

Caregivers, Grandkids & Service Animals - The Truth Will Set You Free!



By John Pentecost

A troubling case developed in a mobile home park in Watsonville, California, in which a granddaughter moved in with an elderly woman homeowner in a 55+ age community. It seemed like a kind gesture on the elderly woman's part. The granddaughter had had a rough youth and the woman could use the company. Shortly after she moved in, however, other residents began complaining about the granddaughter.

One of the most serious complaints was that the granddaughter was using illegal substances and bringing gang members into the park. The grandmother seemed either unwilling or unable to restrain her granddaughter violating the park's rules. To make matters worse, the complaints only seemed to increase. Within a short time, the police forcibly arrested several individuals at the home. One man was arrested for drug possessions, parole violation and weapons violations after officers had to force their way into the grandmother's home. Another individual fled the park and led police on a wild car chase, which car chase resulted in the individual being arrested for possession of methamphetamines, heroin and identity theft materials. On still yet another occasion, the residents complained that the windows of the mobile home turned orange from the making of methamphetamines and that a small fire had broken out, burning the grandmother's carpet and furniture.

These events, among others, caused residents to complain that they were living in constant fear of their safety. Initially, the complaining residents did not want to get involved – it was a park problem. However, this left the park with few options other than issue a Seven-Day Notice, which had no immediate impact. Ultimately, the complaining residents were convinced to do the right thing and step forward to testify about the offending guest's conduct. This enabled the park management to issue a Sixty-Day Notice to Terminate the grandmother's tenancy in the park. (Unfortunately, a situation of "throwing the baby out with the bath water.") What had started out as a kind and loving gesture, led to the grandmother's eviction from the park, the loss of her mobile home and numerous safety problems for other residents in the park.

Significantly, it has been our experience that this is not a standalone story and is becoming a serious trend. Whether it is out of a genuine need or genuine love, senior residents in 55+ communities have been allowing their "problem child" grandchildren to move in with them. Almost inevitably, these grandchildren cause disturbances in the communities, which often result in the eviction of the grandparents from the park.

Should you see this trend appearing in your park, you need to begin concerted efforts to stop it, if appropriate. Sometimes, the offending grandchildren attempt to hide behind two "caregiver" provisions under the Mobile Home Residency Law ("MRL"). In senior parks, Civil Code Sections 798.34 (c) and (d) allow a senior homeowner to share his or her mobile home with any person over 18 years of age if that person is providing caregiver services to the homeowner (798.34 (c)) or if the person is a parent, sibling, child, or grandchild of the senior homeowner and requires live-in health care, live-in support care, or supervision (sometimes referred to as the "reverse caregiver" law under 798.34 (d)). In other words, this caregiver or person does not have to comply with the park's age restrictions.

Park management can address these "problem children" situations by pointing out that Section 798.34(c) and (d) only allows for such caregiver situations if there is a proper written treatment plan signed by the physician or surgeon of the homeowner or person to receive care. In any event, the "guest" – be it the caregiver or the person receiving care (if other than the homeowner) is still required to comply with the rules and regulations of the park. In addition, these sections only allow for one person. The park is within its right to require the homeowner to provide the appropriate treatment plan and ask questions. In addition, any caregiver or guest has to comply with the park's rules and regulations, and a violation constitutes a violation by the homeowner, which can result in the termination of the homeowner's tenancy. Park management should make it clear to the homeowner that their inability to control their unruly grandchildren or other guests/ caregivers can result in them being evicted from the park!

Issues with Pets

Another troubling trend in parks concern "unruly pets." Pet problems can range from the traditional loud barking dog, which disturbs neighbors, to the occasional pot-bellied pig. The more serious issues involve dogs attacking other dogs or attacking and even biting park residents. They can also involve the massive

accumulation of cats in a single home, resulting in pungent and disgusting odors from the buildup of feces and urine. “What can park management do?”

798. 33(a) of the MRL allows a Park to prohibit homeowners from keeping more than one pet within the Park. It also permits parks to pass reasonable rules and regulations concerning such pets. Further, Section 798. 33(c) limits “pet” to a domesticated bird, cat, dog, aquatic animal kept within an aquarium or other animals as agreed to between the management and the homeowner. Park management should have extensive pet rules so as to address the most pervasive problem situations.

If your park rules and regulations do not already address pet restrictions and conduct rules, amend them. Enforce your pet rules in a consistent and nondiscriminatory manner. Among other things, park rules can reasonably prohibit certain large and aggressive breed dogs and require that the resident be responsible for the actions of his or her pet, i. e. , dog bites and animal waste. They can also make keeping an offending pet a violation of the park rules and regulations, which may result in termination of the resident’s tenancy after service of the proper notices under 798. 56 (d) , i. e. , Seven- Day Notices followed up by the appropriate Sixty Day Notice.

Some residents attempt to “sidestep” size and breed restrictions by arguing that their pets qualify as “service animals” under the Federal ADA or a “companion dog” under the Unruh Act and the Federal Fair Housing Act (FHA). Under the ADA, “service dogs” are not pets for purposes of either the MRL or the park’s rules and regulations. However, even service dogs must still comply with the pet conduct rules and the violating homeowner can be evicted for conduct violations.

The rules promulgated under the ADA state that a service animal is “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a

physical, sensory, psychiatric, intellectual or other mental disability.” The regulations further provide, “In the final rule, the Department has *retained its position on the exclusion of emotional support animals from the definition of ‘service animals.’*” Thus, these new regulations may suggest that use of “companion” dogs as service dogs will be limited in the future, under the ADA.

Homeowners have also argued that their “companion” dog should be allowed as reasonable accommodation under the FHA for their or family member’s disability. Generally, any person or entity engaging in prohibited conduct – i.e. , refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable. “A request for a reasonable accommodation may be denied if providing the accommodation is unreasonable, i.e. , if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider’s operations.” Depending on the exclusions of the park’s general liability policy, a park owner may be able to get its insurance carrier to write a letter stating that the park’s insurance will be canceled if there is an aggressive breed allowed in the park, thereby potentially creating an undue financial burden on the park. However, these reasonable accommodation situations must be addressed promptly and fairly and preferably, with the help of your park counsel.

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