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VIA U.S. MAIL
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The Honorable Pima County Board of Supervisors
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Re: **Pima County Board of Supervisors' Verbal Motion Regarding Prohibiting Evictions in Pima County**

Dear Supervisors:

I represent Manufactured Housing Communities of Arizona ("MHCA"), which is a non-profit organization that protects and promotes the interests of Arizona's manufactured housing community owners and managers. MHCA represents hundreds of manufactured housing communities throughout Arizona. It is involved in legislative and legal issues related to

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manufactured housing communities and provides regular training for mobile home park managers and owners. MHCA also represents owners and managers of numerous recreational vehicle (“RV”) communities throughout Arizona.

MHCA recently learned that at its February 2, 2021 meeting, the Pima County Board of Supervisors (the “Board”) voted to approve and adopt a verbal motion made by Supervisor Heinz that would expand the already existing United States Centers for Disease Control eviction moratorium to prohibit “all evictions in Pima County except those for material falsification or for material and irreparable breaches,” as provided in A.R.S. § 33-1368(A), through March 31, 2021 (the “Motion”).

The Motion Ignores the Existence of Mobile Home and RV Parks and Prohibits ALL Evictions in Such Communities, Endangering Park Tenants

As an initial matter, the language used in Supervisor Heinz’s Motion is particularly concerning to MHCA because *it overlooks the existence of the Arizona Mobile Home Parks Residential Landlord and Tenant Act, (A.R.S. §§ 33-1401 et seq.), the Arizona Recreational Vehicle Long-Term Rental Space Act (A.R.S. §§ 33-2101 et seq.), and Arizona’s general Landlord and Tenant Act (A.R.S. §§ 33-301 et seq.) (which applies, among other types of tenancies, to the rental of an RV space in an RV park for 180 days or less)*. In other words, by specifically referencing only A.R.S. § 33-1368(A), the Board’s Motion prohibits all evictions that would fall under any of the other Arizona landlord and tenant acts. To put it differently, the Motion only allows evictions for material falsification or for material and irreparable breaches (normally criminal conduct) *arising under the Arizona Residential Landlord and Tenant Act*, which applies to apartments and single-family rental homes, but does not apply to mobile home or RV parks.

Because of this oversight, as approved, the Motion prohibits any and all evictions in mobile home and RV parks, including but not limited to evicting tenants for committing crimes in the park or for falsifying their applications to rent a space in the park. ***Mobile home and RV parks would not be able to terminate any tenancies at all, for any reason, no matter the danger a resident may pose to others.*** As examples:

- A mobile home or RV park tenant could threaten to kill—or even kill—the tenant’s neighbor or the park manager and could not be evicted.
- Such a tenant could fire a gun in the community and not be evicted.
- Such a tenant could sexually assault someone in the community and not be evicted.
- Such a tenant could steal their neighbor’s car and not be evicted.
- Such a tenant could operate a drug lab in the community and not be evicted.

The result is absurd and, though the Motion was apparently intended to help tenants, would harm mobile home and RV park tenants who may be required to continue residing in their communities with persons engaged in criminal activity (in addition to being required to reside in communities with health and safety issues and general rule violations, as addressed below). It is clear that in the Board’s haste to issue a moratorium that it does not appear to understand—and which it does not have the power to issue in any event—the Board ignored critical provisions of the law.



Setting aside these oversights, the Motion suffers from a number of other deficiencies and was adopted without full consideration of the facts or ramifications.

The Motion is Illegal

Before addressing the Motion's other deficiencies and defects, it is important to note that the Board does not have the legal authority to enter such an Order. Others have addressed the legality of the Board's Motion and MHCA agrees with their contentions. The Motion violates the Governor's Executive Order 2020-36, which preempted such action. Further, the Board lacks the authority to interfere with lawful judicial proceedings or to abrogate valid lease contracts. There is no legal basis for the Board's Motion, which is essentially an attempt to legislate landlord-tenant laws, for which the Board has no statutory authority. The Motion also constitutes a regulatory taking of mobile home and RV parks' property with no just compensation, forcing such communities to allow those who have committed health and safety violations, rule violations, and even serious crimes at their properties to continue living there because the parks' only legal remedies to remove such tenants have been stripped from them in Pima County. By annulling mobile home and RV park landlords' abilities to reclaim their property from tenants in material breach, the Board has also violated the Contracts Clause of the Arizona Constitution. Others have made these points well, and MHCA incorporates into this letter the arguments made in Senator Vince Leach's recent letter to Arizona Attorney General Mark Brnovich.

The Motion is Based on False Factual Assumptions

MHCA understands that the Motion was adopted in part based on the Board's belief that landlords who are unable to evict tenants for non-payment of rent because of a CDC Declaration are using non-compliance evictions as a pretext to complete a non-payment eviction. We understand that this belief is based in part on a letter provided to the Board by Constable Kristen Randall, who stated that "prior to the pandemic," evictions unrelated to non-payment of rent "accounted for around 6% of all filings," while "[p]ost-pandemic this number has increased to 20%." MHCA does not know whether these numbers are reliable but notes that many of its members—including some of the largest park operators in the state—*have refrained from filing any evictions at all for non-payment* during the course of the COVID-19 pandemic, despite having numerous tenants who are behind on rent payments. We believe that many large apartment operators and other smaller apartment and mobile home park operators have done the same. But such operators still pursue evictions related to violations materially affecting health and safety, other material non-compliances (lease or rule violations), and criminal activity, because ignoring such violations only harms other tenants and community management. Mathematically, if a large number of the biggest housing providers are refraining from filing non-payment of rent cases but are continuing to file health and safety and other non-compliance cases, the percentage of non-compliance evictions of the overall number of cases filed would have to increase.

Even if Modified to Allow Material Falsification and Material and Irreparable Evictions for Mobile Home and RV Parks, the Motion Endangers the Health, Safety, and Well-Being of Park Tenants and Employees

For a mobile home or RV park, even if the Board's Motion is expanded to include exceptions for material falsification and material and irreparable breaches under the Arizona



Mobile Home Parks Residential Landlord and Tenant Act, the Arizona Recreational Vehicle Long-Term Rental Space Act, and the general Landlord and Tenant Act, the park owner could not evict a tenant who had raw sewage spilling onto their home site and onto neighboring home sites, as this would constitute a material health and safety violation, for which the Motion has no exception (and pursuant to A.R.S. §§ 33-1451 and 41-4006(E), the connection from the home to the landlord-provided sewer outlet is the tenant's responsibility). A park attempting to enforce its COVID-19 protocols, like requiring masks in common areas or limiting the number of persons in the pool area at once, would have no power to enforce such requirements if it could not terminate a tenancy for a material violation affecting health and safety. Ultimately, health and safety codes, rules, and protocols adopted in relation to the pandemic would be unenforceable, which negatively affects not just the park's employees, but other tenants who would be forced to reside around dangerous conditions that negatively affect *their* health and safety. A mobile home park cited by the city or county for a problematic condition on a tenant's home site or home—which the park would likely not be legally permitted to simply correct on its own—would be prohibited from evicting the tenant for the health and safety violation, which is the mobile home park's only means of obtaining a defense in city code violation cases.

Likewise, if prohibited from pursuing eviction actions for material non-compliance with the lease or Rules and Regulations, a mobile home park could not evict a tenant who allows a registered sex offender to move in with them without prior park approval, prompting all tenants in the community to receive a sex offender notification flier. All of the above examples are not exaggerations or fabrications—these are all cases that MHCA members have faced and for which they have had to serve termination notices and file evictions. The mobile home and RV park landlord-tenant laws, which allow the termination of tenancies for material health and safety violations and material non-compliance, were not intended solely to protect the landlord—they also protect and benefit mobile home and RV park tenants by giving the park operator the power to keep the community in good and peaceful condition, and as clean and safe as possible. While the Board may not appreciate what our communities provide for our residents, our rules and regulations are no different than the sense of uniformity and standards that exist in HOAs or through neighborhood preservation ordinances. Under the Board's order, there would be no regulation of our communities.

The Board's Motion takes these powers (to ensure a neat, clean, and safe community) out of a mobile home or RV park's hands and prohibits the park from evicting anyone for any reason at all. Even if modified to match the exception granted for residential properties under the Arizona Residential Landlord and Tenant Act, it would still prohibit mobile home parks from ensuring that the premises are healthy and safe and that tenants are safe and live in a neat and clean community.

The Motion Wrongly Assumes Non-Compliance Evictions Require No Proof, and Assumes Judicial Incompetence

Termination notices for non-compliances related to health and safety and for material non-compliances for mobile home space renters and long-term RV space renters provide fairly lengthy cure periods during which tenants receiving such notices may cure the violations. For health and safety, tenants have ten days to cure the violation or twenty days to vacate the premises. For material non-compliance, tenants have fourteen days to cure the violation or thirty days to vacate the premises. If such violations are not cured and the premises not vacated, the landlord must file



the eviction action lawsuit in court, serve the tenant with it, and prove the violations by a preponderance of the evidence. Such evictions are not routinely granted and any weak eviction filed as a mere pretext for rent would be evident to a judge presiding over the case. The Board's Motion seems to assume that Pima County judges are not capable of detecting a meritless eviction filed as a pretext.

Conclusion

MHCA understands that the Board is now reconsidering the Motion and whether it should be adopted and implemented. MHCA requests that, for the reasons stated herein, the Board refrain from adopting the Motion. The CDC Order has functioned well with regard to prohibiting all types of residential landlords from evicting tenants for non-payment of rent. The Board's assumption that all evictions in Pima County that are unrelated to criminal conduct or falsification of the application are brought merely as a pretext to evict tenants for non-payment is simply wrong. Such evictions are necessary to ensure that properties where Pima County residents live remain safe, clean, and inhabitable. Prohibiting landlords from evicting for health and safety or non-compliance reasons will only harm tenants living in rental communities. Prohibiting mobile home and RV parks from evicting anyone at all—even for criminal conduct—is absurd and downright dangerous for park employees and tenants alike.

Sincerely,


ZONA LAW GROUP P.C.
by Melissa A. Parham

cc: Client

