Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
SB 274 (Dodd) – As Amended June 25, 2019

SENATE VOTE: 31-5

SUBJECT: Mobilehome parks: tenancies

SUMMARY: Makes changes to the law governing mobilehome tenancy and residency related to companions and establishes rules regarding rebuilding mobilehome home parks after a natural disaster. Specifically, **this bill**:

1) Allows a homeowner who is living alone in a mobilehome to share occupancy of their mobilehome with one companion at a time, free of charge from the park. A homeowner must not designate more than three companions in total during any calendar year, unless otherwise authorized by management.

2) Provides that if a mobilehome park is destroyed as a result of a wildfire or other natural disaster, and the park owner elects to rebuild the park at the same location, the owner is required to:

   a) Extend, for 60 days, an offer to the previous homeowner for a renewed tenancy in the rebuilt mobilehome park on substantially the same terms as the homeowner's previous rental agreement; and

   b) Include notice in the offer of renewed tenancy that the homeowner has 90 days to remove personal property from the homeowner's park space, after which those possessions may be removed and destroyed by the park management.

3) Establishes specified procedures and standards for a park management to determine whether or not a prospective purchaser has the financial ability to pay the rent, estimated utilities, and other charges of the park, including:

   a) A requirement that the park management provide the seller and prospective purchaser with advance notice of the standards the park uses for approving or rejecting tenancies and the documentation the park will require of the prospective purchaser;

   b) A presumption that the prospective purchaser has the financial ability to pay the rent, estimated utilities, and other park charges if:

      i) The prospective purchaser's average gross monthly income during the three months immediately preceding submission of the application is at least three times greater than the combined monthly rent, estimated utilities, and other charges of the park for the mobilehome space;

      ii) The prospective purchaser has prequalified for loan financing for the mobilehome; or

iii) The prospective purchaser's reported credit score from a consumer credit reporting agency meets or exceeds the minimum credit score that management customarily utilizes to approve a tenancy application; and

iv) A requirement that the park management consider additional financial assets and liabilities if the park management initially rejects a potential purchaser based on inability to pay and the prospective purchaser elects to present evidence of additional financial assets.

4) Requires a selling homeowner or their agent to give notice of a sale of a mobilehome that will remain in the park at the time an application for tenancy is requested for approval by park management.

5) Provides that a park is liable to the seller and prospective purchaser for any damages proximately caused by a failure to comply with the standards and procedures set forth in (3), above.

6) Provides that a park withholding approval from a prospective purchaser when the purchaser has established financial ability to pay the combined rent, estimated utilities, and other charges of the park, may be subject to a penalty of $2,000 in addition to any other consequential damages awarded to the selling homeowner as the prevailing party in any civil action.

EXISTING LAW:

1) Provides that a homeowner who is living alone in the mobilehome and who wishes to share occupancy of their mobilehome with one other person may do so, and a fee shall not be imposed by management for that person. For purposes of this provision, a homeowner may only designate one person as their companion per calendar year, except in the case of the companion's death. (Civ. Code § 798.34(a).)

2) Gives mobilehome parks the authority to approve or deny the purchase of a mobilehome that will remain in the park, but that approval cannot be withheld unless:

   a) The purchaser lacks the financial ability to pay the rent and charges of the park; or

   b) The management reasonably determines that, based on the purchaser's prior tenancies, the purchaser will not comply with the rules and regulations of the park. In determining whether the purchaser has the financial ability to pay the rent and charges of the park, the management shall not require the prospective purchaser to submit copies of any personal income tax returns but may require the prospective purchaser to document the amount and source of their gross monthly income or means of financial support. (Civ. Code § 798.74(a).)

FISCAL EFFECT: None

COMMENTS:

Purpose of the Bill: According to the author, "This bill seeks to protect this important source of affordable housing by increasing protections for mobilehome residents and those who desire to

reside in a mobilehome park. This bill clarifies when a mobilehome resident who lives alone can have a companion, after wildfires it allows tenants the first opportunity to move into a rebuilt mobilehome park, and allows for expansion of assets that park management may consider in determining ability to pay for a space in a mobilehome park."

Background: There are approximately 700,000 Californians living in about 400,000 mobilehomes dispersed over 4,100 mobilehome parks. Mobilehomes are not truly mobile, in that it is often cost prohibitive (up to $20,000) to relocate them. A mobilehome owner whose home is located in a mobilehome park does not own the land the unit sits on, and he or she must pay rent and fees for the land and any community spaces. As such, mobilehomes are considered chattel property and not real property. Purchasing a mobilehomes is often much less expensive than other forms of housing. As such, mobilehomes are an important source of housing statewide – particularly, affordable homeownership housing. However, like other forms of chattel property (like cars), they generally decrease in value over time. The Mobilehome Residency Law (MRL) extensively regulates the relationship between landlords and homeowners who occupy a mobilehome park.

Companionship: In 2017, California enacted SB 147 (Dodd, Chapter 767, Statutes of 2017), regarding the circumstances in which a mobilehome owner could invite others to live with them on an indefinite basis. The law struck a deliberate balance. On the one hand, many Californians are in need of a place to live and many homeowners could use the help of a cohabitant to cover expenses. On the other hand, allowing homeowners to sublet to an unlimited number of housemates would have strained the parks' capacities and placed an unfair burden on park owners. SB 147's compromise was to allow homeowners living alone to invite just one other person at a time to live with them – a companion – at no additional charge from the park.

The idea was to allow for long-term cohabitation. To prevent perpetual turnover, SB 147 limited homeowners to naming just one companion per calendar year, with the only exception that the homeowner could name a subsequent companion in the same year if the first one died. The proponents of this bill state that, in practice, this restriction has turned out to be overly restrictive. Companions move out for many different reasons: for example there may be a break-up, a change in job, an illness, tensions with the homeowner, or the companion may be unable to pay their portion of the expenses. Regardless of the reason, once the companion moves out, the homeowner is stuck with all of the expenses and unable to replace the companion, except in the case of the companion's death, for the rest of the year.

To respond to this problem, this bill expands the number of companions that a mobilehome owner could have in a calendar year from one to three. This number would still prevent the possibility of constant turnover, without forcing mobilehome owners living alone to wait a year to replace a companion who has moved out. The author's intention is that parks cannot charge a mobilehome anything for having a companion, regardless of whether the companion is the first, second, or third companion designated in the year.

Right-of-Return: California's recent, unprecedented spate of wildfires has struck the urban-wildland interface especially hard. Many mobilehome parks are located in these areas and many mobilehome parks have been destroyed as a result. Under existing California law, the destruction of the mobilehome park renders the lease agreement void: the park resident's duty to pay rent is extinguished, but so is any right to return, even if the park gets rebuilt.

This bill creates a procedure to facilitate a right-of-return that is applicable only when a natural disaster destroys a mobilehome park and the park owner decides to rebuild it. In that circumstance, the management must offer a renewed tenancy on "substantially the same terms" before offering tenancies to the general public. The park must make this offer by specified procedures intended to maximize the chances that the former residents will receive actual notice of the offer. The offer would expire 60 days after being made, unless accepted or rejected at a previous time. In the meantime, the park would be free to enter into tenancies with any other interested tenants, so long as the number of remaining vacancies is larger than the number of outstanding offers.

Though sympathetic to former residents who have lost their homes on account of a natural disaster, opponents of this bill point out that park owners may not be incentivized to rebuild if they know that they will be restricted to charging substantially the same rental rates as they were charging prior to the destruction of the park. This is particularly the case where the cost to rebuild the park exceeds projected revenues. In such circumstances, there would be no rebuilt housing at all, prolonging the crisis created by the original natural disaster. To address this concern, the Committee may wish to recommend enabling the previous terms to be adjusted to reflect costs required to rebuild the park, and that returning homeowners would, upon their request, receive a disclosure from the park owner that lists out the rebuilding cost and how that relates to the change in their terms.

Additionally, as currently written the procedures for right-of-return are lacking important details that would facilitate its functionality. These include timelines and parameters that provide clarity and certainty for both parties who are re-entering into their agreement. As such, the Committee may wish to consider the following amendments:

- Management must send the offer of renewed tenancy by certified mail at least 240 days prior to opening of the park. The offer must include the terms of renewal as well as the requested earnest money deposit to secure renewal;
- Homeowners shall have 60 days from receiving the offer to accept it, submit their earnest money deposit, and sign a lease. Applications for right to return must be taken on a first come first served basis. Non-response by the homeowner within 60 days will result in forfeiture of the right of return; and
- Specify that the right of return is non-transferable.

The most recent amendment to the bill added language at the behest of the Western Manufactured Housing Communities Association (WMA) requiring that the notice of an offer of a renewed tenancy must advise that the homeowner has 90 days from the date notice is sent to inspect and remove any personal property located on the homeowner's park space damaged by the natural disaster, and after 90 days, all of the property remaining on the park space may be removed and destroyed by management. Upon further reflection, author and proponent of that language have asked for its removal. The language is intended to address a serious concern regarding the ability to clean up after a wildfire or natural disaster, particularly as it relates to the efforts of the Governor's Office of Emergency Services (CalOES) and Federal Emergency Management Agency (FEMA). However, the current bill language only applies to the limited instances when the mobilehome park is being rebuilt, and is tied to the timeframe of that rebuild rather to the timeframe of the cleanup. As such, the Committee may wish to recommend removing this language. The author may wish to consider adding language to this bill that would address this important issue in a broader and more timely way.

Proving Ability to Pay: The unique nature of mobilehome properties creates complex dynamics when a homeowner is ready to sell the mobilehome and move out of the park. The cost to move a mobilehome is up to $20,000. Consequently, in order to move out of the park, homeowners almost always have to sell their mobilehomes. Unlike selling residential property in other contexts, however, it is not just a matter of finding a willing buyer. In the mobilehome context there is another interested party, park management, from whom the new owner will be renting the space on which the mobilehome sits. Understandably, therefore, the park wants some say in the selection of the buyer.

To further complicate matters, park management has potentially more at stake than just whether or not the prospective purchaser will pay the space rent and make a good member of the park community. If the selling homeowner is unable to sell the mobilehome, then that homeowner may have to abandon it to the park, either through a discounted sale or the imposition of a warehouse lien. The park can then turn around and sell the mobilehome itself, often at a profit. This means that mobilehome park management has both a legitimate interest in screening prospective buyers for mobilehomes within their parks, as well as a potentially more nefarious interest in preventing sale of the mobilehome altogether.

The MRL deals with this tricky set of dynamics by giving mobilehome parks the right to approve or disapprove of prospective buyers seeking to purchase mobilehomes within their parks, but placing certain limitations on that right. Specifically, under existing law, mobilehome parks can exercise veto power over prospective buyers, but they are only supposed to do so when there is evidence, based on past tenancies, that the prospective buyer is likely to break park rules or when the prospective purchaser lacks the financial ability to pay the monthly space rent, utilities, and any other costs of staying at the park.

The trouble is that "financial ability to pay" is not defined anywhere in the MRL. With a strong incentive to block prospective purchasers, unscrupulous park managers can take advantage of this vague standard. By demanding more and more documents or simply setting a high bar for what it means to have the financial ability to pay, these park managers can effectively sabotage any chance that the mobilehome gets sold, forcing the homeowner to abandon it to the park.

To address this problem, the bill requires that management provide the standards that they normally use in determining tenancy, and a list of all documents that will be required by a prospective purchaser, any homeowner who provides notice that they are selling the property. However, the bill does not specify the timeframe for providing this information to the selling homeowner. To provide certainty on the timing, the Committee may wish to recommend adding a 15-day limit to management to provide the required information.

This bill also sets forth a process for determining whether a prospective mobilehome purchaser has the financial ability to stay in the park. This includes specifying that the purchaser would be determined to have the ability to pay if they had (1) an average income for the last three months that was more than three times the monthly space rent, utility charges, and fees for the park; (2) pre-qualified for a loan to purchase the mobilehome; or (3) has a credit score that meets or exceeds the standard that the park generally applies for approving tenancies. If the prospective purchaser did not qualify based on one of these presumptions, the park would have to give the prospective purchaser the option of providing additional financial information to demonstrate an ability to pay. If such additional information was provided, management may also consider any of the prospective purchaser's financial liabilities.

The increased clarity of the standards regarding financial ability to pay could be beneficial, but there are equivalent challenges of having absolute standards. For example, income averages vary greatly across the state, so that a fixed standard could exclude lower income residents from qualifying in parts of the state with lower incomes but also lower costs of living. Additionally, as we have seen from the past financial crisis, lenders may be offering for prospective purchasers that might actually have the ability to pay. Finally, credit scores are a better predictor of payment on debt than ability to pay. Based on these concerns, the Committee may wish to recommend striking these standards and rely instead on the language included in the bill to increase transparency and establish a mobilehome owner's ability to pay.

Current law states that management cannot withhold approval from a prospective purchaser if 1) they have the financial ability to pay, 2) the management cannot reasonably determines that, based on the purchaser's prior tenancies, they will not comply with the rules and regulations of the park, or 3) the purchaser has not committed fraud, deceit, or concealment of material facts during the application process. Current law also enables the management or owner to be held liable for all resulting damages if their approval is withheld for any other reason. The existing bill expands the potential liabilities and penalties for management in these instances, predicated on the increased ability to definitively ascertain financial ability to pay. Should the Committee agree to strike the specific standards for determining ability to pay, as discussed above, the Committee should also consider removing these additional liabilities and penalties.

Arguments in Support: According to the Golden State Manufactured-Homes Owners League, "The bill helps to address the challenge facing displaced homeowners when their homes and parks burn down from devastating fires. Should a park owner decide to rebuild the park, homeowners would have the opportunity to return to the place they call home. Finally, the bill allows a purchaser of a mobilehome to demonstrate their ability to pay rent and other fees. Right now, the threshold is higher than what lenders require."

Arguments in Opposition: According to WMA, regarding rebuilding after natural disasters, "When rebuilding these communities, many factors are taken into consideration including whether a return on investment can be attainted after: insurance reimbursement, loss of rent, disposal and cleanup of debris, rebuilding/replacing sewer and water infrastructure, etc. SB 274 seriously hampers this effort by requiring the management to offer a renewed lease on substantially the same terms as the previous homeowner's rental agreement and offers spaces in perpetuity, with no end date and no earnest deposit at any point in time." With regards to financial ability to pay, Each community and region of the state are unique and landlords should be able to adjust standards in various regions accordingly. Mobilehome parks are already subject to just cause eviction and with the high cost of unlawful detainers, management must balance the risk of tenancy by adopting reasonable income requirements that fits their business model and their geographic location. WMA objects to language that could allow unjustified lawsuits against mobilehome park operators if they refuse approval of a mobilehome sale in their park based on legitimate financial concerns."

Committee Amendments: To address the issues raised above, the Committee may wish to consider the following amendments:

- Regarding rebuilding after a natural disaster:

  - Specify that, for park owners rebuilding after a wildfire or other natural disaster, the terms offered must be substantially the same except that they may be adjusted to reflect costs and expenses required to rebuild the park;
  - Specify that returning homeowners would, upon their request, receive a disclosure from the park owner that lists out the rebuilding cost and how that relates to the change in their terms;
  - Specify that management must send the offer of renewed tenancy by certified mail at least 240 days prior to opening of the park. The offer must include the terms of renewal as well as the requested earnest money deposit to secure renewal;
  - Specify that homeowners have 60 days from receiving the offer to accept it, submit their earnest money deposit, and sign a lease. Applications for right to return must be taken on a first come first served basis. Non-response by the homeowner within 60 days will result in forfeiture of the right of return;
  - Specify that the right of return is non-transferable;
  - Remove the language regarding notice of and requirements to removing personal property;

- Regarding financial ability to pay:
  - Add a 15-day limit to management to provide the standards they use to required information.
  - Remove the specified thresholds for ability-to-pay, including an average income for the last three months was more than three times the monthly space rent, utility charges, and fees for the park; pre-qualified for a loan to purchase the mobilehome; or a credit score meets or exceeds the standard that the park generally applies for approving tenancies; and
  - Remove the right of the selling homeowner to additional liabilities and penalties regarding denial based on ability to pay.

Related Legislation:

AB 3066 (Mark Stone), Chapter 774, Statutes of 2018: Established the Mobilehome Residency Law Protection Program, beginning July 1, 2020, within the Department of Housing and Community Development to help coordinate the resolution of complaints from homeowners relating to the Mobilehome Residency Law.

SB 147 (Dodd), Chapter 767, Statutes of 2017: Allowed a person living alone in a mobilehome to share the mobilehome with one other companion at no charge from the park. The bill limited each mobilehome to one companion per calendar year, except in the event of the companion's death.

AB 2026 (Stone, 2014): Would have limited mobilehome parks to rejecting prospective purchasers based on financial grounds only, and would have deemed a loan approval or income of over three times the monthly rent and park fees sufficient proof of financial ability to pay, among other things. AB 2026 failed passage on the Assembly Floor.

SB 1107 (Correa), Chapter 170, Statutes of 2008: Allowed a mobilehome owner of any age to have a live-in caretaker at no additional charge from the park, upon presentation of a doctor's note verifying the need for the caretaker.

REGISTERED SUPPORT / OPPOSITION:

Support

Golden State Manufactured-Home Owners League

Opposition

California Mobilehome Parkowners Alliance
Park Owners (13)

Oppose Unless Amended

California Association of Realtors
Civil Justice Association of California
Western Manufactured Housing Communities Association

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