ASSEMBLY THIRD READING
AB 861 (Bennett)
As Amended May 5, 2021
Majority vote

SUMMARY

Requires mobilehome park management to comply with any park rule or regulation which prohibits mobilehome owners from renting or subleasing.

Major Provisions

1) Specifies that management shall be subject to, and comply with, all rules and regulations that prohibit a homeowner from renting or subleasing a homeowner's mobilehome or mobilehome space.

2) Establishes that, if a rule or regulation has been enacted that prohibits either renting or subleasing by a homeowner, management shall not directly rent a mobilehome, except when renting or subleasing to a person employed by park management.

3) Provides that the exception allowing management to rent to an employee does not apply to a mobilehome tenant or subtenant who has been designated as an employee of park management for the purpose of evading a rental or subleasing prohibition.

COMMENTS

The Applicability of Park Rules and Regulations to Management: Existing law states that the owner of a park, and any person employed by the park is subject to and must comply with all park rules and regulations. This bill provides park management must also follow park rules and regulations on renting and subleasing unless management is renting to an employee. In 2013, Attorney General (AG) Kamala Harris put forth a legal opinion after receiving a request from Assemblymember Das Williams on the applicability of mobilehome park rules and regulations. Specifically, Assemblymember Das Williams' request asked the AG the following question: "If the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, is park management bound by these same rules and regulations?" The conclusion of AG opinion was as follows:

> With the possible exception of rentals to park employees under appropriate circumstances that satisfy certain statutory requirements, if the management of a mobilehome park has enacted rules and regulations generally prohibiting mobilehome owners from renting their mobilehomes, then park management is also bound by these same rules and regulations. (Attorney General Opinion Number 11-703).

In the AG's opinion, one narrow exception is provided for park owners to rent mobilehomes to employees of the park. Specifically, the opinion notes, "we acknowledge the view that, as a practical and economic matter, park owners must be able to rent their mobilehomes to *park employees*." With regards to the employee exemption, the opinion continues, "a genuine and demonstrated need for park management to rent its own mobilehomes to park employees may come within the exception provided in [Civil Code] Section 798.23(b)(2) for '[a]cts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities.'"

Overall the AG concluded that the statute amended by this bill, Civil Code Section 798.23, binds park management to follow enacted rules and regulations that prohibit renting in the park. The statute has not changed since the AG issued the opinion and the committee is not aware of any case law which contradicts the opinion. As such, it would initially appear that this bill is not necessary. However, mobilehome owners report inconsistency in the enforcement of park rules and regulations related to renting and subleasing.

In their opposition letter, the Western Manufactured Housing Communities Association (WMA) quote footnote 30 of the AG opinion, attempting to claim that parks don't have to follow their own rules. Specifically, WMA cites this selection from footnote 30:

> To be sure, a 'no-subleasing' rule would not apply to the park owner's rental of his or her own mobilehome to another because the park owner owns both the mobilehome and the space upon which it sits, so the park owner (unlike a park tenant) would have no occasion to sublease the mobilehome space.

However, WMA's letter fails to mention that the next (and last) sentence of footnote 30 contradicts their point and reads, "But the inapplicability of a no-*subleasing* rule to a park owner does not perforce make inapplicable a no-*renting* rule." To summarize, in footnote 30, the AG concedes that as a matter of semantics a mobilehome park owner cannot sublet their own property, but the opinion then immediately clarifies that such a semantic technicality does not mean that park management can break their own rules on renting.

Staff notes that this bill includes a minor deviation from the AG opinion. Specifically, the bill provides one additional protection against the possibility that an owner could attempt to circumvent the requirement that management follow the rules it makes on renting by deeming all current tenants as employees. Because hiring someone as an employee for one hour per month would cost very little, park owners could be tempted to hire all current tenants in order to take advantage of the employee exemption in order to keep renting. To guard against the potential use of this loophole, the bill notes that the employee exemption does not apply "to a mobilehome tenant or subtenant who has been designated as an employee of park management for the purpose of evading a rental or subleasing prohibition."

According to the Author
"Making sure that affordable housing is available and accessible is a top priority of mine. Manufactured homeowners have a lower household income on average, and manufactured homes can be the most affordable option for low-income homeowners. Park residents should be able to take advantage of affordable living in park environments without being concerned about whether they are legally protected. AB 861 strives to further the intent behind the MRL by codifying an Attorney General opinion that states that park management is required to comply with all park rules related to renting and subleasing manufactured homes and units. The MRL states that park management, employees, and residents are subject to the rules and regulations of the park, but this has often gone unenforced. Clarifying this section of the MRL will prevent an unfair double standard from arising, one where park management are able to rent and sublease their spaces while residents are not. It is important to me that park residents are protected and treated fairly because for a low-income park resident, losing housing is much more devastating than it is for traditional renters. For park residents, losing housing means paying high fees to relocate their home or potentially losing lifelong investments."

Arguments in Support
The Golden State Manufactured-Home Owners League (GSMOL), the sponsor of this bill, writes in support, "The Mobilehome Residency Law allows park management to prevent homeowners from renting out their manufactured homes or subletting the space where their mobilehome is located. Although the law states that all park rules apply equally to owners and residents, some park owners felt that rules regarding renting and subleasing did not apply to owners."

Arguments in Opposition
The Western Manufactured Housing Communities Association (WMA), a mobilehome park owner group, writes in opposition to this bill, "AB 861 seeks to prevent a parkowner from renting his or her home on their property. An owner who owns a home in his or her community is not subletting since a park-owned rental is a direct two-party contract whereas a sublease involves three parties: a landlord, a tenant, and a subtenant." WMA further argues that the bill "will simply increase the use of Vacation Rental By Owner (VRBO) or Air B& B rentals of manufactured homes."

FISCAL COMMENTS

Unknown. This bill is keyed non-fiscal by Legislative Counsel.

VOTES

ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-2-0
YES: Chiu, Gabriel, Kalra, Maienschein, Quirk-Silva, Wicks
NO: Seyarto, Kiley

UPDATED

VERSION: May 5, 2021

CONSULTANT: Sandra Nakagawa / H. & C.D. / (916) 319-2085 FN: 0000295