

COMMUNITY OWNERS' ADVOCATE

A Newsletter for Manufactured Housing Industry Community Owners & Managers

John Pentecost Presents Update at January 2013 MHET Breakfast Forum



MHET President, Wynn Hornburg and HK&C's John Pentecost

HK&C Partner, John Pentecost spoke on the topic of Long-Term Leases. John was also given a special award for his service on MHET's Board for 2012.

Congratulations, Boyd Hill!



In January 2013, Boyd Hill became a partner with Hart, King & Coldren. Boyd has extensive litigation experience in the areas of real property, land use and environmental, CEQA, water, eminent domain and commercial law. He routinely appears before State and Federal courts and administrative agencies. "Boyd is a strong addition to our team and we are pleased to welcome him as our Partner," said Senior Partner, William Hart.

The Community Owners' Advocate is a publication of Hart, King & Coldren. The publication presents information on legal matters of general interest. It should not be relied upon for your specific legal needs. We urge you to seek further professional advice before taking action.

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Keeping Your Litigation Costs Down By Arbitrating

By Daniel T. Rudderow

An unpleasant fact of life for any Community owner is that someday the Community may be the subject of a lawsuit. Whether the suit concerns a breach of contract claim, personal injury claim, rent control issue (the list goes on and on), the lawsuit is likely to require the Community owner to spend significant time, energy and resources (including attorneys' fees and costs) to resolve. Even with liability insurance to cover legal expenses (assuming it is a "covered" claim), the Community business is still affected by the inevitable "down time" in having its executives and employees speak to lawyers, search and collect documents and other evidence, appear for depositions and attend hearings in court (which always seem to last longer than expected).

One way to help control and reduce the tangible and intangible costs associated with litigation is to have lawsuits resolved outside the court system through the process known as arbitration. The U.S. Supreme Court itself has noted the many advantages to arbitration, such as:

- it is usually less expensive and faster than litigation;
- it can have simpler procedural and evidentiary rules;
- it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; and,
- it is often more flexible in regard to scheduling of times and places of hearings and discovery devices.

So how do Community owners get their cases into arbitration? Here are a few tips:

Plan Ahead!

The first step is to plan ahead and incorporate the arbitration process into one's contracts and residency documents. Whether it is a rental agreement, purchase and sale contract or other type of agreement, the Community owner (and his/her attorney drafting the document) should make sure that the wording of any arbitration provision in a contract is sufficiently broad to cover "any and all disputes" to ensure, to the extent possible, that most, if not all, of the many expected and unexpected business disputes that arise will be covered by the parties' agreement to arbitrate.

Don't Wait Too Long!

Often times, in spite of the work done to make sure one's contract includes a legally valid and enforceable arbitration provision (or a separate arbitration agreement if required by your state's laws), one's opponent (i.e. the person who signed the contract with you but now says he/she doesn't want to arbitrate per the contract's terms) will attempt to bypass the arbitration process by going ahead and filing a lawsuit in court. When this happens, it is often necessary for the Community owner to file a motion with the court asking the judge to issue an order to "compel" the other party to go to arbitration.

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Once again, the likely success the Community owner will have in "compelling arbitration" will in large part depend upon the enforceability of the arbitration provision in the contract. Assuming the provision is drafted properly and clearly, the trial court should grant the motion. However, it is important not to wait too long before seeking such an order. If the owner waits too long to file the motion, or, worse yet, participates in any significant way in the court case, then the judge may deem the owner's contractual right to compel arbitration has been "waived" even if the parties had a fully enforceable arbitration provision agreement. So acting promptly to enforce one's rights to arbitrate is essential!

Keep the Case in Arbitration!

Often times, while in arbitration, a party will receive some unfavorable ruling from the arbitrator and, being dissatisfied, will attempt to "go back to court" to have the judge overrule the arbitrator's decision. Such "appeals" back to the court are almost always procedurally improper

and should be fully resisted. Indeed, just recently, the U.S. Supreme Court "scolded" the Oklahoma Supreme Court in a case for improperly assuming an arbitrator's role in determining whether a non-competition agreement was legally valid. The high court said it was for the arbitrator, not the Oklahoma Supreme Court, to decide such issues.

The bottom line is that although arbitration often times takes some planning and enforcement, the benefit to the Community owner is that the arbitration process is usually less expensive and faster than litigation, saving the business both time and money while the dispute gets resolved.



Daniel Rudderow is a partner with Hart, King & Coldren. His practice focuses on business and contract disputes as well as mobilehome community issues. He may be reached at 714-432-8700 or email at drudderow@hkclaw.com.

HK&C Webinar

Projectors and Popcorn: Public Performances of Copyrighted Materials
Thursday, April 25, 2013 | 10:00 am - 11:00 am
Contact Barbara Ericson (714) 432-8700 ext. 339 or bericson@hkclaw.com for more information.

We're On The Move!

Our new address as of May 28, 2013 is **4 Hutton Centre Drive, Suite 900, Santa Ana, CA 92707**. Our phone and fax numbers remain the same. We will be located at Lakeside Tower at MacArthur Place, the black and brown, 10-story office tower located in the Hutton Centre facing the Costa Mesa (55) Freeway.

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EVENTS

Louisville Manufactured Housing Show 2013 January 23-25 (Louisville, KY)

HK&C was a sponsor and exhibitor. Expo was attended by Partners, Bill Hart and Rob Coldren; Rob also participated on the "Ask the Experts!" panel.

MHI 2013 Congress & Expo - April 16-18, (Paris Hotel, Las Vegas, NV)

HK&C is a sponsor and exhibitor. Partner John Pentecost is a panelist at the "Ask the Attorneys" educational workshop on Thursday, April 18. If you attend the show, please stop by HK&C Booth No. 200 and drop off your business card for an opportunity to win a \$100 AmEx gift card!

SAVE THE DATE!

June 18, 2013 • 8:30 a.m. to 11:00 a.m. • DoubleTree Club by Hilton
HK&C's Annual Legal Briefing: An interactive forum designed to provide attendees with simple and practical ways to improve their park's performance. Details and invitation forthcoming.

Join the NCC

If you are not a member of MHI and the National Communities Council (NCC), now is the time to join!

The NCC is a national organization that represents the interests of manufactured home Community owners, operators, managers, developers, lenders and suppliers. Since its inception in 1996, the NCC has continued to be a strong and effective voice for the industry as it tackles a host of legislative and regulatory issues.

The NCC also serves as a clearinghouse for information and provides its members with educational seminars and webinars, newsletters, informative updates and numerous networking opportunities including the upcoming MHI Annual Meeting in September in San Diego, CA.

To learn how to become a member of NCC and work together to improve today's business climate and positively impact the future of the manufactured housing industry, call Jenny Hodge at (703) 558-0666 or visit www.mhcommunities.org.

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