

EMERGENCY PREPAREDNESS PLANS - Words of Wisdom?

Before September 1, 2010, California Park Owners Must:

- (1) Prepare a Plan;**
- (2) Get Notice of the Plan into the Resident's Hands;**
- (3) Post Notice of the Plan (In Clubhouse or Other Conspicuous Location); And,**
- (4) Give a Copy of the Notice to New Purchasers.**

Q *Why have someone else prepare the plan?*

A Not just 'someone'— but someone who can shield management from claims of intentional wrongdoing, or violation of law. Every tenant who seeks a claim against the park owner asks for willful misconduct damages—Civil Code section 798.86 states:

(a) If a homeowner or former homeowner is the prevailing party in a civil action, including a small claims court action, against management, they may be awarded up to \$2,000 for each violation of the MRL in addition to actual damages.

(b) A homeowner or former homeowner who is the prevailing party in a civil action against management may be awarded either punitive damages pursuant to Section 3294 of the Civil Code or the statutory penalty provided by subdivision (a).

ONLY YOUR ATTORNEY CAN PROVIDE YOU WITH A 'RELIANCE OF COUNSEL' DEFENSE AGAINST PUNITIVE DAMAGES.

Q *Do I have negligent rescue liability if I include or offer any services to residents in an emergency?*

A **Yes. And well more than the limits of your insurance policy!** There are too many stories of emergency and trained personnel who flee in an emergency. From flight attendants to oil refineries, the stories of panic and abandonment of duty are legion.

Q *Should you risk exposure to liability based on the performance of your on-site employees in an emergency?*

A You should consider whether you need to make sure you are not volunteering your park managers for emergency duties they may not, "under fire," wish to perform or be able to perform, or willing to perform.

ONLY YOUR ATTORNEY CAN PROVIDE YOU WITH COMPETENT ADVICE ABOUT RESCUE LIABILITY, YOUR POLICY AND GRATUITOUS EXPOSURES

These questions need to be answered when you decide to assemble an emergency plan. An attorney can advise on whether and to what extent you may wish to expose yourself to "rescue liability" in California law. Why? A "**negligent rescue claim**" may be made if someone is injured or dies in an emergency. *A few such claims will exceed any commercial general liability policy. You should decide exactly, if at all, what rescue services you, as park owner, will provide.*

Exposure to damages, punitive damages and potential insolvency are at risk in preparation of emergency plans. Such exposure can be legally defended when the park owner asserts a reliance of counsel defense. "[I]t is a complete defense to a claim of extreme and outrageous conduct when the evidence shows ... the defendant acted on the opinion and advice of counsel..." (160 C.A.3d 936.)

Q *As a management company, can I safely impose a policy without review or consent of counsel?*

A **Sure.** Management companies do not need attorneys to review all that they do. *However, if an emergency occurs, and several claims arise because the managers fled in panic when the manual says they will stay and help, or, the plan is claimed to be incomplete or in violation of SB 23, the owner may question:*

(1) *whether management obtained the protection of "advice of counsel" to defend against punitive damages (which insurance never covers).*

(2) *whether anyone assessed the liability and exposure for "negligent rescue" based on claims that management assumed responsibilities, participation or involvement in emergency planning, evacuation, or organizing, or represented there would be assistance of competent onsite management, and otherwise lulled residents from taking their own personal precautions and measures.*

There are many claiming to provide services for compliance with SB23. Unless the services are approved and recommended by a licensed California attorney, the plaintiff lawyers may have substantial, financially crushing claims in the event of injuries and loss of life in your park. *You may wish to think twice* about explaining to your owner or investors why there was no reason to pay for the additional protection against "rescue liability" or punitive damage exposure (in using non-lawyers for this task), when aggregated claims demands together exceed total insurance coverage and the park's value.

Our office provides the entire service at modest cost, including (1) plan and (2) advice of counsel correspondence, with each plan. Please feel free to contact us if we can help.

Terry R. Dowdall, Esq.

for

DOWDALL LAW OFFICES, A.P.C.