O'Connor v. Village Green Owners Association: Winning the War Against Agree Restrictive Covenants but Using the Unruh Act Cannon as Pea Shooter

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INTRODUCTION

Since its enactment in 1959, the California Unruh Civil Rights Act\(^1\) has served the California public as a mighty cannon warring against arbitrary discrimination by business establishments.\(^2\) The broad language of the Act has purposefully insured its liberal application\(^3\) and the courts have found no difficulty in aiming the sites of this big gun at the housing industry.\(^4\) Recently, two landmark decisions have resulted in the Act's most dramatic and far-reaching assault on housing to date.\(^5\)

The first of these two, *Marina Point Ltd. v. Wolfson*,\(^6\) not only provided the backdrop for the second, but set the stage for future consterna-

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2. *Cf.* In re Cox, 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970) (The Unruh Act forbids only arbitrary discrimination; exclusion based on reasonable criteria is not prohibited). The court in *Cox* held discrimination based on reasons rationally related to the services performed was justified.

[W]e do not imply that the establishment may never insist that a patron leave the premises. Clearly, an entrepreneur need not tolerate customers who damage property, injure others, or otherwise disrupt his business. A business establishment may, of course, promulgate reasonable deportment regulations that are rationally related to the services performed and the facilities provided.

*Id.* at 217, 474 P.2d at 999, 20 Cal. Rptr. at 31 (footnotes omitted).

3. In a relevant section, the Unruh Act states: "All persons . . . are entitled to the full and equal accommodations . . . or services in all business establishments of every kind whatsoever." CAL. CIV. CODE § 51 (Deering Supp. 1983) (emphasis added).


tion in all planned housing developments. Viewing the age old landlord-tenant relationship as a business, the California Supreme Court in Marina barred a landlord from discriminating against families with children. As a result, “adult only” apartment complexes in California became essentially a remnant of the past. With this termination of adult only rental communities, the owners associations of many planned housing developments, such as condominiums, mobile home parks, and co-operative housing complexes began to question the validity of their similar age restrictive covenants and equitable servitudes.

7. Id. at 744, 640 P.2d at 129, 180 Cal. Rptr. at 510-11.
8. The Marina court concluded:
   The argument is launched that children clearly may be excluded from certain kinds of housing, such as housing for the aged, housing for special classes or purposes, and therefore that the instant exclusion is justified. To permit such discrimination is to approve of widespread, and potentially universal, exclusion of children from housing. Neither statute nor interpretation of statute, however, sanctions the sacrifice of the well-being of children on the altar of a landlord’s profit, or possibly some tenants’ convenience.
   Id. at 744-45, 640 P.2d at 129, 180 Cal. Rptr. at 511; see infra notes 135, 140-142 and accompanying text.
9. CAL. CIV. CODE § 783 (Deering 1971) defines a condominium as: [A]n estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an apartment, office or store. A condominium may include in addition a separate interest in other portions of such real property.
   Additional insight into the uniqueness of condominium living is found in Seagate Condominium Ass’n v. Duffy, 330 So. 2d 484, 486 (Fla. Dist. Ct. App. 1976): “Condominium unit owners comprise a little democratic sub-society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization.”
10. “A ‘mobile home park’ is an area of land where two or more mobile home sites are rented, or held out for rent, to accommodate mobile homes used for human habitation.” CAL. CIV. CODE § 798.4 (Deering Supp. 1983). See generally, Mason, Landlord/Tenant Relations in Idaho Mobile Home Parks: Current Problems and Needed Reforms, 16 IDAHO L. REV. 275 (1980).
11. Cooperative apartments (co-ops), although relatively new in California, are commonplace in New York, Florida and other eastern states.
   In the cooperative . . . a developer usually sells the fee along with the buildings and improvements erected on the land to a not-for-profit corporation (the “cooperative apartment corporation”). The corporation then sells its stock to individuals in proportion to the size, location and desirability of the apartment they will occupy. In addition, the corporation enters into a “proprietary lease” with each individual purchaser, granting him the exclusive right to possess a particular unit . . . . These interrelated governing instruments include bylaws, rules and regulations, and article of incorporation.
12. O’Connor v. Village Green Owners Ass’n, 183 Cal. Rptr. 111 (Ct. App. 1982), rev’d, 33 Cal. 3d 790, 662 P.2d 427, 191 Cal. Rptr. 320 (1983); 65 Op. Cal. At’y. Gen. 559 (1982). At the present time there are no cases involving cooperative housing, or adult residential communities which address the question of the validity of age restrictive covenants. However, due to the impact of the recent decisions it is inevitable that such cases will present themselves to the court. See generally Marina Point Ltd.
Staggering from the blow dealt by the court in *Marina*, a second assault was launched in *O'Connor v. Village Green Owners Association* in an attempt to uphold age restrictive covenants in the context of condominium ownership. 13 *O'Connor* is the second of these two landmark decisions. In preparation, the California Supreme Court again loaded its mighty Unruh Act cannon. 14 The public awaited a final resolve to the confusion created by *Marina* and anticipated an opinion with uniform application to all types of planned housing communities. 15 Although the great cannon was primed, powered, and ready as before, without apparent reason, the court tossed aside the heavy cannon ball it could have used and filled the great gun with pea shot. 16 Even though the court hit its mark, the resolution was incomplete; 17 rejecting arguments that age restrictive covenants in condominiums are the contractual creation of private homeowners, the court found that the *homeowners association* of the Village Green complex constituted a business thereby falling under the Unruh Act. 18 Based essentially on this sole rationale, and in this limited context, age restrictions at Village Green suffered a quick but painful death. 19 Unfortunately, the pea shot was much too selective; although the opportunity was presented to the court, the power of the Unruh Act was not used to its full potential. 20 Left totally unscathed were such planned housing communities as mobile home parks, residential


Additionally, the opposing parties in the case before the California Supreme Court acknowledged the restriction barring children was a restrictive covenant that ran with the land. *O'Connor v. Village Green Owners Ass'n*, 33 Cal. 3d 790, 793 n. 1, 662 P.2d 427, 428 n. 1, 191 Cal. Rptr. 320, 321 n. 1 (1983).


16. See infra note 79 and accompanying text.

17. Id.


20. The court saw the need, and had the duty to decide the issue of age restrictions in condominium projects, it also had the strength of the Unruh Act's legislative history to rely upon and could have applied it with a more universal application. See infra note 99 and accompanying text. The California Supreme Court had before it at least one additional target of age restrictions in planned housing in regard to the Unruh Act since the lower court had expressly relied upon certain statutes that authorize "adult only" mobile home parks. *O'Connor v. Village Green Owners Ass'n*, 183 Cal. Rptr. 111, 114 (Ct. App. 1982).
adult communities, co-ops, and condominium developments that do not have owners associations.21

This Note will examine the aftermath of O'Connor, and the soundness and usefulness of its rationale in future application. Additionally, the various means by which the decision may be circumvented will be discussed and finally a more workable and universal solution will be proposed.

To carry out this examination, this Note will first explore the Unruh Act itself, its inclusion of age as a protected class, and its extension to the general housing industry. Secondly, the effect and import of the O'Connor decision will be analyzed in light of projected future developments in the planned housing sector. Here, selective and limited rationale of the O'Connor holding will be questioned for soundness. The third section will shift from the technical, legal aspects of the Unruh Act to review other California statutory authority which expressly allows “reasonable” restrictive covenants. Within this section, “reasonableness” will be tested for consistency with an eye toward a more universal approach for future application.

Finally, this Note will discuss various solutions and policy considerations and conclude that restrictive covenants can only exclude children in rare circumstances and under strictly supervised situations. Since California courts have not seen the need to include a constitutional analysis to resolve age restrictive covenant conflicts, this Note will accordingly limit itself to relevant statutory and case authorities.22

21. See supra notes 10-11 and accompanying text.
22. The O'Connor and the Marina decisions avoided any discussion of constitutional issues, although equal protection and due process arguments were raised. The courts instead opted to consider only California statutory and case law. Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 724, 640 P.2d 115, 120, 180 Cal. Rptr. 496, 498 (1982); O'Connor v. Village Green Owners Ass'n, 33 Cal. 3d 790, 662 P.2d 427, 191 Cal. Rptr. 320 (1983). But cf. San Jose Country Club Apartments v. County of Santa Clara, 137 Cal. App. 3d 948, 187 Cal. Rptr. 493 (Ct. App. 1982), decided only five months after the Marina decision. In San Jose the court addressed the alleged constitutional violations and upheld a county ordinance designed to prohibit discrimination in rental housing “on the basis of age, parenthood, pregnancy, or presence of a minor child.” Among the constitutional issues allegedly violated by the ordinance were rights to association, expression, privacy, travel, speech, due process, and equal protection. Id. at 954-55, 187 Cal. Rptr. at 495-96. Justice Rouse dissented on the sole ground that the cause of action was moot due to the holding in Marina. Id. at 956, 187 Cal. Rptr. at 496-97 (Rouse, J., dissenting).

I. STATUTORY INTERPRETATION OF THE UNRUH ACT

To properly evaluate the present effect and impact of the Unruh Act upon age restrictive covenants in planned communities and the corresponding authority of the O'Connor court to act, it is first vital to understand the Act's legislative and historical background. In this historic light, two essential areas will be considered: (a) age as a protected class under the Unruh Act, and (b) the Unruh Act's inclusion and treatment of the housing industry as a whole.

A. Age as a Class of Arbitrary Discrimination

The modern version of the Unruh Act does not specifically mention age as a protected class; it reads today as follows:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, or national origin.

In 1974, the word “sex” was added to the Unruh Act to appear wherever the expression “color, race, religion, ancestry or national origin” appeared. Despite this single addition to the statutory language of the Act, it has been increasingly expanded by interpretation to include other classifications such as occupational and marital status and the number of children in a family. Furthermore, the courts have expanded its application to groups such as students, persons who associate with blacks, welfare recipients, persons of immoral character, homosexuals, and

even persons of "unconventional appearance," as presented in the case of In re Cox.32

In Cox, the petitioner, who wore long hair and dressed in an unconventional manner, was arrested and charged with violating a municipal trespass ordinance after refusing to leave a shopping center. The proprietor argued he could refuse service to anyone. The California Supreme Court held that although a business operator need not tolerate customers who damage property, injure others, or otherwise disrupt his business, the Unruh Act forbids a business establishment from arbitrarily excluding a prospective customer.33 In arriving at this conclusion, the court ruled on how far the Unruh Act was to extend by holding: "[I]dentification of particular bases of discrimination—color, race, religion, ancestry, and national origin . . . is illustrative rather than restrictive."34 It is therefore evident that the Unruh Act's protection will continue to expand as additional groups test its application.

Among the cases and opinions that have cited Cox with approval35 is the landmark decision of Marina Point Ltd. v. Wolfson.36 In Marina, the owner of the large Marina Point apartment complex instituted an unlawful detainer action against the Wolfsons who failed to vacate the premises at the expiration of an extended lease. The sole reason for the landlord's refusal to renew the lease was the presence of a newly born child on the premises, in violation of a no-children restriction.37 The Wolfsons contended that their child had done nothing to warrant the eviction and that the restriction violated the Unruh Act.38 The municipal court, however, upheld the exclusionary policy and granted the requested relief by concluding that the Unruh Act's protection applied only to the limited number of groups specifically mentioned within the language of the Act itself.39 The California Supreme Court reversed.40 Citing Cox, the court came to the conclusion that age was readily included as a protected class under the Unruh Act.41

Subsequently, the California Court of Appeals in O'Connor disregarded the interpretation which the California Supreme Court had given to the Unruh Act in Cox while also contradicting the Supreme Court's

32. 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970).
33. Id. at 217, 474 P.2d at 999, 90 Cal. Rptr. at 31.
34. Id. at 216, 474 P.2d at 999, 90 Cal. Rptr. at 31 (emphasis added).
37. Id. at 726-27, 640 P.2d at 118, 180 Cal. Rptr. at 499.
38. Id. at 730, 640 P.2d at 120, 180 Cal. Rptr. at 502.
39. Id. at 732, 640 P.2d at 121, 180 Cal. Rptr. at 503.
40. Id. at 745, 640 P.2d at 132, 180 Cal. Rptr. at 514.
41. See id. at 732, 640 P.2d at 121, 180 Cal. Rptr. at 503.
inclusion of "age" in *Marina*.\(^{42}\) *O'Connor's* facts mirror those of *Marina* except that age restrictive covenants were challenged in the setting of condominium ownership.\(^{43}\) The O'Connors were homeowners in a six hundred unit condominium development that restricted occupancy to persons over eighteen years of age. Four years after purchasing their unit, the O'Connors had an infant son. Following shortly thereafter, the homeowners association gave the O'Connors written notice of their intent to enforce the age restrictive covenant against them. The O'Connors responded by filing an action to have the age restrictive covenant declared invalid. The trial court upheld the restrictive covenant and this holding was later affirmed by the California Court of Appeals.\(^{44}\) The appellate court presented various arguments that purported to distinguish *Marina's* inclusion of age under the Unruh Act,\(^ {45}\) but the California Supreme Court did not address these contentions.\(^ {46}\) Since the appellate court's arguments present a potential conflict with the inclusion of age under the protection of the Unruh Act, they warrant review for their validity. The refuting of these arguments is essential to establish the absolute power the California Supreme Court utilized in making its decision in *O'Connor*.\(^ {47}\)

One argument launched by the appellate court was that a number of bills had been rejected by the California Legislature which would have prohibited discrimination against children in *all* forms of housing.\(^ {48}\) The failure of the legislature to pass these bills was used as authority to establish intent opposing such legislation.\(^ {49}\) Citing unpassed bills as authority, however, amounts to an exercise in speculation and conjecture.\(^ {50}\)

\(^{42}\) *O'Connor*, 183 Cal. Rptr. at 114-15. It is obvious that the appellate court was aware of the *Cox* and *Marina* holdings since *O'Connor* was previously remanded from the California Supreme Court to be decided pursuant to the *Marina* decision. *Id.* at 113 (1982).

\(^{43}\) *Id.* at 113. *See also*, *O'Connor* v. Village Green Owners Ass'n, 33 Cal. 3d 790, 662 P.2d 427, 191 Cal. Rptr. 320 (1983).

\(^{44}\) *O'Connor*, 183 Cal. Rptr. at 113.

\(^{45}\) *See infra* notes 48-54 and accompanying text.


\(^{47}\) In order for the California Supreme Court to have authority to strike down age restrictive covenants in *all* forms of planned housing, it must first be established that the court had omnipotent authority to deal with age restrictions in the first place.

\(^{48}\) Cal. S. 359, Reg. Sess. (1977-78) and Cal. S. 440, Reg. Sess. (1979-80) are essentially the same bill and solicit protection against discrimination of children from *any* dwelling containing two or more units. In addition, they both encourage the exception of a child free environment for persons of age sixty and older.

Although not cited by the *Marina* or *O'Connor* courts, Cal. A.B. 300, Reg. Sess. (1977-78) can also be added to the list of unpassed bills attempting to protect families with children from housing discrimination. This bill, however, added the exception of unsafe facilities as a reasonable basis to exclude children.

\(^{49}\) *O'Connor* v. Village Green Owners Ass'n, 183 Cal Rptr. 111, 115 (Ct. App. 1982).

\(^{50}\) Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 735 n. 7, 640 P.2d 115, 123 n. 7, 180 Cal. Rptr. 496, 505 n. 7 (1982).
California courts have traditionally been reluctant to view them as indicative of legislative intent due to the many outside variables which are involved in their enactment.\(^51\)

Additionally, the O'Connor appellate court held that certain sections of the California Government Code,\(^52\) relating essentially to employment discrimination, were present at the time of the 1974 Unruh Act amendment, and specifically included "age" as a protected class.\(^53\) The appellate court reasoned that since age was set forth specifically in the Government Code, but not incorporated into the 1974 amendment of the Unruh Act, the legislature "demonstrated that when it intended to refer to age, it knew how to do so."\(^54\) Such a conclusion is without merit. As the Marina decision points out, the Unruh Act amendment of 1974,\(^55\) was preceded by the 1970 Cox\(^56\) decision. The legislature was well aware of the liberal construction of the Unruh Act by the Cox court.\(^57\) Had it disagreed with the Cox interpretation, or had it desired to constrict the reach of the Unruh Act in a manner incompatible with Cox, it presumably would have done so.\(^58\) This application of the Cox case was cited with approval in the concurring decision by California Supreme Court Justice Broussard in O'Connor.\(^59\)

Accordingly, the type of analysis by the appellate court is left without valid authority to support an exclusion of "age" from those groups protected from discrimination by the Unruh Act. Such an exclusion would fly in the face of the legislative intent,\(^60\) the Unruh Act's history,\(^61\) and recent decisions of the California courts.\(^62\) There is no doubt the Unruh Act protects age discrimination, and the California Supreme Court in O'Connor had every right to proceed without hesitation. As concluded in Marina:

To permit such discrimination is to approve of widespread, and potentially universal, exclusion of children from housing. Neither statute nor interpretation of statute, however, sanctions the sacrifice of the well-being of children on the altar of a land-

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51. Id.
54. Id. at 116.
55. The 1974 amendment added the word "sex" to the list of specifically enumerated classes protected from discrimination.
56. 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970).
57. See supra notes 25-32 and accompanying text.
60. See also infra notes 64-69 and accompanying text.
61. Id.
62. See supra notes 32-36 and accompanying text.
lord’s profit, or possibly some tenants’ convenience.63

Having concluded that age is a class protected by the Unruh Act, it is
now necessary to turn to the Unruh Act’s application to the housing
industry, and then to its more specific application to planned housing
communities.

B. Inclusion of the General Housing Industry Under the Unruh Act

The original version of the bill which was presented to the California
State Legislature, and later became the Unruh Act, enumerated among
its business activities protected against discrimination, the right to
purchase real property.64 Despite this express attempt to include this
aspect of the housing industry, the first enactment of 1959 did not do
so.65 The elimination of all references to real estate sales (and any other
specifically mentioned business activity or business establishment) was
deliberate.66 The legislature deemed specific references as mere surplus-
age in view of the broad language of the Act as finally passed; the intent
was simply to protect the public in any business setting.67 Indeed, the
protection offered in the original bill included private or public groups,
organizations and associations as well.68

True to the legislature’s intent, the Unruh Act has been liberally
applied. As illustrated by extensive case law,69 it is also clearly evident that
California courts have not hesitated to extend the Unruh Act’s broad
application to business activities within the housing industry such as the

Rptr. 496, 511 (1982).
64. As introduced, the bill read in part: “All citizens within the jurisdiction of
this State, no matter what their race, color, religion, ancestry or national origin, are
entitled to the full and equal admittance, accommodations, advantages . . . to
purchase real property; and to obtain the services of any professional person, group or
association.” Cal. A.B. 594, Reg. Sess. (1959) (emphasis added); Horowitz, supra note
23, at 265 n. 31.
65. 1959 Cal. Stat. 4424. See also Horowitz, supra note 23.
66. Horowitz, supra note 23.
Rptr. 609, 612 (1962). Note also that the predecessor to the Unruh Act was an 1897
codification of the common law which specifically included: “full and equal ac-
accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating-
houses, barber-shops, bath-houses, theatres, skating rinks, and all other places of pub-
lic accommodation or amusement . . . .” 1893 Cal. Stat. 137. See generally
Horowitz, supra note 23.

Additionally, California Civil Code section four premises the entire civil code by
stating: “The code establishes the law of this state respecting the subjects to which it
relates, and its provisions are to be liberally construed with a view to effect its objects
and to promote justice.” CAL. CIV. CODE § 4 (Deering 1971) (emphasis added).
68. O’Connor v. Village Green Owners Ass’n, 33 Cal. 3d 790, 795 n. 5, 662 P.2d
69. See supra note 2; see also Swann v. Burkett, 209 Cal. App. 2d 685, 26 Cal.
Rptr. 286 (Ct. App. 1962) (rental of triplex units is a “business establishment”).
rental or sale of real property. The inclusion of housing is not only proper, but in complete harmony with the principles upon which the Unruh Act was founded.

Despite its general application to the housing industry, it is essential to note that until O'Connor, the Unruh Act had not been applied to the rental or sale of owner occupied, single family residences in any context. The rationale for this omission has simply been that a private residence lacks the necessary business characteristics. However, with the unique structure of condominium living and other planned communities, such as mobile home parks, co-operative apartment housing, and "adult only" residential neighborhoods which combine private ownership with group control, it became important to determine whether these planned communities are taken out of the private sector and placed in the realm of the business establishment. Such was the challenge which faced the California Supreme Court in O'Connor.

II. THE EFFECT AND MEANING OF O'CONNOR TO PLANNED HOUSING COMMUNITIES

A. Searching for the "Business Establishment"

In order to strike down age restrictive covenants in condominiums under the authority of the Unruh Act, the court needed to find at least three elements: 1) arbitrary discrimination, 2) of age as a class, 3) by a business establishment. Since the first two elements of this triad were

70. "The law is well settled that the Act is applicable to the sale and rental of real property." 58 Op. Cal. Att'y Gen. 608 (1975).


The Supreme Court of California in Hill v. Miller, 64 Cal. 2d 757, 415 P.2d 33, 51 Cal. Rptr. 689 (1966), however, did not extend section 51 to single family residences but left open the option for an alteration by stating: "Although the state, by action of the Legislature or the People, may make such private acts of discrimination unlawful, [tenancy in a private residence] . . . it has not done so." Id. at 759, 415 P.2d at 34, 51 Cal. Rptr. at 690. Thus, an option may be forthcoming that will extend the Unruh Act into the private sector. Furthermore, in condominium developments, the California Supreme Court, as previously stated, has extended the Unruh Act to protect against age restrictions. O'Connor v. Village Green Owners Ass'n, 33 Cal. 3d 790, 662 P.2d 427, 191 Cal. Rptr. 320 (1983).

72. Id.

73. See supra note 9 and accompanying text.

74. See supra note 10 and accompanying text.

75. See supra note 11 and accompanying text.

76. The court primarily relied upon its earlier decision of Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 640 P.2d 123, 180 Cal. Rptr. 496 (1982) cert. denied, 103 S. Ct. 129 (1983) to satisfy the first of these two elements since Marina expressly included "age" within the purview of the Unruh Act. The courts treatment of the "business establishment" is set out extensively throughout this section. This element is the most difficult to deal with in relation to planned housing. When the court of appeals in O'Connor confronted this problem, it came to the conclusion, by determin-
decided by prior law, the court recognized that the only real issue before it was whether a discriminatory policy against children was being invoked by a "business establishment." Although the court could have reached such a conclusion by various means that would have established a more uniform guide for other types of planned communities, unfortunately, the court was so taken by the concept of an owners association as a business establishment, its holding was largely limited to that sole criterion.

It is readily apparent how the court saw the business characteristics of the Village Green Owners Association since as most owners associations, it: a) employed a professional property management firm, b) obtained insurance for the benefit of all the owners, c) maintained and repaired the common areas and facilities, and d) collected assessments. These services are of unquestionable value to the condominium dweller, and although an owners association becomes a business when it provides such benefits, they could easily be provided by an alternative method or by an outside company. The statutory requirements for a condominium project do not require the existence of an owners association. Just as the dweller of a single family detached residence does not become a busi-

ing that condominiums are not business establishments, that age restrictive covenants do not violate the Unruh Act. O'Connor v. Village Green Owners Ass'n, 183 Cal. Rptr. 111, 114–15 (Cl. App. 1982). In making this determination, however, the appellate court glazed over the inconsistent, but feasible hybrid situation presented when an owner of a condominium subject to age restrictions rents to a family with children. Such a situation would be warranted by the Marina decision, yet would be in violation of the condominium restrictive covenants. Such a situation would also be present where an apartment complex is being converted to condominiums and previous apartment dwellers are still living within the condominium community. Mobile home parks, where the home is owned but the land rented, would also fall into this category.

In order for a homeowner with minor children to comply with this paradox and yet retain occupancy of his unit, he may have had to resort to extreme procedures; he could have exchanged units with another family in the project and both families could have "rented" from each other, or as at least one writer has suggested, the owner "could enter into a straw man sale-leaseback transaction, whereby the seller would assign the premises to the new purchaser." Such new purchaser might have even been the owner's "newly formed corporation." It is essential to note, however, that the author of the article setting forth the sale-leaseback arrangement dismissed the arrangement by stating that the new owner "would be bound to uphold the CC & R's as well [as the original owner]." Note, The Enforceability of Age Restrictive Covenants in Condominium Developments, 54 S. CAL. L. REV. 1397, 1458 (1982). This dismissal is now questionable since the Marina decision bars age discrimination when properties are rented (at least where a single landlord rents more than one unit); such an arrangement may readily place a leased condominium under the Marina holding.


79. Id.

80. Id. at 796, 662 P.2d at 431, 191 Cal. Rptr. at 324.

81. See supra note 9 and accompanying text.
nessman merely because his hired gardener maintains his yard, neither should a condominium dweller that hires an outside management company. It is entirely foreseeable for a condominium project to operate on a "self-serve" arrangement and dissolve the formal association.82 Such action by a condominium complex could result in a circumvention of the restraints on age discrimination imposed by the O'Connor court. However, even if condominium projects are arguably doomed to have their maintenance and operation carried on by an in-house owners association, the O'Connor court could have easily structured its opinion making the ruling applicable to other types of housing that will otherwise slip through the cracks of the shaky foundation the court's opinion constructed.83 It would have been better for the court to recognize the various other business characteristics of the Village Green complex. Had it done so, the foundation could have been built upon by other forms of housing in need of the same protection.84

When Village Green's age restriction was upheld at the appellate level, heavy reliance was given to the statutory authority allowing "adult only" housing for mobile home communities.85 The California Supreme Court was conspicuously mute regarding this apparent exception to age restrictive covenants, and this omission has left the California public to speculate whether mobile home parks are not businesses for purposes of the Unruh Act. The decision could have included mobile home parks, and other types of housing such as co-ops and adult residential communities in arriving at its decision had the O'Connor court acknowledged their many business qualities.86 The business characteristics of these communities are apparent, along with various other characteristics particular to condominiums:

(1) If a person owns a number of condominiums within the project, he becomes a landlord and thereby subject to Marina.87
(2) Condominiums, along with their restrictive covenants, are "born" as business establishments since condominium restrictive covenants are recorded by a sole owner, usually the devel-

82. Although the particulars of such an arrangement are beyond the scope of this article, the services provided by an owners association could be taken care of by the individual homeowners. As an alternative, the homeowners could hire an outside party or company to provide maintenance; under this arrangement the services could be provided as before, but the action taken by the homeowners would be merely to hire an independent contractor—not to act as a business.
83. Most forms of housing do not even operate through the assistance of owners associations. See also notes 10-11 and accompanying text.
84. Although the court's opinion is not totally void of a recognition of other business characteristics of condominiums, these aspects were dismissed rather quickly and the court gave them no more than "footnote treatment.”
86. See infra notes 87-92 and accompanying text.
87. See supra notes 69-71 and accompanying text.
oper, prior to the sale of even a single unit. The developer is not dealing with an owner-occupied, single family residence but with a business enterprise. He, and his project, are therefore subject to the provisions and restrictions of the Unruh Act from the outset. 88

(3) In addition to the control asserted by the owners association of a condominium complex, restrictive covenants can be enforced by the homeowners of a condominium development or residential neighborhood in an individual or group capacity. Thus the homeowners themselves can act as an enforcing body to restrict the sale and rental of all the dwelling units within their complex or subdivision, not just their own. This factor would apply equally as well to the minority of mobile home parks that sell the individual ground space. 89

(4) Most mobile home parks, however, already fall within the business setting of landlord-tenant as set forth by Marina, since most parks are owned by a single landlord who rents ground space to each of the individual mobile home owners. 90

(5) Co-op owners are also conspicuously in a business setting by being shareholders in the corporation that owns the project in which their unit is located. Their regulation of the corporation falls directly within the purview of the Unruh Act. 91

(6) The courts or legislature may extend the application of non-discrimination to owners of individual, single family residences, thus making them come directly within the purview of the Unruh Act. 92

When the above business characteristics of planned communities are combined with the Unruh Act's protection of age, the selectiveness in the O'Connor holding becomes ineffective. Not only does the decision have limited utility in regulating condominiums, but it has caused age restrictive covenants to have a selective application. 93 A more complete test is needed.

88. See generally Cal. Civ. Code § 1355 (Deering Supp. 1983). It is somewhat disturbing that the majority opinion in the California Supreme Court decision, recognized this contention yet greatly discounted its merit. The court stated in a footnote "[T]he association . . . could simply cancel that age restriction and adopt one of its own." O'Connor, 33 Cal. 3d at 795, n. 4, 662 P.2d at 430 n. 4, 191 Cal. Rptr. at 323 n. 4. This conclusion is folly since an owners association cannot even exist until there are owners, and to obtain such requires first the sale of the units subject to the restrictive covenants.


90. See supra notes 10, 70-71 and accompanying text. Unfortunately, many mobile home parks have misinterpreted California Civil Code sections 798.6 & 799.5, which authorize the exclusion of children in parks for senior adults, Cal. Civ. Code § 798.6, 799.5 (Deering Supp. 1983) to illegally create adult only parks where senior adults do not reside. See also infra notes 125-126, 128 and accompanying text; supra note 76 and accompanying text.

91. See supra note 11 and accompanying text.

92. See supra note 71 and accompanying text.

93. The courts opinion will only affect condominiums with owners associations. All other types of planned housing will remain untouched.
B. "Business Establishment"—A Threshold Question

Although it is true that a court decision must be carefully drawn to be as narrow as possible, narrowness does not mean selectiveness. The result of such a decision is counterproductive.94

Since the court focused only on condominiums with owners associations, a complex that is committed to maintain its child free environment may dissolve its owners association to thwart the decision. The result will be less effective and less efficient condominium housing. Due to the ineffectiveness of the O'Connor opinion, "adult condominium dwellers" will be inclined to migrate to other forms of housing that presently can allow the exclusion of children. Housing such as mobile homes and adult residential communities would currently meet this need.95 The result of this exodus will be a substantial drop in the value of condominiums, and consequently, fewer will be built due to the resulting lower profits. On the other hand, if this results in lower priced, more affordable units for families, the cost impact will be absorbed by mobile home parks and adult residential communities that will be able to command a higher price in the adult market.96 Regardless of the economic gymnastics that may occur, had O'Connor set forth a more workable approach to resolve discrimination of age in housing, the present quandry would not exist.97

Therefore, the finding of a "business establishment" is merely a threshold question; the analysis is not complete. California needs something the O'Connor court did not deliver; a complete test that will work in all forms of housing, a universal test, a test that includes the element of "reasonableness."98

94. It is obvious that when an opinion renders a solution to a single problem when that same opinion could have been written so as to set forth a more universal application to other similar problems, the result is a future of peacemeal, one-step-at-a-time decisions.
95. As stated, these types of housing do not utilize an owners association.
96. These comments regarding economic ramifications are merely set forth by the author of this Note as a means of contemplating future economic problems. Only the future course of condominium developments will be able to track the true economic phenomenon that may occur.
97. Had O'Connor given a test with a universal application to all forms of housing, planned housing communities of all types would be able to stabilize their status regarding minors and children.
98. Justice Broussard apparently saw through the serious limitations of the majority opinion in his concurrence. He proposed striking down age restrictive covenants under the authority of California Civil Code section 53, which "deals more specifically with the problem of discriminatory restrictions on the use of [all] real property." O'Connor v. Village Green Owners Ass'n, 33 Cal. 3d 790, 796, 662 P.2d 427, 431, 191 Cal. Rptr. 320, 324 (1983) (Broussard, J., concurring).
This Note does not specifically delve into the ramifications and applicability of section 53 to bar discrimination. Therefore, although section 53 does not have the strong case authority behind it as does the Unruh Act, it may prove to be a much simpler and direct approach to the regulation of planned housing developments in the future. See supra notes 9-11 and accompanying text.
III. AGE RESTRICTIONS AND THE TEST OF REASONABLENESS

Keeping in harmony with the legislative history of the Unruh Act, the O'Connor court should have also considered whether age restrictive covenants were "reasonable."99

It is highly unlikely that the O'Connor court would advocate the right of children to patronize bars or to buy alcoholic beverages. Such action by children is prohibited by the California Constitution;100 fines and penalties await the business owner who sells liquor to a minor or grants a minor admission into a bar or tavern.101 Taking the O'Connor decision to its logical end, however, this is arbitrary discrimination of a class by a business establishment. The California codes are replete with prohibitions, restrictions, and special treatment of children in business settings.102 Are we to assume that O'Connor advocates a repeal of these protective laws? The answer is obviously clear, but the O'Connor court did not explain why housing was singled out from other types of businesses to not allow age restrictions. Without an overt acknowledgement, O'Connor was couching its decision in the context of "reasonableness."103 The element of reasonableness is just as much a part of the Unruh Act as finding the element of a "business establishment."104

It is therefore apparent that the proper test for all planned housing is to collectively take the business characteristics of the particular type of housing at hand and test it for "reasonableness" against the history and legislative intent of the Unruh Act.105 Only then can a complete result

99. Early common law classified certain enterprises as public or common callings. In other words, certain enterprises that held themselves out to the community by providing a particular product or service were affected with a public interest. As such they were regarded differently than purely private enterprises. The common law developed imposing certain obligations on these public interest enterprises, one of which was the duty to serve all customers on reasonable terms without discrimination. The California Legislature codified such common law principles in 1897, by enacting the statutory predecessor to the present Unruh Civil Rights Act. 1897 Cal. Stat. 137; 58 Op. Att'y Gen. 608 (1975).

Additionally, California Civil Code section four which is a precursor to the entire Civil Code, including the Unruh Act (CAL. CIV. CODE § 51 (Deering Supp. 1983)), sets forth the rules of constructing such. It states in full:

The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

CAL. CIV. CODE § 4 (Deering 1971) (emphasis added).

100. CAL. CONST. art XX, § 22(d).

101. CAL. BUS. & PROF. CODE §§ 25658, 25663, 25664, 25665 (Deering 1982).

102. Id. See also CAL. PENAL CODE §§ 12072, 12550 (Deering 1982) (prohibiting sale of firearms to minor); CAL. PENAL CODE § 310 (Deering 1982) (excluding minors from prizefights and cockfights) for a few of the many references to minors within the California Codes.

103. See supra note 99 and accompanying text.

104. Id.

105. Id.
be obtained.

Nonetheless, “reasonableness” could act as a two-edged sword in the context of age restrictions in housing. It was the test of reasonableness that the O’Connor appellate court relied upon to initially conclude that age restrictions could stand.\textsuperscript{106} Owners associations maintain that application of the Unruh Act to planned housing, and especially its inclusion of children, is unreasonable. They assert that it is reasonable to exclude children in light of the mischievous and boisterous propensities they possess.\textsuperscript{107} Such a position is not without some merit and authority,\textsuperscript{108} but the test of “reasonableness” is not absolute and therefore demands careful analysis.

The California Civil Code, by express language allows both mobile home parks and condominium complexes to enact restrictive covenants if they are “reasonable”.\textsuperscript{109} At the appellate level, the court in O’Connor concluded that the age restrictive covenants of the Village Green complex were reasonable due to the rights of those adults that desire to insulate themselves from the “noise, laughter and occasional boisterousness” of children.\textsuperscript{110} A similar rationale was employed in Ritchey v. Villa Nueva Condominium Association\textsuperscript{111} where the owners association was successful in enforcing an age restrictive covenant upon an owner desiring to rent his unit to a woman with minor children. Both of these appellate court decisions discussed the Unruh Act but denied its application to age restrictive covenants by approving the “reasonableness” of adult living.\textsuperscript{112}

Although the California Supreme Court did nothing to clarify this

\textsuperscript{106} We conclude that, Marina, notwithstanding, the restriction in question is a reasonable one and is not subject to attack as being either arbitrary, discriminatory or contrary to public policy. It clearly violates no statute and its enforcement does not involve the court, and thereby the state, in any constitutionally prohibited activity.

\textsuperscript{107} Ritchey v. Villa Nueva Condominiums Ass’n, 183 Cal. Rptr. 111, 118 (Ct. App. 1982) (citation omitted).

\textsuperscript{108} CAL. CIV. CODE § 1355 (Deering Supp. 1983).

\textsuperscript{109} CAL. CIV. CODE § 1355 (Deering Supp. 1983), provides in part: “The owner of a project shall, prior to the conveyance of any condominium therein, record a declaration of restrictions relation to such project, which restrictions shall be enforceable equitable servitudes where reasonable, and shall inure to a bind all owners of condominiums in the project.” (emphasis added).

\textsuperscript{110} O’Connor v. Village Green Owners Ass’n, 183 Cal. Rptr. 117 (Ct. App. 1982).

\textsuperscript{111} 81 Cal. App. 3d 688, 146 Cal. Rptr. 695 (Ct. App. 1978).

\textsuperscript{112} O’Connor, 183 Cal. Rptr. at 116-17; Ritchey, 81 Cal. App. 3d at 693, 146 Cal. Rptr. at 698. The lower court in O’Connor conceded that all other areas of law, and especially California Civil Code section 12993 would preempt the restrictive covenants except for the question of reasonableness presented by California Civil Code section 1355.
area in O'Connor, in Marina it dealt with the same "reasonable test" of excluding children and concluded:

[A]n individual who has committed no . . . misconduct cannot be excluded solely because he falls within a class of persons whom the owner believes is more likely to engage in misconduct than some other group. Whether the exclusionary policy rests on the alleged undesirable propensities of those of a particular race, nationality, occupation, political affiliation, or age, in this context the Unruh Act protects individuals from such arbitrary discrimination.\(^{113}\)

It is clear that a restriction against families with minor children was held to be both arbitrary and unreasonable in Marina. How then can this exclusion, under essentially the same facts, in O'Connor\(^{114}\) suddenly become reasonable simply because the O'Connor case involved homeowners? The distinction cannot logically lie on the premise that O'Connor deals with the contractual relationship of homeowners while Marina deals with "mere tenants." In the final analysis the tenant and the homeowner alike are equally bound by a contractual agreement, one by covenant, the other by lease; both must abide by the restrictions of the development in which they choose to live. Also, regardless of any preconceived intentions to live in an environment free of children, the realities of the human experience dictate that in a six hundred unit project, the planned or unplanned birth of a child into the home of a unit dweller or into that of his or her neighbor is a foreseeable reality. Arbitrary discrimination of a class, and especially the class which includes children, cannot be a reasonable restriction\(^{115}\) in planned housing since reasonable activity must be found within the realm of practicality and legality.\(^{116}\)

In addition, with the current housing needs in California, it is difficult to imagine how age restrictions in housing can be found reasonable.\(^{117}\) In confirmation of a legislative finding, both Marina and the O'Connor appellate decision recognized the current housing shortage in California.\(^{118}\) By barring families with minor children from planned develop-

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114. Neither of the children involved in O'Connor nor Marina had committed any offensive acts or misconduct to make their presence unacceptable.
116. A possible exception may exist in relation to "elderly" living arrangements. See infra notes 140-142 and accompanying text.
117. O'Connor, 183 Cal. Rptr. at 116. Marina held: "As the Legislature stated in 1979: 'The Legislature finds and declares that the state's housing problems are substantial, complex and now of crisis proportions' . . ." Marina, 30 Cal. 3d at 743, 640 P.2d at 128, 180 Cal. Rptr. at 510.
118. Id. Note also, the median sales price of a new home from 1965 to 1975 rose seventeen percent. From 1975 to the second quarter of 1978, a short three and a half
ments, many families would be placed under the unreasonable and unnecessary hardship of being eliminated from what might otherwise be affordable, adequate housing. This adverse impact is further magnified in relation to minority groups and female headed households.\textsuperscript{119} Although this condition of a lack of affordable housing may represent a transitory economic phenomenon,\textsuperscript{120} it is one additional consideration for the test of reasonableness in approving age restrictive covenants.\textsuperscript{121} When a society cannot provide adequate and affordable housing to its members, it is irrational to restrict occupancy in existing housing for the benefit of a few.

Furthermore, in striking down age restrictive covenants, if the element of “reasonableness” is not added to the element of finding a “business establishment,” the ability to circumvent the \textit{O’Connor} decision is greatly facilitated. Although the result reached by the California Supreme Court in \textit{O’Connor} would appear to help alleviate the housing problem in California by opening up condominium living to families with children,\textsuperscript{122} condominiums may still: a) impose ridiculously limiting comportment standards upon the activities of children to make the complex undesirable to families, b) restrict the number of occupants per condominium or room, c) increase owners association fees disproportionally, d) dispose of the owners association as previously stated, or e) construct the complex so as to make child play impractical (or in some ways unsafe). The additional imposition of reasonableness would eliminate these potential actions.\textsuperscript{123}

\[\text{year span, an astounding forty percent increase in cost occurred.} \text{BUREAU OF CENSUS, U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1978 at 800-01 (8th ed. 1978). In a closer application to the “Unruh Act’s domain,” the cities of Los Angeles, San Diego and San Francisco collectively average a median sales price for existing construction at an alarming $120,800 in 1980.} \text{THE WORLD ALMANAC AND BOOK OF FACTS, Quality of Life in U.S. Metropolitan Area: A Comparative Table 71 (1982).}\]

\textsuperscript{119} The Fair Housing Project of 1979 surveyed rental families in California and revealed that, statewide, these groups have a greater percentage of households with children than does the general public: fifty-eight percent for blacks, fifty-five percent for Hispanics and an astounding sixty-nine percent for female-headed households as compared to a low of approximately thirty-five percent for male-headed, non-minority families. \textit{The Fair Housing Project,} Table ten averages (1979). The above statistics are illustrative of the current social ramifications in the current housing market. Although statistical data regarding home ownership is not available, the above statistics are illustrative of the current social ramifications in the current housing market.

\textsuperscript{120} \textit{O’Connor,} 183 Cal. Rptr. at 118.

\textsuperscript{121} The “reasonable test” is found in section 1355 of the California Civil Code for the enactment of condominium restrictive covenants. For mobile home parks, see \textit{CAL. CIV. CODE} § 796.56 (Deering Supp. 1983); see supra note 124 and accompanying text.


\textsuperscript{123} In \textit{O’Connor,} the Supreme Court stated: “the association therefore is already faced with the burden of planning for the presence of children.” \textit{Id.} at 796, 662, P.2d at 431, 191 Cal. Rptr. at 324. This comment is the sole statement by the court.
Nonetheless, the lower court in O'Connor persisted in defending the reasonableness of age restrictive covenants by making reference to California Civil statutes which authorize “adult only” restrictions in mobile home parks.\[124\] This court began its analysis of these statutes by recognizing that they were passed by the legislature exclusively to provide for “older” citizens.\[125\] In its conclusion, however, the court turned its back on the legislative intent of protecting the elderly and used it as support to blindly approve all age restrictive covenants.\[126\]

Since the California Supreme Court avoided the sharply disputed area of age restrictive covenants, some discussion is warranted. Statutes authorizing mobile home parks for the elderly were intended to provide a special exception to the general rule.\[127\] Although some mobile home parks could be tailored to meet the requirements of these statutes, the remaining parks are still subject to the same test of reasonableness as are condominiums regarding age restrictive covenants.\[128\] All inclusive age discrimination in mobile home parks, or any other type of planned housing, was never the intent of the California Legislature.\[129\] A recent California Attorney General Opinion, published in direct response to the Marina decision, addressed the issues presented by these statutes.\[130\]

that addresses “planning for children” in any context. However, in the context of the opinion, the court is merely making a statement that the Marina decision foreshadowed the event of children's inclusion within condominium developments. No statement is made that would tend to impose a duty to create a setting that would be practical and accommodating to children. Although condominium projects would want to protect themselves from lawsuits relating to negligence, there is little incentive for a complex to construct suitable play areas, facilities or layout of the project. Complexes desiring an adult atmosphere will grudgingly comply with O'Connor, but will foreseeably make every effort to make the complex undesirable to families.

\[124\] CAL. CIV. CODE §§ 798.6, 799.5 (Deering Supp. 1983). Note, although section 25 of the California Civil Code defines California's statutory age for adulthood at eighteen, the application of section 25.1 to “adult” mobile home communities has been recently questioned by the California Attorney General. 65 Op. Cal. Att'y Gen. 559 (1982). See also infra note 133 and accompanying text. As stated infra note 127 and accompanying text, the California Supreme Court avoided this sharply disputed area altogether.


\[126\] The lower court in O'Connor disagreed with the practicality of the statutes, holding:

Since persons retire at different ages, some at a fairly early age, and since the definition of what is an “older” citizen varies with the perspective of the individual (for many purposes, anyone over 50 years of age is a “senior citizen”), any legislative definition of those criteria must necessarily be arbitrary and such criteria itself would contain the seeds for a claim of discrimination by persons who fall short by a few days of attaining the requisite status.

Id.

\[127\] Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 743 n. 11, 640 P.2d 115, 128 n. 11, 180 Cal. Rptr. 496, 510 n. 11; see also infra notes 140-142 and accompanying text.

\[128\] California's Civil Code requires compliance to “reasonable rules.” CAL. CIV. CODE § 798.56(c) (Deering Supp. 1983).

\[129\] Id. See also infra notes 133-135 and accompanying text.

torney General George Deukmejian supported the statutory language of allowing "adult" communities in mobile home parks but based his support on a recognition "of the special needs of elderly citizens." Mr. Deukmejian did, however, leave the question open as to what age a person would have to be to obtain "adult" status in terms of the mobile home residency law. Although neither the courts nor the California Legislature have answered Mr. Deukmejian's question with a specific age requirement, it is conclusive that in this setting, they define "adult" to be an elderly citizen. Arbitrarily discriminating against families with minor children is clearly not the purpose of these special parks for the elderly. The true reason for the exclusion of non-adults from these parks is based on the special, unique needs of the elderly, and not the alleged "undesirable propensities" of children. It is a reasonable exception.

To summarize the above points presented in this Note, a blanket and arbitrary exclusion of children as a class, from planned housing, is a violation of the Unruh Act. All forms of planned housing have business characteristics and their compliance with the Act's provisions must also meet reasonable standards. Although arguments may be launched that age discrimination is reasonable and not arbitrary because of the boisterous propensities of children, Marina overruled this logic as

131. See supra note 124. Attorney General George Deukmejian was elected to the office of Governor of California in 1982.
133. Id. The opinion, in part, states:
    The Mobilehome Residency Law does not define the terms "adults only." It
    could mean a rule limiting residents to persons 18 years of age or older. On
    the other hand, the term could embrace a variety of more narrowly defined
    adult-only rules. An adults only device might mean "45 or older only." Id.
    at 561-62 (footnote omitted).
    Tp. v. Weymouth Tp., 71 N.J. 249, 284, 364 A.2d 1016, 1035 (1976) (setting the age of
    "adult" at fifty-two years); 12 U.S.C. § 1701(r) (1982); 42 U.S.C. § 1485 (1976) (set-
    ting an age minimum of sixty-two years for occupancy). See supra note 127 and ac-
    companying text.
    sections represent an implicit legislative finding that not only do older adults need
    inexpensive housing, but also that their housing interests and needs differ from fam-
    ilies with children." Id. at 229, 526 P.2d at 753.
    The case of Taxpayer Ass'n of Weymouth Tp. v. Weymouth Tp., 71 N.J. 249, 364
    A.2d 1016 (1976), cited additional needs of the elderly in this regard: limited and
    fixed incomes, physical problems, social problems, probability of accidents, falls as
    the leading cause of death in persons over sixty-five, need for wider walkways and
    fewer stairs, housing design to permit easy social contact, short distances between
    buildings, easy refuse collection, lighting problems and their susceptibility to being
    victimized, thus an additional need for security. Id. at 268-70, 364 A.2d 1026-28.
136. See supra notes 87-92 and accompanying text.
137. See supra note 99 and accompanying text.
    1982).
“class discrimination”. The Marina court held that under the Unruh Act, a person’s individual conduct is the only basis for discrimination. The apparent stalemate between these opposing views, however, carries with it a workable solution to king and pawn alike.

IV. A Solution

As discussed previously, an exception to the rule barring discrimination of children has been essentially carved out for adult mobile home parks. Case law has defined “adult” as elderly citizens, and has provided special provisions for their needs and circumstances. Logically, these special needs for the elderly are not present only in a mobile home park, but apply wherever senior adults reside as a group. It is by no means improper to extend the same protection found in mobile home parks to condominiums, co-ops, or residential housing developments, where senior adults reside if such a development would meet their needs. This allowance should be provided, not as an exclusionary measure to younger persons, but as a protective measure for older adults. Various cases and opinions have supported special housing for these elderly adults. However, two essential factors must be established in anticipation of possible abuses of this exception: (a) a specific age limit which bears a substantial relationship to the senior adult’s problems must be determined and universally applied, and (b) the facilities themselves must adequately and realistically meet the needs of the senior adult.

140. See supra note 124 and accompanying text.
141. See supra note 127 and accompanying text.
142. See supra note 135 and accompanying text.
143. Id.
144. Selection of age must not be set too low or else the needs detailed in note 135 supra, will not be met since the truly senior adult will be placed in a community of younger persons with different needs. Furthermore, an overabundance of senior adult housing will result in an age limit that is set too low. If a proper age is selected, the problem of overabundance will remedy itself through supply and demand. Otherwise, an overabundance of such communities would essentially deprive many persons of some of the typical, low cost benefits of community type housing. Age sixty-two appears to be a common selection and would be consistent with factor “a” of the text.
145. The denial of housing accommodations because of one’s occupation, marital status, or number of children, may or may not be violative of the Act depending on whether any regulations denying such housing accommodations are reasonable and somehow rationally related to the services performed and the facilities provided. For example, an apartment complex could justifiably establish itself to serve elderly people, have special facilities and services for them, and design the complex for maximum quiet and restfulness. Under these circumstances, the denial of an apartment to people with several children would probably not be “arbitrary” and thus not violative of the Act. On the other hand, it is doubtful that such an apartment complex could justify denying an apartment to a person because of his or her occupation or marital status because such classifications, on their face, do not necessarily upset the atmosphere the complex is trying to maintain.
Other than this exception extended to the elderly, the general rule would be that families with minor children would have the full protection of the California Unruh Act and be able to enjoy the benefits of planned community housing.

To assure acceptable behavior by children and adults within the planned community, proper restrictive covenants could establish reasonable rules of comportment necessary to create a favorable atmosphere. In this setting, denial of accommodations would affect only individual tenants who disrupt the atmosphere, not because of an arbitrary class determination, but because of their own personalities or predilections.

**CONCLUSION**

A retrospective analysis reveals that the California Unruh Act has been broadly written and liberally applied. Recently, the California Supreme Court, by viewing the age old relationship of landlord-tenant as a "business establishment," extended the Act's application to bar age discrimination in rental housing. This was the first big step in barring arbitrary discrimination by age. Shortly thereafter, the same court faced the plaid argument that planned housing communities are creations of individual ownership and therefore exempt from the "business establishment" status under the Unruh Act. In apparent readiness, the court primed and powdered the mighty Unruh Act cannon. The challenge before it ever deserving a mighty blast, but alas, a single pea issued forth from the mouth of that mighty muzzel. Although an age restrictive covenant was eliminated at the Village Green complex, the bulk of the problem continued. This Note concurs with the result reached by the California Supreme Court in striking down age restrictive covenants in the context before it. However, it criticizes the unnecessarily narrow and limited analysis of that opinion. Rather than focusing on the single role of an owners association as a business establishment, all factors must be


146. This could be achieved by employing section 1355 of the California Civil Code, for condominiums and co-ops, and section 798.56 of the California Civil Code, for mobile home parks. This solution was also suggested by the California Supreme Court in O'Connor v. Village Green Owners Ass'n, 33 Cal. 3d 790, 794, 662 P.2d 427, 429, 191 Cal. Rptr. 320, 322 (1983).

147. See 58 Op. Cal. Att'y Gen. 609 (1975). See also Stouman v. Reilly, 37 Cal. 2d 715, 716, 234 P.2d 969 (1951) (proprietor has no right to exlude or eject a patron "except for good cause").

In addition, it is true that enforcing rules of comportment on a case-by-case basis would carry with it difficulties and inconveniences; however, the bad manners of a few children, or their parents, should not provide the basis to exclude all families with minor children anymore than should the bad manners of a few members of any group.

By viewing the entire housing situation as it exists in California at the present time, dealing with people as individuals and not as groups, would assure a more equitable, equal, and homogeneous arrangement for all concerned.
considered collectively, with all types of housing in mind. Only then can a consistent and reasonable result be reached for all settings. As economic and social needs change, so too must the test of reasonableness. In any event, the single fact of individual property ownership does not suddenly make the unreasonable, reasonable. At present, an exception to the invalidation of age restrictive covenants can be made only in communities that are specially created to accommodate the unique needs of the elderly. This exception need not be limited exclusively to mobile home parks; but in whatever settings it is applied, it must be strictly construed to assure that its intended purposes are fully and properly carried out.

Tad D. Draper*

* This article is dedicated to my wife, Christine, whose patience and support made it all possible.