

ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of the

Complaints of Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley Against Oaks Mobile and RV Court.

NOTICE OF VIOLATION

RCW 59.30.040

MHDRP Complaint Nos. 525341,
524803, 526772 and 533727

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 Between January through July 2018, Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley (Complainants) filed complaints against Oaks Mobile and RV Court with the Manufactured Housing Dispute Resolution Program (the Program). The Complainants 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 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 Oaks Mobile and RV Court has violated RCW 59.20.090(2) by increasing the Complainants' rent without providing the proper notice.

II. FACTUAL BACKGROUND

- 2.1 Oaks Mobile and 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 Donna Gosney 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 Walter Lane 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).
- 2.4 Lorraine Simoni owned and resided in a manufactured/mobile home located on space rented from Oaks Mobile until April 30, 2018, and therefore was a tenant under RCW 59.20.030(18) for purposes of this Notice of Violation until April 30, 2018.
- 2.5 Nanette Stickley 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).
- 2.6 Oaks Mobile is owned by TST, LLC (TST).
- 2.7 Brooke Torres (Torres) is a member of TST.
- 2.8 On December 5, 2017, the Program issued a Notice of Violation against Oaks Mobile and RV Court for violating RCW 59.20.090(2) by increasing the complainant's rent without providing proper notice. Notice of Violation, *In the Matter of the Complaint of Lois Bowen Against Oaks Mobile and RV Court* (Dec. 5, 2017) (MHDRP Complaint No. 491053) (hereinafter Oaks NOV I).
- 2.9 Oaks Mobile did not appeal the Oaks NOV I. Therefore, the Oaks NOV I is the final order of the Attorney General and is not subject to review by any court or agency. RCW 59.30.040(8).
- 2.10 Oaks Mobile complied with the Oaks NOV I by reimbursing Bowen \$2,690 for 13 months of overpaid rent (December 2016 through December 2017).
- 2.11 Shortly after the Program issued the Oaks NOV I, the Program received complaints from Gosney, Lane, Simoni and Stickley alleging similar violations of the MHLTA against Oaks Mobile based on similar, defective notices to increase rent.
- 2.12 The Program incorporates relevant facts identified in the Oaks NOV I, for purposes of this Notice of Violation, including:

- 2.12.1 In a letter dated June 1, 2016, TST informed residents that Oaks Mobile is under new ownership. Oaks NOV I ¶ 2.5.
- 2.12.2 TST sought to ensure that all residents had a written, signed rental agreement and that there were written rules and regulations. Oaks NOV I ¶ 2.6.
- 2.12.3 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...” Oaks NOV I ¶ 2.7.
- 2.12.4 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. Oaks NOV I ¶ 2.8.
- 2.12.5 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.” Oaks NOV I ¶ 2.12.
- 2.12.6 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. Oaks NOV I ¶ 2.14.
- 2.12.7 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. Oaks NOV I ¶ 2.15.

A. Donna Gosney, MHDRP Complaint No. 525341

2.13 On January 22, 2018, Gosney filed her complaint against Oaks Mobile.

2.14 As part of Gosney's complaint, the Program received:

2.14.1 An unsigned rental agreement between TST and Gosney, dated August 5, 2016. Section 1 of the agreement identifies the term of the agreement as one year, commencing on July 1, 2016, and renewable for a term of "month to month thereafter." Section 2 identifies the monthly rental amount as \$320 (2016 Gosney rental agreement).

2.14.2 A "90 Day Notice to Change Rent" with a posting and mailing date of August 29, 2016, and indicating that starting December 1, 2016, Gosney's rent will be increased from \$320 to \$525 per month (2016 Gosney rent increase notice).

2.14.3 A "90 Day Notice to Change Rent" with a posting date of September 1, 2017 and mailing date of August 28, 2017, and indicating that starting December 1, 2017, Gosney's rent will be increased from \$525 to \$550 per month (2017 Gosney rent increase notice).

2.14.4 A fully executed rental agreement between TST and Gosney, dated December 31, 2017. Section 1 of the agreement identifies the term of the agreement as one year, commencing on January 1, 2018 and ending December 31, 2018 for a monthly rent of \$550 (2018 Gosney rental agreement).

2.15 Neither party submitted to the Program:

2.15.1 A valid rental agreement with the prior owner of Oaks Mobile.

2.15.2 A valid rental agreement indicating the annual expiration of the rental term as December 1.

B. Walter Lane, MHDRP Complaint No. 524803

2.16 On January 11, 2018, Lane filed his complaint against Oaks Mobile.

2.17 As part of Lane's complaint, the Program received:

2.17.1 A fully executed rental agreement between Torres and Lane, dated August 5, 2016. Section 1 of the Lane rental agreement identifies the term of the agreement as one year, commencing on July 1, 2016, and renewable for a

term of “month to month thereafter.” Lane did not sign Section 1. Section 2 identifies the monthly rental amount as \$320 (2016 Lane rental agreement).

2.17.2 A “90 Day Notice to Change Rent” with a posting and mailing date of August 29, 2016, and indicating that starting December 1, 2016, Lane’s rent will be increased from \$320 to \$525 per month (2016 Lane rent increase notice).

2.17.3 A “90 Day Notice to Change Rent” with a posting date of September 13, 2017 and mailing date of September 6, 2017, and indicating that starting December 1, 2017, Lane’s rent will be increased from \$525 to \$550 per month (2017 Lane rent increase notice).

2.17.4 A fully executed rental agreement between TST and Lane dated December 15, 2017. Section 1 of the agreement identifies the term of the agreement as one year, commencing on January 1, 2018 and ending December 31, 2018 for a monthly rent of \$550 (2018 Lane rental agreement).

2.18 Neither party submitted to the Program:

2.18.1 A valid rental agreement with the prior owner of Oaks Mobile.

2.18.2 A valid rental agreement indicating the annual expiration of the rental term as December 1.

C. Lorraine Simoni, MHDRP Complaint No. 526772

2.19 On February 15, 2018, Simoni filed her complaint against Oaks Mobile.

2.20 As part of Simoni’s complaint, the Program received:

2.20.1 A rental agreement between TST and Simoni, signed only by Simoni, dated August 5, 2016. Section 1 of the Simoni rental agreement identifies the term of the agreement as one year, commencing on July 1, 2016, and renewable for a term of “month to month thereafter.” Simoni crossed out the “month-to-month” language and added “one year thereafter;” however, Simoni did not sign Section 1. Section 2 identifies the monthly rental amount as \$320. Simoni made other changes to this rental agreement (2016 Simoni rental agreement).

2.20.2 A “90 Day Notice to Change Rent” with a posting and mailing date of August 29, 2016, and indicating that starting December 1, 2016, Simoni’s rent will be increased from \$320 to \$525 per month (2016 Simoni rent increase notice).

2.20.3 A "90 Day Notice to Change Rent" with a posting date of September 1, 2017 and mailing date of August 28, 2017, and indicating that starting December 1, 2017, Gosney's rent will be increased from \$525 to \$550 per month (2017 Simoni rent increase notice).

2.20.4 A fully executed rental agreement between TST and Simoni dated December 15, 2017. Section 1 of the agreement identifies the term of the agreement as one year, commencing on January 1, 2018 and ending December 31, 2018 for a monthly rent of \$550 (2018 Simoni rental agreement).

2.20.5 Simoni sold her home and vacated Oaks Mobile on April 30, 2018.

2.21 Neither party submitted to the Program:

2.21.1 A valid rental agreement with the prior owner of Oaks Mobile.

2.21.2 A valid rental agreement indicating the annual expiration of the rental term as December 1.

D. Nanette Stickley, MHDRP Complain No. 533727

2.22 On July 9, 2018, Stickley filed her complaint against Oaks Mobile.

2.23 As part of Stickley's complaint, the Program received:

2.23.1 A rental agreement between TST and Stickley, signed only by TST, dated August 5, 2016. Section 1 of the Stickley rental agreement identifies the term of the agreement as one year, commencing on July 1, 2016, and renewable for a term of "month to month thereafter." Section 2 identifies the monthly rental amount as \$320 (2016 Stickley rental agreement).

2.23.2 A "90 Day Notice to Change Rent" with a posting and mailing date of August 29, 2016, and indicating that starting December 1, 2016, Stickley's rent will be increased from \$320 to \$525 per month (2016 Stickley rent increase notice).

2.23.3 A fully executed rental agreement between TST and Stickley dated December 15, 2017. Section 1 of the agreement identifies the term of the agreement as one year, commencing on January 1, 2018 and ending December 31, 2018 for a monthly rent of \$550 (2018 Stickley rental agreement).

2.23.4 The Program requested from Stickley and TST, but did not receive, a 2017 rent increase notice to Stickley similar to the 2017 Gosney, Lane and Simoni rent increase notices.

2.24 Neither party submitted to the Program:

2.24.1 A valid rental agreement with the prior owner of Oaks Mobile.

2.24.2 A valid rental agreement indicating the annual expiration of the rental term as December 1.

III. LEGAL AUTHORITY

- 3.1 The MHLTA provides that landlords may not offer a mobile home lot for rent without offering a written rental agreement for a term of one year or more. RCW 59.20.050(1). If the tenant prefers a month-to-month tenancy, the tenant must waive, in writing, the right to a term of one year or more. *Id.* A tenant who waives the right to a one-year term can require the landlord to offer a written rental agreement for the term of one year at any anniversary date of the tenancy. *Id.*
- 3.2 The MHLTA provides that rental agreements “of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed to.” RCW 59.20.090(1).
- 3.3 The MHLTA prohibits rental agreements from containing any provision “[b]y which the tenant agrees to waive or forego rights or remedies under” the MHLTA. RCW 59.20.060(2)(d).
- 3.4 “To promote long term and stable mobile home lot tenancies, the Legislature established an unqualified right at the beginning of the tenancy to a one-year term, automatic renewal at the end of the one-year rental term, and the right to a one-year term at any anniversary date of the tenancy.” *Holiday Resort Cmty. Ass’n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 224, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007).
- 3.5 In *Holiday Resort*, the Court of Appeals held that language in a rental agreement in which the original one-year term automatically converted to a month-to-month tenancy, unless the tenant requested an additional one-year term prior to the end of the original term violated the MHLTA:

The language in RCW 59.20.090 must be interpreted together with the requirements of RCW 59.20.050(1) and RCW 59.20.060(2)(d). RCW 59.20.050(1) requires a tenant to waive the right to the one-year rental term in writing. RCW 59.20.060(2)(d) does not allow a tenant to waive rights under the MHLTA in a rental agreement. Reading the requirements of RCW 59.20.050(1) and RCW 59.20.060(2)(d) together with RCW 59.20.090(1), *we conclude that any agreement under RCW 59.20.090(1) to a rental term other than one year or any agreement to waive the right to renew must also be in writing separate from the rental agreement.*

Id. at 225 (emphasis added).

- 3.6 The MHLTA requires that, “[a]ny mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties....” RCW 59.20.060(1).
- 3.7 The purpose of RCW 59.20.060(1) is to satisfy the statute of frauds because it governs the “formal requirements for creating a valid lease.” *Western Plaza, LLC v. Tison*, 184 Wn.2d 702, 709, 364 P.3d 76 (2015). To comply with the statute of frauds under the MHLTA “all rental agreements must be based on a written rental agreement that is signed by the parties, regardless of the duration of the rental. *Id.* at 714.
- 3.8 When a landlord and tenant enter into a valid rental agreement under RCW 59.20.060(1), a landlord, including new landlords, must abide by the terms of that agreement. *Id.* at 706, 718-719 (tenant can enforce rent cap provision, which prohibited rent from being raised by more than \$10 every other year for the remaining tenancy, against new landlord based on tenant’s rental agreement entered into with previous landlord).
- 3.9 The MHLTA 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.” RCW 59.20.090(2).

IV. VIOLATIONS

A. All Complainants

- 4.1 Section 1 of the 2016 Gosney, Lane, Simoni and Stickley rental agreements that automatically convert the one-year term commencing July 1, 2016 to a month-to-month agreement at the end of the initial year term violates the MHLTA, and therefore is unenforceable. *Holiday Resort Cmty. Ass’n*, 134 Wn. App. at 225; RCW 59.20.050(1), .060(2)(d) and .090(1).
- 4.2 Oaks Mobile did not obtain a written waiver, separate from the rental agreement, whereby any of the Complainants waived their rights under the MHLTA to an automatic renewal of their one-year rental agreement. Moreover, none of the Complainants signed the waiver in the 2016 rental agreements, and one Complainant (Simoni) crossed out the month-to-month language and added “one year thereafter.”

B. Donna Gosney, Lorraine Simoni and Nanette Stickley

- 4.3 The 2016 Gosney, Stickley and Simoni rental agreements are not signed by the parties as required by RCW 59.20.060(1).
- 4.4 No complainant or TST submitted to the Program a valid rental agreement with the prior owner of Oaks Mobile.

- 4.5 No complainant or TST submitted to the Program a valid rental agreement indicating the annual expiration of the rental term as December 1.
- 4.6 TST cannot comply with RCW 59.20.090(2) simply by giving 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” the rental agreement. *See, e.g., supra* ¶ 2.12.7; *see also* Oaks NOV I ¶ 3.3.
- 4.7 The 2016 and 2017 Gosney, Simoni and Stickley¹ rent increase notices violate RCW 59.20.090(2) because they increased Gosney, Simoni and Stickley’s rent prior to any identified expiration of the term of a valid rental agreement.

C. Walter Lane

- 4.8 The 2016 Lane rental agreement complies with RCW 59.20.060(1) because it is signed by both Torres and Lane, and is therefore a valid rental agreement that satisfies the MHLTA’s statute of frauds. *Western Plaza*, 184 Wn.2d at 709, 714.
- 4.9 Neither Lane nor TST submitted to the Program a valid rental agreement with the prior owner of Oaks Mobile.
- 4.10 Neither Lane nor TST submitted to the Program a valid rental agreement indicating the annual expiration of the rental term as December 1.
- 4.11 The 2016 Lane rental agreement is for a term of one-year commencing July 1, 2016, with a monthly rent of \$320, and automatically renews after each year term for a term of one year.
- 4.12 The 2018 Lane rental agreement, with an effective date of January 1, 2018, changed the terms of the valid 2016 Lane rental agreement prior to the expiration of the term of that agreement, June 30, 2018. Specifically, the 2018 Lane rental agreement increased Lane’s monthly rent from \$320 to \$550 starting January 1, 2018.
- 4.13 TST cannot comply with RCW 59.20.090(2) simply by giving 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” the rental agreement. *See, e.g., supra* ¶ 2.12.7; *see also* Oaks NOV I ¶ 3.3.
- 4.14 The 2016 and 2017 Lane rent increase notices violate RCW 59.20.090(2) because they increased Lane’s rent prior to the expiration of the term of Lane’s 2016 rental agreement.
- 4.15 TST cannot seek to increase Lane’s rent through the 2018 Lane rental agreement because it increased Lane’s rent prior to the expiration of the term of the 2016 Lane rental agreement, in violation of RCW 59.20.090(2).

¹ Provided Oaks Mobile served Stickley with a 2017 rent increase notice. *See supra* ¶ 2.23.4.

V. CORRECTIVE ACTION

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

A. Donna Gosney, Lorraine Simoni and Nanette Stickley

- 5.1.1 Fully reimburse Gosney, Simoni and Stickley \$205 for each month they overpaid rent for the months December 2016 through November 2017 (12 months).
- 5.1.2 Fully reimburse Gosney, Simoni and Stickley \$230 for the month of December 2017 that they overpaid for rent.
- 5.1.3 Submit to the Program records of rent payments made by Gosney, Simoni and Stickley from December 2016 through December 2017 (13 months) identifying the months they overpaid for rent.
- 5.1.4 Submit to the Program a copy of the reimbursement checks TST provides to Gosney, Simoni and Stickley.

B. Walter Lane

- 5.1.5 Fully reimburse Lane \$205 for each month Lane overpaid rent for the months December 2016 through November 2017 (12 months).
- 5.1.6 Fully reimburse Lane \$230 for each month Lane overpaid rent for the months of December 2017 through August 2018 (9 months).
- 5.1.7 Submit to the Program records of rent payments made by Lane from December 2016 through August 2018 (21 months) identifying the months Lane overpaid for rent.
- 5.1.8 Submit to the Program a copy of the reimbursement check TST provides to Lane.

5.2 TST shall not seek to increase any of the Complainants' rent without complying with RCW 59.20.090(2).

5.3 TST shall not attempt to seek reimbursement from the Complainants.

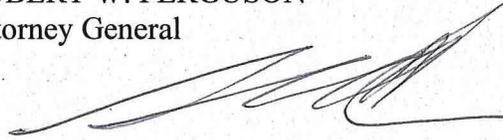
5.4 TST shall not seek monthly rent payments from Lane for the months of September 2018 through June 2019 in an amount greater than \$320 per month.

5.5 Failure to take the corrective action identified above within fifteen (15) business days of receipt of this Notice will result in the imposition of a \$250 fine per day thereafter, until compliance is achieved.

Signed this 24th day of August, 2018.

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, 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	<input checked="" type="checkbox"/> Certified Mail, Receipt Requested
Mark G. Passannante Broer & Passannante, P.S. 1001 SW Fifth Ave, Ste. 1220 Portland, OR 97204	<input checked="" type="checkbox"/> Certified Mail, Receipt Requested
Donna Gosney 38308 NW Lakeshore Dr., Space #1 Woodland, WA 98674	<input checked="" type="checkbox"/> Certified Mail
Walter Lane P.O. Box 434 Woodland, WA 98674	<input checked="" type="checkbox"/> Certified Mail
Lorraine Simoni 38308 NW Lakeshore Dr., Space #13 Woodland, WA 98674	<input checked="" type="checkbox"/> Certified Mail
Nanette Stickley 38308 NW Lakeshore Dr., Space #6 Woodland, WA 98674	<input checked="" type="checkbox"/> Certified Mail

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

DATED this 24th day of August, 2018, at Seattle, Washington.



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.