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## **A Review of the Laws Governing Inspection and Removal of Older Homes upon Resale in California's Mobilehome Parks**

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Many of the homes in California's mobilehome parks are older homes which were manufactured in the 1950's, 1960's and early 1970's (hereinafter referred to as "Older Homes") before the advent of the comprehensive 1976 Federal HUD Code regulations providing rigorous construction standards for manufactured homes. Many of these Older Homes may look rundown and some of them may contain major structural, electrical or other defects which could constitute health and safety problems for occupants and others in the parks. The purpose of this letter is to discuss the circumstances in which the park owner may require a resident to remove an Older Home when the resident puts that home up for sale.<sup>1</sup>

As the housing stock in California continues to improve and become more expensive, one of the resulting phenomena has been the replacement of Older Homes with newer homes in California's 4,500 mobilehome parks. Older Homes are replaced as a result of many factors. Two market and safety based factors currently predominate. First, in many cases, the preferences of today's new customer no longer support acquisition of Older Homes for occupancy because Older Homes have a dated appearance, contain few modern amenities and are not energy efficient. The customers of today want new, larger modern-looking homes, with higher ceilings and roof line profiles, better lighting, new appliances and decors, and exterior appearances more in line with traditional stick-built housing.

Second, some Older Homes may contain health and safety defects of such seriousness that they should not be allowed to be re-sold and re-occupied within the mobilehome park. Homes with antiquated, brittle and frayed aluminum wiring, for example, might be fire hazards. Homes with major structural defects based on pre-HUD Code building practices could be in danger of collapse during even a minor earthquake. Homes with leaking/defective plumbing systems can be health hazards. The list goes on and on.<sup>2</sup>

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<sup>1</sup> Note that the owner of an Older Home may replace the Older Home with a new home and then seek to sell the new home to a new resident.

<sup>2</sup> See Section 1606 of Title 25 of the California Code of Regulations which was recently updated in 2004.

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The replacement of Older Homes due to new homeowner preference is not controversial. The incumbent resident homeowner sells his/her home to a new homeowner (often through a dealer intermediary) who wishes to replace the Older Home with a new manufactured home. In this instance, the new homeowner (or the dealer) purchases the Older Home primarily to gain access to the homesite inasmuch as there is a shortage of mobilehome park homesites in many areas of California. Once purchased, the Older Home is then “junked” and sent to a landfill or sold off as temporary housing for farm workers or sent to Mexico or other lower income areas.<sup>3</sup>

Controversy arises and problems may occur, however, when the owner of an Older Home with potential/alleged health and safety issues seeks to resell that unit. Under the California Mobilehome Residency Law<sup>4</sup> (hereinafter the “MRL”), the resident seller is supposed to provide any prospective buyer with a “disclosure” of the defects of the Older Home.<sup>5</sup> In addition, other provisions of California law prohibit the sale, rental or occupancy of any manufactured home with various physical defects.<sup>6</sup> Unfortunately, many resident sellers, however, are not sophisticated and therefore do not understand these legal requirements. In addition, in order to upgrade the quality of the park, as well as eliminate health and safety hazards, a park owner may prohibit the resale in place of a home if (1) the home is in a “significantly rundown condition or in disrepair;” or (2) the appropriate enforcement agency inspects the home and determines that it does not comply with health and safety standards and the home is over a certain age.<sup>7</sup> Both the resident seller and park owner would be well served to understand their respective rights and obligations in these circumstances.

The seller of a home with health and safety defects is bound by law to

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<sup>3</sup> In these circumstances, the Older Home actually has a *negative* value because it costs money to tear down the Older Home, haul it away and pay fees to dispose of the structure.

<sup>4</sup> The California Mobilehome Residency Law, or MRL, is a comprehensive statute governing many aspects of the landlord/tenant relationship in mobilehome parks, including the sale of homes in parks. The MRL is found in the California Civil Code, beginning with section 798 thereof.

<sup>5</sup> See MRL, Civil Code Section 798.74.4.

<sup>6</sup> California Health & Safety Code Sections 18025 and 18550.

<sup>7</sup> See MRL, Civil Code Section 798.73.

“disclose” those defects to any buyers in the “Manufactured Home and Mobilehome Transfer Disclosure Statement” prescribed in the law.<sup>8</sup> If the roof of the home leaks, or the water heater doesn’t work, and the seller has personal knowledge of these problems, these defects must be disclosed by the seller to the buyer. In order to avoid lawsuits after a sale as to what defects were known to a seller, the sellers of Older Homes would be wise to have the home inspected by a quality home inspection company and to disclose the company’s findings to any prospective buyer, although this is not required by law. Any serious defects should be repaired, if possible, prior to sale. This inspection report may also be useful in any dealings with the park owner, as described below.

When an owner of an Older Home puts the home up for sale, the park owner may take the position—often justifiably—that the Older Home may not be sold in place because it is a health and safety problem or is run-down. When this occurs, both seller and park owner should look to the California Mobilehome Residency Law (MRL) for guidance. In this respect, Civil Code at Section 798.73, as the primary law on this subject, ***generally prohibits management*** from requiring the removal of an Older Home except under certain specified circumstances where it can be shown that the mobilehome is of a certain age and does not comply with certain health and safety code sections, or it is in a significantly rundown condition or state of disrepair.<sup>9</sup>

Section 798.73 allows rejection of a resale in four circumstances. The first basis for rejection is when the home is not a “mobilehome” as defined by law. The next two reasons for rejection relate to the age and width of the mobilehome and require public enforcement agency findings of noncompliance with construction and safety standards. The basis for rejection requires that the home be “in a significantly rundown condition or in disrepair”, with defects affecting the health and safety of the resident or the public. These rules must be carefully applied by sellers and management.

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<sup>8</sup> Note that if a mobilehome dealer or real estate agent is involved in the sale, different disclosure obligations may be required under Section 18046 of the California Health & Safety Code.

<sup>9</sup> Civil Code Section 798.73, which is part of the MRL, lists the conditions under which park management may require repairs or improvements to a mobilehome that will remain in the park.

As an example, let us assume that a resident puts a 1960 single-wide home up for sale. The park owner believes that the home is an eyesore, a detriment to the community in general and quite possibly a safety hazard. In this scenario, the park owner may contend that the home may not be re-sold pursuant to Section 798.73 (c) of the MRL. Let us further assume that the seller rejects this contention. In the case of health and safety issues, the test is whether or not the home complies with certain sections of the California Health and Safety Code and regulations adopted pursuant thereto. To determine compliance with these issues, the MRL states that the appropriate governmental enforcement agency is to conduct an inspection of the home. See Sections 798.73 (b) and (c) of the MRL.

Recent state budget cutbacks, however, have decreased the number of Housing & Community Development (“HCD”) employees to such a degree that HCD is no longer capable of making site visits to mobilehome parks simply to determine whether a single home is a problem.<sup>10</sup> Thus, because it is currently impossible for HCD to make these compliance inspections, park management is unable to use Sections 798.73 (b) and (c) to require the removal of a mobilehome at the time of resale.

Thus, the only viable option by which management may reject a resale of a home is under Section 798.73 (d) of the MRL, where the park management must make a “reasonable determination” that the home is in a significantly rundown condition or state of disrepair. Note that this Section provides that the “management shall bear the burden of demonstrating” these facts. The park owner must therefore use reasonable discretion to determine that the home is significantly rundown or in a state of disrepair based on its acceptability to the health and safety of the occupants and to the public.<sup>11</sup>

If a park owner refuses permission to sell an Older Home in place, the seller may seek an inspection by a third party inspection company to attempt to establish

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<sup>10</sup> A small number of California cities or counties have assumed local enforcement agency jurisdiction over mobilehome parks. These cities or counties also do not usually have the resources to conduct home by home health and safety code compliance inspections in mobilehome parks.

<sup>11</sup> This can be demonstrated, in part, by the park owner’s list provided pursuant to Civil Code section 798.73.5, if such a list is provided.

that the home is not unsafe, unhealthful and not in a significantly rundown condition or state of disrepair.<sup>12</sup> If that can be established based on a competent inspection, then the selling resident is in a stronger position to argue that the park owner must allow the home to be sold in place. If the park owner refuses to do so, the owner may be liable for violation of the MRL and possibly other statutes, and, in a small claims or superior court lawsuit, the seller may be able to obtain the costs of the inspection, any other damages (such as rent because the sale was delayed and other delay damages) and civil penalties under the MRL.

To avoid any disputes or liability, the prudent park owner who wishes to claim that a home is a safety hazard, or is in a significantly run down condition or state of disrepair, should obtain an independent inspection report on the home to make the case for home removal under the MRL. If the resident refuses to cooperate by, for example, refusing to allow an inspector to enter the home for inspection, then the park owner must rely on either the inspector's report on the exterior, and the park manager's or owner's knowledge of the interior, or any problems in any report about the mobilehome itself from prior public agency inspection reports.

If a home is in a significantly run down condition or state of disrepair, or if it is a safety or health hazard, it should be removed from the mobilehome park for a variety of reasons. First, an unsafe home endangers the home occupants and the other residents of the community. Second, a run down or dilapidated home is an affront to other residents and who maintain their homes and have pride in their community. Finally, such a home is an impediment to the park owner who also has pride in the community and seeks overall community improvement and renewal over time.

To summarize the law on whether park owners may require the removal of Older Homes at the time of resale:

- The general rule is that a selling resident may sell his/her mobilehome in place *unless* the exceptions set forth in Section 798.73 of the MRL apply.

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<sup>12</sup> If the inspector finds defects, the resident has the option of fixing the defects so that the home will not be a safety hazard or be in a rundown condition, etc.

- The exceptions, found in Section 798.73 (d) of the MRL, which allow the park owner to require that the Older Home be removed from the park involve Older Homes which are safety or health hazards or which are in a significantly rundown condition or state of disrepair.
- The park owner bears the burden of demonstrating that the home in question falls within one of the exceptions set forth in subdivision (d) of Section 798.73 of the MRL.
- If one of these exceptions can be established, then the park owner may require that the Older Home be removed from the park rather than resold in place. If one of the exceptions cannot be established, then the park owner must allow the home to be sold in place.
- If a park owner refuses to allow a resident to sell his/her home, the resident should refer the park owner to Section 798.73 of the MRL. If the park owner continues to refuse to allow the home to be sold, the seller may, but is not required to, obtain an inspection report to show the park owner that the home is not a safety or health hazard and not in a significantly rundown condition or state of disrepair. If the home does need repairs, the resident would be wise to have those repairs performed. If the inspection determines that the home is not a safety or health hazard and not in a significantly rundown condition or state of repair, then this inspection should put the selling resident in a strong position to demand that the park owner permit the sale of the home in place to proceed.
- If the park owner believes that the home is a safety or health hazard, or in a significantly rundown condition or state of disrepair, then the park owner should photograph the defects and obtain an inspection report that would substantiate the park owner's contentions. If the inspection report confirms those contentions, then the park owner can require that the home be removed rather than sold.
  - If the resident then decides to stay and not sell, the park owner may still insist that repairs be done to the home to eliminate any safety or health issues, or to bring the home up to an acceptable condition.
  - If the resident still wants to sell, but the park owner can only prove the existence of some defects (but not bad enough to be "significant"), then the park owner can require repairs with a list under Section 798.73.5 of the MRL.
- The parties should try to resolve any disputes in an amicable and efficient manner. If disputes cannot be resolved, then the parties may seek the

services of appropriate mediation agencies, such as the Greater Napa Fair Housing Council.

- As a last resort, the parties could have their differences resolved by a court of law, but this alternative is often lengthy, frustrating and expensive.

In conclusion, the Mobilehome Residency Law provisions relating to the resale of homes within mobilehome parks generally favor allowing homes to be sold in place. The MRL recognizes, however, that homes may become health and safety hazards or may reach a state where they are significantly run down or in a state of disrepair. In these circumstances, the MRL does allow management to require the removal of these unsafe or unsightly homes. The burden of demonstrating these conditions rests with management. Third party inspections are often a “neutral” way of determining such conditions. Disputes involving these issues should be resolved in an amicable, efficient manner and in accordance with the MRL.