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West Coast
Mobile Home Parks, Inc.

March 27, 2013

Members
House Human Services
And Housing Committee
State of Oregon

Subject: Vote no on HB 3007

I am a real estate broker and sell and manage mobile home parks in six states including Oregon and Florida. I currently manage 20 parks in Oregon and 2 in Florida. In my job I come into daily contact with mobile home park residents and the people who own the parks.

My experience in Florida shows that their right of first refusal has caused more problems that it has solved. Although the Florida law is less restrictive than the proposed HB 3007, it took almost one year to close one of the park purchases. The other took six months. I have attached comments from others that show my experience is not unique. In general the problems are:

- Increased litigation
- Increased cost to the state
- Increased cost to the park residents
- Increased cost to the park owner
- Increased park foreclosures

People who live in parks do so by choice. Some want to reduce their ownership costs and responsibility. Others do so as an economic choice. Either way they have rejected the traditional home ownership idea.

People who own parks are looking for an investment. State or political boundaries do not bind them. If a market appears unattractive they will avoid it and go elsewhere. There is nothing more portable than money.

I have read House Bill 3007 and think that it should be rejected. It attempts to solve a problem that does not exist and would be a major deterrent to investment in Oregon. Many believe it is unconstitutional because it takes something from one group and gives it to another. At a minimum it would severely restrict the capital investing in affordable housing. House Bill 3007 is bad public policy and should be rejected.

Sincerely,

Richard Delaney

881 Sneath Lane, Suite 110 · San Bruno, California 94066

Comments from Dan Mulkey

Dan is a Marcus & Millichap Florida real estate broker specializing in mobile home parks.

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Subject: RE: [FWD: Florida Lawsuits]
From: "Mulkey, Dan" <Dan.Mulkey@marcusmillichap.com>
Date: Wed, Feb 13, 2013 9:11 am
To: "rich@westcoastmhp.com" <rich@westcoastmhp.com>

Rich, regarding problems with residents first rights...

In most cases the residents are not in a position to purchase financially or just have no desire to own and operate a park since many in FL are snowbirds. What occurs in many cases is an outside source, someone who does this for a living for the fees it generates, finds out a park is going to contract and inserts themselves into the deal by stirring up the residents telling them horror stories about the buyer changing the use leaving them without a home or jamming rents to unreasonable levels. Their involvement often leads to a no-sale on the part of the residents but it adds weeks to the deal and in some cases the sale dies because of it as in a 1031 buyer on a short fuse or the loss of a loan commitment. I was in contract in Hudson, FL on a $20M+ deal with Charles Ellis whom you know. A lawyer stuck his nose into a deal and dragging it out for an additional 90 days causing the buying entity added costs for legal and otherwise, for the delay. There was no way the residents could or should have tried to purchase that park. Charles Ellis closed the deal and as you know is a great operator and a long time holder of parks.

Another thing it tends to do is cause concern/anguish for the residents AND management. Park staff get very concerned when they feel this could affect their jobs.

I suspect one of the biggest negatives is those who are just in it for the fees will, in some cases, put the residents into 1st and 2nd mortgages that, when they come due, may be impossible for the residents to pay off and as owners they may suffer because of it and in some cases lose the park and their equity. This is now coming back to haunt a few in FL that converted a few years ago with notes now due which may now require added equity to replace that they don't have.

This is not to say that there have not been success stories with conversions. Certainly there have been and those park owners are happy. But, in most cases, since you as a resident of a community are not required to buy into a co-op, there may be a large portion of sites-renters and not Owners. Only the Owners will be responsible should unusual expenses occur as in a "cash call" to support CapEx or equity for a new loan.

Hope that helps.

Dan

Comments from Nicole Frost

Nicole is a Florida attorney who specializes in mobile home parks.

Subject: ROR
From: "Nicole Frost" <nfrost@frostlaw.us>
Date: Wed, Feb 13, 2013 9:13 am
To: "'Rich'" <rich@westcoastmhp.com>

Dear Rich:

To my knowledge there have only been two highly litigated Right of Refusal cases filed in Florida. Generally speaking the park owner makes the offer to the HOA. In this sort of economy it is very difficult for them to get financing so they normally can't buy, but I have seen situations where they have bought. The proposed buyer gets the short end of the stick but other than that it isn't too bad. It is the HOA, not the unit owners, that have the right of refusal under the law. There are only two cases that show up in a caselaw search (which only covers appellate cases that are reported). The seminal cases are as follows:

Naples Estates v. Eli-Cap HOA, 1998 case, Pending in Circuit Court in Collier County
Brief summary of main facts - Eli-Cap and the other park owners/managers, entered into a contract to sell the park (and several other parks throughout the country) to MHC. The price of this park was 11.5 million and the deal closed in 1998. The HOA was not given the statutory notice. Eli-Cap claimed the statute did not apply because they didn't really offer the park for sale – it was just a corporate restructure of all assets, one of which happened to be Naples Estates.

Issues: The HOA sued the park owners/managers and said as follows:

- The HOA had a right of first refusal under the statute
- They HOA a right of first refusal based on a prior agreement with Eli-Cap.
- The unit owners had the right for a class action for the above
- The HOA was seeking specific performance (in other words, they want to buy the park for the 11.5 million) and damages (attorney's fees, court costs, and based on the article below somewhere in the neighborhood of $14,000,000.00 - $28,000,000 in profits.

Rulings: The case is still pending, but to date the main rulings are as follows:

- Eli-Cap won an appeal saying it is the HOA, not the homeowners, that have a claim. The class action the HOA tried to file on behalf of the mobile home owners was dismissed.
- The HOA obtained an order saying it was entitled to purchase the park and unless something changes drastically on appeal, the HOA looks like it will be the prevailing party.
- The case has been pending for about 15 years. There have been non-final appeals and there are still depositions, etc., taking place. It is not clear what the exact relief will be.
- The losing party will be responsible to pay the prevailing party's fees and costs. In this case I would suspect that the total fees and costs amounts for both sides will be in the range of $250,000-$500,000. This has been an intensely litigated matter with all sorts of discovery and appeals. The current park owner at this point has basically said the tenants aren't getting the park and dug his heels in.
- The property has been tied up for the hole time with neither the tenants or the park owner knowing what is going to happen.

Here is a news story from last spring. http://www.winknews.com/Local-Florida/2012-04-21/14-year-legal-battle-over-Naples-Estates-land-continues

Frankly my suggestion to my clients who sell parks is to give the notice if there is an HOA that is entitled to it. If you are the buyer and the tenants wanted to buy you don't want to buy a suit. In this case it was clear the tenants wanted to buy – they even had a separate agreement for the right of refusal in addition to the statute. The worst the buyer loses is a bit of time locating and negotiating for the park. It is just not worth it to buy a lawsuit like this, ever. As much as I enjoy litigation, this sort of case is not something that really is helpful to anyone except the lawyers, and it is unfortunate they didn't settle by letting the tenants buy early on.

Harris v. Martin Regency, Fl. Supreme Court, 1991

Brief Summary of the main facts: A park owner sent a notice to tenants saying he was going to close the park because the costs of upkeep of the water/sewer system were too much. He sent the six month notice but then told the tenants they had longer. When the tenants didn't leave, he sent them a five day eviction notice.
Issues: The park owner filed evictions against tenants for change of land use. The tenants counterclaimed and said that the park owner was closing the park because he thought he could sell it for more as vacant land because the right of first refusal would not come into play. The tenants claimed that this was a breach of the statutory requirement for good faith and fair dealing.

Rulings: The court held that while the park owner has every right to shut down the park and use it as vacant land, the park owner cannot do that to intentionally thwart the mobile home owner's right of refusal. This wasn't a popular ruling, and three of the judges dissented. However, it is binding case law today.

This case only lasted 4 years, but the park owner wasn't able to evict the tenants and would have been forced to either keep the park or to sell it after giving the right of first refusal. Typically cases that go to the supreme court are fairly expensive although the case wasn't fought out for an eternity unlike the Naples Estates case. I would estimate the fees and costs roughly for each party at somewhere around $50,000 which means that the park owner likely paid its own attorney about $50,000 and then had to pay the tenants' attorney about the same.

Other issues due to the way the statutes are written. These issues come up because there are a few lawyers who keep an eye on the internet for parks that are closing and they encourage the tenants to file class actions. They will find a few tenants with money who are really upset about the park closing to put in big deposits and then get all of the others to join in by telling them they only have to pay a few hundred in fees up front and that they could win a lot more money.

- Disclosure of Planned Zoning Changes – The park owner selling to a developer is in a bad position because the statutes require them to disclose to the tenants if they are planning to change the land use. The problem is that usually if a developer is considering buying they need a sufficient due diligence period to determine that they are going to sell the park which means that the tenants know the park is under contract with a developer and they get scared. A great majority of them will leave in droves long before they get the notice terminating the lease due to change in land use. They basically walk away. If the contract falls through, the park owner is left with a vacant park with homes left in various conditions. Of course the park owner could sue the tenants for breaching the lease, but in many cases the tenant doesn't have sufficient assets to collect from, and the judgment doesn't put someone in the home. The park looks like a war zone. Fortunately my clients have had the deals go through, but this is a serious concern. It makes sense for them to get six months of notice once things are finalized, but if they know what is happening before the deal is final and long before that six month time frame, it leave open the possibility that tenants will leave unnecessarily.
- Goof Faith and Fair Dealings – Regardless of when the tenants find out that the park is going to be redeveloped, they can claim that the plan was in the works for years, but that it was hid from them. They will argue that it doesn't make sense that someone just walked into the park office and handed the park owner a multimillion dollar offer for the park. There are a handful of attorneys that solicit these tenants when they see the news about the park being sold to a developer, and they encourage the tenants to file a class action under the Florida law that requires businesses to use good faith and fair dealings and allege the park owner knew for years that they were planning to sell the park when the property values went up and that they hid that intent from the tenants. The tenants allege they would not have bought the homes if they had known the park was going to be sold. Other tenants, who opted to leave before they got the notice that they had to leave, claimed they had to leave because conditions were deteriorating because the park was nearly vacant and they didn't feel safe and alleged that the park owner was intentionally forcing them out so that they would not get the money they would be entitled to under Florida law if they stayed until the notice terminating the lease was done. This happened to a client of mine and due to lawyer/client confidentiality issues I can't give you the details, but the client paid for about $80,000 in attorney's fees and settled with some of the unit owners. The case took about five years and involved 30 tenants in a class action seeking damages for the price of their homes, moving expenses, etc., which ranged between a few thousand to hundreds of thousands per unit. Ultimately the client managed to close the park without under $200,000 in amounts paid to former tenants and attorneys. That amount includes both amounts paid to those in the lawsuits, and also amounts paid to tenants who received the notice terminating the lease and/or who accepted a voluntary settlement in that amount the park owner offered. Please note, in this case the tenants were offered the chance to buy the park but could only come up with about 60% of the contract price. Please note that because the right of first refusal was offered there was no attempt by the tenants to interfere with the sale – the tenants merely sued the seller for damages, with some asking for .
- Statutory Technicalities – the statute requires that the tenants get at least six months notice that they are going to be evicted for a change in land use. However, some tenant's lawyers have taken the position that because the lease automatically renews annually that the notice needs to be at least six months prior to the annual lease renewal date. There have been a few cases but none have gone to the appellate court and most (if not all) have settled before trial. I typically avert the issue by suggesting to my client time the notice of change of land use to be delivered at least six months prior to the annual renewal date.

If you need further information, or copies of appeals I have mentioned, let me know.

Nicole

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Comments from James Cook

James is a Florida mobile home park broker and loan broker. He specializes in mobile home parks.

Subject: RE: [FWD: Florida Lawsuits]
From: "James Cook" <james@mhrvexperts.com>
Date: Wed, Mar 06, 2013 2:20 am
To: <rich@westcoastmhp.com>
Attach: image002.jpg

Rich,

The results that have been the most negative have been affiliated with residents being scared into buying the park by park conversion specialists. By the time the conversion specialist gets done increasing the cost of acquisition, they get a less than advantageous rate, and over leverage. Ultimately there becomes a huge rift between the shareholders and the remaining 60%+ of the park residents that stay tenants. We have seen cases where the rents rose 30% on the tenants in the first year, which resulted in a huge spike in for sale homes. There have now been a number of coops that have went into default because they couldn't refinance and the shareholders ended up losing all their equity.

My direct cell is: 386-623-4623

Best regards,

James Cook
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From: rich@westcoastmhp.com [mailto:rich@westcoastmhp.com]
Sent: Friday, February 08, 2013 1:32 PM
To: James Cook
Subject: [FWD: Florida Lawsuits]