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Division II  
State of Washington

No. 49836-7-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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EDNA ALLEN, an individual,

Petitioner

and

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM,  
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE

Petitioner

vs.

DAN AND BILL'S RV PARK

Respondent

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**AMICUS CURIAE BRIEF OF NORTHWEST JUSTICE PROJECT**

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## I. INTRODUCTION

Recreational vehicles (“RV”) provide essential housing of last resort for some of the lowest-income of Northwest Justice Project’s (“NJP”) client population. Many, like Petitioner Edna Allen, were previously homeless, and because they must live on disability assistance or earnings from sporadic work, are on the edge of becoming homeless again. Ensuring that the Mobile Home Landlord Tenant Act, RCW 59.20 (“MHLTA”) is applied to RV residents as the Legislature intended will protect such renters from retaliatory or discriminatory evictions hidden behind “no cause” notices or unlawful rent increases.

Dan & Bill’s RV Park (“the Park”) and Amicus Manufactured Housing Communities of Washington (“MHCW”) assert that the MHLTA does not cover long-term recreational vehicle (“RV”) tenants of the Park, even though several have rented a Park space for many years. Clear guidance is needed from this Court on when tenancies that extend for periods of up to many years, should be deemed “park model” tenancies covered by the MHLTA.

## II. IDENTITY AND INTEREST OF AMICUS

NJP incorporates the statements of Interests of Moving Party and Familiarity with the Issues in its Motion for Leave to File Amicus Brief.

### III. ARGUMENT

The fundamental issue that the Court must decide in this case is whether the Park fits within the definition of a “mobile home park” contained in the MHLTA, RCW 59.20.<sup>1</sup> If the Park is a mobile home park as defined in this statute, then its relationship with non-transient tenants who rent a space in the park: (1) is governed by the MHLTA, chapter 59.20 RCW; and (2) is subject to the Mobile Home Dispute Resolution Program (“MHDRP”) under chapter 59.30 RCW.

#### A. Recreational Vehicles Prevent Homelessness

A key question in this case is how to harmonize the language in the definitions of “recreational vehicle” and “park model” in the MHLTA. A “recreational vehicle” is defined as primarily *designed* to be used as temporary living quarters, is transient, and is not occupied as a primary residence.<sup>2</sup> A “park model” is defined as a recreational vehicle *intended* for semi-permanent or permanent installation and *is used as* a primary residence<sup>3</sup>. In fact, when the Legislature amended RCW 59.20.030 to bring “park model” under MHLTA protections, it acted on an understanding that RVs, while designed for short-term recreational use, are used out of harsh necessity as long-term housing by many

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<sup>1</sup> RCW 59.20.030(10); *See also*, RCW 59.30.020(9).

<sup>2</sup> RCW 59.20.030(17); *See also*, RCW 59.30.020(12).

<sup>3</sup> RCW 59.20.030(14); *See also*, RCW 59.30.020(11).

Washingtonians. The conflicting definitions reflects a mismatch between the design of RVs and the reality of how they are used by people living in poverty.

The Legislature chose in RCW 59.20 to protect real people living in poverty using RVs as their primary residence. In doing so, the legislature was cognizant of the extreme shortage of affordable housing for low-income people in Washington, which continues to worsen.<sup>4</sup> In this challenging environment for low-income renters, RVs provide a source of relatively inexpensive housing that saves people from being homeless. A study of those living in RVs and cars on urban streets found people live in vehicles in two scenarios: (1) as a first step toward permanent housing for someone who was homeless, and (2) as a last resort prior to being forced to live on the streets.<sup>5</sup> Edna Allen, a disabled senior living on a fixed

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<sup>4</sup> A 2015 study found only 51 affordable rental units available for every 100 very-low-income or extremely-low-income households. Washington State Affordable Housing Advisory Board, *Washington State Housing Needs Assessment, Executive Summary*, p. 3 (2015) available at <http://www.commerce.wa.gov/wp-content/uploads/2016/10/AHAB-Housing-NeedsAssessment-Exec-Summ.pdf> (last visited Oct. 23, 2017). Market rate rents are unaffordable in most regions to those living on earnings from a single full-time minimum wage job, or Social Security for disabled or retired workers. Washington Low Income Housing Alliance, Dept. of Commerce, and Washington State Housing Finance Commission, *Bringing Washington Home, 2014 Affordable Housing Report*, p. 3, available at [http://wliha.org/sites/default/files/WLIHA\\_2014\\_Dashboard %20FINAL .pdf](http://wliha.org/sites/default/files/WLIHA_2014_Dashboard%20FINAL.pdf) (last visited Oct. 23, 2017).

<sup>5</sup> So, Jessica; MacDonald, Scott; Olson, Justin; Mansell, Ryan; and Rankin, Sara, *Homeless Rights Advocacy Project*, 5, at 1 "*Living at the Intersection: Laws & Vehicle Residency*" (2016), (hereafter, "LATP") available at <http://digitalcommons.law.seattleu.edu/hrap/5> (last visited Oct. 2, 2017).

income who was homeless before being given a travel trailer to live in<sup>6</sup>, typifies the economic fragility of RV tenants. RVs are a particularly important housing resource for the lowest income people, such as low-income disabled people living on SSI or other forms of fixed income.<sup>7</sup> Graham Pruss, a scholar who extensively studied vehicle residency in Washington, explains: “They are struggling to get by. . . If their options include living in a bush, living in a shelter and breaking their family apart, or living in an RV, the choice to live in an RV is a very valuable option.”<sup>8</sup>

**B. Being Forced to Move from a Mobile Home Park Creates Severe Hardship for RV-Dwelling Tenants**

The Park and MHCW argue that because some people living in RVs, even if renting from the same park for years, can prepare to move in a few hours, RCW 59.20 does not protect them. But, the question is not how fast they can prepare their homes to be moved, and then drive or tow them out of the park. It is whether they have anywhere else to go.

Outside of mobile home parks, there are few safe places for permanent RV dwellers to go. Staying on city streets is not a safe option. Bans on living in a vehicle on Washington city streets are widespread,

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<sup>6</sup> AR 960:25; 966:12-13; 967:7-8; 968:2-3

<sup>7</sup> Declaration of James Whisenhunt, CP 394-395.

<sup>8</sup> *LATI, supra*, at 4, quoting Graham Pruss, Director of the Vehicle Residency Research Program and WeCount.org, from Rianna Hidalgo, “Nowhere to Go,” in *Real Change*, (July 22, 2015).

having doubled from 2011 to 2014.<sup>9</sup> Exacerbating problems of moving, many RV residents, due to extreme poverty, cannot lawfully drive or their RVs are unlicensed, creating the risk of being ticketed or having their homes impounded and lost.<sup>10</sup> As a result of bans, RV residents not in parks concentrate in industrial urban areas resulting in social isolation and not being near municipal services such as bus routes.<sup>11</sup>

MHCW, in an amicus brief filed in another case, described the extreme hardship faced by RV tenants required quickly to vacate parks: “It does not matter how long they have resided in the communities, what ties they have, whether they have children in school, or any other human compassion considerations.”<sup>12</sup>

C. **The Court Should Establish Clear Guidelines For Interpreting MHLTA’s Protections for Park Models**

MHCW does not explain who it contends the Legislature sought to protect with its multiple enactments protecting the tenancies of people residing in RVs. NJP concurs with the arguments made by Edna Allen and the State regarding the statutory construction of the MHLTA and its

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<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> Graham Pruss, *Seattle Vehicular Residency Research Project, 2012 Advisory Report, Seattle University*, (Sept. 2012) at 27-30, available at [http://clerk.seattle.gov/~public/meetingrecords/2012/hhshc20120926\\_8a.pdf](http://clerk.seattle.gov/~public/meetingrecords/2012/hhshc20120926_8a.pdf) (last visited Oct. 20, 2017).

<sup>12</sup> CP 407, Amicus Brief of MHCW (June 24, 2008), filed in *Lawson v. City of Pasco*, 168 Wn.2d 675, 230 P.3d 1038 (2010).

coverage of RV dwellers. In 1999, the MHLTA was amended to extend coverage to “park model” tenants whose primary residence is an RV.<sup>13</sup> In 2003, the definition of “park model” was amended to its current wording.<sup>14</sup> In 2009, the Legislature responded to a Pasco City ordinance prohibiting RV tenancies in mobile home parks with legislation to prevent such bans.<sup>15</sup> In 2012, the Legislature again protected RVs dwellers, amending RCW 59.30.020(11) to align it with the RCW 59.20.030(14) definition of “park model.” Repeatedly, legislation was enacted with the clear purpose of protecting some class of people living in their RVs. Yet, having argued that the statute does not cover RV tenants who rent space in the Park for many years, the Park and MHCW in effect argue that the class of tenants protected by the definition of “park model” consists of no one.

MHCW advises its members on the applicability of the MHLTA to RV tenancies, and provides them RV rental agreements.<sup>16</sup> So it is significant that both the Park and MHCW assert that none of the Park’s RV tenants are covered by the MHLTA, despite such long tenancies.

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<sup>13</sup> *State’s Br*, at 22-24; *Allen Br*, at 25-26 and 40-43.

<sup>14</sup> *State’s Br*, at 23.

<sup>15</sup> 61st Legislature, Laws of 2009, ch. 79, effective July 26, 2009, amending RCW 35.21.684, RCW 35A.21.312, and RCW 36.01. The Legislature did not limit this protection to RVs with a certain type of installation or power or sewer connections. Only fire and safety regulations are allowed, and ordinances may only require *either* RV tenants to have one internal toilet and one internal shower, *or* the mobile home park to provide toilets and showers. RCW 35.21.684(3) and (4); RCW 35A.21.312(3) and (4), and RCW 36.01.225(3).

<sup>16</sup> *Dec. of Craig Hillis In Support of MHCW’s Mot for Leave to File Amicus Brief* at 1.

Thus, this Court should establish clear guidance for what a “park model” is to help park owners comply with the Legislature’s imperative to protect RV resident tenants.<sup>17</sup> Such guidance will also protect landlords because violating MHLTA’s written rental agreement requirements can result in Consumer Protection Act liability.<sup>18</sup>

NJP concurs with Petitioner Allen’s argument regarding the statutory interpretation of the term “park model”<sup>19</sup> and that the facts conclusively support a finding the Park contains two or more “park models.” NJP urges the Court to find that where a primary-residence RV tenant has rented on a semi-permanent basis, additional evidence of intent beyond duration of rental is not required to find a “park model.” This follows from the evidentiary principle that where a person takes a series of actions, each of which reflects conscious choices leading to a result known to or understood by a reasonable person in such circumstances, those individual actions can establish intent to achieve the final result.<sup>20</sup> The

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<sup>17</sup> MHCW’s second argument, that even if the Park tenants live in “park models” they are not covered by the MHLTA because they do not rent mobile home lots, is addressed below in Section E.

<sup>18</sup> *Holiday Resort Cmty. Ass’n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 224-226, 135 P.3d 499 (2006) as amended on denial of reconsideration (Aug. 15, 2006), pet. for rev’w. denied, 160 Wn.2d 1019, 163 P.3d 793 (2007). (Form rental agreement drafted by MHCW that violated MHLTA was an unfair act or practice under the CPA.); See also *Ethridge v. Hwang*, 105 Wn.App. 447, 20 P.3d 958 (2001).

<sup>19</sup> Allen Br at 14-19.

<sup>20</sup> Mens rea elements of knowledge and intent can often be proved through circumstantial evidence offered by a person’s course of conduct, and the reasonable inferences drawn

steps tenant and landlord take to establish long-term rental of a primary-residence RV fit comfortably in this rule: tenant and landlord (1) agree for the RV to be installed for tenant's use in a location, (2) agree as to park rules the tenant must follow, and (3) respectively pay and accept rent for consecutive months resulting in long-term rental. Both parties take actions that as a course of conduct evince intent for long-term installation.

Thus, evidence of tenant structures and landscaping in the Park,<sup>21</sup> while consistent with intent for semi-permanent installation, are not necessary to determine these RVs are "park models." Here, more than two tenants rented more than 5 years,<sup>22</sup> so no evidence beyond duration of residence is needed to find "park models" resulting in MHLTA coverage.

If the Court does not clarify that no further evidence of *intent* to reside semi-permanently is required where tenants have already resided in a park semi-permanently, landlords will bar RV tenants from building decks, sheds and outdoor amenities to try to evade MHLTA coverage. Fewer landlords would voluntarily comply with the MHLTA and it would result in landlords barring the few amenities these tenants may enjoy.

NJP concurs with Edna Allen's analysis that the phrase in 59.20.030(14) "intended for . . . semi-permanent installation" has a plain

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therefrom. *United States v. MacPherson*, 424 F.3d 183, 189-90 (2d Cir. 2005), citing *Ratzlaf v. United States*, 510 U.S.135, 149 n. 19, 114 S.Ct. 655 (1994).

<sup>21</sup> See, Allen Br at 35-40, State Br at 27-30.

and ordinary meaning “to have in mind to set up for long-term use.”<sup>23</sup> How long that use must be intended for to result in MHLTA coverage varies, as next described. Where an act has a doubtful or ambiguous meaning, it is the duty of the court to adopt a construction that is reasonably liberal, in furtherance of the Legislature’s obvious purpose.<sup>24</sup> Thus, in each case, the most protective possible application should apply.

First, MHLTA protections automatically apply to any primary-residence RV tenant renting for more than a month in a park meeting the RCW 59.20.030(10) definition of “mobile home park.” The MHLTA states that a “tenant’ means any person, except *a transient*, who rents a mobile home lot.” (emphasis added),<sup>25</sup> with “transient” defined as someone renting a lot for less than one month other than as a primary residence.<sup>26</sup> The MHLTA applies to “any rental agreement between a landlord and a tenant” for a mobile home lot within a mobile home park.<sup>27</sup> Thus, where a park is deemed a “mobile home park,” all primary-residence RV tenants are covered by MHLTA after renting for a month.

Second, local laws create another threshold for establishing how

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<sup>22</sup> State Br at 7.

<sup>23</sup> Allen Br. at 17.

<sup>24</sup> *Chelan Basin Conservancy v. GBI Holding Co.*, 188 Wn.2d 692, 706, 399 P.3d 493 (2017).

<sup>25</sup> RCW 59.20.030(18).

<sup>26</sup> RCW 59.20.030(19).

<sup>27</sup> RW 59.20.040.

many months equates to semi-permanent installation. In many locations, local ordinances limit the stay of RVs in designated RV parks to 120 to 180 days.<sup>28</sup> These ordinances create a timeframe within which a park owner must decide whether to rent out their property “for seasonal recreational purpose only” and not “for year round occupancy,” to avoid both meeting the definition of “mobile home park” under RCW 59.20.030(10) and running afoul of local laws. Thus, where a park is not already deemed a “mobile home park,” the determination of intent for “semi-permanent installation” should look to any applicable local ordinances.

Third, where a park is not already deemed a “mobile home park” and no local law controls, the court should look for individualized evidence of intent to remain long-term, looking for guidance to the MHLTA’s coverage for rental extending more than a month as established by the interaction of RCW 59.20.040 with RCW 59.20.030(18) and (19).

The Court should also make clear that if a landlord tries to evade MHLTA protections by requiring tenants to move within the park or repeatedly leave the park for brief periods to interrupt residency, this

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<sup>28</sup>E.g., RVs located in an RV park are limited to use as a dwelling during a one-year period to no more than: **six months**, Arlington, Ord. 20.44.046; **180 days**, Pierce Co. Ch. 18J.15.210, Whatcom Co. Ch. 20.80.950(11), Wenatchee Ord.10.65.250; and **120 days**, Auburn Ord. 18.31.060(A)11, Ellensburg Ch. 15.340.050 K; Blaine Ch. 17.108.060 K.

would be evidence of bad faith in violation of the MHLTA. RCW 59.20.020. *Compare*, RCW 59.18.040 listing living arrangement that are not covered by the Residential Landlord Tenant Act, RCW 59.18, “unless established primarily to avoid its application.”

NJP concurs with the State’s briefing asserting that the Court should reject MHCW’s request to invent an exception to the MHLTA that RV tenants can be pressured to waive their MHLTA rights,<sup>29</sup> as the statute explicitly bars such waivers.<sup>30</sup> MHCW argues that RV tenants should not be forced to enter into renewable annual leases that can only be terminated for good cause.<sup>31</sup> However, as with all MHLTA tenants, they may waive an annual lease in favor of a month-to month lease<sup>32</sup> that still shields them from arbitrary evictions because the MHLTA provides that a landlord shall not terminate a tenancy “of whatever duration” except for cause.<sup>33</sup>

MHCW asserts that “rather than subject themselves to a tenancy in perpetuity under RCW 59.20.090(1) for a transient recreational vehicle,” landlords will keep lots vacant until they can rent to “a new higher quality and safer manufactured home.”<sup>34</sup> This argument implies: (1) that the law allows RV residents’ to be treated as second-class citizens, and (2) that

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<sup>29</sup> MHCW Br at 14-15.

<sup>30</sup> RCW 59.20.060(2)(d).

<sup>31</sup> MHCW Br. at 4.

<sup>32</sup> RCW 59.20.050(1).

<sup>33</sup> RCW 59.20.080(1).

parks will not rent to them unless they can discriminate against them. As to the first, vehicle residents are often the targets of the same kinds of social exclusion and discrimination as homeless people.<sup>35</sup> MHCW eloquently describes this brand of prejudice in its *Lawson v. City of Pasco* amicus brief questioning what justification local governments had “for prohibiting [RV] tenancies, other than we do not want ‘these kind of people’ in our communities?”<sup>36</sup> But, the Legislature mandates that once they admit RV residents, parks cannot discriminate against them. As to the second contention, the record below disproves that renting to long-term RV residents is economically unattractive. No law requires landlords to rent to RV tenants. Yet the Park has rented to RV tenants for more than 15 years.<sup>37</sup> In some parks, RV tenants rent the majority of lots, and many parks have some RVs.<sup>38</sup> Landlords rent RV tenants lots that are too small for mobile homes and would otherwise sit vacant.<sup>39</sup> Landlords are unlikely to stop renting these lots to RV tenants if they must follow the MHLTA.

**D. The Park’s Relationship With Its Tenants Is Not Covered By the RLTA**

The Residential Landlord Tenant Act (“RLTA”), RCW 59.18, does

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<sup>34</sup> MHCW Br at 7.

<sup>35</sup> LATI at 2.

<sup>36</sup> MHCW *Lawson* Amicus Memo at CP 407.

<sup>37</sup> Resp. Br. at 31.

<sup>38</sup> *Id.* at CP 406-407.

<sup>39</sup> *Id.* at CP 408, MHCW Br at 4.

not apply to the landlord-tenant relationship between the Park and its residents because the Park does not own dwelling units that it rents to its tenants. Instead, the Park rents spaces or lots, i.e. a portion of the park, to tenants who own their own dwelling units.<sup>40</sup>

MHCW, like the Park itself, mistakenly assumes or asserts that the RLTA applies to the relationship between the Park and its tenants.<sup>41</sup> MHCW further argues that tenants who use an RV as a primary residence, should be “allowed” (in the real world this means required by the landlord) “to voluntarily waive” all rights under the MHLTA, and “allow either the landlord or the tenant to terminate any recreational vehicle tenancy upon proper notice under Ch. 59.18.”<sup>42</sup>

1. The RLTA Applies Only to the Rental of Dwelling Units for Living Purposes, and the Park Rents Out Lots, Not Dwelling Units

Because the Park does not own dwelling units that it rents to its tenants, the RLTA does not apply generally to any known tenancy in the Park. The RLTA applies to the rental of *dwelling units* for living purposes except where exempted from coverage under RCW 59.18.040. A *dwelling*

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<sup>40</sup> AR 359, Park Rules refer to “

<sup>41</sup> *MHCW Br.*, at 13.

<sup>42</sup> *MHCW Br.*, at 15. Compare RCW 59.20.080 and RCW 59.20.090(3) and (4) with RCW 59.18.200, RCW 59.12.030 and RCW 59.04.020. Under RCW 59.20.090(3), tenants covered by the MHLTA can terminate a tenancy with a notice 30-days before the end the lease.

*unit* is “a structure...used as a home, residence, or sleeping place... including...single-family residences...apartment[s]...and mobile homes.”<sup>43</sup> A *landlord* is the “owner... of the dwelling unit,” and a *tenant* is “entitled to occupy a dwelling unit...under a rental agreement.”<sup>44</sup>

None of the Park tenants who testified below rent a *dwelling unit* from the Park, and there is no evidence in the record that the Park owns any *dwelling units* that it rents to tenants. The Park tenants rent only a space or lot from the Park, and either own or otherwise have a right to possess their RVs.<sup>45</sup> The Park’s assertion that it is governed by and operates under the RLTA because the “living arrangements” of Park residents are not among those specifically exempted from RLTA coverage under RCW 59.18.040<sup>46</sup> is baseless. If all living arrangements not specified among the exemptions under RCW 59.18.040 are covered by the RLTA without regard to whether or not the tenancy involves the rental of a dwelling unit, then it follows that the tenancies of tenants who own their

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<sup>43</sup> RCW 59.18.030(9).

<sup>44</sup> RCW 59.18.030(14); RCW 59.18.030(27).

<sup>45</sup> Amicus NJP is aware that some mobile home parks own houses, apartments, mobile homes or RVs and rent them to tenants along with lot on which these dwelling units are located. Such tenancies are governed by the RLTA, whereas the tenancies of other tenants of the park, who own their own homes and rent only the lot, are governed by the MHLTA. RCW 59.20.040.

<sup>46</sup> CP 96; RCW 59.18.040 lists eight “living arrangements” that are not covered by the RLTA, “unless established primarily to avoid its application.” These include, for example, residence in institutions such as correctional facilities, nursing homes, or college dormitories, transient residence in hotels and motels, and residence in seasonal farmworker housing.

own manufactured homes or mobile homes and rent a mobile home lot in a mobile home park must be covered by the RLTA. But this result is not what is intended by the legislature. Instead, it is necessary to look to the relevant definitions under the RLTA and the MHLTA to determine legislative intent as to whether a particular tenancy is governed by the RLTA, the MHLTA, or neither.

If the Park tenancies were actually covered by RLTA as claimed, then the Park would be required to comply, for example, with landlord duties under RCW 59.18.060 including keeping “the premises”<sup>47</sup> fit for human habitation, and maintaining the structural components, electrical, plumbing, heating, and appliances in good working order. Moreover, tenants would be entitled to enforce RLTA repair remedies.

2. The Only Applicable Sections of the RLTA Modify the Unlawful Detainer Procedures for Residential Tenants and Are Incorporated Into the MHLTA

The only sections of the RLTA that apply to any known tenancy in the Park are those sections that modify the unlawful detainer procedures with respect to residential tenants and that have been incorporated into the MHLTA.<sup>48</sup> The Unlawful Detainer Act, RCW 59.12, originally enacted in

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<sup>47</sup> Under the RLTA, the definition of *premises* includes the dwelling unit. RCW 59.18.030(18).

<sup>48</sup> “RCW 59.18.055 and 59.18.370 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter.” RCW 59.20.040.

1890, does not include a show cause hearing procedure. When the RLTA was enacted in 1973, it included provisions modifying unlawful detainer procedures with respect to residential tenants by adding a show cause hearing procedure. RCW 59.18.370-410. The RLTA did not modify RCW 59.12.030 regarding the various ways a tenant can reach the status of unlawful detainer or what notices are a prerequisite to commencement of an unlawful detainer action. Except where prohibited by applicable federal law, municipal ordinance, or lease provision, residential landlords generally may terminate a month-to-month tenancy without cause.<sup>49</sup>

The MHLTA, enacted in 1977, incorporates these RLTA modifications of the unlawful detainer procedures.<sup>50</sup> The MHLTA “governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park.”<sup>51</sup> Termination or non-renewal of a lease or tenancy without cause is not permitted and must be based instead on one of the exclusive grounds set forth in RCW 59.20.080(1). In unlawful detainer

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<sup>49</sup> RCW 59.18.200; RCW 59.12.030(2).

<sup>50</sup> RCW 59.20.040; RCW 59.18.055, providing landlords with an alternative method of service, was added to the RLTA in 1989 and incorporated into the MHLTA in 1997 by RCW 59.20.040. In 1989, the legislature added RCW 59.18.365 (amended in 2005, 2006 and 2008) providing a mandatory Summons form for residential unlawful detainer actions. When RCW 59.18.365 was added, and each time it was subsequently amended, the legislature neglected to amend RCW 59.20.040 to make the summons form apply to MHLTA evictions too. Despite this apparent oversight, mobile home parks typically use the RCW 59.18.365 Summons form.

<sup>51</sup> RCW 59.20.080(3).

actions involving mobile home park tenants, notice must comply with RCW 59.20.080(1)<sup>52</sup> not RCW 59.12.030.<sup>53</sup> By contrast, evictions of transient<sup>54</sup> RVs, i.e. those not used as a primary residence, from mobile home parks are governed by RCW 59.12 and RCW 59.18<sup>55</sup>, and not by RCW 59.20.<sup>56</sup> These provisions concerning evictions from mobile home parks in RCW 59.20.080(3) provide no support to the mistaken contention that RLTA applies generally to the Park's tenancies.

**E. The Court Should Reject the Park's Contention That It May Designate Lots Rented to Park Model Tenants as "RV Spaces"**

MHCW argues that MHLTA coverage does not stop a mobile home park landlord from "designating certain lots or portions of the community as recreational vehicle spaces."<sup>57</sup> NJP concurs with the analysis in Allen's Brief on this issue.<sup>58</sup> MHCW mistakenly asserts that a landlord may simply designate land it rents as "recreational vehicle space" without regard to the statutory definition of a "mobile home lot" as a

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<sup>52</sup> The provisions of RCW 59.20.080(1) are "the functional equivalent of an unlawful detainer statute" which courts "must construe ... strictly in favor of the tenant." *Hartson Partnership v. Goodwin*, 99 Wn.App. 227, 235-36, 991 P.2d 1211 (2000).

<sup>53</sup> RCW 59.12 "shall be applicable only in implementation of the provisions of this chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable;" RCW 59.20.040.

<sup>54</sup> A transient is "as person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence."

<sup>55</sup> *See*, RCW 59.18.365-410.

<sup>56</sup> "Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks." RCW 59.20.080(3). Under the MHLTA, recreational vehicles that are not park models are *inter alia* "used as temporary living quarters," "transient" and "not occupied as a primary residence."

<sup>57</sup> MHCW Br. at 3-4.

portion of a mobile home park designated as a location of a mobile home or park model and intended for the exclusive use as a primary residence of the occupants of that home.<sup>59</sup> If the tenant's dwelling is a "park model," and is located in a "mobile home park," then the rented land on which it sits, regardless of lot size, is a "mobile home lot." This Court should reject MHCW's contention that a park owner may arbitrarily designate lots as "RV spaces" despite renting them to "park model" tenants, because some mobile home parks use this tactic to evade MHLTA coverage.<sup>60</sup>

**F. Without Coverage of the MHLTA, Park Tenants and Similarly Situated Tenants Will Be Without Legal Protection Against Abusive Practices**

The implication of the Park's wrongful assertion that the RLTA applies to the tenancies of Park residents is that the Park's tenants do not deserve the beneficial MHLTA protections because they can assert rights under the RLTA. Because the RLTA does not apply, if the court holds that the MHLTA also does not apply, there would be scant legal protection from abusive practices for RV tenants of the Park, or similarly situated RV tenants. By claiming that the MHLTA does not apply, the Park seeks to prevent its tenants from benefitting from the significant legal protections

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<sup>58</sup> Allen Br. at 5-7.

<sup>59</sup> RCW 59.20.030(9).

<sup>60</sup> See, MHCW Br at 14, arguing that for RVs used as primary residence and not permanently affixed to lot, a landlord can designate a lot as RV space and give tenant

available under RCW 59.20, including enforcement under RCW 59.30.

The Legislature has long recognized the importance of mobile home parks as a source of low-cost housing for low income, elderly, and disabled persons.<sup>61</sup> Due to the importance of this type of low-cost housing and the vulnerability of these low-income home owners who do not own their own land under their homes, the MHLTA provides significant protections for owners of mobile homes and park models in mobile home parks. These include prohibiting park owners from offering a lot for rent without offering an annual or longer lease.<sup>62</sup> The MHLTA also prohibits park owners from using rental agreements by which the tenant waives rights or remedies provided by the MHLTA.<sup>63</sup> Termination of mobile home park tenancies cannot be without cause and must be based on one or more of the exclusive statutory grounds for termination or non-renewal.<sup>64</sup>

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“recreational vehicle rental agreement” rather than MHLTA annual lease; *Dec. of Craig Hillis* at p. 2-3, ¶ 4-5.

<sup>61</sup> RCW 59.22.010. In 2011, the Legislature made findings that: “[m]obile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents.” RCW 59.22.010(1)(a).

<sup>62</sup> RCW 59.20.050(1).

<sup>63</sup> RCW 59.20.060(2)(d).

<sup>64</sup> RCW 59.20.080(1). These provisions are “the functional equivalent of an unlawful detainer statute” which courts “must construe ... strictly in favor of the tenant.” *Hartson Partnership v. Goodwin*, 99 Wn.App. 227, 235–36, 991 P.2d 1211 (2000).

A 12-month notice to all tenants in the event of park closure is required.<sup>65</sup>

If the Court upholds the ALJ's decision that the Park is not a mobile home park under RCW 59.20 and RCW 59.30, then its long-term RV residents will not receive any of these significant protections provided by the Legislature for park model tenants. If neither the MLTA nor the RLTA apply to such tenancies, then there is very little law that will protect tenants of the Park, or similarly situated tenants, from abusive management practices. Such practices can include eviction without cause, retaliation for requesting better services, or notice before rent is increased.

#### IV. CONCLUSION

Amicus NJP respectfully requests that this Court reverse the ALJ's Order, and hold that Dan & Bill's RV Park is a mobile home park under the MHLTA, and is subject to the MHDRP.

Respectfully submitted this 31<sup>st</sup> day of October, 2017.

NORTHWEST JUSTICE PROJECT



Leslie Owen, WSBA #2788

Kelly Owen, WSBA #16599

Stephen Parsons, WSBA #23440

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<sup>65</sup> RCW 59.20.080(1)(e). The Legislature has also provided for relocation assistance to park tenants in the event of a park closure. RCW 59.21.

### CERTIFICATE OF SERVICE

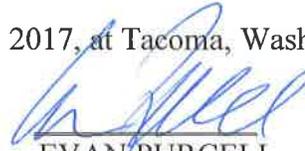
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of October, 2017, at Tacoma, Washington.

  
EVAN PURCELL  
Legal Assistant

# NORTHWEST JUSTICE PROJECT

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