

PARK WATCH

™ LEGAL DEVELOPMENTS NEWSLETTER

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Tutorial Launch !!

What do I Distribute To My Residents in January?

By Terry R. Dowdall, Esq.



It is that time again !! Here is a List of Items to Remember.

■ UPSHOT

Each month, DLO will be providing news and a new service, a tutorial including a brief, practical, hands' on procedure list for management to consider in dealing with various types of resident, governmental, or other daily, real-life issues in operation of a mobilehome park.

The cost of services required to operate a mobilehome community continue to increase. For many owners, the costs of competent representation are a challenge to control and monitor. Maybe we can help. 35 years of experience have lead to many practices and ideas which have been brought to bear in the careful and circumspect representation of the 'Mom and Pop.' We are happy to pass along our experience for your information.

And to start, here is a list of items to check off for the beginning of 2014.

■ THE MRL: TO DISTRIBUTE OR NOT TO DISTRIBUTE

[Civil Code §798.15](#) states that a copy of the MRL must be provided on request, if there are significant changes to it. If there are significant changes, the residents must be alerted. 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. 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? Since no one can definitively say what the grouchy tenant will claim is "significant," the usual custom is to extend that offer. The notice could say –

"To All Residents: Please be advised that there has been a change to the Mobilehome Residency Law (Civil Code §§798, et seq.) For 2014 and you may obtain one copy of this law from management at no charge. Management shall provide a copy within a

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Representation,
Profitable Parks*



In this Issue:

- New Year Notices for January 2014
- Why Requiring Leases is Illegal

Coming Events:

WMA New Laws Seminar, Jan. 29th
Presenting changes to the MRL and other changes in law and regulations; how the changes affect operations in 2014. Get Title 25 training from Brad Harward, HCD, [THE](#) government's authority on Title 25. Hotel Ontario Airport, 700 North Haven Ave., Ontario, CA 91764

*Proudly Representing
Mobilehome Park Owners
since 1978*

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

reasonable time, not to exceed seven days upon your request.”

Some owners routinely serve all residents with a new copy of the MRL each January. Since the only change this year is Civil Code section 798.40, you could just serve that new code section. If you choose to do this, give a copy of the following language:

“798.40. (a) Where the management provides both master-meter and submeter service of utilities to a homeowner, for each billing period the cost of the charges for the period shall be separately stated along with the opening and closing readings for his or her meter. The management shall post, in a conspicuous place, the specific current residential utility rate schedule as published by the serving utility or the Internet Web site address of the specific current residential utility rate schedule. If the management elects to post the Internet Web site address where the schedule may be accessed, the management shall also:” (1) provide a copy of the specific current residential utility rate schedule, upon request, at no cost; and (2) state in the posting that a homeowner may request a copy of the rate schedule from management.”

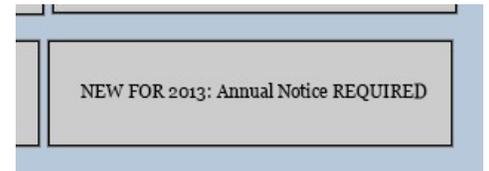
“(b) If a third-party billing agent or company prepares utility billing for the park, the management shall disclose on each resident's billing, the name, address, and telephone number of the billing agent or company.”

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

■ NOTICE OF RIGHTS AND RESPONSIBILITIES

Civil Code §798.15(l) 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: <http://www.dowdalllaw.com>. Just click on this button on the home page: →→→→

The notice must state:



IMPORTANT NOTICE TO ALL MOBILEHOME OWNERS: CALIFORNIA LAW REQUIRES THAT YOU BE MADE AWARE OF THE FOLLOWING: The Mobilehome Residency Law (MRL), found in §§798 et seq. of the Civil Code, establishes the rights and responsibilities of homeowners and park management. The MRL is deemed a part of the terms of any park rental agreement or lease. This notice is intended to provide you with a general awareness of selected parts of the MRL. It does not serve as a legal explanation or interpretation. For authoritative information, you must read and understand the laws. These laws change from time to time. In any year in which the law has changed, you may obtain one copy of the full text of the law from management at no charge. This notice is required by Civil Code Section 798.15(l) and the information provided may not be current. Homeowners and park management have certain rights and responsibilities under the MRL. These include, but are not limited to:

1. Management must give a homeowner written notice of any increase in his or her rent at least 90 days before the date of increase. (Civil Code Section 798.30)
2. No rental or sales agreement may contain a provision by which a purchaser or a homeowner waives any of his or her rights under the MRL. (Civil Code Sections 798.19, 798.77)
3. Management may not terminate or refuse to renew a homeowner's tenancy except for one or more of the authorized reasons set forth in the MRL. (Civil Code §§ 798.55, 798.56)
4. A homeowner must give written notice to the management of not less than 60 days before vacating his or her tenancy. (Civil Code Section 798.59)
5. Homeowners, residents, and their guests must comply with the rental agreement lease, including the reasonable rules and regulations of the park and all applicable local ordinances and state laws and regulations relating to mobilehomes. Failure to comply could be grounds for eviction from the park. (Civil Code § 798.56)
6. Homeowners must pay rent, utility charges, and reasonable incidental service charges in a timely manner. Failure to comply could be grounds for eviction from the park. (Civil Code §798.56)
7. Homeowners have a right to peacefully assemble and freely communicate with respect to mobilehome living and for social or educational purposes. Homeowners have a right to meet in the park, at reasonable hours and in a reasonable manner, 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. (Civil Code §§ 798.50, 798.51)
8. 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. A homeowner has a right to advertise his or her home for sale. Management may deny approval of a buyer, but only for certain reasons listed in the law. (Civil Code §§ 798.70-798.74)
9. Management has the right to enter the space upon which a mobilehome is situated for maintenance of utilities, trees, and driveways; for inspection and maintenance of the space in accordance with the rules and regulations of the park when the homeowner or resident fails to maintain the space; and for protection and maintenance of the mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident's quiet enjoyment of his or her home. (Civil Code Section 798.26)
10. 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, which may include obtaining a permit to construct, and, if required by park rules or the rental agreement, without prior written approval of management. Failure to comply could be grounds for eviction from the park. (Civil Code Section 798.56)

■ Distribute Privacy Statement

(16 Code of Federal Regulations 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

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 <i>no longer</i> our customer, we continue to share your information as described in this notice.	
How?	All financial companies need to share <i>customers'</i> personal information to run their everyday business. In the section below, we list the reasons financial companies can share their <i>customers'</i> 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]	

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

D. 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.

■ Distribute Care Information

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.

■ Complete and File Form MHP-1

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 Park

- ▲ Test fire extinguishers annually;
- ▲ Test kitchen grease fire apparatus annually;
- ▲ Test 10% of utility meters;
- ▲ Verify ombudsman, prop 65. HUD & DFEH fair housing posters;
- ▲ 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

Page 2	
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]	

- ▲ 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 the park 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 subsection 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 section 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 subsection (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 section 1316 of this article, as well as for operation as specified in subsection 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 section 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 section 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 Code of Federal Regulations 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 leak; |
| E. Emergency plan information; | F. Accident prevention information; and |
| G. On-call center information | |

■ **HOPA Survey**

Did you know that without the HOPA two year survey, an older persons park is disqualified from limiting tenancy to older persons? Yes, this decision comes out of the 9th Circuit, which governs California. 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.

■ **Order and Display Required Labor Law Posters**

Parks 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 Form

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 base don 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 "section 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 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 MRL.
- ▲ *Do your documents require that your tenant maintain trees that have become hazardous?* A violation of the MRL.
- ▲ *Do you require tenants to sign leases?* That is illegal. *Civil Code §798.17* now states that the offeree may refuse a lease and have a 12 or less agreement.¹ Such leases, if management were to require them, are vulnerable to legal challenge: they pose enormous risk if rescinded due to extant remedies including rescission, which means: (i) disgorgement of improper raises already paid; (ii) reduction of revenue stream resulting from reduced rents rolled back to pre-lease levels; (iii) virtual collapse of capitalized park value if applicable to all the residents, and (iv) exposure to rent controls.

In sum, if your documents have not been thoroughly evaluated since April, 2011, management is losing out on valuable legal developments and at risk for practices no longer permitted by the Mobilehome Residency Law (*Civil Code §§798, et seq.*)

Please Feel Free to Contact Us with Any Questions!



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¹ *Civil Code §798.17* states in part: "[if]. . . the homeowner rejects the offered rental agreement [lease] or rescinds a signed rental agreement, the homeowner shall be entitled to instead accept, pursuant to §798.18, a rental agreement for a term of 12 months or less from the date the offered rental agreement was to have begun . . ." The *Business and Professions Code*, in the §§11000, *et seq.*, series of statutes, deals with subdivisions. It states that a lease is not subject to the *Subdivided Lands Act (SLA)*, where though mandatory does not exceed 60 months. This law is a jurisdictional parameter defining a "subdivision." It does not trump the MRL. Each law is of equal dignity and designed for different purposes. The more specific law applies. Here, it is §798.17. Only exempt lease proposals are affected. Thus, only those leases purporting to be exempt from rent control may be rejected due to the express language quoted above. Thus, requiring an exempt lease is a willful violation of the express terms of the MRL as a matter of law. *SLA* purposes are irrelevant, laughable really. *Consider:* does the offeree have to accept the 798.17 lease *because the park is not a subdivision?* That would nullify §798.17. No court will ever adjudicate as much. *Rather, the offeree may decline the lease because he does not wish to be exempt from rent controls.* Since the MRL may not be waived (§798.19 and §798.77), the rights of the offeree are *ironclad*. If that is not enough, recall that the references to the *SLA* were *deleted* from §798.17 in 1990 when the offeree became empowered to reject exempt leases. Finally, some say the purchaser is not yet a "homeowner" and hence does not receive the protections of the MRL. This argument is a trap for the unwary. Under §798.17, the exempt lease can *only be entered into with a "homeowner."* If not a homeowner, there is no exempt lease. Any local law is preempted by the foregoing. By legislative deletion of the *SLA* and bestowing the right to a 798.18 agreement (in the 1990's), it is beyond clear the offeree has a choice by the express terms of the law.