Can A Park Owner Convert a Senior Park To All-Age?

(Updated from an article published in The Californian)

By Bruce Stanton, GSMOL Corporate Counsel

There are many homeowners who reside in what is referred to in the industry as a "Senior Park." This is a park which qualifies as "housing for older persons" by requiring that at least one resident in 80% of the park spaces be age 55 or older. Once this threshold is established, the park owner is free to set the age limitation for all other residents at age 65, 55, 45 or whatever other age might be chosen.

Typically, homeowners who reside in a Senior Park have specifically chosen the park because of its age requirements. They desire to reside in a quieter community that has less population and is more geared to their lifestyle. This was a crucial issue which motivated their decision to purchase a home within the park.

Many park owners enjoy operating the park as a Senior facility. There is less liability for injuries or damages that children might cause, and the park population tends to take better care of their spaces and homes. But in some cases a park might choose to convert to "family" or "all-age" status for financial reasons, so rents can be raised based upon increased demand for spaces. Or a park which is trying to force agreement to a long-term lease, or which is opposing passage or application of a Rent Stabilization Ordinance, might threaten to convert the park to all-age status if the residents do not do as the park owner wishes. This threat can be a serious form of duress for the homeowners, and might prompt them to cave in to the park owner's demands.

When a park owner threatens to convert the park to “all-age” and abandon the Senior Park status, it will typically cause great anxiety and unhappiness for most of the residents. The questions that are often posed are:

Can the park owner change the age requirements of the park? and,

What can the residents do to prevent a conversion to “all-age” status?

Thanks to a Federal Court case decided in 2012, homeowners have a better chance of preserving the Senior Park status when the park owner threatens to take it away.

Does a Park Owner have the ability to convert a Senior Park to an All-Age Park?

Unless there is a limitation as described below, the park owner does have the power to determine the age parameters for the park. As the owner or operator of the land, the park owner is vested with many rights of ownership, and this is one of them. This power was exercised when the park owner originally determined the age status for the park. But once the age choice is made, there may be limitations on this power, and depending upon the circumstances, the park owner could be legally prevented from converting the park.

What can the residents do to prevent a conversion to “all-age” status?

There are two scenarios where residents can prevent a conversion.

First, if residents can show that the park was specifically advertised in writing as a senior park, and that they were induced to purchase their homes in reliance upon these representations, residents can argue that the park owner has established a covenant to maintain a senior park which runs with the land, and which cannot be disturbed.

Proving such a covenant in a court of law can be tricky. The sort of “restrictive covenant” that would have to be established must be express and cannot be implied. And since the law always tilts in favor of the free use of one’s property, the burden will be on the residents to prove the existence of the covenant. The

residents would have to prove that the objective of the rental agreement to establish a senior park outweighs the right of the park owner to decide the ages of its tenants. Duration becomes a critical issue, since the residents would want to show that the property should be operated as a Senior Park in perpetuity. This can be very difficult to achieve, and may not be possible unless residents can establish that the value of their homes or lifestyle would suffer damage if the park was converted to "all age." Thus, a civil court battle could be costly and fraught with much risk.

But there is another possible solution. Residents can ask their local City or County to pass an ordinance which establishes a Senior Park Overlay District or Zone, and prevents conversion of those parks to all-ages. If the local government goes to bat for the residents in this fashion, a law is created which would prevent a conversion for as long as it stays on the books, and the residents will be spared the expense and risk of a court battle.

This type of local legislation was tried in the past. Predictably, park owners went to court to challenge these laws, and in at least two cases the Federal District Court held that a city could not interfere with a park owner's decision whether to operate a senior or all age park.

But an opinion from the Federal Ninth Circuit Appeals Court swung the pendulum in the opposite direction, and offered new hope for legislating to protect Senior Parks. In Putnam Family Partnership LLC v. City of Yucaipa, the court rejected a challenge by four park owners to a city ordinance which prohibits conversion of senior parks to all-age housing. The court affirmed the dismissal of the park owner's challenge, holding that the City of Yucaipa could create a "Senior Mobilehome Park Overlay District" which prohibited park owners that currently operate senior parks from changing the age status.

The court held that as long as the City clearly expressed its intent to provide senior housing when the District was created, the decision to do so was intentional, and that intent is demonstrated in published policies where the age requirements are consistently applied, then the ordinance would be upheld.

This case provides valuable assistance for homeowners who wish to preserve their senior park status. Now local cities and counties can enact an ordinance

which restricts conversion, and preserves senior mobilehome parks, provided that the conditions described in the Yucaipa case are present.

Homeowners are encouraged to cite this case whenever a park owner threatens to convert the park, and to bring it to the attention of local government officials if the park owner will not agree to preserve the park status. In some cases it would be wise to contact your local City or County in advance, so that the ordinance can be put into place before conversion threats turn into rules changes.

The only way to change the age status of a mobilehome park is to impose it as an amendment to the park Rules & Regulations. But remember that according to section 798.25 in the Mobilehome Residency Law, a change in age status through imposing a new park rule will typically require a six-month period before enforcement can occur if the homeowners don't sign, which should give homeowners time to organize and take action.

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.