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

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.

Metamorphosis to the 21st Century

Once upon a time in California's picturesque Santa Ynez Valley lived Foss Mobilehome Park, a tired 1950's senior mobilehome park that had seen better days. Along came a park owner with vision and an evolving business plan that ultimately led to the newly named Valley Gardens, a charming family community with new "green" manufactured homes that is now as desirable as its surroundings.

Today, a new rental community blooms in the valley.

The 35 new one and two-bedroom manufactured homes, which will be for lease at market rates, are ready for occupancy. The transformation was supervised by Gilchrist & Rutter clients Katie and David Hay, owners of Central Coast Real Estate, LLC, who will also provide ongoing management.

Katie Hay, co-owner of Central Coast Real Estate, which was given the contract to upgrade, lease, and manage the remodeled property, says, "Some of those who work here in the Valley can't afford to live here, and this renovation creates that opportunity. I have already heard excitement from potential renters."

Valley Gardens, LLC acquired the property in September 2008, and carefully planned a rehabilitation of the 1950s-era mobile home park. Among their "invisible" improvements: new higher capacity water, sewer, gas, electric, telephone and cable services were installed underground. The addition of extensive landscaping, new fencing and

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Park Utilities – Asset or Liability?

Many park owners and managers probably do not spend much time thinking about the utilities that serve their park and its residents (unless they're not working). Between dealing with the logistics of a new mobile home being placed in the morning, attending a rent increase hearing in the evening, and listening to complaints all day, owning and operating a park can leave little time to consider such mundane items like water, gas and electricity costs. As long as they're working, there are more important things to worry about, right? Maybe not – especially if your park is subject to rent control.

The Mobilehome Residency Law (MRL) gives park owners two options when it comes to charging tenants for utilities: utility charges can be included in the total amount of "rent" paid each month by a resident, or (as long as the rental agreement does not specifically prohibit it), park owners can bill homeowners separately for utility charges. So far, so good, at first this appears to be a case of six of one or a half-dozen of the other. Indeed, separate billing would seem to be just an extra bit of paperwork. However, Section 798.41 of the MRL expressly states that "any separately billed utilities fees and charges" shall not be deemed to be "rent or a rent increase" for the purposes of any rent control law. And there lies the potentially significant value of separate utility billing.

If utility charges are simply included in the monthly rent, rent control laws may be preventing you from realizing the full value of your investment. If utilities are separately

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Metamorphosis, Continued

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Valley Gardens “before” (above) and “after” (below) recent refurbishment



freshly paved roads give the park a visible new community feel.

The units were custom-designed and built especially for the vacant home sites. They have quaint front porches and two-car parking spaces. Nine-foot-high ceilings, skylights, and windows over six feet tall create a spacious feeling indoors. Bamboo hardwood floors, recessed lighting, quartz countertops in the kitchens and bathrooms, and an abundance of hardwood cabinetry throughout are standard features in all units, as are central heat and air conditioning and Rinnai tankless hot-water

heaters. All homes come equipped with GE Energy Star appliances, including a stacked washer/dryer, 22-cubic-foot side-by-side refrigerator/freezer with ice and water in the door, gas range, microwave oven and dishwasher.

“We feel fortunate to be able to work on such a worthwhile project and were pleased to be able to employ local Santa Ynez Valley contractors and labor almost exclusively. Not only is this renovation an enhancement to the community, but an investment in our local economy as well,” added Mr. Hay.

Ask the Experts!

Rather than providing the answer, this month the “Expert” is asking you to share your expertise!

With the struggling economy, we are hearing stories from many community owners of creative methods they are utilizing to both avoid vacancies and to assist their residents through these tough times. We have heard everything from a variety of rental assistance and deferral programs, to clubhouse food banks.

If you would like to share ideas you have put into action that have made a difference in your manufactured housing community, please email us your story so that we can share it with other community owners who are likely facing the same issues.

This is a difficult time for many, and a good time to come together as an industry. We look forward to sharing your ideas in our next publication which will be read and appreciated by many park owners across the state.

Please email your ideas to: MHPG@gilchristutter.com or mail to: Susy Forbath, c/o Gilchrist & Rutter, 1299 Ocean Avenue, Suite 900, Santa Monica, CA 90401.

Obviously this innovative transformation took some creative and legal planning, strategic resident negotiations, and a few rounds with local agencies. But the visual difference is astounding and the increased property value rewarding. The lovely Valley Gardens Community is ready to profit for another 50 years while the residents live happily ever after.

To see more of Valley Gardens, you are welcome to visit their website at www.ValleyGardensHomes.com.

The Perfect Economy to Reinvent Your Community

Five or ten years from now, when you look back to the year 2010, what will your thoughts be? I should have. I could have. I wish I had.

Manufactured housing communities have more vacancies than in the recent past. The residents are grouchy because they cannot sell their homes and their values have decreased substantially. Financing of homes and parks is very difficult.

What are the opportunities that currently exist?

There are many prospective buyers of mobile-home parks who cannot find properties to buy at “realistic” prices. Because capitalization rates are higher than in recent years, property values have decreased. However, owners of 5-star parks do not want to sell at today’s lower values – unless they have to.

Park owners may have to sell because loans are coming due. Based upon the lower park values and the new lender rules, park owners may have to substantially reduce the outstanding loan balance on their property in order to refinance. Park owners in this situation need to start the process of negotiations with lenders many months before the loan due date.

This is a good time to subdivide or close your property.

Recent court cases have established the rights of park owners, and damage lawsuits have been filed against cities that do not follow State laws which give park owners the right to subdivide without conditions being imposed by the city or county.

However, the right to subdivide was almost lost last year by new legislation which was vetoed by the governor, who will be replaced in January. Many park owners are obtaining their subdivision maps now, while they still can, but may wait until the market has improved before proceeding with lot sales to residents. Subdivision greatly increases the value of a Park by converting it from its present value based on its net operating income to its true value as real estate that can be sold in individual lots.

Residents often argue that they are not in favor of a subdivision/conversion because it will reduce the value of their homes.

However, the \$100,000 homes from 2007 are being sold today for \$15,000 to \$20,000. Today, more residents understand that they would substantially benefit by owning both the land and the home. In other words, the \$15,000 home is not going to decrease in value but, in fact, could and should substantially increase in value with the future rise in the land value.

Another opportunity to be explored is closure.

Although state law provides that park owners have a right to close their park and pay residents only reasonable relocation costs, many cities require a park owner to pay residents the “in-

place” value of their home upon closure. That was very expensive when homes were selling for \$100,000.00 each. However, the homes are now valued at a much lower price, e.g. \$15,000.00. It may be economical to close the park for redevelopment or sale to a developer as a vacant property.

It is our opinion that cities cannot require a park owner to pay each resident “in-place” value of a home as a condition of approving a park closure, but that issue is for another article.

This is the perfect time to look at the feasibility and benefits of changing a senior park to an all age park. Park owners have the right to do so under state law and local government cannot interfere. A family park has a greater pool of potential tenants. Also, if the owner is considering subdivision/conversion, our experience is that the process is easier in a family park; families have a greater understanding of the benefits of land ownership; and have a greater financial ability to obtain a loan to buy the lots.

Because construction costs are much lower than in the past years, this could be the perfect time to physically upgrade or expand your community. Adding spaces in under-used land in a park is often supported by the local government and current park residents.

Because residents are finding it very difficult to sell their homes, they are often willing to work with the owner to upgrade the park to increase their ability to sell their homes at higher prices. For instance, in rent controlled communities a park owner should discuss with the residents the benefits of a rent increase with the purpose of upgrading utility systems, streets, etc. An agreed upon capital improvement rent increase for that purpose could increase the value of the homes and increase their marketability – as well as increase the value of your property.

Many cities or counties have low-cost loans or grants available for upgrading residential properties. This is most common for properties that have high percentage of low income residents. Although your political ability to obtain the grant or low-cost loans may be limited, working with residents in the park may politically make municipal funding more easily available.

Those who have lived through the past recessions realize that the current financial situation is temporary and creates opportunities. Are you taking advantage of the current financial environment to position your property to be more valuable in the future?



Richard H. Close and Thomas W. Casparian, together with the rest of their team, comprise the Manufactured Housing Practice Group at Gilchrist & Rutter.

“Are you taking advantage of the current financial environment to position your property to be more valuable in the future?”

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:

YEN NGUYEN HOPE

Within the Mobilehome Park Practice group, Yen specializes in trial, writ, and appellate litigation. In this regard, Yen has assisted in winning trials, writs and appeals compelling local governments throughout California to approve mobilehome park conversions to resident ownership, repeal moratoriums, and vacate illegal local ordinances seeking to impose conditions on subdivisions.

In addition to representing mobilehome park clients, Yen has represented financial institutions, private equity funds, developers, individuals and major corporations in a wide range of matters, including California Environmental Quality Act (CEQA) and Subdivision Map Act litigation, joint venture and partnership disputes, real property and land use disputes, fraud claims, breach of contract claims, securities class action litigation, and insurance coverage disputes.

Yen is an associate with Gilchrist & Rutter and has been with the firm for almost 4 years. Before joining the firm, Yen worked for two major national and international law



firms. She received her undergraduate degree in English with a minor in Business Administration from the University of California, Los Angeles, where she spent a year studying abroad at the University of Sussex in Brighton, England. She received her law degree from Harvard Law School.

Yen was born in Saigon (now Ho Chi Minh City), Vietnam and emigrated from Vietnam by boat in the late 1970's. After surviving a pirate attack, she and her family arrived safely in the Philippines, and lived there for a year while awaiting clearance to enter the United States as political refugees. Her family entered the U.S. and moved to San Jose in the early 1980's, where her parents have owned and operated a food truck (before they became trendy) for over 25 years. After graduating from law school in Cambridge, Yen moved back to L.A., replanted her Bruin roots, and met her husband, a police officer with the Los Angeles Police Department. They are expecting their first child this December.

Park Utilities

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billed and the costs go up, a park owner can simply pass the additional cost directly to the resident, rather than having to go through an administrative process with the local rent control board just to "stay even." Further, if a park owner is permitted to increase rents by a set percentage and utilities are separately billed, it ensures that the increase goes entirely to increasing the income you realize from each space in rent, rather than part of the increase being consumed by the higher costs of utilities.

Switching from inclusive to separate utility billing is potentially a relatively easy method of increasing the value and profitability of your property, but working closely with your legal advisor is recommended. The MRL requires that certain initial adjustments be made to base rent amounts, and limits the types of utilities that a park owner can separately bill. The California Public Utilities Code also contains specific provisions applicable to park gas and electrical systems that are beyond the scope of this article. Yet all in all, taking some time to think about utilities may be financially rewarding, especially with the right team of legal experts to help you navigate the applicable laws.

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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