

# PARK WATCH

A Legal Developments E-Bulletin

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## A COURTESY FOR FRIENDS AND CLIENTS

### HCD ANNUAL FEES HIKES: OR WHY THE BUCK STOPS HERE

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#### ● Quick Snapshot:

Park owners are permitted to pass-through half of the annual "MPM" fee imposed by HCD.

But, not the pro-rata annual permit operating fee. The increases in fees for the upcoming year will hit rent-controlled parks hardest.

#### ● HCD October Memorandum:

"Assembly Bill X4 12" (Chapter 12, Stat. of 2009 of the 4th Extraordinary Session) increased annual operating permit fees from \$25.00 to **\$140.00**. This legislation also increased the \$2.00 per lot fee for mobilehome lots to **\$7.00**.

However, there is no change in the \$4.00 Mobilehome Park Maintenance (MPM) fee or the regulatory state fee. These increases do not apply to recreational vehicle parks or recreational vehicle lots.

#### ● Can I Pass-On the Increases?

**No.**

There seems to be a misconception of park operators' rights in respect to allowable pass-throughs of HCD fees, or bad advice, or both.

Essentially, *Civil Code* §798.49 allows for government-mandated costs to be passed on to homeowners when the cost is calculated on a 'per-space' basis. But HCD fees are an express exception, unless specifically authorized to be passed through. None of the "annual operating permit fee" is "specifically authorized" to be passed through. Only *half* the MPM fee is expressly authorized.

#### ● Why Not? (Devil Lies in the Details)

What the legislature giveth, the legislature taketh away.

*Civil Code* §798.49(a)(2) states that management may pass on "...the amount of any increase ... in an existing fee, assessment or other charge imposed ... upon the space rented

by the homeowner.

*Civil Code* §798.49(d) states the pass through does not apply to those fees, assessments, or charges imposed pursuant to the Mobilehome Parks Act "unless specifically authorized by §18502 of the Health and Safety Code."

But *Health and Safety Code* §18502 specifically authorizes a pass-through of part of HCD's annual fees.

Prior to the new fee increases, HCD charged per space for the "[A]n annual operating permit fee of twenty-five dollars (\$25) and an additional two dollars (\$2) per lot." (c)(1).

HCD also charged "[A]n additional annual fee of four dollars (\$4) per lot ... exclusively for the inspection of mobilehome parks ..." (c)(2).

Each fee is charged on a per space basis; but only *half the \$4.00 charge* is "specifically authorized" by (c)(3).

*Health and Safety Code* §18502 (c)(3) states that "... the fee paid pursuant to paragraph (2) shall be used exclusively for the inspection of mobilehome parks ... the holder of the permit to operate the mobilehome park shall be entitled to directly charge one-half of the per lot additional annual fee specified herein to each homeowner ..."

There is no similar language allowing for the pass through of "[A]n annual operating permit fee ..."

#### ● Long Term Leases; Non-Rent Control Jurisdictions

Park owners with long term leases and where not subject to local rent controls can recover these cost increases, as rent increases and allowable lease pass-throughs.

*Long Term Leases:* Long term leases protect against creeping unrecoverable

increases in business operation costs and expenses, among so many other advantages. Under well-written long term leases, government-mandated cost increases can be added to the monthly rent each anniversary date. The pass through depends on specific lease formula and definition. Some leases would recover the permit fee over the course of the next 12 month period; some leases allow for a one time charge corresponding to the park owner's one-time payment. Park owners really should have long term leases in place before Governor Brown takes office (to vest and protect against erosion of rights destined to come in the future).

*Non Rent Control Jurisdictions:* The increase is part of the annual rent increase calculation, weighed-in with other increases in park operations, the CPI and market conditions which define the amount of the next rent increase

### ● **Whoops; What if I Already Did That?**

"What consequence if I do *this?*" I sometimes hear. Sometimes my answer is "*don't,*" followed by a sigh, then, "*what if I already did?*"

In rent control jurisdictions, park owners face significant challenges every day. Operating a mobilehome park continues to grow more technical and complex. Mistakes can be corrected. But knowingly charging impermissible fees may constitute an unfair business practice, a violation of the Mobilehome Residency Law and the Mobilehome Parks Act, and be a defense to non-payment of rent.

Many would ask the *next* question: "so, what is the statute of limitations?" Generally, for violation of statute, three years; for breach of written rental agreement, four years (your rental agreements implicitly require compliance with laws). Overpayment is a defense with no statute of limitations according to one California case.

Due to penalties of the MRL (*\$2,000 for each violation*), no one in good conscience could advise doing nothing about an overcharge. Of course, some might choose to simply discard this newsletter and deny any knowledge of it. But this is not a suggestion I offer for consideration.

*Possible solutions* include providing a clerical or administrative adjustment to subsequent rent bills, a credit against subsequent rents, or reducing a future rent adjustment and noting the correction.

### ● **Conclusion**

In sum, these and other costs of business will only go up. Implementing leases wherever possible obviates *so many problems*: here is apt evidence why leases work.

Please feel free to contact Dowdall Law Offices, A.P.C. for any questions or comments. 714 532-2222, 916-444-0777, [trd@dowdalllaw.net](mailto:trd@dowdalllaw.net).

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