

LEGAL REMEDIES

MANUFACTURED HOME COMMUNITY EDITION

APRIL 2014

STOP HOME LOSSES

BY: [MELISSA PARHAM](#)

We receive a lot of calls from panicked park managers who have learned that a tenant has sold his home and the buyer plans to pull the home out of the park. The park manager almost always wants to find a way to keep the home in the park at all costs.

Parks must realize that tenant-owned homes are just that: tenant-owned. If the tenant has paid all money owed to the park, the park must let the home go. This is codified in A.R.S. § 33-1451(B), which states that a tenant is not to remove a mobile home from a mobile home space unless he has received a written Clearance for Removal from the park showing that “all monies due the landlord as of the date of removal have been paid.” This statute also states that “[t]he landlord shall not interfere with the removal of a mobile home for any reason other than nonpayment of monies due as of the date of removal, even if the term of the rental agreement has not expired.” In other words, if everything due to the park has been paid, the park cannot block the home’s removal and if it does so it may be guilty of conversion (theft).

But, there are a few things parks can do (beyond maintaining nice facilities) to keep homes in the park and out of poachers’ hands.

First, we recommend that parks have a “right of first refusal” in all mobile home space rental leases. It may be a good idea to have this “right of first refusal” in the Rules and Regulations, as well, but to be enforceable it must appear in tenants’ leases. The “right of first refusal” provides that if a tenant receives an offer to purchase his home from someone who does not intend to live in the park, the tenant must offer the home to the park for the same price that the buyer has offered to pay. The park may then accept or reject that offer.

Unfortunately, enforcing the “right of

first refusal” can be difficult. When a tenant disregards it and sells his home to a poacher who plans to pull the home, if no money is owed on the space, the park’s only recourse is to file a lawsuit against the tenant who violated the “right of first refusal” in his lease and possibly against the poacher or mover. To sue the poacher or mover, the park must have evidence that he/she knew of the existence of the “right of first refusal” and intentionally disregarded it. Undoubtedly, the poacher will deny any knowledge of the right. This is why we recommend that parks advise poachers of the park’s “right of first refusal.”



Second, parks should have clear written rules (in their rules and regulations) regarding the restoration of mobile home spaces after removal. Poachers often claim that they are not bound by parks’ rules and regulations regarding space restoration because they never had a written contract with the park. This is simply not true—by statute, anyone removing a mobile home from a park must comply with the rules and regulations regarding space restoration. A.R.S. § 33-1485.01(A) provides (among other things) that before moving a home, a tenant or his successor must provide the park with a written notification of intent to remove the mobile home. This written notification must designate a “responsible party” for the removal, who is responsible for “restoring the mobile home space in accordance with the rental agreement and the “mobile home

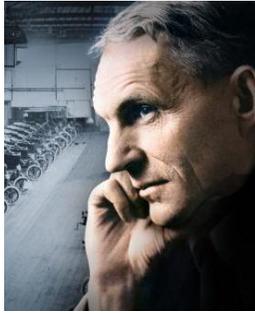
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SPECIAL POINTS OF INTEREST:

- *Home poachers and how to handle them*
- *Make tenants and poachers aware that you will take action*
- *By law a homeowner wishing to remove a home must get a written Clearance for Removal from the park*
- *Licensed mover or \$1,000.00 bond required*
- *Restoration of space when a home is removed*
- *First rights of refusal*

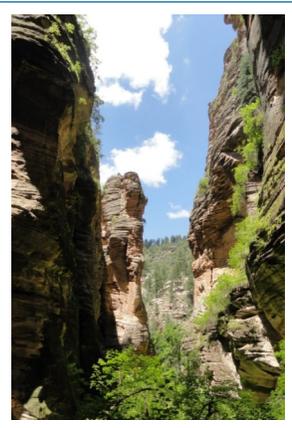
INSIDE THIS ISSUE:

CLEARANCE FOR REMOVAL	2
TENANT OBLIGATIONS	2
POLICE OFFICERS ARE NOT ALWAYS RIGHT	2
RESPONSIBLE PARTIES	3
COMMUNITY RULES & REGULATIONS	3
HOME POACHERS	3
LAW YOU MUST KNOW	4



“If you think you can do a thing or think you can’t do a thing, you’re right”

Henry Ford



West Clear Creek,
Arizona

Simply Beautiful !!!



Clearance For Removal... or not

By: [Chris Francis](#)

Home owners have the right to move their homes from the park. Unfortunately, it is that simple—as long as the homeowner follows the law. The law however also protects the landlord.

The tenant must give the park a Notice of Removal in writing along with an Acceptance of Responsibility completed and signed by the contractor. The contractor must be licensed by the Registrar of Contractors or the Department of Fire, Building & Life Safety. If the tenant is planning to move the home without using a licensed contractor the park can require a \$1,000.00 deposit or bond, total to include any deposit previously collected by the park at the inception of the lease.

If a tenant has given proper notice and paid the rent, the park is obligated to give him a Clearance for removal, regardless of his lease term. The tenant is still obligated to pay the rent until the park re-rents the space or the lease agreement expires, whichever comes first. A park should always get a forwarding address from a tenant in order to send him future bills or law suits if necessary.

If someone is attempting to remove a home from your park without first obtaining a Clearance For Removal, inform all parties that they are in violation of the law and if they do not stop you will call the police. You can refer to Arizona Revised Statute 33-1485.01 (a copy of this statute is on the back page for your convenience). You can park a vehicle in front of the home to prevent the move until the tenants are in compliance. It may be a good idea to post a sign on the front window of the home stating that no disassembly or removal of the home or attachments are allowed until a clearance for removal have been obtained from the park.

It has been common practice in the past for the police to tell the park manager that it is a civil matter and that the park must allow the home to be removed. *This is wrong and the law is very clear on this point.* If this happens, show the officer a copy of the statute (see the back page of this newsletter) and inform him that the law states that a Clearance for Removal is required when moving a home out of a park and that the home owner has not obtained the clearance. If the police officer insists that you let the home leave

then let it go but ask the officer for his or her name and badge number and let him know that you will be filing a formal complaint against him and the police department. Call our office and we will be happy to draft a complaint letter for you. You may also wish to inform the mover and the homeowner that you intend to sue them because of the illegal removal and that they will be liable for two times the rent due plus other damages per ARS § 33-1485.01 sub section (C).

A client of ours recently faced this situation and it created an opportunity for Mike Parham to teach a class to the police department involved regarding Mobile Home Landlord Tenant Law and specifically 33-1485.01. The officer who allowed the home to leave the park was at the training and now understands the law and will handle these situations differently in the future.

You must remember that mobile homes are personal property. A park has no right to deny clearance for removal if the tenant complies with the law, even if he has an unfulfilled lease term.

A park can deny removal for the following reasons only:

The owner owes rent and other charges billed to him with the rent statement through the month the home is being moved or possibly the next month depending on your lease agreement. Some lease agreements contain a 30 day notice requirement. You do not have to pro-rate the rent.

The owner does not use a licensed contractor who assumes liability for adhering to the rules and regulations contained in the park documents, OR give you a \$1,000.00 bond. Remember, the owner and licensed mover are responsible to adhere to the park rules and regulations regarding how a lot is left when the home is removed from the park. *They must comply with these rules even if they do not have a lease.* Be sure you give them a copy of the rules when they request a clearance for removal. It is wise to highlight the information regarding removal.

If your park rules and regulations do not include language regarding the removal of a home we strongly suggest you call our office so we can discuss how we can help you keep your park clean and retain homes.

STOP HOME LOSSES, CONTINUED

BY: [MELISSA PARHAM](#)

park rules and regulations.” If the “responsible party” is not licensed, the park may require a \$1,000.00 security deposit or bond. A.R.S. § 33-1485.01(D) provides, among other things, that the “responsible party” is “responsible for restoring the space in accordance with the rental agreement and the mobile home park rules and regulations.” It further provides that the rules and regulations may contain “conditions regarding the removal of a mobile home from the mobile home park and the restoration of a mobile home space by a tenant or a tenant’s successor in interest after removal of the mobile home.”

Certain rules regarding space restoration may discourage removal. Recently the Department of Fire, Building and Life Safety began requiring that concrete on a mobile home space be either removed or altered before a mobile home may be installed. We have therefore encouraged parks to require the removal of all concrete when a mobile home is removed. Removing concrete is expensive, and often when poachers learn that mobile home parks have such a restoration requirement, they change their decision to remove the home. In fact, parks should consider requiring that mobile home spaces be returned to “virgin land” status upon removal—which would include requiring removal of all concrete, landscaping, and accessory structures. This may discourage poachers from pulling homes because of the expense of space restoration.

Third, once parks have rights of first refusal and clear rules regarding space restoration, they should make sure that poachers are aware of them. We recommend that parks have large signs regarding the “right of first refusal” at the entrance and exit. Such signs should inform buyers of the existence of the right and the need to check with the park office before purchasing a home in the park. Additionally, whenever a park learns of a poacher operating in the park, it should attempt to obtain his contact information and should then send the poacher a letter via hand-delivery, certified mail, and e-mail (if the e-mail address has been confirmed) advising him of: (1) the right of first refusal in tenants’ leases; and (2) the rules regarding mobile home space restoration after removal.

If the park can prove the poacher was aware of the right of first refusal (from the signs and letter), then if the poacher disregards it, the park will have a strong case against him for intentional interference with the tenant’s lease.

Knowledge of the park’s rules for restoration (if they require removal of all concrete, accessory structures, and landscaping) may prompt the poacher to sell the home to the park for a reasonable price or to someone who will not remove it. If a poacher pulls a home from a park and disregards the park’s restoration rules, the park must send the poacher a 10-day notice regarding the violation (called a “Notice of Non-Compliance With Move-Out Requirements,” available in the MHCA Blue Book). After the notice period the park should restore the space. It can then charge the responsible party’s bond or security for the cost of the work. If the responsible party was a licensed contractor who posted no bond, the park can file a complaint with the relevant licensing agency (the Registrar of Contractors or the Department of Fire, Building and Life Safety). The park can also legally pursue the poacher for the violation.

In summary, a park should remember the following when handling poachers * :

**If all money owed to the park for the space has been paid, the park cannot block the home’s removal and if it does so it is committing theft.*

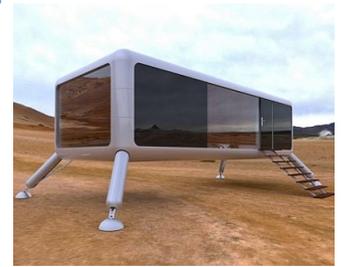
**Parks should have a “right of first refusal” in all mobile home space rental tenants’ leases.*

**Parks should have clear written rules (in their rules and regulations) regarding restoration of mobile home spaces after removal, which, to discourage poaching, should include the removal of all concrete, landscaping, and accessory structures.*

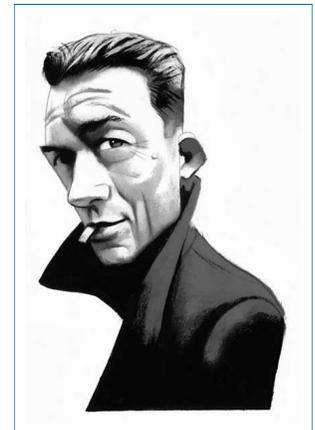
**Parks should make poachers aware of the “right of first refusal” and space restoration requirements via:*

**Signs at the entrance and exit advising purchasers of homes of the “right of first refusal” and the need to visit the park office before purchasing a home; and*

**A letter delivered to the poacher via hand-delivery, certified mail, and e-mail (the park must be able to prove the poacher received it) advising him of: (1) the right of first refusal in tenants’ leases; and (2) the park’s requirements regarding space restoration, including the removal of all concrete, landscaping, and accessory structures.*



Mobile Home or UFO?



Integrity has no need of rules....

Albert Camus





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AZ LAW REGARDING HOME REMOVAL *POST THIS IN YOUR OFFICE*

33-1485.01. Removal of mobile home from mobile home park; violation; joint and several liability

A. A tenant or a tenant's successor in interest shall provide the landlord with a written notification of intent to remove a mobile home from a mobile home space. The notification shall include the date the mobile home will be removed from the mobile home park, the name, address and telephone number of the person or entity that will be removing the mobile home from the mobile home park and the name, address and telephone number of the person or entity that will be the responsible party for restoring the mobile home space in accordance with the rental agreement and the mobile home park rules and regulations. If the responsible party is not licensed by the department of fire, building and life safety or the registrar of contractors, the landlord may require a security deposit or surety bond of not more than one thousand dollars minus the amount of any security deposit that was collected at the beginning of the tenant's tenancy. The security deposit or surety bond shall be paid or provided before work begins on restoring the mobile home space and shall secure the cost of restoration if the responsible party fails to completely restore the mobile home space. The landlord shall provide an accounting of any security deposit as prescribed in section 33-1431, subsection C.

B. A mobile home shall not be removed from a mobile home park by any tenant, any mobile home owner or any other person or entity unless the person or entity that is removing the mobile home has received from the landlord a written clearance for removal. The landlord shall not interfere with the removal of a mobile home for any reason other than nonpayment of monies due as of the date of removal even if the term of the rental agreement has not expired. The written clearance shall contain both of the following:

1. A statement that all monies due for space rent as of the date of removal have been paid or that the landlord and that person or entity have otherwise agreed to the removal.
2. The requirements for a mobile home space restoration as prescribed by the rental agreement and by the mobile home park rules and regulations and that shall

be performed by the responsible party listed in the removal notification that is required by subsection A of this section.

C. A person or entity who violates subsection B of this section shall be liable for two times the amount of any rents due.

D. The responsible party identified in the removal notification that is removing a mobile home from a mobile home space shall also remove all accessory structures unless the landlord has agreed in writing to allow those structures to remain. The responsible party identified in the removal notification that is removing the mobile home shall also remove all construction debris, trash and personal property on the rental space from the mobile home park and shall be responsible for restoring the space in accordance with the rental agreement and the mobile home park rules and regulations. The rules and regulations may contain conditions regarding the removal of a mobile home from the mobile home park and the restoration of a mobile home space by a tenant or a tenant's successor in interest after removal of the mobile home. The conditions shall not include any provisions regarding environmental liability or environmental remediation, and any environmental liability or environmental remediation requirements shall be governed as otherwise provided by law. If a rental space does not satisfy the requirements of this section following removal of a mobile home, the landlord may provide the last tenant, the tenant's successor in interest or the mobile home owner and the responsible party identified in the removal notification with written notice that specifies what must be done to bring the space into compliance and that requests that the parties remedy the condition within ten days. If the work is not completed within ten days, the landlord may cause the work to be done and shall prepare an itemized bill for the actual and reasonable cost or the fair and reasonable value of the work and submit it to the last tenant, the tenant's successor in interest or the mobile home owner and the responsible party identified in the removal notification. All of those persons shall be jointly and severally liable for the expenses.