

News for Manufactured Housing Community Owners July 2011

Rent Control Case Teed Up For U. S. Supreme Court

Prominent community owner James Goldstein is taking his rent control case against the City of Carson to the United States Supreme Court. His case could benefit all Park owners in California.

The Pacific Legal Foundation (PLF), together with Gilchrist & Rutter, has agreed to take the case to the Supreme Court. The PLF is the country's pre-eminent public-interest legal organization defending property rights. R.S. Radford, a principal attorney at the PLF who has specialized in rent control and related issues for over 20 years, will act as lead counsel. Carson has granted only paltry rent increases since Goldstein purchased Colony Cove Mobile Estates five years ago, primarily using a "maintenance of net operating income" formula that does not take into account the debt service necessitated by the acquisition. That and other factors used by the City have denied Goldstein a fair return on its investment, even *without* consideration of the debt service.



JAMES F. GOLDSTEIN

Gilchrist & Rutter filed suit against the City in Federal Court. State courts have been hostile to park owners' rent challenges for years, granting great deference to local governments' decisions without recognition that these local agencies are often highly biased because of the political power of park residents and the cities' own "affordable housing" interests. The federal courts by contrast are perceived as more neutral and more willing to protect the constitutional rights of property owners to a fair return on their investments.

Entry into federal court on a "takings" claim, however, is almost always thwarted by the so-called *Williamson County* "ripeness" requirement. The rule, which was created by the courts, requires that a property owner must first seek and exhaust state remedies for a government taking before suing in federal court.

That means first going through state court. In addition to the usual difficulties in state court, the only remedy provided by California law for denial of fair rents is to go back to the

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Conversion Legislation Stopped... For Now

Manufactured housing community owners have obtained even greater clout in the California State Legislature. On June 2nd the industry was able to defeat SB 444, authored by Senator Noreen Evans from the Santa Rosa area. The Bill's author needed 21 votes in the Senate to pass the Bill. She was only able to obtain 18!!

SB 444 would have given control of a community owner's right to subdivide his/her property, as governed by state law, to the tenants and the city. It was conceived and lobbied by cities throughout California. Local governments continually want to obtain greater control over conversions/subdivisions. In addition, they want retroactive immunity for damage lawsuits for their prior illegal denial of such subdivisions.

It was a formidable task to be fighting the united efforts of cities and resident groups throughout the State. In conjunction with the outstanding lobbying efforts of the WMA and the CMPA, we organized a statewide effort to convince State Senators that the poorly

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The Gilchrist & Rutter Manufactured Housing Practice Group consists of the following attorneys and paralegals:

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CMPA Symposium in Las Vegas

Richard Close, Chairman of the Gilchrist & Rutter Manufactured Housing Practice Group, recently made a presentation at the 2011 CMPA Symposium in Las Vegas. The presentation, together with Clarke Fairbrother, Principal of Newport Pacific Capital, was entitled “Minimizing Partnership Struggles.” The focus of the program was problems that can arise in investor and family entities owning real estate, particularly manufactured housing communities.

Unless entity documents are properly drafted, problems may arise as the general partners pass away or retire, investors get divorced or die, or if creditors try to sell the entity interest of the partner. In addition partners often have different ownership goals, for instance, increased property value versus current monthly distributions.

“Partners often have different ownership goals...”

The general conclusion was that the creators of entities, and the investors, need to have a clear understanding of their goals and objectives and make sure that these goals and objectives are contained in the legal documents. In addition, there needs to be a mechanism to protect the entity as well as the individual owners if problems develop. As the entities evolve, the legal documents need to be updated to reflect the current business plan.

Rent Control

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local government that denied the fair rent in the first place to seek a future rent increase that is supposed to make up for the past lack of fair rents. It is a Kafka-esque procedure that has never resulted in a park owner being fairly compensated.

It is widely believed that a majority of the U.S. Supreme Court thinks *Williamson County* should be revisited. Removal or revision of the ripeness rule would eliminate this primary barrier to federal justice for park owners. At the time Gilchrist & Rutter initially filed the lawsuit against Carson, the PLF’s Radford stated, “This case could mean the end of mobilehome park rent control in California.”

The U.S. Supreme Court recently declined to review a decision by an *en banc* panel of the Ninth Circuit reversing a prior ruling that Goleta’s rent control constituted a taking by transferring property wealth from the community owner to the residents, in *Guggenheim v. City of Goleta*. The industry will now focus on the *Colony Cove* case as the next promising opportunity to obtain fair rents for community owners.

Conversion Legislation

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drafted Bill was unfair to park owners, a violation of their legal rights to own and operate their real estate, and would also harm residents who want to purchase their spaces.

The cities will probably try again next year, this was their fourth attempt. However, both cities and resident groups are now aware that park owners are organized, involved, and politically sophisticated.

Any future attempt to change this area of the law should be based on finding solutions to any substantiated conversion problem in a manner that is fair to both residents and community owners.

Ask the Experts!

Monty from San Diego asks –

“I would love to know what other park owners are doing to prevent vacancies in their parks. These tough economic times are presenting a real challenge. Any creative ideas?”

Well, at least you are on the right track in wanting to “prevent” vacancies, rather than trying to fill them! It is much cheaper to keep an existing tenant than to replace a lost one. And you are not alone - this is an ongoing issue for many parks today, large and small.

To find out what other owners are doing, we posed your question to a community management company to see what successful methods they would share. Of course, the first recommendation was to hire a professional management company!

Here are some collective thoughts on retaining tenants in today’s market:

The issue needs to be considered on a case-by-case basis.

If a tenant’s economic difficulty appears to be short-term, establish a rent deferral program whereby some portion of the rent can be deferred for a specific period of time, until it can be repaid in installments or until the home is eventually sold and the deferral repaid in full.

If the economic difficulty appears to be long-term, consider purchasing the house rather than having it go into foreclosure or relocated. Rental of park-owned homes in today’s climate is typically easier than waiting for a purchaser. Ideally, the house can be made rental-ready thru moderate rehab. If not, replacement with a newer home will only add value and appeal to your park, and generate a higher rental rate.

If a large percentage of your residents are having difficulty, lowering rents, or at least offering a rent increase “freeze” may be your best options. However, review your city’s rent control ordinance (if any) to know what allowances there may be for future recovery of unapplied increases.

If you have a question, please email us at:
MHPG@gilchristutter.com



Richard H. Close Named 2011 *Super Lawyer*



Richard Close,, who Chairs our Manufactured Housing Practice Group, has been named a *Super Lawyer* for the second consecutive year 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.

Richard's counsel goes well beyond legal advice to his clients. As a Wharton School graduate with many years of business and real estate experience, Close's goal is maximizing the profitability of Parks and their 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.

For more than 25 years, Close has been an active leader in both state and local political issues. He has become a political advocate for the park industry at legislative levels, including State, City Councils, Boards of Supervisors, and Coastal Commission. ▲

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

U.S. Supreme Court Gives Nod to Arbitration

The United State Supreme Court has once again issued a decision strongly favoring arbitration and this time it is good news for community owners. For years, California courts have struck down arbitration agreements between owners and residents. They either held that the agreements were "unconscionable" or that they did not have to be enforced under California law. As a result, most failure to maintain actions brought by residents have been allowed to proceed in court, often resulting in outsized settlements to avoid the threat of a jury trial.

The recent decision in *AT&T v. Concepcion* may change all that. The U. S. Supreme Court enforced an arbitration agreement that had been prohibited under California law, finding

"The decision gives hope that arbitration clauses in rental agreements may now be enforced..."

that the agreement was not unconscionable under federal law and that federal law controlled. The decision gives hope that arbitration clauses in rental agreements may now be enforced in actions brought by residents against park owners for an alleged failure to maintain.

However, there is one hitch. The arbitration agreement must call for application of federal, not California, law. Many arbitration clauses in rental agreements currently do not do so. We strongly recommend that rental agreements be reviewed and, if appropriate, revised so that they can be enforced under federal law. ▲

Does Your Lease Say What You Need It To Say? The "Stuff at the Back" Can Be Important

Many busy park owners may feel that they can't spend time (or don't have the interest) on the "legalese" in their park's lease forms. After all, there's a community to manage, and signing a new tenant is good news, so why fret about the confusing jargon and problems that may never happen?

But even "standard" lease provisions can have deep implications for future tenant relations and park operations. So owners should pay careful attention to the specifics of lease terms.

A generic "standard" form lease document may seem like a money saver. But an overly generic printed form can cost you money if it does not address the particulars of your property. Your park has unique features, from the park's size and age, to development possibilities, specialized local laws, management issues, or tenant populations. A customized lease form that fits your community may cost you more up front, but will protect your property and your pocketbook in the future.

"Okay, hold on a second. Who pays for the trash service? It doesn't really say here..." Careless assumptions and loose informal understandings may fall apart at critical moments, creating costly disputes. Some areas that typically need refining or sharpening are: vaguely worded language in leases to clearly spell out business terms; a clear schedule of rent adjustments in the lease; specifying any storage space and storage rent; detailing all utilities and services, including the responsible party, any service limits, and whether meters, jacks, or cabling are required; carefully enumerating types and amounts of capital improvement pass-throughs; specifics about which permitted occupants (or pets) are allowed.

Because poorly drafted provisions open the door to future problems, be sure the documents accurately express your business deal and, if you aren't confident that they do, find an attorney who will make your lease documentation accurate and practical for use.

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Meet the Team

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

STEVE HELLER

Within the Manufactured Housing Practice Group, Steve focuses on general transactional real estate and contract issues, and association management and operations issues. In this regard, Steve has addressed issues relating to resident leases, purchase and sale of park property, and association election, operation and governance matters.

In addition to representing mobilehome park clients, Steve works on commercial real estate transactions for owners of retail centers, office buildings and industrial properties. He has a particular focus on leasing deals, including representation of shopping centers owners with major national retailers and of institutional owners of office buildings. Generally, Steve handles all types of commercial transactions, including leasing, development, sales/acquisitions, financing, construction, and associated corporate matters.

Steve is a partner with the Gilchrist & Rutter and originally joined the firm in 1997. While away from the firm for a few years, he served as the Director of Leasing for a real



estate developer, overseeing the company's leasing activities in 13 states. He received his undergraduate degree in History, with a minor in Business Administration, from the University of California, Berkeley, graduating Phi Beta Kappa, after initially attending the University of Pennsylvania, where he was a Benjamin Franklin Scholar. He received his law degree from the University of California, Berkeley - Boalt Hall in 1995.

Steve grew up in West Los Angeles. After attending school in Philadelphia and Berkeley, he briefly pursued a journalism career in New York City and San Francisco before devoting himself to law and falling right back into his L.A. roots. He currently lives in the same area of Los Angeles where he grew up, has been married 14 years to his wife (whom he knew in elementary school), and remains a rabid Lakers fan. He has two sons, nine and eleven years old, who play baseball on teams whose games are sometimes scheduled *very very* early on Saturday mornings. ▲

Does Your Lease Say What You Need It To Say?

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The various general, legal provisions (often located at the back of the lease document) are sometimes called "boilerplate" or dismissed as legalese. But these provisions can become surprisingly important and are well worth your attention.

For example, standard lease documents don't usually fit for leases of park-owned homes. This misfit may complicate a park owner's legal rights against the tenant under the California Mobilehome Residency Law.

Dispute resolution is another issue commonly ignored. Standard provisions lead to standard lawsuits winding slowly through the court system. Arbitration or judicial reference

may be faster, cheaper and more advantageous for the owner. Understanding the issue and your options may require discussion with an attorney.

Naturally, busy community owners and managers won't realistically spend their days endlessly poring over the minutia of lease provisions. But those who are aware of the potential land mines in their lease documents will know where to best focus their attention.

It is important to remember that the purpose of a lease isn't just a contract to bind the tenant, but is there to protect you and your property. ▲

Representing community owners for over 25 years,

Gilchrist & Rutter

has been providing legal services to the manufactured housing industry, including:

closure | financing | regulatory | acquisition & sale | subdivision
rent control application & litigation | failure to maintain claims & prevention

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