ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of the **Complaints of Sandra Burghard, Beverly Renick, Gwen Leegard, Jakob Maier, Kristi Young, Richard and Marilyn Thomas, Kae Lamberton, Irma Michael-Huezo, and Kristina Nelson Against Auburn Hills Community.**	**NOTICE OF VIOLATION** **RCW 59.30.040** **MHDRP Complaint Nos. 484974, 485003, 486144, 485512, 485002, 484975, 484773, 485005, and 485172**

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 In May 2016, Sandra Burghard, Beverly Renick, Gwen Leegard, Jakob Maier, Kristi Young, Richard and Marilyn Thomas, Kae Lamberton, Irma Michael-Huezo, and Kristina Nelson (the Tenants) each of whom is a tenant of Auburn Hills Community (Auburn Hills) manufactured housing park filed a complaint against Auburn Hills with the Manufactured Housing Dispute Resolution Program (Program). The Tenants alleged that Auburn Hills violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, by failing to provide three months' notice before a rent increase. The Program contacted Auburn Hills 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 concluded that an agreement could not be reached between the parties. As a result, the Program conducted a formal investigation pursuant to RCW 59.30.040. As more fully set forth below, the Program concludes that Auburn Hills violated RCW 59.20.090(2), by failing to provide three months' written notice before increasing the rent.

II. CONSOLIDATION

2.1 Because the Tenants complained about the same issue, the Program consolidated the complaints into this single Notice.

III. FACTUAL BACKGROUND

3.1 Auburn Hills is a mobile home park for purposes of RCW 59.20.030(10) and is located in Auburn, Washington.

3.2 Each of the Tenants owns and resides in a manufactured/mobile home located on space rented from Auburn Hills, and therefore each is a tenant under RCW 59.20.030(18).

3.3 Auburn Hills is managed by Commonwealth Real Estate Services (Commonwealth), a property management company.

3.4 In January 2016, Auburn Hills (through Commonwealth) sought to notify tenants of a rent increase. Auburn Hills asserts that it notified each tenant that the rent would increase effective May 1, 2016 in a January 5, 2015 letter signed by its property manager, Collin DeCastro. Auburn Hills further contends that each tenant was served with the notice either by posting the notice at the tenant's residence or U.S. Mail on January 29, 2016.

3.5 On February 15, 2016, Commonwealth appointed a new on-site manager for Auburn Hills. The new manager observed that some Auburn Hills tenant files did not include proof of service for the rent increase notice.

3.6 Following that discovery, on April 18, 2016, Commonwealth, through Mr. DeCastro, sent a letter to the Tenants instructing them to disregard the May 1, 2016 effective date of the rent increase and that the rent increase would take effect on August 1, 2016.

3.7 However, Commonwealth then discovered service slips dated January 29, 2016, signed by two if its employees asserting that Mr. DeCastro's January 5, 2015 dated letter, had been posted on each door and placed in the mail.

3.8 Commonwealth contends that this discovery confirms that Commonwealth properly served the Tenants with the notice of rent increase on January 29, 2016. As a result of this discovery, Commonwealth, through Mr. DeCastro, sent yet another notice, dated April 26, 2016, to the Tenants acknowledging confusion regarding the changing date of the rent increase, but nonetheless reverting back to the original May 1, 2016 effective date for the rent increase:

> The original notice served in January that notified you of your rent increase taking effective May 1, 2016, stands. Your monthly space rent will increase to $720.00 starting May 1, 2016...

3.9 Each of the Tenants states that they never received, either by mail or by posting, the rent increase notice dated January 5, 2016. Each of the Tenants learned of the impending rent increase for the first time through the April 26, 2016 notice.

3.10 Auburn Hills increased the rent effective May 1, 2016.

3.11 Each of the Tenants has been paying the increased rental amount since May 1, 2016.

IV. VIOLATIONS

3.1 RCW 59.20.090(2) requires landlords to provide written notice three months in advance of any rental increase:

> A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

3.2 Auburn Hills violated RCW 59.20.090(2) when it failed to provide tenants with written notice three months before it increased the rent. Auburn Hills' notice to increase the rent effective May 1, 2016, was improper.

V. CORRECTIVE ACTION

5.1 Auburn Hills must fully reimburse Tenants the amount that each tenant overpaid for rent from May1, 2016, to the present. Auburn Hills must provide this full reimbursement by April 28, 2017.

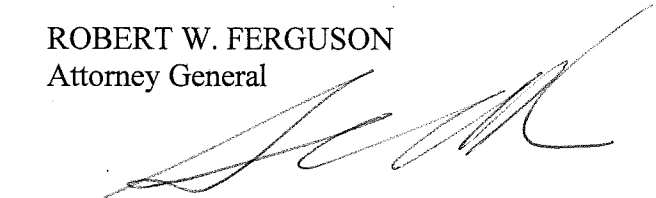
5.2 Auburn Hills shall not attempt to seek reimbursement from Tenants.

5.3 A failure to take the corrective action set forth above within the specified time periods will result in the imposition of a $75.00 fine per day thereafter, until compliance is achieved.

Signed this 11th day of April, 2017.

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM

ROBERT W. FERGUSON
Attorney General



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, MHDRP will coordinate with the Office of Administrative Hearings to schedule a hearing. In an appeal you will bear the cost of you 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 MHDRP. A final order may be appealed to superior court according to instructions included a decision.

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ Certified and First-Class Mail

TO: Sandra J. Burghard
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Auburn Hills Community LLC
c/o Common Wealth Real Estate Services
2375 130th Ave. NE, Ste. 102
Bellevue, WA 98005

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

DATED this 11th day of April, 2017, at Seattle, Washington.

P. JOSEPH DROUIN
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**.