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CHIEF DEPUTIES

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KENT L. DESCHAMBEAU
STANLEY M. LOURIMORE
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JOHN GONZINE
ROBERT CULLEN DUFFY
ROBERT D. GRONNE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
TRACY O. POWELL, II
RUSSELL L. SPARLING
JIMMIE WING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California

June 7, 1982

Honorable Jim Costa
Assembly Chamber

Mobilehomes - #8291

Dear Mr. Costa:

QUESTION NO. 1

Under the Mobilehome Residency Law, (Ch. 2.5 (commencing with Sec. 798), Title 2, Pt. 2, Div. 2, Civ. C.), is the management of a mobilehome park permitted to increase the rent of a tenant during the term of a rental agreement of 12 months' duration upon giving the tenant 60 days' written notice of the rent increase?

OPINION NO. 1

Under the Mobilehome Residency Law, the management of a mobilehome park is permitted to increase the rent of a tenant during the term of a rental agreement of 12 months' duration upon giving the tenant at least 60 days' written notice of the rent increase, provided that the terms of the rental agreement provide for increases in rent.

ANALYSIS NO. 1

The Mobilehome Residency Law regulates tenancies which involve the use of a site within a mobilehome park for the location, maintenance, and occupancy of a mobilehome (Sec. 798.12, Civ. C.*). Section 798.18 requires the management of a

* All further section references are to provisions of the Civil Code.

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mobilehome park to offer a tenant a rental agreement for a term of 12 months, or a lesser period as the tenant may request, or a longer period as agreed upon by the parties. For the purposes of this law, a lease is considered to be a "rental agreement" (Sec. 798.8).

Although the Mobilehome Residency Law requires that a tenant be offered a rental agreement with a term of 12 months, it does not limit the amount of rent that may be charged or prohibit increase in the rent, except with respect to notice requirements. In this regard, Section 798.30 provides that the management of a mobilehome park is required to give the tenant written notice of any increase in the tenant's rent at least 60 days before the date of the increase. Thus, except with regard to the minimum notice required, the conditions under which rent may be increased are a matter of contractual agreement between the parties. The written rental agreement or lease may provide for a specified amount of rent which is fixed for the entire term of the tenancy, rent which is subject to increase during the term of the tenancy, rent which is fixed for a portion of the term of the tenancy and modifiable during the remainder of the tenancy, or any other arrangement mutually acceptable to the parties to the contract. The terms of the particular rental agreement would then govern whether or not the management of the mobilehome park would be permitted to increase the tenant's rent upon 60 days' written notice.

In our opinion, then, under the Mobilehome Residency Law, the management of a mobilehome park is permitted to increase the rent of a tenant during the term of a rental agreement of 12 months' duration upon giving the tenant 60 days' written notice of the rent increase, provided that the terms of the rental agreement provide for increases in rent.

QUESTION NO. 2

Is the rental agreement between the management of a mobilehome park and a tenant required to specify the amount of rent to be charged in connection with the tenancy and to indicate where applicable, that a tenant with a rental agreement for a term of 12 months will be subject to rent increases during the term of tenancy?

OPINION NO. 2

A rental agreement between the management of a mobilehome park and a tenant is required to specify the amount of rent to be charged in connection with the tenancy and to indicate that, where applicable, a tenant with a rental agreement for a term of 12 months will be subject to rent increases during the term of the tenancy.

ANALYSIS NO. 2

Under the Mobilehome Residency Law, a "rental agreement" is defined to mean "an agreement between the management [of a mobilehome park] and the tenant establishing the terms and conditions of a tenancy" (Sec. 798.8). Section 798.15 provides that a rental agreement for a tenancy in a mobilehome park must be in writing and must contain specified provisions, in addition to provisions otherwise required by law to be included in the agreement. Subdivision (a) of Section 798.15 specifically provides that a rental agreement must contain the amount of rent to be charged in connection with the mobilehome park tenancy.

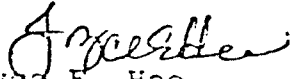
Subdivision (g) of Section 798.15 provides that the rental agreement shall contain "[a]ll other provisions governing the tenancy."

Pursuant to this subdivision, then, where the parties have agreed that rent will be subject to increase during the term of a tenancy (see Analysis No. 1), a provision to this effect would be required to be included in the rental agreement. Additionally, the notice requirement for the rent increases, which is specified in Section 798.30, would also be made a part of the rental agreement pursuant to subdivision (c) of Section 798.15, which requires that the language of the Mobilehome Residency Law be included in the rental agreement.

Therefore, it is our opinion that a rental agreement between the management of a mobilehome park and a tenant is required to specify the amount of rent to be charged in connection with the tenancy and to indicate, where applicable, that a tenant with a rental agreement for a term of 12 months will be subject to rent increases during the term of the tenancy.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Joyce E. Hee
Deputy Legislative Counsel

AMENDED IN ASSEMBLY MAY 11, 1982
AMENDED IN ASSEMBLY APRIL 27, 1982
AMENDED IN ASSEMBLY APRIL 12, 1982

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL No. 2618

Introduced by Assemblywoman La Follette

February 11, 1982

An act to amend Section 798.18 of the Civil Code, relating to mobilehome park tenancies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2618, as amended, La Follette. Mobilehome park rental agreements.

Existing law requires a tenant of a mobilehome park to be offered a rental agreement for (1) 12 months, (2) a term shorter than 12 months if requested by the tenant, or (3) a term longer than 12 months if mutually agreed upon.

This bill would prohibit an increase in rent during the term of a rental agreement of 12 months or less.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 798.18 of the Civil Code is
- 2 amended to read:
- 3 798.18. (a) A tenant shall be offered a rental
- 4 agreement for (1) a term of 12 months, or (2) a lesser
- 5 period as the tenant may request, or (3) a longer period
- 6 as mutually agreed upon.
- 7 (b) Notwithstanding Section 798.30, rents cannot be

- 1 increased during the term of a rental agreement of 12
2 months or less.
- 3 (c) No rental agreement shall contain any terms or
4 conditions for the payment of charges for rent, utilities,
5 or incidental reasonable service charges that would be
6 different during the first 12 months of the agreement
7 than the corresponding terms or conditions that would
8 initially be offered to a tenant or tenants on a
9 month-to-month basis.
- 10 SEC. 2. The Legislature intends that this act shall not
11 preempt the regulation of mobilehome rents in any
12 political subdivision in this state.

SENATE COMMITTEE ON JUDICIARY

1981-82 Regular Session

AB 2618 (LaFollette)
As amended May 11
Civil Code
JGD

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MOBILEHOMES
-RENTAL AGREEMENTS-

HISTORY

Source: Author

Prior Legislation: None

Support: Golden State Mobilehome Owners League; Los Angeles County Board of Supervisors

Opposition: Dept. of Housing and Community Development

Assembly floor vote: Ayes 64 - Noes 8.

KEY ISSUE

SHOULD THE MOBILEHOME RESIDENCY LAW EXPRESSLY PROHIBIT RENT INCREASES WITHIN THE FIRST YEAR OF TENANCY AT A MOBILEHOME PARK IF THE TENANT CHOOSES TO ACCEPT A 12-MONTH RENTAL AGREEMENT?

PURPOSE

Existing law requires that new tenants in a mobilehome park shall be offered a rental agreement for a term of 12 months, for a lesser period if the tenant requests it, or for a longer period as mutually agreed upon by the tenant and management.

This bill would prohibit an increase in rent during the term of a rental agreement of 12 months.

(More)

The purpose of the bill is to ensure that rent increases do not occur within the period covered by the first 12-month agreement.

COMMENT

1. Escalator clauses

Proponents state that some 12-month agreements contain escalator clauses that provide for increases in rent during the first twelve months of a new tenancy. Moreover, some operators reportedly raise rent during the first 12 months after giving 60 day notice, even if the rental agreement lacks such a clause.

This bill would attempt to outlaw such increases.

2. Only 12-month rental agreements affected

The bill provides that rents could not be increased during the term of "a rental agreement of 12 months."

The clear implication is that the park management would be free to increase rents if the tenant signed an agreement of any other duration.

IS THIS THE AUTHOR'S INTENT?

IF SO, SHOULD NOT THE BILL REQUIRE MANAGEMENT TO WARN A PROSPECTIVE TENANT THAT THE AMOUNT OF RENT WOULD BE FROZEN ONLY IF THE TENANT SIGNED AN AGREEMENT FOR A TERM OF EXACTLY 12 MONTHS?

3. Preemption of local rent control law

Pending litigation that arose from a controversy over rent control in San Juan Capistrano has

(More)

raised the issue of whether or not the Mobilehome Residency Law (MRL) preempts local rent control ordinances. A decision of the Orange County Superior court, now on appeal, reportedly holds that local rent control of mobilehome tenancies is preempted by the MRL.

No provision of the MRL states, however, that rent control on the local level is precluded, nor does any provision of the MRL speak to the amount of rent that may be charged or the percentage of increase that may be demanded by management. Instead, the MRL provides that "any increase" of rent may be charged after 60 day notice to the tenant. (Civil Code Sec. 798.30). Other than the 60 day notice requirement, and the requirement that management is to offer a 12 month rental agreement to new tenants, the amount and frequency of rent increase is left to the discretion of management and, therefore, are properly subject to local regulation.

The Dept. of Housing and Community Development is concerned that should this bill become law, an appellate court might read its limited rent increase proscription as a state rent control measure and hold that all local rent control ordinances are thereby preempted in so far as they affect mobilehomes.

The effect of such an interpretation could be to throw into doubt local government's ability to regulate rents in local mobilehome parks.

(More)

AB 2618 (LaFollette)
Page 4

SHOULD NOT THIS BILL BE AMENDED TO REMOVE
POTENTIAL CONFUSION OVER THE INTENT TO PREEMPT
LOCAL RENT CONTROL?

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RAY H. WHITAKER
CHIEF DEPUTIES

JERRY L. BASSETT
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PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
June 22, 1982

GERALD ROSS ADAMS
DAVID D. ALYES
MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
JAMES L. ASHFORD
SHARON G. BIRENBAUM
EILEEN J. BUTTON
HENRY J. CONTRERAS
BEN E. DALE
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THOMAS R. HEUER
JACK I. HORTON
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MICHAEL J. KEPSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
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ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
JERRY J. RUIZ
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MARY SHAW
WILLIAM K. STARK
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RICHARD B. WEISBERG
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THOMAS D. WHELAN
CHRISTOPHER ZIRKLE
DEPUTIES

Honorable Marian W. La Follette
Assembly Chamber

Mobilehome Park Tenancies: Rent
(A.B. 2618) - #14756

Dear Mrs. La Follette:

QUESTION

Is Assembly Bill No. 2618, as amended May 11, 1982,
declaratory of existing law?

OPINION

A.B. 2618 is not declaratory of existing law.

ANALYSIS

A.B. 2618 would make the following changes in Section 798.18 of the Civil Code¹ (additions are underlined and deletions are indicated by strikeout type):

"798.18. (a) A tenant shall be offered a rental agreement for (1) a term of 12 months, or (2) a lesser period as the tenant may request. or (3) a longer period as mutually agreed upon by both the tenant and management.

"(b) Notwithstanding Section 798.30, rents cannot be increased during the term of a rental agreement of 12 months.

"(c) No such rental agreement shall contain any terms or conditions with respect to for the payment of charges for rent, utilities, or incidental reasonable service charges that would be different during the first 12 months of the agreement from the corresponding terms or conditions that would initially be offered to the tenant or tenants on a month-to-month basis."

In order for A.B. 2618 to be properly characterized as declaratory of existing law, a conclusion would have to be reached that under existing Section 798.18, rents may not be increased during the term of a rental agreement of 12 months even if notice is given pursuant to Section 798.30,² as specified in subdivision (b), as proposed to be added to Section 798.18 by A.B. 2618.

In this regard, while existing Section 798.18 requires that a tenant be offered a rental agreement with a term of 12 months, it does not limit the amount of rent that may be charged or prohibit an increase in the rent, except with respect to notice requirements. Section 798.30 provides that the management of a mobilehome park is required to give the tenant written notice of any increase in the tenant's rent at least 60 days before the date of the increase. Thus, except with regard to the minimum 60-day notice, the conditions under which rent may be increased are a matter of contractual agreement between the parties. In other words, the written rental agreement or lease may provide for a specified amount of rent which is fixed for the entire 12-month term of the tenancy, rent which is fixed for a portion of the term of the tenancy, rent which is subject to increase during the term of the tenancy, rent which is fixed for a portion of the term of the tenancy and modifiable or negotiable during the remainder of the tenancy, or any other arrangement mutually acceptable to the parties to the contract. The terms of the particular rental agreement would then govern whether or not the management of the mobilehome park would be permitted to increase the tenant's rent upon 60 days' written notice.

2

Section 798.30 of the Civil Code requires the management of a mobilehome park to give a tenant written notice of any increase in rent at least 60 days before the date of the increase.

Honorable Marian W. La Follette - p. 3 - #14756

Accordingly, under existing Section 798.18, the management of a mobilehome park is permitted to increase the rent of a tenant during the term of a rental agreement of 12 months' duration upon giving the tenant 60 days' written notice of the rent increase, provided that the terms of the rental agreement provide for increases in rent.

However, subdivision (b) of Section 798.18, as proposed to be amended by A.B. 2618, as set forth above, clearly prohibits an increase in rent during the term of a rental agreement of 12 months, irrespective of whether 60 days' notice required by Section 798.30 is given or not.

Therefore, since subdivision (b) of Section 798.18, as proposed to be added by A.B. 2618 prohibits something which presently can occur, namely, increasing a tenant's rent upon 60 days' written notice, if the increase is consistent with the terms of the particular rental agreement, A.B. 2618 is not declaratory of existing law.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
C. David Dickerson
Deputy Legislative Counsel

CDD:nmw