



News for Mobilehome Park Owners

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The End of MHP Rent Control?

Guggenheim Decision Holds MHP Rent Control With Vacancy Control Is A Government Taking Of Property Requiring Compensation To The Park Owner

In a long-awaited decision handed down last month, the Federal Ninth Circuit Court of Appeals ruled that the City of Goleta's rent control system illegally took value from the Park Owners and transferred it to the resident coach owners. The decision, in *Guggenheim v. City of Goleta*, has reverberated in mobilehome parks and City Halls throughout the State, as cities grapple with the decision whether to repeal their rent control ordinances or face similar lawsuits requiring them to pay millions of dollars to park owners as "just compensation."

Like many cities, Goleta's Rent Control Ordinance (RCO) allowed automatic annual rent increases at 75% of CPI. The RCO also restricted the park owner's ability to raise the rent even upon a vacancy, known as "vacancy control." Although the RCO was purportedly passed with the purpose of preventing park owners from charging "exorbitant" rents, the Court found that housing costs in the City had increased approximately 225 percent, but that the Park rent had not kept pace.

The Court next affirmed what park owners in rent-controlled jurisdictions with vacancy control know too well: That below market rents create a "transfer premium" in the value of the coach. This premium allows coach owners to sell their homes to new residents at a cost far higher than the intrinsic value of the coach, because the purchaser is buying the right to the future below-market rent. The Court found, based on a report provided by the Park Owners, that "an average mobile home worth \$12,000 would sell for approximately \$100,000." In other words, "the transfer premium

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AB566 Vetoed by Governor — Now What?

Assembly Bill 566 authored by Assemblyman Pedro Nava was recently vetoed by Governor Schwarzenegger. The Bill would have severely restricted the ability of park owners to convert/subdivide their mobilehome parks. The Bill had been sponsored by the City of Carson and resident groups.

Working together with the WMA and CMPA, we were able to convince the Governor that the Bill would be detrimental to the property rights of park owners and adverse to the interests of many residents who would like the opportunity to purchase their lots at fair market value from park owners.

We have received many inquiries from park owners. *What might happen in 2010?*

A representative from the League of Cities has said that they intend to propose additional Amendments to conversion laws in 2010. However, Governor Schwarzenegger has shown his strong support for conversion and the option for residents to purchase lots. We believe that the opponents will wait until there is a new Governor in 2011.

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The End of MHP Rent Control?

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amounted to, on average, 88 percent of the sale price.”

Thus, the Court recognized that every time a mobilehome was sold by a resident to a new resident, approximately \$88,000 of value that rightfully belonged to the Park Owners was instead transferred to the home seller.

The Court found that the RCO did not actually promote affordable housing, as the creation of the transfer premium simply required home purchasers to pay up front the capitalized value of the restricted future rents. The Court held that “the savings created by these below-market rents are transferred directly into the pockets of the incumbent mobile home tenants, who can now sell their mobile homes for almost ten times their purchase price.”

“Goleta’s rent control system illegally took value from the Park Owners and transferred it to the resident coach owners”

Moreover, the City had “singled out” park owners and “imposed solely on them a burden to support affordable housing.” Citing earlier decisions from the United States Supreme Court, the Court noted, “The [Takings Clause of the Fifth Amendment] was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

The Takings Clause does not prevent government from taking property or its rightful value. Rather, when property is taken for a public purpose, the owner must be fairly compensated. Accordingly, the Court remanded the case back to the trial court for a determination of how much the City would have to pay the Park Owners. In practice, however, it is unlikely cities will choose to pay, or be able to afford to pay, the millions of

dollars that has been taken from Park Owners and transferred to park residents. Many cities will fail to act, however, unless faced with a lawsuit.

The Court also rejected the argument that the Park Owners’ purchase of the Park knowing it was rent-controlled meant there had been no taking. This fact might affect the amount of compensation due to the Park Owner, the Court held, but it did not defeat the fact that there was indeed a taking without any compensation.

Earlier this year, the City of Goleta approved the Guggenheims’ subdivision map for conversion to “condominium-style” resident ownership. That action was the result of a settlement after Gilchrist & Rutter won two State Court writs striking down the City’s earlier attempts to block the subdivision.

This is not the first time a Federal Court has found that mobilehome park rent control constitutes a taking of property. The Guggenheim decision follows a similar ruling by a Federal District Court last year which ordered immediate vacancy de-control in the City of San Rafael and the phase out of rent control for its current residents.

The U.S. Court of Appeals, Ninth Circuit, is the second-highest court in the land, and the largest of the Federal Appeals Courts. Only the United States Supreme Court can review its decisions. However, rent control advocates are expected to seek review by an “en banc” panel of eleven Ninth Circuit judges, which have the power, if they choose, to review the three-member panel decision.

Any further actions by the Court will be reported in our future newsletters.

Ask the Experts!

Robert from San Diego County asks:

Can I subdivide half of my park and keep the other half as a rental park?

Answer:

Yes, that is entirely possible. An existing mobilehome community can have one portion resident owned (subdivided) and the other portion remain as a rental park. Subdivision entitlements can also be obtained for the entire park, but converted in phases.

A recorded final map is valid indefinitely, allowing you the option to sell lots how and when the time is right according to your business strategy.

A multiple phase sales plan may also be utilized if you have undeveloped land in your park (or adjacent) and would like to add new lots in the future with the ability to subdivide them at a later date.

If you have industry-related questions that you would like to see covered in future Newsletters, please e-mail us at:

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Make Money Updating Your Community for the 21st Century (and avoid liability lawsuits)

Small or big upgrades to your manufactured home community can pay for themselves and even reap large dividends as well as help avoid failure to maintain lawsuits.

Many communities look and operate just as they did when they were first created. You can drive through many communities today and be instantly transported back in a kind of time warp of bingo and shuffleboard, clotheslines and potluck dinners.

Many seniors may love the familiarity of their communities being left in their vintage state; however, as a business plan, leaving your community in the 1970s is not in your best interest. It can hurt the value of your property, hinder financing, increase vacancies, and leave you susceptible to claims of failure to maintain.

It is important to look at the new generation of manufactured home dwellers, which is composed of retiring baby boomers and young families, and to predict its needs and wants. In doing so, you must also be willing to look at your community with fresh eyes and a realistic analysis of its infrastructure.

Small changes can make a big difference

If you currently own or operate a senior community, you may have noticed that retirees today are significantly “younger” than the prior generations (and most of them have never played shuffleboard). Features that attract baby boomers will more likely be gym equipment, high-speed wireless Internet service, and pilates classes in the clubhouse.

Even small changes can provide big attraction. That dated and dusty area called the “library” (a small room or corner of the clubhouse where used paperbacks line the shelves) can be remodeled into an exercise room, complete with a few treadmills and exercise bikes, or into a modern community room with a new sofa and flat screen TV.

Even under rent control, upgrades like these can usually be fully recovered, with interest. Some jurisdictions allow the community owner to unilaterally pass through such costs. Others require prior agreement by most residents, but many residents are willing to pay a couple of extra dollars a month when the benefits are visible and immediately usable.

Big upgrades can pay for themselves and protect you from resident claims

More significant upgrades may be necessary. Many communities today are operating on 50 amps. Today’s energy-gulping appliances like panel TVs and air conditioners may be causing brown outs, dangerous conditions, and malcontent residents. Additionally, as most newly manufactured homes

operate on 100 amps, this also discourages (or prevents) residents from bringing in newer homes.

Similarly, outdated plumbing, sewage disposal, street or common area lighting discourages resident upgrades, command lower rents, attract less-desirable tenants, and can lead to resident claims and failure to maintain lawsuits.

Upgrading outdated infrastructure can pay for itself in many ways. Enabling and encouraging new homes will improve the look and value of your property. Furthermore, it is a capital expense that can often be passed through to the residents. Even if rent control rules do not specifically permit it, you have a legal right to a “fair return on your overall investment.”

If resident approval is required, putting the question to them can either provide reimbursement with their assent, or cut off a future claim of failure to maintain if they decline.

In the meantime, you may need to revise community rules and regulations to prohibit new high energy consumption appliances or other wasteful devices to protect yourself from failure to maintain lawsuits. You may also consider implementing “green” or “sustainability” practices, which many residents will embrace and which may lower community operating costs and demands on infrastructure.

Envision your property as a continuing development

Your community likely has unused or underutilized land such as an old RV storage area or undeveloped space. One particular community was able to add 21 new spaces utilizing unused land. Best of all, *under state law, new spaces are not subject to rent control.*

When vacancies occur, a community owner should never overlook an opportunity to reclaim a homesite. Residents sometimes choose or are forced through circumstances to abandon their home. In addition, many homes lately are failing to sell or are selling for a fraction of what they would have a few years ago, providing the community owner with an opportunity to reclaim the lot for a low cost by buying the home.

Installing a new home on a reclaimed homesite improves the look and value of the community as a whole. The home and homesite together can be rented for fair rental market value of the combination. Although the space rent may be controlled, there is no limitation on what the home may be rented for. Therefore, whatever artificially-reduced rent may be charged for the homesite, the difference can be recovered through a higher rent for the home. The combined rent will reflect the true market value for the combination of the homesite and the home, and the community has one more new



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Make Money Updating Your Community for the 21st Century

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beautiful home and upscale resident.

New homes in a community increase the appeal and value of your property. In the current economy, it is important to avoid empty homesites by creating high demand for your property.

Investment in a community leads to increased rents and adds value. A mere additional \$5 per homesite monthly rent increase translates into \$240,000 increased value for a 200-homesite community (using a 5 percent cap rate). At refinancing, this additional equity would permit the community loan to be increased by approximately 70 percent of that amount, resulting in \$168,000 to the owner, *tax free*.

If your city has no rent control, upgrades and improvements command higher rents. Increased rents will attract upscale residents who can afford them and who value the improvements. This will, in turn, encourage newer and better-maintained homes, further increasing the look and value of your community.

Finally, if you are considering subdivision/conversion of your community to condominium ownership, an upgraded property makes the process easier and more profitable.

Increased amperage, an updated clubhouse, additional

homesites, new lighting or sewer system, high-speed Internet, satellite television service- the possibilities of upgrades are endless and now is the perfect time to investigate the options and costs. The current economy is creating lower labor and material costs for many construction projects.

Katie Hay Central Coast Real Estate, LLC, Property Manager of Valley Gardens in Solvang says: *"We feel the importance of upgrading an older park is crucial to preserve the value of the asset as well as providing a better quality of life to the tenants who live there. Maintenance management headaches are reduced significantly and it allows us to attract the very best tenants to our park."*

Large or small, however painful change might be, it is usually very rewarding in the end. The old "trailer park" image of manufactured home communities has been etched in the public eye for too long – it's time to show the world that manufactured home communities are the smart and trendy alternative for the 21st Century. New and happier residents will be yours, and the increased value of the community normally far exceeds the costs.

** Richard Close, Thomas Casparian, and Susy Forbath, together with the rest of their team, comprise the Manufactured Housing Practice Group at Gilchrist & Rutter, Santa Monica, CA.*

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What are the likely future law revisions?

Most municipalities want one of two things, either control over the subdivision process or the ability to deny the subdivision altogether. Some cities want to impose conditions on the approval of a subdivision of a mobilehome park. These conditions might include upgrading infrastructure or imposing requirements for off-site improvements (for example, traffic lights, off site road widening, etc.). Other cities just want the authority to deny the process in order to keep the park as "affordable housing" for the city.

Resident groups want to require resident approval before a subdivision is approved by a City or a County. In addition, they will probably seek more favorable limits to State rent control (which replaces local rent control when a conversion takes place).

Possible revisions of State rent control could involve extending the time period for rents to go to market rates or increasing rent protection that now exists for low-income residents to, for instance, moderate income residents.

Because of political uncertainty, now is the time to obtain entitlements for subdivision/conversion. As in many development projects, an owner has the right to obtain entitlements for a project, such as a subdivision, and wait until the real estate and financing situation improves before proceeding with the project. In other words, obtain your entitlements now while the law permits, and then, even if you want to continue to operate as a rental park, you can leave those entitlements to your children as an option for them to utilize in the future. This is the best exit strategy you or your heirs will ever have.

Representing mobilehome park owners for over 25 years,

Gilchrist & Rutter

has been providing legal services to the manufactured housing industry, including:
closure | financing | regulatory | acquisition & sale | subdivision | conversion
rent control application & litigation | failure to maintain claims & prevention