



News for Mobilehome Park Owners

May 2010

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For attorney biographies, Firm information or more articles, please visit our websites:

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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.

Courts of Appeal Affirm Park Owners' Right To Subdivide

In back-to-back cases recently decided, two Courts of Appeal have ruled that park owners have an absolute right to subdivide their parks for condominium-style ownership. Both cases clearly rule that residents do not have a right to block subdivision approval, despite the survey of resident support that must be taken. Gilchrist & Rutter handled both cases at the trial and appellate stages.

In *Palm Springs Investment Company, L.P. v. City of Palm Springs*, the City of Palm Springs had denied approval of the subdivision application. The City Council contended the subdivision was not a "bona fide resident conversion" because only nine of the Park's 184 households expressed support for the subdivision.

The trial court held that the City Council had exceeded its jurisdiction in denying approval of the subdivision by relying on the tenant survey of support, and the Court of Appeal, Fourth District, agreed.

In its written decision, the Court reaffirmed the 2002 holding in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* that local government must approve a MHP subdivision where the applicant has complied with the limited requirements of the statute. The statute does not authorize a local agency to determine whether a proposed conversion is bona fide, and it is the duty of the courts, not the local agency, to review any evidence such as the survey results if any serious claim of a "sham" conversion is later brought, the Court said.

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Does Your "One-Size-Fits-All" Lease Really Fit?

When was the last time you thought about the form lease or rental agreement that you use when renting a space in your park?

There are more than a few form agreements that claim to be "standard" available from trade associations and other sources. The average park owner, dealing with the many day-to-day matters involved in owning and managing a park, might think, "Isn't a 'standard' agreement good enough?"

The answer: Probably not. Your park is unique – "one-size-fits-all" may not really fit. Location, local laws, size, amenities, management, tenants, age, future plans – these are just a few of the factors that make your park different from all others. But just as one-size-fits-all clothing usually turns out to fit no one, a "standard rental agreement" will rarely address the issues that are individual and important to your property. Working closely with your attorney to produce a custom form lease is an investment in the future of your park. An attorney who knows you and your park can assure that your form lease

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Are We There Yet?

John P. Neet, MAI

The consensus among economists is that the recession ended in June 2009, and a long, slow recovery is anticipated. We are now in the phase of market recovery when all of the clichés are trotted out. Discussions regarding the relative level of fluid in the glass and the nature of the glowing light as seen in the distance seem to begin all conversations regarding the current state of the market. I have even heard Winston Churchill's weighty pronouncement: "Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

In the manufactured housing community investment market, we probably are seeing "the end of the beginning." Unlike the boom of 2004-2006, the recovery will be uneven, and some segments will recover at a much slower rate than others. Some may not ever recover to the value levels of the past. More than in the past, the pace and the ultimate level of recovery will be determined by the availability of financing in that segment.

For the upper tier properties, life did not change much during the "Great Recession." Fannie Mae financing has maintained capitalization rate levels at levels only slightly higher to those of the mid-decade. This segment has benefited from limited downside operational risk, the availability of attractive financing, and demand from investors with long term perspectives.

Demand is slower for the otherwise high quality properties that have top of the market rents, locations away from

major metro areas, or risky vacancy profiles. Some properties that would have drawn multiple and increasing offers a couple of years ago have languished for these reasons or for reasons tied to the existing financing. I expect that this trend will continue.

For second and lower tier properties, the lack of financing has brought the market to a near standstill. The lenders who have supported these segments are either laying low or have disappeared. As of late March, one or two

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of these lenders are cautiously re-entering the market, but with higher underwriting standards. The good news is that there are lenders re-entering the market. They will proceed more selectively, and pay negative attention to high ratios of park owned rental units, high populations of older singlewides, RV's on mobile home sites, and functional inadequacies. These will send many loan inquiries to the trash bin.

Smaller parks that are well occupied and well maintained, especially those in stronger market areas, will see the first of the non-FNMA monies available. The wise owner of a smaller second or third tier park will begin positioning the park now if financing is expected to be obtained in the near future.

Normalcy is probably still 1-2 years off. But the "new" normal is not likely to resemble the normal of 2005-2006. Expect higher underwriting standards, property maintenance and performance standards, and a return to market conditions that more closely resemble the 1990's than the conduit loan era.

Ask the Experts!



Suzanne from Riverside asks:

"Our park rules do not allow for pets in the clubhouse. What do we do about "undocumented" service animals?"

Answer:

The law in this area is shocking. Under the U.S. Americans with Disabilities Act, any animal trained to provide assistance to an individual with a disability is considered a guide animal, regardless of the type of animal, and whether or not they have been licensed or certified by state or local government.

Since there is no set rule or distinction to identify a service animal, you may not be able to identify one by a special collar or identification papers. The disabled person is not required to provide documentation about the animal, or of their own disability (which can include "emotional support") requiring use of the service animal.

Because service animals are not "pets," a "no pets" policy must be modified to allow the use of service animals. So, a service animal (even a pig or a pony) may not be refused admission to the clubhouse.

The law does allow for reasonableness. Once a request is made, the park manager should engage in a dialogue with the resident to reach an agreement that meets the needs of both sides.

If you have industry-related questions that you would like to see covered in future Newsletters, please e-mail us at:

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Courts of Appeal Affirm Park Owners' Right to Subdivide

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In the other appellate decision, *Carson Harbor Village, Ltd. v. City of Carson*, the Court of Appeal, Second District, similarly ruled that a city may not deny a subdivision application merely because the residents do not support it. The Court quoted the legislative history of the statute, which states, "The law is not intended to allow park residents to block a request to subdivide."

However, that Court believed the City does have the authority to deny the subdivision application if it finds the conversion is a "sham", i.e., not "bona fide." Whether the conversion is or is not bona fide depends only upon the state of mind of the park owner. If the park owner expects to sell a significant percentage of the lots, the conversion is bona fide and the local government is required to approve it. The results of the survey of support are at most "circumstantial evidence," and cannot be dispositive, the decision held. The Court explicitly noted that a mobile home park conversion "could be bona fide without any resident support."

In addition, the *Carson Harbor* decision also rejected the City's claim that it could deny a conversion because it purportedly did not comply with the City's general plan. That holding is consistent with the published decision in *Sequoia Park Associates v. County of Sonoma* from the Court of Ap-

peal, First District, (reported here in an earlier Newsletter), which *Carson* unsuccessfully argued was wrongly decided.

It is important to note that the *Carson Harbor* decision was supported by only two of the three justices on the panel. The dissenting justice, like the unanimous Court in *Palm Springs Investment*, would have held that local government had no authority to judge the bona fide nature of a conversion.

Local governments, GSMOL, and other anti-conversion groups have been claiming for several years that the *El Dorado* case was overturned by the Legislature when it enacted the resident survey requirement. These two cases, and the *Sequoia Park* decision, make absolutely clear that argument is wrong. These same groups have also claimed that the local agency may deny conversion approval based solely on the results of the survey. The appellate courts have unanimously rejected that claim. The courts have also unanimously held that local governments cannot impose additional requirements or inject other considerations into a subdivision approval than those already contained in the state statute.

Gilchrist & Rutter acted as trial and/or appellate counsel on the El Dorado, Sequoia Park, Palm Springs Investment and Carson Harbor cases.

Does Your "One-Size-Fits-All" Lease Really Fit?

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meets all the requirements of the law, but also addresses issues such as:

- **Tenant Dispute Resolution:** Many "standard" forms simply assume that disputes will be settled in court. Yet arbitration or judicial reference may be faster, cheaper and more owner-friendly. Your attorney can advise you of your options and incorporate an enforceable dispute resolution provision in a custom form lease that meets the requirements of this complex and changing area of the law.
- **Park Owned Homes:** In addition to renting spaces, some owners rent park-owned homes to tenants. A "standard rental agreement" is not suited for these situations, and may not adequately protect park owner rights. Your attorney can design a custom lease form that provides the flexibility to cover all rental scenarios.
- **Rent and Other Charges:** "Standard" forms often only specify the initial rent and note that it may be increased in accordance with the law. Your attorney, who will be



familiar with local rent control and other applicable laws, can advise you on the possibility of incorporating pre-negotiated rent adjustments into your custom lease form. Pre-negotiated increases may be less likely to impair tenant relations. Your attorney can also ensure that all non-rent charges (i.e. capital improvement pass-throughs, RV storage, etc.) specific to your park are covered in your custom rental agreement.

These are just a few of the many areas in which a custom form lease can be tailored to the needs of your park. California Mobile-home Residency Law can make it impossible to enforce any agreements between a tenant and park owner that are not specified in writing – so a "standard" form that does not take into account your park's circumstances may be cheap now but very costly if a dispute arises later. On the other hand, working with your attorney to create a form lease that is specific to the unique nature of your park can protect and enhance the value of your investment, as well as reduce the potential for expensive disputes or loss of revenue down the road.

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. Going forward, each of our quarterly newsletters will feature an individual team member for you to get to know. In this issue, we'd like you to meet:

TOM CASPARIAN

Tom Casparian is the Director of Litigation for G&R's MHP Practice Group. His areas of specialty include trial, writ and appellate litigation, property rights, rent control, failure to maintain defense and prevention, regulatory compliance and administrative actions, municipal advocacy and government relations, and park development and subdivision. Although the mobilehome park practice is particularly successful, Tom also provides this expertise to many other real estate investors, developers and landlords.

Tom has won dozens of trials, writs and appeals - many against cities and government agencies that have interfered with or denied park owners' rights. Many of Tom's most successful outcomes for his clients are obtained without resorting to court action. Although a very experienced litigator, Tom believes clients are often best

served by avoiding litigation when possible, and is adept at finding creative solutions to his clients' needs. Nevertheless, it is important to have as your attorney someone who has earned a reputation as a skilled and successful litigator. A credible threat of litigation and loss to the other party is critical to avoid or minimize time spent in court.



Tom is a partner with Gilchrist & Rutter and has been with the firm for over 12 years. Prior to joining the firm, Tom was a Deputy Attorney General with the California Department of Justice. He received his undergraduate degree at Cornell University and his law degree at Boston University. He lives in the Westwood area of Los Angeles with his wife Lindsey and their two young daughters.

Congratulations to Susy Forbath



Susy Forbath, Gilchrist & Rutter Senior Paralegal and Mobilehome Park Specialist, was recently appointed as a Member of the City of Carson Mobilehome Park Rental Review Board ("MPRRB"). She will serve as a Park Owner Representative on the MPRRB. Her experience working both with park owners and their residents will be to the betterment of the mobilehome industry in Carson, which is thought to have one of the most restrictive rent control laws in California.

The responsibility of the MPRRB is to determine fair, just, and equitable rent increases and hear Petitions for space rent increases at semi-monthly Hearings. As an advocate of the industry both at the local and state level, we know that Susy will bring her understanding of the issues and extensive expertise to her new appointment.

LEFT: Carson Mayor Jim Dear presents a Certificate of Appointment to the MPRRB to Susy Forbath.

Representing mobilehome park owners for over 25 years,

Gilchrist & Rutter

has been providing legal services

to the manufactured housing industry, including:

closure | financing | regulatory

acquisition & sale | subdivision | conversion

rent control application & litigation | failure to maintain claims & prevention

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