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PARK WATCH™ LEGAL DEVELOPMENTS NEWSLETTER

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EVICTION PROCEDURES FOR DEFAULTING MOBILEHOME TENANTS

Let's Get it Right. How do I Evict the Defaulting Resident??

By: Terry R. Dowdall, Esq.

UPSHOT

Eviction of the defaulting mobilehome park tenant can be minimally painful, frustrating and expensive - if important procedures are routinely followed. Often, our tension level rises because we have "start-overs," caused by inadvertent failure to document files, mathematical error, improper or incomplete service of notices or waiver of rights (by taking rents from the tenant after a 60 day notice is served).

If we follow a consistent routine, use the notices and checklist we provide, the file will arrive ready to immediately process.

BACKGROUND REGARDING THE MRL

Evicting the mobilehome tenant requires compliance with both the Mobilehome Residency Law (Civil Code section 798, et seq.) ["MRL"] and applicable Code of Civil Procedure (contained in the general laws of the Unlawful Detainer Act [Code of Civil Procedure Section 1159, et seq.]) ["UDA"]. Some may fear the process as a mysterious "never-land" for the unwary. Indeed, paralegal instructors in the best of Southern California Universities have told their students to consciously avoid mobilehome evictions due to the complicated nature of the law.

|*Let's de-mystify the procedure*|

There are many ways to assist your attorney (and reduce your cost) by providing a "litigation ready" file. Finally, conversance with the process of eviction will provide the park owner a keen negotiation edge, at least neutralizing unfair lender tactics, while instilling a wariness necessary to cope with this harsh economic climate. The eviction procedure for non-payment is composed of three essential stages in time:

(1) <u>The notice period</u>: The tenant default initiates the eviction process. The grounds for eviction are varied as discussed below. However, the tenant selects just when the procedure will begin. Exceptions for condemnation and change of use of the mobilehome space are the only exceptions to this rule: all other termination of tenancy actions are caused by tenant default in performance of the rental agreement, rules and regulations or other legal requirements. The notice period includes the time period through to the expiration of the eviction notices, and up to the date the lawsuit can be filed.

(2) <u>Pendente Lite or (Pendency of the Lawsuit)</u>: This legal phrase is a fanciful reference to the period of time which exists from the initiation of the action through to the conclusion of the lawsuit. This is also when most of the attorneys fees will be expended. Perhaps that is why the legal profession uses this unintelligible code word for an otherwise simple event.

(3) <u>Post Trial period</u>: This period of time includes all post-trial motions, appeal, and eventual disposal of the mobilehome (through warehouseman lien, abandonment or levy) or work-out agreement with the leal owner.

Folks, you need to be concerned with phase one. This consists of the development of the file before it arrives at the attorney's office. If we get it right at this critical point, the rest of the procedure usually falls into place.

In this Issue:

Reasons for Eviction of the Mobilehome Tenant

The eviction of the mobilehome tenant (the MRL uses the phrase "homeowner" as a politically correct but synonymous term) is permitted under strictly limited circumstances. Once the tenancy has been established, the tenant acquires a virtual life tenancy, which lasts for as long as he/she pleases, subject only to the conformance with the requirements of the rental agreement (and incorporated rules and regulations). Of course, that tenancy extends beyond life: the heirs of the tenant are entitled to sell the mobilehome in the park after death of the tenant (on certain conditions), and may themselves qualify, if they can, for the continuation of the tenancy!

Once established, the mobilehome tenancy is permanent and everlasting, so long as the tenant complies with THE RULES, and does not give good grounds quoted below. Tenancy may only be terminated for the following reasons. The statute provides for termination on the following grounds, summarized as follows:

§798.56. Grounds for Termination of Tenancy
A tenancy shall be terminated by the management only for one or more of the following reasons:
(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehome...
(b) Conduct by the homeowner or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.
(c) Conviction of the homeowner or resident for prostitution or a felony controlled substance offense if the act resulting in the conviction was committed anywhere on the premises of the mobilehome park, . .
(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park which is part of the rental agreement or any amendment thereto. . .
(e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges. . .
(f) Condemnation of the park.
(g) Change of use of the park or any portion thereof, . . .

For your knowledge, awareness of all the bases for the eviction of the tenant are helpful. In our cases, we will focus almost entirely on the tenant who fails to pay rents and other charges.

Code Violations - If Tenant and Park Owner Receive the Activity Report (Or Other Code Violation Notice)

"(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehome. . . "

The tenant is obligated to comply with laws and regulations pertaining to the maintenance of the mobilehome on the space. The mobilehome tenant may be cited for substandard conditions such as lack of weatherproofing, or improper venting, fire hazards, improper wiring (of a storage shed for example), improper additions and a wide variety of other unlawful conditions. Title 25 of the California Code of Administrative Regulations contains a wealth of health and safety requirements for the maintenance of the mobilehome, accessory structures and equipment. That compilation of law is required reading for park management. In "pre-HUD" (pre 1976) mobilehomes, the need is especially keen.

However, the singular drawback to termination of tenancy here is the enlistment of cooperation from the local inspection official. The park owner does not initiate the notice. The park owner must seek an inspection from the local agency (whether it is HCD or the municipal agency which has subsumed the enforcement of the Mobilehome Parks Act (Health & Safety Secs. 18250, et seq.). This may take time: but <u>that</u> may be a gross understatement. HCD staff is overworked. Obtaining an inspection to cite high weeds as a fire hazard may take weeks, perhaps months. Due to this delay, the park owner may alternately assert a violation of the rules and regulations under the rules and regulations specifying that violations of "laws, ordinances and regulations..." are prohibited, as usually provided in the rules and regulations. You may want to remember the rule that states this requirement.

<u>Note:</u> that the government citation is the only notice required before serving the 60 day notice to terminate tenancy. Great caution must be exercised in drafting this from of 60 day notice, and the attorney should draft the notice.

How long does one wait before serving the 60 day notice? The statute allows the tenant a reasonable time for cure after receiving the citation *[". . . within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency"]*. The park owner must wait until after this time, therefore, to serve the termination notice. Typically, the tenant is given 30 days; then upon reinspection, perhaps 30 days more. However, HCD (or the local inspector will not enforce the code -- this becomes the duty of management, who is required to terminate tenancy (or abate the violation with court action). If the park owner balks, the operating permit may be threatened to be revoked, though this author is unaware of any action on that threat.

Advantages: a neutral third party witness. Clarity and dynamics: management is acting on the demand of government, not because management itself is the driving force. No preliminary notice from the park management is required: nonetheless, additional preliminary notice is suggested, because ample warning always puts blame where it belongs. Disadvantage: Government witnesses are reluctant and sometimes equivocal. Their testimony may be uncertain unless questioned before trial under oath in a deposition proceeding, which in most cases is cost prohibitive.

Substantial Annoyance Eviction

(b) Conduct by the homeowner or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

The tenant may not create a "substantial annoyance" of other tenants or residents. What is a "substantial annoyance"? The terms have not been defined by judicial decision involving a mobilehome park tenancy. The phrase has been used to describe loud radio noise, and likely includes disturbances of the peace of all kinds, especially where persisting over a course of time. The resident manager may also qualify as a tenant for purposes of the disturbance. However, it is suggested that a cadre of tenant complainants be collected for the purpose of fully illuminating the extent of the disturbance. Tenant complainants verging on relocating to escape the nuisance are helpful, as is the proverbial petition signed by several of the tenants presented to management as an ultimatum for action (caveat: this may set a precedent: the next petition may be organized to fire the manager).

The decision to terminate for reasons of substantial annoyance also do not require advance warning. **For example, it is unwise to serve preliminary 7 day notices for a substantial annoyance of a severe nature**. Such a notice is an admission that the disturbance could be cured or remedied.

On the other hand, an abundance of preliminary warning notices (not 7 day notices) may be helpful for the persistent nuisance type of substantial annoyance eviction. If many 7 day notices are served, the failure to act on the earlier of the notices may be alleged as waiver, or because management determined that the tenant complied with the 7 day notice, which builds equity in the tenant's position. Obviously, multiple 7 day notices hurt more than help in these circumstances.

The 60 day notice must be carefully framed. Including less than enough may be fatal; including superfluous matters or events which cannot be proved may also be fatal. This is why it is the attorney's job to carefully prepare that notice.

▌ Conviction of the Homeowner or Resident for Prostitution or a Felony Controlled Substance Offense If the Act Resulting in the Conviction Was Committed Anywhere on the Premises of the Mobilehome Park,

This welcome addition to the MRL is a weapon to assert where the facts may be difficult to ascertain because of reluctant witnesses, or where the park owner is willing to wait out the criminal trial or plea bargain process to determine if there is a conviction. This may take time. The event also probably caused a substantial annoyance which may be pursued immediately.

The additional drawback is that if the perpetrator "leaves" the park (For how long? By what proof? By whose determination?) the eviction may fail. ["However the tenancy may not be terminated for the reason specified in this subdivision if the person convicted of the offense has permanently vacated, and does not subsequently reoccupy, the mobilehome"].

How much jail time creates a defense? These factors make pursuit of this process more uncertain.

▌ Failure of the Homeowner or Resident to Comply with a Reasonable Rule or Regulation of the Park Which Is Part of the Rental Agreement or Any Amendment Thereto. . .

The rules and regulations of the park must be in writing. **IF THE RULE IS NOT IN WRITING IT CANNOT BE ENFORCED.**

Under the MRL, the rules and regulations are part of the rental agreement. §798.15. They must be reasonable. What is "reasonable" is not up to you or me: it is up to the judge or jury who hears the case —they define what is "reasonable." So my friends, walk a mile in THEIR shoes before deciding that you can evict a tenant for a small infraction of the rules. The judge or jury may re-define the rule itself as unreasonable under the circumstances just to avoid a harsh result.

Rules and regulations are usually directed at conduct and conditions. The rule violation process is most effective when directed at conditions. Why? The rule violation process includes the need to serve a preliminary 7 day notice.

> No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation. Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

Some management companies prohibit the service of the 7 day notice without home office consent. This is because the 7 day notice, properly used, is the last step before serving the 60 day notice and proceeding with eviction.

The drawback to the rule violation process in respect to conduct is the ease by which the tenant may cure the violation of conduct.

Example: A tenant has several loud late night parties. A 7 day notice is served, advising that within 7 days, the parties must stop. The tenant throws 5 more parties, then desists for 2 days so that within 7 days, the parties have stopped. *In essence, the 7 day notice is a license to continue the obnoxious conduct for up to the end of the 7 day notice*. And if there is compliance at any time during the 7 day period, a tenant attorney will strenuously argue that the notice was cured within the day period, eliminating the right to terminate tenancy.

The rule violation must be substantial. If not, then it is likely the Courts in these economic times will favor the tenant position.

It is best **NOT** to serve seven day notices until it is clear that the *management cannot obtain the cooperation of the resident*.

The suggested procedure for rule enforcement (cleaning up, improper storage, landscaping, clutter, noise, loose dogs, just about any conditions or conduct, that violates the rules) is as follows:

1. Management observes a rule violation.

2. **Verbal contact**—management talks to the resident and seeks his cooperation.
– If tenant cooperates, management follows up with a confirming note about (1) **what** the resident has agreed to do, and (2) **by what date** the work will be done.

(Even better if the resident will **initial the note** to prove he agreed there were rule violations and prove he agreed to remedy the problem.)

- If tenant does not met the agreement to cure, further verbal follow-up until cure completed.

3. **Courtesy Letter:** If tenant does not cooperate or complete his promise, then a **courtesy letter**, stating that management has tried to work with resident to seek cure of rule violation, and requesting, formally, that the tenants cure the rule violations by a date certain.
- The letter should be **very polite**. Take the high road, there is plenty of time to become firm and demanding later.

4. **Start taking photographs.** Let the tenant know you are documenting the space conditions because the park attorney advised it.

5. **Document complaints:** If other tenants complain, **make careful notes** about what they have said, the date of the complaint. Better to have **complaining residents state their complaints** in writing.

6. **Threat of Legal Action:** Final park letter **threatening turn over to attorneys:** If the courtesy letter does not work, one last letter stating that regretfully, failure to work with management to comply with the rules means that legal services may be sought to demand compliance to avoid possible a court action.

7. **Attorney Demand Letter:** This letter to the tenant comes from the attorney, and includes the photographs taken at the park as an exhibit. The letter describes the rules violated, the efforts of the management, the failure to cooperate and comply, and the result if compliance is not forthcoming by immediate agreement.

8. **Seven Day Notices, Injunctive Relief.** If the tenant still does not comply, a decision is made to move ahead with seven day notices, or possibly injunctive relief to simply make the tenant comply (without eviction).

Three Strikes: Rules evictions are difficult in most cases. Therefore the best approach **is three seven day notices for the same rule violation within 12 months**. On the fourth occasion, a termination of tenancy notice can be served, and eviction proceedings to follow.

9. Seven day notices are the last of the efforts to seek compliance. Since no one goes to court on just one 7 day notice, the tenant would begin to see the notices are not serious and ignore them. It is a hollow threat. And like Peter crying wolf. This is why the seven day notices comes at the very end of the rule enforcement effort.

10. More photographs: With each seven day notice, it is important to document the violations complained of. This is because the tenant will lie and state that he has done work on the space. Without fotos, it is his word against the manager's word. Park owners do not risk litigation on just testimony alone. We need proof of the violations, and hopefully complaints from others.

New sets of fotos are taken on service of **each of the 7 day notices,** to show the court that there were no changes in the conditions during the three 7 day periods. The fotos should be **dated and kept separated by date** to avoid confusion.

11. Sixty Day Notice to Terminate Tenancy: The final termination notice should be prepared by an attorney. The attorney should also prepare the seven day notices, but it is not absolutely required where management has good experience in preparing such notices. **This is to make sure that the notices will stand up in court when attacked by the tenant lawyer as being defective and deficient. This happens in almost every case.**

NONPAYMENT OF RENT, UTILITY CHARGES, OR REASONABLE INCIDENTAL SERVICE CHARGES. . .

The eviction procedure for non payment of rent is as follows:

FACTS: The tenant fails to pay the rent and other charges on the first of the month in advance as typically called for by the rental agreement;

7TH DAY OF THE DEFAULTED MONTH: Management must wait until the 7th of the month to serve the 3 day notice to pay or quit. Include just the outstanding rent - no utility charges, late charges, NSF charges, etc. If there are utilities or other charges, the amounts due would be included on the 3 day notice to perform covenants or quit. The 60 day notice to terminate tenancy would also be served. The 3 day notices

may be combined with a sixty day notice as well. Forms for each are set forth in the appendix.

You can wait until after the three day period has run to make sure the tenant does not pay. That way, you will not need a current title check until after you are sure the tenant has not paid and that an eviction is going forward. You have ten (10) days to get all the other parties served.

10th DAY AFTER SERVICE OF THE 60 DAY NOTICE ON THE TENANT - WITHIN 10 DAYS AFTER SERVICE OF THE 60 DAY NOTICE ON THE TENANT, THE LENDERS, JUNIOR LIENHOLDERS IF ANY, AND ALL OTHER REGISTERED OWNERS WHO DO NOT LIVE IN THE PARK MUST ALSO BE SERVED BY CERTIFIED MAIL.

To make sure you serve everyone on title to the mobilehome, YOU MUST KNOW THE INFORMATION SET FORTH ON THE CERTIFICATE OF TITLE - YOU THEREFORE MUST HAVE A COPY OF THE REGISTRATION WHICH IS CURRENT OR BETTER YET,

OBTAIN HCD title report. This ensures that we know upon whom to serve the 60 day notice - all such entities or persons on the title must receive the accompanying 60 day notice by CERTIFIED MAIL.

As explained in more detail below, the tenant can be served by personally **handing the notice to him**; or **dropping it at his feet if you are face-to-face** if he refuses to take the notice; or, **if you knock on the door and he answers but will not open the door to take the notice, by dropping the notice on the porch and advising him that you are doing so. This is called "personal service**." **The tenant can be served by giving the notice to someone at the premises in lieu of the tenant if fairly mature (the person receiving the notice is not required to at least 18) and mailing the notice to the space. This is called "substitute service.**" **The tenant can be served by posting the door of the mobilehome and mailing the notice to the space. This is called "constructive service."**

Whatever the method, always prepare and file a proof of service showing the date and how each notice was served. Proofs of service would be prepared for each of the notices.

▮ *WHAT HAPPENS WHEN THE THREE DAY NOTICE IS SERVED?* In the case of the 3 day notice, once served:

* the tenant has 3 days to pay if you personally serve him. You start counting the days beginning on the day after the tenant is served, and count the third day as the last day. For example, if you serve the tenant on a Monday, you start the count on Tuesday and include Wednesday and Thursday.

* HOLIDAYS: If the last day were Saturday, Sunday or another holiday (Sunday, Christmas, etc.) you also include the first business day after the holiday. So, if the last day to pay fell on a Saturday, you skip to the next day. Because the next day is a Sunday, you skip to Monday. If Monday were Labor day, you skip to Tuesday: Tuesday would then be the last day to pay up.

* the tenant has 8 days to pay if you substitute serve him.

* the tenant has 8 days to pay if you constructively serve him.

The lender or junior lienholder or registered owner who does not occupy the mobilehome (and no one else), has 30 days to reinstate the tenancy beginning from the date of the service of the 60 day notice on them. This may only be done twice in a 12 month period.

If the tenant tries to pay after the 3 day notice expires, the payment can be refused.

▮ IF YOU ACCEPT MONEY AFTER THE NOTICES EXPIRE, NEW NOTICES ARE REQUIRED AFTER A FUTURE NONPAYMENT.

You cannot evict the tenant if you accept money after the expiration of a 3 day notice. During the three day period, you may reject a part payment. But if the part payment is a large amount, you may desire to take the money, and serve a brand new three day notice for the balance due. The form 3 day notices have space to indicate the amount of the part payment so there is no confusion about the amounts due when and if you must prove the accuracy of the notices in court. If a tenant brought in a $1000.00 part payment on a large balance, you may decide to take the payment. Check with your supervisor about how to handle this situation before it comes up.

▮ PART PAYMENT RULE: You do not have to take PART PAYMENTS during the three day period. IF YOU DO, YOU WILL NEED TO SERVE NEW NOTICES FOR THE BALANCE DUE: in that case, the notice should state that "a part payment of (specify the amount of the part payment) is acknowledged." See the forms for this language.

PART PAYMENTS BEFORE SERVICE OF THE THREE DAY NOTICES: If the tenant pays a part payment before you serve the 3 day notice, take the payment and then serve the 3 day notice for the balance due. YOU MAY NOT REJECT PAYMENT BEFORE THE NOTICES ARE SERVED. Exception: if the payment is given to you with the words “payment in full” or other words expressing the intent to clear all past due balances with a part payment, you may - must - reject the payment unless you will allow the part payment to bring the tenant current.

If the tenant pays by check during the three day period but the check bounces, the notices are still valid and the tenant can be evicted. It is as though no payment was ever received.

!! After serving any 60 day notice to terminate possession of the space, the tenancy is then terminated. **If you take money from the tenant after the 60 day notice, the tenant may later argue that you reinstated or renewed the tenancy. SO, DO NOT ACCEPT RENT OR OTHER PAYMENTS FROM THE TENANT AFTER THE 60 DAY NOTICE IS GIVE; DO NOT SERVE FURTHER RENT INCREASE NOTICES OR STATEMENTS; DO NOT BILL THE TENANT; DO NOT SERVE RULE AMENDMENTS OR OTHER NOTICES.** A tenant awaiting eviction may argue that such conduct is a reinstatement of tenancy, causing a waiver of the notice. If you inadvertently receive rent, return it promptly.

THREE STRIKES RENT EVICTION: §798.56 (e)(5) states:

(e)(5) If a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy ON THREE OR MORE OCCASIONS within the preceding 12-month period, NO WRITTEN THREE-DAY NOTICE SHALL BE REQUIRED in the case of a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges. In that event, the management shall give written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, as specified in paragraph (b) of Section 798.55, by certified or registered mail return receipt requested within 10 days after notice is sent to the homeowner.

A Special 60 day notice is required for the termination of tenancy for the three strikes eviction. See the forms appendix at the end of this handbook. It is also recommended that you ALWAYS serve a three day notice as well as the sixty (60) day notice, even if the "four strikes - you're out" notification would apply.

IMPERMISSIBLE GROUNDS FOR EVICTION:

Civ. Code §798.58 specifically prohibits termination of tenancy to make a space available for a buyer of the owner of the park or his or her agent.

Other impermissible grounds for eviction are not set forth explicitly in the MRL. What is prohibited? **An eviction in retaliation for a tenant's exercise of protected rights would be impermissible**. For example, you may not try to evict or retaliate in any way based on the personal characteristics of the tenant (such as race, national origin, color, religion, marital status, sex preference, disability, etc.); the making of complaints to HCD, HUD, DFEH; or the filing of lawsuits brought against the manager or management for violations of laws, codes or standards. For example, the prohibitions against evicting a tenant for complaining about the condition of the mobilehome park's common areas or habitability probably apply to mobilehome parks.

When subjective grounds are the basis for an eviction (e.g., conduct constituting "substantial annoyance" to other tenants), a high standard of proof is always required.

SERVING NOTICES

There are three ways to serve a tenant with notices when served as eviction or termination of tenancy notices. The enclosed notices should be served in accordance with one of the alternative set forth below.

- **PERSONAL SERVICE**. Personally handing the notice to the tenant, followed by preparing a "proof of service" form.

- **SUBSTITUTE SERVICE**. By this method, the notices are handed to a person of "suitable" age and discretion other than the tenant [even if less than 18 years of age], and mailed to the space, followed by preparing a "proof of service" form. Still, I recommend that an adult be given the notice. However, you may risk the service on a teenager who appears to be a responsible person. You should specifically tell the person served to give the notices to the tenant.

When you serve by substitute service, you must also mail the Notice to the tenant at the space. The notices are actually given to the tenant in two ways:

(1) by giving these to the substitute person and

(2) by mailing the notices to the tenant.

However, because the notices are mailed, the tenant must be given five extra days before the notice is effective. Be sure to mail the notices right after you give them to the substitute person.

- **CONSTRUCTIVE SERVICE**. The notices are served by posting the notice to the mobilehome in a conspicuous place and mailing to the space, followed by preparing a "proof of service" form.

This type of service, like "substitute service," also requires that you follow up and mail the notices to the tenant at the space. Again, there are two steps, two ways in which the tenant is given the notices:

(1) by posting it on the mobilehome AND
(2) by mailing it to the tenant at the space.

Just as with substitute service, since the notices are mailed, you must give the tenant five extra days. Please advise us of the date that you serve the notices so we may calendar further action as appropriate.

60 DAY NOTICES TO TERMINATE POSSESSION:

!! CRITICAL REMINDERS:

- With respect to any 60 day notice to terminate possession, **be sure to mail, by certified mail return receipt requested, to all legal owners; junior lienholders; and registered owners who are not residing at the space.**

- **MAIL THE NOTICES BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO ALL THESE PARTIES WHO APPEAR ON TITLE, WHETHER OR NOT THE RECORD IS CORRECT**.

- **ALSO MAIL (AGAIN CERTIFIED MAIL) TO ALL PERSONS WE SUSPECT MAY HAVE AN UNRECORDED OWNERSHIP INTEREST OR LIEN**. FOR EXAMPLE, IF A LENDER HAS ACQUIRED THE LOANS ON A MOBILEHOME, SEND THE NOTICE TO THE NEW LENDER WHOSE NAME IS NOT ON TITLE AND THE OLD LENDER (WHOSE NAME IS ON TITLE EVEN THOUGH THEY ARE OUT OF BUSINESS OR NO LONGER CARRY THE LOAN).

- The process of service described above applies to all notices which relate or deal with termination of tenancy - they all need to be served in the same fashion as other notices.

- You MUST complete a proof of service so that further action can be calendared.

Finally, DON'T BE A HERO!! Please do not serve the notices personally if you feel there is a possibility of violence or injury. In such cases a process server can be hired if needed to have the service of the documents completed.


Mentor

THE BOTTOM LINE

Eviction procedure is a statutory way to regain possession, and therefore requires strict compliance. We ARE dispossessing someone of their home. By careful attention to procedure, management will best prevent defects and inadvertent errors that require starting over with new notices.

Death Knell for Subdivision Proposals in Coastal Mobilehome Parks?

The California Supreme Court Hammers Palisades Bowl in the Effort to Provide Affordable Home Ownership Opportunity

By: Terry R. Dowdall, Esq.

Upshot:

What happens when a subdivision is sought for a park located in the coastal zone? The California Supreme Court now holds that coastal mobilehome park conversions (to subdivisions) require compliance with California Coastal Commission requirements and the Mello Act (replacement of displaced tenants with new housing in the coastal zone). In plain English, allowing the Coastal Commission to scrutinize your project is letting the fox into the hen house. As for the Mello Act, the poor are not displaced but fully protected *in situ*. The Court's frolic into hypothetical tomfoolery (by ignoring residential controls on use, zoning and CC&R occupancy restrictions) to frustrate affordable home ownership opportunity is palpably absurd. In Dissent, Justice Kennard would agree.

Facts:

In this case, the City of Los Angeles rejected the application of Pacific Palisades Bowl Mobile Estates for conversion of its mobilehome park. *The wrinkle in this case is that the park is located at the beach* -- which is in the *coastal zone*. The City denied the application to subdivide for among other things, the owner failed to include an application for clearance under the Mello Act and an application for a coastal development permit under the Coastal Act.

The trial court found that the City *abused its discretion* by requiring compliance with the Mello Act and requiring Palisades Bowl to apply to the City for a coastal development permit. On appeal, the lower appellate court held that despite the subdivision law, the Mello Act and Coastal Act *all* apply to a mobilehome park conversion within the coastal zone, and the local authority must ensure compliance with all those laws. *Until now, it was believed that the Mello Act did not apply to a coastal conversion.*

The *Mello Act*

Provides in part:

"The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, . . . shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed

to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone."

Comment: The *Mello Act* should not apply to the subdivision of the mobilehome park, because *no one is displaced*. The housing continues to be occupied by the incumbent residents without any change at all. The cost of the housing is not going to change at all, either. The court refers to the fact that eventually, the housing cost will increase. However, the housing cost is *already at market*, due to the exaction of premium value (*i.e.*, selling the leasehold at full market value appurtenant to the purchase of the mobilehome on the lot). If anything at all, a shift between the value-elements of a mobilehome purchase may occur as the adjustment between cost of the mobilehome balanced against space rent takes place. The total cost of housing is not likely to change at all as a result of the factors integral to subdividing.

The Coastal Act

"Development" is defined as, among other things, "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with *Government Code* §66410), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use." (*Pub. Resources Code* §30106.) In light of the "paramount concern" for protecting coastal resources by regulating development as expressed in the Coastal Act, the court concluded that state law does not preclude the City from imposing conditions and requirements mandated by the Coastal Act on a park subdivider.

Comment: Approval from the Coastal Commission is required when there is development in the coastal zone. *Is a change in the nature of ownership a "development"?* Does the renter, as homeowner, change any aspect of the manner in which the existing park or its environment is impacted? Of course not. Clearly, this contention is an exaltation of 'distinctions without differences' to inconceivable heights. As if the bars to home ownership in California were not high enough already. The cost of all the new bureaucratic interference, when in fact there is nothing changed but land titles, will fall on the heads of the people who seek home ownership. In the big picture, this is just another blow to the interests of providing affordable housing.

▌ *Supreme Court Requires More Red Tape:*

A mobilehome park conversion . . . is a 'subdivision' under the Subdivision Map Act and for that reason is also a 'development' subject to the Coastal Act's permit requirements.

"We also reject the notion that an owner seeking to convert a mobilehome park to resident ownership can avoid the reach of the Coastal Act by asserting that its particular conversion will have no impact on the density or intensity of land use. In the first place, that a conversion might not immediately alter use of land does not preclude the possibility it will lead to an increase in the density or intensity of use. Additionally, a conversion might lead to problematic design features as owners express their individuality by decorating or adding to their mobile homes. Nor is it impossible that owners would block public access to coastal areas or increase the number of residents in their units."

This is an absurd analysis. CC&R's restrict the use and occupation to a limitation virtually equivalent to the extent of control allowed by rules and regulations. The two sets of standards for occupancy, use and possession are, for all intents and purposes identical. In other words, the rationale is illusory and empirically flawed. And in respect to the *Mello Act*, the court also agreed with the lower appellate court:

"The Mello Act . . . prohibits local governments from authorizing "[t]he conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, . . . unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income." . . . The Mello Act expressly applies to most conversions of residential units within the coastal zone, and also expressly applies to the conversion of a mobilehome or mobilehome lot to a condominium, cooperative, or similar form of ownership. (Gov. Code, § 65590, subds. (b), (g)(1).)"

"We recognize that requiring compliance with the Mello Act and the Coastal Act may slow down the conversion process. But that result, even if not fully consistent with the Legislature's expressed desire, in the MPROP, to encourage or facilitate conversions, does not create so serious a repugnancy between statutory schemes as to justify a construction of Government Code section 66427.5 that effects an implied repeal of the Coastal Act and the Mello Act."

As the dissent points out, there is no displacement. The low and moderate income residents continue to enjoy the benefits of rent control. There is no displacement. The Court concludes:

"Accordingly, despite the Legislature's expressed interest, in the MPROP, of promoting mobilehome park conversions to resident ownership, section 66428.1 contemplates some form of local scrutiny for the purpose of determining whether or not waiver is warranted, and by specifying conditions that preclude waiver, it further implies that the agency charged with the obligation to review map applications has the authority to address those conditions when determining whether to approve, conditionally approve, or disapprove the map. That the Legislature did not intend to prevent all review even of tenant-initiated conversions to address local concerns argues against a construction of Government Code section 66427.5 that prevents review of owner-initiated conversions for compliance with state law."

Commentators will differ. But if the Coastal Commission and Mello Act were intended to apply, the legislature might have expressly said so. Where some scrutiny is provided, it is assumed that legislative programs not included were not intended to be included. The Mello Act and the Coastal commission were the furthest thing from their minds in seeking to make it easier for residents to convert their parks (the original

intent of the mobilehome park conversion-subdivision laws). Kennard dissented:

> *"I disagree. Because subdividing a mobilehome park to convert it to resident ownership does not involve a change in the density or intensity of the property's use, it is not a 'development' within the meaning of the Coastal Zone Act, and therefore it is not subject to regulation under that act. Nor does the Mello Act apply. The plain language of section 66427.5's subdivision (e) shows that the Legislature intended section 66427.5 to displace other state laws such as the Mello Act."*
>
> *"Under the plain meaning of this definition, a mobilehome park conversion to resident ownership is not a 'development' because it does not change the density or intensity of use of the land, but merely changes the form of its ownership. After the conversion, the same number of mobilehomes will remain in the same locations, each occupied by a single household."*


Mentor

● ***Conclusion***

For coastal developments, it would appear that subdivisions are soon to become a relic of the past, preventing landless tenants from becoming fee owners of the land they occupy, and hence depriving thousands of the opportunity to be home owners in California.

Home ownership was once the center-focus of the Golden State Mobilehome Owner's League–to morph mere renters into a collective ownership of the park.

In some cases, a mutual effort by owners and residents produces positive results: the park converts, the homeowners can purchase their spaces and finance at conventional rates, and never again worry about park closures, rent increases, or the array of other assorted anxieties claimed to be faced by residents who rent. Incumbent residents are protected under state controls on rent; and low income residents remain insulated from unregulated rents[1].

But, *ah*, the familiar kerfuffle of class warfare between the land owner and the "land-less" emerges when the residents diverge from the owner's view of things. The fracture occurs where residents cannot either extract or coerce a satisfactory and acceptable lot price. Paradoxically, while the landowner offers the hope of home ownership, the landless struggle to remain landless, while being mollycoddled by a city council.

Where are subdivision applications filed? In areas subject to confiscatory rent controls. While municipalities drone on about the fairness of rent controls, that disingenuous platitude has worn through. In the real world, rent controls are killing the industry, driving down housing opportunity, stultifying development of new parks, and strangling the manufactured housing industry.

Why are subdivision applications filed? Park owners subject to decades of rent controls are sick of the confiscation of their properties. They want out. In the real world, parks are disappearing. And rent control is the fuel driving owners out. And this is why subdivision applications flourish. Efforts to subdivide represent an effort to achieve a fair, real world, return. The kind of return on property *not* subject to rent controls. In cities with draconian rent laws, it is little wonder that the park owners, *en masse*, have sought to subdivide.

Screening: Criminal Background Checks, Fair Housing and Discrimination

By: Terry R. Dowdall, Esq.

UPSHOT:

Many owners use and rely on criminal background checks in scrutinizing prospective purchasers. The effort to qualify good homeowners can only go so far, however. While the MRL defines the limits of financial inquisition, there is much room left in the discretion of the owner to decide how past behavioral histories affect the qualification process. That process should not classify applicants based on any factor which would be deemed discriminatory, of course. The more sensitive issues of which to be aware, is whether a *classification* also bears indirectly on protected class characteristics. Criminal history is one such classification. *Why?* Because it appears from demographic analyses, rather clearly, that there are more minority criminals than Caucasian criminals. Hence, it may be that when a landlord denies an applicant based on a criminal background history, a claim of racial discrimination may be made.

DISCUSSION:

According to the U.S. Census Bureau, there has been a significant jump in the number of individuals and families doubling up in housing. The definition of "doubled-up" households are those that include at least one person over age 18 who is not in school, not the householder, and not a spouse or partner of the householder.

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[1] In the case of low-income residents who chose not to purchase, "the monthly rent . . . may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period." *Government Code* §66427.5, subd. (f)(1) and (2).)

The Census Bureau says 69.2 million, or 30%, of adults were doubled-up in 2010, compared to 61.7 million adults, or 27.7% in 2007. Total American households who have doubled up due to unemployment or underemployment stands at 18.3%. Much of the increase comes from people aged 25 – 34, living with their parents. That number increased from 4.7 million before the recession to 5.9 million (14.2% of the age group) in 2010.

The Census Bureau report on income, poverty and health insurance shows that household incomes dropped sharply last year. Since 2007, they have fallen 6.4%. Not surprisingly, the number of people living in poverty rose sharply, up for the fourth year in a row to 46.2 million people, or 15.1%. According to the Wall Street Journal, incomes have now dropped to 1996 levels.

Screening policies must be rational, so management accepts good prospects and declines expensive mistakes. A consistent, documented approach is the best tool for efficient management and avoidance of decisions which are inconsistent, or *ad hoc*. It is not likely management will encounter the known criminal with an incapacity to lie. Applicants are on their best behavior.

Having a criminal record is not a protected class under fair housing laws. Yet rental screening policies that examine the criminal histories of prospective tenants do have fair housing implications. This article explores some fair housing issues that can arise when you develop and implement policies that use criminal history to evaluate whether an applicant will be a good tenant.

Establishing that an applicant has the income to pay rent is the easy part. Evaluating whether an applicant will pay the rent, reasonably care for the premises and be a good neighbor requires checking credit records, checking court records for evictions, and talking to former landlords.

Applicants with Criminal Histories May be More Likely Members of a Minority Group:

According to a recent article in the Washington Apartment Association newsletter, *"criminal records … reveal the character of the tenant."* Because of the perception that someone with a criminal history is of inferior character, landlords may believe they should, perhaps must, reject all applicants with a felony or violent misdemeanor history.

First, some research suggests that a criminal history does not predict failure or default. A 2009 study suggests that policies and practices that deny housing to those with criminal records may be "unnecessarily restrictive" because there is no clear empirical basis for them.

It is certainly discriminatory to perform criminal background checks only on certain applicants, or to distinguish between applicants with criminal records based on a protected class. The FHA prohibits actions which result in a *disparate discriminatory impact*. *Disparate impact claims result when an outwardly neutral practice has a significantly adverse or disproportionate impact on people in a protected class produced by the seemingly neutral act or practice.*

- For example, a property management company has a policy of charging a set rental amount for the first three residents in a household, plus $100 per month for each additional resident. This policy, although applied equally to all applicants and residents, will have a disproportionately negative affect on families with children, and violate the FHA.

- Too, a policy which denies approval to everyone with a criminal record may well have a disparate impact on certain protected class groups (such as race, color and national origin).

Arrests

The use of arrests as a basis for denying housing should be undertaken with extreme caution. Arrest records used to disqualify an applicant has a disparate impact on some protected groups. According to the EEOC, analogously, an absolute exclusion of prospective employees with arrest records is legally suspect because such a policy has a disparate impact based on race, color, and national origin.

- For example, a 2004 study in Seattle found that while the majority of those who deliver serious drugs are white, 78% of those arrested for this crime from January 1999-April 2001 were people of color
  (64.2% percent were African American;
  14.1% were Latino, and
  only 17.6% were white).

Another study found that even though young blacks use marijuana at lower rates than young whites in all of the 25 largest counties in California, African Americans are arrested for marijuana possession at double, triple or even quadruple the rate of whites. While the EEOC guidance allows arrests to be considered when an arrest is recent or connected to employment, it states that when barring employment on the basis of an arrest, an employer must evaluate whether the arrest record reflects the applicant's conduct.

Zero-Tolerance Policies

The EEOC issued policy guidance as early as 1982 providing that blanket bans on hiring people with criminal records result in disparate impact discrimination. The EEOC has advised employers that they must show they considered three factors to determine whether its decision was justified by business necessity:

1. The nature and gravity of the offense
2. The time that has passed since the conviction or completion of the sentence and
3. The nature of the job held or sought.

To the extent that a housing provider wishes to consider criminal history when screening prospective tenants, it is recommended that

consideration of criminal history be based on a clear connection between the offense committed and whether it was committed *in or on the premises of a former residence*, whether it is a *violent act*, whether others were *injured*, whether property was *damaged*, whether it is *recent*, and further take into consideration that the justice machinery of society *has deemed that the individual is fit to be out of custody living among us.* Of course, the fact the applicant is on a sex registry cannot be taken into account under any circumstances. Additionally, park owners may wish to consider excluding:

- Criminal offenses older than seven years
- Arrests that did not lead to conviction
- Expunged/purged/sealed/vacated convictions or those subject to a certificate of rehabilitation
- Juvenile adjudications that do not qualify as convictions under state law as evidence of criminal activity; and
- Criminal activity that resulted from acts against the applicant as the result of domestic violence, dating violence, or stalking against him or her.

Applicant Must Provide A Full Application

At least, 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.

Our mantra is *Civil Code* §798.74. 2 issues: (1) ability to pay; (2) past conduct.

". . .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."

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.

Mentor

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."

Where Can a Park Owner Consider Past Criminal Conduct?

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").

● *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.**

● *Insufficient age* in "Older Persons" Parks (55+)

● *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.

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