

ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of the

**Complaint of Julie Lagan
Against Golden Valley Estates.**

NOTICE OF NON-VIOLATION

RCW 59.30.040

MHDRP Complaint No. 511311

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 NO 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 July 27, 2017, Julie Lagan filed a complaint against Golden Valley Estates (Golden Valley) with the Manufactured Housing Dispute Resolution Program (the Program). Lagan alleged that her lot was eroding, and as a result, Golden Valley violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20. The Program contacted Golden Valley 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 Golden Valley did not violate RCW 59.20.130(3) or (4).

II. FACTUAL BACKGROUND

- 2.1 Golden Valley is a mobile home park for purposes of RCW 59.20.030(10), and is located in Buckley, Washington.
- 2.2 Lagan owns and resides in a manufactured/mobile home located on space rented from Golden Valley, and therefore is a tenant under RCW 59.20.030(18).
- 2.3 On October 8, 2007, the original owner of Lagan's home submitted an application with Planning and Land Services of Pierce County to install the home on a lot at Golden Valley.
- 2.4 As part of the installation process, on December 3, 2007, an inspector from the Pierce County Development Engineering Department inspected the lot for "erosion control." The inspection result was "approved."
- 2.5 On February 25, 2008, the final inspection was approved with a note that "all development engineering requirements have been met."
- 2.6 Lagan moved into her home on June 17, 2016.
- 2.7 As part of the purchase of her home, a property inspector performed an inspection of Lagan's home and prepared a report ("property inspection report"). This inspection did not address or include any geological conditions or site stability information; the property inspection report recommended that a geologist or soils engineer be consulted for information concerning these conditions. Lagan did not obtain a report assessing geological conditions or site stability prior to moving into her home.
- 2.8 Shortly after moving into her home, Lagan felt her home was uneven and believed this was caused by land erosion. The property inspection report identified the condition of Lagan's floors as satisfactory and did not note an uneven condition.
- 2.9 To mitigate the issues Lagan believed was being caused by land erosion, Lagan hired a landscaper to install packed topsoil and sod. Lagan also hired a contractor to relevel her home. The contractor stated, "when arriving at the home I noticed that the house was on a solid foundation. When I attempted to re-level the house I noticed that the foundation was put on fill dirt and was settling." The contractor relevelled the home "3 inches on one side and 2 inches on the other but was unable to re-level completely due to settling issues with the foundation." However, this contractor is not certified to conduct geotechnical assessments.
- 2.10 Lagan attempted to have the contractor relevel her home for a second time but was told that additional stress could not be put on the home and that the home had already been stressed to the max. After the releveling, Lagan noticed her home pulling apart "where the porch meets the house and at the garage" and that Lagan now has "stress cracks in

[her] home.” Lagan attributes these issues to the land erosion and her “house sinking into the ground.” However, these issues were not identified in the property inspection report and appear to have occurred after Lagan leveled her home.

- 2.11 After Lagan’s home was leveled, Golden Valley had a concrete specialist inspect Lagan’s home. The specialist noted there were no signs of sinking or sliding, no cracks in the foundation, the plastic on the pads underneath the home was flat and not sunk into the ground, the concrete runners had no cracks and seemed to be level, the roof and sides of the house showed no signs of shifting downhill, and that “the post that was leveled previously to our arrival was only wedged roughly 3 inches which for not suggest [sic] any kind of major sinking....” However, this specialist is not certified to conduct geotechnical assessments.
- 2.12 In order to obtain an expert opinion regarding Lagan’s land erosion allegation, Golden Valley hired a licensed engineering geologist to prepare an inspection report (“geotechnical inspection report”). The engineering geologist assessed the slope east of Lagan’s lot (beyond Lagan’s fence), which is a “moderate to steep, thickly vegetated slope [that] descends into the greenbelt.”
- 2.13 Based on information provided by Golden Valley’s manager, the geotechnical inspection report noted that the loss of the top of the slope, from approximately 4 feet to approximately 1.5 feet was because two hardwood trees were removed due to their positioning, angle and potential to fall, and that the community also trimmed and removed berry vines from the top of the slope, clearing approximately 4 feet from the residents’ fence. The geotechnical inspection report also notes that the top of the moderate to steep slope is approximately 1.5 feet from the fence and is difficult to walk due to the loose nature of the sand and rock.
- 2.14 The geotechnical inspection report contains the following conclusions regarding the slope condition:
 - 2.14.1 Our observations of the slope found the surface soil to be consistent with mapping and geology reported in public documents.
 - 2.14.2 Observations of the current condition of the slope found the surface soil to be loose, dry and rocky.
 - 2.14.3 The surface of the slope is thickly vegetated with conifer, hardwood and berry vines.
 - 2.14.4 The surface soils would be susceptible to erosion if exposed.
 - 2.14.5 Vegetation and rooting are assisting in limiting the amount of erosion of the slope.

2.14.6 No evidence of surface movement or excessive erosion was observed at the time of the site visit.

2.15 Regarding the foundation of Lagan's home, the geotechnical inspection report stated, "it could not be concluded there is any settlement of the foundation affecting the floors of the home."¹

III. NON-VIOLATIONS

- 3.1 RCW 59.20.130(3) requires a landlord to "keep any shared or common premises... safe from defects to reduce the hazards of... accident."
- 3.2 RCW 59.20.130(4) requires a landlord to "keep all common premises of the mobile home park... free from potentially injurious... condition."
- 3.3 The only inspection report provided to the Program from a professional certified to conduct geotechnical assessments does not support Lagan's allegation of land erosion.
- 3.4 Therefore, the Program determines Golden Valley is not in violation of RCW 59.20.130(3) or (4).

Signed this 22 day of January, 2018.

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM

ROBERT W. FERGUSON
Attorney General



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

¹ Land erosion was the subject of a prior complaint to the Program from a tenant against Golden Valley. In that matter, Golden Valley hired the same engineering geologist to inspect that tenant's lot. Early signs of erosion were found and Golden Valley took measures to mitigate the problem. MHDRP Complaint No. 491616.

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; and
- 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.

CERTIFICATE OF SERVICE

I certify that I served a copy of the forgoing on the following party/parties via the following methods:

Julie Lagan 6625 241 st Ave E Buckley, WA 98321	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input type="checkbox"/> Hand delivery
Deric Young Olsen Law Firm 205 S Meridian Puyallup, WA 98371	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input type="checkbox"/> Hand delivery

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

DATED this 23rd day of January, 2018, at Seattle, Washington.

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.