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IS COLORADO BECOMING A TENANT-FRIENDLY STATE?
AN EXAMINATION OF THE MOBILE HOME PARK ACT OF 2010

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INTRODUCTION

In 2010, many provisions were amended and added to the Colorado Mobile Home Park Act resulting in a significant expansion of mobile home park tenant protections. In fact, between 1991 and 2010, the Act incrementally imposed more obligations on landlords while increasing mobile home tenant rights. In the 2012 Colorado legislative session, State Senator Irene Aguilar introduced the Uniform Residential Landlord & Tenant Act. Although the Bill died in the Senate Judiciary Committee in March 2012, the Uniform Act, if passed, would expand all tenant rights and protections. Many of the Uniform Act’s protections mirror those found in the 2010 Mobile Home Park Act. Is this evidence of a trend in Colorado to expand all tenant rights?

THE MOBILE HOME PARK ACT

Prior to the 2010 amendments, the Mobile Home Park Act began to establish tenant protections, including:

• Notice of rent increases; 3
• Prohibition of termination of a lease solely to make a space available; 4
• Restrictions on security deposits and amount; 5
• Prohibitions on entry fees; 6
• Prohibition of closed parks; 7
• Prohibitions on selling fees; 8

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• Prohibitions of certain landlord-seller agreements;\(^9\)
• Landlord-required disclosures;\(^10\)
• Limitations on Park regulations;\(^11\) and
• Mediation of disputes if requested by tenant.\(^12\)

In 2010, the Act was further amended to strengthen those protections, including:

• Addition of “manufactured homes” to the definition of mobile homes;\(^13\)
• Notice of termination provisions rewritten to increase the tenant’s moving time and defining resident rights along with the form of notice to be used;\(^14\)
• Limited remedies available to landlords;\(^15\)
• Expanded and added landlord responsibilities;\(^16\)
• Landlord must provide utilities to residents and access to counties and municipalities to inspect utility infrastructure for danger to residents;\(^17\)
• Expanded due process to tenants for sale of the Park or change of use;\(^18\)
• Right of residents to assemble and establish homeowners’ associations;\(^19\) and
• Expanded tenants’ private right of civil action against landlords for violations of the Act including a mandatory award of attorney fees to a successful resident.\(^20\)

The 2010 Legislative declaration also added the following language strongly in favor of mobile home park tenants:

The general assembly further finds and declares that, because of the unique aspects of mobile homes and mobile home park ownership, there is a need to protect mobile home owners from eviction with

\(^16\) Colo. Rev. Stat. § 38-12-212.3 (2010).
short notice so as to prevent mobile home owners from losing their shelter as well as any equity in their mobile homes.21

The most important factor influencing the expansion of mobile home tenant rights is “tenant” ownership of mobile homes. This is opposed to the real property upon which the mobile home is situated, the “park” and “space,”22 which is owned by the landlord. Because of this distinct relationship, “the normal forcible entry and detainer law does not apply to owners of mobile homes who are tenants in a mobile home park.”23 Mobile home residents are given extra protections because “[t]he uniqueness of the mobile home structure and problems involved in its relocation afford ample differences to support its special treatment by the General Assembly.”24

Turning to some of the restrictions on landlords, grounds to evict a tenant from a mobile home park are limited to the six specific reasons listed in Colo. Rev. Stat. § 38-12-203:

- Failure of the home owner to comply with local ordinances and state laws and regulations relating to mobile homes;
- Homeowner conduct that constitutes an annoyance to other owners or interference with park management;
- Failure of the home owner to comply with written park rules and regulations stated in the rental agreement or provided at the inception of the tenancy (subject to landlords’ compliance with the notice provisions related to the rules);
- Condemnation or change of use of the park (subject to landlord timely providing the statutory notice);
- False or misleading statements on an application for tenancy;
- Conduct of homeowner, lessee of homeowner or guest occurring on the park premises that endangers life, willful, wanton or malicious damage to property, certain felonies or a public nuisance.

Missing from the list above is the expiration of the term of the tenancy. In Duhon v. Nelson, the landlord sought to evict a mobile home tenant at the expiration of the term of the tenancy.25 The landlord unsuccessfully argued that if the Court did not interpret the Act to allow the landlord to terminate the tenancy when it expired, the statute would create a “life tenancy” in a mobile home park.26 The court disagreed: “[b]ecause the landlord may terminate the tenancy for the reasons set

24. Duhon, 126 P.3d at 266 (citing Hurricane v. Kanover, Ltd., 651 P.2d 1218, 1223 (Colo. 1982)).
25. Duhon, 126 P.3d at 263.
26. Id. at 267.
forth in § 38-12-203 . . . the statute does not create a life tenancy in the mobile home park.”

After affirming the jury’s verdict in favor of the tenant, the Court in *Duhon* remanded the case for further proceedings as to attorney fees. Under the Act as it existed in 2005, the court “may” award attorney fees to the prevailing party upon certain findings. In the 2010 amendment, the word “may” was stricken from the statute, and an award of attorney fees to the prevailing mobile home tenant became mandatory:

> Any home owner who owns a home in a mobile home park where the landlord has violated any provision of this article shall have a private civil right of action against the landlord. **In any such action, the home owner shall be entitled to actual economic damages and reasonable attorney fees and costs if the home owner is successful in the action.** (emphasis added)

Again, this amendment strengthened the mobile home tenant’s rights and protections.

Does the strengthening of tenant rights in the Mobile Home Park Act mean Colorado is becoming a tenant-friendly state? A review of the proposed Uniform Residential Landlord & Tenant Act may provide clues to the future of landlord-tenant law in Colorado.

**THE PROPOSED UNIFORM RESIDENTIAL LANDLORD & TENANT ACT**

On January 19, 2012, the Uniform Residential Landlord & Tenant Act was introduced in the Colorado General Assembly. The Uniform Act, if passed, would impact the following standard provisions in residential leases:

- **Attorney fees.** A rental agreement may not provide that the Tenant agrees to pay the landlord’s attorney fees.
- **Default and remedy clauses.** Waives the landlord’s right to terminate the lease if the landlord accepted rent knowing of the tenant’s default.
- **Rules and regulations.** Contains limitations on the landlord’s imposing rules and regulations, similar to the limitations found in the Mobile Home Park Act.

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27. *Id.*
28. *Id.* at 269.
32. *Id.*
33. *Id.*
34. *Id.*
The Uniform Act, if passed, would require a landlord at the commencement of the tenancy to disclose in writing: 1) the name and address of the authorized manager of the premises, and 2) an owner, or other person authorized to act for the owner, for purposes of service of process and receiving notices and demands.\(^{35}\)

The Uniform Act, if passed, would prohibit\(^{36}\) certain provisions in rental agreements including:

- A tenant agrees to waive or forego rights or remedies under the article;
- Any provision authorizing any person to confess judgment on a claim arising out of the rental agreement;
- Any provision agreeing to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

Finally, under the Uniform Act, the tenant may recover, in addition to actual damages, an amount of up to three months periodic rent and reasonable attorney fees for a landlord’s violation of the prohibitions stated above.\(^{37}\)

Unfortunately, Senate Bill 70 did not pass during the 2012 Colorado legislative session. It is currently not known whether it will be reintroduced. However, its introduction in 2012 may signal a change in how Colorado is viewing the future of landlord-tenant law. In the past, when Colorado recognized a need for expanding mobile home tenant’s rights and protections, the Mobile Home Park Act was incrementally amended over ten years to meet the need. Will Colorado become a tenant-friendly state? We must wait and see.

\(^{35}\) Id.
\(^{36}\) Id.
\(^{37}\) Id.