IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT NO. 94521-7

COURT OF APPEALS, DIVISION II, NO. 47905-2-II

LARRY D. RILEY,

Petitioner,

v.

IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L. ARONSON EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all dba IRON GATE SELF STORAGE; dba IRON GATE STORAGE – CASCADE PARK,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR REVIEW

James L. Sellers
WSBA #4770
415 East Mill Plain Blvd
Vancouver, WA 98660
(T) (360) 695 0464
(F) (360) 695 0464
Email: jsellers@sellerslawoffice.com

Attorney for Appellant,
Larry D. Riley

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1. INTRODUCTION

A. IDENTITY OF PETITIONER

Larry Riley, appellant below, hereby replies to Respondent's Answer to Petition for Review.

B. COURT OF APPEALS DECISION

Appellant seeks review of the published opinion issued by the Court of Appeals for Division II in the case of *Larry D. Riley v. Iron Gates Self Storage; et al.* (April 18, 2017) (47905-2) .

C. FROM THE RECORD FROM THE COURT OF APPEALS

1. The Court of Appeals commented that

> "The Limiting Provisions Violate Public Policy as to Riley's CPA Claim... We conclude that the limiting provisions violate public policy because they seriously impair Riley from asserting a CPA claim, contrary to the purpose of the CPA's private right of action.
>
> The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020
>
> "The purpose of the CPA is to complement the body of federal law governing... unfair, deceptive, and fraudulent acts in order to protect the public... RCW 19.86.920. To achieve its purpose, the CPA is "liberally construed that its beneficial purposes may be served."
>
> "RCW 19.86.020 ...Plaintiff must show that the challenged conduct affects the public interest." (Ref: Court of Appeals Published Opinion, No. F., pages 14 thru 15).

2. Respondents' Answer requests as follows:

"If the Court Accepts Review, Iron Gate Requests it also Review the Decision on Plaintiff's CPA Claim".

"Iron Gate asks this Court to deny plaintiff's petition for review. But if review is accepted, Iron Gate respectfully requests that the Court reverse the Court of Appeals' decision as to plaintiff's claim under the CPA. That claim should be subject to the same value/damage limitation as plaintiff's other claims. (Ref: Respondents' Answer to Petition for Review, No. D., pages 10 & 11)

3. Mr. Riley contends:

"...Mr. Riley asks the Court to conclude that Mr. Riley's adduced sufficient evidence to create an issue of material fact regarding whether Iron Gate's conduct violated the consumer Protection Act..."

"An exculpatory clause in the Iron Gate rental agreement is not enforceable as a defense to limit Mr. Riley's ability to seek relief under the Consumer Protection Act[CPA]"

II. ARGUMENT WHY RESPONDENT'S REQUEST TO REVIEW THE COURT OF APPEAL'S HOLDING THAT EXCULPATORY LANGUAGE DOES NOT LIMIT CPA REMEDIES SHOULD NOT BE REVIEWED.

A. An exculpatory language which disclaims liability under the CPA is void under public policy.

Respondents' argument on this point begins with the statement that no provision in the CPA precludes contractual limitations. However,

provisions in the CPA are not the only standards for CPA violations. Under the Act, any 'unfair or deceptive acts or practices in the conduct of any trade or commerce' are unlawful. RCW 19.86.020. Liability is not limited to conduct specifically called out in the Act.

In the *Scott v. Cingular Wireless,* 160 Wn.2d 843, 854 161 P.3d 1000 (2007) the Court emphasized "the CPA is designed to protect consumers from unfair and deceptive acts and practices in commerce. RCW 19.86.020. To achieve this purpose, the legislature requires that the CPA be 'liberally construed that its beneficial purposes may be served.' RCW 19.86.920." *Id.* at 853. The *Scott v. Cingular Wireless* Court held that a anti-class action clause which "on its face . . . does not exculpate Cingular from anything" to be invalid because it might limit the ability of private citizens to enforce the CPA. Under this rationale, the public policy explicitly stated by the legislature in the CPA and the intent that individual citizens "act as private attorneys general" precludes any attempt to exculpate a party from liability for a violation of the CPA. A similar rational was used in *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 837, 840-841, 161 P.3d 1016 (2007).

> "Exculpation from any potential liability for unfair or deceptive acts or practices in commerce clearly violates public policy." *Scott v. Cingular Wireless*, 160 Wn.2d 843, 854-55, 854 P.3d 1000 (2007) (citing RCW 19.86.920); *Discover Bank v. Superior Court of Los Angeles*, 36 Cal4th 148, 113 P.3d 1100 (2005).

The phrase coined "value/damage limitation" that was coined by Respondent's Answer is simply such exculpatory language. [The coinage of this phase is an attempt to rewrite the drafting of whatever it was that Iron Gate was attempting to accomplish in paragraph 5 of the Rental Agreement (Ex. 1), wherein it failed in express language to actually establish a value limitation, which there is now an attempt to overcome by marrying the word "value" to the word "damage" and thereby provide previously unascertainable meaning for the language of paragraph 5 that ambiguously mentions $5,000.]

B. Iron Gate's conduct violated the Consumer Protection Act.

In his appeal to the Court of Appeals Mr. Riley argued that Iron Gate's conduct actually violated the Consumer Protection Act. Since the Respondents' raised the CPA issue, Mr. Riley would ask the Court to find that Iron Gate in fact acted unfairly in violating the Act by failing to follow the dictates of Ch. 19.150 RCW and its notice provisions, about which there is no dispute in the record. The failure to follow the procedures of the Act are exhaustively outlined in the Statement of the Case in the Appellant's Appeal Brief and in the Petition for Review.

Iron Gate's outrageous and illegal conduct should be ruled unacceptable to the State of Washington and its citizens, and that these unfair, deceptive, fraudulent, illegal, willful and injurious acts and willful violations of law are not allowed to stand, and that a ruling that their conduct is, in fact, a direct violation of the Consumer Protection Act, and the Washington Self-Service Storage Facility Act and that any and all limitations on value and limitations on liability unenforceable and are null and void. It is all exculpatory language. (Ref: Brief of Appellant [Amended], Conclusion, pages 47-48)

1. Willful injury and willful violation of law violates the CPA:

Iron Gate's behavior can only be described as "willful violation of law", as, in order to perform the business activities that Iron Gate engages in, within the borders of the State of Washington, they are required to familiarize themselves with, and completely adhere to, the governing laws, regulating that business activity, Chapter 19.150 RCW. (Ref: Ignorantia legis neminem excusat (Ignorance of the Law excuses no one)

Iron Gate incorporated the entire body of governing laws embodied in Ch. 19/150 RCW, the Self-Service Storage Act, into their rental agreement, by specific (Ref: CP 0147, Rental Agreement, page 6),

so Iron Gate had to know that such a body of law existed, and then blatantly violated it at least 29 times.

Iron Gate suggests, in their Answer, that:

> "At the time that these notices relating to the auction were sent, Iron Gate believed they complied with Washington law. However, it appears a mistake was inadvertently made in that one of the notices contained an auction date less than 14 days from the date of the notice." (Ref: Answer, No. B, pages 4 & 5)

Iron Gate references the word "notices" in its excuse for its illegal behavior, which is interesting, because it is followed by Iron Gate's "inadvertent mistake" argument, which only describes one mistaken activity, when there were actually numerous violations of law connected with their illegal lien and the illegal auctioning of Mr. Riley's property. Iron Gate's standard form Notice of Lien does not comply with the governing laws regarding the requirements of the notice, namely that it must contain the following statements and notice:

> RCW 19.150.040 (1) An itemized statement of the owners claim... (Iron Gate's claim amount was incorrect), (2) A statement that the occupant's right to use the storage space will terminate on a specific date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date. (No date appears on the

Notice, as required), and (3) …and that the owner's lien may be imposed thereafter. (The Lien is perfected and attaches only if the above requirements are fully met.)

Then, in further violation of the statute, Iron Gate allowed Mr. Riley only a six-day Notice instead of the required 14 day Notice. Note that an example of a compliant Notice appears within the governing law (RCW 19.150.050), so there is absolutely no excuse for non-compliance. The statute clearly states that "…the following form shall satisfy the requirements of RCW 19.150.040. The statute states further that "If the sum is not paid in full before (date at least fourteen days from mailing… and an owner's lien on any stored property will be imposed."

The lien is imposed only **after legal notice has been served and the legal notification period has expired**, which means that, by statute, no legal possessory lien would have perfected or attached to Mr. Riley's property until July 16th, 2010, the day after Iron Gate's illegal auction.

Then Iron Gate would have had to send a legal Notice of Auction, after the Lien perfected (on July 16th, 2010) to Mr. Riley, giving him another 14 days to comply with all notices, and satisfy any and all arrearages. (Ref: Petition for Review, Exhibit 9) All this before any legal auction could be held. The problem is… Mr. Riley appeared at the manager's office on July 16th, 2010, prepared to pay any and all arrearages

in full, and was denied the opportunity to legally tender payment. On July 17th, 2010, Mr. Riley's attorney had a letter delivered to Iron Gate's Cascade Park facility office, which outlined the illegalities of Iron Gate's conduct, specifically their illegal lien and auction, and demanded the return of Mr. Riley's property, and, further, expressed, in writing, conformation of Mr. Riley's attempt to pay in full the previous day, and his continued preparedness to make full payment.

So what does all of this mean, relative to Washington State Consumers? Well, the day Mr. Riley's auction took place, five other storage units were also sold, using the same illegal standard form Notice of Lien and illegal standard form Notice of Auction; and auction is held every month. CP 0168; CP 0243; CP 0170 Iron Gate, more probably than not, used illegal notification periods for both notices, just like they did in Mr. Riley's case. In addition, Iron Gate also conducted auctions at four other Clark County Iron Gate facilities that day, as well, again, using the same illegal notices. *Id.*

It doesn't matter that Iron Gate mistakenly and inadvertently put down the wrong date on their Notice of Auction, that they didn't provide the Notification Period allowed by law and then held their illegal auction , because none of that mattered. No legal lien had been perfected or had attached to Mr. Riley's property. You cannot legally auction someone's

personal property, without first going through the legal foreclosure and Lien process. All of that subterfuge carried no actual legal affect. (Ref: Brief of Appellant [Amended], III Statement of the Case, pages, 6-10) (Ref: Brief of Appellant [Amended], IV Argument, pages 10-44)

Iron Gate began doing business in 1989. CP 0170 The 1987 Sessions Laws, created the applicable language for the statutes in question, namely, RCW 19.150.040, RCW 19.150.050 and RCW 19.150.060, except for a 2007 Session Law that changed the wording from "personal papers and personal effects" to "personal papers and personal photographs". Which we will address in a moment. 19.150.060.

So, by not complying with governing laws, that have been in existence since before Iron Gate began doing business in Washington State, specifically, by using, not only illegal notification periods for both required notices, but also by using notices (both are standard form notices that are computer generated and created by Iron Gate's home office, i.e., Notice of Lien and Notice of Auction), neither of which meets the statute requirements for being a legally compliant notice, the whole process fails. The troubling reality is, it is more probable than not, that every Auction held at all five of Iron Gate's Washington State facilities from the end of 2009 through the illegal auctioning of Mr. Riley's property in July of 2010, were illegal auctions, with property sold without

legal liens being attached, because the same exact standard form illegal Notices were used by Iron Gate in 2009. (CP 0116, and CP 0166) It is also, more probable than not, that Iron Gate has been engaging in illegal auctions, without perfected liens having been obtained since they have been in business, which means that, assuming that only one auction occurred at every facility, at each one of their auctions, since the facility's opening, (Keeping in mind that 5 auctions occurred on the day Mr. Riley's illegal auction took place), that would mean that Iron Gate has held somewhere around a thousand illegal auctions, since arriving in Washington State, and that would possibly qualify as a RICO offense. (Ref: RCW 19.86.020) (Ref: RCW 19.86.093 (3)(a)(b)).

2. **Iron Gate's alleged value/damage limitation:**

Nowhere is there contained, in Iron Gate's Rental Agreement Paragraph/Section 5, or Paragraph/Section 7, or for that matter, anywhere else in the entire Rental Agreement/Contract, is there any specific reference to Iron Gate's and/or their attorney's "value/damage limitation" word grouping, term or concept, either individually, separately, or by any connecting reference.

There simply was no Value/Damage Limitation expressed, neither verbally, nor directly, or indirectly, specifically, or implied, in the Rental Agreement/Contract that Mr. Riley signed.

Iron Gate has used the term, "value/damage limitation" in some fashion, approximately eighteen times throughout their Answer, [1]apparently in an attempt to persuade the reader that the term, and/or connective association, though not substantiated or documented in print, somehow exists. Again, there is no Value/Damage Limitation provision contained in the Rental Agreement/[2]Contract that Mr. Riley signed.

C.) It is of primary importance to note that, one cannot have an actionable "value/damage limitation", which was, allegedly, incorporated into the Rental Agreement, by reference, that neither specifically appears anywhere within the four corners of the entire Rental Agreement, nor appears in any separate context, this, due to the fact that no value limitation, in fact, exists.

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[1] Iron Gate's references to a value/damage limitation contain in its Answer:
"Value/Damage Limit" (Ref: Iron Gate's Answer, pgs. i, 5)
"value/damage limit" (Ref: Iron Gate's Answer, pgs.5, 6)
"contractual value and damage limitation" (Ref: Iron Gate's Answer, pg. 1)
"contractual value/damage limitation" (Ref: Iron Gate's Answer, pg. 2)
"value/damage limitation" (Ref: Iron Gate's Answer, pgs. 5, 6, 7, 11)
"value/damage limitations" (Ref: Iron Gate's Answer, pg. 2)
"contractual limitations on value/damages" (Ref: Iron Gate's Answer, pgs. 9, 11)
"contractual limitations on value or damages" (Ref: Iron Gate's Ans., pgs.10, 11)
"limitation on value or damages" (Ref: Iron Gate's Answer, pg. 11)
"contractual limitations on value or damages" (Ref: Iron Gate's Ans., pgs.10, 11)"limitation on value or damages" (Ref: Iron Gate's Answer, pg. 11)
"contractual limitations on value or damages" (Ref: Iron Gate's Ans., pgs.10, 11)
"limitation on value or damages" (Ref: Iron Gate's Answer, pg. 11)

In short, there was no Value Limitation, either specifically expressed, or implied, in the Rental Agreement/Contract that Mr. Riley signed, Period.

4. Iron Gate's value limitation:

Agreeing, at the time of the execution of Iron Gate's Rental Agreement/Contract that there was no Agreement in place as to any value limitation, is not the same as Iron Gate contractually requiring a bone fide value limitation. Contending that the lease tenant read and understood the language of the agreement does not mean that he agreed to or understood the interpretation imposed on the contract by the landlord.

The Petitioner agrees that there was no Agreement, between the parties, as to any value limitation, or restriction, regarding the value of any or all of the property, either individually or collectively, that Mr. Riley was about to store, or would store at any time in the future, in either of the two storage units that Mr. Riley originally rented from Iron Gate, (Units No. 027 & No. 028). Storage unit No. 028, the remaining storage unit, that Mr. Riley continued to rent in 2010, is the backdrop for the illegal activities that Iron Gate engaged in during the latter part of 2010, which included an illegal Lien (no Lien perfected, established or attached), and the resulting illegal Auction (theft) of Petitioner's personal property,

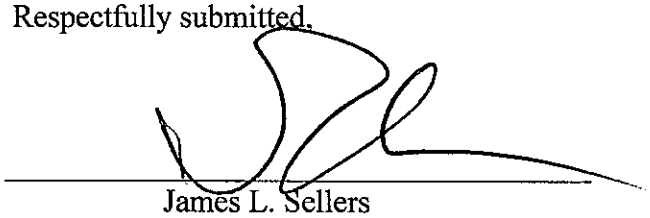
Mr. Riley's "personal effects" and non-"household goods" were excluded from Iron Gate's intended Lien, and notwithstanding Iron Gate's illegal Auction, that property should have been returned to Mr. Riley, per the two Notices sent to Mr. Riley by Iron Gate. (Ref. CP 0149, CP 0151)

VI. CONCLUSION

Larry Riley asks that the Court reverse the Court of Appeals decision except as it pertains to the Consumer Protection Act and rule that contractual limitations on liability and other exculpatory contract language are not enforceable in defense of intentional acts by the party claiming the benefit of the exculpatory language.

September 11, 2017

Respectfully submitted,



James L. Sellers
Attorney for Appellant
WSBA # 4770

APPENDIX

STATE OF WASHINGTON)
) ss.
County of Clark)

COMES NOW, Christine Tracy, and does hereby certify and declare the following to be true under penalty of perjury and under the laws of the State of Washington:

(1) That I am over the age of 21 and I am competent to be a witness herein, and make this Declaration to the best of my own personal knowledge and belief.

(2) On date of this letter, I did those of the following that are checked:

[X] I deposited in the mails of the United States, a properly stamped and addressed envelope,

[ ] I transmitted by fax,

[ ] I transmitted by email,

[ ] Hand delivered,

which was addressed and directed to the recipient of this letter, and which contained a true and correct copy of the document accompanying in this letter.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct; which I subscribe on the date of this letter, at Vancouver, Washington, as follows:

Christine Tracy

Signature of Declarant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

April 18, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LARRY D. RILEY, Appellant, v. IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L. ARONSON; EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all dba IRON GATE SELF STORAGE; dba IRON GATE STORAGE-CASCADE PARK, Respondents.	No. 47905-2-II PUBLISHED OPINION

MELNICK, J. — Larry Riley entered into a self-storage rental agreement with Iron Gate Self Storage that contained provisions limiting Iron Gate's liability and maximum recoverable damages. Riley appeals the trial court's order granting Iron Gate's partial summary judgment, denying his motion for reconsideration, and entering a final judgment of dismissal with prejudice. We conclude that the trial court properly granted summary judgment on the breach of contract and conversion claims. We further conclude that the limiting provisions in the rental agreement violated public policy under the Consumer Protection Act (CPA) but not under the Self-Service Storage Facilities Act (Storage Act). We affirm in part and reverse in part.

FACTS

Iron Gate Storage—Cascade Park (Iron Gate) is a commercial business that rents storage space to the public. On December 1, 2003, Riley entered into a rental agreement with Iron Gate

to rent storage units. The agreement included a cap of approximately $5,000 on the value of personal property that may be stored in the unit. The applicable provision stated:

> 5. **USES AND COMPLIANCE WITH LAW** . . . Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that *the aggregate value of all suchpersonal* (sic) *property is, will be, or is expected to be, at or near $5,000.* **It Is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement.**

Clerk's Papers (CP) at 142 (italicized emphasis added).

Another provision in the rental agreement included a limitation on liability and a $5,000 cap on damages:

> 7. **LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY.** Operator and Operators Agent shall not be liable to Occupant for any damage or lose (sic) to any person. Occupant or any property stored in, on or about the Premises . . . *arising from any cause whatsoever*, including but not limited to . . . active or passive acts, omissions or negligence of Operator or Operators Agents *[except from] Operator's fraud, willful injury or willful violation of law.* . . . Notwithstanding anything contained in this Rental Agreement, *In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of $5,000* for any damage or lose (sic) to any person, Occupant, or any properly (sic) stored . . . *arising from any cause whatsoever, Including, but not limited to*, Operators Agents' active or passive acts, omissions or negligence.

CP at 143 (italicized emphasis added).

The agreement also included a clause that stated the occupant shall maintain an insurance policy covering at least 100 percent of the actual cash value of stored personal property. Riley elected to "self-insure (personally assume all risk of loss or damage)." CP at 143. He initialed his name in each section, indicating that he understood the terms of the agreement.

Over the course of his lease, Riley often fell behind on his rent payments. Iron Gate sent Riley past due notices in May, June, and July 2010. It sent a pre-lien notice to Riley on May 21. It then sent Riley a notice of cutting lock on June 24, followed by a certified notice of lien one week later.

On July 8, 2010, Iron Gate mailed Riley a notice of auction. Iron Gate believed its notices complied with Washington law; however, the Notice of Auction mistakenly contained an auction date that was less than the statutorily required 14 days from the date of the notice. The auction occurred on July 15 and the winning bidder paid less than $2,000 for items in Riley's unit. Riley contacted Iron Gate following the auction and received information that his property had been sold.

Two days after the auction, Riley delivered a letter to Iron Gate expressing his opposition to the auction sale and his belief that the notices were invalid. Riley also notified Iron Gate that he was prepared to pay any outstanding rent. The letter also requested that his property be restored to him.

Iron Gate recovered many auctioned items by repurchasing them from the winning bidder. In addition to the recovered items, Iron Gate continued to store Riley's remaining property at no cost until Riley retrieved it several months later.

In March 2015, Riley filed an amended complaint alleging that Iron Gate violated the Storage Act and the CPA. He alleged that he suffered actual damages in excess of $1.5 million and sought treble damages under the CPA. Riley also alleged that the rental agreement was a contract of adhesion and that its provisions were unconscionable. He further alleged breach of contract and conversion.

Iron Gate moved for summary judgment on Riley's claims and, in the alternative, partial summary judgment against any recovery of damages that exceeded $5,000. Iron Gate acknowledged it mistakenly violated the Storage Act, but stated that it took steps to recover Riley's property. It argued that Riley failed to follow the terms of the rental agreement and the amount of damages he sought was barred by the agreement.

At the hearing on the motion for summary judgment, the trial court deferred its ruling on the summary judgment motion.[1] It granted the partial summary judgment motion and orally ruled that even if Riley successfully brought a claim, he would be bound by the contractual limitation of $5,000 in damages.

Riley moved for reconsideration and the trial court denied the motion. With Riley's agreement, Iron Gate then tendered a $23,000 check to Riley to be held by his attorney pending the outcome of this appeal.[2] Per Iron Gate, this amount reflected the maximum damages for which it could be liable, trebled, and with interest on the trebling, because of the CPA claim.

The trial court entered an order on partial summary judgment and a final judgment of dismissal with prejudice. The final judgment reiterated that Riley's recoverable damages, under all of his causes of action, were limited to a maximum of $5,000. It further stated that the $23,000 check payment tendered to Riley represented "an amount of recoverable damages, plus interest" which was equal to or greater than what Riley could potentially recover at trial. CP at 308. Riley did not object to the form of the order or judgment.

Riley appeals.

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[1] Iron Gate later withdrew this motion and agreed to proceed only on the partial summary judgment motion.

[2] The parties agreed that Riley's counsel would put the $23,000 check in an interest bearing account pending the outcome of this appeal.

ANALYSIS

I. SUMMARY JUDGMENT

A. LEGAL PRINCIPLES

We review an order granting summary judgment de novo. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 271, 285 P.3d 854 (2012). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We construe all facts and their reasonable inferences in the light most favorable to the nonmoving party. *Loeffelholz*, 175 Wn.2d at 271.

A party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apt.–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "A material fact is one upon which the outcome of the litigation depends in whole or in part." *Atherton*, 115 Wn.2d at 516. If the moving party satisfies its burden, the nonmoving party must set forth specific facts demonstrating that a material fact remains in dispute. *Loeffelholz*, 175 Wn.2d at 271. "[C]onclusory statements of fact will not suffice." *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 360, 753 P.2d 517 (1988).

Summary judgment is proper only if reasonable persons could reach but one conclusion from the evidence presented. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007). We may affirm summary judgment on any ground supported by the record. *Blue Diamond Grp., Inc. v. KB Seattle I, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881 (2011).

When interpreting contracts, we give words in a contract their ordinary, usual, and popular meaning, unless the contract in its entirety clearly demonstrates a contrary intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). The contract is viewed as a whole, and particular language is interpreted in the context of other contract provisions. *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116 (2014).

B. SCOPE OF LIMITATION CLAUSE ON DAMAGES

Riley argues that the $5,000 cap on damages in the rental agreement does not apply to intentional torts, such as conversion. We disagree.

Riley focuses on the first part of paragraph 7 of the rental agreement, which states that Iron Gate will not be liable for any damages except for "willful injury or willful violation of law." CP at 143. But the $5,000 damages cap is contained in the second part of paragraph 7, which does not contain any exclusion for willful injury. Instead, the cap applies to damages "arising from any cause whatsoever, Including, but not limited to, Operators Agents' active or passive acts, omissions or negligence." CP at 143. Conversion is a cause of action involving damages "arising from any cause whatsoever." CP at 143. Therefore, the limitation clause imposing the $5,000 cap on damages applies to all of Riley's causes of action.

C. THE LIMITING PROVISIONS ARE ENFORCEABLE

Riley argues that the limiting provisions in the rental agreement are unenforceable because they are ambiguous and violate public policy. We disagree.

"Under the principle of freedom to contract, parties are free to enter into, and courts are generally willing to enforce, contracts that do not contravene public policy." *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 176, 94 P.3d 945 (2004). The parties to a contract are

bound by its terms. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009). Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have made for themselves. *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955).

Exculpatory provisions are strictly construed. *Scott v. Pac. W. Mountain Resort*, 119 Wn.2d 484, 490, 834 P.2d 6 (1992). They are enforceable unless they violate public policy, are inconspicuous, or involve liability for acts falling greatly below the standard established by law for the protection of others. *Scott*, 119 Wn.2d at 492. The third exception is generally referred to as the "gross negligence" standard. *See Conradt v. Four Star Promotions, Inc.*, 45 Wn. App. 847, 852, 728 P.2d 617 (1986).

1. THE LIMITING PROVISIONS DO NOT VIOLATE PUBLIC POLICY

Washington courts apply a six-factor balancing test to determine whether an exculpatory agreement violates public policy.[3] These factors come from *Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, which states that the more of the six factors that "appear in a given exculpatory agreement case, the more likely the agreement is to be declared invalid on public policy grounds." 110 Wn.2d 845, 852, 758 P.2d 968 (1988).

The test is whether: (1) the agreement concerns an endeavor of a type generally thought suitable for public regulations; (2) the party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members

[3] Washington courts seem to analyze contractual agreements involving "exculpatory" or "limiting" liability provisions for public policy violations using the same factors. *See Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, 110 Wn.2d 845, 851-55, 758 P.2d 968 (1988); *Vodopest v. MacGregor*, 128 Wn.2d 840, 845-48, 913 P.2d 779 (1996); *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 109 Wn. App. 334, 340-43, 35 P.3d 383 (2001); *Boyce v. West*, 71 Wn. App. 657, 662-63, 862 P.2d 592 (1993). Riley seems to argue the contract clauses at issue are exculpatory provisions. Iron Gate does not concede the point, but asserts the provisions are valid as either limiting provisions or exculpatory provisions.

of the public; (3) such party holds itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards; (4) because of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks the services; (5) in exercising a superior bargaining power, the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence; and (6) the person or property of members of the public seeking such services must be placed under the control of the furnisher, subject to the risk of carelessness on the part of the furnisher, its employees, or agents. *Boyce v. West*, 71 Wn. App. 657, 663-64, 862 P.2d 592 (1993) (citing *Wagenblast*, 110 Wn.2d at 851-55).

The limiting provisions in Riley's self-storage rental agreement weigh in favor of a majority of the factors listed above. First, as to public regulation, a self-storage facility is a highly regulated industry or service. It must comply with numerous statutory and regulatory requirements contained in the Storage Act. Ch. 19.150 RCW; WAC 308-56A-312.

Second, self-storage facilities are not an essential or necessary public service. "A common thread runs through those cases in which exculpatory agreements have been found to be void as against public policy . . . they are all essential public services---hospitals, housing, public utilities, and public education." *Shields v. Sta-Fit, Inc.*, 79 Wn. App. 584, 589, 903 P.2d 525 (1995) (footnotes omitted) (holding that health clubs contribute to people's health, but are not essential to the welfare of the state or its citizens).

Third, Iron Gate holds itself out by advertising to the general public as willing to rent units to any member of the public who seeks it.

Fourth, Iron Gate does not provide an essential service. Nor does it possess a decisive advantage of bargaining strength. Riley had the freedom to take his business elsewhere if he disagreed with the rental agreement's provisions.

Fifth, the agreement and limiting provisions within it did not create an adhesion contract. Iron Gate did not exercise a superior bargaining power. It provided Riley with an opportunity to pay additional reasonable fees and protect against Iron Gate's negligence. Riley could have opted to purchase insurance and protect 100 percent of the cash value of his property, but he declined to do so.

Sixth, Riley had exclusive control over his storage unit. Per the agreement, Riley placed his own lock on the unit. Iron Gate could only enter the unit with written notice, in the case of an emergency, or if Riley defaulted. The rental agreement, therefore, gave Riley exclusive control of his unit and it did not place him under the control of Iron Gate.

The analysis shows that the limiting provisions and rental agreement as a whole weigh in favor of the majority of the factors outlined above. We, therefore, conclude that the provisions do not violate public policy for self-storage rental agreements.[4]

[4] Additionally, the Storage Act does not bar contractual provisions that limit liability and damages. *See* RCW 19.150.140. A recent amendment to the Storage Act confirms this point. The amendment states that if a condition in the rental agreement specifies a limit on the value of property that may be stored, that limit is the maximum value of the stored property for purposes of the facility's liability only. RCW 19.150.170; LAWS OF 2015, ch. 13 § 5. The accompanying senate bill report seems to acknowledge that such limitations in rental agreements have existed and that the amendment serves to clarify the purpose of such limits. *See* CP at 41-43 (Senate Bill Report 5009, Jan. 26, 2015).

2. THE LIMITING PROVISIONS ARE CONSPICUOUS

Riley next argues that he did not unambiguously agree to store only $5,000 worth of property in the storage unit. He argues that the first part of the applicable contract provision states that he can store property with "substantially less or no aggregate value," and that the second part is not, on its face, a limitation on the value of property that can be stored because it is a "refusal to agree that the property is worth more than $5,000." Br. of Appellant at 25. We disagree.

When read as a whole, the provision limiting the value of items stored in each unit is clear and unambiguous. It states, in relevant part, "It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and . . . the aggregate value of all suchpersonal (sic) property is, will be, or is expected to be, at or near $5,000." CP at 142.

As to the provision limiting damages and liability, Riley argues that the provision is so poorly worded and "hampered by grammatical and punctuation errors" that it is impossible to make sense of what is written. Br. of Appellant at 19. He argues that the damage limitation provision does not expressly exclude willful injury which Riley asserts is expressly excluded in the liability limitation provision. Riley also infers that the reference to "any cause whatsoever" in the damages provision is "general," and we should rely on the "specific term," negligence. Br. of Appellant at 20.

When read as a whole, the provision limiting damages is clear, despite the existing grammatical errors. It states that "In no event" will Iron Gate be liable in an amount in excess of $5,000 "arising from any cause whatsoever, Including, but not limited to" Iron Gate's active or passive acts, omissions, or negligence. CP at 143. The plain language clearly limits damages arising from any cause, including willful and fraudulent conduct. We reject Riley's arguments.

3. THE LIMITING PROVISIONS DO NOT INVOLVE LIABILITY FOR GROSS NEGLIGENCE

Riley seems to argue that Iron Gate's acts fell "greatly below the standard established by law for the protection of others." Br. of Appellant at 31-32. However, Riley provides no evidence that Iron Gate's conduct amounted to *gross* negligence. "Evidence of negligence is not evidence of gross negligence; to raise an issue of gross negligence, there must be substantial evidence of serious negligence." *Boyce*, 71 Wn. App. at 665. "'Gross negligence' is 'negligence substantially and appreciably greater than ordinary negligence.'" *Johnson v. Spokane to Sandpoint, LLC*, 176 Wn. App. 453, 460, 309 P.3d 528 (2013) (quoting *Nist v. Tudor*, 67 Wn.2d 322, 331, 407 P.2d 798 (1965)).

Riley read, understood, and signed the rental agreement with Iron Gate that unambiguously limited the value of his storage contents to approximately $5,000. However, Riley allegedly stored an excess of $1.5 million worth of property in the storage unit and opted to self-insure. Before the auction, Riley was in arrears for months and had been in arrears in the past. Iron Gate sent multiple notices alerting Riley that his account was past due. Iron Gate mailed a notice letter with an erroneous auction date and subsequently conducted an auction of Riley's property. Riley has not provided substantial evidence that Iron Gate's conduct amounted to gross negligence.

Riley also argues that Iron Gate was grossly negligent in failing to give proper lien and auction notices as required by the Storage Act. The evidence showed that Riley was in arrears for several months and that Iron Gate sent an auction notice with an erroneous auction date. After Iron Gate conducted the auction and was made aware of its mistake, it provided Riley with an opportunity to recover his property. Iron Gate also recovered much of Riley's property and stored it for free. Riley has not shown that Iron Gate acted in a grossly negligent manner and the record does not support such a conclusion.

We, therefore, conclude that there was no material issue of fact as to the limiting provisions and that they are enforceable because they are not contrary to public policy, they are conspicuous, and they do not involve liability for acts falling greatly below the gross negligence standard.

D. IRON GATE DID NOT INTENTIONALLY OR WILLFULLY VIOLATE THE STORAGE ACT

Riley further argues that Iron Gate intentionally violated the Storage Act and cannot contractually exculpate itself from its intentional acts. Iron Gate argues that the Storage Act does not bar provisions that limit liability or damages, nor do the provisions violate public policy. It argues that Riley cannot show willful misconduct and the provisions should be enforced. We agree with Iron Gate.

RCW 19.150.060(c) states that an occupant's property may be sold to satisfy a lien after a specified date which is "not less than fourteen days" from the last date of sending the final lien sale of notice. It is undisputed that Iron Gate did not give Riley 14 days' notice. The record also supports Iron Gate's argument that the notice violation was a mistake and that Iron Gate took steps to remedy the mistake.

Riley, however, contends that Iron Gate intentionally violated the notice requirement. He argues that because Iron Gate elected to begin the foreclosure and auction process against his property despite having the option to pursue other remedies such as a suit for money damages, the conduct "can only be described as a willful choice and an intentional act." Br. of Appellant at 14. He contends that volitional acts are included in the definition of willful. However, volition alone is insufficient to support a finding of "willfulness." "Willful" requires a showing of actual intent to harm. *Zellmer v. Zellmer*, 164 Wn.2d 147, 155 n.2, 188 P.3d 497 (2008). The evidence does

not show that Iron Gate's conduct was willful. While the conduct was "volitional" because Iron Gate acted upon their mistake, a mistake in and of itself is insufficient to show willfulness or actual intent to harm. We conclude that no genuine dispute of material fact exists that Iron Gate did not intentionally or willfully violate the Storage Act.

Riley argues that it is against public policy for the limitation provisions to apply to Storage Act claims. As discussed above, the limiting provisions in the agreement are enforceable and not contrary to public policy. Riley does not provide evidence showing how the limiting provisions are contrary to public policy under the Storage Act. Nor is there a provision in the Storage Act barring contractual provisions limiting liability and damages. We conclude that it is not contrary to public policy for such provisions to apply to Storage Act claims.

E. THE LIMITING PROVISIONS BAR RILEY'S CONVERSION CLAIM[5]

Riley next argues that Iron Gate committed conversion when it intentionally seized and sold his property. He argues that to recover for conversion, he need only show Iron Gate intended to sell the property and need not show motive or purpose. He further argues that liability should not be exculpated when conversion occurred due to Iron Gate's volitional act. We disagree.

[5] Riley argues his conversion claim at length under various theories. He argues that the provision limiting liability excludes intentional torts because "willful" implies only "volition action," and because "willful" is used interchangeably with "intentional." Br. of Appellant at 23. He contends that the "willful injury" is selling Riley's unit contents, and the "willful violation of law" is engaging in notice procedures that resulted in the sale of his property in violation of the Storage Act. Br. of Appellant at 22. He also argues that the provision does not pertain to intentional torts because it does not specify that intentional torts are excluded. However, the limiting provision is clear: liability is barred from "any cause whatsoever," except fraud and willful misconduct. CP at 143.

Riley's conversion claim fails because it is barred by the contractual provision limiting liability. Per the agreement, liability attaches only when damage or loss arises out of Iron Gate's fraudulent or willful misconduct. As such, the limitation provision is enforceable for torts involving deliberate or volitional conduct so long as there is no evidence of fraudulent or willful misconduct. Riley has not presented evidence showing that Iron Gate's conduct was willful misconduct or fraudulent. Because the limitation provisions are enforceable against such claims, we conclude that there are no genuine issues of material fact as to whether Riley's conversion claim survives.

F. THE LIMITATION PROVISIONS VIOLATE PUBLIC POLICY AS TO RILEY'S CPA CLAIM

Riley argues that Iron Gate's lien notices and rental agreement violate the CPA and that the agreement's limiting provisions disclaiming liability under the CPA are void under public policy. We conclude that the limitation provisions violate public policy because they seriously impair Riley from asserting a CPA claim, contrary to the purpose of the CPA's private right of action.

The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020. The purpose of the CPA is to complement the body of federal law governing restraints of trade, unfair competition, and unfair, deceptive, and fraudulent acts in order to protect the public and foster fair and honest competition. RCW 19.86.920. To achieve its purpose, the CPA is "liberally construed that its beneficial purposes may be served." RCW 19.86.920.

The CPA was amended to provide a private right of action, encouraging individual citizens to bring suit to enforce the CPA. *Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 836, 161 P.3d 1016 (2007). "The private right of action to enforce RCW 19.86.020 is more than a means for vindicating the

rights of the individual plaintiff" as the plaintiff must show that the challenged conduct affects the public interest. *Dix*, 160 Wn.2d at 837.

The CPA encourages individuals to fight restraints of trade, unfair competition, and unfair, deceptive, and fraudulent conduct. *Dix*, 160 Wn.2d at 840. Barring Riley from bringing a CPA claim due to the limitation provisions of his rental agreement contradicts the purpose of the CPA's private right of action. Further, CPA treble damages are capped at $25,000[6] while the limitation provisions cap Riley's damages to $5,000 as to all claims. Without deciding whether or not Riley's CPA claim survives summary judgment, we, therefore, conclude that a limitation provision that seriously impairs a plaintiff from asserting a private CPA claim violates public policy.

G. THE LIMITATION PROVISIONS ARE NOT UNCONSCIONABLE

Riley argues that the agreement's exculpatory provisions are void because limiting liability for intentional and wrongful seizure and sale of his property worth over $1.5 million is unconscionable. We disagree.

1. PROCEDURAL UNCONSCIONABILITY

Procedural unconscionability requires evidence of blatant unfairness in the bargaining process and a lack of meaningful choice. *Torgerson*, 166 Wn.2d at 518. Procedural unconscionability is determined in light of the totality of the circumstances, including (1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were hidden in a maze of fine print. *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 391, 858 P.2d 245 (1993) (citing *Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 260, 544 P.2d 20 (1975)).

[6] The cap for CPA treble damages is $25,000. RCW 19.86.090. Therefore, contrary to Iron Gate's argument and the trial court's finding, the $23,000 initially tendered to Riley is not the same as an award of damages equal to or greater than what Riley could have potentially recovered at trial.

These factors should not be applied mechanically without regard to whether in truth a meaningful choice existed. *Torgerson*, 166 Wn.2d at 519.

Riley entered into the rental agreement with Iron Gate by choice and had a reasonable opportunity to understand the terms. Riley seems to argue that he did not have such an opportunity because he signed the agreement after a night of driving from California to Washington. This argument is meritless. Riley entered into the agreement with Iron Gate in 2003 and did not raise any issue as to its clarity or meaning until 2015. Riley testified that he understood the agreement. He placed his initials beside each limiting provision and signed the agreement, confirming that he understood its terms.

Further, the terms of the agreement were clear. As both parties acknowledged, the rental agreement contained numerous typographical errors. However, there was no evidence presented showing that the typographical errors confused the meaning of the contract or the provisions limiting liability, the value of the unit's contents, or recoverable damages. The limitation provisions, especially when read as a whole, were unambiguous in its meaning. We, therefore, conclude that the trial court did not err because there was no genuine issue of material fact regarding procedural unconscionability.

2. SUBSTANTIVE UNCONSCIONABILITY

Substantive unconscionability involves cases where a clause or term in the contract is one-sided or overly harsh. *Torgerson*, 166 Wn.2d at 519. However, such unfairness must truly stand out; "shocking to the conscience," "monstrously harsh," and "exceedingly calloused" are terms sometimes used to describe substantive unconscionability. *Torgerson*, 166 Wn.2d at 519 (internal citations omitted).

Riley contends that the agreement's exculpatory terms were "monstrously harsh" and "shocking" because it allowed Iron Gate to auction an alleged $1.5 million of his property without following correct procedure, and because liability was limited to $5,000. Br. of Appellant at 44-45. Riley provides no evidence to support this contention. The agreement stated that the contents of his unit was expected to be valued at approximately $5,000. Further, the limitation on damages was clear and not overly harsh when it capped damages at $5,000—the total dollar amount Riley contractually agreed to keep in the unit. Riley agreed to the value limitation when he initialed his name beside the provision. Iron Gate relied on Riley's representation that the contents of his unit were valued at approximately $5,000. When read as a whole, the limitation provisions were not one-sided or overly harsh. We, therefore, conclude that the trial court did not err because there was no genuine issue of material fact as to substantive unconscionability.

H. THE RENTAL AGREEMENT IS NOT AN ADHESION CONTRACT

Riley argues that the agreement is an adhesion contract because it does not contemplate insuring against illegal seizure and sale of storage unit contents. We disagree.

An adhesion contract exists if (1) the "'contract is a standard form printed contract,'" (2) the contract is "'prepared by one party and submitted to the other on a "take it or leave it" basis,'" and (3) there was "'no true equality of bargaining power between the parties.'" *Zuver v. Airtouch Commc's, Inc.*, 153 Wn.2d 293, 304, 103 P.3d 753 (2004) (quoting *Yakima County (W. Valley Fire Prot. Dist. No. 12*, 122 Wn.2d at 393) (quoting *Standard Oil Co. of California v. Perkins*, 347 F.2d 379. 383 n.5 (9th Cir. 1965))).

Iron Gate prepared the rental agreement, but the agreement gave Riley the option of purchasing insurance. *See Eifler v. Shurgard Capital Mgmt. Grp.*, 71 Wn. App. 684, 694, 861 P.2d 1071 (1993) (limiting provision did not violate public policy because plaintiff was given the

opportunity to purchase insurance). Riley agreed to the liability and damage limitations that were set out in the agreement. To offset the limitation provisions and protect his property, he was also provided an opportunity to purchase insurance through Iron Gate. Riley chose to self-insure and assume the risk instead. Riley also had the choice to take his business elsewhere if he disagreed with the agreement. We, therefore, conclude that the agreement was not an adhesion contract, and the trial court did not err because there was no genuine issue of material fact.

II. MOTION FOR RECONSIDERATION

Lastly, Riley assigns error to the trial court's order denying his motion for reconsideration. We do not consider the issue because it is inadequately briefed.

Under RAP 10.3(a)(4) and (6), an appellant's brief must include "assignments of error, arguments supporting the issues presented for review, and citations to legal authority" and references to relevant parts of the record. *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004). If an appellant's brief does not include argument or authority to support its assignment of error, the assignment of error is waived. *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). "We need not consider arguments that are not developed in the briefs and for which a party has not cited authority." *Kiga*, 127 Wn. App. at 824.

Riley does not present any argument as to how the trial court abused its discretion when it denied his motion for reconsideration. Presumably, Riley is objecting to the court's decision for the same reasons he objects to the court's partial summary judgment ruling. However, we do not consider issues that are unsupported by argument and legal authority. Because Riley waived the issue by providing no argument or authority to support his assignment of error, we do not consider the issue.

Because we uphold the cap on damages to all claims, except as to the CPA claim, we affirm in part and reverse in part.

Melnick, J.

We concur:

Johanson, J.

Maxa, A.C.J.

Filed
Washington State
Court of Appeals
Division Two

April 18, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LARRY D. RILEY, Appellant, v. IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L. ARONSON; EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all dba IRON GATE SELF STORAGE; dba IRON GATE STORAGE-CASCADE PARK, Respondents.	No. 47905-2-II PUBLISHED OPINION

MELNICK, J. — Larry Riley entered into a self-storage rental agreement with Iron Gate Self Storage that contained provisions limiting Iron Gate's liability and maximum recoverable damages. Riley appeals the trial court's order granting Iron Gate's partial summary judgment, denying his motion for reconsideration, and entering a final judgment of dismissal with prejudice. We conclude that the trial court properly granted summary judgment on the breach of contract and conversion claims. We further conclude that the limiting provisions in the rental agreement violated public policy under the Consumer Protection Act (CPA) but not under the Self-Service Storage Facilities Act (Storage Act). We affirm in part and reverse in part.

FACTS

Iron Gate Storage—Cascade Park (Iron Gate) is a commercial business that rents storage space to the public. On December 1, 2003, Riley entered into a rental agreement with Iron Gate

to rent storage units. The agreement included a cap of approximately $5,000 on the value of personal property that may be stored in the unit. The applicable provision stated:

> 5. **USES AND COMPLIANCE WITH LAW** . . . Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that *the aggregate value of all suchpersonal* (sic) *property is, will be, or is expected to be, at or near $5,000.* **It Is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement.**

Clerk's Papers (CP) at 142 (italicized emphasis added).

Another provision in the rental agreement included a limitation on liability and a $5,000 cap on damages:

> 7. **LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY.** Operator and Operators Agent shall not be liable to Occupant for any damage or lose (sic) to any person. Occupant or any property stored in, on or about the Premises . . . *arising from any cause whatsoever,* including but not limited to . . . active or passive acts, omissions or negligence of Operator or Operators Agents *[except from] Operator's fraud, willful injury or willful violation of law.* . . . Notwithstanding anything contained in this Rental Agreement, *In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of $5,000* for any damage or lose (sic) to any person, Occupant, or any properly (sic) stored . . . *arising from any cause whatsoever, Including, but not limited to,* Operators Agents' active or passive acts, omissions or negligence.

CP at 143 (italicized emphasis added).

The agreement also included a clause that stated the occupant shall maintain an insurance policy covering at least 100 percent of the actual cash value of stored personal property. Riley elected to "self-insure (personally assume all risk of loss or damage)." CP at 143. He initialed his name in each section, indicating that he understood the terms of the agreement.

Over the course of his lease, Riley often fell behind on his rent payments. Iron Gate sent Riley past due notices in May, June, and July 2010. It sent a pre-lien notice to Riley on May 21. It then sent Riley a notice of cutting lock on June 24, followed by a certified notice of lien one week later.

On July 8, 2010, Iron Gate mailed Riley a notice of auction. Iron Gate believed its notices complied with Washington law; however, the Notice of Auction mistakenly contained an auction date that was less than the statutorily required 14 days from the date of the notice. The auction occurred on July 15 and the winning bidder paid less than $2,000 for items in Riley's unit. Riley contacted Iron Gate following the auction and received information that his property had been sold.

Two days after the auction, Riley delivered a letter to Iron Gate expressing his opposition to the auction sale and his belief that the notices were invalid. Riley also notified Iron Gate that he was prepared to pay any outstanding rent. The letter also requested that his property be restored to him.

Iron Gate recovered many auctioned items by repurchasing them from the winning bidder. In addition to the recovered items, Iron Gate continued to store Riley's remaining property at no cost until Riley retrieved it several months later.

In March 2015, Riley filed an amended complaint alleging that Iron Gate violated the Storage Act and the CPA. He alleged that he suffered actual damages in excess of $1.5 million and sought treble damages under the CPA. Riley also alleged that the rental agreement was a contract of adhesion and that its provisions were unconscionable. He further alleged breach of contract and conversion.

Iron Gate moved for summary judgment on Riley's claims and, in the alternative, partial summary judgment against any recovery of damages that exceeded $5,000. Iron Gate acknowledged it mistakenly violated the Storage Act, but stated that it took steps to recover Riley's property. It argued that Riley failed to follow the terms of the rental agreement and the amount of damages he sought was barred by the agreement.

At the hearing on the motion for summary judgment, the trial court deferred its ruling on the summary judgment motion.[1] It granted the partial summary judgment motion and orally ruled that even if Riley successfully brought a claim, he would be bound by the contractual limitation of $5,000 in damages.

Riley moved for reconsideration and the trial court denied the motion. With Riley's agreement, Iron Gate then tendered a $23,000 check to Riley to be held by his attorney pending the outcome of this appeal.[2] Per Iron Gate, this amount reflected the maximum damages for which it could be liable, trebled, and with interest on the trebling, because of the CPA claim.

The trial court entered an order on partial summary judgment and a final judgment of dismissal with prejudice. The final judgment reiterated that Riley's recoverable damages, under all of his causes of action, were limited to a maximum of $5,000. It further stated that the $23,000 check payment tendered to Riley represented "an amount of recoverable damages, plus interest" which was equal to or greater than what Riley could potentially recover at trial. CP at 308. Riley did not object to the form of the order or judgment.

Riley appeals.

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[1] Iron Gate later withdrew this motion and agreed to proceed only on the partial summary judgment motion.

[2] The parties agreed that Riley's counsel would put the $23,000 check in an interest bearing account pending the outcome of this appeal.

ANALYSIS

I. SUMMARY JUDGMENT

A. LEGAL PRINCIPLES

We review an order granting summary judgment de novo. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 271, 285 P.3d 854 (2012). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We construe all facts and their reasonable inferences in the light most favorable to the nonmoving party. *Loeffelholz*, 175 Wn.2d at 271.

A party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apt.–Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "A material fact is one upon which the outcome of the litigation depends in whole or in part." *Atherton*, 115 Wn.2d at 516. If the moving party satisfies its burden, the nonmoving party must set forth specific facts demonstrating that a material fact remains in dispute. *Loeffelholz*, 175 Wn.2d at 271. "[C]onclusory statements of fact will not suffice." *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 360, 753 P.2d 517 (1988).

Summary judgment is proper only if reasonable persons could reach but one conclusion from the evidence presented. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007). We may affirm summary judgment on any ground supported by the record. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881 (2011).

When interpreting contracts, we give words in a contract their ordinary, usual, and popular meaning, unless the contract in its entirety clearly demonstrates a contrary intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). The contract is viewed as a whole, and particular language is interpreted in the context of other contract provisions. *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116 (2014).

B. SCOPE OF LIMITATION CLAUSE ON DAMAGES

Riley argues that the $5,000 cap on damages in the rental agreement does not apply to intentional torts, such as conversion. We disagree.

Riley focuses on the first part of paragraph 7 of the rental agreement, which states that Iron Gate will not be liable for any damages except for "willful injury or willful violation of law." CP at 143. But the $5,000 damages cap is contained in the second part of paragraph 7, which does not contain any exclusion for willful injury. Instead, the cap applies to damages "arising from any cause whatsoever, Including, but not limited to, Operators Agents' active or passive acts, omissions or negligence." CP at 143. Conversion is a cause of action involving damages "arising from any cause whatsoever." CP at 143. Therefore, the limitation clause imposing the $5,000 cap on damages applies to all of Riley's causes of action.

C. THE LIMITING PROVISIONS ARE ENFORCEABLE

Riley argues that the limiting provisions in the rental agreement are unenforceable because they are ambiguous and violate public policy. We disagree.

"Under the principle of freedom to contract, parties are free to enter into, and courts are generally willing to enforce, contracts that do not contravene public policy." *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 176, 94 P.3d 945 (2004). The parties to a contract are

bound by its terms. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009). Courts do not have the power, under the guise of interpretation, to rewrite contracts which the parties have made for themselves. *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955).

Exculpatory provisions are strictly construed. *Scott v. Pac. W. Mountain Resort*, 119 Wn.2d 484, 490, 834 P.2d 6 (1992). They are enforceable unless they violate public policy, are inconspicuous, or involve liability for acts falling greatly below the standard established by law for the protection of others. *Scott*, 119 Wn.2d at 492. The third exception is generally referred to as the "gross negligence" standard. *See Conradt v. Four Star Promotions, Inc.*, 45 Wn. App. 847, 852, 728 P.2d 617 (1986).

1. THE LIMITING PROVISIONS DO NOT VIOLATE PUBLIC POLICY

Washington courts apply a six-factor balancing test to determine whether an exculpatory agreement violates public policy.[3] These factors come from *Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, which states that the more of the six factors that "appear in a given exculpatory agreement case, the more likely the agreement is to be declared invalid on public policy grounds." 110 Wn.2d 845, 852, 758 P.2d 968 (1988).

The test is whether: (1) the agreement concerns an endeavor of a type generally thought suitable for public regulations; (2) the party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members

[3] Washington courts seem to analyze contractual agreements involving "exculpatory" or "limiting" liability provisions for public policy violations using the same factors. *See Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, 110 Wn.2d 845, 851-55, 758 P.2d 968 (1988); *Vodopest v. MacGregor*, 128 Wn.2d 840, 845-48, 913 P.2d 779 (1996); *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 109 Wn. App. 334, 340-43, 35 P.3d 383 (2001); *Boyce v. West*, 71 Wn. App. 657, 662-63, 862 P.2d 592 (1993). Riley seems to argue the contract clauses at issue are exculpatory provisions. Iron Gate does not concede the point, but asserts the provisions are valid as either limiting provisions or exculpatory provisions.

of the public; (3) such party holds itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards; (4) because of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks the services; (5) in exercising a superior bargaining power, the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence; and (6) the person or property of members of the public seeking such services must be placed under the control of the furnisher, subject to the risk of carelessness on the part of the furnisher, its employees, or agents. *Boyce v. West*, 71 Wn. App. 657, 663-64, 862 P.2d 592 (1993) (citing *Wagenblast*, 110 Wn.2d at 851-55).

The limiting provisions in Riley's self-storage rental agreement weigh in favor of a majority of the factors listed above. First, as to public regulation, a self-storage facility is a highly regulated industry or service. It must comply with numerous statutory and regulatory requirements contained in the Storage Act. Ch. 19.150 RCW; WAC 308-56A-312.

Second, self-storage facilities are not an essential or necessary public service. "A common thread runs through those cases in which exculpatory agreements have been found to be void as against public policy . . . they are all essential public services—hospitals, housing, public utilities, and public education." *Shields v. Sta-Fit, Inc.*, 79 Wn. App. 584, 589, 903 P.2d 525 (1995) (footnotes omitted) (holding that health clubs contribute to people's health, but are not essential to the welfare of the state or its citizens).

Third, Iron Gate holds itself out by advertising to the general public as willing to rent units to any member of the public who seeks it.

Fourth, Iron Gate does not provide an essential service. Nor does it possess a decisive advantage of bargaining strength. Riley had the freedom to take his business elsewhere if he disagreed with the rental agreement's provisions.

Fifth, the agreement and limiting provisions within it did not create an adhesion contract. Iron Gate did not exercise a superior bargaining power. It provided Riley with an opportunity to pay additional reasonable fees and protect against Iron Gate's negligence. Riley could have opted to purchase insurance and protect 100 percent of the cash value of his property, but he declined to do so.

Sixth, Riley had exclusive control over his storage unit. Per the agreement, Riley placed his own lock on the unit. Iron Gate could only enter the unit with written notice, in the case of an emergency, or if Riley defaulted. The rental agreement, therefore, gave Riley exclusive control of his unit and it did not place him under the control of Iron Gate.

The analysis shows that the limiting provisions and rental agreement as a whole weigh in favor of the majority of the factors outlined above. We, therefore, conclude that the provisions do not violate public policy for self-storage rental agreements.[4]

[4] Additionally, the Storage Act does not bar contractual provisions that limit liability and damages. *See* RCW 19.150.140. A recent amendment to the Storage Act confirms this point. The amendment states that if a condition in the rental agreement specifies a limit on the value of property that may be stored, that limit is the maximum value of the stored property for purposes of the facility's liability only. RCW 19.150.170; LAWS OF 2015, ch. 13 § 5. The accompanying senate bill report seems to acknowledge that such limitations in rental agreements have existed and that the amendment serves to clarify the purpose of such limits. *See* CP at 41-43 (Senate Bill Report 5009, Jan. 26, 2015).

2. THE LIMITING PROVISIONS ARE CONSPICUOUS

Riley next argues that he did not unambiguously agree to store only $5,000 worth of property in the storage unit. He argues that the first part of the applicable contract provision states that he can store property with "substantially less or no aggregate value," and that the second part is not, on its face, a limitation on the value of property that can be stored because it is a "refusal to agree that the property is worth more than $5,000." Br. of Appellant at 25. We disagree.

When read as a whole, the provision limiting the value of items stored in each unit is clear and unambiguous. It states, in relevant part, "It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and . . . the aggregate value of all suchpersonal (sic) property is, will be, or is expected to be, at or near $5,000." CP at 142.

As to the provision limiting damages and liability, Riley argues that the provision is so poorly worded and "hampered by grammatical and punctuation errors" that it is impossible to make sense of what is written. Br. of Appellant at 19. He argues that the damage limitation provision does not expressly exclude willful injury which Riley asserts is expressly excluded in the liability limitation provision. Riley also infers that the reference to "any cause whatsoever" in the damages provision is "general," and we should rely on the "specific term," negligence. Br. of Appellant at 20.

When read as a whole, the provision limiting damages is clear, despite the existing grammatical errors. It states that "In no event" will Iron Gate be liable in an amount in excess of $5,000 "arising from any cause whatsoever, Including, but not limited to" Iron Gate's active or passive acts, omissions, or negligence. CP at 143. The plain language clearly limits damages arising from any cause, including willful and fraudulent conduct. We reject Riley's arguments.

3. THE LIMITING PROVISIONS DO NOT INVOLVE LIABILITY FOR GROSS NEGLIGENCE

Riley seems to argue that Iron Gate's acts fell "greatly below the standard established by law for the protection of others." Br. of Appellant at 31-32. However, Riley provides no evidence that Iron Gate's conduct amounted to *gross* negligence. "Evidence of negligence is not evidence of gross negligence; to raise an issue of gross negligence, there must be substantial evidence of serious negligence." *Boyce*, 71 Wn. App. at 665. "'Gross negligence' is 'negligence substantially and appreciably greater than ordinary negligence.'" *Johnson v. Spokane to Sandpoint, LLC*, 176 Wn. App. 453, 460, 309 P.3d 528 (2013) (quoting *Nist v. Tudor*, 67 Wn.2d 322, 331, 407 P.2d 798 (1965)).

Riley read, understood, and signed the rental agreement with Iron Gate that unambiguously limited the value of his storage contents to approximately $5,000. However, Riley allegedly stored an excess of $1.5 million worth of property in the storage unit and opted to self-insure. Before the auction, Riley was in arrears for months and had been in arrears in the past. Iron Gate sent multiple notices alerting Riley that his account was past due. Iron Gate mailed a notice letter with an erroneous auction date and subsequently conducted an auction of Riley's property. Riley has not provided substantial evidence that Iron Gate's conduct amounted to gross negligence.

Riley also argues that Iron Gate was grossly negligent in failing to give proper lien and auction notices as required by the Storage Act. The evidence showed that Riley was in arrears for several months and that Iron Gate sent an auction notice with an erroneous auction date. After Iron Gate conducted the auction and was made aware of its mistake, it provided Riley with an opportunity to recover his property. Iron Gate also recovered much of Riley's property and stored it for free. Riley has not shown that Iron Gate acted in a grossly negligent manner and the record does not support such a conclusion.

We, therefore, conclude that there was no material issue of fact as to the limiting provisions and that they are enforceable because they are not contrary to public policy, they are conspicuous, and they do not involve liability for acts falling greatly below the gross negligence standard.

D. IRON GATE DID NOT INTENTIONALLY OR WILLFULLY VIOLATE THE STORAGE ACT

Riley further argues that Iron Gate intentionally violated the Storage Act and cannot contractually exculpate itself from its intentional acts. Iron Gate argues that the Storage Act does not bar provisions that limit liability or damages, nor do the provisions violate public policy. It argues that Riley cannot show willful misconduct and the provisions should be enforced. We agree with Iron Gate.

RCW 19.150.060(c) states that an occupant's property may be sold to satisfy a lien after a specified date which is "not less than fourteen days" from the last date of sending the final lien sale of notice. It is undisputed that Iron Gate did not give Riley 14 days' notice. The record also supports Iron Gate's argument that the notice violation was a mistake and that Iron Gate took steps to remedy the mistake.

Riley, however, contends that Iron Gate intentionally violated the notice requirement. He argues that because Iron Gate elected to begin the foreclosure and auction process against his property despite having the option to pursue other remedies such as a suit for money damages, the conduct "can only be described as a willful choice and an intentional act." Br. of Appellant at 14. He contends that volitional acts are included in the definition of willful. However, volition alone is insufficient to support a finding of "willfulness." "Willful" requires a showing of actual intent to harm. *Zellmer v. Zellmer*, 164 Wn.2d 147, 155 n.2, 188 P.3d 497 (2008). The evidence does

not show that Iron Gate's conduct was willful. While the conduct was "volitional" because Iron Gate acted upon their mistake, a mistake in and of itself is insufficient to show willfulness or actual intent to harm. We conclude that no genuine dispute of material fact exists that Iron Gate did not intentionally or willfully violate the Storage Act.

Riley argues that it is against public policy for the limitation provisions to apply to Storage Act claims. As discussed above, the limiting provisions in the agreement are enforceable and not contrary to public policy. Riley does not provide evidence showing how the limiting provisions are contrary to public policy under the Storage Act. Nor is there a provision in the Storage Act barring contractual provisions limiting liability and damages. We conclude that it is not contrary to public policy for such provisions to apply to Storage Act claims.

E. THE LIMITING PROVISIONS BAR RILEY'S CONVERSION CLAIM[5]

Riley next argues that Iron Gate committed conversion when it intentionally seized and sold his property. He argues that to recover for conversion, he need only show Iron Gate intended to sell the property and need not show motive or purpose. He further argues that liability should not be exculpated when conversion occurred due to Iron Gate's volitional act. We disagree.

[5] Riley argues his conversion claim at length under various theories. He argues that the provision limiting liability excludes intentional torts because "willful" implies only "volition action," and because "willful" is used interchangeably with "intentional." Br. of Appellant at 23. He contends that the "willful injury" is selling Riley's unit contents, and the "willful violation of law" is engaging in notice procedures that resulted in the sale of his property in violation of the Storage Act. Br. of Appellant at 22. He also argues that the provision does not pertain to intentional torts because it does not specify that intentional torts are excluded. However, the limiting provision is clear: liability is barred from "any cause whatsoever," except fraud and willful misconduct. CP at 143.

Riley's conversion claim fails because it is barred by the contractual provision limiting liability. Per the agreement, liability attaches only when damage or loss arises out of Iron Gate's fraudulent or willful misconduct. As such, the limitation provision is enforceable for torts involving deliberate or volitional conduct so long as there is no evidence of fraudulent or willful misconduct. Riley has not presented evidence showing that Iron Gate's conduct was willful misconduct or fraudulent. Because the limitation provisions are enforceable against such claims, we conclude that there are no genuine issues of material fact as to whether Riley's conversion claim survives.

F. THE LIMITATION PROVISIONS VIOLATE PUBLIC POLICY AS TO RILEY'S CPA CLAIM

Riley argues that Iron Gate's lien notices and rental agreement violate the CPA and that the agreement's limiting provisions disclaiming liability under the CPA are void under public policy. We conclude that the limitation provisions violate public policy because they seriously impair Riley from asserting a CPA claim, contrary to the purpose of the CPA's private right of action.

The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020. The purpose of the CPA is to complement the body of federal law governing restraints of trade, unfair competition, and unfair, deceptive, and fraudulent acts in order to protect the public and foster fair and honest competition. RCW 19.86.920. To achieve its purpose, the CPA is "liberally construed that its beneficial purposes may be served." RCW 19.86.920.

The CPA was amended to provide a private right of action, encouraging individual citizens to bring suit to enforce the CPA. *Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 836, 161 P.3d 1016 (2007). "The private right of action to enforce RCW 19.86.020 is more than a means for vindicating the

rights of the individual plaintiff' as the plaintiff must show that the challenged conduct affects the public interest. *Dix*, 160 Wn.2d at 837.

The CPA encourages individuals to fight restraints of trade, unfair competition, and unfair, deceptive, and fraudulent conduct. *Dix*, 160 Wn.2d at 840. Barring Riley from bringing a CPA claim due to the limitation provisions of his rental agreement contradicts the purpose of the CPA's private right of action. Further, CPA treble damages are capped at $25,000[6] while the limitation provisions cap Riley's damages to $5,000 as to all claims. Without deciding whether or not Riley's CPA claim survives summary judgment, we, therefore, conclude that a limitation provision that seriously impairs a plaintiff from asserting a private CPA claim violates public policy.

G. THE LIMITATION PROVISIONS ARE NOT UNCONSCIONABLE

Riley argues that the agreement's exculpatory provisions are void because limiting liability for intentional and wrongful seizure and sale of his property worth over $1.5 million is unconscionable. We disagree.

1. PROCEDURAL UNCONSCIONABILITY

Procedural unconscionability requires evidence of blatant unfairness in the bargaining process and a lack of meaningful choice. *Torgerson*, 166 Wn.2d at 518. Procedural unconscionability is determined in light of the totality of the circumstances, including (1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were hidden in a maze of fine print. *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 391, 858 P.2d 245 (1993) (citing *Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 260, 544 P.2d 20 (1975)).

[6] The cap for CPA treble damages is $25,000. RCW 19.86.090. Therefore, contrary to Iron Gate's argument and the trial court's finding, the $23,000 initially tendered to Riley is not the same as an award of damages equal to or greater than what Riley could have potentially recovered at trial.

These factors should not be applied mechanically without regard to whether in truth a meaningful choice existed. *Torgerson*, 166 Wn.2d at 519.

Riley entered into the rental agreement with Iron Gate by choice and had a reasonable opportunity to understand the terms. Riley seems to argue that he did not have such an opportunity because he signed the agreement after a night of driving from California to Washington. This argument is meritless. Riley entered into the agreement with Iron Gate in 2003 and did not raise any issue as to its clarity or meaning until 2015. Riley testified that he understood the agreement. He placed his initials beside each limiting provision and signed the agreement, confirming that he understood its terms.

Further, the terms of the agreement were clear. As both parties acknowledged, the rental agreement contained numerous typographical errors. However, there was no evidence presented showing that the typographical errors confused the meaning of the contract or the provisions limiting liability, the value of the unit's contents, or recoverable damages. The limitation provisions, especially when read as a whole, were unambiguous in its meaning. We, therefore, conclude that the trial court did not err because there was no genuine issue of material fact regarding procedural unconscionability.

2. SUBSTANTIVE UNCONSCIONABILITY

Substantive unconscionability involves cases where a clause or term in the contract is one-sided or overly harsh. *Torgerson*, 166 Wn.2d at 519. However, such unfairness must truly stand out; "shocking to the conscience," "monstrously harsh," and "exceedingly calloused" are terms sometimes used to describe substantive unconscionability. *Torgerson*, 166 Wn.2d at 519 (internal citations omitted).

Riley contends that the agreement's exculpatory terms were "monstrously harsh" and "shocking" because it allowed Iron Gate to auction an alleged $1.5 million of his property without following correct procedure, and because liability was limited to $5,000. Br. of Appellant at 44-45. Riley provides no evidence to support this contention. The agreement stated that the contents of his unit was expected to be valued at approximately $5,000. Further, the limitation on damages was clear and not overly harsh when it capped damages at $5,000—the total dollar amount Riley contractually agreed to keep in the unit. Riley agreed to the value limitation when he initialed his name beside the provision. Iron Gate relied on Riley's representation that the contents of his unit were valued at approximately $5,000. When read as a whole, the limitation provisions were not one-sided or overly harsh. We, therefore, conclude that the trial court did not err because there was no genuine issue of material fact as to substantive unconscionability.

H. THE RENTAL AGREEMENT IS NOT AN ADHESION CONTRACT

Riley argues that the agreement is an adhesion contract because it does not contemplate insuring against illegal seizure and sale of storage unit contents. We disagree.

An adhesion contract exists if (1) the "'contract is a standard form printed contract,'" (2) the contract is "'prepared by one party and submitted to the other on a "take it or leave it" basis,'" and (3) there was "'no true equality of bargaining power between the parties.'" *Zuver v. Airtouch Commc's, Inc.*, 153 Wn.2d 293, 304, 103 P.3d 753 (2004) (quoting *Yakima County (W. Valley Fire Prot. Dist. No. 12*, 122 Wn.2d at 393) (quoting *Standard Oil Co. of California v. Perkins*, 347 F.2d 379. 383 n.5 (9th Cir. 1965))).

Iron Gate prepared the rental agreement, but the agreement gave Riley the option of purchasing insurance. *See Eifler v. Shurgard Capital Mgmt. Grp.*, 71 Wn. App. 684, 694, 861 P.2d 1071 (1993) (limiting provision did not violate public policy because plaintiff was given the

opportunity to purchase insurance). Riley agreed to the liability and damage limitations that were set out in the agreement. To offset the limitation provisions and protect his property, he was also provided an opportunity to purchase insurance through Iron Gate. Riley chose to self-insure and assume the risk instead. Riley also had the choice to take his business elsewhere if he disagreed with the agreement. We, therefore, conclude that the agreement was not an adhesion contract, and the trial court did not err because there was no genuine issue of material fact.

II. MOTION FOR RECONSIDERATION

Lastly, Riley assigns error to the trial court's order denying his motion for reconsideration. We do not consider the issue because it is inadequately briefed.

Under RAP 10.3(a)(4) and (6), an appellant's brief must include "assignments of error, arguments supporting the issues presented for review, and citations to legal authority" and references to relevant parts of the record. *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004). If an appellant's brief does not include argument or authority to support its assignment of error, the assignment of error is waived. *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). "We need not consider arguments that are not developed in the briefs and for which a party has not cited authority." *Kiga*, 127 Wn. App. at 824.

Riley does not present any argument as to how the trial court abused its discretion when it denied his motion for reconsideration. Presumably, Riley is objecting to the court's decision for the same reasons he objects to the court's partial summary judgment ruling. However, we do not consider issues that are unsupported by argument and legal authority. Because Riley waived the issue by providing no argument or authority to support his assignment of error, we do not consider the issue.

Because we uphold the cap on damages to all claims, except as to the CPA claim, we affirm in part and reverse in part.

Melnick, J.

We concur:

Johanson, J.

Maxa, A.C.J.

EXHIBIT 1

RENTAL AGREEMENT

PAY ON LINE: WWW.IRONGATESTORAGE.COM

Lease Number: 2035 Access Number: 5691164

THIS RENTAL AGREEMENT is executed in duplicate on December 1, 2003 by and between Iron Gate Self Storage the Owner ("Operator") whose business name and address is set forth below, 802 NE 112th Ave Vancouver WA 98684 and theTenant Larry Riley, (hereinafter referred to as the "Occupant") whose residence and alternate addresses are set forth below, for the purpose of leasing or renting certain space as described and with the express understanding and agreement that no bailment or deposit of goods for safekeeping is intended or created hereunder.

It is agreed by and between Operator and Occupant as follows:

1 **DESCRIPTION OF PREMISES.** Operator leases to Occupant and Occupant leases from Operator Enclosed Lease Space No. 028 (approximately 30 x 12) and/or Parking Leased SpaceNo. 028 (hereinafter the "Premises") located at the below referenced address of Operator and included in a larger facility at such address containing similar leased real property and common areas for the use of Occupant and other occupants (the entire facility is hereinafter referred to as the "Project"). **Occupant has examined the Premises and the Project and, by placing his INITIALS HERE LL acknowledges and agrees that the Premises and the common areas of the Project are satisfactory for all purposes, including the safety and security thereof, for which Occupant shall use the Premises or the common areas of the Project.** Occupant shall have access to the Premises and common areas of the Project only during such hours and days as are regularly posted at the Project. **BY PLACING HIS INITIALS HERE LL OCCUPANT ACKNOWLEDGES AND AGREES THAT OCCUPANT'S PERSONAL PROPERTY STORED ON OR ABOUT THE PREMISES WILL BE SUBJECT TO A CLAIM OF LIEN IN FAVOR OF OPERATOR FROM THE DATE RENT IS DUE AND UNPAID, FOR RENT, LABOR OR OTHER CHARGES AND FOR EXPENSES REASONABLY INCURRED IN THE SALE OF SUCH PERSONAL PROPERTY. OCCUPANT'S PERSONAL PROPERTY IN, ON OR ABOUT THE PREMISES MAYBE SOLD TO SATISFY SUCH LIEN IF OCCUPANT IS IN DEFAULT UNDER THIS AGREEMENT. IN ADDITION, AFTER THE LONGER OF EITHER THE MINIMUM PERIOD ALLOWED BY LAW OR FIVE (5) DAYS IN WHICH OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT, OPERATOR MAY DENY OCCUPANT ACCESS TO THE PREMISES. THIS REMEDY IS CUMULATIVE VOTH AND IN ADDITION TO EVERY OTHER REMEDY GIVEN HEREUNDER OR NOW OR HEREAFTER EXITING AT LAW OR IN EQUITY.**

2. **TERM:** The term of this Rental agreement shall commence as of the date first above written and shall continue from the first day of the month immediately following on a LL (OCCUPANT'S INITIALS) month-to-month tenancy, or _____ (OCCUPANT'S INITIALS) for a period of one year and thereafter on a month-to-month tenancy.

3. **RENT:** Occupant shall pay Operator as a monthly rent, without deduction, prior notice, demand or billing statement, the sum of $195.00 plus additional monthly rent of $19.50 due pursuant to paragraph 12. together with sales tax of _____ (if applicable) per month in advance on the first day of each month; provided however, that with respect to a term of one year the Occupant may, by placing his Initials here _____ prepay eleven months rent on the commencement date and there shall be no rental charge for the twelfth (12th) month of the first year. If the terms of this Rental Agreement shall commence other than on the first day of a month, Occupant shall owe a pro rate portion of the first month's rent. However, Occupant shall pay, in advance, at West one full month's rent, and Occupant understands and agrees that under no circumstances will occupant be entitled to a refund of the first full month's rent. Any rent paid in excess of that owed for the first month shall be credited to rent payable for the month immediately following. With respect to any month-to-month tenancy, the monthly rent may be adjusted by Operator effective the month following written notice by Operator to Occupant specifying such adjustment, which such notice shall be given not less than thirty (30) days prior to the first day of the month for which the adjustment shall be effective. Any such adjustment in the monthly rent shall not otherwise affect the terms of this Rental Agreement and all other terms of this rental Agreement shall remain in full force and effect.

4. **FEES AND DEPOSITS:**

(a) Concurrently with the execution of this Rental Agreement, Occupant shall pay to Operator $5.00 as a nonrefundable new account administration fee.

(b) All rent shall be paid in advance of the first day of each month and in the event Occupant shall fail to pay the rent by the 10th day of the month, Occupant shall pay, in addition to any other amounts due, a late fee of $10.00.

(c) Concurrently with the execution hereof, Occupant shall deposit with Operator $10.00 to secure Occupant's performance pursuant to the provisions of this Rental Agreement. Operator may comingle the deposit with the funds in its general accounts, and may, at Operators election, apply the deposit to any amounts due and unpaid by Occupant hereunder. The balance of the deposit shall be returned to Occupant, without interest, within two (2) weeks after the termination of this Rental Agreement providing that Occupant is not in default hereunder.

5. **USES AND COMPLIANCE WITH LAW.** Occupant shall not store on the Promises personal property in or to which any other person has any right, title or interest. By placing his **INITIALS HERE LL Occupant states that there are** NO LIEN OTHER THAN OPERATOR'S UPON THE PROPERTY STORED or to be stored except as follows:

(Name _____ (address) _____ It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all suchpersonal property is, will be, or is expected to be, at or near $5,000. **It is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement.** Occupant shall not store any improperly packaged food or perishable goods, flammable materials, explosives or other inherently dangerous material, nor perform any welding on the Premises or in the Project. Occupant shall not store any personal property on the Premises which would result in the violation of any law of governmental authority and Occupant shall comply with all laws, rules, regulations and ordinances of any and all governmental authorities concerning the Promises or the use thereof. Occupant shall not use the Promises in any manner that will constitute waste, nuisance, or unreasonable annoyance to other occupants in the Project. Occupant acknowledges that the Premises may be used for storage only, and that use of the Premises for the conduct of business or human or animal habitation is specifically prohibited.

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6. INSURANCE. OCCUPANT, AT OCCUPANT'S SOLE EXPENSE, SHALL MAINTAIN ON ALL PERSONAL PROPERTY, IN, ON OR ABOUT THE PREMISES, TO THE EXTENT OF ATLEAST 100% OF THE ACTUAL CASH VALUE OF SUCH PERSONAL PROPERTY, A POLICY OR POLICIES OF INSURANCE COVERING DAMAGE BY FIRE, EXTENDED COVERAGE PERILS, VANDALISM AND BURGLARY. Occupant may satisfy the insurance requirement for personal property stored in the enclosed Space by electing coverage under the insurance plan described in the insurance brochure made available by Operator, or by obtaining the required coverage from any other insurance company of Occupant's choice, in an amount equal to the value of the goods stored by Occupant in the Enclosed Space. Insurance coverage for goods stored in the Parking Space must be obtained from an insurance company other than the one named in the brochure. To the extent Occupant does not maintain insurance for the full value of the personal property stored in the Enclosed Space or Parking Space, Occupant shall be deemed to have "self-insured". To the extent that Occupant has "self-insured", Occupant shall, bear all risk of loss damage. As initialled below, Occupant agrees to obtain insurance coverage for 100% of the actual cash value of Occupants property stored on or in the Premises or to be "self insured". OCCUPANT'S PERSONAL PROPERTY STORED IN OPERATOR'S LEASED SPACE OR ON OPERATORS PROJECT IS NOT INSURED BY THE OPERATOR AGAINST LOSS OR DAMAGE.

(OCCUPANT'S INITIALS - Initial only one)

_____A. Occupant will obtain the insurance policy described in the brochure provided by Operator.

_____B. Occupant will obtain insurance coverage from a company other than the one named in the insurance brochure provided by Operator.

LDR C. Occupant elects to "self-insure" (personally assume all risk of loss or damage).

Occupant hereby releases Operator and Operators Agents and authorized representatives and employees (hereinafter collectively referred to as "Operators Agents") from any and all claims for damage or loss to the personal property in, on or about the Premises, that are caused by or result from perils that are, or would be, covered under required insurance policy and hereby waives any and all rights of recovery against Operator and Operators Agents in connection with any damage which is or would be covered by any such insurance policy. While information may be made available to Occupant with respect to insurance, Occupant *understands and* agrees that Operator and operfors Agents are not insurers, and do not assist and have not assisted Occupant in the explanation of coverage or in the making of claims under any insurance policy. Nothing in this paragraph shall limit or reduce the rights and benefits of Operator under paragraph 7. By placing his INITIALS HERE LDR Occupant acknowledges that he has read and understands the provisions of this paragraph 6.

7. LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY. Operator and Operators Agent shall not be liable to Occupant for any damage or lose to any person, Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators Agents: except that Operator and Operator's Agents, as the case may be, may, except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Occupanties Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring in, on or about the Premises arising in any way out of Occupants use of Premises, whether occasioned by Operator or Operators Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, orexpense in connection with Operator or Operator's Agents' fraud, willful injury or willful violation of law. Notwithstanding anything contained in this Rental Agreement, in no event shall Operator or Operator's Agents be liable to Occupant in an amount in excess of $5,000 for any damage or lose to any person, Occupant or any property stored in, on or about the Premises or the Project arising from any cause whatsoever, including, but not limited to, Operators Agents' active of passive acts, omissions or negligence. By placing his INITIALS HERE LDR Occupant acknowledges that he has read, understands and agrees to the provisions of this paragraph 7.

8. INCORPORATION OF PROVISIONS ON PAGES THREE AND FOUR. By placing his INITIALS HERE LDR Occupant acknowledges that he has read, is familiar with and agrees to all of the provisions printed on pages three and four of this Rental Agreement, and Operator and Occupant agree that all such provisions constitute a material part of this Rental Agreement and are hereby incorporated by reference. IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement the day and year first above written.

OCCUPANT: _____ Signature

Name: Larry Riley
Street: 13105 NW 8th ave unit b
City: Vancouver State: WA Zipcode:
RESIDENCE BUSINESS
Phone: 530-218-2717 Phone:

SS# 000-00-0000 Drivers Lic #

ALTERNATE ADDRESS (If alternative information is refused, occupant will please sign here _____
Name_____ Relationship _____

Street: _____

City: _____ State: _____ Zip: _____
Residence Business
Phone ( ) _____ ( ) _____

OPERATORS LIEN LAW(S) REFERENCES:
OPERATOR

_____

By: Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684

Received By:
Mike . Nichols Manager

_____
Signature

0-000000143

S. DEFAULT OPERATOR'S REMEDIES AND LIEN:
If Occupant shall fail to pay timely any rent or other charges required herein to be paid or shall fail or refuse to perform timely any of the covenants, conditions or terms of this Rental Agreement. Occupant shall be conclusively deemed in default under this Rental Agreement. OCCUPANTS PERSONAL PROPERTY IN OR ABOUT THE PREMISES WILL BE SUBJECT TO A CLAIM OF LIEN IN FAVOR OF OPERATOR FROM THE DATE RENT IS DUE AND UNPAID FOR RENT, LABOR OR OTHER CHARGES AND FOR EXPENSES REASONABLY INCURRED IN THE SALE OF SUCH PERSONAL PROPERTY OCCUPANTS PERSONAL PROPERTY IN OR ABOUT THE PREMISES MAY BE SOLD TO SATISFY SUCH LIEN IF OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT IN ADDITION, AFTER THE LONGER OF EITHER THE MINIMUM PERIOD ALLOWED BY LAW OR TEN (10) DAYS IN WHICH OCCUPANT IS IN DEFAULT UNDER THIS RENTAL AGREEMENT, OPERATOR MAY DENY OCCUPANT ACCESS TO THE PREMISES. Operator may also enter the premises and remove Occupants personal property within it to a safe place. This remedy is cumulative with and in addition to every other remedy given hereunder, or now or hereafter exiting at law or in equity. Acceptance by Operator of payment of less than all amounts in default shall not constitute a cure such default nor a waiver by Operator prior to termination of the Rental Agreement unless Operator executes a written acknowledgment thereof. This Rental Agreement specifically incorporates by reference the provisions of applicable state and local laws) (if any) relating to Owner's and/or Operator's lien for rental charges at a self-storage facility. Applicable lien law references are cited next to Operator's address on front page.

10.ABANDONMENT
Without limiting the right of Operator to conclude for other reasons that Occupant has actually abandoned the Premises and the Property located in or on the Premises, Occupant agrees that Operator may conclusively deem an abandonment by Occupant of the Premises and all Property within the fifteen (15) days following Operators written notice of belief of abandonment, which notice may be given and shall be deemed to be effective as provided with respect to the giving of notice as provided in Paragraph 19. If any personal property of Occupant shall remain in or on the Promises or at the Project after the expiration or termination of this Rental Agreement (other than the termination of this Rental Agreement while a default by Occupant exists) shall be considered abandoned at the option of Operator and if abandoned, Operator may sell, destroy or otherwise dispose of Occupants property in order to satisfy Operators lien.

11. ENTIRE AGREEMENT
There are no representations, warranties, or agreements by or between the parties which are not fully set forth herein and no representative of Operator or Operators agents are authorized to make any representations, warranties or agreements other then as expressly set forth herein.

12. USE OF ELECTRICITY
In the event there is an electrical outlet within the rented Premises, the Occupant is cautioned that power to such electrical outlet may be turned off at the option of the Operator, and that the Operator assumes no liability to Occupant or Occupant's property resulting from the failure or shut off of the electrical power supply to the Premises. Accordingly, Occupant is REQUIRED to turn off all lights and disconnect any electrical appliances before leaving the rented Premises and in the event they are not turned off, Occupant shall pay as additional rent a charge of $50.00 per month. If continuous and/or intermittent electrical services is desired and available for powered tools and the like, Occupant shall pay the "additional monthly rent shown in Paragraph 3 above in addition to the basic monthly rent payable as also provided for in Paragraph 3 above.

13. ALTERATIONS:
Occupant shall not make or allow any alterations of any kind or description whatsoever to the Premises without, In each instance, the prior written consent of the Operator.

14. LOCK:
Occupant shall provide, at Occupants own expense, a lock for the Premises which Occupant, In Occupant's sole discretion, deems sufficient to secure the Premises. Occupant shall not provide Operator or Operators agents with a key and/or combination to Occupant's lock.

15. RIGHT TO ENTER, INSPECT AND REPAIR PREMISES: Occupant shall grant Operator, Operator's agents or the representatives of any governmental authority including police and fire officials, access to the Premises upon three (3) days prior written notice to Occupant. In the event Occupant shall not grant access to the Premises as required or In the event of any emergency or upon default of any of Occupants obligations under this Rental Agreement, Operator, Operators agents or the representatives of any governmental authority shall have the right to remove Occupant's lock and enter the Premises for the purpose of examining the Premises or the contents thereof or for the purpose of-making repairs or alterations to the Premises and taking such other action as may be necessary or appropriate to preserve the Premises or to comply with applicable law or enforce any of Operators rights. In the event of any damage or injury to the Premises or the Project arising from the active or passive RCW omissions or negligence of Occupant, all expenses reasonably incurred by Operator to repair or restore the Premises or Project shall be paid by Occupant as additional rent and shall be due upon demand by Operator.

16. NO WARRANTIES:
Operator hereby disclaims any implied or express warranties, guarantees or representations of the nature, condition, safety or as security, of the Premises and the Project and Occupant hereby acknowledges. as provided in paragraph 1 above, that Occupant has inspected the Premises and hereby acknowledges and agrees that Operator does not represent or guarantee the safety orsectuity of the Premises orof any property stored therein. This Rental Agreement sets forth the entire agreement to the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings with respect thereto.

17. **TERMINATION:**
This Rental Agreement shall terminate at the expiration of any term of this Rental Agreement by the party desiring to terminate this Rental Agreement giving written notice by certified or registered mail to the other party of such partys intention to terminate not less than fifteen (15) days before expiration of the ten. Further, this Rental Agreement may, at the option of the Operator be terminated upon any default by Occupant under the terms of this Rental Agreement or the abandonment of the Premises by Occupant or by Operators acceptance of Occupants oral offer to terminate given not less than two (2) days before the proposed date of termination.

18. **CONDITIONS OF PREMISES UPON TERMINATION:** Upon termination of this Rental Agreement, Occupant shall remove all Occupant's personal property from the Premises unless such personal property is subject to Operators lien rights pursuant to Paragraph 9 above and shall immediately deliver possession of the Premises to Operator in the same condition as delivered to Occupant on the commencement due of this Rental Agreement, reasonable wear and tear excepted.

19. **NOTICES:**
Except as otherwise expressly provided in this Rental Agreement, any written notices or demands required or permitted to be given under the terms of this Rental Agreement may be personally served or may be served by first class mail deposited in the United States mail with postage thereon fully prepaid and addresses to the party so to be served at the address of such party provided for in this Rental Agreement. Service of any such notice or demand shall be deemed complete on the date delivered, or if mailed, shall be deemed complete on the date of deposit in the United States mail, with postage thereof fully prepaid and addressed in accordance with the provisions hereof and without regard to Occupant's actual receipt thereof.

20. **NOTIFICATION OF CHANGE OF ADDRESS:**
In the event Occupant shall change Occupants place of residence or alternate name and address as set forth on this Rental Agreement, Occupant shall give Operator written notice of such change within ten (10) days of the change specifying Occupant's current residence and aftemate name, address and telephone numbers. Failure to so notify Operator shall constitute a waiver by Occupant of any defense based on failure to receive any notice.

21. **ASSIGNMENT**
Occupant shall not assign or sublease the Premises of any portion thereof without in each instance obtaining the prior written consent of Operator.

22. **SUCCESSION:**
All of the provisions of this Rental Agreement shall apply to bind and be obligatory upon the heirs, executors, administrators, representatives, successors and assigns of the parties hereto.

23. **CONSTRUCTION:**
Whenever possible each provision of this Rental Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Rental Agreement shall be invalid or prohibited under such applicable law, such provision shall be ineffective only In the extent of such prohibition or invalidity without invalidating the remainder of such provision orthe remaining provisions of this Rental Agreement.

24. TIME:
Time is of the essence of this Rental Agreement.

25. **RULES AND REGULATIONS:**
The rules and regulations posted in a conspicuous place at the project are made a pad of this Rental Agreement and Occupant shall comply at all times with such rules and regulations. Operator shall have the right from time to time to promulgate amendments and additional rules and regulations for the safety, care and cleanliness of the Premises, Project and all common areas, or for the preservation of good order and, upon the posting of any such amendments or additions in a conspicuous place at the project, they shall become a pad of this Rental Agreement.

26. **ATTORNEY'S FEES:**
Occupant agrees to pay all cost, charges and expenses, including reasonable attorneys fees, incurred by Operator in connection with the collection of rent, the enforcement of any rights underthis Rental Agreement or any litigation or contFoversy arising from or in connection with this Rental Agreement. All such costs, charges and expenses shall be made a pad of any lien claimed by or judgement rendered for Operator. If no action in instituted by Operator such cost, charges and expenses shall be paid by Occupant Wong with any other claims by Operator.

27. Occupant agrees that operator may provide notice of any change in any of the foregoing by posting a notice of such change within the project.

END OF RENTAL AGREEMENT
Make check payable to IRONGATE STORAGE

ADDENDUM TO RENTAL AGREEMENT

Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

1747

Unit # 028 Unit Size 30 X 12 Gate Access # ~~5691164~~
Contract # 2035

Welcome! The following information is for your reference. It contains some important suggestions and pertinent information about the policies of this self storage facility.

1. **Your fee is $195.00 and is due on the first (1st) of each month.**
2. **We will not send you a bill.** Please mail your payment or bring it into the office. A payment slot has been provided for your convenience.
3. **If we have not received your payment by day 6 of the month, your gate access will be denied.** However, we will not charge a late fee and overlock your unit until day 11 of the month.
4. **A partial payment will not stop fees or official procedures.** Any agreement between tenant and management to extend payment dates or defer sale of goods must be in writing and signed by both management and tenant to be binding.
5. **A $25.00 fee is automatically charged for all returned checks as well as a $10.00 late fee.** All future payments must be made by money order.
6. **We require that tenant provide his/her own insurance coverage or self insure, and that tenant will be personally responsible for any loss.**
7. Iron Gate Storage is a commercial business renting space and is not a bailiff or warehousemen.
8. Do not use the rental unit for anything **but DEAD STORAGE.** Do not store any flammable, explosive or illicit materials. The unit is to be used for storage only.
9. Tenant agrees to reimburse Iron Gate Storage for the cost of disposal of articles left behind in unit in excess of $10.00 cleaning fee. Tenant agrees to give managers a **10 DAY NOTICE PRIOR TO VACATING.** Failure to give notice will result in a $10.00 fee.
10. The storage unit must broom clean, emptied, in good condition - subject only to wear and tear - and ready to re-rent. Upon managements inspection and approval of units condition, cleaning fee shall be returned.
11. **Tenant's lock must be removed upon termination of occupancy. Failure to remove lock will result in your being charged the next month's rental and late fees. Any units found unlocked, will be considered to have been abandoned, and contents will be disposed of.**
12. Tenant understands that, if the rental agreement commences after the 15th of the month, both the prorated rental amount for the first partial month, and payment for the next full month, is required, and the **these amounts are not refundable.**
13. If tenant vacates on or before the 10th of the month, rent will be prorated. If tenant vacates after the 10th of the month, a full month's rent payment will be required.
14. Upon move out, prepaid rents will be refunded for any full months not used.
15. Gate hours are from 7 (A.M.) to 9 (P.M.), seven days a week. **The gate will not open after 9 (P.M.), so please be out on time.**
16. Office hours are from 9 (A.M.) to 6 (P.M.), Monday through Saturday.
    Office hours are from 9 (A.M.) to 5 (PM) Sunday
    Management is on the property after hours for security reasons only.
17. **Only one lock is allowed per door latch.** If more than one lock is found, you may be subject to a $10.00 cut lock fee for the removal of that lock.
18. **Do not follow someone through the gate without first putting in your access code.** The gate may close on you or you may not be able to exit. The code is required to disarm the alarm on your unit.
19. **Please keep us updated of any address changes and/or phone number changes.** Until we are notified in writing with your signature, the only valid address and telephone number present is on the lease.
20. Please leave aisles clear and do not block another tenant's door.
21. We will strictly enforce all policies and conditions in our contract. We do not make exceptions!

COLLECTION PROCEDURES AUTHORIZED BY RCW 19.150:

If rent remains unpaid for 10 days, tenant will continue to be locked out and a $10.00 late fee assessed.

Pre Lien Notice

If rent remains unpaid for 20 days, tenant's right to use the storage space can be terminated, and a preliminary lien notification sent. Tenant's account will be assessed an additional $20.00 fee.

Attachment of Lien

If rent remains unpaid for 45 days, a lien will be attached to the contents of the storage space. The lock can be cut, and the unit inventoried. A certified letter will be sent. A $25.00 lien fee will be assessed to tenant's account.

Notice of Auction

If the rent is upaid for 56 days, we will set the auction date for sale/disposal of your goods, and will notify you by letter. A $50.00 auction/disposal fee will be assessed to your account.

Disposal of Goods

If the goods are deemed to be worth over $300.00, the unit may be auctioned. **Tenant may not bid on unit at auction.** If the goods are determined to be worth less than $300.00, we may dispose of the contents without notification to tenant. Any costs for disposal will be added to tenants account.

Thank you! We appreciate your business and look forward to your having a pleasant stay with us. If we can be of further help, please let us know.

Cleaning Fee: $10.00 **Admin Fee: $5.00** **Paid Through Date:** _____

Larry D. Riley 12/01/03

Tenant Signature **Date**

000-00-0000
SSN

_____

Other Access Authorized

_____

Manager(s) Signature

EXHIBIT 2

5. **USES AND COMPLIANCE WITH LAW.** Occupant shall not store on the Promises personal property in or to which any other person has any right, title, or interest. By placing his INITIALS HERE_____Occupant states that there are NO LIEN OTHER THAN OPERATOR"S UPON THE PROPERTY STORED or to be stored except as Follows:

(Name_____(address)_____

It is understood and agreed that Occupant may store personal property with substantially less or no aggregate value and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all suchpersonal property is, will be, or is expected to be, at or near $5,000. **It is specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement. ...**

6. INSURANCE OCCUPANT, AT OCCUPANT'S SOLE EXPENSE SHALL MAINTAIN ON ALL PERSONAL PROPERTY, IN, ON OR ABOUT THE PREMISES, TO THE EXTENT OF ATLEAST 100% OF ACTUAL CASH VALUE OF SUCH PERSONAL PROPERTY, A POLICY OR POLICIES OF INSURANCE COVERING DAMAGE BY FIRE, EXTENDED COVERAGE PERILS, VANDALISM AND BURGLARY. Occupant may satisfy the Insurance requirement for personal property stored In the enclosed Space by electing coverage from any other Insurance plan described In the Insurance brochure made available by Operator, or by obtatning the required coverage from any other Insurance 90nWany of Occupart's choice, In an

amount equal to the value of the goods stored by Occupant In the Enclosed Space. Insurance coverage for goods stored In the Parking Space must be obtained from an Insurance Company other than the one named In the brochure. To the extent Occupant does not maintain Insurance for the full value of the personal property stored In the Enclosed Space or Parking Space. Occupant shall be deemed to have "self insured". To the extent that Occupant has "self-insured". Occupant shall, beat all risks of loss damage. To the extent that Occupant has "self-insured", Occupant shall, beat all risk of loss damage. As Initialled below, Occupant agrees to obtain Insurance coverage for 100% of the actual cash value of Occupants property stored on or In the Promises or to be "self insured". OCCUPANT'S PERSONAL PROPERTY STORED IN OPERATOR'S LEASED SPACE OR ON OPERATORS PROJECT IS NOT INSURED BY THE OPERATOR AGAINST LOSS OR DAMAGE.

_____A. Occupant will obtain the Insurance policy described in the brochure provided by Operator.

_____B. Occupant will obtain insurance coverage from a company other than the one named In the insurance brochure provided by Operator.

_____C. Occupant elects to "self-insure" (personally assume all risk of loss or damage).

Occupant hereby releases Operator and Operators Agents and authorized representatives and employee (hereinafter collectively referred to as "Operators Agents") from any and all claims for damage or loss to the to the personal property in, on or about the Premises, that are caused by or result from perils that are, or would be, covered under required insurance policy and hereby waives any and all rights or recovery against Operator and Operators Agents in

connection with any damage which is or would be covered by any such Insurance policy. While InformatIon may be made available to Occupant with respect to insurance. Occupant *understantS and agrees* that Operator and operator's Agents are not insurers, and do not assist and have not assisted Occupant in the explanation of coverage or in the making of claims under any Insurance policy. Nothing in this paragraph shall limit or reduce the rights and benefits of Operator under paragraph 7. By placing his INITIALS HERE_____Occupant acknowledges that he has read and understands the provisions of this paragraph 6.

7. LIMITATION OF OPERATOR'S LIABILITY; INDEMNITY. Operator and Operators Agent shall not be liable to Occupant for any damage or lose to any person. Occupant or any property stored in, on or about the Premises or the Project, arising from any cause whatsoever, including, but not limited to, theft, fire, mysterious disappearance, rodents, acts of God or the active or passive acts, omissions or negligence of Operator or Operators Agents: except that Operator and Operator's Agents, as the case may be, may,except as otherwise provided in paragraph 6, be liable to Occupant for damage of loss to Occupant or Oocupanties Property resulting from Operator's fraud, willful injury or willful violation of law. Occupant shall indemnify and hold Operator and Operator's Agents harmless from any and all damage, loss, or expense arising out of or in connection with any damage to any person or property occurring In, on or about the Premises arising in any way out of Occupants use of the Premises, whether occasioned by Operator or Operators Agents' active or passive acts, omissions or negligence or otherwise, other than damage, loss, orexpense In connection with Operator or Operator's Agent's fraud, willful injury or willful violation of law. Notwithstanding anything contained in this

Rental Agreement, In no event shall Operator or Operator's Agents be liable to Occupant In an amount In excess of $5,000 for any damage or lose to any person, Occupant or any properly stored in, on or about the Premises or the Project arising from any cause whatsoever, Including, but not limited to, Operators Agents' active of passive acts, omissions or negligence ....

EXHIBIT 3

Iron Gate Storage - Cascade Park
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Lien

Tenant	Larry Riley	Date of Notice	Jul 01, 2010
Company		Unit Number	028
Address	13211 NE 76th St	Certified Mail #	
City, State, Zip	Vancouver WA 98682		

Notice of Lien

Dear Tenant:

You are in default of your rental agreement for the unit(s) described below. Demand is hereby made that you pay the amount due immediately. Failure to pay will result in the sale of the contents of the unit(s). Access to the unit(s) has been suspended until payment is made in full.

Personal Effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. If you do not believe the contents of the unit should be sold, complete and return a Declaration in Opposition to Lien form. If the proceeds of the sale exceed the charge on the account, the excess proceeds must be claimed within 90 days or will be forfeited.

The property subject to the lien is:
Household Goods

	Charge Date	Description	Amount		
05/01/2010	Rent	220.00	0.00	0.00	220.00
05/11/2010	Late Fee	10.00	0.00	0.00	10.00
05/21/2010	Pre Lien Fee	20.00	0.00	0.00	20.00
06/01/2010	Rent	220.00	0.00	0.00	220.00
06/11/2010	Late Fee	10.00	0.00	0.00	10.00
06/21/2010	Pre Lien Fee	20.00	0.00	0.00	20.00
06/24/2010	Lock Cut Fee	10.00	0.00	0.00	10.00
07/01/2010	Rent	220.00	0.00	0.00	220.00
07/01/2010	Lien Fee	25.00	0.00	0.00	25.00
		Total Due	**755.00**		

Sincerely,

Chuck Johnston & Katy Wagnon
Resident Managers

Paid 07/09/10 Fri (8 days from date mailed)

0-00000014

EXHIBIT 4

Iron Gate Storage - Cascade Park
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Auction

Larry Riley

13211 NE 76th St
Vancouver WA 98682

Date of Notice: Jul 08, 2010
Unit Number: 028
Certified Mail # 7008 3230 0000 2825 7708

Dear Tenant:

Iron Gate Storage - Cascade Park, 802 NE 112th Ave, Vancouver, WA 98684, pursuant to Washington Statute RCW 191.150 and your rental agreement number 2035 with Iron Gate Storage - Cascade Park, dated Dec 01, 2003, , for the above referenced storage unit number, hereby gives you notice that it is asserting a possessory lien on the property stored in the aforementioned unit. The lien is asserted for unpaid rental charges, late fees, and other associated charges incurred for the rent of the storage space. The amount of the lien is **$805.00**.

Personal effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. Unless payment is made by 7/14/10 (month/day/year), the property will be sold at public auction on 7/15/10 (month/day/year) at 10:00 (A.M./P.M.) on the premises of the Iron Gate Self Storage to satisfy the lien.

This is Jul 08, 2010

Sincerely,

Chuck Johnston & Katy Wagnon
Resident Managers

Rec'd 07/16/10 FM (2 days from date sent)

0-000000151

EXHIBIT 5

Sellers
LAW OFFICE

James L. Sellers
Attorney at Law
Washington Bar
& Oregon Bar
Post Office Box 61535
415 East Mill Plain Blvd
Vancouver, WA 98666
(360) 695-0464
Fax 695-0466

July 17, 2010

Irongate Storage
12406 SE 5th Street
Vancouver, WA 98683

RE: Storage Agreement 2035
Space # 028
Space Tenant: Larry Riley

Dear Irongate:

I represent Larry Riley. He has had a storage unit (028) with you. He has had it for a considerable period of time. He was in arrears. He had been in arrears in the past and informally allowed to pay late. However, this time you have apparently elected to sell his property that was stored in the unit to satisfy a lien claim for his unpaid rent. At least that is what you have said and written. What you actually did may be determined later. However, this letter concerns what you didn't do and insists that you correct it.

The sale of personal property in a storage unit to satisfy a lien for unpaid rent is governed by Ch. 11.150 RCW. In order to sell property to satisfy a lien, you must **strictly** follow the requirements of that statute. Although I have not had sufficient time to compare all of the paperwork that you sent out to foreclose your lien claim, I have seen enough to see that you did not comply with the statute.

You failed to send a notice that met the requirements for a sale.

RCW 19.150.080(3) provides in pertinent part that after the sending of a preliminary lien notice, a final lien notice shall be sent **prior to sale** as follows:

> "The owner shall then serve by personal service or send to the occupant, . . . by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following: . . .
>
> "(3) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date **which is not less than fourteen days from the date of mailing the final lien sale notice**." [bolding and underlining added for emphasis]

I am looking at the final lien notice that you sent, which you title as "Notice of Auction". It is dated July 8, 2010. It gives notice of an auction to occur on July 15, 2010, which is the date that

A Professional Corporation

0-000000153

you told Mr. Riley on Friday that his property was sold. July 15, 2010 is not 14 days from the date of the notice.

Not only did you fail to comply with the express language of the statute, you sent the notice to the wrong address. Several months ago, Mr. Riley came in and advised the then managers at this location of his change of address. However, you sent the notice to his old address. By the time that the postal authorities could deliver the notice to Mr. Riley, the so-called auction had already occurred on the previous day.

Mr. Riley's storage unit contained literally thousands of dollars in personal property. There was a pool table worth at least $7,500, valuable works or art, and many items of Mr. Riley's that are irreplaceable, including his personal papers and photographs. Under the statute (RCW 19.150.080(4), you are required to maintain his papers and photographs for a period of at least six months. However, you told him yesterday that you have gotten rid of everything.

Violations of this chapter are also violations of Washington's Consumer Act. In addition to collecting his actual damages from you, Mr. Rile is entitled to collect his damages trebled, plus attorneys fees and costs. Further, your actions create liability under the tort of outrage and intentional infliction of mental distress.

Demand is hereby made that you arrange for the return of Mr. Riley's property to him immediately. When he was last in your offices on Friday, he was prepared to pay the back rent. However, you had told him the property had already been auctioned and removed. (Since you are obligated to retain his papers and photographs for six months, I don't know how it could all be gone.) Hopefully that is either not the case or you can get it all back. The damages that Mr. Riley can expect to collect from you will be thousands or dollars more than what you likely netted from the auction. Although he is not obligated to do so, Mr. Riley is willing to let you off the hook if all of his property is returned to him early next week.

Feel free to call me. I would prefer that you immediately contact an attorney on your behalf and have the attorney contact me. What you have done is ill-advised and you would be well advised to consult with your own attorney immediately.

Very truly yours,

James L. Sellers

jsellers@sellerslawoffice.com
Cell: 360.921.0762
cc: Larry Riley

EXHIBIT 6

Buyers Agreement

Buyer Agrees to the following:

This is to inform the auction buyer prior to the sale that; Iron Gate Storage and/or auctioneer in their discretion, reserves the right to cancel any Auction.

Iron Gate Storage and/or the auctioneer may ask any person(s) to leave the property at any time for any reason.

When the buyer has been awarded the unit he/she must pay by cash before leaving the property. If not, the unit will be turned back over to Iron Gate Storage.

It is the buyer's responsibility to return all personal papers, photos, legal documents, tax returns, bank statements, year books etc. to Iron Gate Storage within 10 days of the auction. If Iron Gate Storage becomes aware of any personal items not returned by buyer within the 10 day time period, Iron Gate Storage reserves the right to prohibit buyers future attendance at their auctions.

The buyer acknowledges that he or she is bidding on all items within the unit and all items must be removed and unit left clean. If the auction unit is not cleaned and or the items removed within 24 hours the buyer agrees to pay all cost involved in cleaning the unit(s) and will not be able to return to Iron Gate Storage Auctions. (If the items are not removed within 24 hours, Iron Gate Storage reserves the right to claim said property).

The buyer also acknowledges that Iron Gate Storage and/or the auctioneer may contact the buyer, and request that the items be purchased back by Iron Gate Storage and/or the auctioneer in order to prevent any court action. Notice to buyer shall be made no longer than 60 days after said auction. Iron Gate Properties and /or the auctioneer at it's sole discretion will set a reasonable price for the purchase back of the auctioned units items. Buyer is aware if items are not returned to Iron Gate Storage as requested, buyer will agree to pay all damages assigned by court action and also agrees to pay Iron Gate Storage's legal costs.

This agreement pertains to any and all future Iron Gate Auctions which buyer attends.

Agreed and Accepted:

Sonie Dolan
Name

Signature

624-1888
Phone #

6918 NE 90th Ave
Address (Include State)

Driver License #

0-000000156

EXHIBIT 7

Iron Gate Self Storage
802 NE 112th Ave
Vancouver, WA 98684
360-892-8800

Notice of Auction

Larry Riley

13211 NE 76th St
Vancouver WA 98682

Date of Notice: December 3, 2009
Unit Number: 028
Certified Mail # 7008 3230 0000 2825 7951

Dear Tenant:

Iron Gate Self Storage, 802 NE 112th Ave, Vancouver, WA 98684, pursuant to Washington Statute RCW 191.150 and your rental agreement number 2035 with Iron Gate Self Storage, dated December 1, 2003, for the above referenced storage unit number, hereby gives you notice that it is asserting a possessory lien on the property stored in the aforementioned unit. The lien is asserted for unpaid rental charges, late fees, and other associated charges incurred for the rent of the storage space. The amount of the lien is **$785.00.**

Personal effects are excluded from sale and may be picked up upon payment of any outstanding fees after the sale. Unless payment is made by 12-13-09 (month/day/year), the property will be sold at public auction on 12-14-09 (month/day/year) at 10:00 (A.M./P.M.) on the premises of the Iron Gate Self Storage to satisfy the lien.

This is December 3, 2009

Sincerely,

John Myers & Annette Felton
Resident Managers

0-00000016

EXHIBIT 8

RCW 19.150.040: When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first-class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice. [2007 c 113 § 2; 1988 c 240 § 5.

[2007 c 113 § 2; 1988 c 240 § 5.]

RCW 19.150.050 A notice in substantially the following form shall satisfy the requirements of RCW 19.150.040:

"PRELIMINARY LIEN NOTICE

to (occupant)

(address)

(state)

You owe and have not paid rent and/or other charges for the use of storage (space number) at (name and address of self-service storage facility)

Charges that have been due for more than fourteen days and accruing on or before (date) are itemized as follows:

DUE DATE	DESCRIPTION	AMOUNT
		TOTAL $

IF this sum is not paid in full before (date at least fourteen days from mailing), your right to use the storage space will terminate, you may be denied, or continue to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

(Name)

(Address)

(State)

(Telephone)

(Date)

(Owner's Signature) "

[1988 c 240 § 6.]

RCW 19.150.060: If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.

(3) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(5) That any personal papers and personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and photographs in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).

(6) That the occupant has no right to repurchase any property sold at the lien sale. [2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7. [2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

EXHIBIT 9

July 2010

WEEK VIEW

MONTH VIEW

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY 1	FRIDAY 2	SATURDAY 3
				NOTICE OF LIEN (Dated this date) *Notice of Lien does not Conform to Statute therefore has no legal affect.	NOTICE OF LIEN DAY 1	NOTICE OF LIEN DAY 2
4	5	6	7	8	9	10
NOTICE OF LIEN DAY 3	NOTICE OF LIEN DAY 4	NOTICE OF LIEN DAY 5	NOTICE OF LIEN DAY 6	NOTICE OF LIEN DAY 7 NOTICE OF AUCTION (Dated this date)	NOTICE OF LIEN DAY 8 NOTICE OF AUCTION DAY 1	NOTICE OF LIEN DAY 9 NOTICE OF AUCTION DAY 2
11	12	13	14	15	16	17
NOTICE OF LIEN DAY 10 NOTICE OF AUCTION DAY 3	NOTICE OF LIEN DAY 11 NOTICE OF AUCTION DAY 4	NOTICE OF LIEN DAY 12 NOTICE OF AUCTION DAY 5	NOTICE OF LIEN DAY 13 NOTICE OF AUCTION DAY 6	NOTICE OF LIEN DAY 14 NOTICE OF AUCTION DAY 7 * Legal Lien would have attached at midnight. **ILLEGAL AUCTION DATE (Buyers Agreement in effect)**	NOTICE OF AUCTION DAY 8 *First Day Legal Notice of Auction could have been sent. *Plainiff attempted to tender payment in full - payment refused. *Plaintiff requested the return of "Personal Effects" & "Non-Household Goods" in person & by phone, Buyers Agreement Day 1	NOTICE OF AUCTION DAY 9 NOTICE OF LEGAL AUCTION DAY 1 *Plainiff's Lawyer's Letter Delivered. Buyers Agreement Day 2
18	19	20	21	22	23	24
NOTICE OF AUCTION DAY 10 NOTICE OF LEGAL AUCTION DAY 2 Buyers Agreement Day 3	NOTICE OF AUCTION DAY 11 NOTICE OF LEGAL AUCTION DAY 3 Buyers Agreement Day 4	NOTICE OF AUCTION DAY 12 NOTICE OF LEGAL AUCTION DAY 4 Buyers Agreement Day 5	NOTICE OF AUCTION DAY 13 NOTICE OF LEGAL AUCTION DAY 5 Buyers Agreement Day 6	NOTICE OF AUCTION DAY 14 NOTICE OF LEGAL AUCTION DAY 6 Buyers Agreement Day 7	NOTICE OF LEGAL AUCTION DAY 7 Buyers Agreement Day 8	NOTICE OF LEGAL AUCTION DAY 8 Buyers Agreement Day 9
25	26	27	28	29	30	31
NOTICE OF LEGAL AUCTION DAY 9 Buyers Agreement Day 10	NOTICE OF LEGAL AUCTION DAY 10 Buyers Agreement Day 11	NOTICE OF LEGAL AUCTION DAY 11 Buyers Agreement Day 12	NOTICE OF LEGAL AUCTION DAY 12 Buyers Agreement Day 13	NOTICE OF LEGAL AUCTION DAY 13 Buyers Agreement Day 14	NOTICE OF LEGAL AUCTION DAY 14 Buyers Agreement Day 15	*First Day a Legal Auction could have occurred. Buyers Agreement Day 16

August 2010

WEEK VIEW

MONTH VIEW

SUNDAY 1	MONDAY 2	TUESDAY 3	WEDNESDAY 4	THURSDAY 5	FRIDAY 6	SATURDAY 7
Buyers Agreement Day 17	Buyers Agreement Day 18	Buyers Agreement Day 19	Buyers Agreement Day 20	Buyers Agreement Day 21	Buyers Agreement Day 22	Buyers Agreement Day 22
8 Buyers Agreement Day 23	9 Buyers Agreement Day 24	10 Buyers Agreement Day 25	11 Buyers Agreement Day 26	12 Buyers Agreement Day 27	13 Buyers Agreement Day 28	14 Buyers Agreement Day 29
15 Buyers Agreement Day 30	16 Buyers Agreement Day 31	17 Buyers Agreement Day 32	18 Buyers Agreement Day 33	19 Buyers Agreement Day 34	20 Buyers Agreement Day 35	21 Buyers Agreement Day 36
22 Buyers Agreement Day 37	23 Buyers Agreement Day 38	24 Buyers Agreement Day 39	25 Buyers Agreement Day 40	26 Buyers Agreement Day 41	27 Buyers Agreement Day 42	28 Buyers Agreement Day 43

September 2010

WEEK VIEW

MONTH VIEW

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1 Buyers Agreement Day 47	2 Buyers Agreement Day 48	3 Buyers Agreement Day 49	4 Buyers Agreement Day 50
5 Buyers Agreement Day 51	6 Buyers Agreement Day 52	7 Buyers Agreement Day 53	8 Buyers Agreement Day 54	9 Buyers Agreement Day 55	10 Buyers Agreement Day 56	11 Buyers Agreement Day 57
12 Buyers Agreement Day 58	13 Buyers Agreement Day 59	14 Buyers Agreement Day 60 *Final Day per Buyers Agreement to buy back Auctioned Property	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

EXHIBIT 10

ILLEGAL, UNFAIR AND/OR DECPTIVE ACTS OR PRACTICES:

1.) Iron Gate's 2010 Notice of Lien to Appellant:

Note: Iron Gate's 2010 Notice of Lien was signed by then Resident Managers Chuck Johnston and Katy Wagnon. (July 1st, 2010)

Iron Gate's 2010 Notice of Lien did not conform to the then governing law's requirements as to the Notice's required content.

A.) The Notice must, by law, contain, within the four corners of the document, the date that the Lien actually attaches, and…

B.) That date must not be less than fourteen days from the date of mailing.

Neither occurred…

Therefore, this Notice had no legal affect, and, consequently, no legal Lien was ever perfected.

Result: No legal Lien ever attached to Mr. Riley's property.

(Ref: RCW 19.150.040 (2) – Date to be specified)
(Ref: RCW 19.150.050 – Lien Notice example)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0003 – Amended Complaint – No. 9 Notices
(Ref: CP 0149 – 2010 Notice of Lien)

2.) Iron Gate's 2010 Notice of Lien to Appellant:

Iron Gate did not, in fact, give the required fourteen days notice for the attachment of the possessory Lien they sought, therefore no Lien was perfected, and no legal Lien was, in fact, ever realized.

(Iron Gate's 2010 Notice of Lien gave a 6 day Notification Period, instead of the required 14 days Notice.)

(Ref: RCW 19.150.040 (2) – Fourteen Day Notice)
(Ref: RCW 19.150.050 – Lien Notice Example)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0003 – Amended Complaint - No. 9 Notices)
(Ref: CP 0149 – 2010 Notice of Lien)

3.) Iron Gate could not have legally moved forward with a Notice of Auction, an Auction Notification Period, or, for that matter, a Legal Auction, if the requirements, outlined in No. 6 and No. 7 above, were not fully complied with. If no legal Lien has been perfected or attached, no legal Auction can occur.

(Ref: RCW 19.150.060 – If (Lien) Notice has been sent as required…)

4.) Iron Gate's 2010 Notice of Auction to Appellant:

Note: Iron Gate's 2010 Notice of Auction was signed by then Resident Managers Chuck Johnston and Katy Wagnon. (July 8th, 2010)

Iron Gate's 2010 Notice of Auction did not conform to the then governing law's requirements as to the Notice's required content.

Before content can even be considered… A Legal Lien must first be in place (No Legal Lien achieved)

A.) The Notice must, by law, contain, within the four corners of the document, the final date that the Occupant has to cure any and all arrearages, and the date that the Auction Sale will take place, and…

B.) That date must not be less than fourteen days from the date of mailing.

Neither occurred…

Therefore, this Notice had no legal affect, and, consequently, because of these defects and the fact that no legal Lien existed, no legal Auction could have been conducted. A legal Lien was never perfected… therefore no legal Lien ever attached to Mr. Riley's property.

If no legal Lien has been perfected or attached, no legal Auction can occur.

(Ref: RCW 19.150.060 (3) – Date to be specified)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0003 – Amended Complaint - No. 9 Notices)
(Ref: CP 0151 – 2010 Notice of Auction)

5.) Iron Gate's 2010 Notice of Auction to Appellant:

Iron Gate did not, in fact, give the required fourteen days notice prior to their Auction date. All of this is, however, irrelevant…

If no legal Lien has been perfected or attached, no legal Auction could have occurred, regardless of the notification period's time frame, and regardless of any invented "inadvertent mistake."

(Iron Gate's 2010 Notice of Auction gave a 6 day Notification Period, instead of the required 14 days Notice.)

(Ref: RCW 19.150.060 (3) – Fourteen Day Notice)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0003 – Amended Complaint - No. 9 Notices)
(Ref: CP 0151 – 2010 Notice of Auction)
(Ref: CP 0162 – Page 25, lines 2 thru 20 – Katy Johnston Deposition – "No Mistake…")

6.) In 2010, Iron Gate conducted an Illegal Confiscation (Seizure) of Mr. Riley's Property, and an Illegal Auction, without a Legal Lien being perfected or attaching to any of Mr. Riley's Property.
(Ref: The Illegal Auction, referenced above, was held on July 15th, 2010)
(Ref: RCW 19.150 – See individual Statutes as listed above)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0004 – Amended Complaint - No. 13 Notices, No Proper Lien)
(Ref: CP 0005 – Amended Complaint - No. 18a Notices, No Lien)
(Ref: CP 0007 – Amended Complaint - No. 25 Wrongful foreclosure…)

7.) In 2010, Iron Gate never sent an After-Auction Summary/Accounting to Mr. Riley, as required by statute. Mr. Riley was never informed that his "personal papers and personal photographs" were available for pick-up, after previously being told that everything had been removed from his previous storage unit by the Buyer-at-Auction, and that his unit was "completely empty", which would be contrary to governing law.
(Ref: RCW 19.150.060 (3) – An Accounting of the sale shall be sent…)
(Ref: CP 0120 – Riley Declaration – No. 24 No messages from Iron Gate…)

8.) In 2010, Iron Gate failed to disclose to Mr. Riley as to whether any Overage Funds existed (Collected Funds from the Sale over and above the Lien and Auction Fee amount. No Overage Funds were ever returned to Mr. Riley, or sent to the State of Washington Treasurer.
(Ref: 19.150.060 (4) – Excess proceeds turned over to the State)
(Ref: CP 0120 – Riley Declaration – No. 24 No messages from Iron Gate…)

9.) Iron Gate's 2009 Notice of Lien to Appellant:
Iron Gate was guilty of the same actions in 2009, only this time their series of "inadvertent mistakes" involved completely different Resident Managers.
Note: 2009 Notice of Lien signed by then Resident Managers John Myers and Annette Felton. (November 27th, 2009)
Iron Gate's 2009 Notice of Lien did not conform to the then governing law's requirements as to the Notice's required content.
A.) The Notice must, by law, contain, within the four corners of the document, the date that the Lien actually attaches, and…
B.) That date must not be less than fourteen days from the date of mailing.
Neither occurred…

Therefore, this Notice had no legal affect, and, consequently, no legal Lien was ever perfected.
Result: No legal Lien ever attached to Mr. Riley's property.
(Ref: RCW 19.150.040 (2) – Date to be specified)
(Ref: RCW 19.150.050 – Lien Notice example)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0116 – 2009 Notice of Lien)

10.) Iron Gate's 2009 Notice of Lien to Appellant:
Iron Gate, also did not, in fact, give the statutorily required fourteen days notice for the attachment of the possessory Lien they sought, therefore no Lien was perfected, and no legal Lien ever attached to Mr. Riley's property.
(Iron Gate's 2009 Notice of Lien gave a 5 day Notification Period, instead of the required 14 days Notice.)
(Ref: RCW 19.150.040 (2) – Fourteen Day Notice)
(Ref: RCW 19.150.050 – Lien Notice example)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0116 – 2009 Notice of Lien)

11.) Iron Gate could not have legally moved forward with a Notice of Auction, an Auction Notification Period, or, for that matter, a Legal Auction, if the requirements, outlined in No. 1 and No. 2 above, were not fully complied with. If no legal Lien was perfected, or attached, no legal Auction can occur.
(Ref: RCW 19.150.060 - <u>If Notice has been sent as required, then</u>…)

12.) Iron Gate's 2009 Notice of Auction to Appellant:
Note: 2009 Notice of Auction signed by then Resident Managers John Myers and Annette Felton. (December 3rd, 2009)
Iron Gate's 2009 Notice of Auction did not conform to the then governing law's requirements as to the Notice's required content.
Before content can even be considered… A Legal Lien must first be in place, and in this instance, <u>No Legal Lien</u> was ever achieved.
A.) The Notice must, by law, contain, within the four corners of the document, the final date that the Occupant has to cure any and all arrearages, and the date that the Auction Sale will take place, and…
B.) That date must not be less than fourteen days from the date of mailing.
Neither occurred…

Therefore, this Notice had no legal affect, and, consequently, because of these defects and the fact that no legal Lien existed, no legal Auction could have been conducted. A legal Lien was never perfected… therefore no legal Lien ever attached to Mr. Riley's property.
If no legal Lien was perfected or attached, no legal Auction can occur.
(Ref: RCW 19.150.060 (3) – Date to be specified)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0166 – Copy of 2009 Notice of Auction)

13.) Iron Gate's 2009 Notice of Auction to Appellant:
Iron Gate did not, in fact, give the required fourteen days notice prior to their Auction date. All of this is, however, irrelevant…
If no legal Lien has been perfected or attached, no legal Auction can occur.
(Iron Gate's 2009 Notice of Auction gave a 10 day Notification Period, instead of the required 14 days Notice.)
(Ref: RCW 19.150.060 (3) – Fourteen Day Notice)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0166 – Copy of 2009 Notice of Auction)

14.) In 2010, Iron Gate sold a portion of Mr. Riley's "Personal Papers"
Iron Gate left it up to the Buyer to sort through the property and decide what was "personal papers and personal photographs" etc…
(Ref: The sale and removal of "personal papers and personal photographs" is a direct violation of the governing statute)
(Ref: RCW 19.150.060 (3) – Personal papers may not be sold…
(Ref: RCW 19.150.060 (5) – Personal papers will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months…)
(Ref: RCW 19.150.070 – May not sell personal papers..)
(Ref: RCW 19.150.080 (1) – May not sell personal papers…)
(Ref: CP 0002 – Amended Complaint –No. 5 Personal Papers stored in Unit)
(Ref: CP 0003 – Amended Complaint – No. 10 Personal Papers…)
(Ref: CP 0003 – Amended Complaint – No. 12 Personal Papers…)
(Ref: CP 0004 – Amended Complaint – No. 14 Personal Papers…)
(Ref: CP 0006 – Amended Complaint – No. 18b Converted Personal Papers…)
(Ref: CP 0008 – Amended Complaint – No. D Plaintiff seeking the return of Personal Papers)

(Ref: CP 0120 – Riley Declaration – No 24 Personal Papers…)
(Ref: CP 0120 – Riley Declaration – No. 25(a) Personal Papers…)
(Ref: CP 0122 – Riley Declaration – No. 26 Personal Papers…)
(Ref: CP 0124 – Riley Declaration – No. 28 Personal Papers…)
(Ref: CP 0125 – Riley Declaration – No. 28 Personal Papers, a mess…)

15.) In 2010, Iron Gate sold a portion of Mr. Riley's "Personal Photographs" Iron Gate left it up to the Buyer to sort through the property and decide what was "personal papers and personal photographs" etc…
(Ref: The sale and removal of "personal papers and personal photographs" is a direct violation of the governing statute)
(Ref: RCW 19.150.060 (3) – Personal photographs may not be sold…
(Ref: RCW 19.150.060 (5) – Personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months…)
(Ref: RCW 19.150.070 – May not sell personal photographs..)
(Ref: RCW 19.150.080 (1) – May not sell personal photographs…)
(Ref: CP 0002 – Amended Complaint –No. 5 Personal Photographs stored in the Unit…)
(Ref: CP 0003 – Amended Complaint – No. 10 Personal Photographs…)
(Ref: CP 0003 – Amended Complaint – No. 12 Personal Photographs…)
(Ref: CP 0004 – Amended Complaint – No. 14 Personal Photographs…)
(Ref: CP 0006 – Amended Complaint – No. 18b Converted Personal Photographs…)
(Ref: CP 0008 – Amended Complaint – No. D Plaintiff seeking the return of Personal Photographs…)
(Ref: CP 0120 – Riley Declaration – No 24 Personal Photographs…)
(Ref: CP 0121 – Riley Declaration – No. 25(b) Personal Photographs…)
(Ref: CP 0122 – Riley Declaration – No. 26 Personal Photographs…)
(Ref: CP 0122 – Riley Declaration – No. 27, Lines 20 – 22 "entire box of family photographs…)
(Ref: CP 0124 – Riley Declaration – No. 28 Personal Photographs…)
(Ref: CP 0125 – Riley Declaration – No. 28 Personal Photographs, a mess…)

16.) In 2010, Iron Gate sold Mr. Riley's "Personal Effects" contrary to the specific language contained in Iron Gate's Notice of Lien and Iron Gate's Notice of Auction. When exclusions are detailed on mailed Notices, ("Personal Effects are excluded from sale…") and then the business performs contrary to its own statements, and sells the property anyway. This can only be viewed as having the capacity to deceive, especially when the deception is printed on two of Iron Gate's standard Notice forms, or… because they placed postage on this deceit and mailed it… is this, additionally, an act of mail fraud?
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0116 - 2009 Notice of Lien)
(Ref: CP 0149 – 2010 Notice of Lien)
(Ref: CP 0166 – 2009 Notices of Auction)
(Ref: CP 0151 – 2010 Notice of Auction)
(Ref: CP 0003 – Amended Complaint – No. 10 "personal effects")
(Ref: CP 0004 – Amended Complaint – No. 14 "personal effects")
(Ref: CP 0008 – Amended Complaint – No. D "personal effects")
(Ref: CP 0120 – Riley Declaration – No. 24 "personal effects"…)
(Ref: CP 0121 – Riley Declaration – No. 25(c) (d) (e1) (e2) (f) (g1) (g2)
(Ref: CP 0122 – Riley Declaration – No. 25 (j) (k)
(Ref: CP 0122 – 0124 – Riley Declaration – No. 27

17.) In 2010, Iron Gate sold Mr. Riley's Non-"Household Goods" contrary to the specific language contained in Iron Gate's Notice of Lien. When exclusions are detailed a mailed Notice, ("The property subject to the lien is: Household Goods")…") and then the business performs contrary to its own statements, and sells the property anyway. This can only be viewed as having the capacity to deceive, especially when the deception is printed on one of Iron Gate's standard Notice forms, or… because they placed postage on this deceit and mailed it… is this also an act of mail fraud?
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0116 - 2009 Notice of Lien)
(Ref: CP 0149 – 2010 Notice of Lien)
(Ref: CP 0120 – Riley Declaration – No. 24 non-household goods…)
(Ref: CP 0122 – Riley Declaration – No. 25 (h) non-household goods…)
(Ref: CP 0122 – Riley Declaration – No. 26 non-household goods…)

18.) In 2010, Iron Gate refused to accept Mr. Riley's tender of Payment-in-Full for any and all arrearages on July 15th, 2010. Mr. Riley's payment attempt fully complied with the then current statute, and fell well within the statutorily acceptable time frame allowed by governing law, and by incorporated reference to the statute in Mr. Riley's Contract with Iron Gate, within the legally acceptable time frame of the Rental Agreement/Contract.
(Ref: CP 0003 – Amended Complaint – No. 11 Payment…)
(Ref: CP 0153 – Attorney Sellers Letter of July 17, 2010)

19.) In 2010, Iron Gate refused, a second time, to accept Mr. Riley's tender of Payment-in-Full for any and all arrearages on July 17th, 2010, confirmed in writing via a letter to Iron Gate from Mr. Riley's Attorney. Mr. Riley's second payment attempt, again fully complied with the then current statute, and again, fell well within the statutorily acceptable time frame allowed by governing law. Again, it had to fall within an acceptable time frame allowed by the Rental Agreement/Contract, due to the inclusion of the governing laws, by reference.
(Ref: CP 0153 – Attorney Sellers Letter of July 17, 2010)
(Ref: CP 0120 – No. 23, lines 12 thru 15 – Attorney Sellers Letter)
(Ref: CP 0003 – Amended Complaint – No. 12 Attorney Letter / Payment)

20.) In 2010, Iron Gate changed their "accepted practice" of, from time to time, accepting Mr. Riley's payments late, due to the nature of the business he was in, (Construction), and the fact that the "Great Recession" that plagued most of the country, also affected many businesses in Clark County. When late, Mr. Riley always paid any and all late fees, and other associated fees charged by Iron Gate, each and every time he cured any delinquency. Mr. Riley did have a history of paying late, but he always paid… and, it might be noted here… he also had a history of paying early.
(Ref: CP 0118 – Riley Declaration – No. 5, lines 5 thru 9 Early Payments)

21.) In 2010, Iron Gate sent their Notice of Lien and Notice of Auction to the wrong address, even though they had been given a change of address, in-person, verbally, in January of 2010, and again, in writing, in early July of 2010. When Mr. Riley presented himself in person in January, and gave his change of address, Iron Gate personnel had no problem accepting it verbally, just as they had previously accepted his first change of address and his changing of his cell phone contact number.
(Ref: See Return Receipt Green Card)
(Ref: CP 0003 – Amended Complaint – No. 9 Notices sent to wrong address)

22.) In 2010, Katy (Wagnon) Johnston, Iron Gate Manager, stated over the phone and several times in person, that Mr. Riley's unit was "**completely empty**..." and that "...everything was already gone..." and that "...the Buyer was required to have everything removed from the unit within 24 hrs." This was a lie. The Buyer's lock was still on the unit on July 16th, 2010, the day after the auction, and July 17, 2010, two days after the auction. It is not known to Appellant why this deception occurred. Iron Gate had a "Buyers Agreement" in place with the Buyer of Mr. Riley's property, and after Iron Gate had received notice, from Mr. Riley's attorney, that the auction of Mr. Riley's property was illegal, Iron Gate could have chosen to unwind this whole mess by simply placing an over-lock on the unit until all of the allegations could be investigated... and resolved. By not immediately taking action to unwind the sale, after receiving the letter from Mr. Riley's attorney, Iron Gate demonstrated their complete ambivalence toward their documented illegal actions, and fully displayed their willingness to violate the law.
("willing violation of law")
(Ref: CP 0119 – Riley Declaration – No. 21 Katy Wagnon...)
(Ref: CP 0120 – Riley Declaration – No. 22 Katy Wagnon...)

23.) In 2010, it is to be noted that, both times that Mr. Riley attempted to tender payment in full, of any and all arrearages and fees, twice, no less, Iron Gate's Buyer's Agreement was fully in place, and available to Iron Gate as a remedy. Both times that Mr. Riley attempted to pay, much or most of Mr. Riley's property was still on site... as attested to by the fact that on both of the above referenced occasions the Buyers Lock was still on Mr. Riley's unit, and that fact has been testified to by both of Iron Gate's Managers... so Mr. Riley got to relive the theft of his property two more times.
All, or nearly all, of his possessions were just 30 feet away, and if he wanted to remain lawful, there was nothing he could do... again... and again.

Iron Gate willfully chose to ignore the law, ignore their Buyers Agreement, ignore Mr. Riley's attorney's letter, and reject both offers of payment, within a time frame allowed by law, and after being informed of their illegality by Mr. Riley's attorney.
This is clearly the willful infliction of injury described, multiple times, in the Rental Agreement exception described in No. 7, page 2 of the Rental Agreement.
(Ref: CP 0003 – Amended Complaint – N0. 11 Payment)
(Ref: CP 0120 – Riley Declaration – No. 22 Chuck Johnston / "The Buyer still had his lock on the storage unit…")
(Ref: CP 0143 – Page 2 of the Rental Agreement)
(Ref: CP 0153 – Attorney Sellers Letter of July 17, 2010)

24.) In July of 2010, on top of everything else, Iron Gate charged Mr. Riley for two Pre-Lien Fees during the whole illegal Lien/illegal Auction mess… The problem is… charging two Pre-Lien fees on a single Lien would be illegal, but the bigger issue would be… that no actual legal Lien was ever legally pursued or achieved.
(Ref: CP 0149 – 2010 Notice of Lien)

25.) In November of 2009, Mr. Curtis Wilson, Iron Gate's District Manager, told Mr. Riley, in no uncertain terms, that… and I quote: "Larry, we would never sell your stuff… We would never do that…"
(Ref: Mr. Riley's 2009 Late Rent, and Payment in Full as promised, scenario.)
Promises made and not kept.
(Ref: CP 0006 – Amended Complaint – No. 18c property would never be sold)
(Ref: CP 0117 – Riley Declaration – No. 14, lines 5 thru 8 Curtis Wilson…)
(Ref: CP 0117 – Riley Declaration – No. 14, lines 9 thru 26)

26.) In November of 2009, Mr. Curtis Wilson, Iron Gate's District Manager, also told Mr. Riley to disregard Iron Gate's computer generated Notices. If there was a future problem, Iron Gate and Mr. Riley would collectively work it out, or, as a last resort, enter into a Move-Out Agreement, whereby Mr. Riley would pay Iron Gate approximately one-half of what was owed, and then be required to, in fact, move out, thereby ending the relationship.
Promises made and not kept.
(Ref: CP 0006 – Amended Complaint – No. 18c "Move-Out Agreement")
(Ref: CP 0117 – Riley Declaration – No. 14, lines 9 thru 22 Curtis Wilson)

27.) In November of 2009 Iron Gate charged Mr. Riley for an Auction that never occurred. Iron Gate never refunded that money, or credited it back Mr. Riley's account.
(Ref: CP 0118 – Riley Declaration – No. 5 No Auction in 2009)
(Ref: CP 0166 – 2009 Notice of Auction)

28.) In 2011, Iron Gate secretly purchased a small portion of Mr. Riley's property, from the Buyer-at-Auction, (74 items out of over 5,000 stolen). This purchase occurred in January of 2011. Iron Gate, however, did not choose to reveal this purchase in a timely manner, and, in fact, did not inform Appellant of the purchase until late May of 2011, and did not release, and make the purchased items available to Mr. Riley until August of 2011. Mr. Riley had to wait for a convenient time when Mr. Aronson would be making the trip from San Diego to Vancouver, as he wanted to be present for the delivery.
(Ref: RCW 19.150.080 (4) – Who may not acquire property…)
(Ref: CP 0006 – Amended Complaint – No. 18e Defendants' unlawfully acquired property…)
(Ref: CP 0124 – Riley Declaration – No. 27 value estimate…)

29.) The language used in many sections/paragraphs within the Rental Agreement/Contract lends itself to misinterpretation and deception…

"THIS REMEDY IS CUMULATIVE VOTH[sic]…"
(Rental Agreement - Section 1, Page 1, Line 20)

"HEREINAFTER EXITING[sic] AT LAW…"
(Rental Agreement – Section 1, 1/24)

"Occupant shall pay, In [sic] advance at West [sic] one full month's rent…"
(Rental Agreement – Section 3, 1/30)

"Occupant shall not store on the Promises [sic]…"
(Rental Agreement – Section 5, 1/46)

"90nWany [sic] of Occupart's [sic] choice…"
(Rental Agreement – Section 6, Page 2, Line 6)

"Occupant shall beat all risk of loss…"
(Rental Agreement – Section 6, Page 2, Line 10)

"…damage or lose to any person…" (used twice)
(Rental Agreement – Section 7 – 2/28) (Section 7 – 2/37)

"Occupant or any properly stored in, on or about the Premises…"

(Rental Agreement – Section 7 – 2/37)

"They shall become a pad of this Rental Agreement..."
(used three times)
(Rental Agreement – Sec. 25 - 4/37) (Sec. 25 - 4/41)
(Rental Agreement – Sec. 26 - 4/45)

"...Oocupanties [sic]..."
(Rental Agreement – Section 7, Page 2, Line 31)

"...conFoversy [sic]..."
(Rental Agreement – Section 26, Page 4, Line 44)

"...such costs, charges and expenses shall be paid by Occupant Wong with any other claims by Operator."
(Rental Agreement – Section 26, Attorney Fees, Page 4, Lines 46 & 47)

(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0125 thru CP 0133 – Riley Declaration – No. 29 titled The Rental Agreement, which includes descriptions of many of the Contract language defects.)

30.) Reference: The 2003 Rental Agreement

The language contained in Iron Gate's Rental Agreement/Contract with Mr. Riley specifically incorporated, by reference, the entire Washington Self-Service Storage Facility Act, which they clearly violated numerous times, equating to, in essence, numerous intentional Breaches of Contract, deplorable behavior, intentionally unfair and deceptive acts and practices, willful injury and numerous willful violations of law.

(Ref: RCW 19.150 – Washington Self Service Storage Facility Act)
(Ref: RCW 19.86.020 – Unfair or deceptive act or practices declared unlawful)
(Ref: RCW 19.86.093 (3)(a)(b)(c) – Injured other persons / capacity to injure)
(Ref: CP 0007 – Amended Complaint – No. 22 Breach of Contract)
(Ref: CP 0147 – 2003 Rental Agreement, Page 6 – "Collection Procedures Authorized by RCW 19.150:")

EXHIBIT 11

RENTAL AGREEMENT SECTION 5 - EXPLICATION

A.) RENTAL AGREEMENT (Page 1)
SECTION 5. USES AND COMPLIANCE WITH LAW: (excerpt)

> "...and nothing herein contained shall constitute or evidence, any agreement or administration by Operator that the aggregate value of all such personal [sic] property is, will be, or is expected to be, at or near $5,000. It Is [sic] specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement."
> (CP 0142, No. 5, Lines 5 thru 8)

WHEN SUBJECTED TO MINIMAL ANALYSIS, THE EXCERPT CLEARLY DESCRIBES ONLY A LACK OF AGREEMENT, BY THE OPERATOR, CONCERNING ANY VALUE LIMITATION, WHICH IS NOT A RESTRICTION:

> ...and nothing herein contained shall constitute or evidence, any AGREEMENT by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000.

UNDER THE SAME MINIMAL ANALYSIS, THE EXCEPT CLEARLY DESCRIBES A LACK OF ANY ACT, PROCESS, PERFORMANCE OR MANAGEMENT REGARDING ANY ALLEGED VALUE LIMITATION, WHICH, AGAIN, IS NOT A RESTRICTION.

> ...and nothing herein contained shall constitute or evidence, any ADMINISTRATION by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000.
>
> Please Note:
> Webster's New Collegiate Dictionary's definition of administration:
> (as no definition was included in or accompanied the Contract)
>
> administration: 1. the act or process of administering
> 2. performance of executive duties (management)
> (Ref: Reply, Exhibit No. 15)
>
> ...and nothing herein contained shall constitute or evidence, any ACT OF ADMINISTERING by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000.
>
> ...and nothing herein contained shall constitute or evidence, any

> PROCESS OF ADMINISTERING by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000.
>
> "...and nothing herein contained shall constitute or evidence, any MANAGEMENT by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000. ...and nothing herein contained shall constitute or evidence, any PERFORMANCE OF EXECUTIVE DUTIES by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000.

B.) The next reference that Iron Gate uses to define their alleged value limitation is from the second half the Section 5 excerpt, referenced above:

> "...It Is [sic] specifically understood and agreed that Operator need not be concerned with the kind, quality, or value of personal property or other goods stored by Occupant in or about the Premises pursuant to this Rental Agreement." (CP 0142, No. 5, Lines 5 thru 8)

To this Petitioner, "not being concerned with" has never meant "restricted, prohibited, or not being allowed to" perform some act. The simplest way for the Operator (Iron Gate) to "need not be concerned with the kind, quality, or value of personal property..." is to:

1.) Iron Gate could have elected to use specific restrictive language that made it clear to the Occupant that certain things were not allowed, or prohibited, and by referencing that "essential element" restriction, in the same fashion that they reference restrictions of non-essential elements in the Rental Agreement, (i.e., by dictating that Occupant "shall not" be allowed to... store, etc.) then no confusion or misinterpretation occurs, as is the case in the thirteen "shall not" references to rental limitations used throughout the balance of Section 5, or

2.) Iron Gate would not have needed "...to be concerned with the kind, quality or value of the personal property or other goods stored" had they not engaged in illegally confiscating and illegally auctioning Mr. Riley's property.

RENTAL AGREEMENT SECTION 5 - EXPLICATION

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UNDER THE SAME MINIMAL ANALYSIS, THE EXCEPT CLEARLY DESCRIBES A LACK OF ANY ACT, PROCESS, PERFORMANCE OR MANAGEMENT REGARDING ANY ALLEGED VALUE LIMITATION, WHICH, AGAIN, IS NOT A RESTRICTION.

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> Please Note:
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> ...and nothing herein contained shall constitute or evidence, any ACT OF ADMINISTERING by Operator that the aggregate value of all such personal property is, will be, or is expected to be, at or near $5,000.
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B.) The next reference that Iron Gate uses to define their alleged value limitation is from the second half the Section 5 excerpt, referenced above:

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1.) Iron Gate could have elected to use specific restrictive language that made it clear to the Occupant that certain things were not allowed, or prohibited, and by referencing that "essential element" restriction, in the same fashion that they reference restrictions of non-essential elements in the Rental Agreement, (i.e., by dictating that Occupant "shall not" be allowed to... store, etc.) then no confusion or misinterpretation occurs, as is the case in the thirteen "shall not" references to rental limitations used throughout the balance of Section 5, or

2.) Iron Gate would not have needed "...to be concerned with the kind, quality or value of the personal property or other goods stored" had they not engaged in illegally confiscating and illegally auctioning Mr. Riley's property.

EXHIBIT 12

IRON GATE'S STATEMENTS OF ACCEPTABLE KINDS, QUALITY & VALUE
(Ref: Website: www.irongatestorage.com)

MR. RILEY STORED EXACTLY THE KIND, QUALITY AND VALUED PROPERTY THAT IRON GATE ADVERTISED POTENTIAL RENTERS TO ENTRUST THEM WITH:

Petitioner contents that Mr. Riley was exactly the kind of customer that Iron Gate was looking for, and that Mr. Riley's personal property, personal papers and personal photographs, personal effects, and non-household goods, were exactly the kind of property that Iron Gate advertised, and continues to advertise, as being acceptable for storage at any of their facilities. (Ref: Petitioner stored approximately 93 of the 105 category items listed on Iron Gate's website, along with additional categories that are not listed.)

Antiques	Antique Jewelry	Pool Table	Computers
"Priceless Antiques"	Cash	Desks	Electronics
Old Paintings	Traveler's Checks	Leather Furniture	Printers
"Priceless Works of Art"	Fine China	Antique Furniture	Television Sets
Oriental Rugs	Crystal	Wood Furniture	Appliances
Mink Coats	Jewels	Sofas & Loveseats	Microwave
Furs (Fur Coats)	Medications	Chairs	Refrigerators
Movie/DVD Collections	"personal effects"	Dining Room Table	Cameras & Bags
Record Collections	Ceramics	Dressers	Photo Lighting
Rare Coins	Bedding	Ottomans	Tripods
Coin Collections	Winter Gear	Mirrors	Mini Refrigerator
Stamp Collections	Baseball Cards	Old Bookcases	Surfboards
Photographs & Negatives	Rare Documents	Old Dinner Tables	Picture Frames
Keepsakes	Sports Equipment	Lamps	Kennels/Dog Runs
Sentimental Items	Paperwork	Recliners	Garment Bags
Family Heirlooms	"Unfinished Projects"		Luggage/Suitcases
Memorabilia	"Vintage Photographs"		Clothing
Book Collections	Construction Equipment		Storage Racks
"Valuable Possessions"	Construction Supplies		Stereo Systems
"High Value Objects"	Const. Tools, Equipment & Inventory		Stereo Speakers
"Family Treasures"	First Edition, Leather Bound Books		Lg. Flat Screen TV
"Valuable Treasures"	"Awards, Trophies & Ribbons"		Office Furniture
"Collectibles"	"Business Documents"		Office Equipment
"Silver (Silverware)"	"Old or Rare Holiday Decorations"		File Cabinets
"Souvenirs"	"Christmas Decorations"		Office Chairs
"Figurines & Sculptures"	"Halloween Decorations"		Prized Possessions
"Luxury Products"	"Gifts from Someone"		Accessories
"Items with Sentimental Value"	"Your most valuable possessions"		Bar Stools
"Musical Instruments"	"Limited Edition, Old & Rare Comic Books"		
"Couture Clothing signed by prestigious designers"			Client Records

"Storage …for your rarest and most valuable items" Medical Records
("Sometimes these things are worth a ton of cash") Tax Records

IRON GATE:
(Ref: Website – Ref: CP 0119, No. 17)
(Ref: Web Address & content - www.irongatestorage.com CP 0242, CP 0243)

PETITIONER:
(Ref: Riley Declaration - CP 0120, No. 25 (a))
(Ref: Riley Declaration - CP 0121, No. 25 (b)(c)(d)(e)(e)(f)(g)(g))
(Ref: Riley Declaration - CP 0122, No. 25 (h)(j)(k), No. 26, No. 27)
(Ref: Riley Declaration - CP 0123, No. 27 / CP 0124, No. 27, 28 / CP 0125, No. 28)

EXHIBIT 13

CHAPTER 240

[Substitute Senate Bill No. 5595]

SELF-SERVICE STORAGE FACILITIES

AN ACT Relating to self-service storage facilities; amending RCW 18.11.070 and 18-.85.110; adding a new section to chapter 63.29 RCW; and adding a new chapter to Title 19 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This chapter shall be known as the "Washington self-service storage facility act."

NEW SECTION. Sec. 2. For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(2) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(3) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules or any other provision concerning the use and occupancy of a self-service storage facility.

(5) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(6) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

NEW SECTION. Sec. 3. The owner of a self-service storage facility and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor, or other charges, present or future, incurred pursuant to the rental agreement, and for expenses necessary for the preservation, sale, or disposition of personal property subject to this chapter. The lien may be enforced consistent with this chapter. However, any lien on a motor vehicle or boat which has attached and is set forth in the documents of title to the

motor vehicle or boat shall have priority over any lien created pursuant to this chapter.

NEW SECTION. Sec. 4. When any part of the rent or other charges due from an occupant remains unpaid for six consecutive days, and the rental agreement so provides, an owner may deny the occupant access to the storage space at a self-service storage facility.

NEW SECTION. Sec. 5. When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address, and to the alternative address specified in section 13(2) of this act, by first class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in section 3 of this act may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice.

NEW SECTION. Sec. 6. A notice in substantially the following form shall satisfy the requirements of section 5 of this act:

"PRELIMINARY LIEN NOTICE

to _____(occupant)_____

_____(address)_____

_____(state)_____

You owe and have not paid rent and/or other charges for the use of storage __(space number)__ at __(name and address of self-service storage facility).__

Charges that have been due for more than fourteen days and accruing on or before __(date)__ are itemized as follows:

DUE DATE	DESCRIPTION	AMOUNT
		TOTAL $____

IF this sum is not paid in full before

__(date at least fourteen days from mailing)_____,

your right to use the storage space will terminate, you may be denied, or continue to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

(Name) _____
(Address) _____
(State) _____
(Telephone) _____
(Date) _____

(Owner's Signature) _____"

NEW SECTION. Sec. 7. If a notice has been sent, as required by section 5 of this act, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in section 13(2) of this act by certified mail, postage prepaid, a notice of lien sale or notice of disposal which shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.

(3) That the property, other than personal papers and personal effects, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. If the total value of property in the storage space is less than one hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of section 9(3) of this act.

(4) That any excess proceeds of the sale or other disposition under section 9(2) of this act over the lien amount and costs of sale and any personal papers and personal effects will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds and personal papers and effects will be turned over to the state as abandoned property as provided in section 21 of this act.

(5) That if the occupant was served with notice of the lien sale by mail, the occupant within six months after the date of the sale may repurchase from any purchaser or subsequent purchaser any of the occupant's property

sold pursuant to section 9 of this act at the price paid by the original purchaser.

(6) That if notice of the lien sale was by personal service, the occupant has no right to repurchase any property sold at the lien sale.

NEW SECTION. Sec. 8. The owner, subject to sections 10 and 11 of this act, may sell the property, other than personal papers and personal effects, upon complying with the requirements set forth in section 9 of this act.

NEW SECTION. Sec. 9. (1) After the expiration of the time given in the notice of lien sale pursuant to section 7 of this act, the property, other than personal papers and personal effects, may be sold or disposed of in a reasonable manner.

(2)(a) If the property has a value of one hundred dollars or more, the sale shall be conducted in a commercially reasonable manner, and, after deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within six months of the date of sale.

(b) If the property has a value of less than one hundred dollars, the property may be disposed of in a reasonable manner.

(3) No employee or owner, or family member of an employee or owner, may acquire, directly or indirectly, the property sold pursuant to subsection (2)(a) of this section or disposed of pursuant to subsection (2)(b) of this section.

(4) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned property pursuant to section 21 of this act.

(5) After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

NEW SECTION. Sec. 10. Any person who has a perfected security interest under Article 62A.9 RCW of the uniform commercial code may claim any personal property subject to the security interest and subject to a lien pursuant to this chapter by paying the total amount due, as specified in the lien notices, for the storage of the property. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due. The owner shall not be liable to any person for any action taken pursuant to this section if the owner has fully complied with sections 6 and 7 of this act.

NEW SECTION. Sec. 11. Prior to any sale pursuant to section 9 of this act, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred for particular actions taken pursuant to this chapter. In that event, the goods shall not be sold, but shall be retained by the owner subject to the terms of this chapter pending a court order directing a particular disposition of the property.

NEW SECTION. Sec. 12. (1) Except as provided in subsection (2) of this section, a purchaser in good faith of goods disposed of pursuant to section 9(2) of this act takes the goods free of any rights of persons against whom the lien was claimed, despite noncompliance by the owner of the storage facility with this chapter.

(2) A purchaser or subsequent purchaser shall return the goods to the occupant if the occupant tenders the original purchase price plus any costs incurred by the original purchaser within six months of the date of the purchase, unless the occupant was personally served with notice of the lien sale. If the occupant was personally served, the occupant has no right to repurchase the property.

(3) If the occupant exercises his or her right to repurchase property pursuant to subsection (2) of this section, a subsequent purchaser is entitled to rescind a transaction with a previous purchaser.

NEW SECTION. Sec. 13. (1) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement requiring the occupant to disclose any lienholders or secured parties who have an interest in the property that is or will be stored in the self-service storage facility, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for fourteen consecutive days, and that such actions are authorized by this chapter.

(2) The lien authorized by this chapter shall not attach, unless the rental agreement requests, and provides space for, the occupant to give the name and address of another person to whom the preliminary lien notice and subsequent notices required to be given under this chapter may be sent. Notices sent pursuant to section 5 or 7 of this act shall be sent to the occupant's address and the alternative address, if both addresses are provided by the occupant. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this chapter or under any other provision of law.

NEW SECTION. Sec. 14. Any insurance protecting the personal property stored within the storage space against fire, theft, or damage is the responsibility of the occupant. The owner is under no obligation to provide insurance.

NEW SECTION. Sec. 15. Nothing in this chapter may be construed to impair or affect the right of the parties to create additional rights, duties, and obligations which do not conflict with the provisions of this chapter. The rights provided by this chapter shall be in addition to all other rights provided by law to a creditor against his or her debtor.

NEW SECTION. Sec. 16. This chapter shall only apply to rental agreements entered into, extended, or renewed after the effective date of this section. Rental agreements entered into before the effective date of this section which provide for monthly rental payments but providing no specific termination date shall be subject to this chapter on the first monthly rental payment date next succeeding the effective date of this section.

NEW SECTION. Sec. 17. All rental agreements entered into before the effective date of this section, and not extended or renewed after that date, or otherwise made subject to this chapter pursuant to section 16 of this act, and the rights, duties, and interests flowing from them, shall remain valid, and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

NEW SECTION. Sec. 18. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to Article 62A.7 RCW (commencing with RCW 62A.7-101) of the uniform commercial code and this chapter does not apply.

Sec. 19. Section 6, chapter 205, Laws of 1982 as amended by section 4, chapter 324, Laws of 1986 and RCW 18.11.070 are each amended to read as follows:

(1) It is unlawful for any person to act as an auctioneer or for an auction company to engage in any business in this state without a license.

(2) This chapter does not apply to:

(a) An auction of goods conducted by an individual who personally owns those goods and who did not acquire those goods for resale;

(b) An auction conducted by or under the direction of a public authority;

(c) An auction held under judicial order in the settlement of a decedent's estate;

(d) An auction which is required by law to be at auction;

(e) An auction conducted by or on behalf of a political organization or a charitable corporation or association if the person conducting the sale receives no compensation; ((or))

(f) An auction of livestock or agricultural products which is conducted under chapter 16.65 or 20.01 RCW. Auctions not regulated under chapter 16.65 or 20.01 RCW shall be fully subject to the provisions of this chapter; or

(g) An auction held under chapter 19.— RCW (sections 1 through 18 of this 1988 act).

Sec. 20. Section 3, chapter 252, Laws of 1941 as last amended by section 9, chapter 370, Laws of 1977 ex. sess. and RCW 18.85.110 are each amended to read as follows:

This chapter shall not apply to (1) any person who purchases property and/or a business opportunity for his own account, or that of a group of which he is a member, or who, as the owner or part owner of property, and/or a business opportunity, in any way disposes of the same; nor, (2) any duly authorized attorney in fact, or an attorney at law in the performance of his duties; nor, (3) any receiver, trustee in bankruptcy, executor, administrator, guardian, or any person acting under the order of any court, or selling under a deed of trust; nor, (4) any secretary, bookkeeper, accountant, or other office personnel who does not engage in any conduct or activity specified in any of the definitions under RCW 18.85.010; nor, (5) any owner of rental or lease property, members of the owner's family whether or not residing on such property, or a resident manager of a complex of residential dwelling units wherein such manager resides; nor, (6) any person who manages residential dwelling units on an incidental basis and not as his principal source of income so long as that person does not advertise or hold himself out to the public by any oral or printed solicitation or representation that he is so engaged; nor, (7) only with respect to the rental or lease of individual storage space, any person who owns or manages a self-service storage facility as defined under chapter 19.— RCW (sections 1 through 18 of this 1988 act).

NEW SECTION. Sec. 21. A new section is added to chapter 63.29 RCW to read as follows:

The personal papers and personal effects held by the owner and the excess proceeds of a sale conducted pursuant to section 9 of this act by an owner of a self-service storage facility to satisfy the lien and costs of storage which are not claimed by the occupant of the storage space or any other person which remains unclaimed for more than six months are presumed abandoned.

NEW SECTION. Sec. 22. Sections 1 through 18 of this act shall constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 23. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 10, 1988.
Passed the House March 10, 1988.
Approved by the Governor March 24, 1988.
Filed in Office of Secretary of State March 24, 1988.

EXHIBIT 14

An agency must allow an employee who is a volunteer firefighter to respond, without pay, to a fire, natural disaster, or medical emergency when called to duty. The agency may choose to grant leave with pay.

Passed by the Senate March 13, 2007.
Passed by the House April 4, 2007.
Approved by the Governor April 18, 2007.
Filed in Office of Secretary of State April 18, 2007.

CHAPTER 113

[Substitute Senate Bill 5554]

SELF-SERVICE STORAGE FACILITIES

AN ACT Relating to self-service storage facilities; and amending RCW 19.150.010, 19.150.040, 19.150.060, 19.150.070, 19.150.080, and 19.150.100.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.150.010 and 1988 c 240 s 2 are each amended to read as follows:

((~~For the purposes of this chapter, the following terms shall have the following meanings:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(2) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(3) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules or any other provision concerning the use and occupancy of a self-service storage facility.

(5) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(6) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

(7) "Reasonable manner" means to dispose of personal property by donation to a not-for-profit charitable organization, removal of the personal property from the self-service storage facility by a trash hauler or recycler, or any other method that in the discretion of the owner is reasonable under the circumstances.

(8) "Commercially reasonable manner" means a public sale of the personal property in the self-storage space. The personal property may be sold in the

owner's discretion on or off the self-service storage facility site as a single lot or in parcels. If five or more bidders are in attendance at a public sale of the personal property, the proceeds received are deemed to be commercially reasonable.

(9) "Costs of the sale" means reasonable costs directly incurred by the delivering or sending of notices, advertising, accessing, inventorying, auctioning, conducting a public sale, removing, and disposing of property stored in a self-service storage facility.

Sec. 2. RCW 19.150.040 and 1988 c 240 s 5 are each amended to read as follows:

When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice.

Sec. 3. RCW 19.150.060 and 1996 c 220 s 1 are each amended to read as follows:

If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of final lien sale or final notice of ((~~disposal~~)) disposition which shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.

(3) That all the property, other than personal papers and personal ((~~effects~~)) photographs, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other

charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(5) That any personal papers and personal ((~~effects~~)) photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and ((~~effects~~)) photographs in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).

(6) That the occupant has no right to repurchase any property sold at the lien sale.

Sec. 4. RCW 19.150.070 and 1988 c 240 s 8 are each amended to read as follows:

The owner, subject to RCW 19.150.090 and 19.150.100, may sell the property, other than personal papers and personal ((~~effects~~)) photographs, upon complying with the requirements set forth in RCW 19.150.080.

Sec. 5. RCW 19.150.080 and 1996 c 220 s 2 are each amended to read as follows:

(1) After the expiration of the time given in the final notice of lien sale pursuant to RCW 19.150.060, the property, other than personal papers and personal ((~~effects~~)) photographs, may be sold or disposed of in a reasonable manner as provided in this section.

(2)(a) If the property has a value of three hundred dollars or more, the sale shall be conducted in a commercially reasonable manner, and, after ((~~deducting the amount of the lien and costs of sale~~)) applying the proceeds to costs of the sale and then to the amount of the lien, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within six months of the date of sale.

(b) If the property has a value of less than three hundred dollars, the property may be disposed of in a reasonable manner.

(3) Personal papers and personal ((~~effects~~)) photographs that are not reclaimed by the occupant within six months of a sale under subsection (2)(a) of

this section or other disposition under subsection (2)(b) of this section may be disposed of in a reasonable manner.

(4) No employee or owner, or family member of an employee or owner, may acquire, directly or indirectly, the property sold pursuant to subsection (2)(a) of this section or disposed of pursuant to subsection (2)(b) of this section, or personal papers and personal ((~~effects~~)) photographs disposed of under subsection (3) of this section.

(5) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned property pursuant to RCW 63.29.165.

(((~~(6) After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.~~)))

Sec. 6. RCW 19.150.100 and 1988 c 240 s 11 are each amended to read as follows:

Prior to any sale pursuant to RCW 19.150.080, any person claiming a right to the ((~~goods~~)) personal property may pay the amount necessary to satisfy the lien ((~~and the reasonable expenses incurred for particular actions taken pursuant to this chapter~~)) and one month's rent in advance. In that event, the ((~~goods shall~~)) personal property may not be sold, but ((~~shall~~)) must be retained by the owner ((~~subject to the terms of this chapter~~)) pending a court order directing ((~~a particular~~)) the disposition of the personal property. If such an order is not obtained within thirty days of the original payment, the claimant must pay the monthly rental charge for the space where the personal property is stored. If rent is not paid, the owner may sell or dispose of the personal property in accordance with RCW 19.150.080. The owner has no liability to a claimant who fails to secure a court order in a timely manner or pay the required rental charge for any sale or other disposition of the personal property.

Passed by the Senate March 14, 2007.
Passed by the House April 5, 2007.
Approved by the Governor April 18, 2007.
Filed in Office of Secretary of State April 18, 2007.

CHAPTER 114

[Senate Bill 5640]

TRIBAL GOVERNMENTS—PUBLIC EMPLOYEES' BENEFIT BOARD PROGRAMS

AN ACT Relating to authorizing tribal governments to participate in public employees' benefits board programs; amending RCW 41.05.011, 41.05.021, 41.05.050, 41.05.065, 41.05.080, and 41.05.195; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so.

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5554

Chapter 113, Laws of 2007

60th Legislature
2007 Regular Session

SELF-SERVICE STORAGE FACILITIES

EFFECTIVE DATE: 07/22/07

Passed by the Senate March 14, 2007
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 5, 2007
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 18, 2007, 11:18 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5554** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 18, 2007

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 5554

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators McAuliffe, Clements and Kohl-Welles)

READ FIRST TIME 02/22/07.

AN ACT Relating to self-service storage facilities; and amending RCW 19.150.010, 19.150.040, 19.150.060, 19.150.070, 19.150.080, and 19.150.100.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 19.150.010 and 1988 c 240 s 2 are each amended to read as follows:

((~~For the purposes of this chapter, the following terms shall have the following meanings:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(2) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person

authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(3) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules or any other provision concerning the use and occupancy of a self-service storage facility.

(5) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(6) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

(7) "Reasonable manner" means to dispose of personal property by donation to a not-for-profit charitable organization, removal of the personal property from the self-service storage facility by a trash hauler or recycler, or any other method that in the discretion of the owner is reasonable under the circumstances.

(8) "Commercially reasonable manner" means a public sale of the personal property in the self-storage space. The personal property may be sold in the owner's discretion on or off the self-service storage facility site as a single lot or in parcels. If five or more bidders are in attendance at a public sale of the personal property, the proceeds received are deemed to be commercially reasonable.

(9) "Costs of the sale" means reasonable costs directly incurred by the delivering or sending of notices, advertising, accessing, inventorying, auctioning, conducting a public sale, removing, and disposing of property stored in a self-service storage facility.

Sec. 2. RCW 19.150.040 and 1988 c 240 s 5 are each amended to read as follows:

When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the

occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice.

Sec. 3. RCW 19.150.060 and 1996 c 220 s 1 are each amended to read as follows:

If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of final lien sale or final notice of ((~~disposal~~)) disposition which shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.

(3) That all the property, other than personal papers and personal ((~~effects~~)) photographs, may be sold to satisfy the lien after a

specified date which is not less than fourteen days from the date of mailing the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(5) That any personal papers and personal ((~~effects~~)) photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and ((~~effects~~)) photographs in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).

(6) That the occupant has no right to repurchase any property sold at the lien sale.

Sec. 4. RCW 19.150.070 and 1988 c 240 s 8 are each amended to read as follows:

The owner, subject to RCW 19.150.090 and 19.150.100, may sell the property, other than personal papers and personal ((~~effects~~)) photographs, upon complying with the requirements set forth in RCW 19.150.080.

Sec. 5. RCW 19.150.080 and 1996 c 220 s 2 are each amended to read as follows:

(1) After the expiration of the time given in the final notice of lien sale pursuant to RCW 19.150.060, the property, other than personal papers and personal ((~~effects~~)) photographs, may be sold or disposed of in a reasonable manner as provided in this section.

(2)(a) If the property has a value of three hundred dollars or more, the sale shall be conducted in a commercially reasonable manner, and, after ((~~deducting the amount of the lien and costs of sale~~)) applying the proceeds to costs of the sale and then to the amount of the lien, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within six months of the date of sale.

(b) If the property has a value of less than three hundred dollars, the property may be disposed of in a reasonable manner.

(3) Personal papers and personal ((~~effects~~)) photographs that are not reclaimed by the occupant within six months of a sale under subsection (2)(a) of this section or other disposition under subsection (2)(b) of this section may be disposed of in a reasonable manner.

(4) No employee or owner, or family member of an employee or owner, may acquire, directly or indirectly, the property sold pursuant to subsection (2)(a) of this section or disposed of pursuant to subsection (2)(b) of this section, or personal papers and personal ((~~effects~~)) photographs disposed of under subsection (3) of this section.

(5) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned property pursuant to RCW 63.29.165.

((~~(6) After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.~~))

Sec. 6. RCW 19.150.100 and 1988 c 240 s 11 are each amended to read as follows:

Prior to any sale pursuant to RCW 19.150.080, any person claiming a right to the ((~~goods~~)) personal property may pay the amount necessary

to satisfy the lien ((~~and the reasonable expenses incurred for particular actions taken pursuant to this chapter~~)) and one month's rent in advance. In that event, the ((~~goods shall~~)) personal property may not be sold, but ((~~shall~~)) must be retained by the owner ((~~subject to the terms of this chapter~~)) pending a court order directing ((~~a particular~~)) the disposition of the personal property. If such an order is not obtained within thirty days of the original payment, the claimant must pay the monthly rental charge for the space where the personal property is stored. If rent is not paid, the owner may sell or dispose of the personal property in accordance with RCW 19.150.080. The owner has no liability to a claimant who fails to secure a court order in a timely manner or pay the required rental charge for any sale or other disposition of the personal property.

Passed by the Senate March 14, 2007.
Passed by the House April 5, 2007.
Approved by the Governor April 18, 2007.
Filed in Office of Secretary of State April 18, 2007.

EXHIBIT 15

Webster's New Collegiate Dictionary

A Merriam-Webster®

noun to denote a quality of the thing named, to indicate its quantity or extent, or to specify a thing as distinct from something else

ad·join \ə-'jȯin\ *vb* [ME *adjoinen*, fr. MF *adjoindre*, fr. L *adjungere*, fr. *ad-* + *jungere* to join — more at YOKE] *vt* **1** : to add or attach by joining **2** : to lie next to or in contact with ~ *vi* : to be close to or in contact with one another

ad·join·ing *adj* : touching or bounding at a point or line *syn* see ADJACENT *ant* detached, disjoined

ad·joint \'aj-ˌȯint\ *n* [F, fr. pp. of *adjoindre* to adjoin] : the transpose of a matrix in which each element is replaced by its cofactor

ad·journ \ə-'jərn\ *vb* [ME *ajournen*, fr. MF *ajourner*, fr. *a-* (fr. L *ad-*) + *jour* day — more at JOURNEY] *vt* : to suspend indefinitely or until a later stated time ~ *vi* **1** : to suspend a session to another time or place or indefinitely **2** : to move to another place
syn ADJOURN, PROROGUE, DISSOLVE *shared meaning element* : to terminate the activities of (as a legislature)

ad·journ·ment \-mənt\ *n* **1** : the act of adjourning **2** : the state or interval of being adjourned

ad·judge \ə-'jəj\ *vt* **ad·judged; ad·judg·ing** [ME *ajugen*, fr. MF *ajugier*, fr. L *adjudicare*, fr. *ad-* + *judicare* to judge — more at JUDGE] **1 a** : to decide or rule upon as a judge : ADJUDICATE **b** : to pronounce judicially : RULE **2** *archaic* : SENTENCE, CONDEMN **3** : to hold or pronounce to be : DEEM ⟨~ the book a success⟩ **4** : to award or grant judicially in a case of controversy

ad·ju·di·cate \ə-'jüd-i-ˌkāt\ *vb* **-cat·ed; -cat·ing** [L *adjudicatus*, pp. of *adjudicare*] *vt* : to settle judicially ~ *vi* : to act as judge — **ad·ju·di·ca·tive** \-ˌkāt-iv, -kət-\ *adj* — **ad·ju·di·ca·tor** \-ˌkāt-ər\ *n*

ad·ju·di·ca·tion \əˌjüd-i-'kā-shən\ *n* **1** : the act or process of adjudicating **2 a** : a judicial decision or sentence **b** : a decree in bankruptcy — **ad·ju·di·ca·to·ry** \-'jüd-i-kəˌtōr-ē, -ˌtȯr-\ *adj*

[1]ad·junct \'aj-əŋ(k)t\ *n* [L *adjunctum*, fr. neut. of *adjunctus*, pp. of *adjungere*] **1** : something joined or added to another thing but not essentially a part of it **2** : a word or word group that qualifies or completes the meaning of another word or other words and is not itself one of the principal structural elements in its sentence **3** : a person associated with or assisting another — **ad·junc·tive** \ə-'jəŋ(k)-tiv\ *adj*

[2]adjunct *adj* **1** : added or joined as an accompanying object or circumstance **2** : attached in a subordinate or temporary capacity to a staff ⟨an ~ psychiatrist⟩ — **ad·junct·ly** \'aj-əŋ(k)-tlē, -əŋ-klē\ *adv*

ad·junc·tion \ə-'jəŋ(k)-shən\ *n* : the act or process of adjoining

ad·ju·ra·tion \ˌaj-ə-'rā-shən\ *n* **1** : a solemn oath **2** : an earnest or solemn urging or advising — **ad·jur·a·to·ry** \ə-'jůr-ə-ˌtōr-ē, -ˌtȯr-\ *adj*

ad·jure \ə-'jů(ə)r\ *vt* **ad·jured; ad·jur·ing** [ME *adjuren*, fr. MF & L; MF *ajurer*, fr. L *adjurare*, fr. *ad-* + *jurare* to swear — more at JURY] **1** : to charge or command solemnly under or as if under oath or penalty of a curse **2** : to entreat or advise earnestly *syn* see BEG

ad·just \ə-'jəst\ *vb* [F *ajuster*, fr. *a-* + *juste* exact, just] *vt* **1 a** : to bring to a more satisfactory state: (1) : SETTLE, RESOLVE (2) : RECTIFY **b** : to make correspondent or conformable : ADAPT **c** : to bring the parts of to a true or more effective relative position ⟨~ a carburetor⟩ **2** : to reduce to a system : REGULATE **3** : to determine the amount to be paid under an insurance policy in settlement of (a loss) ~ *vi* **1** : to adapt or conform oneself (as to climate, food, or new working hours) **2** : to achieve mental and behavioral balance between one's own needs and the demands of others *syn* see ADAPT — **ad·just·abil·i·ty** \-ˌjəs-tə'bil-ət-ē\ *n* — **ad·just·able** \-'jəs-tə-bəl\ *adj* — **ad·jus·tive** \-'jəs-tiv\ *adj*

ad·just·ed *adj* **1** : accommodated to suit a particular set of circumstances or requirements **2** : having achieved a harmonious relationship with the environment or with other individuals ⟨a well-*adjusted* schoolchild⟩

ad·just·er *also* **ad·jus·tor** \ə-'jəs-tər\ *n* : one that adjusts; *esp* : an insurance agent who investigates personal or property damage and makes estimates for effecting settlements

ad·just·ment \ə-'jəs(t)-mənt\ *n* **1** : the act or process of adjusting **2** : a settlement of a claim or debt in a case in which the amount involved is uncertain or in which full payment is not made **3** : the state of being adjusted **4** : a means (as a mechanism) by which things are adjusted one to another **5** : a correction or modification to reflect actual conditions — **ad·just·men·tal** \ə-ˌjəs(t)-'ment-ᵊl, ˌaj-ˌjəs(t)-\ *adj*

ad·ju·tan·cy \'aj-ət-ən-sē\ *n* : the office or rank of an adjutant

ad·ju·tant \'aj-ət-ənt\ *n* [L *adjutant-*, *adjutans*, prp. of *adjutare* to help — more at AID] **1** : a staff officer in the army, air force, or marine corps who assists the commanding officer and is responsible esp. for correspondence **2** : one who helps : ASSISTANT

adjutant general *n, pl* **adjutants general** **1** : the chief administrative officer of an army who is responsible esp. for the administration and preservation of personnel records **2** : the chief administrative officer of a major military unit (as a division or corps)

[1]ad·ju·vant \'aj-ə-vənt\ *adj* [F or L; F, fr. L *adjuvant-*, *adjuvans*, prp. of *adjuvare* to aid — more at AID] : serving to aid or contribute : AUXILIARY

[2]adjuvant *n* : one that helps or facilitates; *esp* : something that enhances the effectiveness of medical treatment

Ad·le·ri·an \äd-'lir-ē-ən, ad-\ *adj* [Alfred *Adler* †1937 Austrian psychiatrist] : of, relating to, or being a theory and technique of psychotherapy emphasizing the importance of feelings of inferiority, a will to power, and overcompensation in neurotic processes

[1]ad–lib \'ad-'lib\ *adj* [*ad lib*] : spoken, composed, or performed without preparation

[2]ad–lib *vb* **ad–libbed; ad–lib·bing** *vt* : to deliver spontaneously ~ *vi* : to improvise esp. lines or a speech — **ad–lib** *n*

ad lib *adv* [NL *ad libitum*] **1** : in accordance with one's wishes **2** : without restraint or limit

[1]ad li·bi·tum \(ˌ)ad-'lib-ət-əm\ *adv* [NL, in accordance with desire] : ad lib ⟨rats fed ~⟩

[2]ad libitum *adj* : omissible according to a performer's wishes — used as a direction in music; compare OBBLIGATO

ad loc *abbr* [L *ad locum*] to or at the place

adm *abbr* administration; administrative

ADM *abbr* admiral

ad·man \'ad-ˌman\ *n* : one who writes, solicits, or places advertisements

ad·mass \'ad-ˌmas\ *adj* [*ad*vertising + *mass*] *chiefly Brit* : of, relating to, or characteristic of a society that devotes itself chiefly to the production, promotion, and consumption of material goods

ad·mea·sure \ad-'mezh-ər, -'mā-zhər\ *vt* **-sured; -sur·ing** [ME *amesuren*, fr. MF *amesurer*, fr. *a-* (fr. L *ad-*) + *mesurer* to measure] : to determine the proper share of : APPORTION

ad·mea·sure·ment \-'mezh-ər-mənt, -'mā-zhər-\ *n* **1** : determination and apportionment of shares **2** : determination or comparison of dimensions **3** : DIMENSIONS, SIZE

Ad·me·tus \ad-'mēt-əs\ *n* [L, fr. Gk *Admētos*] : a king of Pherae who was saved from his fated death by the substitution of his wife Alcestis

admin *abbr* administration

ad·min·is·ter \əd-'min-ə-stər\ *vb* **ad·min·is·tered; ad·min·is·ter·ing** \-st(ə-)riŋ\ [ME *administren*, fr. MF *administrer*, fr. L *administrare*, fr. *ad-* + *ministrare* to serve, fr. *minister* servant — more at MINISTER] *vt* **1** : to manage or supervise the execution, use, or conduct of ⟨~ a trust fund⟩ **2 a** : to mete out : DISPENSE ⟨~ punishment⟩ **b** : to give ritually ⟨~ the last rites⟩ **c** : to give remedially ⟨~ a dose of medicine⟩ ~ *vi* **1** : to perform the office of administrator **2** : to furnish a benefit : MINISTER ⟨~ to his ailing friend⟩ **3** : to manage affairs *syn* see EXECUTE — **ad·min·is·tra·ble** \-strə-bəl\ *adj* — **ad·min·is·trant** \-strənt\ *n*

ad·min·is·trate \-ˌstrāt\ *vt* **-trat·ed; -trat·ing** [L *administratus*, pp. of *administrare*] : ADMINISTER

ad·min·is·tra·tion \əd-ˌmin-ə-'strā-shən, ˌad-\ *n* **1** : the act or process of administering **2** : performance of executive duties : MANAGEMENT **3** : the execution of public affairs as distinguished from policymaking **4 a** : a body of persons who administer **b** *cap* : a group constituting the political executive in a presidential government **c** : a governmental agency or board **5** : the term of office of an administrative officer or body — **ad·min·is·tra·tion·al** \-shnəl, -shən-ᵊl\ *adj* — **ad·min·is·tra·tion·ist** \-sh(ə-)nəst\ *n*

ad·min·is·tra·tive \əd-ˌmin-ə-ˌstrāt-iv, -strət-\ *adj* : of or relating to administration or an administration : EXECUTIVE — **ad·min·is·tra·tive·ly** *adv*

administrative county *n* : a British local administrative unit often not coincident with an older county

administrative law *n* : law dealing with the establishment, duties, and powers of and available remedies against authorized agencies in the executive branch of the government

ad·min·is·tra·tor \əd-'min-ə-ˌstrāt-ər\ *n* **1** : a person legally vested with the right of administration of an estate **2 a** : one that administers esp. business, school, or governmental affairs **b** : a priest appointed to administer a diocese or parish temporarily

ad·min·is·tra·trix \-ˌmin-ə-'strā-triks\ *n, pl* **-tra·tri·ces** \-'strā-trə-ˌsēz\ [NL] : a female administrator esp. of an estate

ad·mi·ra·ble \'ad-m(ə-)rə-bəl\ *adj* **1** *obs* : exciting wonder : SURPRISING **2** : deserving the highest esteem : EXCELLENT — **ad·mi·ra·bil·i·ty** \ˌad-m(ə-)rə-'bil-ət-ē\ *n* — **ad·mi·ra·ble·ness** \'ad-m(ə-)rə-bəl-nəs\ *n* — **ad·mi·ra·bly** \-blē\ *adv*

ad·mi·ral \'ad-m(ə-)rəl\ *n* [ME, fr. MF *amiral* admiral & ML *admiralis* emir, *admirallus* admiral, fr. Ar *amīr -al-* commander of the (as in *amīr-al-bahr* commander of the sea)] **1** *archaic* : the commander in chief of a navy **2 a** : FLAG OFFICER **b** : a commissioned officer in the navy or coast guard who ranks above a vice admiral and whose insignia is four stars — compare GENERAL **3** *archaic* : FLAGSHIP **4** : any of several brightly colored butterflies (family Nymphalidae)

admiral of the fleet : the highest-ranking officer of the British navy

ad·mi·ral·ty \'ad-m(ə-)rəl-tē\ *n* **1** *cap* : the executive department or officers formerly having general authority over British naval affairs **2** : the court having jurisdiction of maritime questions; *also* : the system of law administered by admiralty courts

Admiralty mile *n* : NAUTICAL MILE a

ad·mi·ra·tion \ˌad-mə-'rā-shən\ *n* **1** *archaic* : WONDER **2** : an object of admiring esteem **3 a** : a feeling of delighted or astonished approbation **b** : the act or process of regarding with admiration

ad·mire \əd-'mī(ə)r\ *vt* **ad·mired; ad·mir·ing** [MF *admirer*, fr. L *admirari*, fr. *ad-* + *mirari* to wonder — more at SMILE] **1** *archaic* : to marvel at **2** : to regard with admiration **3** : to think highly of often in a somewhat impersonal manner ⟨~ a man's capacity for work⟩ *syn* see REGARD *ant* abhor — **ad·mir·er** *n* — **ad·mir·ing·ly** \-'mī-riŋ-lē\ *adv*

ad·mis·si·ble \əd-'mis-ə-bəl\ *adj* [F, fr. ML *admissibilis*, fr. L *admissus*, pp. of *admittere*] **1** : capable of being allowed or conceded : PERMISSIBLE ⟨behavior that was hardly ~⟩ **2** : capable or worthy of being admitted ⟨foreign products ~ to a domestic market⟩ — **ad·mis·si·bil·i·ty** \-ˌmis-ə-'bil-ət-ē\ *n*

ad·mis·sion \əd-'mish-ən\ *n* **1 a** : the granting of an argument or position not fully proved **b** : acknowledgment that a fact or statement is true **2 a** : the act or process of admitting **b** : the state or privilege of being admitted **c** : a fee paid at or for admission *syn* see ADMITTANCE — **ad·mis·sive** \-'mis-iv\ *adj*

ad·mit \əd-'mit\ *vb* **ad·mit·ted; ad·mit·ting** [ME *admitten*, fr. L *admittere*, fr. *ad-* + *mittere* to send — more at SMITE] *vt* **1 a** : to allow scope for : PERMIT **b** : to concede as true or valid ⟨compelled to ~ his failure⟩ **2** : to allow entry (as to a place, fellowship, or privilege) ⟨each ticket ~s two persons⟩ ⟨*admitted* to the university⟩ ~ *vi* **1** : to give entrance or access **2 a** : ALLOW,

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