



HART | KING ADVOCATE

A Newsletter for Manufactured Housing Industry Community Owners & Managers

WHY MHET?

MHET is a California non-profit association dedicated to promoting mobilehome parks and the manufactured housing community industry through the education of its members, community leaders, manufactured home owners and the public about mobilehome parks and manufactured housing community issues. For more information on how MHET can provide you with value, please reach out to Vickie Talley, Executive Director for MHET, at 949-380-3303 or vickie@talleyassoc.com.

If you're a golfer, it's not too late to register for **MHET's 19th Annual Jim Jones Memorial Charity Golf Classic** at Coyote Hills Golf Course in Fullerton on **Friday, August 22, 2014**. This tournament benefits MHET's Rental Assistance Program for low income mobilehome park residents. Great event for a great program! For more information or to register for the tournament, please contact Brianne Virden at 949-380-3303 or at Brianne@talleyassoc.com.

NOTEWORTHY

Hart King partner, Robert Williamson, recently prevailed in a week-long jury trial where he represented a park owner sued for alleged racial discrimination and unfair business practices. End result was a satisfied client...what's the take away?

Having good park rules really **DOES** matter.

AND THE WINNER IS...

Congratulations to **Ana Mauricio**, Franciscan Mobilehome Park manager, for guessing the "What is John Pentecost's Middle Name" contest during a recent Hart King "Effective Enforcement Policies" webinar, presented by John Pentecost and Ryan Egan. Oh, and for those of you wondering...John's middle name is Henry!

QUESTIONS?



Please contact Barbara Ericson at (657) 622-4714 or bericson@hartkinglaw.com.



FAILURE TO MAINTAIN LITIGATION

This article first appeared in MHPProNews.

By *William R. Hart*

Much has been written in the past several weeks regarding recent Failure to Maintain ("FTM") litigation in California. As a law firm that has been very much involved in defending manufactured home communities throughout California in a variety of litigation settings, including FTM, we offer some thoughts about the current status and the future of FTM.

First, a very brief overview: California FTM litigation generally arises under California's comprehensive law governing the relationship between community owners and tenants, known as the Mobilehome Residency Law ("MRL") and/or under the Mobilehome Parks Act ("MPA"). Together, these two statutory schemes govern the construction, maintenance and operation of manufactured/mobilehome communities throughout the entire state and are enforced by the state through its Department of Housing and Community Development ("HCD").

The MRL requires, among other things, that community owners provide and maintain physical improvements in the common facilities of the community (sewer, electrical, gas, roads, and water) in good working order and condition. The MPA, depending on the community involved, provides measurable standards for maintenance and operation.

The MRL provides that the substantial failure to provide and maintain the physical improvements in the common facilities in good working order and condition shall be deemed a public nuisance. Tenants and/or local or state governments are authorized to bring lawsuits against a community owner alleging such a public nuisance. Moreover, the MRL authorizes monetary penalties and the potential to seek punitive damages. Furthermore, the MRL provides that the winning party in an FTM action is entitled to recover their reasonable attorney's fees and costs which can be substantial. Finally, under the MPA the state may, among other things, suspend a community's permit to operate. Without a permit to operate,

a community owner may not collect any rents for the homesites.

In the typical FTM action, multiple current and former tenants allege an exhaustive and sweeping laundry list of "deplorable" community conditions designed to "shock" a judge or jury. The residents often allege that these conditions have been recklessly or intentionally ignored by the community owner and seek monetary compensation for alleged physical and emotional distress injuries, as well as for lost coach value and/or overpayment of rent.

There are a handful of law firms in California that specialize in representing tenant groups against community owners. Over the years, it has been our observation that those law firms have refined and improved their pre-litigation investigative strategy. This strategy now often includes hiring private investigators, collecting detailed tenant questionnaires tailored to specifically identifying potential violations of the MRL, MPA and other statutory law in California, and finding the most effective mix of tenants as plaintiffs in a particular community for an optimal chance of success.

Community owners in California may wish to consider adopting a proactive strategy to prepare for and defend against potential FTM claims by law firms that specialize in representing tenant groups, including a plan identifying and addressing various kinds of maintenance issues.

Community owners/managers should be aware of their obligation to maintain their community's systems and infrastructure consistent with requirements of law. An appropriate strategy for meeting those obligations may help to reduce the financial risk that FTM litigation poses to community owners, especially in California.

We work with community owners to develop custom protocols for each community and we work closely with onsite managers, to implement protocols every year. As a community owner/manager, if you are interested in establishing such a plan, we would be pleased to work with you to design one.

William "Bill" Hart is the managing partner of Hart King and can be reached on his direct dial at 714.619.7080 or whart@hartkinglaw.com.



In early March, managing partner, Bill Hart, and partners, John Pentecost and Bill Dahlin, channeled their inner cowboy and participated in the **Los Caballeros Annual St. Patrick's Day Ride**. The Ride is organized by WMA President, Alex Boggs, or as he is commonly known around these parts, El Presidente!

Celebrating Cowboy Camaraderie since 1943, Los Caballeros is dedicated to preserving cowboy culture. The Hart King cowhands saddled up their steeds for a little riding and roping while enjoying the beauty of the Perez Family and Circle K Ranch.

And to quote the Old Code of the West "A cowboy is loyal to his "brand," to his friends, and those he rides with."

Thank you to Alex Boggs, Dan Fischer, and Ernie Schroer for "a hog-killin' time!"

UPDATE: HR 1779

by Robert G. Williamson

The U.S. House Financial Services Committee recently acted on and passed the Preserving Access to Manufactured Housing Act (H.R. 1779), a bill which would amend the loan amount thresholds under Dodd-Frank that set criteria for manufactured home loans, classifying them as "high-cost." Under current Consumer Financial Protection Bureau (CFPB) guidelines, many small loan amounts originated for manufactured home purchase are unjustly classified as predatory and high-cost. Due to increased potential lender liabilities for generating

"high-cost" loans, lenders have balked at continuing to offer these loans thus denying, in some cases entirely, access to financing for moderate and low income housing consumers. This bill, by changing elements of "high cost" mortgage criteria, can help derail this negative trend and stimulate lending. This could broaden consumer access to loans originated for manufactured home purchase, sale or refinance. This is a positive development in "kick starting" what could become a robust manufactured home financing market.

H.R. 1779 also clarifies that under Dodd-Frank manufactured home retailers and

salespersons would not be considered loan originators unless they receive compensation from a lender, mortgage broker or loan originator. This change thus eases anxiety over being unjustly "flagged" for potential CFPB fines and penalties which is another positive development in reviving the manufactured home financing market.

Robert Williamson is a partner and member of Hart King's manufactured housing practice group. He can be reached on his direct dial at 657.622.4709 or rwilliamson@hartkinglaw.com.

HART | KING

ATTORNEYS AT LAW

4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707
Address Service Requested

Hart King proudly supports the following trade organizations and publications:



HART | KING
ATTORNEYS AT LAW

4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707
p: (714) 432-8700
f: (714) 546-7457
hartkinglaw.com