

Date of Hearing: January 11, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 317 (Calderon) – As Amended: January 9, 2012

SUBJECT: Mobilehomes.

SUMMARY: Exempts any mobilehome that is not the sole residence of the homeowner from rent control. Specifically, this bill:

- 1) Exempts a mobilehome space within a mobilehome park that is not the sole residence of the mobilehome owner from any ordinance, rule, regulation, or initiative measure adopted by any city, county, or city and county that establishes a maximum amount that the landlord may charge a tenant for rent.
- 2) Specifies that evidence that a mobilehome is not the sole residence of the mobilehome owner must be weighted in light of the totality of the circumstances and may include, but is not limited to, the following factors:
 - a) The mobilehome owner rents, leases, occupies, or has a present ownership interest in another place of residence, other than an ownership interest in a place of residence solely and exclusively occupied by the mobilehome owner's child or parent and his or her immediate family.
 - b) Another place of residence appears as a matter of public record or in other evidence obtained by management;
 - c) Monthly statements are mailed to, or payments are made from, a different place of residence;
 - d) The mobilehome owner is regularly absent from the mobilehome for extended periods of time, other than for military service, hospitalization, vacation, family or friend emergency care, or other reasonable temporary or seasonal periods of absence, such as travel necessitated by employment or education;
 - e) The mobilehome is used primarily for vacationing, storage, or business;
 - f) The mobilehome has been subleased or possession of the mobilehome has been transferred without management's approval; and
 - g) A review of state or county records demonstrates that the homeowner is receiving a homeowner's exemption for another property or mobilehome.
- 3) Requires any disputes related to whether or not a mobilehome is the sole residence of the mobilehome owner to be arbitrated, with the cost of the arbitration paid by the owner or management of the mobilehome park.

- 4) Requires the parties to meet and confer to select a mutually agreeable arbitrator.
- 5) Specifies that if the parties cannot agree to an arbitrator within 10 days after the homeowner's written response is received, the management must obtain a list of five arbitrators from any bona fide dispute resolution provider serving the judicial district in which the mobilehome park is located.
- 6) Allows each party to disqualify up to two arbitrators from the list and allows any remaining arbitrator to be selected.
- 7) Requires the arbitrator to hear the evidence relevant to the dispute within 30 days after selection, at a time and place reasonably convenient to the parties.
- 8) Specifies that no attorney may represent either party at an arbitration hearing.
- 9) Requires the arbitrator to render a written decision within 15 days of hearing the evidence as to whether the mobilehome is the sole residence of the mobilehome owner.
- 10) Specifies that the decision of the arbitrator is final.

- 11) Specifies that the exemption from rent control does not apply under any of the following circumstances:
 - a) The mobilehome is the sole residence of the mobilehome owner, which is defined as a person who has a full-time tenancy in a mobilehome park under a rental agreement, a senior who is a full-time resident of a mobilehome owned by a child of the senior, or a child with a disability or handicap who is a full-time resident of a mobilehome owned by a parent or guardian of the child.
 - b) The space is subleased by the owner for a medical hardship;
 - c) Ownership of the mobilehome is transferred to an heir, joint tenant, or personal representative upon the death of mobilehome owner;
 - d) Management elects to apply an exemption or right set forth in the ordinance, rule, regulation, or initiative measure that establishes a maximum amount that a landlord may charge a tenant for rent; and
 - e) The mobilehome is actively being held available for sale by the homeowner and the home remains vacant and unoccupied. If the home remains occupied, provides 120 days from the time management provides notice of a rent increase based on a finding that the home is not the sole residence of the mobilehome owner for the space to remain under rent control while being actively held available for sale.

- 12) Provides that if management authorizes the subleasing of mobilehomes in the park, management shall not restrict the amount of rent that the mobilehome owner may charge for rent in a sublease situation.

- 13) Provides that sublet mobilehomes are exempt from rent control, except when subleased for a medical hardship.

- 14) Specifies that upon reoccupation of the space by the mobilehome owner after the term of the sublease has expired, the last rental rate charged to the mobilehome owner shall be the base

rental rate for purposes of rent control, plus any increases that were allowed during the term of the sublease.

- 15) Deletes the following exemptions to the current law that exempts mobilehome spaces that are not the principal residence of the homeowner from rent control:
 - a) The homeowner is unable to rent or lease the mobilehome because the park prohibits subletting; and
 - b) The legal owner has taken possession or ownership, or both, of the mobilehome from a registered owner through either a surrender of ownership interest by the registered owner or a foreclosure proceeding.
- 16) Adds language to an existing disclosure form that the management of a mobilehome park must provide to prospective homeowners stating that purchasers who do not occupy the mobilehome as their sole residence may be subject to rent levels that are not governed by rent control.

EXISTING LAW

- 1) Exempts any mobilehome that is not the principal residence of the homeowner and that has not been rented to another party from rent control (Civil Code Section 798.21).
- 2) Specifies that a mobilehome is considered the homeowners principal residence unless the homeowner is receiving a homeowner's exemption for another property or mobilehome in California, or unless a review of public records reasonably demonstrates that the principal residence of the homeowner is out of state (Civil Code Section 798.21).
- 3) Requires the management to notify the homeowner in writing of any proposed change in rent before modifying the rent or other terms of tenancy based on evidence that the mobilehome is not the homeowner's principal residence, and requires the management to provide the copy of the documents upon which management relied (Civil Code Section 798.21).
- 4) Specifies that homeowners are not required to disclose information concerning their personal finances and management is not authorized to gain access to any records which would otherwise be confidential or privileged (Civil Code Section 798.21).
- 5) Gives homeowners 90 days from the date they receive notice from the management of a proposed change in rent to respond (Civil Code Section 798.21).
- 6) Prohibits management from modifying the rent or other terms of tenancy prior to the expiration of the 90-day period or prior to responding, in writing, to information provided by the homeowner (Civil Code Section 798.21).
- 7) Prohibits management from modifying the rent or other terms of tenancy if the homeowner provides documentation reasonably establishing that the information provided by management is incorrect or that the homeowner is not the same person identified in the documents (Civil Code Section 798.21).

- 8) Prohibits a homeowner from changing the homeowner's exemption status of the other property or mobilehome owned by the homeowner after receiving the notice from the management (Civil Code Section 798.21).
- 9) Specifies that the exemption from rent control does not apply under any of the following conditions:
 - a) The homeowner is unable to rent or lease the mobilehome because the owner or management of the mobilehome park does not permit subleasing;
 - b) The mobilehome is being actively held available for sale; or
 - c) The legal owner has taken possession or ownership, or both, of the mobilehome from a registered owner through either a surrender of ownership interest by the registered owner or a foreclosure proceeding.

(Civil Code Section 798.21)

- 10) Requires management to permit a homeowner to rent his or her mobilehome or sublet his or her space if a medical emergency or medical treatment requires the homeowner to be absent from his or her home and this is confirmed in writing by an attending physician. In such cases, the homeowner is prohibited from charging a renter or sublessee more than an amount necessary to cover the cost of space rent, utilities, and scheduled loan payments on the mobilehome, if any. (Civil Code Section 798.23.5)

FISCAL EFFECT: None

COMMENTS:

Background: *Birkenfeld v. Berkeley* (1976) 17 Cal. 3d 129, provides that cities and counties have within their policy and regulation powers the authority to enact rent control laws so long as a fair return is assured to property owners. Approximately 111 local jurisdictions have enacted measures limiting the amount of rent or establishing a maximum amount of rent that the management of a mobilehome park may charge a tenant for rent of a lot space. Under existing law, local governmental entities are free to enact rent control laws regarding mobilehome parks. These local laws are not subject to the state's Costa-Hawkins Act restricting permissible rent control ordinances, but in certain limited circumstances the Mobilehome Residency Law (MRL) exempts certain mobilehome park spaces from local rent control. Under existing law rental agreements which are twelve months or longer are exempt from local rent control.

SB 1181 (Haynes), Chapter 392, Statutes of 1996, created an exemption to rent control for mobilehomes that are not the principal residence of the homeowner and established that a mobilehome is deemed the principal residence of the homeowner unless the owner claims the homeowner's exemption on another residence in California or unless records show that the owner's principal residence is out of state. At the time, the sponsor of the bill, the Mobilehome Park Alliance (MPA), stated that as many as 20% of the mobilehomes in luxury parks in communities such as Malibu, Palm Springs, Santa Barbara County, Palm Desert, and Escondido

are used as vacation homes and remain vacant for significant periods of the year while their owners are living elsewhere. MPA argued that vacation homes should not be eligible for rent control.

Purpose of the bill: AB 317 exempts any home that is not the sole residence of the homeowner from rent control. The bill contains a non-exclusive list of factors that could be used to determine that a home is not the sole residence of the owner. The bill requires arbitration, paid for by the park owner or management, if the homeowner disputes a finding that the home is not their sole residence. The arbitrator must be mutually agreed upon by both parties and the decision of the arbitrator is final.

The bill additionally provides that subleased mobilehomes, except those subleased in the event of a medical hardship, are exempt from rent control. If a mobilehome owner reoccupies their home after a sublease, the bill requires that their base rent for purposes of rent control be set out their pre-sublease rent plus any increases that were permitted during the term of the sublease.

Finally, AB 317 adds language to an existing disclosure form that the management of a mobilehome park must provide to prospective homeowners stating that purchasers who do not occupy the mobilehome as their sole residence may be subject to rent levels that are not governed by rent control.

According to the sponsor, the Western Manufactured Housing Communities Association, the homeowner's exemption test has proved to be an inadequate way of determining whether a mobilehome is a vacation home. Because the financial benefits of rent control can be substantial and the value of the homeowner's exemption is the same no matter what property an owner claims it on, those who own mobilehomes as vacation properties have a strong incentive to claim the exemption on the mobilehome rather than on their true primary residence. While property tax law requires that the homeowner's be claimed only on a primary residence, there is no way for county assessors to determine that a homeowner has instead claimed it on a vacation property. As long as a homeowner is only claiming the exemption on one residence, there is no reason why an assessor would question where someone is claiming the exemption.

WMA additionally states that currently, most mobilehome parks do not allow subleasing. They state that one reason for this is that some homeowners have taken advantage of park owners by purchasing multiple homes in rent-controlled communities and creating a business of subletting out the homes at rents greater than what the park owner is permitted to charge.

Arguments in Support: WMA argues that the original intent of rent control was to preserve a source of affordable housing and protect residents who are captive in the community because they can't move their home from large rent increases, not to make it affordable for someone to own a second home. WMA believes that current law is inadequate because it is easy for owners to claim that a mobilehome is their primary residence even when it is not, and further believes that the laws needs to be expanded to prohibit rent control on any second home. WMA argues that those who can afford to own two homes should not benefit from rent control. They additionally argue that it is unfair for homeowners to profit off of rent control in a sublease situation and believe that if sublet mobilehomes were no longer subject to rent control, more parks would allow subletting, providing homeowners with more options.

Arguments in Opposition: The Golden State Manufactured-Home Owners League (GSMOL) believes that the current requirements for determining whether a homeowner is entitled to a rent-stabilized space are fair and adequate. They argue that the list of factors that could be used to establish that a home is not the owner's sole residence is so vague and overbroad that many innocent activities of homeowners will be used as a basis for declaring a residence to be a second home, thus ending rent control protections and allowing park owners to increase space rent by any amount desired. GSMOL further argues that very few mobilehome parks allow subleasing, including the vast majority of parks in jurisdictions without rent control and questions the argument that removing sublet mobilehomes from rent control will encourage subleasing.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Manufactured Housing Communities Association

Opposition

Golden State Manufactured Homeowners League
Western Center on Law and Poverty

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