



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle, WA 98104-3188

**Manufactured Housing Dispute
Resolution Program**

•Consumer Protection Division•
1-866-924-6458

In the Matter of:

Mary Jorgensen

Complainant,

v.

**Lago de Plata Manufactured
Home Community,**

Respondent.

**NOTICE OF NONVIOLATION
RCW 59.30.040**

MHDRP Complaint No.: 350881

Following an investigation into the above-entitled matter pursuant to RCW 59.30.040, the Program Manager of 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 are aggrieved by the Program Manager's decision, your attention is directed to the **APPEAL RIGHTS** section of this Notice, which outlines the procedures under RCW 59.30.040 for obtaining review of this decision by an administrative law judge.

I. INTRODUCTION

1. On October 8, 2009, the Complainant, Mary Jorgensen, filed a complaint under RCW 59.30 with the Washington State Attorney General's Manufactured Housing Dispute Resolution Program (MHDRP) against her landlord, Lago de Plata Villa Manufactured Home Community (Lago de Plata), alleging violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20. Ms. Jorgensen resides at Lago de Plata in Everett, Washington, a mobile home park for purposes of RCW 59.20.030(10). Ms. Jorgensen resides at [REDACTED] and owns her manufactured home. She has lived at Lago de Plata for five years. Lago de Plata is managed by Commonwealth Real Estate Services (Commonwealth). The two property managers who share responsibility for Lago de Plata are Christy Mays and Karen

Williams. The on-site park managers for Lago de Plata are Cristal Southerland and Dan Southerland.

2. In her complaint and in subsequent communications with the MHDRP, Ms. Jorgensen alleges that Lago de Plata violated RCW 50.20.045(1)-(2) by demanding that she re-paint the exterior of her manufactured home. She alleges that she was unfairly targeted in this request because other tenants have not been requested to take similar action, in violation of RCW 50.20.045(3). Finally, Ms. Patterson alleges that Lago de Plata unlawfully retaliated against her when it threatened to evict her from her homes in response to filing a complaint with the MHDRP, in violation of RCW 59.20.070(5)(a).

3. After contacting the parties and attempting to resolve the disputes through the informal dispute resolution process, the MHDRP conducted an investigation pursuant to RCW 59.30.040(3). Ms. Jorgensen's complaint was consolidated with MHDRP complaint #350880 for purposes of investigation. As will be more fully set forth below, the MHDRP has concluded that NO VIOLATIONS of RCW 59.20 have occurred.

III. BACKGROUND AND INVESTIGATION

1. On May 26, 2009, Ms. Jorgensen was informed in a written notice issued by Lago de Plata and signed by Ms. Southerland that based on a recent inspection of her property by park management she would be required to re-paint the exterior of her manufactured home. Ms. Southerland and her husband, Mr. Southerland, serve as the resident property managers at Lago de Plata. Around this time, Lago de Plata had recently conducted a survey of the park's physical condition and determined that many of the homes needed to either be painted or pressure-washed, in order to maintain the aesthetic standards set forth in its rules and regulations.

2. Lago de Plata is a mobile home park community consisting of 243 mobile home spaces. One of the rules governing the appearance of mobile homes at Lago de Plata states, in part, as follows:

In order to maintain the appearance of the community, manufactured homes must be attractively maintained, exteriors washed, painted when needed, and comply with all laws and ordinances of the state, county, and city . . .

Based on its survey and the perceived physical conditions of the homes on the property, park management determined that several of the manufactured homes in the community were in violation of the above-cited rule. A total of 176 tenants received notices in May and/or September 2009 to either paint or pressure-wash the exterior of their manufactured home, or simply paint such things as the trim, louver or lattice, or perform of the landscaping or lot. In May 2009, Lago de Plata served notice on 107 tenants informing them that they needed to perform work on their manufactured home. In September 2009, Lago de Plata served a notice on 104 tenants similarly informing them of needed repairs. Some tenants received notices in both May and September 2009, pointing out different issues with their home.

3. Of the 107 notices served in May 2009, 76 notices required its recipient to paint the exterior of his or her home, 12 notices required pressure-washing or painting of the trim, 5 notices required painting of the lattice, louvers, or awnings, and 16 notices

required other miscellaneous tasks. Of the 104 notices served in September 2009, 10 notices required its recipient to paint the exterior of his or her home, 46 required pressure-washing or painting of the trim, 4 required pressure-washing only, 19 notices required painting of the lattice, louvers, or awnings, and 25 required other miscellaneous tasks.

4. Ms. Jorgensen received her first notice on May 26, 2009. The notice informed her to re-paint the exterior of her home. This prompted her to talk to the resident managers. Ms. Jorgensen reported that when she spoke to Ms. Southerland, she was told that she could comply with the park rule by merely pressure-washing her home. Ms. Jorgensen had her home hand-washed at some point during the summer months but did not have any painting done.

5. In late September or early October 2009, Ms. Jorgensen reported that she was approached by Ms. Southerland and told that she would have to re-paint the entire exterior of her home. Ms. Southerland denied having said that merely pressure-washing would bring Ms. Jorgensen's home into compliance. On or about September 28, 2009, Ms. Jorgensen received a document entitled "Notice to Comply," informing her that she had failed to comply with the notice of May 26, 2009, and notifying her that her continued failure to comply could result in her eviction. Ms. Jorgensen filed a complaint with the MHDRP on October 8, 2009. On October 29, Ms. Jorgensen received a document entitled "Agreement for Performance" from park management, which included an agreement requiring her to paint the exterior of her home or face eviction. Ms. Jorgensen refused to sign the document.

6. Ms. Jorgensen's complaints, as well as her subsequent communications with the MHDRP, indicate that she believes that Lago de Plata has attempted to impose an unenforceable rule by requiring that she re-paint the exterior of her home. She has indicated that she simply cannot afford to paint her home, as she has had to spend considerable amounts of money on other home repairs. Ms. Jorgensen also believes that Lago de Plata treated her differently from other tenants who have also refused to paint, and retaliated against her for filing a complaint with the MHDRP by presenting her with the "Agreement for Performance" document, which contained a threat of eviction and which other tenants did not receive. Ms. Jorgensen indicated that Lago de Plata offered her the opportunity to postpone painting until 2010. To date, Ms. Jorgensen has not re-painted her home.

7. The MHDRP spoke to Karen Williams, who co-manages Lago de Plata on behalf of Commonwealth. Ms. Williams reported that approximately 80 homeowners painted either the entire home or simply the trim. She indicated that Ms. Jorgensen was one of two tenants who refused to paint. Ms. Williams reported that she visited with Ms. Jorgensen in October and told her that they would revisit the painting issue in the spring of 2010. Ms. Williams said that she told Ms. Jorgensen that the park is willing to pay for all painting service up-front, and she would only have to reimburse the park with a monthly payment of \$25 or \$50 interest free. Ms. Williams said that Ms. Jorgensen told her that she would not be able to afford to reimburse the park.

8. Ms. Williams reported that of the 170 notices Lago de Plata issued to its tenants requesting that tenants paint or pressure-wash their homes, 135 painted, and 17 pressure-washed to the management's satisfaction. Ten tenants agreed to paint at some

point in 2010. Seven tenants failed to perform the work and one began the work but failed to complete it. Lago de Plata monitored all of the tenants' progress in painting or pressure washing the home, and, if the home looked acceptable to the management, the tenant would be recorded as complying with the rule.

9. Ms. Williams reported that of the 176 tenants who received notices, 21 also received Notices to Comply similar to the notice received by Ms. Jorgensen. Ms. Williams said that the "Agreement for Performance" form was also offered to two other tenants, May Shreaves and Arvella Patterson, when they similarly failed to comply with their original notices to comply with park rules.

10. Lago de Plata has not undertaken to evict Ms. Jorgensen, increase her rent, or decrease services, nor has it refused to renew her rental agreement. Lago de Plata has indicated that it does not intend to evict any tenants for failing to comply with their notices, but prefers to work out a satisfactory arrangement with all tenants to resolve these issues. Lago de Plata has offered to pay for the costs of painting the Complainant's homes, and enter into an interest-free payment plan with her in order to facilitate reimbursement.

IV. CONCLUSIONS

1. Enacted in 1977, the MHLTA regulates and determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and a mobile home park landlord. RCW 59.20.040. Any party aggrieved by a violation of RCW 59.20 party has the right to file a complaint with the MHDRP of the Attorney General's Office. RCW 59.30.040 (1). After receiving the complaint, the Attorney General's Office shall initiate the dispute resolution program by investigating alleged violations at its discretion and, if appropriate, facilitate negotiation between the parties. RCW 59.30.040(3). If after an investigation the MHDRP determines an agreement cannot be negotiated between the parties, the MHDRP will make a written determination on whether a violation of the MHLTA has occurred, and give appropriate notice to the parties upon reaching its conclusion. RCW 59.30.040(5)-(6).

2. Ms. Jorgensen submitted a complaint to the MHDRP on October 8, 2009 against her landlord, Lago de Plata, alleging violations of RCW 59.20. Ms. Jorgensen rents manufactured mobile home space at Lago de Plata and resides in a mobile home at the park. Lago de Plata is a mobile home park within the meaning of RCW 59.20.030(10). Accordingly, the MHDRP has jurisdiction to conduct the dispute resolution program under RCW 59.20.040 and determine whether a violation of the MHLTA has occurred. As indicated above, the MHDRP has concluded that, based on the information obtained during the course of its investigation, no violations of the RCW 59.20 have occurred.

3. Ms. Jorgensen complained that Lago de Plata violated RCW 59.20 in three separate ways:

- (1) unlawfully imposing an unenforceable rule against her in demanding that she paint the exterior of her home, in violation of RCW 59.20.045(1)-(2);
- (2) unfairly targeting her, but not other tenants, in requesting she paint her home, in violation of RCW 50.20.045(2); and

(3) unlawfully retaliating against her for filing a complaint with the MHDRP, in violation of RCW 59.20.070(5)(a).

Each allegation will be discussed and analyzed separately below.

4. **Enforceability of Lago de Plata's rule under RCW 59.20.045:** First, Ms. Jorgensen alleges that Lago de Plata violated RCW 59.20.045(1)-(2) by unlawfully imposing an unenforceable rule against her in demanding that she re-paint the exterior of her home. The MHLTA provides, in part, that rules are enforceable against a tenant only if their purpose is to promote the convenience, health, safety, or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally, and they are reasonably related to the purpose for which they are adopted. RCW 59.20.045(1)-(2).

5. Here, Lago de Plata is attempting to enforce a community rule related to the physical appearance of manufactured homes on its property. The rule requires tenants to wash and paint their homes when needed. A rule requiring tenants to paint their homes when necessary promotes the welfare of the residents by maintaining the standard of living that the park wishes to uphold. While having to paint the entire exterior of a manufactured home may be burdensome and costly, all tenants benefit from having an aesthetically pleasant living environment that may assist homes in maintaining their value. Thus, such a rule promotes the welfare of the residents. This rule also protects the park premises from abusive use because it ensures that the normal wear and tear that a home undergoes is readily addressed by its owner, thereby contributing the welfare of the community. Moreover, this rule is reasonably related to the purpose for which it was adopted. The rule specifically states that it is designed "to protect the appearance of the community." Obligating tenants to paint and wash their homes when needed is directly related to protecting the appearance of the mobile home community. A landlord has the right to impose aesthetic standards for the benefit of all tenants. *Gillette v. Zakarison*, 68 Wn.App. 838, 846 P.2d 574 (1993). Therefore, Lago de Plata's rule regarding maintenance and appearance is a valid community rule and is enforceable against Ms. Jorgensen.

6. **Fairness of Lago de Plata's rule application under RCW 59.20.045(3):** Next, Ms. Jorgensen alleges that Lago de Plata has unfairly targeted her in demanding that she re-paint her home, and by not permitting her to simply pressure-wash like other tenants. Under RCW 59.20.045(3) community rules must apply to all tenants in a fair manner.

7. From the information collected by the MHDRP, it does not appear that Lago de Plata applied its rule regarding home appearance in an unfair manner. Lago de Plata served a total of 211 notices on its tenants and followed up as appropriate with each tenant. Of the 170 notices issued in May and September requesting that tenants paint or pressure-wash their homes, 135 painted, and 17 pressure-washed to the management's satisfaction. Ten tenants agreed to paint at some point in 2010. Seven tenants failed to perform the work and one failed to complete it. Thus, the rule was applied to most of the tenants in the park. Moreover, Ms. Jorgensen was not the only tenant who received a Notice to Comply after failing to initially comply with the request to re-paint. In fact, 21 tenants received similar notices. While aesthetic requirements, such as painting, necessarily have some degree of subjectivity, it appears from the information gathered that Lago de Plata has imposed its requirement on each home on a case-by-case basis, depending on the particular needs of the home. The fact that some tenants were required to paint and others to pressure-wash, is more likely than not based on the physical conditions of each individual manufactured home and not on management's desire to treat Ms. Jorgensen

differently from the rest of the tenants in the park. Moreover, Lago de Plata has agreed to make arrangements with each tenant based on their specific circumstances, which demonstrates good faith on the part of the park. Accordingly, as it relates to Ms. Jorgensen, it is the conclusion of the MHDRP that Lago de Plata has not violated RCW 59.20.045(3).

8. **Retaliation under RCW 59.20.070(5)(a):** Finally, Ms. Jorgensen alleges that Lago de Plata unlawfully retaliated against her by threatening eviction for filing a complaint with the MHDRP. Under RCW 59.20.070(5)(a), a mobile home park landlord is prohibited from evicting a tenant or terminating a rental agreement in retaliation to a tenant's action of filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance. The MHDRP is a state governmental authority for purposes of RCW 59.20.070(5). If the landlord initiates any action listed in RCW 59.20.070(5) within 120 twenty days after a good-faith and lawful act by the tenant, a rebuttable presumption shall arise that the action is retaliatory against the tenant. RCW 59.20.075. However, if the tenant made a complaint or report to a governmental authority within 120 days after the landlord took any action in good-faith, there is a rebuttable presumption that the complaint was not made in good faith. RCW 59.20.075.

9. Based on the information gathered during the MHDRP's investigation into this matter, it does not appear that Lago de Plata's actions were retaliatory. Ms. Jorgensen filed her complaint with the MHDRP on October 8, 2009. The allegedly retaliatory action Lago de Plata is accused of engaging in is presenting Ms. Jorgensen with a document entitled "Agreement for Performance" on October 29, 2009, less than one month after the complaints were filed with the MHDRP. The law prohibits a landlord from evicting a tenant in retaliation for a tenant's decision to file a complaint. Here, Lago de Plata did not attempt to evict Ms. Jorgensen, but merely informed her that it was reserving the right to do so, a statement also made in the original notice served on Ms. Jorgensen and other tenants on May 29, 2009. Accordingly, Lago de Plata did not violate RCW 59.20.070(5).

10. The disagreement between the parties regarding the painting had been the subject of dispute for several months prior to Ms. Jorgensen filing of the complaint and Park's subsequent issuance of the "Agreement for Performance." During this time, the parties went back and forth in their communications on this issue. Thus, even if Lago de Plata had instituted eviction proceedings shortly after Ms. Jorgensen filed her complaint it does not necessarily show retaliation.

APPEAL OF THIS NOTICE

You may appeal this Notice by requesting a hearing before an administrative law judge. RCW 59.30.040. Any appeal must be made within fifteen (15) days of receipt of this Notice and sent to the following address:

**Attorney General of Washington
Manufactured Housing Dispute Resolution Program
800 Fifth Avenue Suite 2000
Seattle, WA 98104-3188**

Your appeal must be submitted in writing and must be signed. The administrative law judge has authority to receive evidence and testimony in order to decide whether the evidence supports the MHDRP's decision by a preponderance of the evidence.

If you do not submit a signed, written appeal within fifteen (15) days of receiving this Notice, this Notice will become final and binding on all parties. For more information on your rights and responsibilities with regard to this Notice, consult RCW 59.30.