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PARK WATCH

LEGAL DEVELOPMENTS NEWSLETTER

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THE RISKS OF SUING LANDLORDS

■ Everybody knows it's a sure bet for tenants when they sue their park owners. *Right?* Wrong, *very* wrong. A recent case shows why.

Consider the recent case of tenant "Molly McGreedy" and "Bea Rich"(not real names). Molly took her complaints about water damage and mold, allegedly causing health problems, to some local attorneys. *The lawyers sent letters and retainer agreements to all the tenants in the premises,* suggesting they could participate in a "**risk free**" lawsuit that could result in collecting damages against the landlord. The letter claimed that the proposed complaint would **not** be a class action suit, and that the *only way the renters would "receive funds from settlement or judgment" would be to sign the retainer agreements*. More than 40 tenants took the bait, including Bea.

THE TENANT LAWSUIT

McGreedy's attorneys filed suit alleging 18 different types of claims (causes of action). A typical *"shotgun"* [1][2] approach to a lawsuit. They asked for damages for pain and suffering, emotional distress, medical expenses, loss of earnings, property and punitive damages. But when Molly was questioned under oath, her story changed. No mold problems, no visible signs of mold, no health problems -- only a belief that her security deposit should have been returned!! Eventually, Molly tired of the litigation and requested dismissal of the lawsuit, though the attorneys continued to insist that Molly had a strong case. The lawsuit continued for a full eight months before it was dismissed.

Bea seemed to have few of the harms alleged in the lawsuit. She did claim to suffer from sinus congestion, watery and itchy eyes, headaches and fatigue. She experienced heating problems and made a claim of unfair retention of a security deposit. But Bea had never provided any specific information indicating that there was mold in her unit, or that she had suffered any damages attributable to mold. In Bea's written answers to sworn questions (*aka*, "interrogatories"), she said that she was not claiming to have suffered physical injuries, property damage, lost earnings or lost future earnings. In response to the question, "Do you attribute any physical, mental, or emotional injuries to the INCIDENT?" Bea answered, "Yes."

Even though she had stated in her response to the solicitation letter that she had suffered from various physical ailments, when Bea was asked to identify each injury she attributed to the landlord, Bea answered only that "The owner and staff have caused me mental and emotional distress because of their dishonesty." Bea identified no past or present physical injuries that she attributed to living at the complex. When asked "Do you still have any complaints that you attribute to the INCIDENT," Bea answered "No." Bea stated that she had not received any consultation, examination or treatment from a health care provider, had not taken any medications, and had not required any other medical services related to her tenancy. She did state that she felt that the premises were "unsuitable to live in." Bea eventually dismissed her claim as well.

After Molly and Bea dismissed their claims, the landlord filed suit based on "malicious prosecution." The landlord's complaint, not a "shotgun" pleading, claims that the tenant suit was filed and prosecuted without probable cause, and that the lawsuit was maintained in bad faith and with malice. In a preliminary ruling on the landlord's case, the judge ruled that there was sufficient evidence to allow the landlord's suit to proceed.

THE LANDLORD SUES!

In order for the landlord to sue successfully, he is required to prove that the tenant lawsuit: (1) was commenced by or at the direction of the tenant and was pursued to a legal termination in landlord's favor; (2) was brought without probable cause; and (3) was initiated with malice. The court also echoed the familiar rule that continuing to prosecute a lawsuit which is subsequently discovered to lack probable cause is grounds for a claim of malicious prosecution (continuing an action that is discovered to be baseless harms the defendant and burdens the court system just as much as initiating an action known from the outset to be baseless). What's more, a claim for malicious prosecution may also apply where an action charges multiple grounds of liability when some, but not all, of the grounds were asserted are without probable cause and with malice.

What did the court make of the underlying tenant claims? Well, Bea failed to appear for two depositions and submitted interrogatory responses that indicated she had incurred no damages other than mental and emotional distress, despite the suit with 18 causes of action alleging physical injury and property damage. The court held that this constituted a reasonable inference that her allegations of mold contamination and personal injury were groundless. Molly's claims were likewise, not supported by the evidence she presented.

[1] The Court uses the term "shotgun;" if in any way offensive to the reader, I suggest you think "kitchen sink" instead; the only context in which the two terms mean the same thing seems to be lawsuits.

Was the tenant lawsuit a malicious prosecution of the landlord? All legal actions, including suits against landlords, are deemed to have been pursued without "probable cause" if not legally "tenable" when "viewed in an objective manner as of the time the action was initiated or while it was being prosecuted." There must be "probable cause."

● What is ***"probable cause"***? A litigant will lack probable cause for his action if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him. The action must be "tenable."

● What does ***"tenable"*** mean? The test is whether any reasonable attorney would have thought the claim tenable . "Tenable" means "capable of being held, maintained, or defended, as against attack or dispute: a tenable theory. In determining whether the tenant lawsuit was legally tenable, it was clear to the court that there was not probable cause to support at least some of the 18 causes of action alleged on Bea's and Molly's behalf. As with "*failure to maintain"* lawsuits against park owners, Molly's and Bea's claims included negligence in failing to manage, repair and/or maintain the property; breach of contract based on allegations that management failed to maintain the plumbing, heating, and electrical systems in satisfactory condition; and breaches of the warranty of habitability and the covenant of quiet enjoyment for failing to water/weather-proof the buildings, installing improper plumbing and gas facilities, and maintaining unclean and/or unsanitary buildings and grounds. The complaint also included causes of action for retaliation by the landlord.

The court concluded that Bea, for example, had never discussed any of the several alleged complaints regarding management with the tenant lawyers. Still, Bea alleged 18 different causes of action, the great majority of which had nothing to do with any of the concerns she had discussed with them. Said the court,

> "***[U]nder these circumstances, it is difficult to conclude that a reasonable attorney would have believed that [Bea] had tenable claims under many of the causes of action alleged in the complaint as filed. The court also determined that whatever the tenant lawyers knew at the time the lawsuit was filed, it became clear, after Bea provided responses to the interrogatories, that she was not claiming any physical injuries or property damage. She claimed 'dishonesty' on management's part. For example, when asked 'Do you still have any complaints that you attribute to the INCIDENT,' Bea answered 'No.' Bea further denied that she had been examined by any health care provider or that she had received advice or treatment from any health care provider. She also denied that she had taken any medications, or that she had required other medical services as a result of any injury she attributed to the 'INCIDENT.' In response to the question, 'Do you attribute any loss of or damage to a vehicle or other property to the INCIDENT?' Bea answered, 'No.' In response to the question, 'Do you attribute any loss of income or earning capacity to the INCIDENT?' Bea answered 'No.' In response to almost every question concerning whether or not she had been injured or had suffered a loss, Bea answered, 'No' or 'Not that I know of.'***

Even in stating that she felt the premises were "unsuitable to live in," Bea did not explain why, and offered no evidence that would demonstrate any factual support for this claim. The court stated that Bea's "subjective feelings" were insufficient to support a cause of action for breach. Bea had no complaints about mold or other health concerns at the premises.

The court therefore ruled that Bea and Molly had no "probable cause" to support most of the causes of action alleged in the complaint. The tenant lawyers nevertheless continued to prosecute the action against the landlord. And this was sufficient for the landlord to sue for damages for the failed and groundless claims brought by the tenants.

● What is ***"malice"***? The landlord must also show *"malice."* But in the malicious prosecution arena, "malice" has a very specific usage. The *"malice"* element speaks to subjective intent in suing. Malice is not just actual hostility or ill will. Rather, malice can also be shown when the tenant does not believe the claim may be held valid; or, suit is filed solely for the purpose of depriving the landlord of a "beneficial use of his property"; or, in order to force a settlement which has no relation to the merits of the suit. In other words, evidence tending to show that the tenants did not subjectively believe that the action was tenable is relevant to whether an action was instituted or maintained with malice. All tenants who responded were named in all counts of the complaint, whether or not there was a factual basis for the claims. This supported a finding that the claims were brought for an improper purpose.

In this respect, the court determined that there was also evidence that the tenant lawsuit was initiated and maintained in order to force the landlord to enter into a settlement unrelated to the merits of Bea's claims. The court held that once it became clear that there was no basis for a number of Bea's claims, the claims should have been dismissed "immediately."

The court finally concluded that a person, including a landlord, is harmed because he is compelled to defend against a fabricated claim which not only subjects him to the *"panoply of psychological pressures most civil defendants suffer, but also to the additional stress of attempting to resist a suit commenced out of spite or ill will, often magnified by slanderous allegations in the pleadings."*

TIPS FOR LANDLORDS

There is no such thing as a 'little lawsuit.' The filing of a legal action must be taken with great prior contemplation, care and concern -- especially when one considers the impact on the lives of the plaintiff and defendant. First and foremost, no legal action should be taken without first seeking to resolve the dispute by all reasonable means, including dialogue and mediation. Even non-payment of rent cases should be scrutinized for conceivable settlement possibilities, work-outs, and then possible defenses if litigation is necessary. Use of alternate dispute resolution techniques such as mediation, arbitration, and settlement proceedings may help to avoid the unnecessary and sometimes intractable position into which litigation will thrust management.

Records: Any legal action taken by management should be supported with evidence and investigation. *"Build a record"* is a common recommendation from every lawyer in the mobilehome park field. The record should reflect a strong probability of success before proceeding with a lawsuit. *What is a record?* It depends on the nature of the case. Usually, the preparation of the "record" includes the laborious task of assembling the entire universe of documents which pertain to the subject matter of the lawsuit, so your counsel can determine if your money will be well spent (i.e., whether you can prevail, whether a defendant can afford to respond to the judgment).

Keep in mind that one landlord's crisis may be but a judge's trifle. A judge who has just completed a preliminary hearing of a grisly homicide case, may not believe that an eviction case over landscape conditions is of much concern. With respect to claims against tenants, let's consider the typical rule enforcement dispute.

Witness Statements: Statements of what the witnesses will say; written complaints from other residents. Some managers complain that the residents will not provide written complaints. The resident may fear retaliation from the offending resident, for example, or, the resident may have poor writing skills. Well, recording a verbal complaint in your handwriting is nearly as good. Better that your record be a word-by-word reflection of the resident's complaint, but even a summary is good. More detail can be garnered later.

Photographs are very important, and several sets of photographs over the course of time will show a pattern of violations. Once you have a good set of photographs, the attorney can evaluate the likely reaction of judge or jury to the situation.

Correspondence and notices are also key. In typical rule and regulation violation cases, use of the 14 day notice may not be useful in the eviction case. *Why?* Because management has cleaned up the violation which we want to use for the eviction. And more significantly, the decision to clean up a space with a 14 day notice, implies a decision that the resident can stay if he or she would simply maintain the premises. If it is the management's decision to terminate the tenancy of the resident, acting to create damaging admissions by cleaning a mobilehome space so the resident complies with the rules may work against our interests. It tends to show the resident is worthy of remaining in the park. Other basic documents should be collected. Relevant rental and lease agreements, rules and regulations and notices. And in regard to correspondence, keep in mind that any written document given to a tenant may eventually be read by a jury. *Communications with tenants must be professional at all times.* A single piece of ill-considered correspondence can sink your ship. There is simply no excuse for anything less than *professional communication* at all times.

Weighing the Equities: More than ever before, equities weigh heavily in the balance of assessing the likelihood of prevailing in litigation against a mobilehome resident. Even in non-payment situations, there is latitude to decide whether and how to proceed. One well-worn example is the long time resident who, for the first time in many years, fails to pay the rent on time. It behooves management to contact such resident and determine if there is a valid excuse. There may be a death in the family, illness, vacation, etc. Serving a 'pay or quit' notice would engender ill-will, create distrust, and waste the manager's time. Even if a resident pays late (beyond the time limitations of a 3 day 'pay or quit' notice) consider accepting the payment. If management proceeds to trial and the judge determines that the payment was a day or two late, and then considers a long-tenured occupancy in the park, the judge may reinstate that tenancy, allowing the tenant to remain in the park. In rule violation cases, the judge will weigh the detriment to the management and perhaps other tenants, against the forfeiture of the tenancy and required sale or removal of the mobilehome from the park. That is a heavy penalty for rule violations, and hence, especially in this problematic real estate market, a sanction that judge's cautiously and sparingly administer.

Assessing the possibilities for early and non-judicial resolution of disputes is extremely important. Otherwise, immersed in litigation at some point, someone is likely to say, "if we had mediated this issue," or "if we had accepted that proposal earlier," we would not be HERE. So, if you *must* litigate, I would be sure that there is no room for that kind of remorse later. The case of McGreedy and Rich reflects the importance of care and concern for the initiation, maintenance and necessity of legal action by and against anyone, including landlords.

APPLICANT SCREENING *TRENDS AND ISSUES*

No More Residency-Status Screening in California

By: Terry R. Dowdall, Esq.

While immigration policy continues to be a topic of heated national debate, there's increasing confusion in California about what park owners should and should not do to comply with the law. Whatever our opinions, the laws affecting resident screening changed effective January 1, 2008.

In a nutshell, the change is this: *No more inquiries regarding immigration or citizenship status*. Management may not *"Make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant or prospective occupant,"* or require *"any statement, representation, or certification concerning his or her immigration or citizenship status."* Despite a previous HUD position that the Fair Housing Act does not prohibit discrimination based solely on a person's citizenship status and existing federal immigration law that it is illegal to conceal, harbor, or shield an illegal alien from detection, the California Legislature now prohibits screening for lawful residency.

Why all the fuss? The City of Escondido passed an ordinance barring all landlords from renting to illegal immigrants and requiring landlords to evict them. A suit ensued and the ordinance was promptly rescinded. Many other municipalities had passed or considered such ordinances. The Apartment Association of California Southern Cities sponsored AB 976 to protect landlords, stating that regulation of immigration is exclusively a matter of federal law and conflicting local laws would result in lawsuits and create landlord liability (to enforce federal laws as "de facto immigration cops"). Specifically, AB 976 adds Section 1940.3 to the Civil Code.

This section:

- prohibits local government from requiring owners of rental property to gather or report information about a tenant or a prospective tenant's immigration or citizenship status.
- prohibits a landlord from making any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.
- prohibits a landlord from requiring that any tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status.

AB 976 does not prohibit the landlord from:

- Complying with any legal obligation under federal law.
- Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

Thus, the law does not affect operation or application of the statutes (Civil Code section 798.74) that deals with the qualification of a prospective homeowner for a mobilehome tenancy.

Management would be violating the law to inquire concerning residency status in this country. It is, for example, illegal to ask a prospective homeowner (verbally or in writing) if he, she or any member of the prospective household is a U.S. citizen, in this country illegally, has a "green card" or other documentation, intends on becoming a citizen or attaining legal residency status. Of course, indirect questions designed to elicit information regarding citizenship or residency status would be similarly prohibited. These questions and all like them would violate the law. No questions or inquiries designed to reveal residency status may be directed to the prospective homeowner. However, verification of the identity of your prospective homeowner, by reliable identification, is permitted; otherwise management could not obtain a financial report and credit rating.

A New Quasi-Protected Class. A good "fair housing" adage to remember, is that "if you are not entitled to know a fact, you are not entitled to ask about it." In other words, residency status is not a subject for inquiry or discussion of any kind. Put another way, we know that management is not entitled to ask about any protected class status. "Residency status" creates a new quasi-protected class status. What are protected classes in California? Sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, familial status, sexual orientation and source of income. "Source of income" includes failing to account for the aggregate income of persons proposing to reside together on the same basis as the aggregate income of married persons. The one exception to "familial status" protections applies only to "older persons" or "senior" parks, and there management is required to seek and document status of "older persons" (55+) or "seniors" (62+) for tenancy. Thus, management may not ask if an applicant is African-American, Catholic, or female, for example. No protected class status or characteristic is open for screening, discussion or scrutiny. Simply, residency status is also a protected class for purposes of the tenancy application.

Management's Rights and Duties? The law also states that "Nothing in this section shall prohibit a landlord from either: (1) complying with any legal obligations under federal law (2) requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant."

Do I Modify My Tenancy Application? Does your application request citizenship information? If so, such inquiries must be removed from the application. Have you requested residency status information? You can no longer seek such information. Does your resident interview sheet contain questions as to residency or citizenship status? Such inquiries must be deleted from the interview topics of discussion.

Does the New Law Affect Tenancy Screening under the MRL? The operation and scope of Civil Code section 798.74 is not affected by the new law. Management may and should inquire into ability to pay the rents and other charges, gross income, and ability to comply with the rules and regulations. A tenant may be required to demonstrate the "financial ability to pay the rent and charges of the park." Hence, credit screening should continue to remain park policy without change.

For example, due to the right to determine or verify the financial qualifications of a prospective tenant, the information used for the processing of a credit screening check, employment and income verification are permitted. Under Civil Code section 798.74, management has the right to require proof of gross income ("management may require the purchaser to document the amount and source of his or her gross monthly income . . . "). The Mobilehome Residency Law expressly allows the management to "obtain a financial report or credit rating . . ." The law allows the management to set up and use reasonable standards for determining sufficient income. All these requirements for information set forth on a tenancy application remain permissible.

The Difference Between an Incomplete Application and a Denial of Tenancy. A tenancy application must be approved or denied within 15 business days. Civil Code section 798.74 (a) (within 15 business days of receiving all of the information requested from the prospective homeowner . . .). And within that fifteen day period, the applicant must submit to a park interview at management's request. Where truthful and correct information is provided, the management can then proceed to procure a financial report showing a history of experience with financial obligations. This information bears upon the reasonable expectancies for timely payment of rents and other charges of the tenancy. Proof of income is also provided. In such cases, management is provided with a reasonable, demonstrable assurance that the prospective homeowner will not default in future payment. Accordingly, management then provides a notice of approval of the application. But this is not always the case.

What if the management has not received "all of the information requested from the prospective homeowner"? In such case, the submitted application should be promptly returned to the prospective homeowner so a complete application can be submitted. The time frame for approval or denial of the application, of course, cannot begin to apply until a completed application has been received. If there is insufficient information provided on which to obtain a financial report or credit rating, the management is deprived of the right to determine financial ability to pay the rent. *The new law does not purport to relax any financial requirement for tenancy in the park*. The law does not require the management to make a tenancy decision devoid of all the information requested, and without proof of reasonable expectation of sufficient source and amount of income to make timely payment. Consistently applied tenancy application criteria including review of financial reports, credit ratings and amount and source of income do not violate the new law.

The application provided to the management must also contain correct information. *Providing false information (in the same manner as fraudulent concealment of the truth) about material facts pertaining to a tenancy application is a lawfully recognized basis for refusing to enter a contractual relationship*. For example, providing a false social security number to enable processing of a financial report constitutes a fraudulent effort to deceive the management into an acceptance for tenancy. Obviously, management is entitled to reject an applicant for such a tactic. In the same way, the failure to provide any social security number disables management from obtaining a financial report. Such an application is incomplete.

Thus, management is entitled to screen prospective homeowners for ability to pay the rents and other charges of the park, as always. The new law does not require approval of tenants without reasonable assurance of performance under a rental agreement. The law does not impose a requirement or assumption of greater credit risk, costs for defaulting tenants, or qualifications below management's standards.

Am I a "de facto immigration cop"? Do I have a duty to take action against homeowners whom I discover are undocumented

aliens? *Legislative Counsel once wrote that a landlord may refuse to rent to such a person without running afoul of a ban on immigration-status discrimination if so renting would violate federal law for "harboring" an alien known to be in the country illegally.* According to the Bill analysis, *prohibiting residency status inquiries is to be read in harmony with any federal obligation to refuse to rent when management is put on sufficient notice of facts indicating that a tenant or prospective tenant is undocumented.* "Sufficient notice" means to be aware of, but consciously and carelessly ignore, facts and circumstances clearly indicating that the alien entered or remained in the U.S. in violation of law.

What happens if a property owner determines that an existing homeowner is an illegal immigrant? Preventive response to avoid potential liability is a hallmark of good management. And is there any higher business priority than avoidance of any lawsuit entitled "The United States of America vs. [Park Owner]"? It is a violation of federal law to harbor an illegal immigrant. So, let's first understand the meaning and operation of the federal prohibition against 'harboring."

What does "harbor" mean? Do you know that an illegal immigrant is your homeowner? Is that enough to "harbor" an illegal alien? Some decisions find liability for allowing a residency, some address more egregious conduct. Certainly, management must have had an awareness and knowledge of undocumented residency before being required to take action. At present, the personal counsel of your attorney is the only source of authority on which to rely in this matter. This is because the law varies across the country, and there have been very few prosecutions reported for violations of the federal "harboring" law.

"Harboring" has included the church official who invited an illegal alien to stay in an apartment behind his church (harboring did not require an intent to avoid detection). "Harboring" is proved if the accused "intended to violate the law," with "the purpose of avoiding [the aliens'] detection by immigration authorities." "Harboring" has been established by proof of "conduct tending substantially to facilitate an alien's 'remaining in the U.S. illegally,' provided, of course, the person charged has knowledge of the alien's unlawful status." One Court stated that the word "harbor" means to "clandestinely shelter, succor and protect improperly admitted aliens." When an act is done "clandestinely" it is done secretly or in hiding.

So, we have a range of precedents, from the benevolent act of sheltering an illegal alien at a church, to promoting illegal entry and sustenance. On discovery that the homeowner is an undocumented alien (that is, the registered owner under a rental agreement for mobilehome tenancy), it is imperative that management consult with experienced counsel with likely two alternatives in mind: 'blow the whistle' and terminate the tenancy. There is no specific ground for termination of tenancy based on compliance with federal law to avoid "harboring." However, presumably, rules and regulations that prohibit unlawful activity, violation of statutes, laws and ordinances, etc., will be a basis to assert violation of rules and regulations. Management's choices can only be decided definitively by considering the facts, location, judicial attitudes, government agency propensity for enforcement and other relevant factors.

Simply, have a plan and follow it. Financial ability to pay rent is management's concern: proof of gross income, a financial report, a credit rating; the ability to comply with the rules and regulations. Make sure your credit screening, interviews and decisions are made timely. Carefully review Civil Code section 798.74. Follow your plan consistently. Retain your records, applications, approvals and denials. And, make sure the plan does not include inquires into residency status. When confronted with clear evidence that a homeowner is an undocumented alien, management's decisions should be based on consideration of all factors made in conjunction with the opinions of your counsel.

Park owners should keep in mind that immigration is a fluid issue and federal policy may yet emerge from the ongoing spirited debate. For the present, we should stay focused on California law that prohibits inquiries into a prospective applicants residency status, and the federal mandate to avoid "harboring" illegal aliens.

TENANT SCREENING UNDER THE PATRIOT ACT RECOMMENDED

By: Terry R. Dowdall, Esq.

The Mobilehome Residency Law ("MRL") allows for the screening of a prospective homeowner under Civil Code §798.74. The MRL allows rejection because of *(1) financial inability to pay the rent and other charges or (2) based on inability to comply with the rules and regulations based on prior tenancies.*

"Income Equals Three Times Rent" Test: In *Harris v. Capital Growth*, plaintiffs (female heads of low income families whose income consisted of public assistance benefits), filed suit against landlords, challenging their minimum income policy as economic discrimination and sex discrimination. The landlords *enforced a policy that applicants must have a monthly income equal to or greater than three times the rent charged.* Plaintiff applicants alleged they could afford to pay the rent but did not have incomes equal to three times the rent.

The court upheld the *"income equals three times rent"* test and held that landlords have an obvious and important interest in obtaining full and timely payment for the goods and services they provide.[2] The policy of screening out prospective tenants who are likely to default assumes that, at some ratio of rent to income, the burden of paying rent along with other living expenses will impose a hardship and result in default. The court stated that it is based on the rational economic interest of the landlord to minimize defaults and maintain the solvency of his business establishment.

Under the MRL, management may *not* request tax returns. Management may demand proof of gross monthly income or other means of support. Evidence of wealth cannot be demanded unless it is offered by the tenant as constituting the "means of support."

Incidentally, a failed effort was made in the last legislative session to denude park owners of the right to reject for insufficient

[2] "In pursuit of the objective of securing payment, a landlord has a legitimate and direct economic interest in the income level of prospective tenants, as opposed to their sex, race, religion, or other personal beliefs or characteristics. For nearly all tenants, current income is the source of the monthly rental payment. When a tenant ceases paying rent during the term of the tenancy, the landlord must resort to legal process to obtain possession of the premises and to collect any back rent that may be due."

income, *per se.*[3] We may expect more of that sort of legislative effort in the future.

Bank-Approved Financing: If there is *approved bank financing*, management may be hard-pressed to deny tenancy. If a bank is willing to take a risk, management may be likewise constrained to do so. It may be difficult for management to prove justification for a more stringent criteria than used by the bank. And, the "cost-benefit" risk of such litigation does not add up for management. It is far less expensive (and faster) to accept the applicant and evict later if buyer defaults.

Inability to Comply with Rules and Regulations: It is a more difficult determination to reject an applicant due to inability to comply with the rules. For an "older persons" park, the failure to qualify because the applicant is under 55 years of age is an example; or because the applicant has a 10 member family seeking to live in a 3 bedroom mobilehome (generally allowing a total of 7 persons total occupancy with a "2 person per bedroom plus 1" rule and regulation). There must be a prior "tenancy," although I would not stop research after receiving a glowing recommendation from the current landlord, who may have an eye toward unloading the applicant quickly. Talking to the rent-paying neighbors and personally viewing the past premises is a sound idea. Since the statute states that "past tenancy" is a relevant factor, it would seem reasonable to request a renter to provide evidence of compliance with the past tenancy requirements.

Are there other bases to reject an application?

Falsifying Facts: If false information about material tenancy issues is provided, the applicant is seeking to commit "fraud in the inducement" of contract. An application received with false evidence about material facts warrants rejection, but I recommend legal advice that the facts are material and the fraud is documented carefully. Rumor has it that false social security numbers and doctored TRW reports are being used for applicants. I do not believe that the MRL requires action on a fraudulent application. However, management's response should be declared in writing quickly: holding the application in silence may be arguably a "tacit" approval of the completeness or satisfaction with the application. The statute provides for a written notice of acceptance or rejection within 15 business days (does not include Saturdays, Sundays or other holidays).[4]

Incomplete Application: A failure to submit a completed application should not begin the statutory 15 day time limit for processing. An incomplete application should be returned for processing. The application should be an accepted form used in processing of mobilehome tenants. It should be up to date; it should have been reviewed by counsel. Outdated applications may seek information no longer permissible under the law. For example, questions which disclose residency status in the United States are questions which management may no longer ask.

Executive Order 13224

The applicability of Executive Order 13224 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism):

General Criminal Background Reporting: Generally, criminal record reports are not commonly sought for many reasons and not required in any case. The reports are not centralized (recorded by county), and the gravity of the offense, the relation to tenancy, and the proximity between date of the offense and application for tenancy are all variables which make a clear standard on which to rely very problematic. Moreover, if the government or correctional authorities have deemed an individual fit to live among us, I question whether we, as management, may enforceably 'second guess' the judgment of the regulatory powers whose opinions may be contrary to ours. And, if a lender has approved the applicant, I feel that management's powers may also, arguably, be similarly circumscribed.

Patriot Act and Impact of the Executive Order: There are no known cases in the federal or any state courts regarding landlords (generally and mobilehome park owners) in reference to the Executive Order. Still, the weight of the commentary in the legal field suggests that a check for possible listing as a 'blocked person" is necessary.

For example, In January 2008, one continuing legal education organization counsels that the Executive Order " . . . covers all types of transactions -- leases, purchases and sales, guaranties, financing transactions, brokerage relationships, joint venture and other partnership transactions, property management arrangements, investments, arrangements for other services, etc., etc. [I]n short, everything."

Another author states:

> *A "transaction" with a suspected terrorist could include, without limitation, leasing, brokerage, financing, purchasing, selling forming a limited liability company, limited partnership or other legal entity, investing or even entering into a property management arrangement with someone. The Order applies to owners, landlords, tenants, property managers, brokers, title agents, and last, but not least, real estate attorneys.*

Pursuant to the Executive Order, all U.S. citizens and organizations are prohibited from any business transaction with any person or entity on the United States Treasury Office of Foreign Assets Control's ("OFAC"), Specially Designated Nationals and Blocked Persons List ("SDN List"). The SDN list is located on the internet at:

www.ustreas.gov/offices/enforcement/ofac/sdn/index.html

The authorities counsel that if a 'hit' occurs or a name is suspicious, call the Office of Foreign Assets Control at (800) 540–6322 or (202) 622–2490. It appears that screening for the SDN list is highly recommended, and agencies who run checks on prospective applicants may be asked to do so if not already part of the screening process.

Please feel free to contact me in the event that you have any further questions or comments.

Terry R. Dowdall, Esq.

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[3] SB 541, ALQUIST (. . . in addition to income, the management shall consider, if provided by the purchaser, the purchaser's other financial assets, whether or not income producing, including, but not limited to, savings accounts, certificates of deposit, stock portfolios, trust interests of which the purchaser is a beneficiary, real property, and similar financial assets that can be liquidated or sold . . . ")

[4] Civil Code § 798.74, in part: . . . Within 15 business days of receiving all of the information requested from the prospective homeowner, the management shall notify the seller and the prospective homeowner, in writing, of either acceptance or rejection of the application, and the reason if rejected. If this letter is not sent, management can be accused of accepting the applicant by default. During the 15 day time period, management may require a personal interview.