ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of the **Complaint of Lois Bowen Against Oaks Mobile and RV Court.**	**NOTICE OF VIOLATION** **RCW 59.30.040** **MHDRP Complaint No. 491053**

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 September 1, 2016, Lois Bowen filed a complaint against Oaks Mobile and RV Court with the Manufactured Housing Dispute Resolution Program (the Program). Lois Bowen alleged that Oaks Mobile and RV Court violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20 by failing to provide proper notice of a rent increase. The Program contacted Oaks Mobile and RV Court in an attempt to facilitate negotiation between the parties and resolve the dispute through an informal dispute resolution process. 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 a result, the Program conducted a formal investigation pursuant to RCW 59.30.040. As more fully set forth below, the Program concludes that Oaks

Mobile and RV Court has violated RCW 59.20.090(2) by increasing Lois Bowen's rent without providing the proper notice.

II. FACTUAL BACKGROUND

2.1 Oaks Mobile & RV Court (Oaks Mobile) is a mobile home park for purposes of RCW 59.20.030(10), and is located in Woodland, Washington.

2.2 Lois Bowen (Bowen) owns and resides in a manufactured/mobile home located on space rented from Oaks Mobile, and therefore is a tenant under RCW 59.20.030(18).

2.3 Oaks Mobile is owned by TST, LLC (TST).

2.4 Brooke Torres (Torres) is a member of TST.

2.5 In a letter dated June 1, 2016, TST informed residents that Oaks Mobile is under new ownership.

2.6 TST sought to ensure that all residents had a written, signed rental agreement and that there were written rules and regulations.

2.7 In a letter dated July 1, 2016, TST informed residents that "we are in the process of creating new leases… new rules and regulations will also be sent out...."

2.8 In a letter dated July 15, 2016, TST provided residents with a new rental agreement and rules and regulations stating, "Please read through and sign where it is highlighted. Please keep these lease agreements & rules and policies in a safe place. We will be picking these up from you no later than **AUGUST 5, 2016.** No extensions will be given, so please take the time before then to ask any questions, review and sign all paperwork." The lease provided to Bowen was dated July 1, 2016.

2.9 Bowen did not agree to sign the rental agreement dated July 1, 2016 or the rules and regulations for several reasons, including that the rules and regulations identified the wrong manufactured home park and referenced Oregon law.

2.10 In a letter dated July 25, 2016, TST informed residents that "Evelyn in space #19 will be our new manager." And, TST informed residents that "signed rules and regulations may be dropped off with Evelyn. We will get everyone copies once we have received your packet."

2.11 TST provided Bowen a new rental agreement dated September 1, 2016. This agreement was for a term of one year, starting September 1, 2016, and automatically renewed for a term of one year. The monthly rent listed was $320.

2.12 In a letter to residents dated August 20, 2016, TST stated "If you are on a current valid lease agreement; please produce the agreement and we will abide by the lease… Those

who cannot provide a current valid lease agreement or return the lease provided by TST, LLC will be regarded as not having any lease at all. Please do the following no later than August 31, 2016. If you will be mailing in a copy, please be sure the mailed copy arrives by August 31, 2016." [1]

2.13 Bowen was unable to produce her rental agreement with the prior owner.

2.14 Prior to the August 31 deadline, TST served on Bowen a "90 Day Notice to Change Rent" dated on August 29, 2016, stating that effective December 1, 2016, Bowen's rent will be increased from $320 to $525.

2.15 Upon serving the August 29, 2016 rent increase notice, Bowen had still not signed the September 1, 2016 rental agreement. Torres informed the Program that the August 29, 2016 rent increase notice was valid because the September 1, 2016 rental agreement (which Torres contends is invalid) stated that TST can "give a rental increase with a 90 day written notice to Lois Bowen. The rental increase was given on August 29, 2016.... The rent increase is not effective until December 1, 2016; which is a 4 month notification from our office, that is one month longer than the minimum amount of notice required by Washington state and in the lease." However, upon serving the August 29, 2016 rent increase notice there was no prior rental agreement between Bowen and TST in which the expiration of the term was December 1, 2016.

2.16 On August 30, 2016, Bowen emailed Torres disputing the validity of the August 29, 2016 rent increase notice stating that her lease agreement with the prior owner went through September 8.[2] Bowen stated that in "October [2016] you can start your correct 90 day notice, then in jan. of 2017 we begin the new rent increase." Bowen acknowledged that she does not have a "correct current lease" with TST and that TST's "rules and lease papers are all copied off of Oregon state rules." Bowen also states that residents have been told the manager is not accepting any more paperwork.

2.17 Later that day, Torres responded to Bowen's email stating that if Bowen can produce a valid, current rental agreement then TST will abide by it. Torres also stated "the manager will accept any paperwork we have given you to sign & will issue copies as well."

2.18 On September 9, 2016, TST, through its Manager Evelyn Irvin, served on Bowen a Notice to Comply with the Lease/Rental Agreement and/or Rules/Regulations or to Vacate. This Notice to Comply identified the violation as "Sign the lease agreement" and to cure the violation, Bowen must "Please sign and return lease agreement."

2.19 On September 15, 2016, TST sent Bowen corrected Rules and Regulations, which removed references to Oregon state law and properly identified Oaks Mobile.

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[1] Contrary to this letter, Torres informed the Program that Bowen was supposed to return the signed September 1, 2016 rental agreement by August 15, 2016.

[2] Bowen identified the year as 2012 but appears she meant 2016. Additionally, in a handwritten note, Bowen informed Torres that her old lease was in effect until September 8, 2016.

2.20 At some point after receiving the corrected Rules and Regulations, Bowen signed the lease dated September 1, 2016. Bowen provided this signed lease to the manager, Evelyn Irvin, who also signed the lease.

2.21 In December 2016, Bowen paid the increased rent of $525 and informed TST that she "is paying the extra 205.00 this month Dec. 3, 2016 under duress...."

2.22 On August 28, 2017, TST served on Bowen a "90 Day Notice to Increase Rent" stating that effective December 1, 2017 Bowen's rent will be increased from $525 to $550.

2.23 On or about October 2, 2017, Bowen wrote to Torres stating "My Dec 1, 2017 rent check will still be for $525.00 – contract runs through Dec 1st to the end of Dec. 2017 – Year contract is for 12 month – Jan 1st 2018 Rent is $550.00." However, TST has not provided Bowen with a rental agreement that begins December 1, 2016 and ends December 31, 2017.

2.24 Torres asserts that the September 1, 2016 rental agreement signed by Bowen and the manager Evelyn Irvin is invalid because the manager does not have authorization to sign any rental agreement with tenants.

2.25 Bowen complied with Torres' instructions that she provide the signed rental agreement to the manager, who Torres said "will accept any paperwork we have given you to sign & will issue copies as well." But, Torres continues to assert that Bowen does not have a valid rental agreement with TST.

2.26 TST has not shown that the expiration of the term of Bowen's rental agreement is December 1. Moreover, TST served both notices of rent increase (August 2016 and 2017) while maintaining there is no valid, current lease agreement between TST and Bowen.

III. VIOLATIONS

3.1 RCW 59.20.090(2) requires that "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 Bowen and Torres misconstrue when a landlord can lawfully raise a tenant's rent pursuant to RCW 59.20.090(2) by ignoring the language "a landlord seeking to increase the rent *upon expiration of the term of a rental agreement*..." (emphasis added). *See* 2.15, 2.16, 2.23.

3.3 TST cannot comply with RCW 59.20.090(2) by only giving Bowen notice of a rent increase three months prior to the effective date of the increase. TST must first determine the "expiration of the term of" Bowen's rental agreement.

3.4 Bowen and Torres dispute whether the September 1, 2016 rental agreement is a valid agreement between the parties. However, the "90 Day Notice to Change Rent" served on August 29, 2016 with an effective date of December 1, 2016 violates RCW 59.20.090(2) regardless of whether the September 1, 2016 rental agreement is a valid agreement between Bowen and TST.

3.5 If the September 1, 2016 rental agreement is valid, the August 29, 2016 rent increase notice violates RCW 59.20.090(2) because it seeks to increase Bowen's rent prior to the expiration of the term of that rental agreement (September 1, 2017).

3.6 If the September 1, 2016 rental agreement is invalid, the August 29, 2016 rent increase notice violates RCW 59.20.090(2) because TST has not provided evidence that the "expiration of the term of [Bowen's] rental agreement" is December 1, 2016.

3.6.1 On October 4, 2017, Torres informed the Program that the December 1, 2016 effective date for the rent increase was based on Bowen's statement that her rental agreement ends on December 1, 2016. However, this is inconsistent with Torres' prior statements to the Program, Bowen's written statements and the evidence.

3.6.1.1.1 The "90 Day Notice to Change Rent" was served on August 29, 2016 with an effective date of December 1, 2016.

3.6.1.1.2 On August 30, 2016, Bowen informed Torres that her prior lease agreement was effective through September 8.

3.6.1.1.3 On November 29, 2016, Torres informed the Program that Bowen "was originally disputing the rental increase effective December 1 stating her lease agreement wasn't up until September."

3.6.1.1.4 Bowen informed TST that she was paying the rent increase for December 2016 "under duress."

3.6.1.1.5 Any statement by Bowen that her lease ended December 1, 2016 occurred after the 90 Day Notice to Change Rent was served on August 29, 2016.

3.7 The "90 Day Notice to Increase Rent" TST served on Bowen dated August 28, 2017, with an effective date of December 1, 2017 violates RCW 59.20.090(2) regardless of whether the September 1, 2016 rental agreement is a valid agreement between Bowen and TST for the reasons set forth in 3.5 and 3.6.[3]

[3] While Bowen appears to believe she now has a rental agreement that starts on December 1, 2016 and ends on December 31, 2017, Torres has repeatedly asserted that no valid rental agreement exists between Bowen and TST. Nor has Bowen produced a rental agreement with these operative dates.

IV. CORRECTIVE ACTION

4.1 TST must, within fifteen (15) business days of receipt of this Notice:

4.1.1 Fully reimburse Bowen $205 for each month Bowen overpaid for rent from December 1, 2016 through the present.

4.1.2 Submit to the Program records of rent payments made by Bowen from December 1, 2016 through the present identifying the months Bowen overpaid for rent.

4.1.3 Submit to the Program a copy of the reimbursement check TST provides to Bowen.

4.2 TST shall not seek to increase Bowen's rent without complying with RCW 59.20.090(2).[4]

4.3 TST shall not attempt to seek reimbursement from Bowen.

4.4 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 $75 fine per day thereafter, until compliance is achieved.

Signed this 5th day of December, 2017.

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM

ROBERT W. FERGUSON
Attorney General

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

[4] Because the Parties dispute whether a valid, written rental agreement currently exists, the Program encourages Bowen and TST to enter into a written, signed rental agreement as required by, and that complies with, the MHLTA to determine "the expiration of the term" that must be identified for rent increase notices under RCW 59.20.090(2).

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 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 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:

Oaks Mobile & RV Court c/o TST LLC PMB 452 16420 SE McGillivray, Ste. 103 Vancouver, WA 98683	☒First-Class Mail, Postage Prepaid ☒Certified Mail, Receipt Requested
Lois Marlene Brown PO Box 2 Woodland, WA 98674	☒First-Class Mail, Postage Prepaid
Lois Marlene Brown 38308 NW Lakeshore Dr., Space #7 Woodland, WA 98674	☒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 5 day of December, 2017, at Seattle, Washington.

Michelle Ferazza

MICHELLE FERAZZA
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**.