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PARK WATCH ™ LEGAL DEVELOPMENTS NEWSLETTER

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The ADA and Federal Fair Housing Act: Applicability and Exclusions

By: Terry R. Dowdall, Esq.

UPSHOT

Many park owners are a little hazy about the requirements of the Americans with Disabilities Act (ADA) and the Federal Fair Housing Amendments Act of 1988 (FHAA) in respect to obligations which concern the disabled. Let's be clear. In summary: The ADA does not apply to manufactured housing communities (with possible exceptions noted regarding the park office, parking and access to the park office); the FHAA does.

The ADA *does* apply to protect the rights of the "disabled" with respect to "public accommodations." But manufactured housing communities are "private" residential enclaves. Still, if an owner converts common facilities to public use, the facilities will become "public accommodations." The ADA will apply if the general public (as opposed to personally invited guests) are permitted into park facilities.

Where the ADA does apply, compliance is limited to "readily achievable" modifications."Readily achievable" means that changes can be made to comply with ADA accessibility guidelines without "undue hardship."

The FHAA prohibits "discrimination" against the "disabled" in housing including manufactured housing communities. The FHAA requires management to allow reasonable modifications to the premises, usually at *resident's* cost.

Both ADA and FHAA call for providing reasonable modifications to policies, rules and procedures to accommodate the disabled. "Reasonable accommodations" enable enjoyment of the housing opportunity for the disabled. Unreasonable accommodations are not required. Undue hardships in reasonable accommodations or premises modifications are not required.

Let's break all this down and fill in the definitions of these specific terms used in the law.

HOW DO WE KNOW WHEN A PERSON IS DISABLED?

It is sometimes not obvious.

Management is not permitted to ask about a disability until the resident requests a reasonable accommodation. That request triggers a dialogue initiated by management to seek out an acceptable and agreeable accommodation.

THE ADA HAS A THREE-PRONG DEFINITION OF "DISABILITY."

(1) SUBSTANTIAL IMPAIRMENT OF A MAJOR LIFE ACTIVITY: An individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." This is the most hotly litigated of the definitions. There are three sub-parts:

(i) **Physical or Mental Impairment** (*first* subpart): "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito urinary, hemic and lymphatic, skin,

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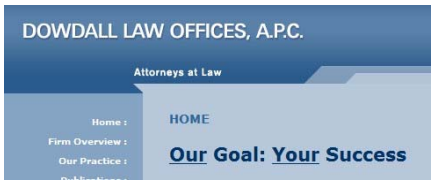

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and endocrine." A mental impairment includes: "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Examples of covered physical and mental impairments include: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction and alcoholism and HIV infection. An impairment under the ADA must be a physiological or mental disorder. Special problems are posed by stress and depression, which may or may not be considered impairments, depending on whether these conditions result from a documented physiological or mental disorder or whether they result from job or personal life pressures.

(ii) **Substantially Limits** (*second* subpart): The impairment must substantially limit one or more major life activities, such as inability to perform a major life activity that the average person in the general population can perform; or significantly restrict the condition, manner or duration under which an individual can perform a particular major life activity as compared to the average person in the general population. Three factors influence "substantial limitation": nature and severity of the impairment, how long the impairment is expected to last, and whether the impairment is permanent or long-term. It is not the name of the condition but the effect on the life of a particular person.

Examples: AIDS, deafness and blindness are by their nature substantially limiting, but many other impairments may be disabling for some individuals but not for others, depending on the impact on their activities. Someone may have mild cerebral palsy. Cerebral palsy may limit the major life activities, but an individual with mild cerebral palsy which only slightly interferes with the ability to speak without significant limitation on other major life activities is not an individual with a disability under the ADA.

(iii) **Major Life Activity** (*third* subpart): A major life activity must be "substantially limited." A major life activity is that which an average person can perform with little or no difficulty. Examples include walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, sitting, lifting, reading, standing and working. Example: A baseball pitcher with a bad elbow is not substantially limited in working. The person must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes, compared to an average person with similar training, skills and abilities.

(2) RECORD OF SUBSTANTIALLY LIMITING CONDITION: People who have recovered from physical or mental impairments, or who have been misclassified as having such impairments. So people with a record of mental or emotional illness, cancer, heart disease or other debilitating illness or have been misclassified as having these illnesses, are protected under the ADA even if not currently substantially limited in a major life activity.

(3) REGARDED AS HAVING SUCH AN IMPAIRMENT: People with impairments that do not substantially limit major life activities, but who are perceived as having substantial limiting impairments or impaired as a result of attitudes of others toward the impairment. This category deals with "society's myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairments."

Persons are covered if they have an impairment which is not substantially limiting but treated as having such an impairment, that is substantially limiting because of attitudes of others, or has no impairment but is regarded as having a substantially limiting impairment. Disfigurement is an example of one regarded as impaired.

BUSINESS POLICY:

The determination of whether a resident is disabled under these broad ranging definitions is a case-by-case determination. It is suggested that a policy which sets a low threshold of acceptability by the community owner be followed. There is no point in generating needless, costly and pointless litigation in uncertain cases of claims of disability. Remember that a prevailing defendant is not entitled to an award of attorney's fees and costs. Thus, resolving a case with one claiming a disability, even if the claim is somewhat open to question, avoids needless costs which will not be reimbursed, may promote good will and eliminates risk of defeat. But not always. If there are issues of precedent which may prove more costly in the long run, a decision to defend and prevail may be in the management's best interests. Each case is determined on facts of the individual circumstance and must be carefully evaluated.

WHAT ARE NOT DISABILITIES:

There are clear exclusions of characteristics deemed not to constitute disabilities under the ADA. Included are: homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania and psychoactive substance use disorders resulting from current illegal use of drugs.

While tenancy cannot be denied such applicants, neither is it a disability to have such conditions. Likewise, temporary, non-chronic impairments and that have little or no long-term impact usually are not disabilities. Examples include broken limbs, sprained joints, concussions, appendicitis, influenza, common colds, spasms and except in rare and unusual circumstances, obesity, are generally not considered disabilities. But if a temporary impairment resulted in a permanent impairment such as a restricted the use of a limb, the individual would be considered to have a disability. Poor judgment, quick temper, or irresponsible behavior are not impairments. Environmental, cultural, or economic disadvantages, such as lack of education or a prison record, also are not impairments.

What say the courts? Courts have said that pregnancy is not a physiological disorder; being left-handed is not a disability, nor is chemical hypersensitivity syndrome, average height or strength, muscularity preventing an individual from complying with a valid weight requirement, illiteracy, violent temper, or smoking.

THE ADA AND READILY ACHIEVABLE MODIFICATION OF AREAS GENERALLY OPEN TO THE PUBLIC.

The park office is open to the public. The owner impliedly invites the public into the park office. While the ADA does not apply to the park generally, the park offices *does constitute a public accommodation;* modifications *are* required to the extent *readily achievable*. Therefore, the path to the office and doorway to the office must be modified to comply with the ADA. The requirements for ADA compliance are set forth in Title 24 of the California Building Code. It is voluminous. A copy can be reviewed on line.[1]

The path to the office is also required to be compliant with ADA standards. And finally, disabled parking must be provided for any common parking lot. Disabled parking requires a sufficient number of spaces, with satisfactory surface, slope, markings and signage.

If the community owner does not comply with the ADA in these respects, it is like advertising to be sued. Of course, a community owner may wait to be sued, then hire counsel, run up a bill for defense costs, and then make the modifications (ordered by the court or required as a condition of settlement). Suit will also entail payment of the plaintiff's attorney's fees. There is a robust industry of lawyers who prosecute these claims, and they are in your community looking for new cases. Thus, if the decision is made to comply early, a lawsuit may be avoided.

Converting to ADA: Invitation to General Public

WHY DO I NEED A CASP INSPECTION?

A "CASp" inspection is a wise choice. CASp inspectors are licensed by the state in order to provide guidance on ADA compliance. After inspection of the property and completion of readily achievable modifications, a certificate is posted in plain view at the office which advises the public that the property has been inspected and in compliance. *That* is like ADA attorney repellant. The list of inspectors is published.[2]

Locating a good CASp inspector can require some research depending on location of the community. Obtaining a referral from other satisfied park owners is probably best.

Be sure to obtain the written report of the inspection (the law provides for it). It is needed to prove the inspection and serves as a guide for improving the property. The report will identify changes that need to be made and recommended reasonable time frames for completion. Since the property is exposed to a disability tester at all times until then, it is recommended the updating occur as soon as practicable.

If you are ever sued, you must have a CASp inspection report in order to be eligible to request a 90-day stay of the lawsuit and an Early Evaluation Conference. If you do not have a report, you will be barred from this benefit.

Post a CASp window sign! Parks approved by a CASp inspector will be able to request a window sign signifying they have been CASp-inspected. The window sign dissuades attorneys looking for easy cases and fast settlement money.

HOW DO I AVOID MORPHING THE REC HALL INTO A PUBLIC ACCOMMODATION?

We start with the proposition that the ADA does not apply to mobilehome parks (with the park office, pathway and parking exception note above). As early as 1982, authorities have said as much. According to the California Attorney

[1] http://www.dowdalllaw.com/dowdall-CaliforniaAccessibility-Title_24_regulations-12-8.pdf

[2] https://www.apps.dgs.ca.gov/casp/casp_certified_list.aspx

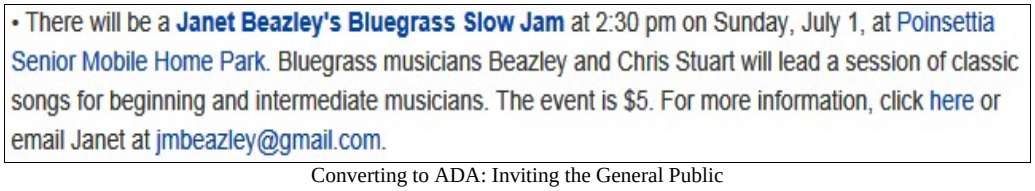
General, "a mobilehome park is not a facility for transitory use by the general public." Last year, an Illinois federal court[3] also determined that residential facilities, such as mobilehome parks, apartments and condominiums, do not fall within the definition of public accommodation.[4] Also, the Sherwood Manor Mobile Home Park case[5] held that the mobile home park did not fall within any of the categories covered by the ADA.

Recreational facilities are not public accommodations either. In a case out of Orange County recently,[6] it was held that a recreational trail system maintained by a common interest development association was not a "public accommodation," as required in order for disabled horse drawn carriage for an ADA claim. Plaintiff was not an association member and prevented from using equestrian paths after the association erected barriers to prevent vehicle access. Even though there was no express exclusion of the public, association's trails were built for association's members and did not encourage public use, did not charge fees to members of the public for using the trails. The trail system was an amenity provided to association's members.

Except for the rental office, the path to the rental office and adjacent parking, the ADA does not apply to your park unless you convert it to public use or allow your residents to do so.

But if management allows the clubhouse to be used by the general public, it can be converted into a public accommodation, which is required to comply with the ADA. *How might this happen*? *By making the facilities available to the general public.* Such activities as unrestricted meetings of public groups, use of the facilities as a polling place, publicly invited bingo (check the license to see exactly what it requires!), allowing garage sales in the clubhouse to which the general public is invited, renting out the clubhouse for third party events, etc.

And public use is distinguished from private use, including the personal invitation of guests. Invited guests are members of the public, certainly, but *specifically identified and known*, as compared to a flyer posted throughout your town. The Attorney General stated that: "[U]ndoubtedly that facility is open to a more general class than the residents of the park, for surely it is available to their families and invited guests. Use by the expanded group of persons in our view, however, does not reach the use 'by the general public.'"


• There will be a **Janet Beazley's Bluegrass Slow Jam** at 2:30 pm on Sunday, July 1, at Poinsettia Senior Mobile Home Park. Bluegrass musicians Beazley and Chris Stuart will lead a session of classic songs for beginning and intermediate musicians. The event is $5. For more information, click here or email Janet at jmbeazley@gmail.com.

Converting to ADA: Inviting the General Public

FHAA REASONABLE ACCOMMODATIONS

The FHAA also requires reasonable modifications to be made in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the housing and services provided. (The ADA also provides for "reasonable accommodations" in public accommodations, and to avoid confusion, we limit our discussion to the FHAA).

'REASONABLE ACCOMMODATION' VERSUS 'REASONABLE MODIFICATION'

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice or service to enable a disabled person an opportunity to use and enjoy their dwelling in a way that is equal to a person without a disability. The Park's rules or policies may be altered or waived when necessary to accommodate a person with a disability. Examples include a change in the way the Park communicates with a resident, providing a designated parking space or permitting a service animal that would otherwise violate a rule pertaining to pets.

Another application of a "reasonable accommodation" is seen where the Court of Appeals[7] held that a financial arrangement proposed by a disabled applicant for an apartment which would require the lessor to disregard a disability-neutral policy of precluding co-signers on leases was a "reasonable accommodation" within the meaning of the FHAA.

Example: A tenant who suffers from a mental disability receives a notice of termination of tenancy for disturbing other residents and violating community rules. The disabled tenant requests that the manager reasonably accommodate her, due to her disability, by not proceeding with the proposed eviction action and allowing her time to get medical treatment and/or psychological counseling. The manager must grant the accommodation unless he/she can demonstrate that no reasonable accommodation will eliminate or acceptably minimize any risk the tenant poses to other residents.

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[3] *Gragg v. Park Ridge Mobile Home Court, LLP*.

[4] *Radivojevic v. Granville Terrace Mutual Ownership Trust*, 2001 WL 123796, at p. 3 (N.D.Ill.2001)

[5] 947 F.Supp. 1574, 1577 (M.D.Fla.1996)

[6] 177 Cal.App.4th 1090, 99 Cal.Rptr.3d 699.

[7] *Giebeler v. M & B Associates*, 343 F.3d 1143 (9th Cir. 2003),

On the other hand, *is the lessor required to participate in "Section 8" housing to accommodate a disability?* No. The evidence demonstrated that the tenant's use and enjoyment of the premises was not "impinged" by the refusal to participate in a Section 8 program.[8] While the case was decided under the State Unruh Act, its requirements of making "reasonable accommodations" is the same as the FHAA and likely persuasive if the issue arose again.

FHAA REASONABLE MODIFICATIONS ARE STRUCTURAL CHANGES

A "reasonable modification" is a structural change made to existing premises when necessary to afford the person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of the mobilehome, as well as to common
and public use areas. Examples include widening doorways so they are accessible to persons who use wheelchairs or installing a ramp to provide access to the disabled person's mobilehome or a Park facility. Although the housing provider must allow a reasonable modification, *the resident is generally responsible* for paying the cost of the modification. Contrast to the ADA: where the ADA calls for readily achievable modifications, the *management* pays.

WHAT IS "REASONABLE"?

Management is required to engage in a timely, good faith, interactive process with the person requesting the accommodation or modification to determine whether the request is reasonable and available. A disabled tenant with a mobility impairment has difficulty walking more than short distances and cannot fit the van on the driveway. The tenant requests that management grant a reasonable accommodation in its parking policy and reserve a parking space on the street, due to his disability. If the street allows, legally, for parking, this accommodation is necessary to afford the disabled tenant an equal opportunity to use and enjoy the mobilehome. Therefore, management must grant the accommodation unless some other equally satisfactory accommodation can be identified and offered.

The management requires homeowners to come to the rental office in person to pay their rent. A resident has a mental disability that makes her afraid to leave her home. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. Management must make an exception to its payment policy to accommodate this homeowner.

INSURANCE COVERAGE AND DANGEROUS DOGS:

Service animals are not pets, they are instruments, or tools to accommodate a disability. Certain breeds of dogs may not constitute a reasonable accommodation as a service animal. HUD will defer to your insurer. HUD states that "if the housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider" (in other words, it is an unreasonable accommodation and would impose an undue burden on housing providers). A rule and regulation to embody this policy may help enforcement efforts when an unacceptable dog is proposed as a service animal.

WHAT IF THE ACCOMMODATION POSES A DANGER, OR THE RESIDENT POSES A DANGER WITH THE ACCOMMODATION?

He may be evicted. For example, a tenant at Rancho Loco Estates is arrested for threatening his neighbor while brandishing a baseball bat. Management learns that the tenant threatened the victim with physical violence and had to be physically restrained by other neighbors. A substantial annoyance notice is then served. Under the MRL, management is required to allow the violent resident to stay, and expose all other tenants fully exposed to the violent tenant for a full 2 months (60 days) until eviction can be filed.[9] The tenant lawyer then intervenes, claiming the tenant has a psychiatric disability that causes him to be physically violent when off his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the resident manager grant the tenant an exception to the "no threats" policy as a reasonable accommodation.

Management need only grant the reasonable accommodation if the tenant's attorney can provide satisfactory assurance that he will receive appropriate counseling, medication and monitoring so that he will no longer pose a direct threat during tenancy. If the tenant is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication, the eviction may go forward at the end of the two month period (while, again, all the other residents remain terrified).

Recently, the ninth circuit held that allowance of a *trampoline* on a mobilehome space was not a reasonable accommodation for attention deficit disorder of a child of the resident. And it is not reasonable to endanger other residents. According to the Department of Justice, the FHAA does not protect juvenile offenders, sex offenders, persons who illegally use controlled substances,

[8] *Sabi v. Sterling*, 183 Cal. App. 4th 916 (2010).

[9] Despite WMA's best efforts, some tenant groups continue to object to efforts to provide for accelerated evictions of dangerous residents.

and persons with disabilities who pose a significant danger to others. The FHAA does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

A SNAPSHOT OF REQUIREMENTS AND PROCEDURES FOR REASONABLE ACCOMMODATIONS

When considering whether to approve a request for a reasonable accommodation or modification, management may only take the following into consideration:

IS THE INDIVIDUAL MAKING THE REQUEST QUALIFIED?

Management may request confirmation from a medical provider that the individual has a disability as defined by law but may never inquire as to the nature or severity of the disability.

Is the request for an accommodation or modification reasonable? Management may ask questions which will clarify what it is about the rule or policy that serves as a barrier, so that management may offer an alternative "solution" if the requested accommodation is not reasonable.

Management should not attempt to determine whether or not the request is necessary for the individual making the request; that decision is up to the individual and their medical provider. Management may request confirmation from the medical provider that there is an identifiable nexus between the requested accommodation and the individual's disability.

UNDUE FINANCIAL BURDENS

Would the requested accommodation/modification impose an undue financial or administrative burden or require a fundamental alteration in the nature of the housing program or compelling management interests? This necessitates a case-by-case determination involving factors such as the cost of the accommodation, the financial resources of the management, the benefits the accommodation would provide the requester, and the availability of alternative accommodations that would adequately meet the requester's disability-related needs.

POTENTIAL DAMAGES AND LIABILITY

Housing discrimination plaintiffs may recover actual damages based upon their out-of-pocket expenses and lost housing opportunity (the plaintiff's opinion of what they would have had), intangible damages (humiliation, embarrassment and emotional distress), statutory damages (up to three times the amount of actual damages but in no case less than $4,000), injunctive relief, punitive damages and reasonable attorney's fees and costs.

WHAT SHOULD YOU DO TO PREVENT A CLAIM?

1. Post. A fair housing poster must be posted in a conspicuous location in the Park. Posters may be obtained from any local HUD (Housing and Urban Development) or DFEH (Department of Fair Employment and Housing) office.

2. Develop. Develop and comply with a written "reasonable accommodation policy" describing how residents may request reasonable accommodations, report incidents of claimed discrimination.

3. Provide. Forms to assist in making a request and in obtaining their medical provider's verification that the individual is qualified and that the request is consistent with the disability.

4. Respond. The policy should include a timely response by management. An undue delay in responding may be deemed to be a failure to provide the reasonable accommodation.

5. Dialog. Be prepared to engage in an interactive dialog to determine whether the request is reasonable and available, and document all communication. If the requested accommodation or modification is approved, document the approval in writing to the requesting individual in a timely fashion. However, management cannot request information about the nature, extent, or severity of a person's disability.

If the requested accommodation or modification is denied, is there an alternative accommodation or modification that would effectively address the individual's disability-related needs? Propose the alternative solution in writing. If an alternative accommodation is reasonable and meets the individual's needs, grant the accommodation.

THE BOTTOM LINE

By posting, following a written policy, and engaging in the interactive process, management will best prevent a claim of disability discrimination.

Is You Is or Is You Ain't?

When is a T25 Permit Required?

By: Terry R. Dowdall, Esq.

Upshot: The residents of California communities sometimes improve their homes, add accessory structures, build fences or walls, and add appliances, storage sheds, even cabana rooms. The problem is that their efforts may be displeasing to the eye, or the long term plans of the community owner, or the local code enforcement inspector. *To wit*, there is a surprisingly comprehensive list of items requiring a permit.

If management is not conversant with the situations requiring a permit, certainly our residents are in the position of hoodwinking the management or, making changes in everyone's honest ignorance of Title 25. The problem is much more difficult to resolve after the work is done. If management can stop improper proposals which require permits or advance written consent of the management, or both, the cost for enforcing the rules and regulations can be minimized.

Often, advance written consent of the management is required. However, residents may (and have) defended assertion of rule enforcement by retorting that they had verbal permission, or that a written request was not necessary. We suggest the management make it easy to request permission, use a standardized request form so there is a business practice which the management can testify to, and so there is no way to claim verbal permission was granted. Here is an example of a simple rule and regulation with form which can be made available in the park office for residents who propose to make some change in appearance at the mobilehome or the premises.

"Advance Approval required for Any Alteration, Modification: Building permits, licenses and other similar permission from governmental or quasi-governmental bodies or agencies are required and must be obtained before construction or installation of certain accessory equipment and structures and appliances and all appliances, equipment and structures must comply with all federal, state and local laws and ordinances. Before doing so, homeowner is required to submit a request in writing for the work and to give notice of the contractor, as follows:

REQUEST FOR WORK, PREMISES ALTERATION

Homeowner: _____ Space_____ Date_____

Description of Work _____

Dates of Work _____

Contractor Name_____License No._____

Address_____

Permit Required _____ Exempt_____

I request approval of the management for the work described above.

Homeowner signature _____

Permits for exterior work *require management approval*. Do not approve until you are satisfied you have all the details. A proportioned sketch is suggested. For structural changes, the professionals who are doing the work should provide a detailed drawing sufficient to satisfy the local enforcement inspector.

Permission for interior work *does not call for the approval* of the management in seeking a permit.

In Figures 1 through 4, we have provided the list of commonly required changes which call for the issuance of a permit.

Figure 1

ELECTRICAL				
Alteration Type	**Permit**	**Plan Review**	**Load Calculations Required**	**Comments**
Air Conditioning				
Install *(Add)* – Air Conditioning	Yes	No	*Yes	*Unless home is factory A/C ready. Refer also to Mechanical.
Replace – Air Conditioning	Yes	No	*Yes	*If A/C amperage is increased. Refer also to Mechanical.
Appliance				
Install *(Add)* -- "Built-in" Electrical Appliance	Yes	No	Yes	
Replace – "Built-in" Electrical Appliance	Yes	No	*No	Unless amperage increase.
Ceiling Fan				
Install *(Add)* – Ceiling Fan	Yes	No	No	
Receptacle/Switch				
Replace – Receptacle/Switch	No	No	No	
Misc.				
Change – Electrical System *(Upgrade/Downgrade)*	Yes	No	Yes	
Install *(Add)* – Dedicated Branch Circuit	Yes	No	Yes	Furnace, Water Heater, etc.
Install *(Add)*/Replace – Electrical Panel	Yes	No	No	
Install *(Add)*/Replace – Electrical Circuit	Yes	No	*	*Load calculations may be required.
Install – Meter Base	Yes	Yes*	No	*HCD detail available.
Replace – Circuit Breaker or Fuse	No	No	No	Must be the same amperage and disconnect type.
Transition – Branch Circuits from aluminum to copper	Yes	No	No	Pigtail, receptacles and switches.

MECHANICAL				
Alteration Type	**Permit**	**Plan Review**	**Engineered Plans**	**Comments**
Air Conditioning / Evaporative Cooler				
Install – Air Conditioning *(New or Replacement)*	Yes	No	No	Refer also to ELECTRICAL classification.
Install – Evaporative Cooler	Yes	No	No	
Furnace / Heater / Heat Pump / Stove				
Replace – Furnace *(No system changes)*	Yes	No	No	
Replace – Furnace *(Any changes or outside MH)*	Yes	Yes	No	
Replace or Install – Heater *(Freestanding Gas or Oil Burning)*	Yes	No	No	
Replace or Install – Heat Pump	Yes	No	No	
Replace or Install – Wood or Pellet Burning Stove	Yes	No	No	
Gas Line				
Install/Add to Length/or Modify – Gas Line	Yes	Yes	No	
Range, Oven, or Cooktop *(Gas)*				
Replace – Built-in oven, range, cooktop, or freestanding range.	Yes	No	No	Same size, location, and BTU rating with no gas line changes.
Range Hood				
Replace – Range Hood	*No	No	No	*Same size and location including venting.
Replace – Range Hood	*Yes	No	No	*Different size or location including microwave.
Water Heater				
Replace or Install – Water Heater *(Gas or electric)*	Yes	No	No	Water heaters installed outside and adjacent to the home, with connections provided from the home and placed in an approved manufactured metal cabinet will not require an Alternate Approval.

Figure 2

PLUMBING				
Alteration Type	**Permit**	**Plan Review**	**Engineered Plans**	**Comments**
Drain, Waste and Vent				
Install/Modify – Drain, Waste and Vent *(DWV)* or Water System.	*Yes	Yes	No	*Bathtub, Dishwasher, Lavatory, Shower, Sink, Toilet, Washing Machine, *etc.*
Repair/Replace – DWV Tailpiece or Trap	No	No	No	
Replace – Kitchen Sink, Lavatory, or Toilet.	*No	No	No	*Provided no alteration to DWV or water system.
Replace – Mechanical Auto Vent	No	No	No	

PLUMBING *(Continued)*				
Alteration Type	**Permit**	**Plan Review**	**Load Calculations Required**	**Comments**
Garbage Disposal				
Install *(Add)* – Garbage Disposal	Yes	No	No	
Replace – Garbage Disposal	No	No	No	
Washing Machine				
Install/Replace – Washing Machine	*No	No	No	*Permit required if water supply and/or drain line not present or altered.
Misc.				
Gas Lines				See MECHANICAL requirements.
Water Heater				See MECHANICAL requirements.

STRUCTURAL				
Alteration Type	**Permit**	**Plan Review**	**Engineered Plans**	**Comments**
Chassis / Frame				
Repair – Chassis/Frame	Yes	Yes	*Yes	*An engineered plan or design is required for units manufactured after Sept. 15, 1971.
Doors *(Exterior)*				
Replace – Door*(s)* with same size and type*	*Yes/No	No	No	*Alternate size or type requires permit.
Floors				
Repair – Decking	*Yes	No	No	* Required if over 4 square feet.
Repair – Joist	Yes	Yes	No	
Replace – Joist	Yes	No	No	
Roof				
"California Roof"	Yes	Yes	*Yes	*An engineered plan or design is required for units manufactured after Sept. 15, 1971. HCD plan available with 30 PSF maximum.
Built-Up or Overlay	Yes	Yes	Yes*/No	*An engineered plan or design is required for units manufactured after Sept. 15, 1971.
Insulated Roof System*	*Yes	Yes	No	*One inspection required.
Re-Roof* *(Existing roof covering removed)*	*Yes	No	No	*Two inspections required *(Underlayment and final)*. This does not include coating metal roof with approved roof coating material.
Repair – Rafter or Truss	Yes	Yes	No	
Repair/Replace – Sheathing	Yes	No	No	
Replace – Truss	Yes	Yes	*Yes/No	*An engineered plan or design is required for units manufactured after Sept. 15, 1971.

Figure 3

This list can be added as an attachment to the rules and regulations, to ensure that the residents are made aware of the changes to the mobilehome or to the premises that require the issuance of a permit. We suggest that this list be added to the rules and regulations because, after all, it is not likely the average mobilehome resident, or the contractor selected by the resident, will have a copy of Title 25 to which to refer.

The cost and risk in seeking to terminate tenancy for rule violations has resulted in innovative means by which to enforce rules and regulations while preserving the tenancy. The most useful of these alternate means of enforcement is the clean up law prefaced with a "14 day notice"; or, the storage of personal property which violates the rules and regulations; and, the right to seek an injunction for rule violations. Since the 14 day notice is only useful for premises, or clean up of the space, it is of no use in dealing with alterations and additions which violate the rules and regulations.

The law is changing effective January 1, 2013, based on a new law proposed and drafted by this office for the WMA, to allow for injunctions against residents to be more readily available and at lesser cost than before. Since an injunction can be sought without terminating tenancy, immediately without waiting, and is heard quickly (within 15 days of filing), this remedy is cost effective, immediate and protects against the loss of the home, which was the only previous means by which to enforce the rules against an intransigent resident.

Attorney's fees and costs are also minimized by the quick and simple remedy. It is expected that offending residents may more often <u>not</u> be asked to sell and move, but

to stay and "behave" as the effect of the new law becomes known.

One of the most significant benefits of use of the injunction process is that unlike the usual termination of tenancy action, the offending resident is not judgment proof. Defaulting residents cannot afford the rents, and hence collection of attorney's fees and costs are not likely.

In the case of the injunction, the need to obtain relief is supported with the expectation that the resident, willing to invest in an impermissible alteration of the premises, will have the ability to respond to a judgment for attorney's fees and costs.

Finally, injunction actions are determined quickly by the "chancellor in equity." The judge quickly determines whether to allow the injunction or not. The delays involved in the use of juries to determine the "quality of life" standards in a mobilehome community are not permitted in injunction actions.

Injunctions are obeyed. Simply, no resident wishes to be held in contempt of an injunction.

Figure 4

STRUCTURAL *(Continued)*

Alteration Type	Permit	Plan Review	Engineered Plans	Comments
Walls				
Modify/Remove – Bearing Wall	Yes	Yes	*Yes/No	*An engineered plan or design is required for units manufactured after Sept. 15, 1971.
Modify/Remove – Non-bearing Wall*(s)*	Yes	Yes	No	
Wall Covering – Exterior	Yes	Yes	*Yes/No	*An engineered plan or design is required for units manufactured after Sept. 15, 1971.
Wall Covering – Interior	Yes	No	No	Maximum flame spread 200 required. *(Details available for flame spread requirements)*
Sidewall or Endwall Opening *(New or enlarged)*	Yes	Yes	*Yes/**No	*If Endwall shear is affected. **Use HCD header schedule.
Windows				
Replace – Windows *(Same size/type)*	*Yes/No	No	No	*Permit required for units manufactured after Sept. 15, 1971 when openings are enlarged or reduced; when bedroom egress window is replaced; or when structural change to window framing or header is necessary. No permit required when replacing single pane window with dual pane window or when installation of bay window(s) requires no additional support.

STRUCTURAL *(Accessory Structure)*

Alteration Type	Permit	Plan Review	Load Calculations Required	Comments
Structure Attachment				
Attach – *Awning *(Wood)*, Garage, or Porch	**Yes	Yes	***Yes/No	* Awning shall comply with T25, Section 1468. **MH Alteration Permit required from HCD. Awning, Garage, and Porch construction is a separate permit issued by the enforcement agency having jurisdiction. Alternate Approval from HCD may be required for attachment. ***An engineered plan or design is required for units manufactured after Sept. 15, 1971.

Important Rule-making Information Regarding Carbon Monoxide Alarm Installation

By: Terry R. Dowdall, Esq.

Upshot:

The Department of Housing and Community Development recently developed regulations for installation of carbon monoxide (CO) alarms in new and existing manufactured homes and multifamily manufactured homes. The regulations have been approved and become effective July 1, 2012.

These new regulations provide for the installation of CO alarms in all new, existing (unsold inventory) and used manufactured homes, mobilehomes and multifamily manufactured homes as follows:

* The requirements of **section R315** *(reprinted below)* of the California Code of Regulations, *Title 24, Part 2.5, California Residential Code* (CRC), is incorporated by reference and applies to the design, construction and installation of approved carbon monoxide alarms in 1) New manufactured homes, 2) New multifamily manufactured homes containing only two dwelling units, 3) Existing manufactured homes on dealer lots or in inventory, and 4) Used manufactured homes and mobilehomes - if such units contain either a fuel-burning appliance(s) or are designed for an attached garage. Effective date is July 1, 2012.

* The requirements of **section 420.4** *(reprinted below)* of the California Code of Regulations, *Title 24, Part 2, California Building Code* (CBC), is incorporated by reference and applies to the design, construction and installation of approved carbon monoxide alarms in multifamily manufactured homes containing more than two dwelling units - if such units contain either a fuel-burning appliance(s) or are designed for an attached garage. Effective date is July 1, 2012, for new units, January 1, 2013, for existing and used units.

Note - CO alarms in new manufactured homes and multifamily manufactured homes must be both hard wired and interconnected (if more than one device is installed), in accordance with the referenced sections. However, for new manufactured homes and multifamily manufactured homes where construction is complete; remain unsold to a first user; and exist either at a manufacturing plant, or dealer lot - CO alarms are permitted to be solely battery operated or plug-in type with battery back-up.

If you have questions or need more information, please contact Kevin Cimini via email kcimini@hcd.ca.gov. or by telephone at 916.327.2651.

SECTION R315: CARBON MONOXIDE ALARMS

§R315.1 Carbon monoxide alarms For new construction, an approved carbon monoxide alarm shall be installed in *dwelling units and in sleeping units* within which fuel-*burning appliances* are installed and in dwelling units that have attached garages.

§R315.1.1 Power supply*. For new construction required carbon monoxide alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery back-up. Alarm wiring shall be directly connected to the permanent building wiring without a disconnecting switch other than as required for overcurrent protection.*

Exceptions:

1. In dwelling units where there is no commercial power supply the carbon monoxide alarm may be solely battery operated.

2. In existing dwelling units a carbon monoxide alarm is permitted to be solely battery operated where repairs or alterations do not result in the removal of wall and ceiling finishes or there is no access by means of attic, basement or crawl space.

§R315.1.2 Interconnection*. Where more than one carbon monoxide alarm is required to be installed within the dwelling unit or within a sleeping unit the alarm shall be interconnected in a manner that activation of one alarm shall activate all of the alarms in the individual unit.*

Exception:

1. Interconnection is not required in existing dwelling units where repairs do not result in the removal of wall and ceiling finishes, there is no access by means of attic, basement or crawl space, and no previous method for interconnection existed.

R315.2 Where required in existing dwellings. Where a permit *is required for alterations, repairs or additions exceeding one thousand dollars ($ 1,000),* existing dwellings or *sleeping units* that have attached garages or fuel-*burning appliances* shall be provided with a *carbon monoxide alarm* in accordance with Section R315.1 . *Carbon monoxide alarms shall only be required in the specific dwelling unit or sleeping unit for which the permit was obtained.*

§R315.3 Alarm requirements. Single- and multiple-station carbon monoxide alarms shall be listed as complying with the requirements of UL 2034. *Carbon monoxide detectors shall be listed as complying with the requirements of UL 2075. Carbon monoxide alarms and carbon monoxide detectors shall be installed* in accordance with th is code, *the current edition of NFPA 720 "Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment"* and the manufacturer's installation instructions. *Other carbon monoxide alarm and detection devices as recognized in NFPA 720 are also acceptable.*

Carbon monoxide alarms required by Sections R315.1 and R315.2 shall be installed in the following locations:

1. Outside of each separate dwelling unit sleeping area in the immediate vicinity of the bedroom(s).

2. On every level of a dwelling unit including basements.

§R315.3.1 Multiple-purpose alarms. *Carbon monoxide alarms combined with smoke alarms shall comply with Section R315. All applicable standards, and requirements for listing and approval by the Office of the Slate Fire Marshal, for smoke alarms.*

SECTION 420.4, TITLE 24, PART 2, Carbon monoxide alarms.[HCD 1, HCD 2 & HCD 1-AC]

§420.4.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed in dwelling units and in sleeping units within which fuel-burning appliances are installed; and in dwelling units that have attached garages.

§420.4.1.1 Power supply. For new construction, required carbon monoxide alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and shall be equipped with a battery back-up. Alarm wiring shall be directly connected to the permanent building wiring without a disconnecting switch other than as required for overcurrent protection.

Exceptions:

1. In dwelling units where there is no commercial power supply, the carbon monoxide alarm may be solely battery operated.

2. In existing dwelling units, a carbon monoxide alarm is permitted to be solely battery operated where repairs or alterations do not result in the removal of wall and ceiling finishes or there is no access by means of attic, basement or crawl space.

1. 123

1.Other power sources recognized for use by NFPA 720.

§420.4.1.2 Interconnection. Where more than one carbon monoxide alarm is required to be installed within the dwelling unit or within a sleeping unit, the alarm shall be interconnected in a manner that activation of one alarm shall activate all of the alarms in the individual unit.

Exception: Interconnection is not required in existing dwelling units or within sleeping units where repairs do not result in the removal of wall and ceiling finishes, there is no access by means of attic, basement or crawl space, and no previous method for interconnection existed.

§420.4.2 Where required in existing dwellings or sleeping units. Where a permit is required for alterations, repairs or additions exceeding one thousand dollars ($1,000), existing dwellings or sleeping units that have attached garages or fuel-burning appliances shall be provided with a carbon monoxide alarm in accordance with Section 420.4.1. Carbon monoxide alarms shall only be required in the specific dwelling unit or sleeping unit for which the permit was obtained.

§420.4.3 Alarm requirements. Single- and multiple-station carbon monoxide alarms shall be listed as complying with the requirements of UL 2034. Carbon monoxide detectors shall be listed as complying with the requirements of UL 2075. Carbon monoxide alarms and carbon monoxide detectors shall be installed in accordance with this code, the current edition of NFPA 720 "Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment" and the manufacturer's installation instructions. Other carbon monoxide alarm and detection devices as recognized in NFPA 720 are also acceptable.

Carbon monoxide alarms required by Sections 420.4.1 and 420.4.2 shall be installed in the following locations:

1.Outside of each separate dwelling unit sleeping area in the immediate vicinity of the bedroom(s).

2.On every level of a dwelling unit including basements.

3.For R-1 only. On the ceiling of sleeping units with permanently installed fuel-burning appliances.

§420.4.3.1 Multiple-purpose alarms. Carbon monoxide alarms combined with smoke alarms shall comply with Section 420.4, all applicable standards, and requirements for listing and approval by the Office of the State Fire Marshal, for smoke alarms.

§420.4.4 Visible alarms. In buildings meeting the definition of "COVERED MULTIFAMILY DWELLINGS" in accordance with Chapter 11A and with fuel-burning appliances and/or attached garages as described in Section 420.4.1, all required carbon monoxide alarms shall be provided with the capability to support visible alarm notification appliances in accordance with NFPA 720 and Chapter 11B.

§420.5 Licensed 24-hour care facilities in a Group R-2.1, R-3.1, or R-4 occupancy. See Section 425 for Special Provisions for licensed 24-hour care facilities in a Group R-2.1, R-3.1, or R-4 occupancy.

§420.6 Existing Group R Occupancies. See Chapter 34.

Pit Bulls Deemed Inherently Dangerous - Maryland

Landlords <u>Automatically</u> Liable by Knowledge of Mere Presence of Pit Bull on Premises

By: Terry R. Dowdall, Esq.

▮ *Upshot*:

Developing pet policies that are acceptable both to owners who love pets and those who don't has never been easy, but it is likely to become a lot more difficult, thanks to a recent court decision. In a case involving a Pit Bull that attacked and seriously injured a child, Maryland's highest court ruled that a landlord could be held strictly liable for the damages if he knew or had reason to know that a Pit Bull was living in the dwelling, and failed to take steps to protect other residents.

> *It is not necessary that the landlord…have actual knowledge that the specific Pit Bull involved is dangerous."*

This Maryland decision represents a significant change in the common law standard for determining the negligence of a landlord in dog bite cases. Under the common law standard, applicable in most jurisdictions, (including Maryland before this decision), landlords could be found liable for dog bite damages only if they knew or had reason to know that a dog was potentially dangerous to others. If the dog had not previously bitten anyone or otherwise demonstrated aggressive or violent tendencies of which the landlord was aware, the owner might be strictly liable for damages, but the landlord would not be.

▮ *"Inherently Dangerous"*

The Maryland court rejected that standard in this case, because, the court concluded, Pit Bulls are more dangerous than other

dogs and must be treated differently. Their "aggressive and vicious nature and [their capacity] to inflict serious and sometimes fatal injuries," the court wrote, makes Pit Bulls "inherently dangerous." As a result, the court explained, "we are modifying the Maryland law of liability as it relates to Pit Bulls and Pit Bull mixes [in attacks] against humans. With the standard we establish today, when an owner or a landlord is proven to have knowledge of the presence of a pit bull or cross-bred pit bull …or should have had such knowledge, a prima facie case is established. *It is not necessary that the landlord…have actual knowledge that the specific Pit Bull involved is dangerous."*

Do park owners have reason to know that Pit Bulls are more dangerous than other dogs? The conservative answer – that is, the answer aimed to avoiding litigation — is yes. There have been so many reports about Pit Bulls involved in attacks against children, mail persons, neighbors, even other dogs, it would be difficult to claim ignorance of the breed's reputation for aggressive behavior.

Regulating Behavior

Park owners concerned about Pit Bulls can add provisions to their rules and regulations prohibiting residents from owning them. Determine if your insurer does not allow pit bills. Some insurance companies will not cover dogs with a history of aggressive behavior and many won't cover particular breeds they have identified as aggressive – a list that often includes Pit Bulls, German Shepherds, Dobermans, Chows, Akitas, Malamutes, Great Danes, and Siberian Huskies, among others. Owners have eliminated them as an allowable breed. Better yet, avoid the issue entirely by instituting a weight limit. This will essentially bar all the dangerous breeds. Also, you may wish to consider these alternatives.

•Require the owners of all dogs to keep them on a leash of a specified length and *in hand* by someone able to control the animal in the common areas.

•Require the owners of any dog that has demonstrated vicious behavior to keep the dog muzzled as well as leashed in common areas. A procedure for dealing with complaints about aggressive behavior justifying a muzzle requirement can be instituted for dogs not previously seen as dangerous. For example, a certain number of reports from others might trigger discipline, with an opportunity to be heard to rebut the evidence. The park owner appears to be more reasonable when acting on the complaint of other residents. The opposite result must also be considered. Failing to act on reasonable complaints will result in a finding of wilful failure to correct a risk of harm. This opens the door to punitive damages.

But keep in mind that breed regulation is not always a walk in the park. A breed-specific ban, even one that encompasses several breeds, may be challenged. Rescue groups for Pit Bulls and other breeds that are reputedly dangerous can and have joined in support of litigation in support of dog owners. "There are no bad breeds" may be their mantra. And litigation is costly. However, a passer-by may sue if you do not act to enforce safety standards. The Maryland Courts can be pointed to as examples of the necessity for stronger action against dangerous animals. Once again, weight restrictions may go a long way to eliminating the risk posed by dangerous breeds.

Please feel free to contact Terry R. Dowdall, Esq. for further information and questions.