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To: Hilary Mosher Date: December 8, 2015

From: Bruce E. Stanton, Esq., Corporate Counsel

Re: Lazy J Ranch Mobilehome Park

Introduction

At your request, I am on behalf of GSMOL providing you with this basic analysis of the “Long Term Lease Agreement” which you have provided for Lazy J Mobilehome Park. Although the term has not been filled in, it seems clear that a multi-year term is contemplated, which would make the Agreement rent-control exempt.

Long-Term Leases in General

The Mobilehome Residency Law (MRL) contains specific language governing the enforceability and offering of long-term leases. Civil Code sections 798.17 and 18 are the key sections which describe these issues. When they were initially passed, the legislature hoped that residents and park owners could voluntarily agree upon long-term contracts which would eliminate the need for adversarial rent control. But no one counted on the lengths to which some park owners would go to force people to sign these leases. Any lease which exceeds 12 months in length is exempt from local rent control. It is thus very important for every resident to carefully consider whether the offered lease terms are fair, or best, before signing away the potential for ordinance protection. In Humboldt County you are about to pursue an initiative-based Rent Ordinance. No resident who signs this document would be covered by the Ordinance until the Lease term expires, at which time the last rent charged under the Lease would be the initial rent charged under the Ordinance. So for every resident who signs this document, there shall be one less “voice” or concerned resident who would be motivated to participate in the Ordinance process.

Where rent control exists, or might potentially, it is typical that park owners will offer leases to lock as many as possible out of the “rent control pool”. Fewer residents will be motivated to speak out, fewer will be affected by any action that the City takes and thus the Council will be able to more easily justify a decision to modify or abandon the ordinance. The sad thing is that some residents feel compelled to sign such leases when they do not have to sign anything! **In fact the Civil Code makes it clear that after initial move in, no homeowner ever has to sign a new rental agreement or lease of any kind. In fact, no resident should ever sign a lease because they think they have to. They should only sign a lease where they understand all of its terms, and because it makes the most sense for them.**

I would typically advise residents NOT to sign the offered lease without negotiating its terms first. Accepting a “take it or leave it” offer from the park owner is not smart or even necessary. Homeowners typically have far more power and negotiating leverage than they believe, especially where there is an existing rent control ordinance or the potential of one. But where, as here, there is no ordinance, it is tempting to sign a lease in order to at least achieve some sort of “certainty” about future rent increases. One must be careful, however, that you do not give up too much, for at some point “certainty” is not justified if it becomes nothing but “bad” certainty. The best strategy is for the park residents to band together and present a “common front” to negotiate a fair and reasonable agreement if possible, as a possible alternative to a rent ordinance. In other words, the threat of passing an ordinance can be used as leverage to get a better lease. Or it should simply be rejected.

I am fond of saying that “I never met a long-term lease I liked”. With few exceptions this has been true in my experience. Leases can be lengthy, and may attempt to induce residents to waive rights. Hidden rent increases may be present which are not readily apparent. Some of the common issues to analyze in a lease are as follows:

1. What is the beginning rent?
2. How often are rent increases given?
3. What is the amount of each rent increase, and how is it calculated?
4. If CPI is used, which index or portion of an index will be utilized?
5. Are there any “pass throughs” in addition to base rent? If so, for what?
6. Does rent increase on resale?
7. Does rent increase just before the lease expires?
8. Is there an arbitration clause?
9. Are there any other express waivers of rights?
10. What is the term of the lease; can it be unilaterally renewed?

Important MRL Election-Civil Code 798.17 (c)

Civil Code sections 798.17-18 provide that if the resident does not wish to sign an offered long-term lease, they do not have to. The resident can, however, request a **one-year or month-to-month agreement**, and the rent for the first twelve months cannot exceed what would have applied during the first year of the offered multi-year term (see Civil Code 798.17 (c)). This is a very important strategic maneuver that can be made to at least lock the rent in for a one-year period, while local ordinance protection is pursued. There are other related offering requirements that appear in 798.17-798.18 which should also be reviewed in conjunction with a lease offering. For Lazy J residents this strategy can be especially effective, since it is contemplated that the ordinance initiative would be on the ballot next November. A one-year term would cover the interim period and lock in the space rent to a specific amount. About the time the one-year term expires, the ordinance would hopefully be taking effect.

It is, however, difficult to determine the amount of rent being offered in the Agreement when the blanks on page 2 are not filled in. Any resident who received this document should ask that management fill in those blanks before they can consider accepting the offered Lease.

Analysis of the Offered Agreement

The offered agreement is typical of many leases that I have seen. I have the following observations:

Paragraph 4 (1.2) Term- This has been left blank, but paragraph 5.6 speaks of 60 months. Suffice it to say, the longer the term the term longer a potential rent ordinance will not apply, and the longer any bad terms in the document will apply. I usually would not recommend agreeing to a term for longer than 5, and possibly 3 years.

Paragraph 5.2: Base Rent- The annual CPI increase is not unreasonable, since the entire CPI index is used. I note that there is a 3% floor (which is about 1% higher than what CPI has averaged for a number of years) and a 6% ceiling, so it literally means minimum annual increases of 3%. It's the other “Adjustments” contained in paragraph 5.3 which are the problem. This paragraph and its subparagraphs allow “pass throughs” which shall add on to the monthly rent load significantly. These include a property tax increase which could be triggered if there is a “change of ownership” under Prop 13, as in a sale of the park. In addition there is a pass through which includes the cost of all capital items +6% interest, and no approval vote power by residents is included for new capital improvements which many times is present in leases. This means that costs of items like road repairs, which could be very large, would be passed through to the residents in addition to the base rent.

Any true “pass through” item must be billed as a separate line item, and must include the date upon which the pass through charge will “drop off” once full reimbursement is obtained. (See 798.32 (b)). However these charges are described as adjustments to “base rent”, which means the park owner shall likely argue that these charges become a part of base rent and are added to the base that is increased each year. Added to this is the \$20.00 “Landscape” fee set forth in paragraph 5.5, which is styled as a “service rendered” which can be charged per Civil Code 798.31.

Paragraph 5.6 is very unique; I’m not sure I have ever seen it before. It offers one month free rent provided that the resident complies with the Agreement during its term. This sounds good, but is actually not worth much in dollar terms.

There is no provision which stipulates that a rent increase shall occur upon sale of the home. However paragraph 20 indicates that any new purchaser must execute a new rental agreement, which means that the park can re-set the rent to any amount upon resale.

In combination these subparagraphs create open potential for larger rent increases.

The balance of the lease is pretty much “boiler plate”, and tracks the MRL. Any provision which conflicts with MRL provisions on the same subject is unenforceable; i.e. the MRL always governs. Remember the 72-hour rescission rights that are provided in Civil Code 798.17. There is no mandatory arbitration clause, which is good. But beware of a separate arbitration agreement that could be offered.

If the park owner does not translate the agreement into Spanish or Vietnamese, it runs the risk that the document could be unenforceable as being in violation of the California Translation Act.

Conclusion

Each resident needs to weigh the pros and cons in an offered agreement and make a decision for themselves. By choosing a 1-year term per 798.17 (c), a resident would still be eligible for ordinance protection in the future, if an ordinance is adopted in Humboldt County. And the rental charges during that one-year term must be the same as the first year of the offered 5 year lease. But that would include the “wide open” pass through categories. Residents are giving up rent control protection for 5 years if they sign the lease, since any space that is subject to a long-term lease with a term greater than 12 months is exempt from rent control protection. Next year, residents can choose a new one-year option if a new lease is once again offered. If there is no chance that the voters might adopt a rent ordinance, then this lease is the only “certainty” that residents will have. Ultimately each resident needs to make an informed business decision and decide what is best for him or her.

This lease was drafted by the park owner’s attorney to benefit the park owner. I see nothing that is “illegal”. But the rent provisions are very one-sided. If residents want better protection, they need to reject this offering and accept the 1-year term instead under 798.17 (c) and then either (1) proceed with the ordinance initiative or (2) negotiate what would hopefully be a more favorable long-term agreement.

In my view, no resident who wishes to pursue an ordinance should sign this Agreement, but should instead give notice of the 798.17 (c) election. Please let me know if you have any further specific questions about the Lease.

Rental Assistance Program

This is obviously a voluntary program that could be changed or terminated at any time by the park owner. It does not seem to defer the rent credit (which is bad) but actually does reduce the amount of rent, but requires submission of tax returns and private information which residents may not be comfortable giving to the park.