

PARK WATCH

LEGAL DEVELOPMENTS NEWSLETTER

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

Exit from the Older Rent Controlled Park:

Re-Couping the Damage to Max the Return Before Sale: Rent? Convert? Subdivide? Peer-to-Peer sale? Sell to Re-Develop?

By Terry R. Dowdall, Esq.

We are pleased to address the realities of ownership and maximizing performance of older parks, *without* attorneys, accountants, real estate brokers, experts or the courts for staging the exit from the investment.

Parks under 100 spaces pose special challenges for park owners, *especially those under the boot of draconian rent stabilization*. For owners with small parks, options are believed few,¹ *but there are opportunities not widely discussed. And meanwhile, the rest of the world wonders why affordable mobilehome parks are vanishing* (see, next page, "Affordable Mobilehome Parks Vanishing").



Rent Controls protect the wealthy voter at the beach. Why? Because there are more beach-goers than park owners. See fn. 1.

Your prospective options are basically the following:

- **Do Nothing:** Capitulate to the *Status Quo*. Maintain the Park with Band-aids and Duct Tape.
- **Shift Gears:** Shed off Mandatory Controls and Morph to Exempted Uses to Exploit Economic Potential.
- **Abandon Ship:** List for sale with a trustworthy broker, pay a commission and seek the highest bid without any staging at all.



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¹ "Stabilization" is a "feel good" term for insidious rent control. The platitudes of "fair" rent controls 35+ years after inception, are plain farce. Rent controls are simply political expedience. Despite the promise of the Founding Fathers of protection of the economic minority from the avaricious majoritarian populous, rent controls are mostly about just counting the votes. If rent control was really needed, why has San Diego prospered without them? Why did Los Angeles County rescind rent control, while the adjacent City enforces rent stabilization? Rent controls are legally protected if they "assure good credit," "maintenance" and "attract. . . capital and investment." This test has proven no more than meaningless rhetoric. The bottom line is that California jurisprudence sanctifies the interests of the landless mob on the altar of property rights. Mobilehome parks are, basically, "sitting ducks" for the next fashionable cause intruding on property rights. Essentially, Park owners and residents are unprotected without leases. With rent controls, leases may not be possible. This leads to closures and sales. You know, many scoffed at the President's past remarks that he hoped to "redistribute the wealth." Well, that has been the case in parks for decades.

- **Peer-To-Peer:** Save time and money with a Peer-to-peer Transaction for sale of the park.
- **Path of Development:** Sell to a Developer Before or After Closing the Park.

● UPSHOT

So the park was a family investment. A stable investment for long term growth. But then government intervened with rent stabilization. The tenants pushed hard so they could sell their homes with vacancy controls guaranteeing a profit on sale. Rent controls guaranteed an undermarket rent, but not undermarket mobilehomes. The homes are sold with the subsidized rent at full value. Legalized scalping.

Some jurisdictions like New York make such profit-taking a crime. In California, the courts say it is okay to take advantage of the park owners and the poor buyers.

Rent stabilization restricts inflation to 40% since rent control (or, no real inflation dollars covering the last 20 years, diminishing real NOI back to 1995 levels). This means you have had no inflation adjustment for 15-20 years. Real return is plummeting toward a bottomless abyss for which there is no remedy.

Thirty years later, the laterals are tired. The utility systems quirky. Sewers are flat. Capital improvement pass-throughs are rejected by tenants, taking a further toll on function and appearance. Depreciation is depleted. The prospects of a rent application are dim, the costs of application alone nearly prohibitive. Meanwhile, tenants sell \$3,500 homes built in '65 for \$75,000.

Maybe it is time to go.

What are my options?

BY KATIE KRAMON / MARCH 11, 2015

California's affordable mobile home parks vanishing

Affordable housing for middle- and lower-income families is drying up by the month in California. Among the hardest hit are those living in mobile home parks. In the last decade, 4,792 mobile home lots in the state have vanished from the map according to data from the California Department of Housing and Community Development, with even more expected to disappear.

"Affordable housing is like the spotted owl or the tiger. If we don't go out of our way to save what we have, then we'll lose it forever," said Winter Dellenbach, founder of the local community group Friends of Buena Vista.

Buena Vista is a case study of the challenges in saving the mobile home parks. For the last three years, the 400 residents of Palo Alto's Buena Vista Mobile Home Park, located off El Camino about a mile from the Stanford Campus, have fought eviction and demolition of their homes to make way for higher-end housing for tech workers.

Buena Vista has caught the attention of the Palo Alto community, as well as a community on the Stanford Campus — the Buena Vista Action Committee, a branch of the Students for Education Reform group. So far, \$16 million has been allotted to saving the park from the city and a housing fund donated by Stanford University, according to the Santa Clara County Board of Supervisors and an announcement by city manager James Keene. This represents only a fraction of what is required to prevent the park from being sold — about \$30 million, according to student representative Molly Saloman.

But it's not unique — at least not for California, and especially for the Bay Area and greater Los Angeles area. Mountain View lost the most mobile home lots of any one city — 307 lots in the past two decades. Over 400 mobile home parks have closed in the state over the last 20 years. Laguna Beach, another notoriously expensive zip code, lost 294 lots. And much of the change is yet to occur. According to Evan Gerberding, director of external relations at the California Department of Housing and Community Development: "California's economic recovery during the last year, while ahead of the nation, has been uneven with nuanced growth in coastal zones, and inland areas lagging behind," leaving many repairs to the state of affordable housing in the Bay Area and L.A. far from complete.

In some cases, entire mobile home parks have been sold and then shuttered. In other instances, mobile home residents were gradually pushed out. For example, residents of Mission Valley Village in San Diego, a mobile home park for seniors, were slowly pushed out due to rising rent and decaying conditions according to a San Diego Reader article in 2010. Either way, the number of mobile home lots available for lower-income Californians has continued to shrink.

Some think this is just the beginning. Don Barr — a Palo Alto resident since 1990, Stanford professor and member of the Community Working Group involved in Buena Vista and other local projects — has noticed the disappearance of affordable housing, especially in the last decade. "Gradually, one by one, they (mobile home parks in California) are going to be shut down," Barr said. "It's not feasible financially to create new ones."

Percentage of mobile home lots closed 1995-2014



© OpenStreetMap contributors
Mobile home lots closed across California. [CLICK](#) to launch full interactive graphic. (Data visualization by Katie Kramon/Peninsula Press)

Peninsula Post: Lamenting the vanishing mobilehome park, abused as "affordable" housing without just compensation, regulated out of existence. Just another memory of failed social engineering which hurts the poor, and awards a windfall to predator sellers.

1. Do nothing, live with the *status quo*.

Take the 40% - 60% of CPI allowed (without hearing by the ordinance). Nurse the asset with band-aids and duct tape. In order to minimize economic growth, the owner will:

- not increase rents to seniors;
- keep rents below prevailing conditions;
- provide free yard maintenance and tree trimming,
- fix plumbing problems,
- voluntarily cut rents for the tenants who complain they cannot afford the rent (without verifying the income property downtown);
- provide special resident benefits without a *quid pro quo* embodied in a lease agreement.
- loan money to tenants so they can take the cruise (you are not taking)
- never even try to market secure, fair leases in the community.

Do you help out your seniors with home repairs? Basic charity? Just helping a senior along? If you feel good about helping your seniors, you must feel like a saint when they took tens of thousands from you by rent control. Why would you give more, without a quid pro quo of a fair lease agreement?

By taking these steps to have pity on your residents, you are taking away the property of your family.

In any case, this owner is viewed as living in a different time, before rent controls, the microwave, color tv, and specifically: failure to maintain claims, down zoning, closure laws, and a 20 page Mobilehome Residency Law, and a \$2,000 fine for every technical violation of the Mobilehome Residency Law.

Do you help out your seniors with home repairs? Yes?

WHAT ARE YOU DOING?

Basic charity? Just helping a senior along?

If you feel good about helping your seniors, you must have felt really great when rent controls passed (because they have taken tens of thousands of dollars from you for each space).

Why would you give more, without a quid pro quo of a fair lease agreement?

This option is certain to *minimize* economic growth of the park. On sale, you will recapture the depreciation and pay capital gains on the amount exceeding original acquisition price. You can 1031, at least in part, to reduce gain exposure.

But how much gain? This is problematical. *You are not selling for real value.* Due to rent controls, and the omission to seek just return increases with regularity, waiver objections will arise if you try to catch up. The lost rent adjustments caused by not routinely applying for rent increases directly reflects on net operating income at whatever cap rate set for the park purchase price.

You are selling at far less than real achievable value. Certain 'savvy' buyers understand the ability to buy on the come, to gamble on the ability to attain the next re-assessment of property tax, or the next rent increase. But multi-years failures (or omissions) to take advantage of opportunities to achieve market or prevailing conditions represents lost opportunities which will never be recovered in the procedures available under the rent control ordinance.

2. Switch from a use which is price-controlled to a use which is *not* price-controlled.

This would mean finding a way to:

1. Change to tenancies not subject to rent controls,
2. Closure and cessation of use,
3. Conversion to a new use subject to permits approved in advance, while providing reasonable relocation costs to move tenants off the property.

Subdivisions? We do not include subdivisions. Leaving the tenant in place for a subdivision is unlikely to succeed because the tenants will veto it (unless you sell the lots for

the price they want). Economically, the reason to subdivide is to escape rent controls. But in rent-stabilized areas, tenants will claim they already paid for the price of the lot when they bought the home, including an inflated value representing the real market value for leasehold.²

² The plain fact is, that the tenants paid full fair market value of the leasehold and the mobilehome when they bought into the park, care of the mobilehome seller who most likely lobbied for rent control to be sure they could peddle or scalp the leasehold at sale.

The subdivision “survey” which must be agreed on with the tenant association will be a difficult to achieve. With some HOA’s it will not be possible. This may render subdivision a futile gesture, requiring litigation before the survey is even circulated. And the tenants have the power to veto—i.e., torpedo, your effort by voting against a subdivision.

Since the tenants now control the process, subdividing is not a viable choice if there is any friction whatsoever with the residents. For subleasing purposes, the true test of the relations with residents is whether they will agree to the terms of a long term lease as a gesture of good faith. The plain reality of the political risk attendant to park operation still leaves many other opportunities for land use: from a parking lot to a mixed use development. Earmarking a part of a new development for truly needy residents is a societal benefit and can reap great rewards where the park is in the path of development.

For subleasing purposes, the true test of the relations with residents is whether they will agree to the terms of a long term lease as a gesture of good faith.

Change to tenancies not subject to rent controls? Switching to park owned rentals is a right secured by the Health and Safety Code. In most jurisdictions, the rent stabilization ordinance attacks only space rent. One acquired by the park owner, the mobilehome can be rented, at often 2-4 times space rent due to deeply confiscated rent rate levels. This approach was discussed in this publication.

Go To:
<http://www.dowdalllaw.com/PARKWATCH-December-2014.pdf> (Say

Good-Bye To Rent Controls: No More Courts, Books Or Tenant's Dirty Looks)

[Proprietary alternatives are deleted from this publicly available publication]

[We discuss closure processing further below]

3. List with a broker and sell. Locate one of many very good and trustworthy brokers in the industry, list, and sell.

But can you do better? Listings are usually based on a capitalization rate. The *lower* quality the park (including whether rent stabilized or not) the higher the capitalization rate. The *better* the quality, the higher the price—a more moderate the return is tolerable for the buyer.

Much of this determination is up to the lender who takes a risk as well. Lower quality parks will not bring the large debt to value ratio. Buyers may have to find a 50% down. Under rent controls, the regime typically requires approval of property tax re-assessment pass-throughs. While legally mandated, the regulators will contend that the amount of the new projected property taxes which could not be passed through were negotiated into the price.

*Maybe this is a bad investment??
Maybe it is time to recover the capital and find a stable non rent control investment.
Maybe the time has come to 1031 into a new property.
Now, the question is how to maximize your return on exit.*

If the property taxes cannot be passed through, this is yet another dissuasion from investing capital in that area for the ordinary investor. *What can the seller do to minimize these concerns?*

Can we do better than just list without any action to improve the net operating income? The problem a selling park owner would like to have is dealing with a big capital gain. The seller then must account for the taxes and recapture which appears in the graph (next

page) That happens when the economic potential of the park is exploited first.

Many brokers will list a park and tell you what you want to hear, whatever the remote relation to reality, all to secure the listing. But if the deal offered is not reasonable the seller is wasting his time, life and opportunities.

4. Arrange sale with a knowledgeable buyer, peer to peer.

Finders are trusted industry contacts with working relationships with knowledgeable buyers. For example, a park was sold in Orange County, peer-to-peer which this

office arranged. In a park seminar conducted by Tom Tatum in Las Vegas a year or two later, in which he was discussing his analysis of recent park sales transactions, the sale I

handled was rejected from consideration. The reason? Tom reportedly complained that the price received was too high to fit the paradigm. See last page of this publication. The buyers disagree.

Again, the need to understand a transaction and how to maximize potential does not require real estate professionals, when the investors and their advisors are sophisticated. An introduced buyer can expediently make deals happen when serious sellers confidentially disclose relevant financial information with legal analysis and pragmatic evaluation of opportunity, not a glossy brochure. In 60 days or less. Of course, just testing the market is a different matter, and then taking a lot of time with a broker is no harm no foul, as no one is serious, and no serious consideration is given either.

Even in this setting, a legal advisor will tell the park owner client to maximize potential first, by maximizing net operating income and stabilizing expenses. Though most buyers have a operating template they can apply to a prospective investment, demonstrating cost savings just makes a good NOI look better.

So, the options for setting the stage to exit are overlooked all too often, resulting in the selling of parks without having first exploited economic potential which might have been attained with very little, if any, real effort. Before selling, listing, engaging a trusted finder, for an arrangement peer-to-peer, consider the changes which can be made.

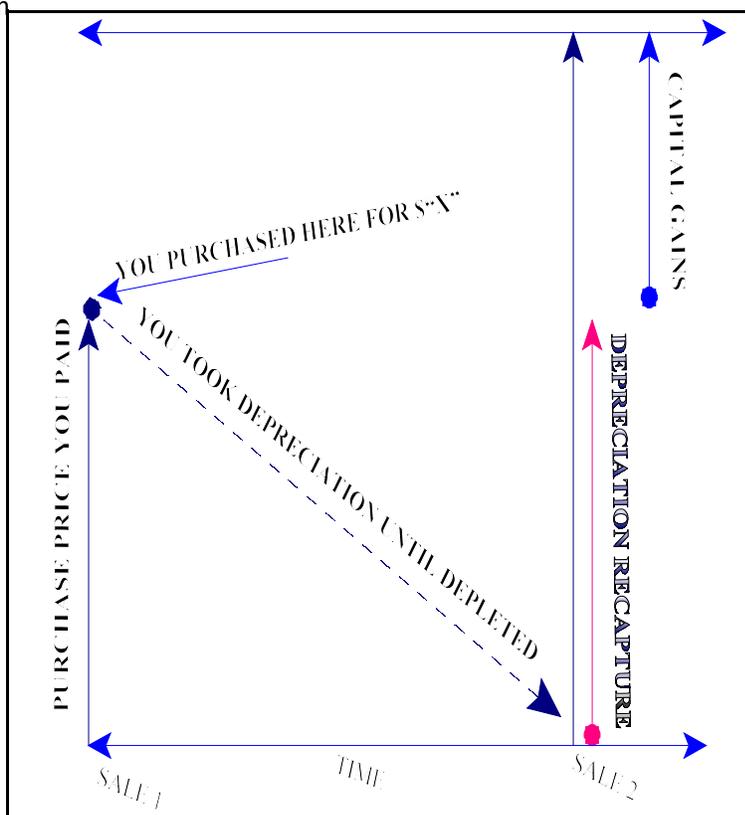
5. What can we do to exploit potential?

There is good reason why an experienced property management firm can be hired for the purposes of professionally evaluating and promoting economic growth to maximize a return. While that is occurring, there is time to identify an “up-leg” for potential exchange.

Don't Sell When You Can “Refurb and Rent”? One strategy is to control the rights to possession of the spaces, then refurbish and sell the home; refurbish and rent the home; buy and lease-back the home; buy with free rent for the space; remove and rent to r.v.’s for short terms (okay in parks built before 1982).

Depending on whether posturing for eventual sale, conversion or long term ownership, park owner control over the pads, so they may be rented as park rentals (usually not covered by rent controls) or so residential renters can be vacated without relocation costs quickly, may mean hundreds of thousands in additional profit.

Example: You have a space for sale; the tenant wants \$20,000.



SALE 1 (YOU) is depreciated over ownership to depletion. Then SALE 2 occurs. You must add back in the depreciation and then pay capital gains taxes for amounts exceeding your SALE 1 price

Refurbish and Rent: You could buy the home, refurbish for another \$10,000 (\$30,000 total investment), rent at twice space rent, e.g. \$1000.

In 3 years, you have earned \$36,000 gross on your \$30,000 investment. If you were to have tried closing under the MRL two years ago, the relocation expense might have been \$20,000-\$40,000.

No Relocation Expense: Because there is no relocation expense, you avoid that expense altogether. The swing is \$20,000-\$40,000 expense to a \$6,000 gain, plus \$500 extra rent until you sell or close.

Refurbish Fund Created: The extra \$500 per month is banked to start a fund for further acquisitions.

Result is Return of Rent Stabilization Takings: If you can save \$40,000 per space for closure, and you have 100 spaces, you have made an additional \$40,000 x 100 = \$4,000,000 for your family if sold to a developer.

Example: If sold to a knowledgeable park operator, the additional space rent of \$500, which is double the allowed rent controlled space rent, means the park has doubled its NOI without increase in expenses. This means the sales price just tripled:

● If the park had a 50% NOI and rents were \$500 per month for 100 spaces, assuming a 5 cap, the value would be $250 \times 100 = 25000 \times 12 = \$300,000$. $/.05 =$ **\$6,000,000**.

● If the NOI is another \$500, or a total of \$750, the calculation becomes $750.00 \times 100 = 75,000 \times 12 =$ $\$900,000$ $/.05 =$ **\$18,000,000**.

Controlling the spaces means significant gains in value with relatively small investments from the park owner. This is without lawyers, attorney's fees, expert witnesses, lawsuits, administrative hearings, economists, and antacids. The expenses remain internal to the transaction itself.

Of course, continuing to rent the pads is exempt from most rent control laws and hence, the cash return is significantly increased from original investment expectation. The downside for sale to an operator is that the prospective lender may discount rents based on the value of the rental of the mobilehomes. Some lenders have said they accept the space rent, as is. Whether setting the stage to sell to an operator or a developer, the approach of controlling the pads is the single least expensive step which can be taken to exploit economic potential of your park. Do not list your property until you have considered whether you are selling it for a third of its value.

6. Closure: Should I close the doors, and sell to a developer?

Some parks are in the path of development. Should I close the park in order to boost value to the developer?

Well, do not enter into a venture agreement which requires you to close within a certain time frame, and for a certain amount of developer contribution. Close the park first. Handled correctly, you will be handing off an asset that yields more return than when the process of asserting control launched. Put all that relocation money in your pocket. All you need is time and investment back into the property.

Here is the suggested procedure for a holding pattern for closure, or for direct, outright closure (cessation of use).

The procedure discussed assumes a municipality with no mobilehome park closure ordinance in effect and that all mobilehomes (and travel trailers or other forms of recreational vehicles located therein, if any) qualify as "mobilehomes" for purposes of termination of tenancy due to a change of use (closure) of the park.

Informal Efforts to Negotiate Crucial to Success

Well prior to the formal commencement of application for conversion and procurement of permits to close or for a new development or use, and well prior to contemplated service of "intent to close" notices (and Relocation Impact Report ["RIR"]) in cessation of use cases, informal efforts to negotiate private transactions for voluntary displacement are very prudent. This process should ideally start as much as 5 year sin advance of possible exit date.

This is because the hearings for approval of the RIR are very contentious, and serve as a rallying point for tenant

resistance, organization, legal aid intervention, and lawsuits meritorious or not, often on unrelated issues to enhance bargaining power leverage.

Informal workouts give more money to the tenants who consensually agree to terms. These workouts are often not possible with older persons (55+) who depend on political sympathy for entitlements. This is one reason why it is sound and prudent practice to follow fair housing laws at all times, and welcome families, extended families, and working families with children who may not have any affordable housing alternatives in the community. This type of rule change should be initiated promptly so transition to all age use can be effected.

If private deals are entered into, the tenants will continue to rent or have vacated by the time of public hearings in the forthcoming years, and the RIR consideration ideally becomes a moot point.

The form of voluntary displacement may take any form, so long as it concretely allows for a remedy to evict in the event of later failure to vacate, to ensure that the tenants will not be present when the owner gets on with approval for development or approval of the RIR in cessation of use cases.

Again, this process should be undertaken well in advance of formal action to initiate the conversion-cessation. Someone who is employed by the park owner, or the park owner himself or herself, can garner the trust of the tenants: the idea of dislocation is new to the tenant and there will be trepidation in considering the voluntary options. Tenants are usually approached in priority of easiest to deal with and likelihood of success. We

want to show the deals are fair, make people happy and are an improvement over the alternatives if forced relocation were to occur. We can make the best deals to the first tenants, and making special considerations for specially needy residents is a must. The easiest to deal with are approached first, and the most difficult approached last. The extra revenue needed to deal with the difficult tenant is then more likely to be available.

The following terms could be considered:

1. *Sale and purchase of the mobilehome* to owner (change in title allows certainty of eviction for holdover by the tenant). Compensation can be cash, free rent, or a combination.

2. *Sale with lease-back.* The lease-back is for a term certain.. The leaseback allows for cash flow maintenance during the time of the conversion, which may be considerable. Free rent can be used as part of the consideration for the purchase.

3. *The relocation of the mobilehome* to a new destination. Park owner pays the cost of the breakdown, transport and set up, with perhaps incidental expense during the move (lodging and, meals).

Any of these options needs to be carefully anchored by written agreement. Later attack against the validity of these agreements, if the tenants organize, can be expected.

When the intention is simply to close the park the procedure is legally very straightforward. Of course implementation is another thing if consensual workouts are not in place. Then, government is looked to for relief. Will government look favorably on closure? Yes if it favors city interests. This advance scouting is critical before engaging in a planned action to ready the park for closure.

This because the park may have low rents, and so may be perceived as a valuable source of low income housing . Some local housing elements to a general plan may designate the park as low income housing. Closure of that housing may be difficult for the local government because the loss of the park may put the local government in non-conformance to the requirements of its housing element. And of course, we have the issue of tenant and local government resistance to approval of the proposed RIR.

Procedure Once Spaces are Controlled by Park Owner

This procedure mandates a twelve month "intent to change use" notice, concurrently served with the RIR; once the RIR is approved and the twelve-month period has passed, written sixty day notices of termination of tenancy are then served, followed by eviction of holdover tenants.

It can be expected that legal efforts will be mounted against enforcement of the termination notices, with claims of defects in the underlying procedure of obtaining approval of the RIR and approval of the cessation of use.

The RIR (Relocation Impact Report): Entitlements and Who Receives Them

The RIR is evaluated and approved by the local agency to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park "residents . . ." The RIR " . . .shall address the availability of adequate replacement housing in mobilehome parks and relocation costs."

"Resident" is a defined term in the Mobilehome Residency Law. Civil Code §798.11: "'Resident' is a homeowner or other person who lawfully occupies a mobilehome." I believe that resident refers not to just the "homeowner" (Civil Code §798.9: "'Homeowner' is a person who has a tenancy in a mobilehome park under a rental agreement"). Resident includes other persons regularly occupying the site. To the extent that the existing occupants will also reside in the home in the target destination, it is arguable that the code would require some compensation for individualized inconvenience.

. . . investors and their advisors are sophisticated. An introduced buyer can expediently make deals happen when sellers confidentially disclose relevant financial information with legal analysis and pragmatic evaluation, not a glossy brochure—in 60 days or less. . . . Just testing the market is a different matter, . . . a lot of time with a broker is no harm no foul, as no one is serious, and no serious consideration is given by buyers either.

Another definition of the recipient of a relocation entitlement might be the "registered owner" of the mobilehome. Under the code, however, the "registered owner" is required to be the "homeowner" (the person with a rental agreement pursuant to Civil Code §798.75). And registered owners do not always live in

the mobilehome. When terminating a tenancy for example, service of termination of tenancy notices are required to be served on registered owners if they do not live in the mobilehome. These may be relatives, co-signors, ex-spouses, etc.

To be fair with all, the entitlement may be drawn by

check made payable collectively to all who qualify for relief, including "registered owners" to assure that an unscrupulous resident does not abscond with funds for relocation, only to leave the registered owner without means to move the mobilehome. Sample language to accomplish this:

"If a mobilehome is occupied by two or more displaced tenants, the relocation fee shall be paid to all displaced residents and the registered owner jointly. In no event shall Marina Park be liable to pay a total amount more than the entitlement for one mobilehome, and Marina Park shall have no responsibility or liability for disputes between displaced residents and registered owner(s) over allocation of the relocation fee between such persons.

Permission to move financed mobilehomes must be obtained from any legal owners (typically lenders extending a loan secured by the mobilehome). The law forbids removal of a mobilehome without such consent. Health and Safety Code § 18099.5.

Entitlements should therefore be conditioned on the approval of all title owners to the mobilehome as well, to ensure that you have complied with code.

The Amount of Resident Entitlements

I believe this statutory language ("reasonable cost of relocation") refers to the real expense of moving the mobilehome to another location and setting it up again, moving all interior contents, and incidental costs for the full-time occupants. "Double-wide" homes must be separated for transit, and reinstallation requires pairing up, leveling and sealing the twin structures once again. A single wide move is accordingly much less.

Pursuant to the Government Code, the steps required to be taken to mitigate ". . . shall not exceed the reasonable costs of relocation . . ." Thus the entitlements should, I believe, be based on two components: (1) moving the mobilehome and its contents and (2) the inconvenience to the occupants who will live in the mobilehome. The list of items might be as follows:

(1) Payment of relocation assistance to each resident who resided in the mobilehome park as of and before the date of the notice of closure is served or application is filed.

(2) Payment of the cost of physically moving the mobilehome to a new site, including tear-down and setup of movable improvements such as patios, carports and porches; packing, moving and unpacking all personal property; and in-transit costs for meals, lodging and gas.

(3) Deduction of a lump sum to compensate for the differential if any, between rental rates at the departing and the new mobilehome park during the first year of the new tenancy.

(4) The costs may include reasonable expenses incurred in moving to a new location, up to a maximum distance of fifty miles; and for each day a resident is without a home due to relocation, the park owner shall pay in advance daily to that resident for lodging the sum of \$_____ per couple and \$_____ per day for each member of his or her immediate family residing with the home owner in the home to be relocated, for a maximum of seven days.

A fair assumption is that most, if not all the affected occupants, will not live in the mobilehomes after the homes reach their target destinations, because such locations will not likely be remotely near current location. I believe the affected homes will be moved and then sold for profit in locations with much lower space rents.

Entitlements based on home size: Some ordinances use the size of the residence to determine relocation entitlements. For example, Santa Monica, a city reputed for deferential treatment of tenants, including stringent rent controls and conversion restrictions, contains the following allotments.

Entitlements based on number of occupants: Based on the Government Code's use of the defined term "resident" as the target of relocation entitlements, it would be more defensible to key the amount and target of relief to each individual person residing in the mobilehome on a full time, permanent basis. Sample language to accomplish this:

(a) In the case of a tenant residing in the mobilehome subject to the tenancy agreement who has not located a comparable replacement mobilehome park space by the time the fee is due under this ordinance, a fee of \$5,000 to qualified tenants and \$2,000 to all other tenants.

(b) In the case of a tenant residing in the mobilehome subject to the tenancy agreement who has located a comparable replacement mobilehome park space by the time the fee is due under this ordinance, a fee of \$2,000.

(c) In the case of a tenant who does not reside in the mobilehome subject to the tenancy agreement, and who has not located a comparable replacement mobilehome park space by the time the fee is due under this ordinance, a fee of \$3,000 to qualified tenants and \$2,000 to all other tenants.

(d) In the case of a tenant who does not reside in the mobilehome subject to the tenancy agreement and who has located a comparable replacement mobilehome park space

by the time the fee is due under this ordinance, a fee of \$2,000. (e) In the case of a resident who is not also a tenant, a fee of \$2,000.

Reasonable Costs of Relocation: A "bright line" test to precisely define "reasonable relocation costs" does not exist. The park owner's view is that relocation benefits should not exceed the cost of the actual removal, travel and re-installation of the unit. I believe there should be no amount allocated for the loss of value of the mobilehome.

The problem of unavailability of target destinations is difficult. In some municipalities, such a situation calls for the purchase of the unit by the park owner. Price is determined by appraisal. "On-site" appraisal (fair market value assuming the right to reside in the park) will be much higher than blue book or NADA index.

This is exacerbated by under-market rents which give rise to a lease premium. Major rent increases or increases at sale also pose difficult legal problems and may cause lawsuits. The issue of required purchases is a major bone of contention in the industry and has been for more than a decade.

6. Are you interested in litigating or using lawyers at all?

Of Course Not. It's the same when considering an exit from the business. The issue is maximizing economic potential to earn the highest price. So, the limit of proper relocation entitlements remains unresolved in California. Coming full circle, it makes utmost sense to try to reach voluntary agreements with tenants before possibly becoming entangled with intractable legal process concerning these issues. If the park is sold to a developer, costs of closure are a significant issue. The developer may want the park owner to close; the developer may want an option to work the park toward closure and then pass if the going becomes too difficult. In any event, the property cannot be sold at true value if the tenants maintain their MRL entitlements to reasonable costs of relocation.

Conclusion:

In the final analysis, *if sale of the park is highest exit potential*, then when time is right, the quiet peer-to-peer transaction should be considered. Such deals are prevalent today.

Why? Some knowledgeable investors will pay for the increase not yet taken. A strong purchaser will make such offers; and often have acquisition departments which have the expertise to perform fast. An introduction to a peer-to-peer transaction will often produce a favorable result for seller and buyer.

If new development maximizes return, then posture for easy transition with smiling residents to the developer and save millions.

If you are not sure, control the pads so you maximize your options. Certainly, if you are being crushed by rent stabilization, start now and pursue this and other proprietary options not disclosed here. Do it before big capital outlays you may be able to avoid and the state of law changes further..

Payment of relocation assistance in the form of placement value would essentially require the park owner to buy his land twice. The tenants argue generally that absent a comparable destination, it is reasonable for the park owner to pay the real value of the sited home. This makes the park owner pay for the park twice and is an unfathomable judicial result (regulatory taking). It also means rents should be kept at prevailing conditions so value does not leach from the ground into the mobilehome.

See *Guimont v. Clarke*, 121 Wash. 2d 586, 854 P.2d 1 (Wash. 1993), cert. denied, S.Ct. 1216 (1994); This is an excellent case where the \$4500 (single wide) and \$7500 (double) relocation requirement was found unduly oppressive.

Get your lawyer to explain *Aspen-Tarpon Springs Ltd. vs Stuart* (January 18, 1994, Fla. Ct. of App., No. 92-2814); and *Arcadia Development Corp., et al. v. City of Bloomington Arcadia* (1996) 552 N.W.2d 281.

Assuming the decision is made to sell to a developer because the land value supports a price superior to the operating park, the owner should allow **5 years** in order to immediately institute a strategy for the quiet, consensual change in rights to tenancy. Ideally, control over the pads, or most of them, is accomplished within a period of time. Then the park is sold, on the basis that a certain super-percentage of spaces are controlled. During escrow or better before sale, the park is emptied in a series of terminations, until totally empty. The homes are salvaged and or sold and removed, then the park is ready for transfer to the buyer, who would be responsible for capping utilities and complying with state regulations.

True Story: The sale of Fountain Valley Estates (\$33,500,000) in which this office introduced the parties lead to a successful sale in which both sides were very satisfied, and did not require any brokers. Plus, the legal representation provided by this office resulted in a significant reduction in the closing expenses of the sale, more than covering the a small finder's fee. The fact is, that many sales, especially by knowledgeable parties, are peer-to-peer without any brokers. This process is especially advantageous in a mobilehome park situation where investors are experienced, and can evaluate price based on prospective change to the asset. The uninitiated purchaser will not have the experience or sophistication to judge how a park works and the ability to make changes after a new acquisition. A seller may have considerably better luck selling to a first-time owner not counseled by a knowledgeable attorney, though unwelcome revelations later should be avoided.

Congratulations!

to:
Seller and Buyer, an affiliate of Kort and Scott Financial Group,
on the acquisition of:

FOUNTAIN VALLEY ESTATES
A Manufactured Housing Community
Fountain Valley, California

\$33,375,000.00
193 Homesites

A Principal-to-Principal Acquisition
Introductions and Legal Representation by:
TERRY R. DOWDALL, ESQ.

DOWDALL LAW OFFICES, A.P.C.
ATTORNEYS AT LAW

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Legal Representation of Mobilehome Park Owners Since 1978

PARK WATCH ©

Courtesy of **DOWDALL LAW OFFICES, A.P.C.**

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NOTA BENE: For parks considering the staging up to closure or exit via sale by closure, include the attached notice for new purchasers. New purchaser may later complain that the owner should have disclosed the intent to close the park, even though that intent was for a distant future time. Since the notice of intent to close is a 12 month notice, the legislature has spoken to this obligation and other objections are spurious.

SUPPLEMENTAL DISCLOSURES FOR THE PROSPECTIVE PURCHASER

THIS NOTICE IS INTENDED FOR THE PURPOSE OF DISCLOSURE OF FACTS WHICH ARE MATERIAL TO THE DECISION TO ENTER A RENTAL AGREEMENT. THIS NOTICE IS PROVIDED FOR THE INFORMATION OF THE PROSPECTIVE PURCHASER OF A MOBILEHOME WHO INTENDS TO RESIDE IN THE MOBILEHOME PARK.

1. As a prospective homeowner, you have the right to at least thirty (30) business days from the date a lease agreement is first offered to you to accept or reject that lease agreement. You are not required to wait 30 days however. For a rental agreement in excess of one (1) year duration, you may cancel/withdraw your agreement to a lease agreement by giving management written notice within seventy-two (72) hours of your execution of the rental agreement. Please read the rental agreement carefully. You are not required to “agree” with the disclosures herein. The information is made available to you to described potential changes in the nature of the park, its operations and tenancy.
2. The disclosures described herein involve legal rights and duties. To understand these duties, you may need legal assistance. There are many attorneys knowledgeable in mobilehome park law and various tenant political organizations you may join (for an annual fee) or contact, for referral to a knowledgeable attorney.
3. The Mobilehome Residency Law allows for the termination of the tenancy based on good cause as described therein. A copy of the Mobilehome Residency Law is attached to the lease or rental agreement. The causes for termination include non-payment of rent, violation of rules and regulations, creating a substantial annoyance to other homeowners, and condemnation (eminent domain taking of the park or some part thereof). Good cause also includes the decision of the park owner to cease use of the property as a mobilehome park. Accordingly, closure of the mobilehome park during the term of the rental agreement and during any extension, renewal or holdover period is permitted by the lease agreement, pursuant to the Mobilehome Residency Law. Civil Code section 798.10 expressly states in pertinent part as follows: *"Change of use' means a use of the park for a purpose other than the rental, or the holding out for rent, of two or more mobilehome sites to accommodate mobilehomes used for human habitation, and does not mean the adoption, amendment, or repeal of a park rule or regulation. A change of use may affect an entire park or any portion thereof. 'Change of use' includes, but is not limited to, a change of the park or any portion thereof to a condominium, stock cooperative, planned unit development, or any form of ownership wherein spaces within the park are to be sold."*
4. Management reserves the right to change use of the park or portions thereof during tenancy. Management makes these representations to reserve all rights under the Mobilehome Residency Law and the lease or rental agreement. Management reserves the right to plan, consider and in accordance with legal notice requirements notify any homeowner(s) of intended new use or closure of the park or portions thereof or which would affect any space(s) therein and to undertake other legal formalities to effect change of use, at any time in the future during the term of a rental agreement whatever its term. Management makes no warranties, express or implied, or other representations, opinions or statements as to the effect of closure on mobilehome value, price, condition, relocation cost or availability or other factors which relate thereto. In the event of closure of the park, removal of the mobilehome will be necessary unless the change of use is for conversion to a condominium, stock cooperative, planned unit development, or any form of ownership wherein spaces within the park are to be sold. This information is an express exception to the stated term, duration and other provisions set forth in the rental agreement.
5. Neither the park owner, its agents, employees, representatives, attorneys, or management company is responsible for the condition of the mobilehome or other property purchased incidental to its sale. If you have such questions, or desire an inspection (which we do recommend for your protection and peace of mind), you may contact the local code enforcement agency having jurisdiction of the inspection and maintenance of mobilehomes. Management will be happy to provide you with information as to how such agency may be contacted.

I HAVE READ AND UNDERSTOOD ALL PROVISIONS OF THIS TENANT INFORMATION STATEMENT.

Dated: _____, 201____ Prospective Homeowner _____

Dated: _____, 201____ Prospective Homeowner _____

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

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