

Estoppel Certificates – Can They Be A Useful MHC Management Tool?



John Pentecost

Estoppel certificates are well known in commercial real estate sale and financing transactions. Their primary use is to assure a buyer or lender that the tenant leases are in full force and consistent with the terms disclosed by the owner/seller. Can they be used to assist a MHC to *rein in* future tenant claims against the community? This article will review the use of estoppel certificates as implemented in California to assist in reducing potential liability for tenant claims such as lease actions or failure to maintain actions.

The certificate may take various forms, but is generally a statement of the tenant as to the current status of his/her lease with the landlord. In addition, the tenant is generally requested to confirm the existence of the lease, to state whether any modifications or additions have been made to the original lease, and to describe any claims they may have against the landlord.

An estoppel certificate executed by a tenant sets forth his/her current rights and liabilities with respect to the lease with the landlord, such as the amount of any security deposits held by the landlord, rent, condition of the property and whether the landlord/tenant is in breach of the lease. Once the estoppel certificate is executed, the tenant is typically *estopped* from subsequently making any assertions contrary to those stated in the estoppel certificate. But care needs to be used in drafting the estoppel certificate so that it is a clear and unambiguous statement by the tenant as of the date it is executed.

Although estoppel certificates are more commonly used in commercial real estate sale transactions or leasehold financing there is no existing legal prohibition for their use in residential transactions. Requiring an estoppel certificate is also consistent with California's mobile home laws, which allow any provision in a mobile home rental agreement that is *permitted by law*. Estoppel certificates may reveal what existing claims tenants are alleging so as to address them on a

proactive basis rather than a *reactive* basis.

Additionally, it is well known that California MHC can come under *siege* by tenants under what is commonly known as a *failure maintain action*. In essence, in such actions, tenants claim that there has been a failure by community management to maintain, among other areas, the common area facilities, drainage or utility infrastructure. Tenants may claim horrendous physical and emotional damages sometimes dating back years based on allegations such as sewer backups, electrical brown-outs and bad drinking water. However, a community owner who has diligently previously utilized estoppel certificates in its management protocol at the community may be in a position to successfully rebut such *allegations* by demonstrating that the tenant estoppel certificates over the previous years have identified no such claims or damages or any breach of duty by the community owner whatsoever.

Provisions can be drafted by the community's attorney so as to allow the community to request an estoppel certificate upon reasonable notice. A community owner may want to request estoppel certificates at regular intervals so as to create a *profile* of each particular tenant for future use. The community owner will want work closely with its industry attorney in order to draft an appropriate estoppel certificate tailored to its specific community, as well as addressing any unique areas of community concern.

The above commentary is not intended as legal advice. Our observations of the current trend of estoppel certificates are interpretive and may differ from that of other counsel's interpretations and the appropriate provisions to include in, or exclude in rental agreements.



John H. Pentecost is a longtime partner with Hart King Law. He represents manufactured home community owners and managers with on various legal issues including preparation and enforcement of estoppel certificates. He may be reached at jpentecost@hartkinglaw.com or at 714.432.8700.