

# PARK WATCH

™ LEGAL DEVELOPMENTS NEWSLETTER

DOWDALL LAW OFFICES, A.P.C., Attorneys at Law

SOUTHERN CALIFORNIA: 284 NORTH GLASSELL STREET, FIRST FLOOR, ORANGE 92866 Ph. 714.532.2222, FAX 532.3238, 532.5381

NORTHERN CALIFORNIA: 980 NINTH STREET, 16TH FLOOR, SACRAMENTO 95814 Ph. 916.444.0777, FAX 444.2983

## IT'S A BIRD! IT'S A PLANE! NO, IT'S... IT'S... IT'S... AN ADDITIONAL OCCUPANT!!

*– How to Classify Additional People in the Household: Register? Charge? Evict? Add to Rental Agreement? Add to Rules?*

By: Terry R. Dowdall, Esq.

### ■ **Upshot**

Losing in Court is a humbling and costly embarrassment. Ask the park owner who recently licked some wounds when he wrongly used the “midnight move-in” law (§798.75(d)) against an occupant *during* a tenancy in which the tenant was *not selling*. The additional occupant issue is often confusing. *Family member? Guest? Caretaker? Care-receiver? Sublessee? Assignee? Buyer? Heir?* Dealing with each of these defined categories calls for differences in management response.



*Examples of problems management faces are posed by these questions:*

- *“Why can’t I make the guest move out—she has been there more than 45 days!—That’s a rule violation!”* The MRL outlaws such rules and regulations.
- *“Do I have to let the homeowner’s sister sign on to the lease?”* The reasons why not should be second nature to your management staff.
- *“That felon was granted parole! And NOW he has moved back in with his wife!”* And until there is new evidence of a reason to terminate tenancy, yes, husband and wife may live together without additional charge.
- *“She is renting out that bedroom, so is she subleasing?”* Does your resident reserve possessory rights or has she turned over possession?
- *“He isn’t the registered owner, but he signed the lease I gave him, isn’t he an unlawful occupant?”* Park owners often decline to enforce the requirement that the homeowner be the registered owner. Check out §798.75 (a).

One of the most complicated areas of the MRL is properly classifying additional occupants and then applying the proper law. And there is a wide spectrum of labels to choose from --- “homeowner,” “tenant,” “lessee,” “resident” (which is commonly used to refer to the “homeowner,” “tenant” or “lessee”-- a marketing relic which is legally a misnomer), to “guests,” “caregivers,” “care-receivers,”

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*In this Issue:*

- ★ *How To Classify the Additional Occupants in the Household*
- ★ *Minority Families Barred from Housing due to White Senior Zones- “Okay by us” says HUD, DFEH*

*Coming Events:  
Save the Date:*

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“boarders,” and “sublessees,” “invitees,” “family members,” “unlawful occupants” and “assignees.”

Classifying additional occupants can be complicated. That is because, *guess what*, it is a complicated area, even for some attorneys. *But not to worry*. We will, once and for all, set the record straight. You and your management staff need to become conversant with these principles. Perhaps you already are. In that case, keep this newsletter handy in case you need to straighten out your attorney. Here are some basic questions, possible answers, and discussion.

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**Question I:** *A complete stranger enters your office. He proclaims: "I'm Stu Pidman, your new tenant and I think I need to pay the rent." You have never seen Stu before, and for that matter, you rarely saw the homeowner for that space.*

**Do you:** (a) take his check for rent? (b) hand him a residency application? (c) serve him a 5 day notice to quit? (d) call 911?

Too easy? Okay. Just a warmup. Now, try this one:

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**Question II:** *The adult son of a deceased tenant, Lef Toverson, moves into dad's substandard mobilehome shortly after his dad dies.*

**Do you:** (a) hand Lef a residency application? (b) serve Lef with a 5 day notice to quit (c) advise that the mobilehome must be removed? (d) take 2 aspirin and call the mobilehome ombudsman?

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**Question III:** *Tenant Mack Wheeler says he has a second home in Faraway, U.S.A. and states that this nice young couple will "watch" his home while he is away.*

**Do you:** (a) hand Mack a 7 day notice of rule violations? (b) hand the couple a residency application? (C) see a therapist?

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Now the hitch. If you, as owner, accept rent with the intent of allowing the occupants to be your tenants, none of the answers apply. Likewise if you, as owner, have authorized your manager to enter into a written lease agreement with your residents, and to thereby enter into tenancy arrangements (the rule of equal dignities). You may as well *provide them a rental agreement*. Acceptance of an offered payment may form a rental agreement, **if accepted with owner authority and intent** to form a new tenancy. Managers sometimes take custody of offered rent until approval by the owner is made. This sometimes creates tenancy issues where none exist. The best policy is not to take such *conditional* offers of payment, or document the conditions under which custody of a payment or deposit is held.

Can my manager enter into a tenancy? Make sure you make some decision to this question. The “authority” to enter tenancy agreements is often overlooked. A tenancy must be in writing. §798.15 (all code references are to the *Civil Code*). In fact there is no tenancy formed until the parties have agreed to the terms of a written rental agreement. §798.75(a). California therefore imposes a “statute of frauds” on the formation of a tenancy—it must be in writing. By the same token, any agent working for the owner is not authorized to enter into, modify, release or terminate a written mobilehome tenancy without written authorization. This is a principle known as “equal dignities.” For our purposes, if the manager’s terms of employment expressly *disallow* entering into rental agreements subject to the statute of frauds, such as mobilehome lease agreements (see §§798.15, 798.17, 798.18), the manager has no power to enter into the tenancy, modify, alter, or release any tenancy obligation. On the other hand, if the lease itself states that the manager “has all the powers of the owner in dealing with the resident community,” the owner has probably empowered the manager to make these decisions. This proposition should be carefully analyzed by the owner. And this is reason alone to use written employment agreements.

The Midnight Move-in Statute and When it Applies. The Mobilehome Residency Law (“MRL”) authorizes fast eviction of the “unlawful occupant.” But before serving the 5 day notice to quit, let's decide if it applies. Serve notice after all steps are taken in processing the application. Only then are you safely able to decide the person is an unlawful occupant. “Knee jerk” service of notice is not necessarily the best reflex here.

Co-Occupant? Stu Pidman in Question I *can be* an unlawful occupant. Is the existing tenant current on rent? Has he indicated he intends to sell? It could be that Stu is moving in with the existing tenant and paying rent on his behalf. In that case, a 5 day notice to quit is the wrong notice.

Buyer of the Mobilehome? On the other hand, did the existing tenant sell and vacate, and just neglect to inform the management of the sale of the mobilehome. The existing tenant took the money from Stu and vacated, without change or assignment of title, because he never had title to the home either. Stu paid for the home with clouded title, which was transferred several times before without proper registration to avoid the cost and because HCD does not enforce transfer requirements.

*If Stu is not the [i] registered owner of the unit, or [ii] cannot qualify for tenancy, or [iii] qualifies for tenancy but refuses to sign*

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the rental agreement offered by management, he is an unlawful occupant. This 3 part test is set forth in §798.75 (d). Stu must prove **each** of these 3 tests to defeat us. Stu is not an unlawful occupant if all the following are correct:

- "(1) The occupant is the registered owner of the mobilehome." [AND]
- "(2) The management has determined that the occupant has the financial ability to pay the rent and charges of the park; will comply with the rules and regulations of the park, based on the occupant's prior tenancies; and will comply with this article." [AND]
- "(3) The management failed or refused to offer the occupant a rental agreement."

First, the occupant must prove he is the registered owner of the mobilehome. If not the registered owner, he is an unlawful occupant *whether or not he could qualify for tenancy under the balance of the tests*. A title report may not reflect recent title changes. Ask for documentation. Perhaps Stu will also give you information which is damaging to him. Such statements [known as "admissions" and "declarations against interest"] can be presented to the Court. Document his statements where your daily notes and reminders are kept. Your notes can be introduced into evidence as "business records" and as "past recollection." Record the words verbatim if possible.

Second, Stu must then prove that management qualified him for tenancy. Stu must show "financial ability" to pay rent and other charges, a likelihood of complying with the rules and regulations and the **MRL**. He must satisfy your "new purchaser" requirements. It is possible Stu was "confused" (let's be generous) by the dealer about pre-approval for tenancy. *Indeed*, he already violated the MRL by not seeking approval for tenancy in advance: but **MRL** policy gives the "benefit of the doubt" to Stu. Management should offer a rental application to Stu so the purchaser investigation can be made. *What! Give an application to a no-good, low-down trespasser!?* In most cases, *yes*. Why? In the 3rd test below, Stu must prove you refused to offer a rental agreement: now, you may *properly* refuse to offer a rental agreement only *if Stu fails to qualify for tenancy or is not the registered owner*. (Still not convinced? Okay. Ask your attorney about possible exceptions).

Stu may not be qualified for tenancy. Result: he fails the second test and is an unlawful occupant. If he qualifies for tenancy (and, of course, is the registered owner), *you must offer a rental agreement*.

Third, Stu must prove that management refused to offer a rental agreement (this assumes he also proves he is the registered owner and qualifies for tenancy). If Stu was offered a rental agreement and

*Special note:*

## HUD / DFEH DECLINE TO ENFORCE THE FAIR HOUSING LAW: MINORITIES AND FAMILIES SACRIFICED ON THE ALTAR OF WHITE SENIOR VOTE.

Due to a sour economy, more and more park owners are amending rules-- or considering changing rules and regulations-- to "all age" status. And many cities, ignoring the rights and freedoms of property ownership, are seeking to stop such conversions to "all age" status by local law.

The dreams of minority families are crushed by White senior vote. The city council (who can see as far as the next election) are quick to see that kids don't vote. *Hence, White seniors have the backing of local government to keep minorities out on a pretense of preserving senior housing. Amazing as it may seem, state and federal agencies are fully supportive of this animus-based housing discrimination against minorities.* Thus, places like Yucaipa, Hemet and Huntington Beach, all desire to keep kids out. One need only look to the public hearings to see the carnival-like atmosphere and applause at the impassioned hate speech against kids. This is billed as preserving senior housing, but is arguably just a thinly-veiled mask to legitimize wholesale exclusion of Hispanic families. The smoking gun? There has been absolutely no effort by DFEH to scrutinize the affected parks for "significant services and facilities" for seniors still required by California Govt. Code. It is all about keeping kids out.

■ In the East, Kids and Families are Protected. On the Eastern seaboard, HUD's view has been that senior zoning cannot be applied to existing housing (per conciliated agreement respecting Ansonia, Connecticut). Here in the West, HUD will not intervene to protect the right to "all age" housing if the park owner could change the housing back to 55+ to comply with the zoning mandate of local government. Irrespective of the discrimination against children, familial status, and the minorities who have more and larger families than White people.

■ HUD will also decline to intervene to enforce the newly promulgated regulations concerning disparate effects on protected classes such as race, color and national origin. In the City of Huntington Beach, it is quite demonstrably clear that senior zoning (for a very small portion of the housing there) is working to the total exclusion of Hispanic families. HUD has taken the position that when seniors wish to congregate together in small residential clusters of affordable housing, a city may exclude Hispanic families.

■ HUD and Yucaipa: HUD failed to take any action when the White senior population was clearly locking out minority families. The same statistics (see "HUD/DFEH Ignore Minority Housing Rights," next page) apply in a study of Hemet and Huntington Beach. Now, Yucaipa is now trying to persuade owners of "all age" communities to change use and eliminate "all age" housing *en masse*. HUD continues to take no enforcement action to stop the elimination of affordable housing opportunities for families.

■ Welcome news to developers in traditionally segregated areas? Now developers have a *de facto* "green light" for exclusion of minority family housing in residential zones. "Older persons" zones where minorities have a high degree of representation will disproportionately exclude minority families. Demand for senior housing will mushroom within 10 years. *Do you really want to convert?*

Thus, if Stu Pidman is part of a minority family, and management is enforcing "older persons" housing, the exclusion of the minority family is totally acceptable and *required* in order to maintain a consistent enforcement pattern of "older persons" housing and to comply with a local zoning law if in effect in your area. Once again, a White majority succeeds in blocking access to minorities, with government's nod.



**No Minorities! No Kids Allowed!**

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fails to execute it, Stu "... shall not have any rights of tenancy." §798.75(b). He is an unlawful occupant.

Thus, if Stu is the registered owner, qualifies for tenancy and management refuses to offer the rental agreement, he stays. Usually, the key issue is whether Stu can qualify for tenancy. Put differently, if management refuses a rental agreement, management prevails if Stu is not the registered owner or cannot qualify for tenancy.

What about Rule Compliance? What if Stu has three little dogs, and you enforce a "one pet" policy (except for service and signal animals for the "disabled" (California does not use the term "handicap" anymore)? Can you jump to the conclusion Stu cannot comply with the rules, thusly refusing a residency application and immediately serving 5 day quit notice? Well, once informed of park rules (again, the MRL assumes innocence), Stu *may* part with two of his companions. Or, one may be a "service animal," calling for displacement of one dog. People do this. Again, do not prematurely serve your notices until all the facts are gathered.

**Do not use legal notices as a bluff.**

What if you operate a 55+ park and Stu is clearly under the age minimum? Do not refuse to provide an application. You need to have all the facts relating to the application, in writing and under your control, before you can provide a written acceptance or rejection for tenancy. You did not know that Stu was going to reside in the mobilehome with his grandfather Andy Belham. A written application would reveal this pivotal fact.

Is Stu a sublessee? Further, is the rent current? Is Stu a sublessee? Or is it clear he is buying the mobilehome? The tenancy with the existing tenant continues if the tenant is paying rent. In such case, Stu is a sublessee (see below). Thus, management needs to determine if Stu is just occupying the mobilehome or whether he intends to purchase (or has purchased) the mobilehome. Offering the rental application may bring out his intent. If the application is taken by the occupant and he indicates a willingness to complete and return it, he is likely seeking tenancy as a new purchaser. If he refuses it and states that he is just occupying the mobilehome, he is not an unlawful occupant if the rent continues to be paid by the tenant. He may also say he is sharing the mobilehome or that the tenant will at some future time return to the mobilehome - see below. For many years, earlier iterations of this discussion have always been clear that the midnight move in statute does not apply.

**QUESTION II:** *The adult son of a deceased tenant, Lef Toverson, moves into dad's substandard mobilehome. Do you:* (a) hand Lef a residency application? (b) serve Lef with a 5 day notice to quit (c) advise that the mobilehome must be removed? (d) take 2 aspirin and call the mobilehome ombudsman?

**Rule:** **The deceased tenant's estate may sell the mobilehome if rent is paid and other requirements are satisfied. See §798.78. The adult son must, like a purchaser, be approved for tenancy: he must be registered owner and qualify for tenancy and execute a rental agreement. If he fails any of the 3 tests, he is an unlawful occupant.**

What if the rules require at least one 55 year old tenant and son is 30? If he shared the household with Dad as a "resident" (see §798.11), he is the same as a "prospective homeowner" (see §798.74); if he *was* an additional "homeowner" (see §798.9), his tenancy may continue if "grandfathering" (continuation of a rule violation until transfer of tenancy) can be permitted without jeopardizing the

### HUD/DFEH Ignore Minority Housing Rights

Our studies of census statistics clearly corroborate that the seniors zones disproportionately lock out families with kids, and especially minority families, in places like City of Yucaipa. *Here is one example of many revealed by our research.*

The U.S. Census reports that the presence of 35,065 white occupants and 7,830 Hispanic occupants in Yucaipa. Families with children in the Hispanic community vastly outnumber White families.

	<i>With children</i>	<i>Without children</i>	<i>Total</i>
White families:	4617	4746	9363
Hispanic families:	1125	440	1565

**White with children, 49%, Hispanic with children, 71%.**

The data also show that household size is much greater in the Hispanic community. Hence exclusion of access to all age housing adversely affects Hispanic families to a great extent than White families.

	<i>Total households</i>	<i>2 person household</i>	<i>3-7 persons</i>
White	13490	2832 (20.9%)	<b>5531 (41%)</b>
Hispanic	1847	314(17%)	<b>1251(67.7%)</b>

There are also more Hispanic families in larger families, and, a smaller percentage in 2 person households.

A full two-thirds of Hispanics reside in households of 3 to 7 persons. There is also a disproportionate number of persons of White race over 60 years of age. The population is more heavily weighted toward Hispanics in the 18-and-under age range.

**White 9521 / 35065 = 27%      Hispanic 3213 / 7830 = 41%**

The density of the household more heavily weighted toward Hispanics.

**White 2.6 (average household size)      Hispanic 3.7 (average household size)**

Housing units occupied by 4 or more persons also reflect a disproportionately greater percentage for Hispanic people.

**White 3492 / 13586 = 25.7%      Hispanic 966 / 1868 = 51.7%**

The burden is *double* on the Hispanic family. Clearly, the differential impact of senior zoning on minorities is shamefully palpable. What's worse, it is driven by a sub-agenda of racial animus as has been shown in locations such as Hemet.

These statistics, in substance, also apply to Huntington Beach and Hemet. The impact is most noticeable in Huntington Beach because of its prime location and affordability. The effect on minorities, especially Hispanics, is especially pronounced there.

park's "older persons" status. Should you give him an application for tenancy because *he is less than 55*? Before deciding, what if he states that *Al Simers and Dee Mensha, an uncle and aunt*, plan to share the home? You can eliminate such "escape hatches" by gathering all the facts in writing, **in a residency application**. Additionally, consistent application of your **age verification** procedure (implemented long ago in compliance with HR1158, right?) *may require it*.

**Question II** contained a twist. *Did you see it?* The *mobilehome is substandard*. Management may require it to be removed under §798.73 of the **MRL**. If requested by the homeowner or selling tenant, management must supply a list of all conditions which must be corrected. Only code or regulation violations (Title 25 and Health and Safety Code) –and rules and regulations which implement these codes–can be used for such a list. Rules and regulations cannot be used for this list. Ideally, there should be no such rule violations if the management is on top of enforcement of the rules and regulations. Even without a request, if management decides that the home must be removed on sale as allowed by §798.73, communicate this news as soon as possible, if not immediately. A delay in communicating the demand for removal on sale raises serious waiver and estoppel issues, possibly vitiating the ability to require removal.

**Question III:** *Tenant Mack Wheeler is a long haul trucker – says he has a second home in Faraway, U.S.A. and states that this nice young couple will "watch" his home while he is away.* **Do you:** (a) hand Mack a 7 day notice of rule violations? (b) hand the couple a 5 day notice to quit? (c) hand the couple a residency application? (d) see a therapist?

**Mack (the tenant) is temporarily departing and not selling the home. He is subleasing. If subleasing violates the rules and regulations, a 7 day notice for violation of the rules is proper, naming Mack--not the young couple. Treating the couple as tenants may admit tenancy with them. Termination of tenancy could follow, which would also dispossess the couple.**

## ■ **SHARING V. TRANSFERRING POSSESSION:**

*What if Mack did not leave the state but welcomed the couple as additional persons sharing the mobilehome?* Assuming Mack lives alone, and the couple is not related, the couple are "guests." A guest fee may be charged. However, the first guest may not be charged a fee because a homeowner living alone may board one unrelated person without being charged a guest fee. Other guests may be charged such a fee.

*What if Mack stated he was sharing the home but departed for Faraway claiming a bedroom was kept for him at all times?* If true, he is still sharing the mobilehome. If he has turned over possession to the couple and has no shared right of possession reserved, he is subleasing. This is probably subleasing masquerading as house-sharing, but it depends on all the facts. It matters not that the couple is paying the tenant money to share expenses or to rent a bedroom.

*What if Mack claimed the couple was purchasing the mobilehome on a contract (in which title does not transfer until the last payment) instead of transferring title.* Waiving the "registered owner" test of the unlawful occupant statute should be discussed carefully with your legal advisor.

**One last hitch.** Rent control laws may purport to alter specifically defined terms such as "homeowner" and "purchaser." Local ordinance *cannot* change state law, but these local changes may affect your strategy.

## ■ **GUESTS: WHEN CAN I CHARGE? WHAT CAN I CHARGE? WHEN CAN I REQUIRE THE GUEST TO DEPART THE HOMESITE (if ever)??**

**Homeowners:** The first time the issue of guests becomes relevant is at the inception of tenancy. This is the time when the management will define the ground rules for guests visiting the premises during the tenancy. The rental or lease agreement will define the homeowner. The homeowner is the person or persons who filled out a tenancy application, screened for tenancy, were approved and completed the purchase of the mobilehome. The homeowner is the person or persons management looks to for the payment of the rent.

**Family members:** The homeowner may have family members live with them. Parents, children, grandchildren. You cannot vary the rent based on the number of persons in the household. And even if the immediate family member is not part of the household at inception of tenancy, the immediate family member cannot be charged a guest fee later during the course of the tenancy. Members of the household can be unrelated and part of the household to reside in the mobilehome for the initial monthly rent. Guest charges will not apply to the original members of the household. Again, total rent may not vary based on the number of persons in the household. The household is therefore composed of the homeowners and the additional members of the household, which are the residents. Residents sign the rental agreements and rules and regulations (if they are adult) which acknowledges they are in lawful occupation, but never qualified as a homeowner, are not the homeowners obligated to pay rent and if the homeowner departs, vacates or gives the home to the resident(s), must qualify as a new purchaser.

**NOTE:** Many park owners call their "homeowners" by the "resident" label ("tenants" by legal definition). "My residents are good people, well most of them anyway." The not-so-good-people go by a wide variety of labels. And this nomenclature is just fine so long as the rental or lease agreements have a well-defined definitions section so the rights and liabilities of the parties are clear and not subject to ambiguity. Park owners always lose the argument when there is an ambiguity, because the drafter always bears the risks of ambiguity in the law. We are following the MRL definitions in this article. I suggest you do so too.

Initial Occupants of the Household Living in the Mobilehome: At inception of tenancy, there may be longtime family members that are not “immediate family” defined by §798.35. There are many non-traditional households today. If the additional occupants are moving in with the homeowner at the inception of the tenancy, they should be listed as additional occupants on the rental agreement. These are the “residents” to reside with the homeowner on the homesite. The homeowner is permitted to have as many unrelated persons reside with the homeowner as they please, up to the density limit of the household. By rule of thumb, the number of persons may be limited to 2 persons per bedroom plus one additional person, in the all age community. Park owners can use a more restrictive limit in 55 plus communities (but generally do not do so as a marketing consideration).

NOTE: additional occupants not part of the original household may become guests later on during the tenancy. It is important for security reasons to the management and to know who resides in the park, to have a complete picture of the people to live in the mobilehome as part of the *original* household. You cannot require registration until the guest has been in occupation for 20 consecutive days or 30 days in a calendar year.

Sharing the Household. If the homeowner lives alone, the unrelated guest may reside in the mobilehome without charge. If another person enters into possession of the mobilehome, a guest charge becomes applicable. The law allows free occupancy only if the homeowner resides alone. Once the homeowner is no longer living alone, a guest charge will apply to the persons who is not an immediate family member or caregiver or care-receiver. On the other hand, immediate family members may move in, in whatever numbers, right up to the occupancy limit set in the rules and regulations and no additional charge may be imposed.

Care giver: If the homeowner requires the services of a caregiver, that person may not be charged a guest or other fee by reason of living in the mobilehome. On the other hand, that person has no rights of tenancy and may not use the facilities of the park—and why should he or she? The caregiver is present to provide a service to the homeowner, not to enjoy themselves in their free or leisure time, or for that matter, at times they are supposed to be rendering services to the homeowner.

What does the statute say? §798.34(c) says: A homeowner may share his or her mobilehome with any person over 18 years of age if that person is providing live-in health care or live-in supportive care to the homeowner pursuant to a written treatment plan prepared by the homeowner's physician. A fee shall not be charged by management for that person. That person shall have no rights of tenancy in the park, and any agreement between the homeowner and the person shall not change the terms and conditions of the rental agreement between management and the homeowner. That person shall comply with the rules and regulations of the mobilehome park.

Management is entitled to be provided a written treatment plan. A written treatment plan deals with a “plan,” not a letter which merely concludes that a caregiver is needed. Especially when the caregivers, lately, tend to be an adult child and the homeowner is clearly seeking to dodge the older persons rule which excludes underage children from the homesite.

There Is No Charge for the Care-receiver Who Comes to the Homesite. If the homeowner is 55 years of age or older, and will be providing care to an immediate family member who is over the age of 18, that care-receiver shall not be subject to a guest charge.

What does the statute say? §798.34(d) says: A senior homeowner in a 55+ park “may share his or her mobilehome with any person over 18 years of age if this person is a parent, sibling, child, or grandchild of the senior homeowner and requires live-in health care, live-in supportive care, or supervision pursuant to a written treatment plan prepared by a physician and surgeon.”

## ■ GUEST FEES:

The guest fee may be charged to a non-immediate family member, who is not an original resident of the household related or not, who is not a caregiver, who is not a care receiver in an older persons mobilehome park, who is not moving in with a homeowner residing alone, after staying 20 consecutive days or 30 days in a calendar year.

If this person moves in while there is a tenancy in place, *e.g.*, while the rent is current, this person will never be an unlawful occupant. The midnight move in statute applies when a person moves in without having complied with the requirements to establish a tenancy.

How much can we charge for a guest fee? This issue is nowhere discussed or analyzed to our knowledge. But a charge should not be so large as to draw the criticism that it is designed to discourage the right of the homeowners to have and enjoy their guests—to disincentivize inviting friends and acquaintances into the park and thereby intrude on the private lives of homeowners.

One way to set the guest charge is to base it on housing value. In the same manner as a park owner sets prevailing rents where a free market still remains (*i.e.*, in the absence of a coerced rent control ceiling), the value of the short term housing can be measured. For example, the rent is \$1200 per month, and one assumes a couple resides in the average home. A per diem rental value per guest, is the daily value of the rent per person. Assuming a 30 day month, the rent is \$1200 per couple or \$600 per person, and \$600 per month or 30 days, is \$20.00 per day. This is one example of the manner in which a park owner can explain the basis for a guest charge if ever challenged.

How do you know when to start charging a guest fee? Keeping track of incoming visitors is an ongoing challenge for everyone

in park management. This imperfect science relies on the powers of observation or resident reporting. Visitors unfamiliar with mobilehome park living and common courtesy tend to draw more than their share of attention and reports to management. Note the date of first report or observation, then pencil 20 days thereafter.

## ■ I HAVE BEEN ASKED TO ADD ANOTHER FAMILY MEMBER AS A HOMEOWNER. MUST I? SHOULD I?

Taking account of the reality that mobilehome tenants have proven themselves, time and time again, to be dishonest, it is incumbent on the part of the management to avoid being duped, victimized or exploited. Attempts to mislead and cheat park owners are legion.

Here is one of the ways deceitful residents trick park owners out of the right to impose rent adjustments on turnover of tenancy. The park owner has two homeowners who qualified for tenancy and executed the lease. In order to avoid rent control hearings, capital improvement increases and paying lawyers for rent increase hearings, the homeowners executed a long term lease. On sale of the home, the lease call for an increase of 2 percent per year of tenancy. Several years later, the homeowners Phil D. Bagg and Rob Banks request that their sister, Patty Larceny, be added as a homeowner.

1. You re not obligated to add Patty Larceny to the lease. *You already have 2 creditworthy homeowners on the lease. You have not run the credit on Patty and are not required to.* If there is a change in the title or registration, that event calls for a rent increase, and yes, you can re-qualify all three homeowners. If you allow Patty Larceny to be added to the lease, Phil and Rob may vacate leaving her in possession. And you have no remedy. You allowed her to sign the lease agreement. *You miss out on a rent adjustment.*

2. On a month to month tenancy, under rent control, same answer. If you allow others to be added to the rental agreement without going through the screening process, you lose out on the right to increase rents on transfer of the mobilehome. Moreover, the added occupant may not qualify for tenancy. He or she may have a bad credit or rental history which poses nothing but new problems for the management.



**RULE: Do not add additional persons as homeowners, to the lease or rental agreement.**

## ■ Questions

This decision chart may help in assessing the status of the newly discovered occupant and *whether guest charges can be applied.*

If, then **Yes**

If, then **No**

Guest?	<ul style="list-style-type: none"> <li>■ Guest fees apply</li> <li>■ Cannot set duration of visit</li> </ul>	<ul style="list-style-type: none"> <li>■ Guest fees inapplicable if <i>host lives alone; immediate fam. member; caregiver; care-receiver; permissible medical hardship sublessee</i></li> </ul>
Immediate fam. member?	<ul style="list-style-type: none"> <li>■ No charge, stays without guest charges</li> </ul>	<ul style="list-style-type: none"> <li>■ E.g., cousin, niece: Then guest charges apply unless <i>host lives alone, or caregiver, care-receiver</i></li> <li>■ Cannot stay if age violation in 55+ park</li> <li>■ Cannot stay if exceeds occupancy limit</li> </ul>
Collateral fam. member?	<ul style="list-style-type: none"> <li>■ Guest charges apply</li> <li>■ E.g., cousin, niece: guest charges apply unless <i>host lives alone, or caregiver, care-receiver</i></li> </ul>	<ul style="list-style-type: none"> <li>■ No guest charge if <i>host lives alone, or caregiver, care-receiver</i></li> </ul>
Host lives alone?	<ul style="list-style-type: none"> <li>■ No guest charge for one sole boarder (guest)</li> </ul>	<ul style="list-style-type: none"> <li>■ If 1+ person already there, guest charges apply unless <i>caregiver, care-receiver, immediate fam.</i></li> </ul>
Caregiver?	<ul style="list-style-type: none"> <li>■ No guest charge</li> </ul>	<ul style="list-style-type: none"> <li>■ If not caregiver, guest charges apply, unless <i>host lives alone, or care-receiver, or immediate fam.</i></li> </ul>
Care-receiver?	<ul style="list-style-type: none"> <li>■ Must be 18, 55+ park, No guest charge</li> </ul>	<ul style="list-style-type: none"> <li>■ If not <i>care-receiver</i>, guest charges apply unless <i>host lives alone, caregiver, immediate fam.</i></li> </ul>
Sublessee?	<ul style="list-style-type: none"> <li>■ If homeowner in good standing, and park allows subleasing</li> </ul>	<ul style="list-style-type: none"> <li>■ If no subleasing allowed: 7 day notice, Not 5 Day Notice</li> </ul>
Medical hardship subleasing?	<ul style="list-style-type: none"> <li>■ No guest fee for medical hardship sublessee</li> <li>■ Sublease rent limited.</li> <li>■ Must provide documentary evidence, follow rules and regs. No guest charge.</li> </ul>	
Unlawful occupant?	<ul style="list-style-type: none"> <li>■ Fits no other category</li> <li>■ No tenancy in place, or</li> <li>■ Home for sale, application given and not returned, takes possession.</li> </ul>	<ul style="list-style-type: none"> <li>■ No remedy applicable if occupant is <i>impermissibly subleasing, sharing of possession, guest, house-sitting, caregiver, care-receiver.</i></li> </ul>
Assignee/Purchaser/Heir?	<ul style="list-style-type: none"> <li>■ Must follow application procedure</li> <li>■ Qualify of tenancy</li> <li>■ Record title as registered owner.</li> </ul>	<ul style="list-style-type: none"> <li>■ If takes possession before approved, no right of tenancy, then 5 day notice with application for tenancy</li> </ul>

**Disclaimer Regarding Materials:** PARKWATCH™ is prepared to provide information of general interest. This information is not legal advice or a substitute for specific advice and information that you obtain from your own counsel. Some information may contain information that is dated or obsolete. The legal advice appropriate to you, will also depend on particular facts and circumstances. Thus, this is not to be construed as legal advice to be relied upon by you in any capacity.

Please Feel Free to Contact Us with Any Questions!

