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# PARK WATCH

™ LEGAL DEVELOPMENTS NEWSLETTER

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## Just Say No! Improper Charges, Fees, Billing Management Should Avoid

*By DLO Staff Attorneys*

### THE LAW DOES NOT ALLOW *ALL* THE CHARGES WHICH *SHOULD* BE ALLOWED

The Mobilehome Residency Law allows few monetary tolls on mobilehome residents. Rent, utilities and charges for services actually rendered. Civ C 798.31. But then, *not all charges*: only charges which are necessary. For example, management may not simply add on new charges for bulk service cable television: *not even if* the *tenant HOA chose the company* and *negotiated the terms*. Not even if the services were procured at one third of market cost. Some rights cannot be waived.

On the other hand, lease pass-throughs are legally permissible for *any component of overhead* which is customarily within the rent setting mentality of the park owner. And tree maintenance fees demanded by a 14 day notice are permissible if a tree is *not* a specific hazard, but *prohibited* if a tree IS a specific hazard.

Government assessments and fees are permitted if assessed on a *space by space basis*, but not if assessed against the *real estate as a whole*. A tenant is *exempt from rent control* if he has a second residence, but continues under rent control if rolling in money from subleasing the second home. The code is a haphazard patch work of illogical, inconsistent and irrational legislation, accounted for in large part due to resident-lobby influence over short sighted legislators, some of whom are bent on dismantling, disrupting, and minimizing property rights of park owners.

Perhaps the following discussion will save time and clear up any misunderstanding about allowable charges a park owner may be considering. Generally:

> The code is a haphazard patch work of illogical, inconsistent and irrational legislation, accounted for in large part due to resident-lobby influence over hostile or just short-sighted legislators.

■ Management may not charge for enforcement of the rules and regulations. The exception has to do with 14 day notices for premises maintenance. "Premises" refers to the landscaping, removal of rubbish, other word to the premises (not the repair or maintenance of the mobilehome).

■ While management may not charge for enforcement of the rules and regulations, if clutter is removed into storage, storage fees may also be charged as per Civ C 798.36. Specifically, storage charges must be stopped and the storage disposed as in accordance with the statute after the two month period. Civ C 798.36(a).

■ A homeowner may not be charged a fee for the entry, installation, hookup, or landscaping as a condition of tenancy except for an actual fee or cost imposed by a local governmental ordinance or requirement directly related to the occupancy of the specific site upon which the mobilehome is located and not incurred as a portion of the development of the mobilehome park as a whole.

***Wheels Up!***
***Creative Solutions,***
***Efficient, Practical***
***Representation,***
***Profitable Parks***

Dowdall Law Offices A.P.C.

***In this Issue:***



*Coming Events:*

★ 2015 WMA Convention & Expo Peppermill Resort Spa Casino in Reno, November 12-15

***Proudly Representing Mobilehome Park Owners since Disco***

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

What about a decorative wall on the back side of the space which is at the foot of a rise? Is the wall part of the decorative scheme of the park? Or is it load bearing, and required to make the lot available and habitable to the resident? In the latter case, it would appear the construction is part of the function of the park. Decorative purposes are not the construction of the park. However, there is no reported case law on this aspect of the statute.

- Reasonable landscaping and maintenance requirements may be included in the park rules and regulations. The management may not require a homeowner or prospective homeowner to purchase, rent, or lease goods or services for landscaping, remodeling, or maintenance from any person, company, or corporation.

- Reasonable landscaping and maintenance requirements may be enforced by either termination of tenancy; or injunctive relief (a court order requiring the remediation of rule violations).

## FEES AND CHARGES, THE RULES WE MUST FOLLOW:

- Generally, a fee for items other than rent, utilities, and incidental reasonable charges for services actually rendered, or a fee for obtaining a lease on a mobilehome lot for (a) a term of 12 months, or (b) a lesser period requested by the homeowner.

- Pass-Throughs in Leases. Civ C 798.31 does not preclude park owner from structuring rent to include pass-through of capital expenditures.

- Pass-Throughs in Leases are allowed for governmental services and improvements, property taxes, and insurance.

- But charges for cable television service, and inferentially, any other service provided which is not an "essential" necessity is not allowed to be added by 60 day notice if not in the rental agreement, without the consent of the homeowner (despite the language of Civ C 798.32, allowing the adding of any new charge on 60 day notice).

- An essential fee may be added, where not listed in the rental agreement, if the homeowner is given written notice 60 days before imposition of the charge. Such fees and charges must be separately stated on the homeowner's regular billing, with a notice of the expiration date if applicable.

- Pet Fees: A fee for keeping a pet, unless special facilities or services are provided. If special facilities are maintained by the management, the fee charged must reasonably relate to the cost of maintenance of the facilities or services and the number of pets kept in the park.

- No Guest Fees for Short Term Guests: A fee for a guest who does not stay for more than a total of 20 consecutive days or 30 days in a calendar year.

- No fees for boarders: No fees are allowed for a person who is living alone and wishes to share the mobilehome with one other person.

- No fees may be charged for the number of members in the household; rents may not vary based on number of residents.

- No fees may be charged for any immediate family of the homeowner.

- No fees for premises maintenance unless a 14 day notice is first served describing the conditions and estimating the costs. This right of the management must also be stated in the rental agreement.

- No fees for caregivers may be charged (for a person over 18 years of age who provides live-in health or supportive care to a homeowner who is 55 years of age or older)

- No fees may be charged for a homeowner providing care to a family member: a parent, sibling, child, or grandchild of a homeowner may share the mobilehome without charge, if that relative is over 18 years of age and requires live-in health or supportive care.

- No fees, charges or reimbursement is allowed to reimburse the cost of any fine, forfeiture, penalty, money damages, or fee assessed by a court against management for violating the Mobilehome Residency Law, or related attorneys' fees or costs. This provision does not apply, however, to Mobilehome Parks Act violations for which the mobilehome's registered owner is initially

responsible pursuant to Health & Safety Code 18420(b). Civ. C. 798.39.5(a)(2).

■ A fee is permitted to be charged for removal and storage of a homeowner's personal property when necessary to bring the premises into compliance with park rules and regulations, the provisions of the Mobilehome Parks Act, or Title 25.

■ Homeowner cannot be obligated to acquire third-party landscaping goods or services. Homeowners cannot be required to "purchase, rent, or lease goods or services" for landscaping, remodeling or maintenance. The same applies to brokers, agents, contractors, other service people.

■ Management may not impose a fee for tree maintenance for trees on a space that pose a "specific hazard or health and safety violation." This likely includes trip hazards and raised surfaces from root growth.

■ The homeowner is responsible for the maintenance, repair, replacement, paving, sealing and expenses related to the maintenance of a homeowner-installed driveway.

■ The homeowner may be charged for the cost of any driveway damage caused by the homeowner or by a breach of the homeowner's responsibilities under park rules and regulations. The management has the responsibility to maintain a serviceable driveway originally installed by the management or the origin of which cannot be ascertained (tie goes to the homeowner). This is not an aesthetic standard, but a functional test.

■ The homeowner is responsible for the maintenance, repair, replacement, paving, sealing and expenses related to the homeowner-installed driveway.

■ Management cannot secure a homeowner's rent or other fee obligations by acquiring a lien on his or her mobilehome unless management and the homeowner mutually agree thereto. In the event of such agreement, any billing and payment on the secured obligation must be kept separate from current rent.

■ Management may lien title for judgments for past rents. The MRL does not preempt management's right to a judgment lien on the mobilehome (pursuant to writ of execution to satisfy a money judgment against the homeowner).

■ Pass—throughs of government-imposed fees are sometimes permitted

• specified fees, assessments or other costs imposed upon the homeowner's rented space by the local municipality (or state or federal government) on or after January 1, 1995;

• increases in existing fees, assessments or costs imposed upon the homeowner's rented space by any governmental entity on or after January 1, 1995;

• fees, assessments or other charges and increases imposed upon the homeowner's rented space after 1992 pursuant to any state or locally-mandated program relating to housing contained in the Health & Safety Code.

■ It is clear that rent increases which are related to management's increased operating expenses are not unlawful "fees" where the homeowners had agreed to pay same as a component of rent in their rental agreements. "In leases, the pass-throughs operate as rent, not as fees."

■ Similarly, a rent increase triggered upon transfer of a mobilehome was not a "fee" prohibited by the Mobilehome Residency Law.

■ Increased rents on sale of a mobilehome subject to a lease is clearly permissible. For example, homeowners entered into an enforceable agreement when it states that a buyer must accept an assignment of the lease and that rent would then be increased by a specified amount.

■ Leases may also provide for pass throughs of property tax increases. Property taxes imposed on park land may be deemed a component of rent.

■ Pass-throughs for capital improvement expenditures, defined as rent increases, are permitted.

■ PUC limitation on pass-through of electricity and gas system improvement costs in master-metered parks: The PUC regulates rates that parks with master-metered utility systems may charge tenants. *Pub.Util.C.* § 739.5. The allowable rates charged

to park master-metered customers/park owners are discounted to compensate for maintenance or improvement of the electricity and gas systems; therefore, the PUC prohibits passing through those costs to tenants.[1]

■ Reimbursement of costs not included in submeter discount: Park owners are not limited to the submeter discount to recover certain utility costs; however, such recovery may not result in submetered tenants paying more for utilities than directly-metered customers.[2]

■ Payment Back to the homeowner: Generally, master-metered customers/park owners receiving rebates from the PUC are required to distribute to, or credit to the account of, tenants in an amount proportionate to the gas and/or electricity consumed by the tenant. Pub.Util.C. § 739.5 (b). The "rebate" does not include monetary incentive awards under the Solar Initiative (Pub.Util.C. § 2851 et seq.) for solar energy systems that provide electrical generation. Pub.Util.C. § 739.5 (i)

## ■ CONCLUSION

The California legislature has set up a continuing comprehensive scheme to manage the relationships between park owners and park residents. In some instances, it is not altogether clear whether or not fees and charges are always permissible. Even when reading the face of the Mobilehome Residency Law (Civil Code §§798, et seq.), there is more to the story which only the case law reveals. There is simply no substitute for judiciously obtained legal advice from experienced counsel (and reading informational materials whenever available).

TRD

# Pools and Summer, Again: *U.S. v Plaza Estates*

By: Terry R. Dowdall, Esq.

● ***UPSHOT:*** Summer is here again! And the kids have started their seasonal pilgrimage to the coolest place in the park. Each year, there is loss of life in private residential pools due to inattentive parents. Residing in a mobilehome park does not make parents any more careful. But it is the parents' responsibility, not management's, to decide proficiency and access privileges for their kids. Access, hours and supervision restrictions are illegal under the FHA (United States v. Plaza Mobile Estates). But parents must still adhere to the legal requirements for responsible parenting.

● ***A Reminder: Federal Requirements:***

*Let's face it.* Some parents are *not* responsible. And some of them live in mobilehome parks**.** According to the Centers for Disease Control and Prevention, of all children 1 to 4 years old who died from an unintentional injury, almost 30% died from drowning. Fatal drowning remains the second-leading cause of unintentional injury-related death for children ages 1 to 14 years.[3] The same report reveals that "[T]he fatal drowning rate of African American children ages 5 to 14 is 3.1 times that of white children in the same age range."

> Police arrived about 2:56 p.m. to a report of a drowning at the Pine Lakes Ranch Mobile Home Community Clubhouse Pool, 4210 E. 100th Ave. Witnesses had removed the child from the pool prior to police arrival and unsuccessfully initiated CPR.

[1] *Hillsboro Properties v. Public Util. Comm'n* (2003) 108 Cal.App.4th 246, 257, 133 Cal.Rptr.2d 343, 351–352; *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Board* (1998) 64 Cal.App.4th 1159, 1165–1169, 75 Cal.Rptr.2d 746, 749–752.

[2] Pub.Util.C. § 739.5(a); Hillsboro Properties v. PUC, 108 Cal.App4th at 261, 133 Cal.Rptr.2d at 355. Management may seek adjustment of the sub-meter discount to allow for reimbursement of costs not included in the discount at rate case proceedings with the PUC. The decision whether certain costs are statutorily required to be included in the calculation of the submeter discount lies exclusively with the PUC; authorization must be obtained from the PUC before passing costs through to tenants. Hillsboro Properties v. PUC, 108 Cal.App.4th at 263–264, 133 Cal.Rptr.2d, 356–357—management not entitled to rent increase allowed under rent control based on capital expenses not included in submeter discount without PUC authorization.

[3] http://www.cdc.gov/HomeandRecreationalSafety/Water-Safety/water injuries-factsheet.html

*"Most young children who drowned in pools were **last seen in the home**, had been out of sight less than **five minutes**, and were in the care of one or both parents at the time. Barriers, such as pool fencing, can help prevent children from gaining access to the pool area without caregivers' awareness."*

Park swimming pools are deemed 'public' and require fencing, postings and related equipment. In years long past, it was believed that park owners could require adult supervision in the swimming pool area. The common rule would provide that anyone 14 years and under required adult supervision. Indeed, the sign still required by the State (at least 4 inches high), is as follows: "CHILDREN UNDER THE AGE OF 14 SHOULD NOT USE POOL WITHOUT AN ADULT IN ATTENDANCE."

But *requiring* adult supervision is NOT allowed. Certainly an adult supervision requirement should be reasonable,[4] but is outlawed by *United States v. Plaza Mobile Estates*[5]*:* it is the *parents*, not *management*, who act as the "gatekeepers" of swimming pool access and usage (in "all age" communities). Requiring any form of child supervision constitutes a violation of the FHA.

● ***The FHA***

Rules and regulations in "all age" communities may not discriminate against children. Various rules were cited by the court as illegally restricting access or denying the use of the communities' facilities and/or areas on the basis of age, included those set forth below.


NEWS

**CALIMESA: Man drowns in mobile home park pool**

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BY RICHARD BROOKS / STAFF WRITER

Published: June 24, 2015 Updated: 8:27 p.m.

● ***Samples of Illegal Rules***

*If your rules contain any of the following restrictions, or any rules similar to them, it is strongly advised that a legal advisor conversant with the FHA (and implementing regulations and judicial and administrative interpretations) be promptly consulted*.

❑ "Residents and visitors under the age of eighteen (18) years old are not permitted to use the saunas . . .[or] . . . jet pool at any time;"

❑ "Residents and visitors under the age of fourteen (14) years old are not permitted to use the saunas or . . . jet pool (spa) at any time;"

❑ "Use of the spa is prohibited to children under eighteen (18) years old;"

❑ "Use of the pool by children fourteen (14) years old and under requires accompaniment by a resident;"

❑ "Parent of resident child or resident host must accompany children at all times in the pool or pool area;"

❑ "No one under the age of fourteen (14) years old is allowed to use the Jacuzzi;"

❑ "Guests and residents under the age of eighteen (18) years old are permitted to use the swimming pool and sun deck from the hours of 10:00 a.m. to 2:00 p.m. only and must be accompanied by an adult park resident;"

❑ "Parent or responsible adult must accompany all children under fourteen (14) years old at all times [in the swimming pool and/or pool area];"

❑ "Children under 18 years old must be accompanied by a parent when they are in the swimming pool;"

❑ "Minors under 16 years old are not permitted in the therapeutic pool;"

❑ "At 2:00 p.m. children are to be out of the pool area;"

❑ "All children must be accompanied by an adult to use the pool;"

● ***Rules Which Treat Kids Differently Constitute Illegal Discrimination***

The court held that these rules were not based on "compelling business necessity" and did not represent the "least restrictive intrusions" on familial status rights in promoting a health and safety interest.

The court stated that the age restrictive rules were "facially" discriminatory. These rules " . . .treat children, and thus, families with children, differently and less favorably than adults-only households." In other words, no matter how administered,

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[4] According to the United States Consumer Product Safety Commission, " . . . The main hazard from hot tubs and spas is the same as that from pools -- drowning. Since 1980, CPSC has reports of more than 700 deaths in spas and hot tubs. About one-third of those were drownings to children under age five. Consumers should keep a locked safety cover on the spa whenever it is not in use and keep children away unless there is constant adult supervision. ¶ Hot Tub Temperatures -- CPSC knows of several deaths from extremely hot water (approximately 110 degrees Fahrenheit) in a spa. High temperatures can cause drowsiness which may lead to unconsciousness, resulting in drowning. In addition, raised body temperature can lead to heat stroke and death. In 1987, CPSC helped develop requirements for temperature controls to make sure that spa water temperatures never exceed 104 degrees Fahrenheit. Pregnant women and young children should not use a spa before consulting with a physician..." CPSC Document #5112 "Spas, Hot Tubs, and Whirlpools Safety Alert"

[5] A copy of the published court opinion in *United States v. Plaza Mobile Estates* can be found at www.dowdalllaw.net; click 'resources', then 'cases': the opinion is 14th down the list.

the rules were invalid as drafted. Even if never enforced, such rules may lead to a resident's belief about allowable restrictions in use of the facilities.

● ***Parental Responsibilities Under California Law***

In California, there are requirements for the protection of child welfare that come into play. Examples of such regulations are reflected in the neglect cases reported above.

Specifically, California law provides that parents and guardians are responsible to provide care and an environment which is reasonably safe to the children under their care. The law defines "severe" and "general" neglect.

> "'Neglect' means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. ¶(a) 'Severe neglect' means . . . where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered,. . . 'General neglect' means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred."

Further, Welfare and Institutions Code §300 states that the juvenile court has jurisdiction where:

> "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Without doubt, allowing a toddler unrestricted access to the swimming pool as mandated by *U.S. v. Plaza Estates* would not be a responsible parental act. *But management cannot interfere with that decision of the parent*.

● ***What <u>can</u> management do?*** Practical advice to consider this summer in dealing with the inattentive or neglectful parent:

1. **ALERT THE AUTHORITIES.** For example, the three-year-old sent to the clubhouse by the parent because "there are nice people there who will watch you" is still a concern of the park managers, even if we cannot legally exclude the toddler. If we assume that some parents will allow their toddlers to slip out and wander in the park, calling the authorities is the first step: Child protective services, then the police.

The sooner reports accumulate against irresponsible parents, the sooner serious intervention will save the child from exposure to danger and injury. If you return the child to the parent yourself, you may be only *enabling* and *reinforcing the negative behavior*; and legally, *lulling* the parent into believing management will care for the child. This is **<u>not</u>** the manager's job.

2. **EDUCATE THE PARENTS**. Some parents may heed the caveats of the management's newsletters and hand-outs. Perhaps a parental reminder to all parents about the risks of inadequate supervision will make them more attentive and caring.

Such information should include the admonition that the management is legally forbidden from intervening in parental choice about access and usage of facilities by children. Educating parents with comprehensive "eye-opening" memoranda (clear it with your attorney) is not discriminatory enforcement of rules based on age, and has worked well.

3. **CHECK THE RULES AND REGULATIONS**. Owners may also consider rule amendments which reference the laws and regulations pertaining to child welfare statutes; however, there has been controversy over curfew rules and such regulations must be very carefully drawn. But even your existing rules probably provide that residents are required to *comply with law*; and such a rule may be used to argue that applicable laws are *already incorporated* by reference.



Please Feel Free to Contact Us with Any Questions!