The Nuts and Bolts of Park Rules and Regulations, Part Two
(Updated from an article published in The Californian)

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Can a given park rule be enforced? If so, how does enforcement occur?

Whether a rule can be enforced requires that "reasonableness" be determined. This is not an inquiry that homeowners should make on their own. The reasonableness test factors should be carefully applied in each case, and a homeowner should never choose not to obey a rule except in rare and very clear cases; i.e. to comply is not financially possible, or the rule is so random or arbitrary on its face that no court would find it to be reasonable.

Where there is a close call, advice of an attorney should always be sought first. The reason is simple: Park rules form a part of the rental agreement with the homeowner. The failure to comply with a rule constitutes a breach of the rental agreement, and can justify eviction from the park.

Civil Code 798.56 (d) contains the procedure for terminating a tenancy based upon the failure to follow a park rule. The park owner is required to first give a 7-day notice of the violation. To be proper, such a notice should quote the applicable

rule and then contain a detailed description of time, date, and place of the alleged conduct.

If the notice is not corrected within 7 days, the park owner must then give a 60-day notice of termination of tenancy in order to evict. Thus, two separate notices are required. Ultimately, if the 7-day notice is turned into a subsequent 60-day notice, 798.57 will require a specific statement of reasons for termination in that notice.

A resident faced with a 7-day notice should always respond in writing, so that a paper trail is created in case the matter turns into a termination. The response should specify whether the violation is disputed, or if not in dispute, that compliance has occurred. Compliance within the 7-day period cures the violation. Compliance after the 7 days expires technically does not. A homeowner is entitled to receive up to three 7-day notices within a 12-month period for the same rules violation. On the fourth occasion, no 7-day notice is required, no chance to cure will be given, and the park owner could proceed directly to a 60-day notice of termination, followed by an eviction action in court. It is thus important that 7-day notices not be ignored, as serious consequences could result. And multiple violations of the same rule become increasingly risky.

If termination is pursued in court, the homeowner must be ready with photographs, documents and testimony to prove that no violation occurred. Sometimes evidence will be needed in the form of testimony from neighbors, and it can be a challenge to convince other residents to essentially testify against the park owner. Their fear of future harassment is understandable. For that reason, again, the suggested response is: When in doubt, comply with the rule, as long as it is financially or logistically possible to do so. But in the case of a minor violation, park owners know that it can be very difficult to convince a Judge that the resident should be forced to lose their home over such an issue. And there are admittedly those cases where conflict, and thus a court action, might be inevitable. But any homeowner must proceed very carefully in making that determination.

What is the procedure for amending park rules, and when do they take effect?

Pursuant to 798.25, a park owner is permitted to revise or amend its rules and regulations unilaterally, without any consent or agreement from the residents, as long as the park gives proper advance notice, waits until the time that the new rule can be enforced (60 days for rules relating to recreational facilities and 6 months for all others) and holds a meeting with residents upon 10 days notice. Until the meeting occurs, and where no consent is given the applicable time period elapses, the proposed new rule cannot be enforced.

There is no waiting period, and the rule takes effect immediately, if the homeowner consents to immediate enforcement. **GSMOL would never recommend that any homeowner do so**, since it is beneficial to have the notice period to acquaint one's self with the new rule and the need to follow it. In addition, signing a written consent arguably amounts to a contractual obligation to follow the rule.

Park owners will often announce the proposed new rule in writing and request that the homeowner sign an acknowledgement that the notice was received. As long as the acknowledgement only says this, it is not a problem. But if the language states that the homeowner "acknowledges receipt <u>and</u> consent to the rule amendment", or words to that effect, the homeowner should not sign such a statement.

The only exception to the meeting and notice period is where the rule amendment is required by a change in the law. In such a case, the amendment takes effect upon 60 days' notice, with or without the homeowner's consent. The notice of any such rules amendment must specify the law which requires the amendment.

Is a meeting with the park residents required? What must take place in such a meeting?

As stated above, no rule can be amended without a meeting with residents, except where a change of law requires the amendment. This 798.25 requirement presumably exists so as to allow the residents to clearly understand the rule and its purpose. It also contemplates that the parties will communicate freely and share concerns or suggestions.

In a perfect world, management would call the meeting and attend in a spirit of good will, listening to comments or criticisms or answering questions. Sadly, this does not always occur. Because the statute is silent about the conduct of the meeting, it is true that management could simply show up, read the proposed rule, listen to comments and questions, say nothing and adjourn the meeting without further comment. Such a result would not, in this author's opinion, be good business practice for a park owner who should be interested in the comments of its customers, the residents. But it does happen, and in such a case it would be difficult for the residents to have any legal recourse for management with a bad attitude.

Homeowners are encouraged to attend such meetings and ask whatever questions are desired. They should do so without fear of any retaliation, since this is a right given by law. And they should participate in a way that causes even the most uncooperative park owner to engage with them in a courteous manner. If you have a good attitude and show that you have the best interests of the park community in mind, management may find it difficult not to participate in a discussion of the issues.

Are any Rules or Regulations void on their face?

Yes. Civil Code 798.25.5 prohibits the enforcement of any rule which is unilaterally implemented without consent and which by its terms requires arbitration of disputes. Such clauses are typically found in the middle or near the end of rental agreements, in bold or 10-point type. Arbitration clauses require homeowners to

give up their right to a trial by jury for most legal disputes, and are thus not favored by GSMOL.

TO BE CONTINUED…

This article is part of a series produced by the GSMOL Leadership Training Committee. Articles by Bruce Stanton as well as other experts on mobilehome matters can be viewed and downloaded on the GSMOL website at https://gsmol.org/know-your-mh-rights

If you have further questions on this topic or want to discuss possible violations of law in your park related to this topic, please contact your GSMOL go-to person, who may be a Chapter officer, Associate Manager, Region Manager or Zone Vice President.

To find your go-to person, see the "Who's Who" page in the Californian magazine, or look on the ***Contact*** *page at https://gsmol.org for the link to the Who's Who page.*