RESOLUTION 01-02-2007

DIGEST
Mobilehome Parks: Procedure for Changing Services, Equipment and Improvements
Adds Civil Code section 798.24.5 to provide a procedure by which mobilehome park management may change services, equipment and physical improvements.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Civil Code section 798.24.5 to provide a procedure by which mobilehome park management may change services, equipment and physical improvements. This resolution should be disapproved because it would allow mobilehome park management to add, alter or delete services, equipment and physical improvements, without liability to, and over the objection of, the homeowners.

The procedures proposed in this resolution offer no rights or remedies for homeowners. Under the resolution, in order to add, alter, or delete an existing service or facility, mobilehome park management would only be required to provide a written notice to the homeowners of its intent to do so; that management shall not be liable for doing so; and that any addition, alteration or deletion may involve a fee or rent increase to be charged to the homeowners. The only remedy available to disaffected homeowners would be to request a meeting pursuant to Civil Code section 798.53 subdivision (c). Even if two-thirds of the homeowners object to the proposed change, the homeowners can be forced to sign an acknowledgment to the effect that, because of their opposition, service fees or their rent may be increased. Regardless of the course taken, the homeowners have no power to prevent the change.

This resolution also fails to address the problems the proponent cites, i.e., the need for management to be able to discontinue the maintenance of services or facilities that are obsolete or seldom used, or to respond to requests by the majority of the residents for a change. Instead, it simply gives management a way to alter the level of services to homeowners without contest. Such a scheme is far too one-sided and should be disapproved.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Civil Code section 798.24.5 to read as follows:

1 § 798.24.5

2 (a) Management shall not be deemed to have breached its responsibility of providing
3 and maintaining physical improvements in the common facilities in good working order and
4 condition if Park management serves Homeowners in the manner prescribed by Section
5 1162 of the Code of Civil Procedure a written notice that management intends to add, alter,
6 or delete a specific service, equipment or physical improvement. The written notice must:
7 (1) Identify the service, equipment and/or physical improvement that management
8 wishes to add, alter or delete.
9 (2) Describe in detail the proposed addition, alteration or deletion of the service,
10 equipment, or physical improvement as to give reasonable notice to the Homeowner as to
11 the change in service(s), equipment or physical improvements.
12 (3) Set Forth the date that such addition, alteration or deletion will commence. Such
13 date must be at least thirty (30) days from the date of service of the written notice unless
14 there are exigent circumstances. Exigent circumstances may include the fact that the current
15 service, equipment or physical improvement can no longer be provided due to a failure in
16 the equipment, service or physical improvement or impracticality of providing the service,
17 equipment or physical improvement.
18 (4) State whether the Homeowners and residents will be charged a fee to as a result
19 of the addition, alteration or deletion of the service, equipment or physical improvement. If
20 a fee is anticipated, the notice shall set forth the amount of the fee that will be charged for
21 the addition, alteration or deletion of the service, equipment or physical improvement. In
22 situations where the exact amount of the fee or charge is unknown an estimate should be
23 provided along with a statement that such sum is an estimated amount. If this written notice
24 sets forth the exact amount of the fee to be charged and gives the resident at least sixty (60)
25 days notice of implementation then this written notice it shall be deemed sufficient notice
26 under Civil Code section 798.32 of the imposition of a fee. No fee shall be charged until the
27 service, equipment or physical improvement is substantially available.
28 (5) State whether management believes that there will be a rent increase as result of
29 the addition, alteration, or deletion of service, equipment or physical improvement. If
30 management anticipates a rent increase as a direct result of the addition, alteration, or
31 deletion of service, equipment or physical improvement management must set forth the
32 anticipated amount. If management sets forth the exact amount of a rent increase and the
33 date for imposition of the rent increase is at least ninety days from the date of service of the
34 written notice then this written notice shall be deemed sufficient notice under Civil Code
35 section 798.32 as a notice of a rent increase. No rent increase may be charged until the
36 service, equipment or physical improvement is substantially available.
37 (6) Affirmatively state whether the addition, alteration or deletion of service,
38 equipment or physical improvement will result in net gain to management over a five year
39 period taking in consideration the cost of: (a) removal of a service, equipment, or physical
40 improvement, (b) replacement of substitute service, equipment, or physical improvements,
41 (c) installation of replacement or substitute service, equipment, or physical improvements,
42 (d) implementation of changes in service, equipment or physical improvements;
43 (7) In rent control jurisdictions where management anticipates a net gain over a five
44 year period as a result of the addition, alteration, deletion of service, equipment or physical
45 improvements, management must notify Homeowners of the anticipated amount and date of

46 <u>a rent reduction. The rent reduction will be a pro rata share of the monthly savings resulting</u>
47 <u>from the addition, alteration or deletion of a service, equipment or physical improvement.</u>
48 <u>The reduction will commence the first month after the date that any and all costs resulting</u>
49 <u>from the addition, alteration or deletion of a service, equipment, or physical improvement</u>
50 <u>are recovered from the savings resulting from the addition, alteration or deletion of a</u>
51 <u>service, equipment or physical improvement.</u>
52 <u>(b) As provided in Section 798.53(c), at Homeowner (s) request Management shall</u>
53 <u>meet with Homeowner(s) concerning any such addition, alteration or deletion of a service,</u>
54 <u>equipment, or physical improvement. If Management decides after meeting with</u>
55 <u>Homeowner(s) to change any or alter its plans concerning the addition, alteration or deletion</u>
56 <u>of service, equipment or physical improvement then Management must send an amended</u>
57 <u>written notice to Homeowners. The date of the addition, alteration or deletion may remain</u>
58 <u>as set forth in the first written notice of the subject matter.</u>
59 <u>(c) Nothing in this section shall be construed as either requiring or prohibiting</u>
60 <u>management in non rent control jurisdictions from reducing the rent.</u>
61 <u>(d) Nothing in this section shall alleviate the contractual duty of management to</u>
62 <u>provide those services and the physical improvements as set forth in the rental agreement or</u>
63 <u>lease but such duty will not extend past the expiration date of the initial term of the rental</u>
64 <u>agreement or lease.</u>
65 <u>(e) In situations where two thirds of the Homeowners, counting all Homeowners of a</u>
66 <u>space as one, are against the proposed change and sign a statement to that effect and an</u>
67 <u>acknowledgment that because of their desire to prevent management from changing,</u>
68 <u>altering, or deleting a service, equipment or physical improvement the fee charged for the</u>
69 <u>service, equipment or physical improvement may increase according to the costs associated</u>
70 <u>with maintaining the service, equipment or physical improvement and/or the rent charged by</u>
71 <u>management may increase by the costs associated with maintaining of the service</u>
72 <u>equipment, or physical improvement.</u>
73 <u>(f) To the extent that a Rent control ordinances is inconsistent with the provisions</u>
74 <u>stated herein, it is the intent of the Legislature that this provision prevail.</u>

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

<u>Existing Law:</u> Civil Code section 798.15(d) requires that rental agreements for mobilehome park tenancies have a provision that specifies that "it is the responsibility of management to provide and maintain physical improvements in the common facilities in good working order and condition and" to if there is a breakdown or deterioration management absent exigent circumstances has thirty days to replace or repair. Civil Code section 798.53(c) requires management to meet with Homeowners regarding adding, altering or deleting services, equipment or physical improvements.

This Resolution: Provides a mechanism by which management may change, alter or delete services, equipment or physical improvements in a mobilehome park without fear of being sued for violating its responsibilities under Civil Code section 798.15(d).

The Problem: Civil Code section 798.15(d) has been interpreted to be a prohibition against management making changes to services, equipment and physical improvements. Lawsuits based thereon are known as "failure to maintain" and are greatly feared due to the fact that successful Homeowners are entitled to attorneys fees which are often claimed to be hundreds of thousands of dollars. Even though it is clear by Section 798.53(c) that the Legislature clearly contemplates that management will make changes to services, equipment and physical improvements, because of the fear of a failure to maintain action, management feels compelled to continue providing outdated, outmoded, unused or underused services, equipment and physical improvements at an expense to Homeowners and management. The lack of a safe harbor procedure leaves management resurfacing and repainting shuffleboard courts that are seldom used, if ever, instead of installing perhaps using the area for a basketball hoop or playground. Laundry rooms are another prime example. When "trailer" parks were built in the 1950's the standard trailer was small and without laundry facilities. The "trailer" parks had one, if not more, laundry rooms with dozens of machines and outside areas for line drying clothes. The manufactured homes that have been built for the past thirty years and longer all have laundry hook-ups rendering the laundry rooms obsolete. Management often continues to spend large amounts of operating funds replacing and repairing the machines, repairing and replacing plumbing, and making repairs to the buildings themselves. The unused space is ideal areas for other amenities such as a child's playground, a picnic area, a meeting room, a storage facility, guest parking or even additional spaces. Often, there are only a few residents actually opposed to a specific change. Homeowners may resist a change simply because they believe that the lack of a playground, for example, might discourage families with children from moving into the community or might annoy a neighbor with children. Management is often inundated by requests from residents for a change. Management is often in the catch twenty-two position because there is no procedure for changing, altering or deleting services, equipment or physical improvements without running the risk of being sued for "failing to maintain". A procedure for allowing changes to services, equipment and physical improvements is desperately needed.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

AUTHOR AND PERMANENT CONTACT: Elaine B. Alston, ALSTON, ALSTON & DIEBOLD, 5 Hutton Centre Drive, Suite 900, Santa Ana, California, 92707, Tel (714) 556-9400, EMAIL ealston@aadlawyers.com

RESPONSIBLE FLOOR DELEGATE: Elaine B. Alston

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

The Mobilehome Residency Law is a complex and comprehensive statute enacted to curb owner abuse of captive tenants. In a mobilehome park, the park owner generally owns the dirt and the tenants own the improvements. This makes it difficult for tenants to simply move out as would an apartment tenant. Owners found it easy to manipulate these tenants because of their captive nature on the property. The MRL was intended to even the balance. This resolution would remove a very important protection – the protection against diminishment of services. Under the resolution, an owner could just send out a letter and proceed to eliminate services as part of driving residents out of the park. This is contrary to the purposes of the MRL. Additionally, a body of law as complex as the MRL should not be amended piecemeal. Rather, any amendments should be done viewing the law as a whole.