

# PARK WATCH<sup>®</sup>

A LEGAL DEVELOPMENTS NEWSLETTER

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**THIS NEWSLETTER CONVEYS GENERAL INFORMATION, NOT LEGAL ADVICE: CONSULT AN ATTORNEY BEFORE RELYING HEREON**

## How Can We Keep People Like This Out of Your Park?

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In this issue . . .

- More Effective Screening
- Governor Brown Hits Mobilehome Tenants with \$150 new tax
- Rent Controls Force Orange County Park Owner into Bankruptcy
- Chula Vista Approves Vacancy Decontrols

By: Terry R. Dowdall, Esq.

● **Snapshot:** It might not be as easy as you think to keep a murder defendant (acquitted) out of your park. Screening is a one shot proposition based on two tests and one short glimpse: a decision to approve or decline a tenancy for life and perhaps beyond. This is all the Mobilehome Residency Law allows to make a decision we may live to embrace or regret.

So how may we ensure the choice of a resident is as good as we may make it? How may we properly decline a resident who will generate risk, default and harm to you and others? See page 4



## Jerry Brown Hits MH Tenants With New \$150 Tax for Fire Protection!

By: Terry R. Dowdall, Esq.

● Ask your tenants if they are happy now with their vote for governor. ABX1 29 was signed by Jerry Brown a week ago and it will cost each mobilehome tenant in a fire area an additional \$150 /year in taxes.

Despite objections from many sides, including: lawmakers in rural counties, the Regional Council of Rural Counties, and the State Association of Counties,<sup>1</sup> Governor Brown has signed



**Assembly Bill 29** as part of the new state budget. Referred to as the “rural fire tax,” it will impose up to a \$150 fire-prevention fee on state residents who live in a *State Responsibility Area* or “SRA.” This includes mobilehomes and manufactured homes. Specifically, the fee is assessed on “habitable structures,” including mobilehomes.

Public Res. Code §4211 (a) states: “For the purposes of this chapter, the following terms shall have the following meanings: ¶‘Structure’

means a building used or intended to be used for human habitation. For purposes of this subdivision, a building includes, but is not limited to, a mobilehome or manufactured home. The board shall exclude from this definition building types that require no structural fire protection services beyond those provided to otherwise unimproved lands.”

<sup>1</sup> [http://www.counties.org/images/users/1/CSAC\\_SRA%20FEE\\_Oppose.pdf](http://www.counties.org/images/users/1/CSAC_SRA%20FEE_Oppose.pdf).

The new tax (labeled a “fee”) will appear as a *line item on property tax statements* (but not, say the detractors, for owners of richly forested lands supporting no structures, which pose the greatest risks—where environmental regulations are claimed to have prevented proper stewardship of forested lands to reduce fire risk).

The rubs to this bill are several. While CalFire may not maintain a firefighting presence in rural counties, it may contract with the U.S. Forest Service. But many residents who live in a SRA already pay for fire protection through a local fire district. Those residents are to pay the additional \$150 fee for services they are already receiving.

It is reported that CalFire Public Information Officer Daniel Berlant said *“There are still lots of details that need to be worked out. . . We will be looking at the double-taxation issue. That is one of the complexities that has to be addressed.”*

### ● **Brown’s Letter re AB 29**

Brown wrote, *“I am signing Assembly Bill 29 because establishing a fire protection and prevention fee in state responsibility areas will reduce General Fund costs, and ensure property owners in developed wildland areas pay for a portion of the fire and emergency response services they receive.”*

Brown contends that because of population growth the costs for with fire protection in wildland areas has markedly increased. But in an equivocal gesture, he added, *“As currently drafted, the revenues may not materialize,”* and he called for clean-up legislation to fix problems in the bill.

Brown’s letter to the State Assembly continued, *“The purpose of this bill is to make the necessary statutory changes to realize \$50 million of General Fund savings identified in the budget bill by allocating the revenue generated from this fee to the . . . (CalFire) fire protection program, as well as \$200 million in ongoing General Fund savings.”*

Statewide, the new fee is expected to affect about 860,000 homes located in 31 million acres of state responsibility area.

### ● **AB 29 Fees Are for Fire Prevention**

According to **AB 29**, the money collected is to be used for fire prevention activities, which will benefit owners of structures in state responsibility areas. Some of the activities detailed in the bill include:

- Grants to fire safe councils, the California Conservation Corps or certified local conservation corps for fire prevention projects.
- Inspections by CalFire for compliance with defensible space requirements around structures.
- Public education to reduce fire risk.
- Fire severity and fire hazard mapping.
- Other fire prevention projects.

The establishment of such a fee has been advocated for years by state fire officials and budget policy analysts who argue that a boom in urban development in wildland areas has fundamentally shifted the mission of CalFire. Its focus has evolved from battling brush fires in the wild to having to defend life and property imperiled by the fires - a much more costly endeavor.

**AB 29** says that “[T]he costs of fire prevention activities aimed at reducing the effects of structures in state responsibility areas should be borne by the owners of these structures.”

*“The state has long been looking for a stable source of funding for fire protection and public safety,”* said CalFire spokesman Daniel Berlant. *“State government as a whole has taken spending reductions at every level, including CalFire.”*

By directing that the money be spent on fire prevention programs - clearing brush from around structures, creating fire breaks in wildland areas and such - state officials believe they can show a direct connection that links the benefits funded by the fee to the property owners who pay it. *Without such a connection, the fee would be considered a tax and would thus have required a two-thirds vote of the Legislature, which it did not receive.*

### ● **Assemblyman Dan Logue said AB 29 probably isn’t legal.**

*“The way we are going to have to fix this is in court,”* Logue said. *“The governor said he has signed it. And he’s going to try to implement it. But half of his budget is not even legal.”*

Proposition 26 (approved by voters in November, which defines a “tax” to include any levy, fee or charge, with some exceptions) holds that a two-thirds majority vote is required to pass or increase a “fee.” But **AB29** did not receive a two-thirds vote. Indeed, the Howard Jarvis Taxpayers intends to file suit asserting that the AB29 fee is a tax and thus illegal.

This fire prevention fee does not appear to fall under the exceptions, including a charge for a special benefit conferred or privilege granted directly to the taxpayer, that is not provided where not charged; or, a charge for reasonable regulatory costs for issuing licenses, doing inspections, etc. The fire fee is not for a specific benefit granted directly to the payer, and others who are not charged also benefit, e.g. landowners without habitable structures on their property.

### ● **Defining Our Terms (Fire Hazard Severity Zone Development) and, Is Your Park Affected?**

▲*Fire Hazard* is a way to measure the physical fire behavior so that people can predict the damage a fire is likely to cause. It is a measure of the likelihood of an area burning and how it burns (example: intensity, speed, embers produced). ▲*Fire hazard measurement* includes the speed at which a wildfire moves, the amount of heat the fire produces, and most importantly, the burning fire brands that the fire sends ahead of the flaming front. ▲*Fire Risk* is a measure of the potential for damage. ▲*Fire Hazard Zoning* refers to a map of the fire hazard without

*“ . . . we are going to have to fix this is in court . . . ”*  
--Assemblyman Dan Logue

considering the value at risk.

Maps exist by which to determine if a park is located in a SRA as specified below. Since habitable structures are included, it would appear that the fee will also apply to common buildings and certainly park-owned homes.

For **Orange County** the map is here and you can check your city to see if you are in the yellow outlined area:

<http://www.ocfa.org/Menu/Departments/FirePrevention/VHFMaps.aspx>

The **State map** is here:

[http://frap.cdf.ca.gov/webdata/maps/statewide/fhszs\\_map.jpg](http://frap.cdf.ca.gov/webdata/maps/statewide/fhszs_map.jpg)

For your county, go here and pick out your county:

[http://frap.cdf.ca.gov/webdata/maps/statewide/fhszs\\_map.jpg](http://frap.cdf.ca.gov/webdata/maps/statewide/fhszs_map.jpg)

### A Few of the Maps Are as Follows:

**San Diego** is here:

[http://frap.cdf.ca.gov/webdata/maps/san\\_diego/fhszs\\_map.37.jpg](http://frap.cdf.ca.gov/webdata/maps/san_diego/fhszs_map.37.jpg)

**Sacramento County** is here:

[http://frap.cdf.ca.gov/webdata/maps/sacramento/fhszs\\_map.34.jpg](http://frap.cdf.ca.gov/webdata/maps/sacramento/fhszs_map.34.jpg)

**San Bernardino** is here:

[http://frap.cdf.ca.gov/webdata/maps/san\\_bernardino\\_sw/fhszs\\_map.62.jpg](http://frap.cdf.ca.gov/webdata/maps/san_bernardino_sw/fhszs_map.62.jpg)

**Riverside West** is here:

[http://frap.cdf.ca.gov/webdata/maps/riverside\\_west/fhszs\\_map.60.jpg](http://frap.cdf.ca.gov/webdata/maps/riverside_west/fhszs_map.60.jpg)

**Riverside East** is here:

[http://frap.cdf.ca.gov/webdata/maps/riverside\\_east/fhszl06\\_1\\_map.61.jpg](http://frap.cdf.ca.gov/webdata/maps/riverside_east/fhszl06_1_map.61.jpg)

**Ventura** is here:

[http://frap.cdf.ca.gov/webdata/maps/ventura/fhszs\\_map.56.jpg](http://frap.cdf.ca.gov/webdata/maps/ventura/fhszs_map.56.jpg)

**Los Angeles** is here:

[http://frap.cdf.ca.gov/webdata/maps/los\\_angeles/fhszs\\_map.19.jpg](http://frap.cdf.ca.gov/webdata/maps/los_angeles/fhszs_map.19.jpg)

**Santa Barbara** is here:

[http://frap.cdf.ca.gov/webdata/maps/santa\\_barbara/fhszs\\_map.42.jpg](http://frap.cdf.ca.gov/webdata/maps/santa_barbara/fhszs_map.42.jpg)

**San Luis Obispo** is here:

[http://frap.cdf.ca.gov/webdata/maps/san\\_luis\\_obispo/fhszs\\_map.40.jpg](http://frap.cdf.ca.gov/webdata/maps/san_luis_obispo/fhszs_map.40.jpg)

### A List of Cities affected by County:

- Alameda (5 cities), Berkeley, Oakland, Piedmont, Pleasanton, San Leandro
- Amador (1 city), Ione
- Butte (2 cities), Chico, Paradise
- Calaveras (1 city), Angels Camp
- Contra Costa (8 cities), Clayton, Concord, Danville, El Cerrito, Lafayette, Moraga, Orinda, Richmond,
- El Dorado (2 cities), Placerville, South Lake Tahoe
- Lake (1 city), Clearlake

- Lassen (1 city), Susanville
- Los Angeles (40 cities), Agoura Hills, Arcadia, Avalon, Azusa, Beverly Hills, Bradbury, Burbank, Calabasas, Claremont, Covina, Culver City, Diamond Bar, Duarte, Glendale, Glendora, Hidden Hills, Industry, Irwindale, La Canada Flintridge, La Habra Heights, La Mirada, La Verne, Lancaster, Los Angeles, Malibu, Monrovia, Palmdale, Palos Verdes Estates, Pasadena, Pomona, Rancho Palos Verdes, Rolling Hills, Rolling Hills Estates, San Dimas, Santa Clarita, Sierra Madre, Walnut, West Covina, Westlake Village, Whittier
- Marin (6 cities), Corte Madera, Larkspur, Mill Valley, Novato, Ross, Sausalito
- Mendocino (2 cities), Ukiah, Willits
- Mono (1 city), Mammoth Lakes
- Monterey (5 cities), Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Seaside
- Napa (3 cities), Calistoga, Napa, Yountville
- Nevada (3 cities), Grass Valley, Nevada City, Truckee
- Orange (22 cities), Aliso Viejo, Anaheim, Brea, Buena Park, Dana Point, Fullerton, Irvine, La Habra, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Newport Beach, Orange, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Tustin, Villa Park, Yorba Linda,
- Placer (2 cities), Auburn, Colfax
- Plumas (1 city), Portola
- Riverside (21 cities), Banning, Beaumont, Calimesa, Canyon Lake, Cathedral City, Corona, Desert Hot Springs, Hemet, Indian Wells, La Quinta, Lake Elsinore, Moreno Valley, Murrieta, Norco, Palm Desert, Palm Springs, Perris, Rancho Mirage, Riverside, San Jacinto, Temucula
- San Bernardino (16 cities), Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, Yucca Valley
- San Diego (13 cities), Carlsbad, Chula Vista, Del Mar, El Cajon, Encinitas, Escondido, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista
- San Luis Obispo (6 cities), Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Pismo Beach, San Luis Obispo
- San Mateo (9 cities), Belmont, Half Moon Bay, Hillsborough, Pacifica, Portola Valley, Redwood City, San Carlos, San Mateo, Woodside,
- Santa Barbara (4 cities), Goleta, Guadalupe, Lompoc, Santa Barbara
- Santa Clara (7 cities), Cupertino, Gilroy, Los Gatos, Monte Sereno, Morgan Hill, San Jose, Saratoga
- Shasta (3 cities), Anderson, Redding, Shasta Lake
- Siskiyou (6 cities), Dunsuir, Etna, Fort Jones, Mt Shasta, Weed, Yreka
- Sonoma (2 cities), Cloverdale, Santa Rosa
- Tuolumne (1 city), Sonora
- Ventura (9 cities), Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Santa Paula, Simi Valley, Thousand Oaks, Ventura
- Yolo (1 city), Winters

*Credits:* Orange County Fire Authority, Sacramento Bee, Plumas County News, California Department of Forestry and Fire Protection, Ventura County Star, California State Association of Counties.



# How Can We Keep People Like This Out of Your Park?

## Applicant Screening Trends and Issues

By: Terry R. Dowdall, Esq.

### ● Summary:

*Residency screening remains a challenge in these trying economic times. Standards may become more lax as management seeks to qualify increasingly risky applications. The hard and fast rules remain an instinctual guide in avoiding the potentially dangerous, the hapless, and the financially irresponsible. Let's review the outer limits: screening policies which are business-related and rational, so we accept good prospects while we decline expensive mistakes. In the end, a rational consistently-applied policy, in writing, remains the best tool for efficient management and avoidance of decisions which are not precedented, inconsistent, or ad hoc.*

It is not likely management will encounter the known criminal with delusional incapacity for the truth. Applicants are on their best behavior. And genuine character may not surface for many years. Here's a few that got away from the screener:

▲ "Middlesex Township police have charged a woman riding a motorized wheelchair with driving under the influence of alcohol following an incident early this morning. Police said Connie Lebo, 63, was riding around the Country Manor mobile home park while intoxicated. . . . Police said they first received a report of a woman crawling around a yard in the mobile home park at 4:23 a.m. . . . She told the police she had crashed the wheelchair. . . . Her blood alcohol level was .16, twice the legal limit for driving..."<sup>2</sup>

▲ "--two people are in critical condition and one is dead after a shooting at a Key Largo trailer park. . . ." Miami

*Herald, July 23, 2011 (Key Largo, Fla);*

▲ "PHOENIX-Police say a shooting Friday. . . at a Phoenix trailer park has turned into a homicide investigation after a man died"; ABC15.com (KNXV-TV);

▲ "...[sex offender]...Kenneth Daniel Martin, 46, now reports he is living at 4 Twin Oaks Trailer Park, . . . according to a sheriff's office"; Baxter Bulletin, July 23, 2011;

▲ "An Iredell County man swiped mail out of several boxes at a mobile home park, Iredell County Sheriff said . . . they traced the stolen mail to a former resident, 31-year-old Jerry Paul Sigmon"; WXII12.com, Sept. 23, 2010, IREDELL COUNTY, N.C.

What can be done to bar dangerous tenants like this? Park owners must comply with *Civil Code* §798.74. It allows the park owner to scrutinize facts about 2 issues: (1) ability to pay; and (2) ability to comply with rules and regulations.

" . . . Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the park unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park. . . management may require the purchaser to document the amount and source of his or her gross monthly income or means of financial support."

Based on historical information in the application, the law requires a *fact-based* but nonetheless *speculative* prediction. As we will see, so long as rational and consistent, your decisions should be sustained as proper.

Proof of "Gross income" yes, "net worth statements" and "tax returns," *no*. Past acts of prior tenancy, *yes*.

Prior Criminal Conduct? A definite maybe. If the applicant was terminated based on *Civil Code* §798.56 (c)(1), management may decide to decline. This logic assumes that prior conduct during tenancy which justifies termination, also qualifies to show that the applicant has demonstrated the inability to comply with the rules and regulations of the park. See:

▲ Penal Code §243[subd(d)] ("When a *battery* is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for two, three, or four years").

▲ Penal Code §245[¶(2), subd (a)] ("Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment").

▲ Penal Code §245 [subd(b)] ("Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years").

<sup>2</sup> Monica von Dobeneck, Patriot-News, last visited 07/20/11, [http://www.pennlive.com/midstate/index.ssf/2011/07/woman\\_in\\_wheelchair\\_charged\\_wi.html](http://www.pennlive.com/midstate/index.ssf/2011/07/woman_in_wheelchair_charged_wi.html)

▲ Penal Code §288 [subd(a)] (“Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony...”).

▲ Penal Code §451 (“A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property.”).

*Are there any other reasons to deny tenancy? Yes.*

Liars: Under general law, the applicant is required to provide truthful information. If there are misrepresentations which are *material* to the application, *i.e.*, facts which a reasonable landlord may want to know, the application is based on false material “inducements.” Making a false statement to induce a contract is a fraud and deceit. Fraud justifies rescission of a contract; hence its discovery justifies rejection of an offer of tenancy. *You do not have to do business with someone trying to defraud you.* On the other hand, if a landlord knew or should have known of the fraud and *enters the contract anyway*, a waiver of the fraud may result, estopping a later claim or defense. *Lesson*: if you discover erroneous information, obtain an explanation.

*For example*, providing a false social security number to enable processing of a financial report constitutes a fraudulent effort to deceive the management into an acceptance for tenancy. Obviously, management is entitled to reject an applicant for such a tactic. In the same way, the failure to provide any social security number disables management from obtaining a financial report. Such an application is incomplete.

Criminal Background Reports: Obtaining a criminal report for an applicant is problematic.

Registered Sex Offenders. Sex offenders can be identified on line. <http://meganslaw.ca.gov/>. Every rental agreement is required to contain the website address so your residents can search. However management is strictly forbidden from relying on the registered sex offender status to deny an application (or employment). Still, some owners may wish to know, despite inability to make use of the report. Some of the information may be misleading. For example, an applicant, convicted as an 18 year old based on statutory rape of his 17 year old girlfriend, both then marrying and raising a family twenty years later, may pose no risk. Though such cases are not the reason we are discussing this issue.

Other Criminals. Problems with the investigation: reports are limited in scope. If you assume the applicant has lived in California for a defined relevant period of time, say the last ten years, you have an assurance of a more complete, hence accurate, report. A report for California may not disclose a cocaine-trafficking conviction in Michigan twenty years ago

(*true story* as to a former resident manager).<sup>3</sup> So, reports may be incomplete.

Within a particular area, there are federal and state, limited and general jurisdiction. And civil and criminal. There may be claims for civil restitution where there was insufficient evidence for a criminal conviction (*e.g.*, O.J. Simpson, Robert Blake, Michael Jackson, and outside of Los Angeles County, Casey Anthony), or a plea bargain. And available information is only that publicly available.

Let’s assume accuracy is not the issue. The applicant openly announces he has previously served time. Prison means a convicted felon. Misdemeanants serve in County facilities. What was the crime? How long ago? A non-violent crime, twenty years ago, followed by a clean record since, may pose no risk to management; moreover, may not raise any issues concerning ability to comply with rules and regulations. On the other hand, a recent aggravated assault may be different.

The information garnered is only useful if it can be used as a reasonable predictor of conduct addressed in §798.74:

*Does it bear on the ability to pay rent?  
Is it a reasonable indication that the applicant cannot comply with the rules and regulations?*

If the conduct occurred recently, bears on ability to pay or conduct, and occurred in a residential context, the information would be relevant to the determination of qualification. On the other hand, if the conduct occurred in a past remote time, had nothing to do with issues legitimately bearing on the quality of the tenant, it is possible that declining the applicant may be improper. “Ability to pay the rent” may not mean reliance on past defaults, if applicant has good employment and *has income sufficient to pay the rents now*. Indeed, some lenders have said they approve past debtors in bankruptcy if they have a reliable and consistent earning performance--because all the debt was extinguished so there is plenty of income, and the bar against further re-filings indicates likelihood of performance.

When you suspect a *damning* criminal record, but the crimes *do not bear on issues in a residency context* (*e.g.*, a manslaughter conviction from a bar fight fifteen years ago, or domestic abuse conviction from a now single applicant living alone), declining may or may not be defensible. It is a “question of fact:”

▲If you decline and are challenged, a “question of fact” about the propriety of the owner’s actions means an expensive legal dispute. Management must prove that declining was proper. Loser pays legal expenses. If management loses, damages may also be recovered.

▲If you approve despite a damning criminal record and harm

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<sup>3</sup> Employing a felon may interfere with the doing business of a resident or property manager, because these employees are routinely called into court to testify in unlawful detainer and other legal actions. A felon’s testimony is subject to impeachment: a judge or jury may be entitled to discount or reject the testimony altogether. In other words, a park owner’s case may be fatally vulnerable when relying on testimony of a convicted felon.

later occurs, a claim may be made management should have declined the applicant and was negligent in accepting him. You are subject to a claim for punitive damages because, it will be claimed, you knowingly exposed your residents to this new evil applicant and should have refused tenancy. Note, you would not have this knowledge but for obtaining a criminal background check. Hence, obtaining a criminal background check may paint the owner into a Hobson's choice. The issue is a difficult one and suggests management is better to decline a criminal background check.

If you accept the applicant and he causes injury from violent behavior, the owner is usually not liable—one is not liable for the criminal conduct of others: it is deemed not legally foreseeable (absent circumstances which may put a landowner on notice of the specific risk). Obtaining a criminal background check reveals new facts which you may *or may not* properly reject the applicant. On the other hand, if you deny the applicant based on the report and both the seller and listing broker have tried, in vain until now, to sell the mobilehome at a high price for the past two years, they may be extremely frustrated, and sue to show you wrongly declined tenancy. After all, it is the public authorities who decide to release the applicant to the general public: they have all the facts, they have expertise. A landlord may assume, absent actual knowledge, that the released convict is deemed to be reasonably safe for public contact.

#### Welcome the Dangerous Convicted Felon Guest

*Helena Handbasket* is just released from prison (for mayhem and attempted murder of her landlord).

*Can she move in with your tenant and her sister?* The recently released, violent, dangerous and hardened felon is *absolutely entitled* to share and occupy the home of an *existing* homeowner (assuming no occupancy standards violated and any age regulation is satisfied). There is no basis in the law allowed for management to exclude or reject a guest, even a menace to society or sex offender. Of course, the occurrence of new facts and evidence may call for termination of the tenant harboring the offender, after the fact. This happens when, for example, a sex offender takes possession with his tenant-brother after release from prison. A guest is permitted to reside with the tenant. If a new assault were to occur, termination of tenancy would be justifiable (for substantial annoyance). If there is new conduct which provides grounds for termination of tenancy, then the management is required to act with suitable diligence to quell the risks to others. Unfortunately, a termination notice requiring tolerance of the harm for another *sixty days* is required before being allowed to deal with these exigent risks to others. But the rule is clear: management cannot prohibit occupancy by the *guest* based on the guest's *past* conduct.

... management cannot prohibit occupancy by the *guest* based on the guest's *past* conduct.

#### Applicant Must Provide A Full Application

The applicant is required to provide a fully-completed application. In such case, the submitted application should be promptly returned to the prospective homeowner so a complete

application can be submitted. Failure to fully provide information required on the application should be promptly brought to the attention of the applicant so the omissions can be rectified. If the applicant cannot document income, the application is not complete. Be consistent. If you require full information from some applicants but not others, you may be subject to a claim of housing or arbitrary discrimination--for even a more favorable treatment of some. If the park owner accepts the partially completed application and does not advise of the omissions, such conduct may admit that the omissions were not material and that action on the application is required within the 15 business days provided by *Civil Code* §798.74 to act on the application. If you fail to approve or deny an application within 15 business days of submission of a completed application, it will be argued you waived your right to decline.

The law does not require the management to make a tenancy decision devoid of all the information requested, and without proof of reasonable expectation of sufficient source and amount of income to make timely payment. Consistently-applied criteria including review of financial reports, credit ratings and amount and source of income do not violate the law.

#### What Does "Financial Ability" Mean?

There is little authority to determine the meaning of "financial ability." It appears that financial ability is to be determined from "gross monthly income" or "means of financial support." And not necessarily a past which no longer pertains to the relevant evidence in play at the time of application. And further, there may be inability to pay for reasons not associated with sufficient income. A millionaire may not pay debts on time because of an emotional resistance or psychological impediment; or a wealthy person cash strapped may not have the liquid funds to make timely payments.

One Court holds that a landlord makes a rational decision when denying tenancy because the tenant housing cost was more than 33% of income. In *Harris v. Capital Growth*, female heads of low income families [whose income consists of public assistance benefits], filed suit against owners

of apartment buildings, challenging their minimum income policy as economic discrimination and sex discrimination. Defendants had an express written policy that prospective tenants must have a monthly income equal to or greater than three times the rent charged. The women alleged that they could afford to pay the rent but did not have incomes equal to three times the rent; and they contended that the policy was grounded on unsubstantiated assumptions and had a disparate impact on women.

The court upheld the "income equals three times rent" test. The court stated that business establishments have an obvious and important interest in obtaining full and timely payment for the goods and services they provide.

*"In pursuit of the objective of securing payment, a landlord has a legitimate and direct economic interest in the income level of prospective tenants, as opposed to their sex, race, religion, or other*

*personal beliefs or characteristics. For nearly all tenants, current income is the source of the monthly rental payment. When a tenant ceases paying rent during the term of the tenancy, the landlord must resort to legal process to obtain possession of the premises and to collect any back rent that may be due."*

Another case upheld a landlord's decision which required the tenant to be able to pay 90% of the rent with one week's salary. The courts (and Harvard Law Review commentators) agreed that the courts are hardly suited to acting as a referee as to percentage ratios used to judge rent applications. The Bank of America renders decisions based on discretionary factors, and may allow a ratio as high as 40% or perhaps 50% where the total fixed expenses are compared to gross income.

#### Hands Tied if a Bank Approves the Loan?

If the institutional lender decides to approve a loan (not "Uncle Charly"), the park owner is probably hamstrung into approving the tenant as well, because the bank's decision is a credible judgment the park owner will find difficult to question. If a private resident is financing the home, they too should be careful. In these difficult times, they may be very anxious to sell without fully considering or investigating the buyer.

#### Owner Financing

The park owner who regularly lends to prospective applicants should be ready to answer to claims that a credit denial was based on grounds other than a proper credit determination. Many (most, perhaps) discrimination cases arise at the application or pre-application stage, due to conduct of the on-site management. Many reported cases from the archives of HUD administrative cases reveal claims based on subliminal attitudes unconsciously communicated, hostile atmosphere, delays in response, selective treatment, forecasts of rejection, even facial expressions. All these may trigger discrimination complaints based on the perceived preferences or discriminatory treatment of the applicant.

The policy of screening out prospective tenants who are likely to default assumes that, at some ratio of rent to income, the burden of paying rent along with other living expenses will impose a hardship and result in default. It is not arbitrary in the way that race and sex discrimination are arbitrary. The courts state that landlords have a rational economic interest to minimize defaults and maintain the solvency of the business establishment. The question is whether the speculation is rational.

*So, how can the decision to approve (or disapprove) an application on financial grounds be made?*

First, it is important to have a *standardized policy* (in writing) and to comply with it. If exceptions are made, the landlord may be subject to the claims that preferences have been shown to some, but not other, applicants. If a case for an exception not previously considered is ever presented to the management, the policy can be updated so that exception is recognized as part of the policy. The *written policy* of the landlord in the *Harris* case demonstrates this. A strict reading of *Civil Code* §798.74 may, arguably, eliminate the relevance of the past payment history. "Ability to pay rent" may mean only "present" ability—or, it

may mean "based on past performance, record and income, a likelihood the applicant has the ability to pay rent." The latter definition is most likely the correct one, as it comports with the language allowing for credit reports, suggesting that credit history, not just isolated income presently, is the proper level of scrutiny a park owner may apply.

#### Past bankruptcy?

Since the purpose of bankruptcy is to give the debtor a fresh start, a strict reading of the statute may, again, render that history of marginal relevance. However, there is no authority on which to conclude that such a strict reading is proper. Again, the statute may be no more than a reference to the right of the park owner to use *commercially reasonable criteria* for the determination whether to approve an application for tenancy. It is not likely, after all, that the legislature intended the park owners in California to expose themselves to any greater risk of default than any other landlord or business extending credit or making decisions about new tenants. If we can assume the test for mobilehome parks parallels the standards in other industries, park owners may have a better defense when accused of improper discrimination or arbitrary rejection of an application based on judgments regarding poor credit.

*What are commercially reasonable standards? The test is usually based on three factors.*

- 1) *the applicant's desire to pay,*
- 2) *the applicant's ability to pay, and*
- 3) *the applicant's financial strength.*

TRW states that the decision is based on character, capacity, and existing credit relationships. Simply, "creditworthiness" refers to the risk of default and loss from a potential approval of tenancy. An applicant is considered "creditworthy" if the risk that he or she will default on the loan is acceptably small and the value of the transaction to the park owner sufficiently outweighs its costs.

#### Subjective, or FICO

In current lending practice, lenders use one of two methods to evaluate the creditworthiness of a loan applicant: the "judgmental method" or the "statistical method." In some instances, they combine the two. Judgmental scoring is more "subjective," a personal evaluation of income, employment, and credit history. Pertinent financial information usually includes:

1. *applicant's current and future income,*
2. *length and type of employment,*
3. *credit history,*
4. *credit references, and*
5. *accumulated wealth.*

Traditionally, these factors have been referred to as the "three C's" of credit: *capacity, character, and collateral*. Judgmental scoring relies on the judgment of the loan officer to determine if the applicant seems willing or will be able to pay back the loan. This is the process which park owners generally use, when compared to the statistical approach.

Statistical scoring uses real world statistics to predict the probability of repayment by the applicant. The system assigns a series of point scores to a list of financial and nonfinancial

characteristics that indicate the financial ability of the applicant to repay the loan. The FICO score is the most common today. It is easy to administer. Make sure your application contains a release and permission for obtaining this personal information. Once in the possession of the management, the FTC Safeguards rules apply. For example, it may assign points for:

1. *possession of a home phone,*
2. *a checking account,*
3. *a savings account,*
4. *a credit card,*
5. *existence of other debts,*
6. *prior homeownership or rental status,*
7. *employment, and*
8. *length of residence or employment.*

While the management may establish its own scoring system, the expense and risk of variation from FICO scoring hardly makes any benefits worth the expense and risk.

#### Fair Housing Act Implications

Management may not request information concerning the following, which is a list of federal and California state factors:

1. *Sex,*
2. *Race,*
3. *Color,*
4. *Religion,*
5. *National origin,*
6. *Birth control practices,*
7. *Familial status, including child-bearing intentions or capability,*
8. *Disability,*
9. *Residency Status (however, Patriot Act clauses are desirable)*
10. *Marital status (whether single, married, separated, divorced, or widowed),*
11. *Military status,*
12. *Ability to speak English,*
13. *Cultural reasons,*
14. *Physical appearance, age (i.e., you cannot rate anyone based on age for credit purposes, except that you can give senior citizens a more positive rating),*
15. *Any arbitrary reason.*

#### Use of Co-Signor at Your Election, Uniform Application

Management is not required to allow a co-signor. Once allowance for a co-signor is made, the management may not preclude it for subsequent applicants.

This situation does not arise in mobilehome parks often, as the application from two individuals, one to be a registered owner “out of possession,” is a rough equivalent. Management cannot disallow a joint tenant application. Of course, a joint application requires a credit screening for all the applicants.

Once approved, management is not required to accept any further homeowners to the lease or rental agreement. Your contract is formed when the applicant is approved for tenancy and signs a lease agreement. No new homeowners can be added for “failure of consideration”—the remedy of the management is against the original obligors, not “tag alongs” who were not

approved for tenancy. If new homeowners are proffered, a new application and processing of a new tenancy is required. The lease and rules should clearly provide this requirement. The unscrupulous practice of adding homeowners is usually attempted in rent control areas with vacancy decontrols, where changing tenancy will result in a rent increase (so tenant tries just to add new tenants to the rental agreement, with the plan to vacate thereafter).

No greater security deposit or advance rent, or increased rental rate may be required of an unqualified applicant unless you are prepared to make the offer for every applicant, and quantify the amount of added rent to be demanded for the enhanced risk.

“Net worth” is helpful but cannot be required, unless the applicant submits it to show interest or liquidity available to pay rent. However, if principle of the asset is to be used to pay rent, what happens when the investment is fully dissipated? The future ability to pay rent should also be taken into account.

Taking personal notes, even liens on the mobilehomes, are not good bets to make up for a shabby income. If you enter the transaction expecting a reasonable possibility of default, the park owner is probably not required to assent to the arrangement. A possible exception to keep the mobilehome in the park is to have the lender subordinate to your interest. An institutional lender will not do this; a private tenant selling his mobilehome may; this may be a good approach when tied together with the first right of refusal to the mobilehome (so you may purchase it before it is removed later).

#### Which is Less Expensive: Decline and Defend? Take and Terminate?

In a marginal case, it may be less expensive to accept a borderline prospective tenant and evict in a crystal clear case when the rent is unpaid. It may be more expensive to deny the borderline applicant: and then, be sued for improper rejection, violation of the Civil Code, emotional distress, unfair business practices, and punitive damages by 3 different parties such as the seller, the broker and the rejected buyer. Defense costs, lost rents, risk, insurance coverage issues, time and aggravation will certainly generate a greater expense than a simple rent eviction. This is not to discount other non-economic facts to be considered, such as the degradation of the community, loss of good-will, deterioration of the appearance or “quality of life” because the prospective applicant appears to be a prospective rule violator according to past landlords. And the immediate- past landlord may be less than a model of veracity—the manager may wish to be rid of the applicant and give a falsely-glowing recommendation; it is best to travel and observe the applicants’ place of residence.

Remember, too, that all discrimination laws prohibit not only clear, intentional discrimination against protected categories of people, but also practices which have the effect of discrimination.

#### No More Residency-Status Screening in California

While immigration policy continues to be a topic of heated national debate, there's increasing confusion in California about what park owners should and should not do to comply with the law. *It is unlawful to inquire regarding immigration or citizenship status.* Management may not:

*"Make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant or prospective occupant,"*

or require

*"any statement, representation, or certification concerning his or her immigration or citizenship status."*

Despite a previous HUD position that the Fair Housing Act does not prohibit discrimination based solely on a person's citizenship status and existing federal immigration law that it is illegal to conceal, harbor, or shield an illegal alien from detection, the California Legislature now prohibits screening for lawful residency. *Civil Code* §1940.3:

- prohibits local government from requiring owners of rental property to gather or report information about a tenant or a prospective tenant's immigration or citizenship status.

- prohibits a landlord from making any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.

- prohibits a landlord from requiring that any tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status.

*Civil Code* §1940.3 does not prohibit the landlord from:

- Complying with any legal obligation under federal law.

- Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

*Management would be violating the law to inquire concerning residency status in this country.* It is, for example, illegal to ask a prospective homeowner (verbally or in writing) if he, she or any member of the prospective household is a U.S. citizen, in this country illegally, has a "green card" or other documentation, intends on becoming a citizen or attaining legal residency status.

Of course, indirect questions designed to elicit information regarding citizenship or residency status would be similarly prohibited. These questions and all like them would violate the law. No questions or inquiries designed to reveal residency status may be directed to the prospective homeowner. However, verification of the identity of your prospective homeowner, by reliable identification, is permitted; otherwise management could not obtain a financial report and credit rating.

#### A New Quasi-Protected Class

A good "fair housing" adage to remember, is that "if you are not entitled to know a fact, you are not entitled to ask about it." In other words, residency status is not a subject for inquiry or discussion of any kind. Put another way, we know that management is not entitled to ask about any protected class status. "Residency status" creates a new quasi-protected class status. Simply, residency status is also a protected class for purposes of the tenancy application.

#### Management's Rights and Duties?

The law also states that "Nothing in this section shall prohibit a landlord from either: (1) complying with any legal obligations under federal law (2) requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant."

Thus, management is entitled to screen prospective homeowners for ability to pay the rents and other charges of the park, as always. The new law does not require approval of tenants without reasonable assurance of performance under a rental agreement. The law does not impose a requirement or assumption of greater credit risk, costs for defaulting tenants, or qualifications below management's standards.

#### Park Owners as "de facto immigration cop"?

*Do I have a duty to take action against homeowners whom I discover are undocumented aliens?* Legislative Counsel once wrote that a landlord may refuse to rent to such a person without running afoul of a ban on immigration-status discrimination if so renting would violate federal law for "harboring" an alien known to be in the country illegally. According to the legislative intent, *prohibiting residency status inquiries is to be read in harmony with any federal obligation to refuse to rent when management is put on sufficient notice of facts indicating that a tenant or prospective tenant is undocumented.* "Sufficient notice" means to be aware of, but consciously and carelessly ignore, facts and circumstances clearly indicating that the alien entered or remained in the U.S. in violation of law.

#### What happens if a property owner determines that an existing homeowner is an illegal immigrant?

Preventive response to avoid potential liability is a hallmark of good management. And is there any higher business priority than avoidance of any lawsuit entitled "*The United States of America vs. [Park Owner]*"? It is a violation of federal law to harbor an illegal immigrant. So, let's first understand the meaning and operation of the federal prohibition against 'harboring.'

*What does "harbor" mean?* Do you know that an illegal immigrant is your homeowner? Is that enough to "harbor" an illegal alien? Some decisions find liability for allowing a residency, some address more egregious conduct. Certainly, management must have had an awareness and knowledge of undocumented residency before being required to take action. At present, the personal counsel with your attorney is the only source of authority on which to rely in this matter. This is because the law varies across the country, and there have been very few prosecutions reported for violations of the federal "harboring" law.

*"Harboring" has included the church official who invited an illegal alien to stay in an apartment behind his church (harboring did not require an intent to avoid detection).* "Harboring" is proved if the accused "intended to violate the law," with "the purpose of avoiding [the aliens'] detection by immigration authorities." "Harboring" has been established by proof of "conduct tending substantially to facilitate an alien's 'remaining in the U.S. illegally,' provided, of course, the person charged has knowledge of the alien's unlawful status." One Court stated that the word "harbor" means to "clandestinely shelter, succor and

protect improperly admitted aliens.” When an act is done “clandestinely” it is done secretly or in hiding.

So, we have a range of precedents, from the benevolent act of sheltering an illegal alien at a church, to promoting illegal entry and sustenance. On discovery that the homeowner is an undocumented alien (that is, the registered owner under a rental agreement for mobilehome tenancy), it is imperative that management consult with experienced counsel with likely two alternatives in mind: ‘blow the whistle’ and terminate the tenancy. There is no specific ground for termination of tenancy based on compliance with federal law to avoid “harboring.” However, presumably, rules and regulations that prohibit unlawful activity, violation of statutes, laws and ordinances, *etc.*, will be a basis to assert violation of rules and regulations. Management’s choices can only be decided definitively by considering the facts, location, judicial attitudes, government agency propensity for enforcement and other relevant factors.

*Simply, have a plan and follow it.* Financial ability to pay rent is management’s concern: proof of gross income, a financial report, a credit rating; the ability to comply with the rules and regulations. Make sure your credit screening, interviews and decisions are made timely. Carefully review *Civil Code* § 798.74. Follow your plan consistently. Retain your records, applications, approvals and denials. And, make sure the plan does not include inquires into residency status. When confronted with clear evidence that a homeowner is an undocumented alien, management’s decisions should be based on consideration of all factors made in conjunction with the opinions of your counsel.

Park owners should keep in mind that immigration is a fluid issue and federal policy may yet emerge from the ongoing spirited debate. For the present, we should stay focused on California law that prohibits inquiries into a prospective applicants residency status, and the federal mandate to avoid “harboring” illegal aliens.

#### Tenant Screening under the Patriot Act Recommended

Is management required to comply with Executive Order 13224? (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism).

*Patriot Act and Impact of the Executive Order:* There are no known cases in the federal or any state courts regarding landlords (generally and mobilehome park owners) in reference to the Executive Order. Still, the weight of the commentary in the legal field suggests that a check for possible listing as a “blocked person” is necessary. One continuing education organization counsels that the Order “. . . covers all types of transactions -- leases, purchases and sales, guaranties, financing transactions, brokerage relationships, joint venture and other partnership transactions, property management arrangements, investments, arrangements for other services, etc., etc. [I]n short, everything.” On the other hand, some have derisively quipped that the language is so broad it covers a hamburger lunch at McDonald’s.

Another author states that a “*transaction*” with a suspected

*terrorist could include, without limitation, leasing, brokerage, financing, purchasing, selling forming a limited liability company, limited partnership or other legal entity, investing or even entering into a property management arrangement with someone. The Order applies to owners, landlords, tenants, property managers, brokers, title agents, and last, but not least, real estate attorneys.”*

#### Transactions with Designated Foreign Nationals and Blocked Persons are Prohibited.

Pursuant to the Executive Order, all U.S. citizens and organizations are prohibited from any business transaction with any person or entity on the United States Treasury Office of Foreign Assets Control’s (“OFAC”), Specially Designated Nationals and Blocked Persons List (“SDN List”). The SDN list is located on the internet at:

[www.ustreas.gov/offices/enforcement/ofac/sdn/index.html](http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html)

The authorities counsel that if a ‘hit’ occurs or a name is suspicious, call the Office of Foreign Assets Control at (800) 540-6322 or (202) 622-2490. It appears that screening for the SDN list is highly recommended, and agencies who run checks on prospective applicants may be asked to do so if not already part of the screening process. Out of precautionary concerns, residency documents prepared by these offices routinely contain a Patriot Act agreement/addendum covenanting that the parties are subject to the bars on dealing imposed by the Patriot Act. Use of such clauses remains recommended for prospective purchaser applications and screening.

## Chula Vista Enacts Vacancy Decontrol

*By: Terry R. Dowdall, Esq.*

● **Snapshot:** *In Chula Vista, park owners can now set rent for their land at whatever price they see fit when a resident tries to sell their property.*

Four members of the City Council voted for vacancy decontrol. Deputy Mayor Rudy Ramirez abstained from voting to avoid any appearance of a conflict of interest because of the location of his own residence near one of the parks. The topic sparked intense debate at City Hall and more than three hours of public testimony.

Congratulations go to WMA’s Julie Paulie, the Regional representative who is also largely responsible for the move for vacancy decontrols in the City of Oceanside.

According to reports, Housing Manager Mandy Mills said updates to the city’s mobilehome park closure policy have been in the works since 2007:

*“We have often come to an impasse on the process and discussions because these are very volatile issues. The nature of park owners owning the land and the residents owning their personal property that they place on the*

*land - it's a very tenuous situation and there's a huge array of opinions, and definitely, their personal interests are contradictory."*

She probably does not mean "tenuous" but perhaps "tense." Such situations are common throughout California where a repressive local government passes rent control in return for votes. That symbiotic relation increasingly takes the right to fair rents, and bolsters resale prices on the backs of the management.

*Comment: Parks cannot indefinitely survive the suffocation of liberty to do profitable business. Rent controls mean eventual closure or bankruptcy, causing a loss of the housing altogether. When it comes to such realization however, the cities do not 'take' and pay for the park; the city decides a dislocation fee and forces the tenants out. In some areas, this may be the sub-agenda for redevelopment.*

For example, in Oceanside, it is imponderable that property owners would be treated in such a draconian and acerbic manner under their laws and interpretation of codes, unless it is because the City is inviting a closure of its parks to invite permanent real estate development; as such would enhance greatly, the city coffers which mobilehome tenants do not contribute to (taxes go to the County).

#### \$10,000 to Settle Oceanside Civil Right Violations:

*Catalina Park* is one such park which closed because of the oppression of a socialistic-like zeal leveled against the owner. Indeed, the City paid the owner \$10,000 in damages to settle a lawsuit for violating civil rights of the park owner before the park closed and emptied.

Some fair-thinking city councils like Chula Vista eventually realize the harsh insult to property rights and change it. One of its park owners had already filed for bankruptcy because of a rent control ordinance. The closure of Jade Bay occurred in the bankruptcy of 2007, which displaced senior citizens and low-income residents. The city had to provide relocation and rental assistance to some residents for several years because of the vexing situation.

*Park owner Virginia Jensen*, who believes rent control is a privately-funded government subsidy, pointed out that developers who build affordable housing receive city subsidies, tax breaks and sunset clauses that allow them to eventually raise rents.

*"We're business people," she said. "We have no intention of raising rents so high that we have vacant lots."*

Of course. The fallacy that owners will drive rents up to the point of dislocation is empty political rhetoric. In a free market, rents are at market. Rent adjustments exceeding market mean dislocation and loss of the tenant; loss of income and another space to fill. Hence, *e.g.*, on realization of decontrols in the wake of *Thomsen v. Escondido*, those City residents did not experience the widely frantically alarmist scenario of mass dislocation. Instead, the City has saved millions on litigation, lawyers and experts. Plainly, rent control is a political decision and has nothing to do with shortages of housing or rent levels.

That courts sustain rent control is no measure of its wisdom. It is not the office of our judiciary to stop myopic decision-making.

## Capo Terrace Mobilehome Park Files Bankruptcy

*By: Terry R. Dowdall, Esq.*

● ***Snapshot: Rent controls force another park owner into bankruptcy. Tenants once sought rent controls because of apprehension about rent increases. So they were bestowed with politically-concocted rent subsidies. Then, 2 FTM's. But they bullied the owners too much and now may be required to move out—presumably outside Orange County (because all other OC cities have no rent controls). Is this a learning experience?***

A limited partnership that owns Capistrano Terrace mobilehome park has filed for Chapter 11 bankruptcy. No other mobilehome park in Orange County is known to have filed for bankruptcy (other than Capo Terrace). *No other jurisdiction has mobilehome park rent control, either.*

According to management, Capo Terrace "has seen mounting liabilities caused by geological issues, deteriorating infrastructure, lawsuits by tenants over park issues, and failure of insurers to handle resolution of those claims." Since its purchase by Capistrano Terrace Ltd. in December 2003, it is reported that several improvements have been made, such as employing a professional management company, hiring full time maintenance staff, annual tree trimming, refurbishing the clubhouse and pool, buying new furniture, and scheduling regular sewer line cleaning.

*Comment: Combined together, management found it impossible to obtain the funds necessary for park improvements and fair rents. Despite this, management has done all it could to maintain the park, only to be thanked with two "failure to maintain" lawsuits. But the required revenues for operation could not be attained due to rent controls. The rent subsidies and grossly excessive home premiums cemented a voting bloc, which tethered the city council to its de facto refusal to eliminate rent controls, a decision which has driven the park into insolvency. In contrast, the insolvency of Jade Bay finally caused those City Fathers to amend their ordinance, too late for the loss of housing for those residents.*

The last bastion of protection of private property is the filing for bankruptcy protection; the result of a Chapter 11 Debtor-in-Possession case will be a work out with park improvements, or closure. Essentially, the tenants must have believed that the park owner was a bottomless source of money. Now, they must reconcile and understand, finally, that private enterprise that cannot function at profit will fail.

The residents, in sum, will likely be looking for another place to live. In the past, the position of the tenants is that without rent control, there would be no way for them to avoid unfair treatment of park owners. In order to enjoy some form of rent control, the residents will have to locate outside of Orange County. There is no other "safe" location for *these* residents in the County of Orange.

### Two Failure to Maintain Lawsuits

An Orange County jury awarded \$1.1 million to 17 of the mobile-home park residents in January in the second FTM brought by 125 plaintiffs. The residents had previously brought suit against former owner Richard Hall. That suit was settled for \$1.5 million. Park owners have been trying to close the park and residents have been trying to buy it, despite the allegations in the complaint, for years.

*(Comment: One wonders how bad the conditions really are if the residents want to buy it, and have the ability to pay for it. This does not sound like a group of low income individuals in dire need of price controls.)*

### Rent Control Prevents Funds to Make Improvements

Capistrano Terrace Ltd. could not replace sewer lines or upgrade electrical systems because it could not raise the rents to pay for those improvements, according to the park owners. According to the Orange County Register,

"Adding to the mounting burdens, the City of San Juan Capistrano's rent control ordinance makes it extremely difficult to even raise the rents to allow replacement of major park systems, such as new sewer lines or upgraded electrical systems," the release says. "The inability of the owners to raise rents (\$51 per month per the city's rent control ordinance) to cover these additional expenses as well as the rising costs of insurance, property taxes and improvements have created an untenable situation resulting in the need to file for bankruptcy protection."

Despite the desire of residents to be protected by the City as usual, and the City to have its relocation requirements for closure to apply, those regulations will be trumped by the will of the Bankruptcy Court Judge, if the judge requires the park to be closed.

It will be interesting to see what new fodder the election platform of the local council people will be without the ability to thrash the mobilehome park owner with over-regulation to promote confiscation of private property.

It is equally important to note that the City itself did not acquire the property through eminent domain for the preservation of affordable housing. *One might imagine something like the conclusion that "mobilehome parks are not prudent investments in this city."*

*Please feel free to contact us for further questions:*

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