



News for Mobilehome Park Owners

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gilchristutter.com

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Gilchrist & Rutter provides updates on legal trends as a service to keep our valued clients and friends informed of the latest legal news. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

“You’ve Been Served”

You have just been notified that a large group of residents is bringing a claim against the park owner, and perhaps its outside management company, alleging that they have failed to properly maintain the park’s facilities. Now what?

Your first instinct may be to call your insurance agent and entrust him to tender the claim to your carrier. If you are really lucky, your agent will identify each and every potential policy and the carriers will accept the tender of coverage without a reservation of rights, assuring you coverage for both the cost of your defense as well as the cost of resolution, whether by settlement or judgment.

Unfortunately, that never happens in the real world. Too often, the agent fails to identify all of the potentially applicable policies at the outset, risking loss of a key source of coverage based upon a failure to provide timely notice under the policy. Even more common, the carrier will reflexively respond to the agent’s tender with either a cookie-cutter denial or a conditional acceptance of coverage that threatens to evaporate as the case proceeds to trial.

In defending a failure to maintain action, the park owner must face two potential adversaries – the park resident plaintiffs and, unfortunately, its own carrier. It is therefore critical to develop immediately a strategy for both. With the early assistance of legal counsel, there are a number of things the park owner can do to maximize the benefits of coverage while ensuring that it receives an effective and zealous defense.

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Conversions... Unintended Options

You, as a park owner, have decided to subdivide your property and sell lots to the residents. This process is known as conversion to resident ownership. You understand the benefits: selling the land at its real estate value rather than its value as rental property. In addition, if there is rent control in your community, upon conversion the property transitions from local rent control to State rent protections. (Under State rent control, low income residents are protected, but non-low income residents transition to market rents.)

However, filing an Application for conversion can have unintended outcomes that can substantially increase the value of your property for different reasons.

Over the past several years, as our firm has handled the conversion process in cities throughout California, we have encountered the following scenarios that have produced unintentional – but profitable – options for our clients:

Scenario 1 – Upon learning that the park owner is planning to subdivide, the residents seek out a “non-profit” buyer to buy the park and “save them” from conversion. The non-profit recognizes the value of the park as a rental park (\$14,000,000), and the fair value as a subdivided park (\$28,000,000), and is willing to pay the park owner an amount between fair value and the rental value, for example \$20,000,000. This provides the park owner

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Guggenheim Awaits Decision, and Possible Review by The Supreme Court

Perhaps the most important mobile-home park rent control case in a generation is awaiting decision by the Ninth Circuit Court of Appeals. Guggenheim v. City of Goleta was argued before an “en banc” panel of 11 Federal judges on June 22, 2010. The en banc panel is reviewing a prior favorable decision by a panel of three circuit judges.

The prior decision held that mobile-home park rent control that does not allow a park owner to raise rent to market when a space/coach changes hands (“vacancy control”) constitutes a government “taking” which must be compensated. No city can afford to pay park owners for such a taking, and if the prior ruling is upheld, cities with vulnerable rent control ordinances will likely repeal or modify them to include vacancy decontrol.

Since the circuit court’s earlier decision, efforts for stricter rent control in several cities have stopped dead or have been defeated, and no new rent control has been imposed anywhere. Enacting or modifying a rent control ordinance would start a new statute of limitations period, subjecting that city to almost-certain liability. In this way, the case benefits park owners who do not currently suffer under rent control, as well as those who are otherwise unable to challenge their city’s ordinance due to an expired statute of limitations. The case is viewed as so important to the industry that “Friend of the Court” briefs were filed by nine different organizations in support of the park owner.

The justices’ questions and comments at oral argument primarily focused on the fact that the current park owner purchased the park with rent control and vacancy control in place. The city’s attorney contended there was no “taking” because the price paid for the park took into account the rent regulations and so there was no economic loss as a result of the law. Some justices also questioned whether the park owner’s claims are foreclosed by

the statute of limitations. However, it is an axiom of appellate practice that the ultimate decision by a court cannot reliably be determined from the bench’s questioning. While park owners should hope for the best, we must all prepare for the worst, by preparing a plan of action for seeking further review by the United States Supreme Court.

The current composition of the Supreme Court may give the best opportunity in a century to make favorable law regarding rent control. If the circuit court’s decision is not favorable, the park owner and its allies will have to move quickly in order to seek review by the High Court.

A request to have the Supreme Court review the case must be filed within 90 days of the new decision. In that short time period, industry lawyers will need to analyze the decision to identify issues and arguments that will appeal to at least four Supreme Court justices, the number required to grant review.

If the High Court agrees to hear the case, there will be plenty of financial and legal support for the industry. The much harder part is convincing the Court that it should review the case and generating the support necessary to do so. The Court will need to be persuaded that the primary issues are not limited to California or to mobilehome parks, but are of broader, national significance. Therefore, national organizations and corporations with wider relevant interests will need to be identified, persuaded to join the cause, and will each need to draft their own Friend of the Court briefs in support of Supreme Court review, all in the 90 days after the decision is released.

It is therefore essential that all park owners be fully prepared to support the effort before the Ninth Circuit’s decision is known. We will continue to keep you informed through our email blasts and newsletters of all further developments.



Ask the Experts!

William from Watsonville asks:

“Due to the economy, I now own several homes in my park. I planned to rent them out until I can find new buyers, but the residents have complained to the city that I am illegally subleasing. Under our park rules, tenants are not allowed to sublease. Am I exempt from my own rule?”

Answer:

Yes! But not because you are exempt from your own rule, but because renting out homes that you own does not constitute subleasing.

By definition, a sublease involves Person A leasing something to Person B, who then (sub)leases it to Person C. Your rules prohibit that from happening. But when you as the park owner and owner of homes rent such a home, you are not subleasing because there is only one lease – between you and the tenant.

As an added benefit, a tenant who rents a home directly from an owner is considered a “resident” under the Mobilehome Residency Law, rather than a “homeowner.” Residents do not have many of the protections under the law that are given to homeowners. Thus, you should consider using a different form of lease for these situations and work with your legal counsel to ensure you have maximum flexibility and protection in these circumstances.

However, your initial instincts were correct – generally, you and your renter(s) must follow the park rules. For instance, if you own a Senior park, the tenant who rents your house must meet the age requirements (55+).

The rule of thumb is that if the park violates its own rules, it may not have the ability to enforce them against the other residents. But in this case, the rule against subleasing is not applicable to your plan to rent out the homes you own.

Questions? Please e-mail us at:
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Conversions...Unintended Options

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with an option to avoid controversy with the residents and the city, while still selling the park for a substantially increased profit.

Scenario 2 - Upon learning that the park owner is planning to subdivide, the city realizes that they really did not want the land to remain forever as a mobilehome park, which would be the case if the residents purchased the individual lots. The city, recognizing that the park is not consistent with the other commercial use on the street, and that redevelopment would generate more tax revenue, allows the park owner to close the park and the land to be developed for other purposes such as apartments, condominium or commercial development. This creates an unintended option for the owner to either redevelop the land, or to sell to a developer for its increased highest and best use value.

Scenario 3 - Upon learning that the park owner is planning to subdivide, the city begins doing everything in its power – and outside of its power – to improperly interfere or delay the conversion. By using such tactics as enacting illegal moratoriums or anti-conversion ordinances that impede the

process for months or even years, the city ultimately becomes liable for damages for the costly delays. Within the past two years, we have settled with one city for \$750,000 and another for \$937,000 paid to the park owners for failing to approve their subdivisions in a timely manner. In both cases the cities paid the money to the park owners before a trial.



Scenario 4 - Upon learning that the park owner is planning to subdivide, the city and the residents become agreeable to more equitable rent control terms. In an effort to placate the residents, the city proposes modifications such as partial vacancy decontrol, in exchange for stopping the conversion. The residents, who are misled into believing that conversion is the worst thing that could ever happen to them, think that the city has come to their rescue and agree to the more equitable rent control rules.

While many conversions move through the process in a smooth and timely manner, which by law and procedure should be about one year, others are faced with challenges along the way that can create options with unintentional, yet profitable outcomes.

“You’ve Been Served”

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First, counsel can work with the park owner and its agent to identify immediately all potential policies. Depending on the policy language, coverage may be triggered even before a lawsuit is actually filed, at the time residents serve their required thirty-day notice of an intention to bring suit. By tendering at the earliest opportunity, the cost of counsel’s initial legal and factual investigation of the claims will be treated as covered defense costs.

Second, counsel can advocate in favor of coverage on behalf of the park owner before the carrier makes its coverage decision. If the policy language contains troubling exclusions, or the complaint’s allegations do not contain the magic verbiage to ensure coverage, counsel can address these issues preemptively and favorably influence the carrier’s response.

Third, if and when the carrier accepts coverage, counsel can advise the park owner regarding the scope of coverage offered and its range of options for legal representation. Depending on the particular carrier’s practices and whether the carrier reserves its right to later deny liability coverage

due to certain exclusions in the policy, it may insist on appointing one of its panel counsel to defend the case. Alternatively, it may authorize the park owner to select its own

“In defending a failure to maintain action, the park owner must face two potential adversaries – the park resident plaintiffs and, unfortunately, its own carrier.”

“Cumis,” or independent counsel, to defend the matter at rates that are typically significantly below the prevailing hourly rates of law firms that specialize in mobilehome park litigation. Some carriers will both appoint counsel of their choosing to defend the action and authorize the park owner to select its own Cumis counsel to serve as co-counsel. The park owner must carefully consider the pros and cons of each option. In virtually all instances, independent counsel should be retained to perform some role, from merely monitoring the carrier’s defense and advising on settlement strategy to actively defending the action.

While you can’t prevent disgruntled residents from bringing suit, you can minimize your exposure and stress by maximizing the benefits promised to you when you paid your insurance premiums. An early phone call to experienced legal counsel may be your best insurance of all.

Meet the Team

For those of you who may not be as familiar with us, we would like to introduce our Gilchrist & Rutter Mobilehome Park Practice team members. In this issue, we'd like you to meet:

DUANE MONTGOMERY

Duane Montgomery specializes in representing clients in real estate transactions, including structuring, negotiating and documenting real estate secured loans, refinancing, loan modifications and workouts.

In addition, Duane focuses on representing mobilehome community owners in the subdivision public report process with the California Department of Real Estate (DRE) in connection with the issuance of a Final Public Report permitting the sale of units related to conversion of the park to resident ownership. In this regard, Duane prepares and processes with the DRE all required governing documents for the homeowners association and the project, including covenants, conditions and restrictions, bylaws, articles of incorporation and various other documents.

He also prepares and obtains approvals from the DRE of documents related to the conversion process, including appropriate forms of purchase and sale documents, seller financing documents and others requiring the DRE's approval in connection with the issuance of the Final Public Report. Further, Duane has extensive experience representing clients in transactions involving the purchase and sale of mobile-



home communities and with regard to other issues such as negotiation and documentation of cable television agreements with major cable television service providers.

Besides specializing in real estate financing transactions and representing mobilehome community owners, Duane represents clients in a variety of other real estate and business transactions. Among other things, he represents clients applying for California finance lender licensing through the California Department of Corporations, and he assists businesses in the startup, formation and operation of limited liability companies, corporations, partnerships and joint ventures.

Duane is a partner with Gilchrist & Rutter and has been with the firm for over 13 years. Before joining the firm, Duane worked as a lawyer for major national and international law firms and served as a vice president and associate general counsel for a major savings and loan association. He received his law degree from the University of Michigan Law School. His wife, Sharon, works as a licensed clinical social worker at the Children's Court for the Los Angeles County Department of Mental Health. Duane has a son in college and a daughter starting college in the fall.

Association Participation

Richard Close, the Department Chair of the Gilchrist & Rutter Mobilehome Park Practice Group, was a speaker at the recent California Mobilehome Parkowners Alliance (CMPA) Symposium in Las Vegas. He joined other industry leaders and service providers in making educational presentations to CMPA Members.

Mr. Close will be speaking next in October at the Western Manufactured Housing Communities Association (WMA) Convention & Expo in Monterey. He will be moderating a panel providing both legal and management advice.

If you already belong to an industry association, we strongly encourage you to attend the annual events that they offer. Not only do they provide valuable seminars to better enable you to own or manage your parks, they also provide networking opportunities in which to exchange ideas and experience with others in the industry.

If you do not belong to any associations, we urge you to join today!

Representing mobilehome park owners for over 25 years,

Gilchrist & Rutter

has been providing legal services
to the manufactured housing industry, including:
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acquisition & sale | subdivision | conversion
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