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THIRD READING

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Bill No: AB 861  
Author: Bennett (D)  
Amended: 9/1/21 in Senate  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 8-1, 6/15/21  
AYES: Umberg, Caballero, Durazo, Gonzalez, Laird, Stern, Wieckowski, Wiener  
NOES: Jones  
NO VOTE RECORDED: Borgeas, Hertzberg

ASSEMBLY FLOOR: 41-20, 5/10/21 - See last page for vote

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**SUBJECT:** Mobilehome parks: rental restrictions: management

**SOURCE:** Author

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**DIGEST:** This bill confirms and codifies existing law which provides that if a mobilehome park prohibits park residents from renting or subleasing their mobilehomes, then the park itself is bound by the same rule as to mobilehomes that the park owns.

*Senate Floor Amendments* of 9/1/21 exempt non-profit or government-owned mobilehome parks that are subject to affordability restriction to the extent of the restriction.

**ANALYSIS:**

Existing law:

- 1) Establishes the Mobilehome Residency Law (MRL), which regulates the rights, responsibilities, obligations, and relationships between mobilehome park management and park residents. (Civ. Code § 798, *et seq.*)
- 2) Specifies that the owner of the park, and any person employed by the park, shall be subject to, and must comply with, all park rules and regulations, to the same extent as residents and their guests, except as follows:

- a) Any rule or regulation that governs the age of any resident or guest.
  - b) Acts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities. (Civ. Code § 798.23.)
- 3) Requires mobilehome rental agreements to be in writing and include certain information including the term of the tenancy and rent as well as the rules and regulations of the park. (Civ. Code § 798.15 *et seq.*)
  - 4) Prohibits a mobilehome owner 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. (Civ. Code § 798.23.5(c).)
  - 5) Allows local jurisdictions to impose mobilehome rent control laws, provided that parks can still earn a fair return on their investment. (*Cacho v. Boudreau* (2007) 40 Cal.4th 341, 350.)

This bill:

- 1) Specifies that park management shall be subject to, and must 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, park management shall not directly rent a mobilehome that the park owns.
- 3) Creates an exception to 2) above, allowing park management to sublease or rent out mobilehomes that the park owns as follows:
  - a) A maximum of two mobilehomes, plus one additional mobilehome for every 200 mobilehomes in the park, for use as on-site employee housing, as defined.
  - b) Any mobilehome where there is an existing tenancy as of January 1, 2022 for as long as any tenant listed on the lease continues to occupy the mobilehome.
- 4) Exempts from (1) through (3), above, non-profit and government-owned or controlled mobilehome parks that are subject to affordability restrictions, as to those mobilehomes or mobilehome sites that are subject to the restrictions.

## Comments

### 1) *Existing law generally requires mobilehome parks to abide by their own rules*

Since 1993, the MRL has contained a provision requiring the owner of a mobilehome park, and any person employed by the park, to abide by all park rules and regulations to the same extent as the park's residents and their guests. (Civ. Code § 798.23(a).) The provision only allows for two exceptions: (a) rules governing the age of residents or guests; and (b) things done by park owners or employees to fulfill maintenance, management, and business operation responsibilities. (Civ. Code § 798.23(b).)

### 2) *Attorney General Opinion applying existing law to renting and subleasing*

There has been a longstanding dispute over how exactly Civil Code Section 798.23 applies in the context of subleasing and rental of mobilehomes. While the plain language appears to suggest otherwise, some parks apparently insist that Section 798.23 does not prevent them from renting out the mobilehomes that they own, even as they deny that same possibility to the park residents who own their own homes.

In an attempt to put the controversy to rest, in 2013, then-Assemblymember Das Williams requested a legal opinion on the subject from the California Attorney General. (96 Ops. Cal. Atty. Gen. 29 (2013).) The Attorney General's response was clear:

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?

## CONCLUSION

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. (*Ibid* at 1.)

This bill is a straightforward codification of the Attorney General's conclusion. The author and sponsor state that such a codification is needed even though it is declaratory of existing law because, even in the wake of the Attorney General Opinion, some parks continue to prohibit their residents from renting out their units even as the park rents out its own units.

### 3) *Background policy issues regarding subleasing in the mobilehome context*

Despite the strong argument that this bill does no more than codify existing law, this bill is contentious. This reflects longstanding policy debate between parkowners and residents regarding the merits of allowing renting and subleasing in the context of mobilehomes. That policy debate is well summarized at the outset of the Attorney General's Opinion as follows:

Park owners who favor [prohibitions on renting and subleasing] have observed that, whereas a "rental agreement" under the MRL is a contract between park management and a homeowner, a homeowner's subsequent rental of his or her mobilehome, and subletting of the space on which the mobilehome is situated, creates a contract only between the homeowner/tenant and the tenant's renter/sublessee. Some park owners maintain that the absence of any contract privity between park management and a park tenant's renter/sublessee makes enforcement of park rules and regulations difficult, to the potential detriment of other park residents, because under such circumstances, management can enforce the rental agreement (and its associated rules and regulations) only against the homeowner/sublessor, who in some or many cases may no longer reside in the park. No-renting/no-subletting rules are also warranted, some park owners say, because permitting homeowners to rent their mobilehomes and sublet their spaces could result in a park composed of multiple absentee landlords or a few landlords who purchase mobilehomes in order to engage in rental as a business enterprise. Such a circumstance, we are told, can lead to degradation of the park's overall physical and social environment.

Some mobilehome owners, on the other hand, complain that no-renting/no-subletting rules often unreasonably hamstring homeowners, whose homes have been recognized as difficult and expensive to relocate. When the option of renting a mobilehome is not available because park rules prohibit such rentals and/or subletting the mobilehome space, a mobilehome owner who wants or needs to leave his or her mobilehome-residence at a park where such rules are imposed must either sell or abandon the mobilehome. (96 Ops. Cal. Atty. Gen. 29 (2013) at 4-5.)

On top of these concerns, the author adds his belief that parks commonly purchase and rent out mobilehomes as a way to get around local rent control laws, thus reducing the amount of affordable housing in the park.

#### 4) *How to handle on-site employee housing?*

This bill in print codifies an exception, recognized in the Attorney General's Opinion, that parks may rent out park-owned mobilehomes to park employees even where the park generally prohibits resident homeowners from renting out their units to others. This is consistent with existing law that says parks need not abide by the same rules as they impose on their residents and their residents' guests when undertaking maintenance, management, and business operation responsibilities. (Civ. Code § 798.23(b)(2).)

In correspondence with the Senate Judiciary Committee, park owners have pointed out that a strict rule against renting to non-employees would create a practical problem. Generally, parks will maintain ownership of at least one or two mobilehomes in order to be able to rent them out to employees who will live on-site. At times, however, the on-site employees will own their own mobilehome in the park and have no need to rent a mobilehome from the park. If the parks were subject to a rule prohibiting them from ever renting out a park-owned mobilehome to anyone except a park employee, park-owned mobilehomes would have to sit vacant during periods in which the on-site employees happen to own their own mobilehome. Such vacancies would be an inefficient use of available housing.

To try to avoid that outcome while still restricting parks' ability to rent park-owned mobilehomes when they do not permit residents to do the same, this bill uses a simple formula. In parks that do not allow their residents to rent or sublease their mobilehomes, the park itself would be limited to owning and renting out two mobilehomes, plus one more for every 200 mobilehomes in the park. Thus, a park with 30 mobilehomes could own and rent out two of them; a park with 205 mobilehomes could own and rent out three of them; a park with 460 mobilehomes could own and rent out four of them; and so on, even if the park prohibits residents from renting out their mobilehomes. This formula should provide parks with a sufficient supply of housing to rent out to on-site employees, without forcing parks to leave one of those mobilehomes vacant during times when the mobilehome is not needed for employee housing.

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: No   Local: No

**SUPPORT:** (Verified 6/17/21)

Disability Rights California  
Golden State Manufactured Homeowners League  
Four individuals

**OPPOSITION:** (Verified 6/17/21)

California Association of Realtors  
California Mobilehome Parkowners Alliance  
Western Manufactured Housing Communities Association

**ARGUMENTS IN SUPPORT:** According to the author:

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.

In support of this bill, the Golden State Manufactured Homeowners League writes:

The [MRL] 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. [...] AB 861 would avoid an unfair double-standard by clarifying current MRL and codifying the Attorney General Opinion requiring park management to comply with all park rules relating to renting and subleasing manufactured homes and units without limiting their ability to rent or sublease to a park employee.

In support, Disability Rights California writes:

DRC is aware of the injustices and challenges that are associated with renting and subleasing as a park resident. AB 861 would avoid an unfair double-standard by clarifying current MRL and codifying the Attorney General opinion requiring park management to comply with all park rules relating to renting and subleasing manufactured homes and units without limiting their ability to rent or sublease to a park employee.

**ARGUMENTS IN OPPOSITION:** In opposition to this bill, Western Manufactured Housing Communities Association (WMA) writes:

Most residents (especially senior citizens) want to be ensured a certain quality of life and comfort that their neighbors know the rules and regulations and abide by them. Having residents adhere to rules and regulations helps ensure peace of mind and helps with home sales. If a resident sublets a home, where is there stability for the park, and how can the parkowner ensure a promised quality of life for other residents in the park? [...] WMA believes AB 861 is bad housing policy because allowing subletting does not put one more roof over anyone's [sic] and eliminates housing which could be available to an incoming resident. We further believe this legislation diminishes the quality of life for all current residents.

In further opposition to this bill, the California Mobilehome Parkowners Alliance writes:

Subleasing of a home by a resident who owns only their home and not the property it is installed on is fundamentally different than a parkowner who owns the property and the home and who has an obligation to maintain their community to the benefit of all park residents. We believe it is inappropriate to curtail a parkowner's management of their own property in this way. The bill also has the potential to reduce the supply of affordable housing in the market by creating a disincentive for parkowners to lease park-owned homes.

ASSEMBLY FLOOR: 41-20, 5/10/21

AYES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Calderon, Carrillo, Cervantes, Chau, Chiu, Friedman, Gabriel, Cristina Garcia, Gipson, Lorena Gonzalez, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Rendon

NOES: Bigelow, Choi, Cunningham, Megan Dahle, Davies, Flora, Frazier, Gallagher, Kiley, Lackey, Levine, Mathis, Nguyen, Petrie-Norris, Salas, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Arambula, Burke, Chen, Cooley, Cooper, Daly, Fong, Eduardo Garcia, Gray, Grayson, Mayes, Patterson, Ramos, Rodriguez, Blanca Rubio, Villapudua, Wood

Prepared by: Timothy Griffiths / JUD. / (916) 651-4113  
9/2/21 16:30:28

\*\*\*\* END \*\*\*\*