

ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of

Cheryl Lager-Levi,

Complainant,

v.

Birch Bay Resort,

Respondent.

NOTICE OF VIOLATION

RCW 59.30.040

MHDRP Complaint No. 408669

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 59.20.¹ 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.

I. INTRODUCTION

On May 11, 2012, Cheryl Lager-Levi filed a complaint against Birch Bay Resort (Birch Bay) with the Manufactured Housing Dispute Resolution Program (MHDRP). Lager-Levi made several allegations of violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, in her complaint; however, this Notice addresses only the allegation related to the boundary line of her lot and the fence she constructed. Lager-Levi alleged that Birch Bay was requiring her, at her expense, to remove a fence that she constructed with the permission of park management. MHDRP contacted Birch Bay in an attempt to facilitate negotiation between the parties and resolve the dispute through an informal dispute resolution process. However, the MHDRP determined that an agreement could not be negotiated between the parties. The MHDRP conducted a formal investigation pursuant to RCW 59.30.040. As more fully set forth below, the MHDRP concludes that Birch Bay has violated RCW 59.20.050

¹ The issuance of this Notice does not limit the rights of either party to take other legal action.

by failing to offer written rental agreements to tenants, and former RCW 59.20.060(j)² by failing to describe the boundaries of the mobile home space sufficiently to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces.

II. FACTUAL BACKGROUND

1. Birch Bay Resort is a mobile home park for purposes of RCW 59.20.030(10), and is located in Blaine, Washington. Cheryl Lager-Levi owns and resides in a manufactured/mobile home located on space rented from Birch Bay, and therefore is a tenant under RCW 59.20.030(18).
2. Lager-Levi has rented space M9 from Birch Bay since 2006.
3. Birch Bay did not offer Lager-Levi a rental agreement when she moved in. Lager-Levi states that she asked for a rental agreement several years ago and was informed that Birch Bay was making a new one that would be provided when it was done. However, Birch Bay failed to follow through and provide Lager-Levi with a rental agreement. Birch Bay attests that it makes rental agreements available to anyone upon the tenant's request and there is nothing in Lager-Levi's file indicating that she requested one.
4. On May 25, 2012, Birch Bay wrote a letter asking tenants to "decline the offer for a written rental agreement" or "request a written rental agreement." There was no rental agreement attached with this letter.
5. Birch Bay requires tenants to come to its office to obtain a written rental agreement.
6. Birch Bay provided MHDRP with a sample Space Rental Agreement that contains an addendum A, "Mobile Home Lot Description" (attached as Exhibit 1) and addendum B, "Legal Description" (attached as Exhibit 2).
7. There is no signed or unsigned written rental agreement between Birch Bay and Lager-Levi.
8. In 2010, Lager-Levi received verbal approval from Birch Bay manager Maureen Wilson to erect a fence.
9. Lager-Levi worked with Wilson to establish where the fence would be placed. Wilson used a map and had Lager-Levi measure the boundary line and then adjusted the fence line one foot closer to the home to accommodate the necessary fire line. Wilson approved of the location where the fence was to be placed.

² Amendments to RCW 59.20.060(j) made during the 2012 legislative session became effective June 7, 2012. This decision is based on the language of RCW 59.20.060(j) before the amendments took effect: former RCW 59.20.060(j).

10. In July of 2010, Wilson presented Lager-Levi with a letter, dated July 8, 2010, "to clarify the understanding" between Wilson and Lager-Levi regarding the site improvements, including the placement of the fence, that Lager-Levi was undertaking on space M9.
11. The July 8, 2010, letter stated that the fence encroached onto space M8. The letter also stated that the encroachment was not a current problem, although it might become a problem in the future, and if so, it may become necessary to remove the fence and improvements around space M8 for a future resident.
12. Wilson asked Lager-Levi to sign the July 8, 2010, letter but Lager-Levi refused and informed Wilson that the fence was not a temporary fixture but a permanent one.
13. Space M8 has a concrete pad (for future placement of a manufactured home) and may or may not have utility hook ups. The space is also marked by a painted "M8" on the street in front of the pad.
14. In May of 2012, Wilson hand delivered to Lager-Levi a "30-Day Notice to Relocate or Remove Fencing Around M9 Property" dated May 9, 2012. The Notice stated that space M8 was going to be rented and that Lager-Levi needed to either remove the fence encroaching on space M8 or move it to a location "that will be identified by [Birch Bay] staff." Birch Bay later rescinded this notice, but the parties still dispute whether the fence may remain in its current location.
15. Birch Bay has never defined where the boundary lines are for each space.
16. Birch Bay has not provided Lager-Levi with a description of her rental space, M9.

III. VIOLATIONS

1. RCW 59.20.050 provides in part: "No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more." Birch Bay violated RCW 59.20.050 when it failed to offer tenants a written rental agreement. Birch Bay's May 25, 2012, letter to tenants does not constitute an offer of a written rental agreement because the letter does not present a rental agreement to tenants.
2. RCW 59.20.060 requires rental agreements to contain a description of the tenant's space sufficient for the tenant to know the exact location of the space. Birch Bay's sample rental agreement does not comply with RCW 59.20.060 because it does not contain a sufficient description of the boundaries of a mobile home space.

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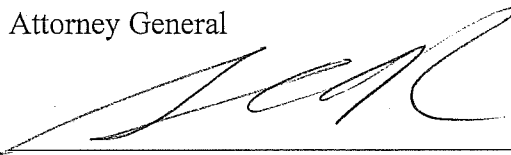
IV. CORRECTIVE ACTION

1. Birch Bay must, within thirty (30) days of receipt of this Notice, provide/present to each tenant a written rental agreement pursuant to RCW 59.20.050 that complies with RCW 59.20.060, including but not limited to the following:
 - a. The written rental agreement must be delivered to each tenant;
 - b. Each tenant must be allowed the time to review the written rental agreement and consider its terms; and
 - c. The written rental agreement must include "[a] written description, picture, plan, or map of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to the other tenants' spaces." RCW 59.20.060(j).
2. Birch Bay must, within thirty (30) days of receipt of this Notice, relocate Lager-Levi's fence at its own expense.
3. A failure to take any of the corrective action as set forth above within thirty (30) days will result in the imposition of a \$100 fine per day thereafter, until compliance is achieved.

Signed this 23rd day of August, 2012.

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM

ROBERT M. MCKENNA
Attorney General



SHANNON E. SMITH
Assistant Attorney General
Attorneys for State of Washington

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 your own legal expenses. An administrative law judge will hear and receive pertinent evidence and testimony and decide whether a violation of the MHTLA 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 in a decision.

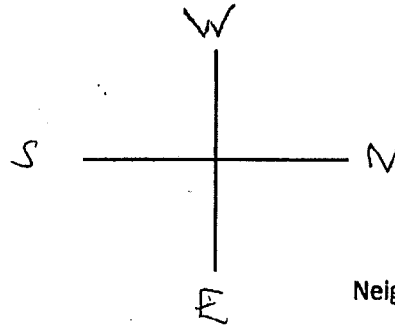
EXAMPLE ONLY

Birch Bay Resort

ADDENDUM "A"

MOBILE HOME LOT

SPACE: M 6



Neighbor

(E)

Your Space Location

E

Neighbor

M 7

M 6

(TV)

M 5

(S)

(W)

Electrical Hook-Up = E
Cable TV Hook-Up = TV
Water Connection = W
Sewer Connection = S

Parking: YOU ARE ASSIGNED 2 PARKING SPACES, FOR
REGULAR SIZED CAR, DIRECTLY ACROSS THE
STREET ON THE EAST SIDE OF THE ROAD.

Birch Bay Resort

ADDENDUM "A"

MOBILE HOME LOT

SPACE: _____

Neighbor

Your Space Location

Neighbor

The diagram illustrates the spatial relationship between a mobile home lot and its neighbors. A large central rectangle represents the 'Your Space Location'. To its left and right are smaller rectangles representing 'Neighbor' lots. A horizontal line extends from the right side of the central lot, and a vertical line extends from the top of the right neighbor lot, intersecting at a point.

Assessor's Tax Parcel Numbers:

4001300 04154 0000, 400130 074492 0000, and 400130 125454 0000

Addendum "B"

EXHIBIT A

PARCEL A:

LOT 3, AS DELINEATED ON AMENDED EARL VOGT SHORT PLAT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 15 OF SHORT PLATS, PAGE 44, UNDER AUDITOR'S FILE NO. 1578677, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL A-1:

AN EASEMENT FOR PEDESTRIAN, GOLF CART, AND EMERGENCY VEHICLE ACCESS, INGRESS, AND EGRESS ONLY OVER THE NORTHERLY 5.00 FEET OF THE FOLLOWING DESCRIBED TRACT OF LAND:

THAT PORTION OF GOVERNMENT LOT 1, SECTION 30, TOWNSHIP 40 NORTH, RANGE 1 EAST OF W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID GOVERNMENT LOT 1, WHICH IS 602.24 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 30; THENCE EAST 30.00 FEET TO A POINT ON THE EAST MARGIN OF DRAYTON HARBOR ROAD (HARBOR VIEW ROAD, COUNTY ROAD NO. 8); THENCE NORTH 66°47'00" EAST, 141.43 FEET; THENCE SOUTH 28°27'00" EAST, 160.37 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 28°17'00" EAST, 95.00 FEET; THENCE SOUTH 61°56'30" WEST, 250.00 FEET, MORE OR LESS, TO THE NORTHEASTERLY MARGIN OF BIRCH BAY DRIVE; THENCE NORTHWESTERLY AND NORTHERLY ALONG THE NORTHEASTERLY MARGIN OF BIRCH BAY DRIVE AND THE EASTERLY MARGIN OF DRAYTON HARBOR ROAD, 100.00 FEET, MORE OR LESS, TO A POINT THAT BEARS SOUTH 61°56'30" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 61°56'30" EAST, 224.90 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, LESS ROADS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL A-2:

AN EASEMENT FOR PEDESTRIAN, GOLF CART, AND EMERGENCY VEHICLE ACCESS, INGRESS, AND EGRESS ONLY OVER THE SOUTHERLY 5.00 FEET OF THE FOLLOWING DESCRIBED TRACT OF LAND:

A PORTION OF GOVERNMENT LOT 1, SECTION 30, TOWNSHIP 40 NORTH, RANGE 1 EAST OF W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 602.24 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 30; THENCE EAST 30.00 FEET TO A POINT ON THE EAST LINE OF DRAYTON HARBOR ROAD AND THE TRUE POINT OF BEGINNING; THENCE NORTH 66°47'00" EAST, 141.43 FEET; THENCE SOUTH 28°27'00" EAST, 160.37 FEET; THENCE SOUTH 61°56'30" WEST, 224.90 FEET, MORE OR LESS, TO THE EASTERLY LINE OF SAID DRAYTON HARBOR ROAD; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE, 191.20 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL A-3:

AN EASEMENT FURNISHING ACCESS AND A RIGHT OF ACCESS OVER AND ACROSS THE FOLLOWING DESCRIBED SECOND CLASS TIDELANDS. THE SECOND CLASS TIDELANDS SITUATED IN FRONT OF AND ADJACENT TO OR ABUTTING UPON GOVERNMENT LOT 1, SECTION 30, TOWNSHIP 40 NORTH, RANGE 1 EAST OF W.M. THE EASEMENT AND RIGHT OF ACCESS OVER AND ACROSS THE ABOVE-DESCRIBED TIDELANDS SHALL INCLUDE THE USE OF THE TIDELANDS FOR SWIMMING, BOATING, FISHING, AND SUCH OTHER RECREATIONAL USES INCIDENT TO AND COMMON WITH THE USE OF SAID TIDELANDS, PROVIDED THE USE OF THE BEACH AND TIDELAND UNDER THE EASEMENT AS PROVIDED HEREIN SHALL BE SUBJECT TO REASONABLE RIGHTS OF OWNERSHIP OF THE SELLER AND THEIR SUCCESSORS IN INTEREST, AND THEY MAY EXERCISE ALL OF THEIR RIGHTS OF OWNERSHIP AS PERMITTED BY LAW, AND THE EXERCISE OF THIS EASEMENT PRIVILEGE SHALL NOT BE INCONSISTENT WITH THE RIGHTS OR OWNERSHIP OF THE SELLER OR THEIR SUCCESSORS IN INTEREST.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL A-4:

AN EASEMENT FOR INGRESS AND EGRESS ACROSS LOT 1 AS SHOWN ON THE FACE OF SAID SHORT PLAT.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

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 Regular US Mail

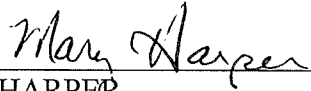
TO:

**Birch Bay Resort
Attn: Mr. Kevin Olsen
8080 Harbor View Road
Blaine WA 98230**

**Ms. Cheryl Ann Lager-Levi
8080 Harbor View Road, M9
Blaine WA 98230**

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 August, 2012, at Seattle, Washington.



MARY HARPER
Legal Assistant II