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PARK WATCH ™ LEGAL DEVELOPMENTS NEWSLETTER

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BREAKING NEWS:

California A.G. Kamala Harris: If You Prohibit Tenants from Renting Out Mobilehomes, You Can't Either. *What?*

Attorney General Opinion Issued July 23, 2013 is a Palpably Absurd Interpretation of the Mobilehome Residency Law. Do You Ignore it? Amend Your Rules to Circumnavigate it? Allow Wide Open Subleasing?

By Terry R. Dowdall, Esq.

■ Upshot

Just when you thought it was safe outside, along comes one of the most preposterous legal analyses of a lifetime. You may have thought the *Mobilehome Residency Law* (*Civil Code* §§798, *et seq.*) was well and widely understood. *It is.* But we have entered a new age, where a partisan agenda has overrun a once prominent legal institution. Simply, as discussed below, this opinion encroaches upon common sense. Masquerading as legal analysis, the Attorney General ("AG")Opinion tortures very elementary legal principles beyond recognition. Like so many past opinions rejected by the courts, this one is doomed to fail or be clarified into obscurity. The question is whether *you* can avoid risk of test piloting a lawsuit, or can navigate around this car wreck. An owner's actions in this regard should be discussed and cleared with your counsel.

■ Facts

Mobilehome residents have enjoyed the statutory right to sublease in the event of medical hardship for some time. *Civil Code* §798.23.5 states in part that *"(a) (1) Management shall permit a homeowner to rent his or her home that serves as the homeowner's primary residence or sublet his or her space, . . . "*

For some residents, this right does not go far enough. Certain residents' sentiments, amplified through the drone of the collective GSMOL voice, assert that where the park owner leases a park-owned home ("POH"), *residents should also have a right to sublease their homes* (often using the misnomer that *"if the park owner can sublease, why can't we?*").

Of course, a park owner is <u>not</u> *"subleasing"*:

● When a park owner leases out a POH, the transaction is <u>not</u> a *sublease*: the park owner owns the ground on which the mobilehome sits. The park owner is leasing out a residential real estate premises which is owned by the park owner. *Like any single family dwelling rental.* The MRL has no application to the POH tenancy. Many park owners employ simple apartment association forms for facilitation of POH rentals.

● On the other hand, what does the lessee "rent out"? A <u>partial</u> interest in possession of the homesite for a limited time. This is the classic definition of a "*sublease*" or "*under-lease*." A tenant does not own the fee simple real estate. The tenant is only a lessee.

The AG does seem to *discuss* the issue as singly one of "*subleasing*" and *"renting out the mobilehome*." But the *conclusion* only speaks to the *rental of the mobilehome*, not the *sublease*. This distinction yields a favorable advantage to the park owner. While reaching for the ideological result desired by the liberal legislator who requested the opinion in the first instance (Das Williams, D, Santa Barbara), the AG delivers only half a loaf. Prohibiting *rental of the home* is a problem, but prohibiting *subleasing*, in a well defined clause, appears a complete solution.

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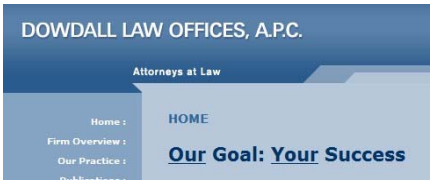

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Courtesy MRL, TITLE 25, TITLE 24

The analysis implicates the operation of *Civil Code* 798.23(a), which states: "*The owner of the park, and any person employed by the park, shall be subject to, and comply with, all park rules and regulations, to the same extent as residents and their guests*."

Terms

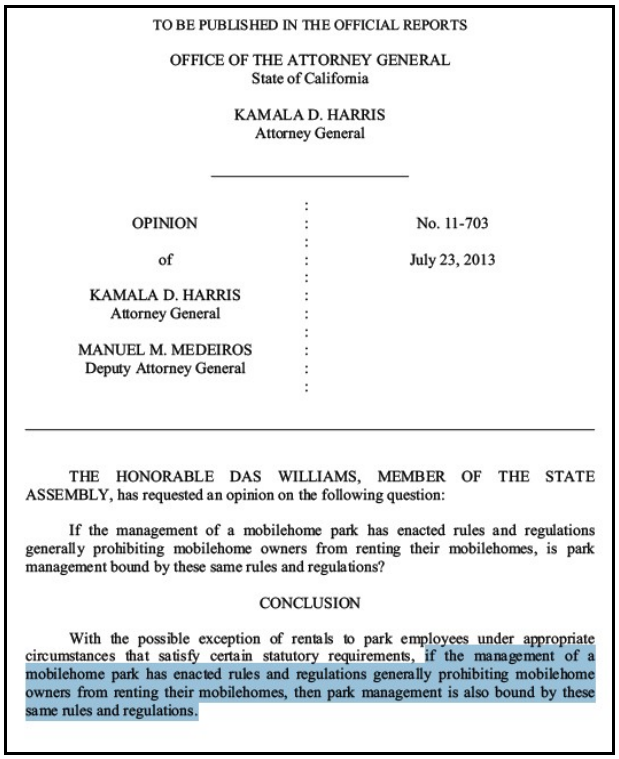
Let's make sure we understand the relevant terms. In this context, a "*homeowner*" is "a person who has a tenancy in a mobilehome park under a rental agreement."[1]

"*Management*" means "the owner of a mobilehome park or an agent or representative authorized to act on his behalf in connection with matters relating to a tenancy in the park." [2]

A "*rental agreement*" is "an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy." [3]

A "*tenancy*," in turn, is "*the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the park*."[4]

"*Subleasing*" is not defined in the MRL. A "*sublease*" *is* defined in Black's Law Dictionary as follows: "*A lease by a tenant to another person of a part of the premises held by him; an under-lease*." An "*underlease*" is defined as follows: *"A lease granted by one who is himself a lessee for years, for any fewer or less number of years than he himself holds."*



TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION : No. 11-703
of : July 23, 2013
KAMALA D. HARRIS
Attorney General
MANUEL M. MEDEIROS
Deputy Attorney General

THE HONORABLE DAS WILLIAMS, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

If the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, is park management bound by these same rules and regulations?

CONCLUSION

With the possible exception of rentals to park employees under appropriate circumstances that satisfy certain statutory requirements, if the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, then park management is also bound by these same rules and regulations.

Attorney General Opinion 11-703

A.G. Analysis

The AG reaches the following conclusion:

"With the possible exception of rentals to park employees under appropriate circumstances that satisfy certain statutory requirements, if the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, then park management is also bound by these same rules and regulations."

If a park owner disallows a tenant from renting a "mobilehome" the park owner may not rent a park-owned home out either. But, note *there is not a word about the applicability of restrictions on "subleasing"* in this response. The word "*subleasing*" is not used in the conclusion.

● Park Owners Can Prohibit Subleasing

The AG recognizes that the management may forbid subleasing:

". . . *the MRL acknowledges that park rules may preclude homeowners from* renting their mobilehomes *or subletting* the park spaces where the mobilehomes are situated, . . . "
(citing *Civil Code* § 798.70 (advertising the offering of a mobilehome for sale or rent "if [such sales or rentals are] not prohibited"))

● Subleasing is Prohibited for Good Reason

Park owners prohibit subleasing for several good reasons. The AG opinion draws from WMA submissions which explain the reasons for barring subleasing. Park owners observe that, whereas a "rental agreement" under the MRL is a contract between lessor and a tenant, a tenant's rental of the space is memorialized in a contract between the tenant and a sublessee. The park owner takes no part in the sublease contract. And the tenant is not present to discipline the sublessee. The park owner has no relationship or "privity" with the sublessee and so cannot enforce the rules and regulations. Sublessees also increase the potential detriment to others because the sublessee has no vested ownership interest in the park or mobilehome.

"No subleasing" rules are justified because subleasing has resulted in absentee landlords who purchase multiple mobilehomes in order to engage in rental as a business enterprise. Such a circumstance leads to exploitation of the sublessees, and degradation of the park's overall physical and social environment. This is already the case with rentals in popular vacation communities which are ocean-oriented, where local

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[1] Civ. Code § 798.9. But see http://www.dowdalllaw.com/legislative-counsel-opinion.pdf (1982 Legislative Counsel opinion–"homeowner" not substantive change in the law from the previous definition of "tenant")

[2] Civ. Code § 798.2.

[3] Civ. Code § 798.8.

[4] Civ. Code § 798.12.

politics favor subsidizing tourism on the backs of park owners choked off by rent controls. Some of the vacation homes rent like hotels on a nightly basis. All under rent controls. While all this is a local political decision which makes a mockery of political competence, areas under adjacent County control or other non-rent control areas juxtapose the rent regulated spaces and are located in the same geographical and economic market at vastly different rents and home values. This anomalous situation is bereft of any relation to health, welfare or need for resident protections.

- **Subleasing is in the Interest of the "Victimized" Resident**?

Despite what we hear in parks everyday, the GSMOL publicly states that residents are pro-subleasing. We think they are entirely out of touch with their dwindling membership. The complaint is that no subleasing rules "unreasonably hamstring" tenants, whose homes have been recognized as "difficult and expensive to relocate." This tired claim is transparently specious. The AG states that it is the tenant's position that:

> *"[W]hen the option of renting a mobilehome is not available because park rules prohibit such rentals and/or subletting the mobilehome space, a mobilehome owner who wants or needs to leave his or her mobilehome-residence at a park where such rules are imposed must either sell or abandon the mobilehome."*

Since a mobilehome is always more valuable on site, it is not moved. It is sold in place to take advantage of location, site improvements and to avoid moving costs and re landscaping. While amazingly fantastic, receptive audiences continue to embrace the palpable lie. In any case, mobilehomes are not moved by tenants except out of spite for their park owners, or to purchase and move to fee land.[5]

> The apparent key to navigating this AG opinion is to understand that there is nothing added to the analysis by considering "renting the mobilehome." The issue is subleasing. . .

Such residents do not sublease even if they could. Like any real estate, they sell. If the financing is unaffordable, they may well abandon due to lenders, not because of space rent. To stop defaults, many park owners have emergency or hardship subleasing programs to keep the tenants in place. Interestingly, none of this information was shared with the AG apparently. Other concealed information includes:

Tenants Do Not Mention that Mobilehomes are Financed for Owner-Occupation: A Tenant is Contractually-Bound not to Sublease: Mobilehome retail financing requires owner-occupation. A park owner cannot be asked to cooperate in the breach of mortgage obligations and covenants. There is no mention of the plain fact that all financing for mobilehomes is conditioned on owner-occupation. Arguably, park owners should not cooperate with a coordinated assault on lender's rights by allowing any sublease which violates terms of a secured loan. The AG opinion does not mention this ubiquitous standard term. *Maybe no one in the AG's office is familiar with residential financing?*

Alternative Housing is More Expensive: The tenant priced out of the mortgage must secure other housing, which will be more expensive than space rent. So, the tenant may sell, re-finance or relocate the mobilehome it is said. Many park owners are starving for new installations and will pay for the move free of charge or at great discounts. Many park owners are offering credits and discounts to keep tenants in place. There appears to be no mention of these opportunities, especially apt in light of the great number of vacancies state-wide. These options are not available to the ordinary homeowner. Tenants have more options than the comparable homeowner in residential real estate. An unspoken benefit of manufactured housing which the victim agenda of the tenant prefers to keep quiet.

■ Is "Subleasing" Different than "Renting Out the Home"?

The AG tries to draw a distinction between *"subleasing"* and *"rental of the home"* (a chattel). This tortured dichotomy is pointless. Again, who can criticize favorable institutional myopia?

From the management's viewpoint, *"subleasing"* and *"rental of the home"* is precisely the same thing with a different label. *Subleasing* (sublessor takes possession of the homesite and the home upon it); *rental of the home* (take possession of the home, located on the homesite) is the same. Either way, the space is subleased, and the chattel is included.

Does the park owner need language barring *rental of the home*? The AG states:

". . . the MRL acknowledges that park rules may preclude homeowners from renting their mobilehomes or subletting the park spaces where the mobilehomes are situated."

It is clear that the park owner may bar *subleasing*. The AG also acknowledges that the sublease rule will not apply to the park owner.

"To be sure, a 'no-subleasing' rule would not apply to the park owner's rental of his or her own mobilehome to another because the park owner owns both the mobilehome and the space upon which it sits, so the park owner (unlike a park tenant) would have no occasion to sublease the mobilehome space."

■ "No subleasing" Subsumes a Bar Against "Rental of the Mobilehome"

May the park owner institute a "no sublease" rule and stop there? Yes. The somewhat archaic expression barring "rental of the mobilehome" is of dubious origin. *Why?* Because while once often used as a cumulative proscription to the usual bar against "subleasing," today it is not needed. Prohibiting rental of the mobilehome could have emerged as so many rules do, from actual experience.

A park owner likely encountered a subleasing tenant who claimed he was not "subleasing," just "directly renting the mobilehome itself,"

[5] Ed.: The information provided to the AG by residents appears more a foray into the depths of obfuscation than a search for truth.

which, *oh yes*, just happens to be located on a homesite. Whatever the original justification, there is no reason to continue that language today. With a well-written *"no sublease"* clause, deceitful tenants cannot claim that rental of the home is not *subleasing*. *Subleasing* bars today are too well-written to allow for such a claim.

The old rules may say something like:

"The mobilehome and homesite shall be used only for private residential purposes and no business or commercial activity of any nature shall be conducted thereon. This prohibition applies to any commercial or business activity, including, but not limited to, the following:"
"(1) Any activity requiring the issuance of a business license or permit by any governmental agency."
"(2) The leasing, subleasing, sale or exchange of mobilehomes."

or
"Resident shall not sublease, rent or assign Resident's mobilehome, the homesite or any rights or interest that Resident may have under Resident's rental agreement."

> Your counsel may advise that a well-conceived bar against *subleasing* subsumes any conceivable circumstances of prohibited *rental of the mobilehome*.

or
"Resident shall not sublease, or otherwise rent all or any portion of Resident's Mobilehome or the Space. Notwithstanding the foregoing, Owner reserves the right to sublet or rent any Space or mobilehome owned by Owner."

New versions of a sublease might contain a paragraph which summarized, begins like this:

"Subleasing is prohibited. Any occupancy of the premises by any person (i) not approved for tenancy and (ii) not having executed the rental agreement as a homeowner, constitutes a sublessee unless the homeowner also resides in and maintains actual occupancy of the premises. Any subleasing is void. The only exception is medical hardship pursuant to Civil Code §798.23.5, where a medical emergency or treatment requires Lessee's absence . . . "

Again, the AG states that park owners may prohibit subleasing. The AG says that the issue of subleasing does not arise in the case of the POH. If park rules and regulations merely omit the bar against "rental of the mobilehome" language, *is the park owner protected*?

■ "Subleasing" Bars May be Enforced. Subleasing Subsumes "Rental of the Home"

The AG says: *"[B]ut the inapplicability of a no-subleasing rule to a park owner does not perforce make inapplicable a no-renting rule."*

Okay, *fine*, we must adhere to rules that state that the tenant may not *rent out the mobilehome*. With such a rule, the park cannot rent out its mobilehomes either. Let's assume a "*no renting*" rule applies to owner and tenant alike (as the AG concludes).

This school of thought is to draft around it: strengthen the *sublease* rule, omit the *"no rental of the home"* rule. Delete it. Say nothing about the *"rental of the mobilehome." The AG opinion states that the park owner may enforce "no subleasing" rules*. Your counsel may advise that a well-conceived bar against subleasing subsumes any conceivable circumstances of prohibited *rental of the mobilehome*. In other words, barring *"rental of the mobilehome"* could be deemed surplusage, swallowed up by a well-written *no subleasing* clause. So, "Rental of the mobilehome" prohibited? Delete it.

While barring subleasing, the park owner who rents out a home is not transgressing any written rule or regulations. Only rules and regulations in writing are enforceable. If a tenant tried to rent out the home, the "no sublease" rule comes into play.

Also consider adding the justifications for *"no sublease"* rules so there is further reinforcement for your local judge, such as the owner-occupied nature of retail financing (which necessarily bars subleasing), the density and close knit surroundings of parks calling for careful enforcement of conduct and aesthetics rules, the special community atmosphere, the fabric of vested interests which blanket the park, and the needs to maintain the quality of moderate cost housing and value-rich rental opportunities.
TRD

Please Feel Free to Contact Us with Any Questions!



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