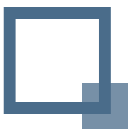

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CLIENT ALERT

# TIPS FOR MOBILEHOME PARK OWNERS PROVIDING EMPLOYEE HOUSING

**Archer Norris lawyers Mike McGuire and Lisa Estabrook share this information with you as a client service of Archer Norris. We invite you to speak with us about these issues, or other MHP matters.**

Many California Mobilehome Park owners provide their onsite managers with housing as part of the compensation package. Providing employee housing has certain benefits such as a recruitment tool for hiring and retaining the best managers. However, before a park owner agrees to provide his or her manager with free housing, the owner should follow some "best practices" guidelines.

## THE "RENTAL" AGREEMENT

First, put the agreement in writing. It is never a good practice to provide employee housing and not document the terms of the agreement. The biggest benefit to the owner from a written agreement is that it provides the owner with control over defining the terms of the tenancy. Typically, the park owner seeks to have the employment relationship and the tenancy relationship co-exist. When the employment relationship ends, the owner generally seeks to end the tenancy and have the former employee vacate the premises. If the agreement is not in writing, the potential for future litigation is high because the employee may want to remain in the dwelling. The circumstances may be such that the tenant has strong grounds for arguing the landlord-tenant relationship exists independently of the employment relationship. For example, the tenant may argue the landlord's transfer of possession and control over the dwelling to the tenant shows the landlord intended to create a tenancy independent of any services rendered by the employee. To avoid this, the park owner should make the terms of the relationship clear by putting the terms in writing. It is a good idea to consult with an attorney experienced in writing such contracts.

## AVOIDING CONFLICTS

Second, state clearly in the written employment contract that the employment is "at-will." Making it clear the employment may be terminated at the will of either party provides flexibility to both parties to end the relationship when it is no longer mutually beneficial. The landlord may wish to preserve a good relationship with the employee for future dealings. By combining the "at-will" language with clear language deeming

the tenancy at an end when the employment relationship is at an end, both the landlord and the tenant can avoid conflict over the eviction process while ending the obligations to one another as employer and employee. Please keep in mind that if an eviction should become necessary, there are some local jurisdiction with rent control laws that limit a landlord's right to evict a resident manager.

### KEEPING TRACK

Lastly, be sure to maintain compliance with federal and state wage and hour laws for resident managers. Under both state and federal law, the reasonable cost or value of lodging furnished by the employer for the employee's benefit may be considered part of wages. There are two wage-hour issues that arise most frequently in the resident employee context. The first involves recording the employee's hours and the second involves classifying the employee as exempt versus non-exempt. To ensure the employee's compensation each week equals or exceeds the minimum wage, the employer must know not only what the minimum wage is (the state minimum is higher than the federal) but how many hours the employee worked; this allows the employer to ensure the value of the housing plus the amount of wages paid equals or exceeds the minimum wage times the hours worked. The only way to do this is to consistently record the hours worked. Unfortunately, many park owners do not require that their resident managers consistently keep and *submit* accurate time sheets. In addition, the park owner may hold the mistaken belief the manager is exempt from the overtime laws or that the employee never works overtime. While this may be true, it is not a risk worth taking by failing to keep accurate records, particularly when the resident manager is required to answer calls and address tenant complaints after regular business hours, and when the number of employees supervised by the manager varies. The laws governing proper employee classification and proper payment of overtime are complex and good record-keeping practices are the best defense to an audit from the United States Department of Labor or the State of California Department of Industrial Relations.

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## CHANGES TO MOBILEHOME RESIDENCY LAW EFFECTIVE JAN. 1, 2013

Each year California Mobilehome Park owners face the onslaught of changes to the Mobilehome Residency Law ("MRL") as well as other laws unrelated to the MRL that create additional duties for the Park Owner and require additional disclosures in favor of residents. This year is no different. Set forth below is our review of those changes that will impact the operation of your Park. Please feel free to contact us with any questions you may have.

**CHANGES TO THE MRL:**

**798.14:** This section requires that all notices required by the MRL be served on the tenant via personal delivery or first class mail. This amendment now requires that all notices required under the MRL to be delivered before February 1st each year may now be combined into one notice. (See Section 798.15 below for specifics)

**798.15:** This section currently identifies the minimum components of a written rental agreement between the Park Owner/management and a homeowner as well as the information that must be contained in the rental agreement. This amendment requires that a specified notice with specific language be *given to all homeowners prior to February 1 of each year*. The notice must describe various rights of homeowners, including the right of the homeowner to receive advance written notice of any rent increase. The amendment requires that all notices required to be delivered each year before February 1 are to be combined into one, all-inclusive notice, as set forth in newly created section 798.15(i). It is extremely important that Park Owners comply with this new notice provision and we urge you to take the time to review and incorporate this newly required wording into your notice (To find the exact wording required go to www.findlaw.com)

**798.17:** Currently authorizes a Park Owner to enter into long term rental agreements with his/her homeowners. Should rent control be imposed on a park where long term leases are in effect, those spaces covered by long term leases that comply with this Section, will not fall under the rent control ordinance for the duration of the long term lease.

This Section also gives the homeowner the right to reject the executed agreement within 72 hours after signing by the giving of written notice to the Park Owner of the homeowner's intent to reject.

This amendment to Section 798.17 now changes the current law by allowing the homeowner 72 hours to cancel the agreement, *if and only if*, the Park Owner has previously provided the homeowner with a copy of the fully executed agreement at the time the homeowner returns the signed agreement to the Park Owner/management.

In the alternative, this Section is further amended in that new language is added providing further protections to homeowners by allowing the homeowner 72 hours to cancel the agreement *from the date that they first receive a copy of the fully executed agreement*. In other words, unless the Park Owner/management provides the homeowner with a fully executed copy of the agreement at the time the homeowner brings his/her signed copy back to the Park Owner/management, the 72 hour clock will not start to run until the date that the homeowner first receives a copy of the fully executed agreement. It now behooves all Park Owners/management to provide a fully executed copy of the agreement, bearing all necessary signatures, on the same date that the homeowner returns the agreement to the Park Owner/management. This is equally true if the return of the agreement by the homeowner is done by mail rather than in person. Every moment that the Park Owner delays in providing the homeowner with a fully executed agreement results in additional time for the homeowner to invoke his 72 hour right to cancel.

**798.39.5:** This Section prohibits the Park Owner from passing on to the tenant/homeowner, *as either a fee or rent increase*, any cost incurred by management due to fines, forfeiture, penalty or money damages as assessed by a court, including attorney's fees and costs associated . Now, effective January 1, 2013, is added the prohibition of passing on any penalty or charge issued to the park by *an enforcement agency* [Typically the County or HCD].

An exception to this prohibition relates to fees, attorney's fees, costs, etc. incurred where the registered owner of the home *is initially cited for a violation of Title 25*. (Typically by HCD)

While the language is somewhat ambiguous, a broad reading of this amendment would support a pass-through/assessment of attorney's fees, costs of investigation as well as court costs. Until there is case law interpreting this new amendment, we would urge Park Owners to broadly interpret this new authority.

**798.74.5:** Currently requires the Park Owner to provide a specific notice containing specific wording to prospective homeowners within two (2) days of receiving a request from a prospective homeowner for an application for residency. This Section now requires that the notice must include the following language in bold-faced 12 pt. type just below that section of the notice where the Park Owner sets forth the metered utility charges:

> *"Some spaces are governed by an ordinance, rule, regulation, or initiative measure that limits or restricts rents in mobilehome parks. THESE LAWS ARE COMMONLY KNOWN AS "RENT CONTROL." PROSPECTIVE PURCHASERS WHO DO NOT OCCUPY THE MOBILEHOME AS THEIR PRINCIPAL RESIDENCE MAY BE SUBJECT TO RENT LEVELS WHICH ARE NOT GOVERNED BY THESE LAWS. (CIVIL CODE SECTION 798.21) Long-term leases specify rent…."*

Sub-Section 798.74.5(c) is deleted from the MRL.

**798.88:** Currently allows the Park Owner to file a petition or complaint for an order to enjoin certain violations of the park rules and regulations by tenants. This amendment now allows the Park Owner, or his/her attorney, to file the petition or complaint within the limited civil jurisdiction of the Superior Court in the county in which the park is located. This results in a reduction in filing fees from $435.00/defendant/Tenant to $225.00/defendant/Tenant. This Section will sunset on January 1, 2016 unless amended.

As you can see there are some significant changes that are now required of California Park Owners. Please feel free to call us with any questions you may have. There is no charge for this consultation. You may contact either Mike McGuire or Lisa Estabrook at 916-646-2480.

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## CIVIL CODE AMENDMENTS PERTAINING TO NON HOMEOWNERS IN MOBILEHOME PARKS

**1950.5:** This section limits the amount of a security deposit to two times the monthly rent for unfurnished units or three times the monthly rent for furnished units; sets for the allocation of the security deposit by the landlord in the event of default by the tenant; that the landlord inspect the premises no later than two weeks before the voluntary termination of the tenancy and provide the tenant with written notice of the defects which need correction so that the tenant has an opportunity to make corrections; and that no later than 21 days after the tenant vacates the premises the landlord must give a written allocation of the security deposit if any monies are withheld.

This amendment now provides that the landlord and tenant may agree to have the landlord deposit any remaining portion of the security deposit electronically into a bank account or other financial institution designated by the tenant and that once either the landlord or tenant gives notice of termination of the tenancy they may agree to have the landlord provide a copy of the itemized statement along with copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises to an email account provided by the tenant.

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## CHANGES TO THE PUBLIC UTILITIES CODE

**Water Services Provided by MHPs**

**2705.6:** Under existing law, a MHP which provides water services to its tenants from supplies and facilities which the park owns and which are not dedicated to public service is not considered a "water corporation". The park is subject to the jurisdiction of the Public Utilities Commission such that if a tenant complains about rates or services, the PUC can investigate and determine whether rates are reasonable or services are adequate.

This amendment now provides that if 10% or more of the residents in a park complain to the PUC during any 12 month period, the PUC has jurisdiction to determine whether the complaint(s) has merit, whether the rates are reasonable and whether the service provided is adequate. The PUC may now order that the current or former tenants be reimbursed. The Park Owner is now required to provide his tenants with written notice of their right to file a complaint with the PUC using a standard notification to be provided by the PUC.

**4353:** Under existing law, the PUC currently inspects MHP gas and propane distribution systems for compliance with the federal pipeline standards every 5 years. This amendment would require that if the system operator demonstrates compliance with the initial inspection that additional inspections are made at least once every 7 years thereafter.

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## CHANGES TO THE BUSINESS AND PROFESSIONS CODE

**Sub Metering Services Provided by MHPs/Change in Fees**

**12240:** Existing law provides that the County must inspect and test meters within parks used for sub metering utilities and that fees can be charged to the Park Owner for such services. This amendment would cap the fees for such inspections in MHPs, RV Parks, and marinas at $2.00/space for water sub meters; $3.00/space for electric sub meters and $4.00/space for vapor sub meters.

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