

ATTORNEY GENERAL  
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING  
DISPUTE RESOLUTION PROGRAM

**In the Matter of the Complaint of Jan  
Howard Against Lago de Plata Villa.**

**NOTICE OF VIOLATION**

**RCW 59.30.040**

**MHDRP Complaint No. 519785**

**Following an investigation into the above-entitled matter pursuant to RCW 59.30.040, the Manufactured Housing Dispute Resolution Program of the Office of the Attorney General of Washington has found there to be a VIOLATION of the Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20. If you disagree with this decision, your attention is directed to the section entitled APPEAL RIGHTS at the end of this Notice, which outlines the procedures under RCW 59.30.040 for filing an appeal.**

**This Notice does not limit the rights of any party to take other legal action.**

**I. INTRODUCTION**

- 1.1 On November 9, 2017, Jan Howard filed a complaint against Lago de Plata Villa with the Manufactured Housing Dispute Resolution Program (the Program). Howard alleged that Lago de Plata Villa violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, by failing to identify in the rental agreement “any additional charges” to be paid by Howard and the nature of fees, if any, charged to Howard related to utilities, services, and facilities available to Howard during her tenancy. The Program contacted Lago de Plata Villa in an attempt to facilitate negotiations between the parties to resolve the dispute. However, the parties were not able to negotiate a resolution to this matter and the Program therefore concluded that an agreement could not be reached between the parties. As more fully set forth below, the Program concludes that Lago de Plata Villa violated RCW 59.20.060(1)(a) by failing to identify in Howard’s rental agreement any additional charges (not including the terms for payment of rent) to be paid by Howard and RCW 59.20.060(1)(i) by failing to identify in Howard’s rental agreement the nature of the fees, if any, to be charged to Howard related to the utilities, services, and facilities available to Howard during her tenancy.

## II. FACTUAL BACKGROUND

- 2.1 Lago de Plata Villa is a mobile home park for purposes of RCW 59.20.030(10), and is located in Everett, Washington.
- 2.2 Jan Howard owns and resides in a manufactured/mobile home located on space rented from Lago de Plata Villa, and therefore is a tenant under RCW 59.20.030(18).
- 2.3 On March 23, 2017, Howard commenced her tenancy at Lago de Plata Villa through assignment of the prior tenants' one-year lease, dated January 1, 2017 through December 31, 2017 (2017 rental agreement).
- 2.4 Prior to the expiration of the 2017 rental agreement, Lago de Plata Villa provided Howard with a new rental agreement commencing January 1, 2018 and ending December 31, 2018 (2018 rental agreement).
- 2.5 Section 2 of the 2018 rental agreement states that "In addition to the monthly rental and any other charges or fees specified in this Agreement, Tenant agrees to pay to Landlord the following charges: Ag Fee, Landfill Fee, Utility Billing Fee, Clubhouse Use Fee, Legal Notice Fee."
- 2.6 Section 3 of the 2018 rental agreement states that the tenant is responsible to pay for all utilities supplied to the lot.
- 2.7 Section 4 of the 2018 rental agreement states that "The following facilities shall be available to Tenant during the tenancy: Clubhouse, Seasonal pool, Library."
- 2.8 Lago de Plata Villa informed the Program that the:
  - 2.8.1 Ag Fee refers to the \$10 annual registration assessment under RCW 59.30.050(3)(b), of which the landlord may charge a maximum of \$5 to the tenant, for each manufactured/mobile home subject to RCW 59.20 within a manufactured/mobile home community. Lago de Plata Villa states, "This provision is in our lease to explicitly notify our Residents of our practice of passing through the statutorily set charges for this program as allowed by the statute."
  - 2.8.2 Landfill Fee "is a fee charged by Snohomish County which is now called the 'Solid Waste Program.'" Lago de Plata Villa states, "This change is to more clearly meet our obligations to explicitly include the additional charges and the nature of the charges that are to be paid by the tenant."
  - 2.8.3 Utility Billing Fee is "to account for the extra labor involved with the collection of utility usage data and invoicing. We are required by statute and case law to identify any additional charges and the nature of those charges that are to be paid by the tenant."

- 2.8.4 Clubhouse Use Fee has not yet been implemented, but that “we are reserving the right to do so in [the] future should past abusive use of the common area facilities continue.” Lago de Plata Villa states, “we are required by statute and case law to identify any additional charges and the nature of those charges that are to be paid by the tenant. We felt that in an abundance of caution it should be disclosed as part of the rental agreement.”
- 2.8.5 Legal Notice Fee is not a current fee being charged, but that “we are reserving the right in future leases to begin charging a fee associated with the additional expense of preparation and delivery of legal notices, to include notices to comply or vacate which can often take substantial time to document and prepare.” Lago de Plata Villa states, “we are required by statute and case law to identify any additional charges and the nature of those charges that are to be paid by the tenant.”
- 2.9 The 2018 rental agreement contains examples where Lago de Plata Villa describes the amount and nature of other fees, including:
- 2.9.1 \$50 “NSF fee” for returned checks (Section 5);
- 2.9.2 \$0 per day fee (i.e., no fee) for each guest who remains in Lago de Plata Villa for more than 15 days in any 60 day period (Section 15);
- 2.9.3 “NA” fee (i.e., no fee) for guest parking (Section 16).
- 2.10 Section 5 of the 2018 rental agreement also describes “late charges” in which a \$50 late fee is imposed “if full rent, fees, and other charges are not received by the 5<sup>th</sup> day of each month.”
- 2.11 However, the 2018 rental agreement does not provide information regarding the amount and nature of all the charges and fees purportedly owed by Howard, specifically the Ag Fee, Landfill Fee, Utility Billing Fee, Clubhouse Use Fee, and Legal Notice Fee.
- 2.12 In July 2018, Lago de Plata Villa offered Howard a revised rental agreement commencing January 1, 2018 and ending December 31, 2018 (2018 revised rental agreement).
- 2.13 Section 2 of the 2018 revised rental agreement indicates that “Additional Charges” are identified in the “attached addendum F.”
- 2.14 Section 3 of the 2018 revised rental agreement indicates that the tenant is responsible to pay for all utilities supplied to the lot “except for see attached addendum F, which shall be paid for by Landlord.”

2.15 Section 4 of the 2018 revised rental agreement indicates that the facilities available to the tenant are identified in addendum F.

2.16 Addendum F to the 2018 revised rental agreement states in full:

This addendum to the 2018 rental agreement is provided as part of the dispute resolution engaged in by the tenant and the landlord and facilitated by the Attorney General's Dispute Resolution Program. The following language is intended to assist in describing the terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant and to identify which additional charges that occur less frequently than monthly are itemized in a billing to the tenant.

Of the fees identified in Section 2 of the 2018 rental agreement,<sup>1</sup> only the Landfill Fee is a monthly fee. It is invoiced along with the tenant's monthly utility bill.

At this time, the remaining fees identified in Section 2 are billed less frequently than monthly or are not currently billed to tenants.

Section 3 and Section 4 of the 2018 rental agreement may be considered together to identify the utilities, services and facilities that are available to a tenant during the term of their tenancy.

The landlord does not provide any Utilities supplied to the mobile home lot and each tenant pays the fees for the utilities they use as they are billed by the utility company or via a monthly invoice provided by the landlord.

The Facilities which are available to tenants are the Clubhouse, Seasonal Pool, and Library. The current fee associated with the use of the Clubhouse is a refundable cleaning deposit when the Clubhouse is reserved for exclusive use. There are no fees for the Seasonal Pool or Library.

No Services are provided by the landlord.

2.17 Sections 2, 3 and 4 of the 2018 revised rental agreement do not identify any "fees" or additional charges, or any utilities, services or facilities available to Howard.<sup>2</sup> The 2018 revised rental agreement instead refers Howard to Addendum F to obtain this information.

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<sup>1</sup> The 2018 rental agreement identified in Addendum F refers to the 2018 revised rental agreement identified in this Notice of Violation.

<sup>2</sup> Sections 5, 15 and 16 of the 2018 revised rental agreement contain information regarding the amount and nature of the late charges, NSF fees, guest fees and guest parking. *See also* ¶¶ 2.9, 2.10.

- 2.18 Addendum F identifies the Landfill Fee but does not identify the amount and nature of this fee.
- 2.19 Addendum F identifies the Clubhouse Fee and the nature of the fee, but does not identify the amount.
- 2.20 Addendum F does not identify the Ag Fee, Utility Billing Fee and Legal Notice Fee previously identified in the 2018 rental agreement.

### III. LEGAL AUTHORITY

- 3.1 The MHLTA provides that rental agreements must contain “[t]he terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant.” RCW 59.20.060(1)(a).
- 3.2 The MHLTA provides that rental agreements must contain “[a] listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any to be charged.” RCW 59.20.060(1)(i).
- 3.3 The MHLTA prohibits a landlord from charging “any tenant a utility fee in excess of actual utility costs.” RCW 59.20.070(6). “‘Actual utility costs’ is limited to those costs that the [landlord] was charged by or paid to” the utility provider for providing the utility. *Narrows Real Estate, Inc. v. MHDRP, Consumer Protection Division, Office of the Attorney General*, 199 Wn. App. 842, 856, 859, 401 P.3d 346 (2017). A landlord may not charge a tenant more than the actual utility cost, “unless additional expenses are listed and the nature of the additional expenses are identified in the rental agreement as costs independent from the utility cost.” *Id.* at 854-55 (citing RCW 59.20.060(1)(i)).

### IV. VIOLATIONS

- 4.1 Although Lago de Plata Villa indicates that the Landfill Fee is invoiced to tenants on a monthly basis, the 2018 revised rental agreement and Addendum F do not identify the amount and nature of the Landfill Fee in violation of the MHLTA. RCW 59.20.060(1)(a) and 59.20.060(1)(i). *See also Narrows Real Estate, Inc.*, 199 Wn. App. at 854-56, 859.
- 4.2 The 2018 revised rental agreement and Addendum F do not identify the amount of the Clubhouse Fee in violation of the MHLTA. RCW 59.20.060(1)(i). *See also* RCW 59.20.060(1)(a).
- 4.3 The 2018 revised rental agreement and Addendum F violate the MHLTA to the extent Lago de Plata Villa requires payment of other fees (e.g., Ag, Utility Billing and Legal Notice Fees) without identifying the amount and nature of those fees. RCW 59.20.060(1)(a), (i).

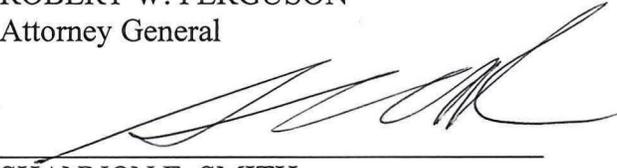
### V. CORRECTIVE ACTION

- 5.1 Lago de Plata Villa must, within fifteen (15) business days of receipt of this Notice, offer Howard a written rental agreement that identifies the amount and nature of all charges and fees, in compliance with RCW 59.20.060(1)(a) and 59.20.060(1)(i).
- 5.2 Failure to take the corrective action set forth above within fifteen (15) business days of receipt of this Notice will result in the imposition of a \$50 fine per day thereafter, until compliance is achieved.

Signed this 2<sup>nd</sup> day of <sup>October</sup>~~September~~, 2018.

MANUFACTURED HOUSING DISPUTE  
RESOLUTION PROGRAM

ROBERT W. FERGUSON  
Attorney General



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SHANNON E. SMITH  
Senior Counsel  
Division Chief, Consumer Protection Division

## APPEAL RIGHTS

Either party may appeal this Notice by requesting a hearing before an administrative law judge. If neither party appeals this Notice, the Notice of Violation becomes a final order of the Attorney General and is not subject to review by any court or agency.

RCW 59.30.040 governs the parties' appeal rights. A copy of RCW 59.30.040 is attached. An appeal of this Notice requesting a hearing must be:

- In writing, stating the basis for the appeal and the specific remedy sought
- Signed by the appealing party
- Received by Manufactured Housing Dispute Resolution Program within fifteen (15) business days of the party's receipt of this notice
- Mailed or delivered to:  
Attorney General's Office  
Manufactured Housing Dispute Resolution Program  
800 Fifth Avenue, Suite 2000, TB-14  
Seattle, WA 98104-3188

If a timely appeal is received, the Program will coordinate with the Office of Administrative Hearings to schedule a hearing. In an appeal you will bear the cost of your own legal expenses. An administrative law judge will hear and receive pertinent evidence and testimony and decide whether a violation of the MHLTA has occurred by a preponderance of the evidence. The administrative law judge's decision will constitute the final agency order of the Program. A final order may be appealed to superior court according to instructions included in a decision.

## PROOF OF SERVICE

I certify that on this day, I caused to be served a copy of this document on the following parties via the method indicated:

Lago de Plata Villa c/o Détente Management, Inc. 7426 SE 27th St, Suite 100 Mercer Island, WA 98040	<input checked="" type="checkbox"/> Certified Mail
Jan Howard 620 112th St SE #175 Everett, WA 98208	<input checked="" type="checkbox"/> Certified Mail
Lago de Plata Villa c/o Tony Branson Olsen Law Firm PLLC 205 South Meridian Puyallup, WA 98371	<input checked="" type="checkbox"/> Certified Mail, Receipt Requested

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2<sup>nd</sup> day of October, 2018, at Seattle, Washington.

  
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LUTHER CAULKINS  
Legal Assistant

## **RCW 59.30.040**

### **Dispute resolution program—Complaint process.**

(1) An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter 59.20 RCW.

(2) Upon receiving a complaint under this chapter, the attorney general must:

(a) Inform the complainant of any notification requirements under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations and encourage the complainant to appropriately notify the respondent of the complaint; and

(b) If a statutory time period is applicable, inform the complainant of the time frame that the respondent has to remedy the complaint under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations.

(3) After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by (i) responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents; and (ii) providing access to the manufactured/mobile home facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

(5) If after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter 59.20 RCW has occurred.

(a) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has occurred, the attorney general shall deliver a written notice of violation to the respondent who committed the violation by certified mail. The notice of violation must specify the violation, the corrective action required, the time within which the corrective action must be taken, the penalties including fines, other penalties, and actions that will result if corrective action is not taken within the specified time period, and the process for contesting the determination, fines, penalties, and other actions included in the notice of violation through an administrative hearing. The attorney general must deliver to the complainant a copy of the notice of violation by certified mail.

(b) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has not occurred, the attorney general shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the process for contesting the determination included in the notice of nonviolation through an administrative hearing.

(6) Corrective action must take place within fifteen business days of the respondent's receipt of a notice of violation, except as required otherwise by the attorney general, unless the respondent has submitted a timely request for an administrative hearing to contest the notice of violation as required under subsection (8) of this section. If a respondent, which includes either a landlord or a tenant, fails to take corrective action within the required time period and the attorney general has not received a timely request for an administrative hearing, the attorney general may impose a fine, up to a maximum of two hundred fifty dollars per violation per day, for each day that a violation remains uncorrected. The attorney general must consider the severity and duration of the violation and the violation's impact on other community residents when determining the appropriate amount of a fine or the appropriate penalty to impose on a respondent. If the respondent shows upon timely application to the attorney general that a good faith effort to comply with the corrective action requirements of the notice of violation has been made and that the corrective action has not been completed because of mitigating factors beyond the respondent's control, the attorney general may delay the imposition of a fine or penalty.

(7) The attorney general may issue an order requiring the respondent, or its assignee or agent, to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter. The affirmative actions may include, but are not limited to, the following:

(a) Refunds of rent increases, improper fees, charges, and assessments collected in violation of this chapter;

(b) Filing and utilization of documents that correct a statutory or rule violation; and

(c) Reasonable action necessary to correct a statutory or rule violation.

(8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter 34.05 RCW to contest:

(a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;

(b) A fine or other penalty imposed under subsection (6) of this section; or

(c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.

The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.

(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.

(10) The administrative law judge appointed under chapter 34.12 RCW shall:

(a) Hear and receive pertinent evidence and testimony;

(b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and

(c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.

The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.

(11) When the attorney general imposes a fine, refund, or other penalty against a respondent, the respondent may not seek any recovery or reimbursement of the fine, refund, or other penalty from a complainant or from other manufactured/mobile home tenants.

(12) All receipts from the imposition of fines or other penalties collected under this section other than those due to a complainant must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070.

(13) This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or tenants may bring a legal action. This section does not apply to unlawful detainer actions initiated under RCW 59.20.080 prior to the filing and service of an unlawful detainer court action; however, a tenant is not precluded from seeking relief under this chapter if the complaint claims the notice of termination violates RCW 59.20.080 prior to the filing and service of an unlawful detainer action.

[ 2007 c 431 § 4.]

#### NOTES:

Implementation—2007 c 431: See note following RCW 59.30.010.