

ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

In the Matter of the

**Complaints of Della Dewey and Mary
Lou Divelbiss Against View Vista Mobile
Home Park.**

NOTICE OF VIOLATION

RCW 59.30.040

**MHDRP Complaint Nos. 449091,
449783**

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 In May and June of 2014, Della Dewey and Mary Lou Divelbiss, filed separate complaints against View Vista Mobile Home Park (View Vista) with the Manufactured Housing Dispute Resolution Program (MHDRP). Dewey and Divelbiss each alleged that View Vista violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, when it changed the park rules regarding parking. The MHDRP contacted respondent in an attempt to facilitate negotiations between the complainants and the park and resolve the complaints through an informal dispute resolution process. However, the complainants and the park were not able to negotiate a resolution to this matter and the MHDRP concluded that an agreement could not be reached between the complainants and the park. Therefore, the MHDRP conducted a formal investigation pursuant to RCW 59.30.040. As more fully set forth below, the MHDRP concludes that View Vista's

parking rule requiring a fifteen foot setback is unenforceable under RCW 59.20.045 because it does not apply to all tenants in a fair manner.

II. FACTUAL BACKGROUND

- 2.1 View Vista is a mobile home park for purposes of RCW 59.20.030(10), and is located in Port Angeles, Washington.
- 2.2 Dewey owns and resides in a manufactured/mobile home located on space rented from park, and therefore is a tenant under RCW 59.20.030(18).
- 2.3 Divelbiss owns and resides in a manufactured/mobile home located on space rented from park, and therefore is a tenant under RCW 59.20.030(18).
- 2.4 For many years, the rules regarding parking at View Vista restricted parking to two vehicles per lot and prohibited vehicles from extending into or blocking the visibility of the road.
- 2.5 In 2012, View Vista changed the rule to the following:

Tenants and their guests (if space is available) shall park vehicle(s) in the Tenant's driveway and under the Tenant's carport awning. Vehicles must not block visibility and may not extend into any portion of the driveway which is within fifteen feet of the road. No parking on the road or in yards or in any way that blocks the visibility of neighbors exiting their driveways....A maximum of two (2) vehicles may be parked in the Tenant's driveway at any time.

- 2.6 View Vista changed the rule following an incident wherein a grandchild of a tenant was almost hit by a car backing out of a driveway.
- 2.7 A number of tenants are unable to park two vehicles on their driveways without violating the fifteen foot setback. View Vista estimates that approximately 5-6 homes only have room to park one vehicle with the fifteen foot setback rule.
- 2.8 In the spring of 2014, Divelbiss and Dewey each received a Notice to Comply with the Lease/Rental agreement and/or Rules/Regulations or to Vacate for violating various portions of the parking rule. However, neither Notice specifically pertained to the fifteen foot setback requirement of the parking rule. The Notice to Divelbiss stated that she violated the rule by having more than two vehicles in her driveway and by blocking her neighbors' visibility. The Notice to Dewey stated that she violated the rules regarding guest vehicles.

III. VIOLATIONS

- 3.1 RCW 59.20.045, provides that rules are enforceable against a tenant only if:

- (1) 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;
- (2) They are reasonably related to the purpose for which they are adopted;
- (3) They apply to all tenants in a fair manner;
- (4) They are not for the purpose of evading an obligation of the landlord; and
- (5) They are not retaliatory or discriminatory in nature.

- 3.2 The MHLTA thus imposes a duty of good faith and fair dealing on landlords in enforcing rules against a tenant. *Country Manor MHC, LLC v. Doe*, 176 Wn. App. 601, 609, 308 P.3d 818, 822 (2013).
- 3.3 There is no evidence that View Vista is enforcing the parking rules in bad faith.
- 3.4 However, the fifteen foot setback portion of the parking rule does not apply to all tenants in a fair manner because the setback prohibits a number of tenants from parking two vehicles on their driveway. Therefore, the portion of View Vista's parking rule requiring a fifteen foot set back is unenforceable under RCW 59.20.045 because it cannot apply to all tenants equally.
- 3.5 The Notices to Comply or Vacate issued to Divelbiss and Dewey did not expressly state that either tenant violated the fifteen foot setback portion of the rule. To the extent that View Vista intended the notices to enforce the fifteen foot setback, View Vista cannot enforce the notices and they are void.

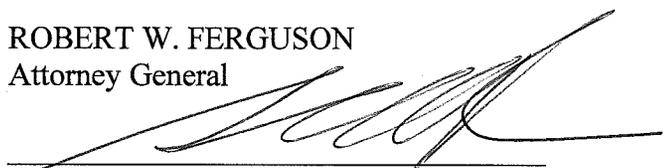
IV. CORRECTIVE ACTION

- 4.1 View Vista must immediately stop enforcing the fifteen foot setback requirement in the parking rules.
- 4.2 A failure to take the corrective action set forth above upon receipt of this Notice will result in the imposition of a \$20 fine per day thereafter, until compliance is achieved.

Signed this 25 day of November, 2015.

MANUFACTURED HOUSING DISPUTE
RESOLUTION PROGRAM

ROBERT W. FERGUSON
Attorney General



SHANNON E. SMITH
Senior Counsel
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, 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 MHLTA 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.

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:

View Vista Park
c/o Robert Flood
1434 View Vista Park
Port Angeles, WA 98362

Della Dewey
1429 View Vista Park
Port Angeles, WA 98362

Mary Lou Divelbiss
c/o Crisie Knapman
181 Ruby Rd.
Port Angeles, WA 98362

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

DATED this 25th day of November, 2015, at Seattle, Washington.



CHRIS BUNGER
Legal Assistant

59.30.030 << 59.30.040 >> 59.30.050

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.