**SENATE JUDICIARY COMMITTEE**
**Senator Thomas Umberg, Chair**
**2021-2022 Regular Session**

AB 861 (Bennett)
Version: May 5, 2021
Hearing Date: June 15, 2021
Fiscal: No
Urgency: No
TSG

## SUBJECT

Mobilehome parks: rental restrictions: management

## 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 itself owns.

## EXECUTIVE SUMMARY

Existing law provides that the owner of a mobilehome park, and any person employed by the park, is subject to, and must comply with, all park rules and regulations, to the same extent as residents and their guests. Consistent with a 2013 Attorney General Opinion, this bill codifies the application of that general rule to renting and subleasing. Specifically, the bill confirms that if a park elects not to allow its residents to rent or sublease mobilehomes that the residents own, then the park itself must abide by the same rule as to the mobilehomes that the park owns. Also consistent with existing law, the bill makes an exception to this rule for scenarios in which the park is renting a mobilehome to one of its employees.

The bill is author-sponsored. Support comes from mobilehome owners and disability rights advocates. Opposition comes from park owners and realtors who assert that subleasing or renting by mobilehome owners will negatively impact the quality of life in mobilehome parks and would not necessarily increase the availability of affordable housing.

## PROPOSED CHANGES TO THE LAW

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, except when renting or subleasing to a person employed by park management.

3) Provides that the exception allowing park management to rent to an employee does not apply to a mobilehome tenant or subtenant who has been designated as an employee of park management for the purpose of evading a rental or subleasing prohibition.

## COMMENTS

1. About mobilehomes and the Mobilehome Residency Law

Mobilehomes situated in mobilehome parks present unique legal concerns. In typical "conventional" or "stick built" rental housing situations, the tenant simply rents the dwelling from the landlord. In the case of mobilehomes, by contrast, two different scenarios are possible. In the first scenario, the mobilehome park owns both the mobilehome and the land underneath it. The park rents both to the people who will live in the mobilehome. Such a scenario is functionally analogous to conventional rental housing scenarios and many of the same laws apply.

Things get more complicated in the second scenario. In the second scenario, the people living in the mobilehome own the mobilehome itself, but they rent the space underneath it from the park. This latter scenario is especially complicated because, in spite of their names, mobilehomes are extremely costly and difficult to move. Consequently, when mobilehome owners are forced to leave mobilehome parks, they almost always have to sell their mobilehome quickly or abandon it to the park.

To address these unique circumstances, a special body of laws has developed, known collectively as the Mobilehome Residency Law (MRL).

2. 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: (1) rules governing the age of residents or guests; and (2) things done by park owners or employees to fulfill maintenance, management, and business operation responsibilities. (Civ. Code § 798.23(b).)

3. 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.

Letters submitted in opposition to the bill seem to support the need for a legislative codification of the rule. The opponents' correspondence makes it clear that, in spite of the plain language of Civil Code Section 798.23 and the Attorney General's Opinion interpreting it, they do not fully accept that parks must comply with any rules they promulgate against renting and subleasing to the same extent as their residents and their residents' guests. Pulling fragments out of the Opinion, the opponents contend that the Opinion somehow supports the opposite conclusion.

For instance, the opposition highlights that the Opinion states: "the MRL impliedly recognizes that park management may rent out its own mobilehomes." (*Ibid* at 3.) The opposition concludes that "[t]his seems to clearly recognize that parkowners may rent out homes that they own." Both statements are accurate, but beside the point. The question at issue in the Opinion and as relevant to this bill is not whether parks have the legal authority to rent out their mobilehomes, but whether they may do so while simultaneously prohibiting park residents from renting out the mobilehomes that the park residents own. Similarly, the opposition highlights a footnote in the Opinion to suggest that rules against subleasing can never be applied against a park. (*Id*. at fn. 30.) The citation is accurate as far as it goes, but it omits the very next sentence in which the Attorney General affirms that this has no bearing on the applicability of no-renting rules to parks. In other words, the bottom line is that if a resident cannot rent out their mobilehome to others, then the park may not either.

4. Background policy issues regarding subleasing in the mobilehome context

Despite the strong argument that the bill does no more than codify existing law, the 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.

In relation to these policy debates, the Committee may wish to bear in mind that the bill neither forces parks to allow subletting and renting nor stops parks from prohibiting subletting and renting. The bill simply requires – as the existing law does – that parks abide by whatever subleasing or renting rules they impose on their residents. Thus, a park that feels that allowing resident homeowners to rent out their mobilehomes would be detrimental to the community could still prohibit such rentals; the park would just have to give up its ability to rent out its own units in order to keep that rule. Similarly, while the opponents of the bill raise the specter of mobilehome residents putting up their mobilehomes for rent on short-term vacation rental sites like AirBnB and VRBO, nothing in the bill would seem to prevent parks from setting a rule against such short-term rentals so long as the park itself complies with the same rule. On the other hand, because the bill only requires equal application of the rules, rather than favoring one side or the other in the debate, it could be that the bill, rather than preventing parks from buying and renting out mobilehomes as the author hopes, will just induce parks to start allowing residents to rent out the residents' mobilehomes.

5. How to handle on-site employee housing?

The 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).)

The term employee is not defined in the bill, however. If interpreted broadly, it could create a significant loophole. Unscrupulous parks could get around the law by "employing" each of their mobilehome tenants for just a few minutes or a few dollars in wages. To try to close off this loophole, the bill in print states that the exception for employees "does not apply to a mobilehome tenant or subtenant who has been designated as an employee of management for the purpose of evading a rental or subleasing prohibition." Opponents of the bill understandably object that this phrasing is vague and could easily lead to legal disputes.

Moreover, in correspondence with the Committee, park owners have pointed out that a strict rule against renting to non-employees creates 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, the author proposes to amend a simple formula into the bill. 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.

6. What to do about existing tenancies in park-owned mobilehomes in parks with rules prohibiting resident mobilehome owners from renting or subletting

As previously discussed, there is a strong argument that this bill is declaratory of existing law. The bill is nonetheless needed, according to the author and sponsor, because several parks currently rent their own mobilehomes while refusing to allow park residents who own their own mobilehomes to do the same. That situation creates a problem. If the bill is enacted, parks that have rules against renting and subletting but have nonetheless rented out their park-owned units would be forced to terminate those tenancies in order to comply with the bill. This would punish the tenants with the loss of their homes through no fault of their own. To avoid that outcome, the author may wish to amend the bill to allow existing tenants in park-owned mobilehomes to remain in their homes for the duration of their current tenancies, including any renewals or extensions.

7. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- specify that each park is entitled to own and rent out two park-owned mobilehomes, plus an additional mobilehome for every 200 mobilehomes in the park; and
- permit existing tenants in park-owned mobilehomes to remain in their homes through the end of their tenancies, including any extensions or renewal, even if the park has a rule against allowing resident mobilehome owners to rent out their mobilehomes.

A mock-up of the amendments in context is attached to this analysis.

8. Arguments in support of the bill

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 the 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.

10. Arguments in opposition to the bill

In opposition to the 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 the 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.

**SUPPORT**

Disability Rights California
Golden State Manufactured Homeowners League

**OPPOSITION**

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

**RELATED LEGISLATION**

Pending Legislation: AB 978 (Quirk-Silva, 2021) would, among other things, extend the existing statewide annual residential rent increase cap of five percent plus inflation, up

to a maximum of 10 percent, to mobilehomes owned and rented out by park management.

Prior Legislation:

SB 1410 (Chesbro, Ch. 672, Stats. 2002) required mobilehome park management to permit homeowners to rent their home or sublet their space if medically necessary. The bill also prohibits mobilehome owners from charging a renter or sublessee more than necessary to cover the cost of space rent, utilities, and scheduled loan payments on the mobilehome. In addition, SB 1410 removed the provision from Civil Code Section 798.23 that previously read: "[t]his section shall not affect in any way, either to validate or invalidate, nor does this section express a legislative policy judgment in favor of or against, the enforcement of a park rule or regulation which prohibits or restricts the subletting of a mobilehome park space by a tenant."

AB 217 (O'Connell, Ch. 520, Stats. 1993) provided that all mobilehome park rules and regulations apply to owners and employees of mobilehome parks to the same extent they are applied to residents and their guests, with specified exceptions. The bill included a provision stating that "[t]his section shall not affect in any way, either to validate or invalidate, nor does this section express a legislative policy judgment in favor of or against, the enforcement of a park rule or regulation which prohibits or restricts the subletting of a mobilehome park space by a tenant."

**PRIOR VOTES:**

Assembly Floor (Ayes 41, Noes 20)
Assembly Housing and Community Development Committee (Ayes 6, Noes 2)

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***AB 861 (Bennett)***
***MOCK UP OF PROPOSED AMENDMENTS***

*The people of the State of California do enact as follows:*

SECTION 1. Section 798.23 of the Civil Code is amended to read:

798.23. (a) Management shall be subject to, and comply with, all park rules and regulations to the same extent as residents and their guests.

(b) Subdivision (a) of this section does not apply to either of the following:

(1) Any rule or regulation that governs the age of any resident or guest.

(2) Acts of management that are undertaken to fulfill management's maintenance, management, and business operation responsibilities.

(c) (1) Notwithstanding subdivision (b) and subject to paragraph (2), management shall be subject to, and comply with, all rules and regulations that prohibit a homeowner from renting or subleasing the homeowner's mobilehome or mobilehome space.

(2) (A) If a rule or regulation has been enacted that prohibits either renting or subleasing by a homeowner, management shall not directly rent a mobilehome except ~~in the case of a mobilehome being rented or subleased to a person employed by management.~~ *as follows:*

~~(B) This paragraph does not apply to a mobilehome tenant or subtenant who has been designated as an employee of management for the purpose of evading a rental or subleasing prohibition.~~

*(i) Management may directly rent up to two mobilehomes within the park for the purpose of housing on-site employees.*

*(ii) For every 200 mobilehomes in a park, the management may directly rent one more mobilehome within the park, in addition to the mobilehomes authorized for direct rental pursuant to clause (i), for the purpose of housing on-site employees.*

*(B) For purposes of this paragraph, "the purpose of housing on-site employees" includes directly renting a mobilehome to a person who is not an on-site employee to avoid a vacancy during times when the mobilehome is authorized for direct rental pursuant to subparagraph (A) and not needed for housing on-site employees.*

*(d) Notwithstanding paragraph (2), management may continue to directly rent a mobilehome to a tenant if both of the following apply:*

*(1) The tenancy was initially established by a rental agreement executed before January 1, 2022.*

*(2) A tenant listed on the rental agreement described in paragraph (1) continues to occupy the mobilehome.*

(PU Amended by Stats. 2002, Ch. 672, Sec. 1. Effective January 1, 2003.)