



Golden State Manufactured-Home Owners Education Fund

VIRTUAL TOWNHALL

Saturday, April 10, 2021

Featuring BRUCE STANTON, GSMOL Corporate Counsel

Update on COVID issues regarding MH Parks, New Protections for 2021

Bruce Stanton divided this Townhall into 3 Acts: Summary of GSMOL-sponsored legislation; Covid-19 issues; Answers to questions received in advance. He concluded with an open Q&A that will be posted separately.

SUMMARY OF GSMOL-SPONSORED LEGISLATION 2021

1. **SB 64 (Leyva):** Extends Covid-19 rent protections to additional issues for MH residents. The time to cure 7-day notices to remedy a MHP code violation has been extended up to 12 months during the pandemic due to the financial impact of the pandemic on residents and the inability/delay to get a repairman out in a timely manner to repair any problem. Exemptions to the extension are health and safety violations such as a fire code violation.
2. **AB 1061 (Lee):** would prohibit management from collecting a separate charge for the provision of sub-metered water service beyond the amount charged for the water actually used by the homeowner if the charge is not authorized by the serving water provider – or the charge exceeds the collective total of any separate charges that are in fact paid by management to the serving water provider. This is to address the “suspicious” unjustified charges some park owners add on for their profit. This bill will provide MHP residents the same protections as apartment renters have.
3. **AB 1061 (Bennett):** would require management to comply with a rule or regulation prohibiting renting or subletting of a homeowner’s mobilehome and would prohibit management from renting a MH owned by the park (except to a person employed by the park). This law does not prohibit subletting. If an owner wants to sublet or rent his home/s, he must allow residents the do the same. In other words, what is good for the goose is good for the gander!

COVID-19 ISSUES

As vaccines become available and pandemic restrictions are lessening to allow businesses and facilities to reopen on a limited basis, a Mobilehome Park, which is also a business, should comply with these lessening restrictions. At the beginning of the pandemic, it was reasonable for park owners to restrict access to common area facilities. It is also reasonable that as health orders change and restrictions are being lifted, MH park owners should open up their facilities according to their local rules. *MRL 798.24 states that common area facilities, such as pools, clubhouses and laundry rooms, be open or available to residents at all reasonable hours.* Park owners might impose some rules, such as limiting occupancy, requiring social distancing and masks etc. Some may require a Waiver of Liability, which is reasonable *only* if it is specific to Covid-19! It is not reasonable to compel all residents to sign the Waiver: rather residents who want to use a facility should sign one. Upon reopening a facility, park owners have an obligation to train staff and properly sanitize the facility for the safety of residents, similar to how restaurants and other businesses have had to accommodate safety concerns. Requiring “proof” of a vaccine or showing a vaccine passport is a controversial issue that is evolving and might have to be decided by the courts.

Taking away amenities (without good reason) or refusing to reinstate amenities when local rules allow it, could be construed as a ‘service reduction’ and make park owners liable for a rent rebate or reduction. The residents of a park in San Leandro got a small rent rebate when their pool was closed for one month when it could have been open per Alameda County guidelines. The Park appealed that decision and lost. It is considering appealing again. This was an administrative decision, not a court case, so does not set precedence, but it is considered a guideline.

QUESTIONS ASKED IN ADVANCE OF TOWNHALL

1. ***Define legal tenant in terms of a MH contract.*** Per the MRL, a tenant is a person who owns a home, has a tenancy agreement and has been approved by the park. An “additional authorized occupant” of the home is someone who lives with the tenant such as a permanent guest (798.34) who has no tenancy rights (only those approved by the park do). Immediate family do not have to become legal tenants and no fee is charged for them.
2. ***How can I determine if my Senior Park has more than 20% under senior age?*** Federal law says a Senior park has 80% of spaces with one person living there who is 55 years of age or older. The other 20% can be different ages. Park rules allow can go beyond this such as saying additional persons must be over 45 years of age. Parks that fall below the 80% *could* become all-age parks. It is difficult to determine the percentage of ages in a park. HUD could investigate if you are still a senior park by requesting to look at driver’s licenses.
3. ***Complaint about improper propane charges?*** When resident complained, park management took him off the propane program and told him to get his own. Resident should check what his rental agreement says.
4. ***If I sign a voluntary arbitration clause in a lease, can I rescind it or get out of it at time of renewal?*** Park owners prefer arbitration rather than

risk a large jury verdict in court, especially if it is a Failure to Maintain lawsuit. No, you cannot rescind signing an arbitration clause in a lease: only a court can. But, you **never** have to sign a new lease or a renewal of a lease after the original lease expires. Once a lease expires, you automatically go on a month-to-month basis.

5. ***Is it reasonable to close facilities at 7 pm?*** It may or may not be reasonable. It probably depends on what time of year it is. For example, it may be reasonable to close a pool at 7 pm in winter if the park owner is concerned about residents' safety when walking to the pool in the dark?
6. ***How can we get our facilities back?*** You might file a petition of residents requesting it. You can always request a meeting with park management (798.53) or go straight to the park owner.
7. ***Can a park tell residents they cannot contact the park owner?*** No! Per MRL 798.28: *The management of a MHP shall disclose, in writing, within 10 business days, the name, business address, and business telephone number of the MH Park owner upon request of a homeowner.*

Q&A Session Following Townhall April 10, 2021

1. ***Is Park management required to clean after clubhouse use due to COVID? Our park manager says he is not cleaning.*** The answer is likely "Yes", but check your city or county's rules and guidelines for specific requirements. Park management which does not follow County health guidelines or reasonable safety protocols is very unwise given virus conditions. Any written COVID waiver the park owner might ask you to sign will not protect the park from its own negligence if it fails to take reasonable precautions to protect residents.
2. ***Can we force the park to open their books? Our park is moving from sub-metered utilities to direct assessment, and we feel the reduction in rent he is offering is too little compared to other parks in our area.*** Civil Code 798.41 allows utilities to be billed separately according to usage, which encourages conservation. Rent reduction shall be equal to the average amount charged by park management for that space during the prior 12 months. The problem is park owners seldom calculate costs on a space-by-space basis as this section appears to require, but simply divide the utility usage by the number of park spaces. There is no known court decision which construes this requirement. But the park has an obligation to show how their calculation is made. Utility companies seldom want to get involved, citing privacy issues. If the rent reduction is unreasonable, residents have the right to have a meeting and challenge it with management. Provide evidence of what comparable local parks are charging. You might have to go to court to prove that the 798.41 rent reduction is inadequate.

3. ***Can I initiate a willful violation in small claims court without actual damages – as a test case? My park is slow to open facilities and refuses to heat our pool.*** Small claims court is always an avenue of relief. Advantages are it is quick (6-8 weeks to get to trial), cost is minimal (less than \$100 to file) and no lawyers are allowed. You can argue your case yourself. It is just you and the landlord. If you win, you can use that decision as a “sword” or precedent for other residents to bring the same case. The disadvantages are that your time to argue your case in court is very short: you must argue your case very efficiently. The court has a calendar and usually hears 10-25 matters daily. If you lose your case there is no right of appeal for the plaintiff, while the defendant can appeal the case to Superior Court for a new trial. The difficulty will be calculating the value of a service reduction for facilities not re-opening when County guidelines allow for it. Damages must be proven with certainty. It is doubtful that a “willful violation” penalty would be awarded without actual damages being proven.
4. ***How do I get a copy of a COVID Common Area Facility Waiver of Liability?*** Every park will likely have its own waiver form; there are templates available to park owners. You would likely receive this as a mass mailing without needing to ask for it.
5. ***Was the process to change our park rules legal? Park owner did not meet with residents as a group but met with 3-4 persons at a time over several weeks. Then he asked us to sign the new rules. Do we have to sign the new rules?*** NO, you are never required to sign the park rules and shouldn't. Pursuant to Civil Code 798.25 new rules take effect 6 months later, except rules relating to common area facilities take effect 60 days later. If you do sign the rules, they take effect immediately instead of after the waiting period. Also, signing them could be construed as having signed a contract, which residents should avoid. The unique pandemic conditions may prevent “in person” meetings. The question is whether the park owner reasonably accommodated the residents by meeting in small groups. The park owner might claim he met separately with residents for their safety during the pandemic.
6. ***Our park association puts on events. Do we need to require masks, proof of vaccination, waivers etc. How protected is the Association and residents?*** Your Association must comply with park rules, and the County health guidelines. If the park has no rules then what you do will be an added layer to park regulations. You might make a list of safety “Protocols” for members to follow. If you require a waiver (which is a little heavy handed) make it simple, so as not to completely discourage attendance.
7. ***Do we have to sign a new lease when this one expires?*** NO! Once a lease term expires a mobilehome tenancy *automatically* becomes month-to-

month. Furthermore, if you sign a long-term lease (longer than one year) you lose the protection of rent control now (and in the future) if your city/county has (or gets) a rent stabilization ordinance. You cannot be evicted for refusing to sign a lease! There are 7 specific reasons for eviction in California and failure to renew a lease is not one of them. Per MRL 798.56 the 7 reasons for eviction are: 1) Failure to pay rent 2) Conduct that constitutes a substantial annoyance to other residents 3) Failure to comply with a reasonable rule and regulation that is part of the rental agreement 4) Failure to comply with local or state laws relating to mobilehomes within a reasonable time after notification of non-compliance 5) Conviction of prostitution or certain felonies committed on the premises 6) Condemnation of the park and 7) Change of use of the park.

8. ***We have a long-term lease in a rent-controlled jurisdiction and the park owner is bumping up the rent before the lease expires (just before we become eligible for rent control protection). Can he do this?*** It depends on the terms of your lease. Does it have a “market catch-up clause” which states that near the end of the lease the park can raise rent to market value? If it does, then increases dictated by your rent stabilization ordinance will be applied to the space rent that exists at the end of the lease. An RSO does not establish the amount space rent should be (whether high or low) but it does regulate the **increase** allowed each year. That increase is applied to the base rent at the time the RSO becomes effective. AB 2784 that GSMOL sponsored and helped pass in 2020 helps stem the tide of rapidly increasing MH space rent increases. It closes a state loophole that allows long-term leases to be exempt from rent stabilization ordinances. It ends that exemption! All leases of any length signed on or after February 13, 2020 shall no longer be exempt from local RSO (Rent Stabilization Ordinance) which means the local RSO rent increase will apply to protect those residents regardless of what the lease provisions might say. The local RSO will effectively pre-empt the lease! But, all leases with a term of 12 months or longer signed *before* February 13, 2020 will remain exempt from rent control until they expire or until January 1, 2025, whichever comes first.
9. ***In my park which has a rent stabilization ordinance, park owners are raising rents more than 10% at point of sale of a mobilehome. Is this legal?*** You must read your rent control ordinance to see what is allowed. If it has a “Vacancy Control” provision which regulates resale rent increases, the park owner is restricted in the amount he can raise rent at point of sale.
10. ***Can a park owner bill separately for utilities (garbage, sewer etc.) from rent?*** Yes, but he must adjust the space rent accordingly pursuant to Civil Code 798.41, and cannot charge more than the rate as if the resident was served directly by the utility.
11. ***If park owners challenge AB 2782 (i.e., park conversion protection and long-term lease exemption from RSO), does this law stand or does it stop until it is adjudicated?*** To stop the law, one must get a court

injunction which will enjoin the effect of the law pending trial, and then prove the new law is unenforceable. Without an injunction it will remain enforceable.

12. ***Does HCD keep a record of space rents in California to help determine what “market value” or average rents in my area are?*** No, HCD does not. You can review a local real estate Multiple Listing Service which lists space rents for mobilehome homes for sale. There are also services such a “Mobilehome Village” which might provide you with information. Or you can hire a appraiser.

Bruce Stanton reemphasized that knowledge is power. If you do not know your rights, how can you stand up for your rights?

GSMOEF or the Ed Fund, who sponsored this Townhall is a non-profit 501(C)3 organization formed by GSMOL about 10 years ago. It is a charitable and educational organization and donations to the Ed Fund are tax deductible. GSMOL is a 501(C)4 organization that is allowed to lobby and participate in initiatives and political campaigns. Donations are not tax deductible. Both organizations work to support the rights and security of mobilehome residents in California.