

## ***DLO Succeeds in Court: San Mateo's Rent Control Law Struck Down: License to Operate - "Square Pegs and Round Holes"***

Introduction: The San Mateo Superior Court recently ordered an injunction against enforcement of a County park "licensing" law. The County law prohibited any rent increase until a special license to operate a mobilehome park had been granted after public hearing. Rent levels, proposed increases and the amount of rent allocated to park maintenance all constituted criteria for granting the license to operate. Yet the law did not provide for adjustment of any proposed or pending rent increase. Rather, the ordinance merely provided for either approval or disapproval of the license (and hence any proposed rent increase). I believed that the ordinance failed to pass constitutional muster and concluded that filing suit to enjoin enforcement of the law was a required action. The Court issued a preliminary injunction against enforcement of the ordinance as to all park owners. The County now considers a rent control law. Ironically, the rents in San Mateo County are already consistent with low and moderate income rent levels. And, a moderate approach to resident concerns for park conditions would, if ever considered, meet the intended goals of the County reflected in promulgating the licensing law without the permanent discord, expense and bureaucracy engendered by rent controls.

The Ordinance: The ordinance required the management of each mobilehome park in the unincorporated area of the County to apply and pay for a new "license to operate." ("*. . . every mobilehome park, . . . must obtain an annual business license to operate a mobilehome park*"). The ordinance froze all rents in County parks until a license to operate had been obtained from the licensing board.

The perceived alternatives for the Bayshore Villa owners were few. The owners could attempt to obtain a license and submit to the evisceration of property the rights. But the damage to the owners seemed inestimable under this scenario. The owners concluded that legal relief to stop enforcement of the ordinance was the only means by which to address the serious harms it would inflict.

Careful review of the ordinance was undertaken to assess the likelihood of injunctive relief. After all, the owner's leases were exempt from the ordinance pursuant to the Mobilehome Residency Law, Civil Code §798.17; the MRL preempts the ordinance and forbids the County from asserting any jurisdiction over the rent increases required by the leases. The ordinance so vaguely sets forth the duties of the License Board that no one is given fair notice of the standards for approval or denial of any proposed rent increase. The determination of the condition of a park and a proposed rent increase, absent any standards or guidelines for review, would devolve into a matter of personal scrutiny and sensibility beyond any semblance of impartial treatment, and worse, beyond any intelligible benchmark for judicial appeal and review.

Suit was filed on behalf of Bayshore Villa shortly after passage of the ordinance. The County responded to the suit, essentially denying all allegations of the suit. Legal Aid organizations intervened in vigorous additional defense of the ordinance. The Court issued a preliminary injunction against enforcement of the ordinance as to any park owner affected by the ordinance. The County has not, as yet, sought any appeal of the injunction. The County is now considering further rent controls and a new ordinance. The preliminary injunction against enforcement of the ordinance

remains in effect until trial which has not been set to date.

The Bayshore owners stepped up and took issue with all the deficiencies posed by the law, for all owners. The injunction has stopped interference with all parks affected by the ordinance. For Bayshore Villa, action was required to be taken to stop interference with long term leases which would have undermined the capitalized value of the park to an unknown and potentially devastating extent. The precedent of tolerating intrusion into the exempt long term leases at all (the "slippery slope" problem) was simply unthinkable to the owners.

Future Legislative Alternatives: The County cannot postulate any rational basis for enactment of rent controls, but still consider this proposition.

Rent controls would be unadvisable for several reasons:

1. Rent controls permanently institutionalize acrimony within the park owner/tenant dynamic.
2. Rent controls fail to function in the manner intended, instead producing concomitant ill-effects, waste and expense.
3. Rent controls exacerbate underlying conflicts, and formalize disputes which could be sensibly settled into adversarial trials and judgments. Park owners and tenants are morphed into litigants and perpetual adversaries. The mutual interests in enhancing the lifestyle, peace and harmony in manufactured housing communities are lost and forgotten.
4. Actual facts must be present to demonstrate intent to charge excessively high rents to exploit tenants amidst a housing shortage. The effects on the tenants must be sufficiently serious to make rent controls a rational measure. That situation does not exist in the County of San Mateo.

In sum, rent control does not solve the problems it aims to cure. Rent controls are expensive. And rent controls are typically unwieldy, controversial and permanent. Worse, rent control eliminates the hope that groups of people with similar long term interests can work together to achieve these mutual goals. Rent controls institutionalize a real or merely perceived conflict and redefine the roles of the landlords and tenants as civil combatants locked into a bureaucratic adjudicative trial process. Bearing the imprimatur of local recognition, the rental disputes arise to new heights of formality, procedural complexity, and lack of effective disposition--spilling over into administrative agencies, appeal processes, and finally the trial and appellate courts. Any incentives to resolve, settle, compromise, are removed.

It is to be sincerely hoped that the County of San Mateo will consider all the alternatives to dealing with the issues and reach a reasoned conclusion which serves the long term interests of owners and residents alike.