buyer, but only for certain reasons listed in the law. (Civ. C. §§ 798.70-798.74)

- Management has the right to enter the space upon which a mobilehome is situated for maintenance of utilities, trees, and driveways; for inspection and other just cause; but not in a manner or at a time that would interfere with the resident's quiet enjoyment (Civ. C. § 798.26);

- A homeowner may not make any improvements or alterations to his or her space or home without following the rules and regulations of the park and all applicable local ordinances and state laws and regulations. . .

Distribute Privacy Statement to all Homeowners in Community (16 C.F.R. Part 313)

Landlords must safeguard resident (and employee) personal information and properly dispose of records. The requirements are based on the type of business; however, anyone who gathers personal information, including but not limited to, a driver's license or a social security number, is likely subject to the rule. The notice should be delivered at the inception of the relationship and annually thereafter, for the duration of the relationship. The statement should:

A. Describe the categories of nonpublic personal information you collect;

B. State the fact that you do not share nonpublic personal information about your customers or former customers to affiliates or non-affiliated third parties, except as authorized by law; and

C. Describe your policies and practices for protecting the confidentiality and security of consumer's nonpublic personal information.

A "safe harbor," though not foolproof, is a good way to check park policies respecting private information of residents and comply with the notice requirements.

The model form has two pages and together, pages one and two address the legal requirements of applicable Federal financial privacy laws.

A specific paper size is not mandated as long as the paper is in portrait orientation and sufficient to accommodate minimum font size, spacing, and content requirements.

Rev. [insert date]

FACTS		WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] When you are no longer our customer, we continue to share your information as described in this notice.	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
	Reasons we can share your personal information	Does [name of financial institution] share? Can you limit this sharing?
	For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	
	For our marketing purposes—to offer our products and services to you	
	For joint marketing with other financial companies	
	For our affiliates' everyday business purposes—information about your transactions and experiences	
	For our affiliates' everyday business purposes—information about your creditworthiness	
	For our affiliates to market to you	
	For nonaffiliates to market to you	
Questions?	Call [phone number] or go to [website]	

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Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [nonaffiliate information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> ■ [joint marketing information]
Other important information	
[insert other important information]	

Distribute “CARE” Information for 2015 to Homeowners in the Community.

The management of a master meter park shall give written notice to homeowner and residents on or before February 1 of each year in their utility billing statements about assistance to low income persons for utility costs available under the California Alternate Rates for Energy (CARE) program. The notice must:

A. Disclose that CARE offers a discount on monthly gas or electric bills for qualifying low income residents; and

B. Include the phone number of the serving utility which provides the CARE information and applications.

C. The park shall also post the notice in a conspicuous place in the clubhouse, or if there is no clubhouse, in a conspicuous public place in the park.

Distribute CARE Information for 2015 to Homeowners in the Community.

If you operate the natural gas system in your community, you must complete and file with the California Public Utilities Commission, form MHP 1.

It is the Mobilehome Park Operator's Annual Report. Generally, the company that conducts your gas leak surveys will prepare and file this report.

Miscellaneous Duties to List For Responsible Management of Your Community.

- Test fire extinguishers annually;
- Test kitchen grease fire apparatus annually;
- Test 10% of utility meters;
- Verify ombudsman, Prop 65. HUD & DFEH Fair Housing posters, Park Policies;
- Health and Safety Code phone numbers are all posted;
- Conduct loss control prevention (slip & fall, hazardous);
- Chemical, dryer lint buildup, etc. inspection;
- Review and verify proper charges for water, trash, sewer, recycle, cable, fire district, etc. and post;

- Post gas & electric utility rates monthly
- Conduct OSHA training
- Inspect smoke and CO detectors and change batteries in employee homes and rentals.
- Also in common areas (when they are required by insurance companies).

Schedule Backflow Prevention Device Test

The backflow prevention device is usually tested annually at the direction of the city or county cross-connection control department or health department. Failure to comply with testing requirements may result in the discontinuance of water service.

Schedule Gas Leak Survey

If your community operates a natural gas system, a leak survey must be conducted frequently (the WMA recommends that such tests be done on an annual basis).

MP 532 Fire Hydrant Test

See Title 25 § 1300 Fire Protection Standards for Parks: Parks built after September 1, 19681 are required to meet NFPA Standard 24, 1977 Edition. § 1317 of Title 25 states in part:

(b) Annual Test and Certification of Operation. Private fire hydrants shall be tested annually in order to determine that they are operational as specified in sub§ 1316(b) of this article. Verification shall be submitted to the enforcement agency and to the fire agency responsible for fire suppression in the park, as required in § 1319 of this article. The annual hydrant operational test may be performed and verified by a park operator for the years between the five-year water flow tests. However, the five-year test and certification of water flow and the operational test performed at that time shall not be certified by the park operator. The five-year test and certification of water flow and the operational test shall only be certified by one of the entities listed in sub§ (c) of this section.

(c) Five -Year Test and Certification of Water Flow and Operational Test.

(1) Private fire hydrants shall be tested and certified at least once every five (5) years for minimum water flow as prescribed in § 1316 of this article, as well as for operation as specified in sub§ 1316(b) of this article. Certification shall be submitted to the enforcement agency and to the fire agency responsible for fire suppression in the park as

required in § 1319 of this article.

(2) Parks existing prior to December 31, 2002, shall submit verification of their five-year test and certification for minimum water flow, beginning with the permit to operate renewal year 2008, after the initial water flow test has been completed.

(3) The five - year test and certification of the required water flow and the operational test shall be conducted during the 12 months prior to the renewal of each fifth year park permit to operate. The previous five - year renewal for the prior permit to operate must have complied with the required water flow standards set forth in § 1316 of this article.

(4) Testing for the required water flow shall be conducted in such a manner as to ensure there is no pollution of the storm drain system or any other water or drainage systems within, or serving, the park, and no damage to structures or improvements within or outside of the park.

Distribute Natural Gas Public Awareness Information - (49 C.F.R. Part 192.616)

Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice 1162. If you operate your community's gas system, along with other responsibilities, you must provide public awareness messages to your residents. The Initial Message should include information relating to:

- A. General pipeline description and reliability information;
- B. Operation and maintenance of the system;
- C. Physical indications that a leak has occurred;
- D. What to do in the event of a teak;
- E. Emergency plan information;
- F. Accident prevention information; and
- G. On-call center information

Housing for Older Persons Survey / Census, Every Two Years to Remain Qualified to Restrict Tenancy to 55+ The Ninth Circuit disqualifies mobilehome communities in which the management fails to take the 2 years census of residents!

The Courts in the Ninth Circuit have disqualified mobilehome park communities in which the management failed to take the 2 years census of residents in the community.

So, it is *critical* that the two year census be required. The requirement is codified in the regulations implementing the "Housing for Older Persons Act of 1995" (HOPA) and the April, 1999 rules for implementing that act provided by the Department of Housing and Urban Development.

The park census should exist for the following dates: 1999 (when the regulation became effective), 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015. A census should be taken in 2015. If not, you are no longer qualified to operate as a 55+ park, not at least until the task is complete and you then re-qualify.

Order and Display Required Labor Code Posters! This year, the new Sick Leave Act poster must be displayed.

Management must post and distribute certain required employment notices. This includes displaying posters in every company location, somewhere employees can easily read them such as a break room or common hallway. One of the best bargains available is the assembled set of posters from the California Chamber of Commerce.

Update Emergency Preparedness Program, Rental Agreement Disclosure Forms.

The **Emergency Plan** (required of every park since 2010) is to be updated regularly. It must be provided to each new resident. *Is it up to date?* Read yours and spot check the information in it. There are many items of information which may change, and it is a responsibility of management to ensure all the addresses, media outlets for information, gathering points and evacuation and emergency information remains correct.

The management shall provide a prospective homeowner with a completed **written disclosure form** concerning the community at least three days prior to execution of a rental agreement or statement signed by the community management and the prospective homeowner that the parties have agreed to the terms and conditions of the rental agreement.

Management shall update the information on the disclosure form annually, or, in the event of a material change in the condition of the manufactured housing community, at the time of the material change in that condition.

Update Employment Application

If you have employees, you should check for changes and update hiring practices accordingly. Break time, time off, monitoring overtime and time recording, all are very important and frequently change based on law and decisional developments. Include consideration of the application, annually taking into consideration changes in employment law. There are several sources for information relating to employment law, including the California Chamber of Commerce.

Residency Documents

"Failure to Maintain" is over. If your residency documents do not contain an arbitration clause referencing federal law (not "California" law, not "reference," not "state arbitration" or rights under "§ 1280" of the California Code of Civil Procedure—all of which **MUST** be discarded), your documents are out of date and you are failing to take advantage of reasonable custom and practice. That is to say, the park's documents are prejudicial to the operation and safety of the park.

- **Do your documents waive jury trial?** That is illegal and **not enforceable**.

- **Do you require leases?** That is **illegal**. Civ. C. §798.17 now states that the offeree may refuse a lease and have a 12 or less agreement. Such leases may mean disgorgement of improper raises already paid; reduction of revenue stream resulting from reduced rents rolled back to pre-lease levels; virtual collapse of capitalized park value if applicable to all the residents, and exposure to rent controls, penalties and punitive damages.

- **Do your documents have a shortened statute of limitations?** **No longer enforceable** and must be removed.

- **Do your documents require guests to vacate after 45 days (or similar limitation)?** That is a violation of the Mobilehome Residency Law. You cannot stop a homeowner from having guests; you may charge a guest fee if your documents provide it, and it runs afoul of no rent control laws. You can also enforce a reasonable density limit rule.

- **Do your family-park rules require adult supervision in any common area?** This would constitute a violation of the federal Fair Housing Act.

- **Do your documents require that your tenant maintain trees that have become hazardous?** This would constitute a violation of the Mobilehome Residency Law, as management owes the duty to maintain trees which have become a specific hazard or code violation.

- **Do your documents require "special" permission for a pet?** Tenants may have pets as a matter of right; subject to reasonable rules and regulations.

- **Can you prohibit pit bulls as service animals or companion animals by reason of breed alone?** No. Breed discrimination against service animals (include companion animals) is not permitted.

In sum, if your documents have not been thoroughly evaluated since April, 2011, management is:

1. Losing out on valuable legal developments; and,
2. At risk for practices no longer permitted by the Mobilehome Residency Law (Civ. C. §§798, et seq.). Your best solution is to propose a park-drafted agreement to ensure the park owner's rights are protected.

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