



TEN TIPS

TO BULLET PROOF YOUR COMMUNITY FROM LAWSUITS

by **Robert S. Coldren, Esq.** and **Beau Chung, Esq.**

Although it may be impossible to prevent every lawsuit regarding a manufactured housing community, the following ten tips, gathered from our experience representing manufactured community owners, can help reduce exposure to frivolous and preventable lawsuits.

Tip #1: Create and Maintain Effective Residency Documents

Rental agreements and other documents that are used in the community, such as rules and regulations, community guidelines, pool rules, pet rules, etc. (“residency documents”) should typically be reviewed at least every two years. If there are significant changes in the law pertaining to manufactured home communities, the residency documents should be reviewed on an annual basis.

Properly drafted residency documents offer not only an important opportunity for you to set the “ground rules” for the community owner’s relationship with residents, but also offer increasingly important protections for the community owner.

We offer the following points to improve your residency documents:

- Rules regarding “all age” communities: Since Federal law views discrimination on the basis of age in housing essentially the same way it views race or religious discrimination, you must be extremely careful about provisions in your residency documents that refer to children or to any specific age restriction. A good “rule of thumb” would be to eliminate all such references. Also, be careful about rules that, while not mentioning children specifically, have what the law calls a disparate impact on children, amounting to de facto age discrimination. There are still many people looking for “fair housing” violations as the basis for a lawsuit.

- Standards for manufactured homes and space maintenance: While state and local regulations set forth detailed standards that manufactured homes and

manufactured home spaces must meet, they do not address issues such as landscaping standards and the appearance of manufactured homes. Therefore, your residency documents need to address these issues. It is prudent to include a provision in your rules and regulations that enforcement of the rules and regulations is a private matter between the community and the individual homeowner, and that it is not a “third party beneficiary” contract.

Caveat: Such a provision will not necessarily constitute a defense to a “failure to maintain” lawsuit—the community must still be diligent in enforcing its maintenance standards.

- Comprehensive residency application: By creating a comprehensive residency application, you can discover far more information about the residents and their qualifications to rent a home-site in your community. By discovering this information earlier, your managers are better able to filter out potential disruptive or troublesome residents before they reside in your community. Caveat: State law, such as the California Mobilehome Residency Law, may limit the grounds for denying an application for tenancy—so do not ask for information you cannot use.

- Long-Term Leases: Long-term leases may exempt the community from rent control. Although some communities are currently not in rent control jurisdictions, there is still the ever-present risk that rent control will be adopted.

- Alternative Dispute Resolution Agreements: Offer arbitration and mediation agreements. Such agreements allow disputes between the community and the community residents to be resolved by a relatively informal proceeding, rather than trial, avoiding the considerable costs and uncertainties associated with a jury trial. Unlawful “detainer” actions and actions regarding rule violations should be exempted from alternative dispute agreements, to avoid delay.

Tip #2: Maintain Regularly Scheduled Infrastructure Inspections

If a community does not do so already, establish regular inspections of the roads, utility systems, and infrastructure in your community. Not only will this help prevent accidents (and lawsuits) from occurring in the community, but ensuring that the roads, utility systems, and infrastructure in the community are in good repair will improve resident relations, and reflects a sense of pride in ownership for both the resident and the community owner.

In addition, state and federal regulations require community owners to conduct regular tests of the utility systems, such as the water, electricity, gas, and fire protection systems.

Tip #3: Conduct Regularly Scheduled Maintenance Of Common Area Facilities

Community owners are responsible for maintaining the common area facilities. By conducting regularly scheduled maintenance of the common area facilities, the community owner can prevent accidents (and lawsuits) concerning failure to maintain the common areas of the community.

Make sure that trees in the common areas are well maintained. Make sure that the pool and/or spa in your community is regularly maintained and that all rules are clearly posted. Conduct, at a minimum, yearly inspections of the exterior of residents’ homes and landscaping to ensure that the community is looking its best.

Tip #4: Enforce The Community Rules Effectively

Document all violations of the community rules and regulations. Send “friendly reminders,” advising residents of the need to comply with the community’s rules and regulations. Promptly serve the appropriate notices to cure the violations. Be prepared to proceed with an injunction or termination of tenancy if the violations are not cured.

Consistently enforcing your rules and regulations for all residents reduces the risk of a claim that the community is discriminating against a particular resident. Furthermore, enforcing the maintenance standards set forth in the residency documents can help reduce the risk of claims by other homeowners that their property is being devalued by deteriorated conditions in the community.

Have vehicles parked in violation of community rules and regulations towed, being careful to comply with the requirements of state law regarding towing.

Tip #5: Foster Positive Resident Relations

Organize community social events. One excellent example is having various health organizations and the local fire department come to the community and give the residents information about their health and safety. Ice cream socials,

barbeques, and holiday parties can be wonderful social events for a community that can foster positive resident relations.

Develop an open door policy that welcomes residents to discuss issues with management. Combined with the next tip, developing management policies and procedures, the open door policy promotes positive resident relations, minimizing lawsuits against the community by unhappy residents looking for a way to get the community owner's attention.

Tip #6: Develop Management Policies And Procedures

Develop a handbook for on-site managers, setting forth community policies and procedures. Develop a method to organize all relevant documentation, and purge all unnecessary documents. One problem faced by many community owners is the massive amount of paperwork and records that must be retained

by the community managers. Establish a document retention policy and develop a method to file, label and store all relevant documents.

Investigate and follow up with resident complaints in a timely fashion. This allows you to quickly catch rule violators and remedy problems before the need to resort to legal counsel, or worse, the courts.

Tip #7: Educate Your Community Managers

Conduct seminars on community policies and legal requirements applicable to manufactured home communities. A number of industry-sponsored seminars are available.

Tip #8: Have Positive Involvement With Local Government

Get to know and encourage the community managers to know the local govern-

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ment officials. By developing a good working relationship with them, problems can be avoided or more readily resolved. It is also a good idea to know your local city council and local building inspector.

Tip #9: Create An Emergency Preparedness Plan

Be prepared for a disaster before it happens. Certain areas of the country are more prone to earthquakes and fires. Other areas of the United States are subject to hurricanes, tornados and other natural disasters. Having a plan before a disaster strikes can help save lives and help prevent the community owners from being sued for negligence should a disaster occur. The Red Cross or government agencies may be able to provide guidelines for an emergency preparedness plan for your community. (The Manufactured Housing Educational Institute offers a special seminar on disaster preparedness. Contact MHEI's Ann Parman at 703-558-0653 or ann@mfghome.org.)

Tip #10: Have Adequate Liability Insurance Coverage

Make sure that the community has adequate liability insurance coverage, and that the insurance is renewed on a timely basis and coverage is in existence at all times. Periodically review the coverage needs of the community to ensure that the community is adequately protected. ■

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