

Using Arbitration to Resolve Residential Landlord-Tenant Disputes



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For many years manufactured housing communities have been advised to utilize arbitration agreements. State courts, and sometimes even federal courts, have refused to enforce arbitration agreements which are based upon state statutes. In contrast, much better success has been achieved in using arbitration agreements which are based upon the Federal Arbitration Act (FAA).

An interesting matter that arose recently in California, however, illustrates the ongoing problems that can arise when utilizing arbitration agreements that do not address certain foundational issues.

In this example a mobilehome park (Park) resident filed a lawsuit against the Park management company and the Park owner alleging that an agreement for the purchase of the homeowner's home had been breached. The resident had signed a lease agreement that contained an arbitration agreement based upon the Federal Arbitration Act. That same arbitration agreement called for the use of the Commercial Rules of the American Arbitration Association (AAA). The agreement did NOT require the AAA be the arbitration/dispute resolution provider.

The Park owner and the park's management company moved to compel arbitration. The petition was granted. The arbitration process was commenced at the AAA. All seemed well.

Not so. The AAA, as an entity, made a policy decision, that any and all disputes arising out of a residential landlord-tenant relationship must use the "consumer rules" of the AAA. The consumer rules have restrictions on who pays what for the arbitration process and also have restrictions on what attorneys fees may or may not be recoverable. Extensive correspondence between AAA and the attorneys involved on all sides, resulted in the AAA finding that it would not administer the arbitration without a court order *requiring* it to use the Commercial Rules set forth in the parties written agreement.

Following the 25+year trend in California courts the trial court concluded that arbitration would, therefore, not be required because AAA stated that it would not use its own Commercial Rules. There was no finding or discussion indicating how or why the Commercial Rules were unfair to a residential tenant. Rather, the trial court relied on the refusal of AAA to proceed as a basis

for the court to decline to enforce the arbitration agreement under the FAA.

What does all this mean? This author sees several issues for Park owners to consider. First, if your current arbitration agreements call for AAA to arbitrate that should be reconsidered. The foregoing example is illustrative of AAA's approach to disputes in the landlord-tenant setting that are not commercial in nature. Second, one way to address the issue is to select an arbitration provider that will utilize procedural rules that are neutral and not oriented towards one side or the other. AAA Consumer Rules, for example, tend to be oriented towards the consumer. This office, as a matter of policy, recommends that Park owners underwrite the initial out-of-pocket expense for any arbitration proceeding. That contractual provision helps eliminate one of the primary arguments raised by residential tenants against arbitration; the out-of-pocket cost to a homeowner can be seen as excessive.

There are several nationwide dispute resolution providers. This recent interaction with the AAA indicates why other dispute resolution providers should be utilized for arbitration proceedings that are not 100% commercial in their content and focus.

The U. S. Supreme Court has ruled consistently, for over 30 years, that arbitration under the FAA is favored. The approach of AAA, and a recent regulation adopted by federal regulators are contrary to that legislation. For example, AAA has also indicated it will, per se, not arbitrate disputes between nursing homes and residents of nursing homes. AAA has concluded that such agreements are fundamentally unfair, regardless of the objective fairness of the language in such an agreement. Whether the approach of AAA in rejecting arbitration of residential landlord-tenant disputes will become generally accepted is unknown. However, at present, legislation to change the FAA seems unlikely.

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