

News for Manufactured Housing Community Owners October 2011

The Gilchrist & Rutter Manufactured Housing Practice Group consists of the following attorneys and paralegals:



Richard H. Close, Esq.
Department Chairman

Thomas W. Casparian, Esq.
Litigation Director

Yen N. Hope, Esq.

Duane M. Montgomery, Esq.

Christine A. Page, Esq.

Steven P. Heller, Esq.

Kevin M. Yopp, Esq.

Scott Reynolds, Esq.

Susy Forbath
Senior Paralegal

Janet Ortega



For attorney biographies, Firm information or more articles, please visit our websites:

gilchristutter.com

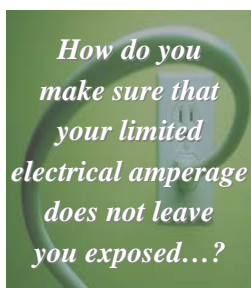
gilchristutter.com/mobilehome

Gilchrist & Rutter provides updates on legal trends as a service to keep our valued clients and friends informed of the latest legal news. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.



Electricity – It Can Spark a Wildfire of Problems

Electricity – is there enough to go around in your community? Probably not. If your community is like many, you're probably providing 50 or even 30 amp service, which in today's world of high-tech electronics (and little basics like flat screen televisions and air conditioning) isn't enough to operate every device and appliance that your residents want to have – particularly in all-age communities.



If your community is experiencing regular "brown outs", you need to take action.

One obvious, but very expensive solution, is to upgrade to 100 amps. But this raises other considerations, such as, once you open up the roads and create the trenches, do you then take the opportunity to upgrade the water, sewer lines, etc? \$\$\$!!!

There are ways to make this happen without it all reducing your net profit, such as utilizing a capital improvement pass-through provision.

If you are not ready to upgrade the entire infrastructure of your community, how do you make sure that your limited electrical amperage does not leave you exposed to a dreaded failure to maintain lawsuit which resident groups are increasingly pursuing?

We encourage our clients to exercise "failure to maintain prevention." Specifically as applied to **controlled electrical usage**, that means:

- Make sure there is adequate disclosure of limited electricity in your Lease Agreements;
- Make sure that your Rules and Regulations specifically address general usage limits, new home amperage limit, and prior permission requirements;
- Have your documents reviewed and revised if needed. Many communities are using documents that were written before electricity was in short supply;
- Make sure that on-site managers are observant, and that they are strictly and uniformly enforcing the rules pertaining to usage;
- Make sure that on-site managers keep a log of inspections, violations, and warnings given as related to electrical usage abuse.

The important message here is that in order to best protect your community from unwelcome problems or even litigation, you must BE PROACTIVE!



Financing Gamble



Are you a gambler? Is your existing financing due and payable in the next nine months? Is the interest rate on your current loan too high?

Interest rates are at historically low levels. The Feds have stated they do not intend to increase rates for at least a couple of years. However, some experts are concerned that the Federal Reserve does not have sufficient control over interest rates. A sovereign debt crisis in Europe could cause U.S. interest rates to increase in spite of the goals of the Federal Reserve Bank.

Mark Hansen of Hansen Financial indicates, "It is a difficult financing market now." Insurance companies are making loans, but primarily on properties in their portfolio. Although manufactured housing communities have not been a problem for Fannie Mae, its financial

(Continued on page 4)

What Did Shakespeare Say About Mobile Home Parks?



“ All that glitters is not gold,
Often have you heard that told:
Many a man his life hath sold,
But my outside to behold:
Gilded tombs do worms enfold.”

The Merchant of Venice (II, vii)

William Shakespeare’s cautionary tale against hasty decisions based on exterior appearances applies to many human endeavors, including the purchase of real estate. Mobile home parks are no exception. They have great potential for economic gain, but risks exist for purchasers.

Many mobile home parks were built decades before adoption of environmental laws that may face landowners with unexpected, even personal liability or loss. It is not unusual for parks to be located on or near old landfills or other historical uses with hidden residue.

Regulators have adopted ever more stringent guidelines regarding the potential for vapor intrusion into structures from subsurface pollution or naturally occurring but potentially explosive gasses.


Financing may be difficult and lenders may require personal environmental indemnities.


When problems come to light, residents may become concerned about real or imagined health threats.

Fortunately, there are means of identifying and dealing with such risks. Pre-acquisition due diligence should be done by qualified consultants and counsel regarding a variety of potential issues arising from the location and condition of target property. This applies to structures as well as underlying soil, soil gas and groundwater. Processes are available for environmental site assessment, property condition assessment, seismic study and other specialized reviews as warranted.

Many risks are manageable with cost-effective precautions. Environmental site assessment prior to purchase may provide the “innocent purchaser defense” under some laws. In addition, protective deal terms can be negotiated. Insurance products are available, including environmental insurance against the risk of unknown conditions or even contingent risks of known conditions.

Sometimes the best precaution is avoidance where serious risks are identified threatening the economic viability of a proposed acquisition.

Shakespeare could not have imagined today’s environmental and other risks, but the truism of his day – “All that glitters is not gold” – still applies with full force to caution all who would seek to profit without adequate study. 

In celebration of the Fall season, we have hidden Halloween symbols throughout this newsletter. Have fun, and just for a little “friendly competition” – count and email us the correct number of hidden symbols at MHPG@gilchrstrutter.com and Gilchrist & Rutter will donate \$100 in your name to the charity of your choice! In the case of a tie, the winner will be chosen from a  . (And yes, this hat counts!)

Ask the Experts!

Carol from Westminster asks –

“How often should we be updating the documents used in our community?”


There are a several occurrences that could or should prompt you to have your community’s documents reviewed and possibly revised. Changes to the Mobilehome Residency Law (MRL), key industry-related legal decisions, or changes in the demographics of your community are all good reasons to have your documents reviewed by your legal counsel. In general, periodic review is a smart preventative practice that will ensure that your documents are not exposing your community and its ownership to unnecessary legal challenge or liability.



Lease Agreements, Rules & Regulations, Clubhouse Use Agreements, Management Agreements, etc. are not everlasting documents. Without current updating, they can leave you exposed to challenge by individual residents, resident advocacy organizations, or by state and local agencies.

So, how do you know when it is time for a “check-up?” With regard to changes in the MRL, we recommend owners/management attend industry seminars and conferences offered by trade associations, such as the WMA, CMPA, and MHET. They offer educational opportunities to keep you abreast of changes to the MRL. Your legal counsel should keep you informed of key legal cases that could impact your community and its documents (favorably or adversely).

It is up to you to discuss with your legal counsel any changes in, or plans to change, the demographics or operations of the community (e.g. senior to all-age, change in management, long and short range business plans, changes to the infrastructure, meet and confer requests, etc). This should be done, at a minimum, on an annual basis.

After any revisions to your documents, make sure that the out-dated documents are phased out as quickly as possible, and that management is aware of the changes. 

If you have a question, please email us at:
MHPG@gilchrstrutter.com



CALIFORNIA MOBILEHOME PARKOWNERS
ALLIANCE NEWS



The Perfect Time to Re-Think Rent Control?

By Richard H. Close, Esq. And Susy Forbath

At long last, there seems to be some signs of erosion in California rent control. There is finally a glimpse of reality in the minds of some elected officials who have held on fiercely for so long to the premise that rent control was the key to affordable housing and a requirement to be reelected.

We are seeing a slow but steady shift in the stronghold that mobilehome community residents have held in local political arenas. Even the residents are aware of the movement. A recent edition of the Californian (the monthly GSMOL newsletter) stated, "Park owners up and down the state are targeting Council elections in the hope of getting 'their people' in power. This significant threat creates a new urgency for homeowners..."

We have seen recent movement in the city Oceanside and other locales in San Diego County. Gilchrist & Rutter is currently coordinating the goals of Los Angeles community owners in a united effort to convince the city to pass a "phase-in" vacancy decontrol provision in their rent control ordinance. The city, community owners and yes, even residents, will benefit from smart changes to rent control as they will allow parks not just to "maintain", but to actually afford upgrades necessary to accommodate today's homes and lifestyles.

Why this unimaginable shift in sentiment? It is in part due to the increasing number of "family" parks. As the demographics in manufactured housing communities have transitioned, the political clout of the "senior" majority has been reduced. Residents in family parks want better properties – not just "cheap rent". They realize that a better park increases the value of their home and quality of life for their family.

With less political pressure, cities are better able to make balanced, rather than emotionally driven, decisions.

The change in attitude is also due to the downward economic times, particularly as cities face severe budget tightening and programming cuts. The financial crisis faced by many cities is making some local governments aware of the costly administration and litigation associated with rent control. City officials also are learning that "market rent" is a self-regulating option. Both of these concepts however, can and must be furthered along in the hearts and minds of the elected officials with a little encouragement and education from community owners.

Importance of local political/media relations – 

- Residents have long portrayed "the park owner" as a cross between Simon Legree and the CEO of Enron.
- Community owners must get to know the elected officials as well as the residents do. If the local officials know you



RICHARD CLOSE AND SUSY FORBATH

on a personal level, it is much more difficult for the residents to depict you as the epitome of greed and evil. They also need to be made aware of your good deeds. Invite the mayor or a council member to the turkey dinner you provide in the clubhouse at Thanksgiving, or make sure you notify them of any resident programs you may offer (i.e. rental assistance, local shuttle service, home repair assistance, etc.). They should receive copies of your community newsletters – keep them involved, and let them know that YOU are involved in good ways.


- These same public relations methods should also be extended to the local news media. Befriend them, give them "positive" community news items to write about, and let them know that you are easily approachable. Get to know the local beat writer and periodically give him/her human interest story ideas (i.e. park upgrades, community events, resident assistance efforts, etc.).

If you wait until you are "responding" to get to know elected officials and the press – it is probably too late. Be pro-active!

Political activism – 

- Support your local politicians – it should come as no surprise that elected officials appreciate campaign and other contributions! They also respond well to hosting fund raising events (maybe a small gathering with other local community owners). This is a great way to get to know the officials better, and to have them remember you in a positive light.
- Once you have established a relationship, take your council member to lunch and a personal tour of your park. Use the time to educate on such topics as: the ever-widening gap between below-market rents and increasing operating costs, the financial burden to the city of rent control administration and litigation vs. city programming and services.
- Last, but not least, the time is right to ensure these issues are at the forefront by consistently filing rent increase and fair return applications, second home exemptions, capital improvement pass-throughs, litigation, and ultimately closures.

An annual rent increase is a great short-term goal. However the ultimate goal is to have cities re-examine rent control which discourages investment to improve the quality, longevity and value of parks. The stars are aligned. However, community owners must get actively involved to make it happen.

Richard H. Close, Esq. and Susy Forbath, together with the rest of their team, comprise the Manufactured Housing Practice Group at Gilchrist & Rutter. 



Meet the Team

For those of you who may not be familiar with us, we want to introduce our Gilchrist & Rutter Manufactured Housing Practice team members. In this issue, we'd like you to meet:

KEVIN YOPP


Within the Manufactured Housing Practice Group, Kevin specializes in trial and appellate litigation, as well as rent control proceedings. He has represented community owners as plaintiffs in rent control litigation, and damages cases for cities' wrongful delays of mobilehome park subdivision/conversions. He was counsel for the damages portion of the *El Dorado* case, which led to nearly a \$1 million settlement from the City of Palm Springs. Kevin has also represented community owners in constitutional litigation seeking to have local rent control laws declared illegal. "There is no legitimate justification for rent control – it's pure politics," Kevin says. "Even the ultra-liberal Ninth Circuit recently recognized that rent control is a failed economic policy."



intellectual property disputes and has handled several partnership disputes. Additionally, Kevin counsels high school athletes regarding CIF athletic eligibility hearings.

Before college and law school, Kevin drove a tank in the U.S. Army and was stationed in Germany. "We had a fantastic training exercise with the Irish Royal Rangers, who were principally tasked with defending against the NRA in Northern Ireland," says Kevin. "The German government took over an entire small city, kicked out the residents, and used it for urban warfare training." "We and the Irish Royal Rangers took turns occupying the city, and then the other would come in and try to take the city." "I personally had hundreds of confirmed kills," says Kevin. "Fortunately for the Irish Royal Rangers, we were using blanks."

After graduating from the University of Virginia School of Law, Kevin practiced for five years with O'Melveny & Myers in Los Angeles prior to joining Gilchrist & Rutter. He grew up in Long Beach and attended Long Beach Poly High School.

Kevin is an avid sports fan and a season ticket holder for USC football. He also loves to cook (Asian, Latin, and American cuisine) and enjoys running. Most of all, Kevin enjoys spending time with his daughter, Sophia. 



Financing Gamble



(Continued from page 1)


situation is strained because of underwater loans on single family homes.

Local banks are trying to make more loans, especially for local properties. However, many of these banks do not have the personnel to process a significant number of these loans. Experienced lenders were laid off a few years ago when banks decided that real estate loans were too risky.

John Neet, well-known industry appraiser, explains that capitalization rates are trending down which will increase property value. John says, "Although more lenders are entering the market, they primarily want upper-tier properties. There is a little increase in availability for middle-tier properties, while lower-tiered parks are having significant problems getting financing."

Neet reminds park owners that in the current market, lenders are very cautious in their underwriting process, requiring more extensive financial documentation with special focus on operating statements and vacancy trends. Experienced counsel can provide critically important advice on how to best "explain" problems in the park or financial history.

The general conclusion: the crystal ball for financing is very cloudy. Waiting could be a big gamble. Will rates go up? Will availability go down?

The only certainty is that to obtain maximum loan proceeds you must make sure both your community and your record keeping are top-tier. 

Representing community owners for over 25 years,

Gilchrist Rutter

has been providing legal services to the manufactured housing industry, including:

financing | regulatory compliance | acquisition & sale | subdivision | environmental issues
rent control application & litigation | failure to maintain claims & prevention | governmental advocacy
(310) 393-4000 • gilchristutter.com • gilchristutter.com/mobilehome • MHPG@gilchristutter.com