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News for Mobilehome Park Owners February 2010

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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.

Litigation Is Not Always The Solution

It is the lucky park owner that has not had to pay attorney's fees for prosecuting or defending a lawsuit. Litigation, unlike most transactional or administrative attorney services, usually leads to steep fees very quickly because of the amount of work necessarily involved.

Most park owners who have had to incur the cost of litigation might have believed that it was unavoidable. Local governments all-too-frequently take illegal action on rent control, land use, permitting, code enforcement and other issues where the law takes a back seat to local politics. When faced with conduct that tramples your legal rights, and profit, it can appear that filing a lawsuit is the only way to obtain what you are entitled to or to ward off unwarranted intrusions.

Even more (seemingly) unavoidable are litigation fees when you are the defendant. Resident-initiated failure to maintain actions, rent challenges and discrimination claims are unfortunately common these days. Many park insurance policies exclude coverage or a defense to such actions, leaving the park owner to fend for him-or-herself, often at great expense. Once sued or threatened with a lawsuit, most believe they have no choice but to respond in kind and let the matter play out in the courts.

But it does not always have to be so. While an attorney's advice and possible action is certainly required in all of these situations, it is the highly skilled lawyer, and the one who truly has your interests at heart, who can and will find alternative means of resolution.

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Emergency Preparedness Plans: Are You In Compliance?

You may recall that pre-existing law regarding emergency preparedness required the park management to designate a person available by telephonic or other means to be responsible for, and reasonably respond in a timely manner to, emergencies concerning the operation and maintenance of the park. In parks with 50 or more units, the designated person was required to reside in the park and have knowledge of emergency procedures relative to utility systems and common facilities. That law authorized, but did not require, park management to adopt an emergency preparedness plan in accordance with statutory requirements.

However, under recently approved Senate Bill 23, the pre-existing law concerning emergency preparedness measures has been considerably revised and supplemented.

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Litigation Is Not Always The Solution

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For example, imagine you have learned that a well-known predatory plaintiffs' law firm is circulating a questionnaire in your park among residents asking them to list problems and complaints with the park's facilities or management. Or worse, you have already received the statutory Notice that a failure to maintain action will almost certainly be filed in about 30 days (Civ. Code, § 798.84). There's little you can do except wait to be served with the inevitable lawsuit, right?

Not so. This firm, for example, has successfully dissuaded residents from going the next step. First, it is important to understand that the plaintiff law firm has almost certainly not informed the residents of the many downsides to them of bringing or joining a failure to maintain action. For instance, resident plaintiffs can be liable to the park owner for litigation costs if the suit is unsuccessful. These can amount to thousands or even tens of thousands of dollars. Furthermore, residents' homes can become difficult or impossible to sell once a lawsuit is filed – no one wants to buy into a park when the residents have gone on record with claims that "the Defendant (park owner) forced them to live in unhealthful and unsafe conditions, subjecting them to cruel and unjust hardship."

"Most park owners who have had to incur the cost of litigation might have believed that it was unavoidable."

If you, however, ensure that the residents learn of these possible or probable results, a "critical mass" of potential plaintiffs may reconsider their tactics and decide their efforts would be more productively spent working with management to improve the areas of dissatisfaction. If nothing else, taking the time to communicate with and educate your residents is likely to persuade some residents that joining the lawsuit is not in their personal best interest. Even simply decreasing the number of plaintiffs will make the matter more easily resolved with other methods.

To take an entirely different example, suppose the local rent board has denied your application for a "fair return" rent increase beyond what the local ordinance would allow. You may now have a strong case to sue the City. But before you do, your attorney and you should meet with the City Attorney and the City Manager to discuss your case. Rather than face a lawsuit, especially one where the local ordinance is at risk of being invalidated completely and the City may be liable for damages, many Cities have been willing to use their Redevelopment Agency funds to subsidize rents — when pushed. If such an agreement can be reached, you are happy because you are collecting more rent, the residents are happy because they are not paying more, and the City is happy because it will take credit for "spending" its own money on the residents' behalf and avoiding a lawsuit, damages and a potential retroactive rent increase the residents would have to pay.

Park owners need attorneys who have earned a reputation as skilled and successful litigators. A credible threat to your adversary of litigation and loss is necessary to have any hope of actually avoiding court. But your litigator needs to have the creative mind and versatility to find ways of avoiding or minimizing the time spent in court and preparing for trial, and a willingness to advise you to use alternatives where possible.

Ask the Experts!

Gil from San Joaquin County asks:

"The loan on my park is coming due later this year. What should I be doing now?"

Answer:

The financial market today is as bad as it has been in many years. Park owners need to start working on new loans much earlier than in the past.

Capitalization rates for parks are (hopefully temporarily) much higher than in the recent past. Therefore, even if the net operating income for the property is the same as in the past, the value of the park is lower.

Loans with high debt to value ratios will find it more difficult to refinance. Lenders are requiring higher equity as a hedge against further reduction in property value.

We have been able to assist our clients in finding creative ways to obtain new loans.

There are Fannie Mae programs available if your property qualifies, but you need to start the process as early as possible because as one of the few active lenders, Fannie Mae and their agents are very busy. In addition, there are local banking institutions willing to make smaller loans.

If these options fail, we have also successfully assisted our clients in convincing their lenders to extend existing loans for one to two years.

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

MHPG@gilchristrutter.com

Sign-up for our free e-mail service to receive the latest news and industry developments.

Congratulations to Richard H. Close, Esq.! Named 2010 Super Lawyer!

Richard Close, a partner of Gilchrist & Rutter, has been named a SuperLawyer by Law & Politics media.* He was selected from an outstanding group of lawyers from more than 70 practice areas who have achieved a high degree of professional achievement, from which only five percent of the lawyers in the state are selected.

Lawyers are selected based on a rigorous, multiphase process that is recognized by Courts and Bar Associations across the Country. Peer nominations and evaluations are combined with third party research. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement.

Richard's counsel goes well beyond legal advice to his clients. As a Wharton School graduate with many years of business experience, Richard oversees our Mobilehome Park Practice Group in maximizing the profitability of the property and its land value through long-term and short-term business plans, including rent control litigation, adding spaces, ensuring a fair rate of return, acquisition, refinancing, failure to maintain claims/prevention, and park closure. In addition to expert legal representation and consultation, our practice group has extensive experience administrating and advocating on behalf of our clients with California State agencies, including, but not limited to, the California Coastal Commission, the Department of Housing and Community Development, and the California Department of Real Estate.

With over 20 years of experience representing park owners, Richard is the Department Chair of our Mobilehome Park Practice Group. His experience, leadership and successes have helped Gilchrist & Rutter become a top choice in legal representation for California park owners. Since our involvement with the El Dorado case which created the State law that provides park owners the ability to subdivide their property, Richard has represented the majority of park owners seeking conversion in California.

Richard's business knowledge and experience, gained from having formed a national bank and served on its Board for over 14 years, adds an invaluable dimension to his legal representation. His focus is not only on the law, but also on maximum profitability, financing strategies and negotiations, and solutions.

Close has also taken an active leadership role in both state and local political issues for more than 25 years. He has become a political advocate for both the park industry at the legislative level and for park owners in their pursuit of equitable local governance.

Beyond his work in real estate law, Richard also assists clients in the formation of joint ventures, partnerships, limited liability companies, trusts, family limited partnerships, professional corporations and related entities.

** Law & Politics has been publishing legal magazines since 1990.*

How Can The City Pay You A Rent Increase?

You as a park owner have a dispute with the city where your property is located. Your exceptional law firm has prevailed on your behalf. The city wants to settle its dispute with you, but has little money to pay you a settlement because of its budget crisis. Meanwhile, the tenants are complaining that the space rent is too high.

What is the solution?

You do not need to take city money that would otherwise be used for police or fire protection, which could tarnish your reputation in the community. If the city has a Redevelopment Agency, those funds can be designated to subsidize low or moderate income residents. The rents payable to you can be increased without any hardship on your tenants.

Many cities throughout the State have Redevelopment Agencies. State law requires that a portion of the tax increment funds that the agency receives must be used for affordable low or moderate income housing, which can mean either new development or existing facilities. Cities are hesitant to use the money to build low income housing projects. They would rather use the money to subsidize existing low and moderate income residents (voters), thus generating "affordable" housing within your park.

Although city budgets have been shrinking, most Redevelopment Agencies have annual income that must be used for low and moderate income residents. In addition, most have reserves that have not yet been used for housing projects.

This money can be used to assist your residents or to help finance the expansion of your park.

So even though your city (or county) could be "crying" poverty, remind them that their Redevelopment Agency may be able to solve your problem, the city's problem and the residents' problem.

Emergency Preparedness Plans: Are You In Compliance?

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As under the pre-existing law, the new law still requires the park to have a person available to respond to emergencies concerning the operation and maintenance of the park and that such person reside in the park for parks with 50 or more units. What is significantly different under the new law ? The owner or operator of a park is now required to adopt an emergency preparedness plan on or before September 1, 2010. Preparation of an emergency preparedness plan is no longer an option but a requirement. (For parks constructed after September 1, 2010, the owner or operator of the park is required to adopt such a plan before issuance of a permit to operate.)

In order to comply with such emergency preparedness plan requirements, the new law provides that the owner or operator is permitted to adopt the emergency procedures and plans approved by the Standardized Emergency Management System Advisory Board on November 21, 1997, entitled "Emergency Plans for Mobilehome Parks,"* or any subsequent version. Or, as an alternative, the owner or operator may adopt a plan developed by the park management that is comparable to the "Emergency Plans for Mobilehome Parks."

The new law also requires that an owner or operator of the park post a notice of the emergency preparedness plan in the park clubhouse or in another conspicuous area within the park. On or before September 1, 2010, the owner or operator of the park is also required to notify all residents of how to access the plan and information on individual emergency preparedness from the appropriate state or local agencies, including the California Emergency Management Agency. This is permitted to be accomplished by distribution of such materials and posting notice of the plan or information on how to access the plan via the Internet.

The new law provides for agency enforcement as to whether park management is in compliance with the law, and compliance may be ascertained by requiring receipt of a copy of the plan during site inspections.

Underscoring the very serious nature of the law, violations of the law are described as constituting "an unreasonable risk to life, health, or safety" that must be corrected by park management within 60 days of notice of the violation.

In summary, to make sure your park is in compliance with the new law you must:

- Adopt an emergency preparedness plan on or before September 1, 2010;
- Post a notice of the emergency preparedness plan in the park clubhouse or in another conspicuous area within the park;
- Notify all residents of how to access the plan and information on individual emergency preparedness from the appropriate state or local agencies.

** A PDF copy of "Emergency Plans for Mobilehome Parks" can be obtained on our website at: www.gilchristrutter.com – Mobile Home Practice – Resources.*

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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