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STATE OF WASHINGTON
BY
DEPUTY

NO. 43514-4-II

IN THE WASHINGTON STATE COURT OF APPEALS,
DIVISION II

WESTERN PLAZA, LLC,

Respondent,

vs.

NORMA TISON,

Appellant.

BRIEF OF RESPONDENT

Appeal from the Ruling of Judge Gary Tabor,
Thurston County Superior Court

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A. INTRODUCTION.

Respondent Western Plaza, LLC ("Landowner") owns and operates Western Plaza Mobile Home Park (the "Park") in Tumwater, Washington. Appellant Norma Tison ("Homeowner") currently occupies Lot #48 in the Landowner's mobile home park. On October 9, 2001, the prior owner of the mobile home park entered into a one year rental agreement with the Homeowner for purposes of the placement of her mobile home on Lot #48. CP 25. Pursuant to that original 2001 lease, initial rent was $345.00 per month, plus certain other charges specified in the lease. A handwritten footnote to the lease states: "Landlord Erlitz agrees to have the land rent remain at $345 for two years." Another footnote indicates: "Every other year rent will be raised no more than $10 for remaining tenancy."

At issue on this appeal is whether the Mobile/Manufactured Home Landlord Tenant Act gives the Homeowner a legal right to hamstring a subsequent Landowner in perpetuity to an original now long-expired one year rental agreement.

Because Washington's common law, and its state constitution, preserves the Landowner's fundamental property right to amend its written rental agreement upon proper notice, this Court should affirm the trial court's Judgment against the Homeowner in its entirety. *McGahuey*

v. Hwang, 104 Wn. App. 176, 182-183, 15 P.3d 672 (2001); *Seashore Villa v. Hagglund*, 163 Wn. App. 531, 540, 260 P.3d 906 (2011); *Little Mountain Estates Tenants Ass'n. v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 269, 236 P.3d 193, 195 (2010). *See* RCW 59.20.050, .090.

B. STATEMENT OF THE CASE.

The Landowner purchased the Park in or around February 2008. CP 25. On March 15, 2009, the Landowner served the Homeowner with a Notice of Change in Rental & Lease Agreement pursuant to RCW 59.20.090 increasing rent to $405.00 per month. CP 25. The Homeowner paid rent in the amount of $405.00 per month through June 30, 2010. CP 25-26.

On June 22, 2011, the Landowner provided the Homeowner with a Notice of Rent Increase, amending the parties' lease by increasing rent to $495.00 per month, effective October 1, 2011. CP 26, 36. But, on October 3, 2011, and monthly thereafter through December 2011, the Homeowner tendered $395.00 ($100.00 less than that required by the June 22, 2011, Notice of Rent Increase). The tendered rents were not accepted and returned to the Homeowner in order to preserve the Landowner's legal rights in this action, and defeat the very waiver arguments contained in the Homeowner's opening brief. CP 26.

The landlord filed an unlawful detainer action on December 2, 2011 alleging that the Homeowner failed to pay rent within five days of service of a Five-Day Notice to Pay or Vacate pursuant to RCW 59.20.080(1)(b). CP 5-8. At the show cause hearing set for May 4, 2012, the trial court agreed that the Homeowner was in unlawful detainer and a writ of restitution was issued. CP 94. The trial court correctly ruled that the Homeowner had a one year rental agreement that could be renewed under its same terms each year, unless there was a proper "objection" by either party to renewing the lease under the same terms. RP 5/5/12 at 15. The court entered Findings of Fact/Conclusions of Law and an Order for Unlawful Detainer against the Homeowner at that hearing. CP 92-95.

On May 18, 2012, the court entered judgment for the past due rent, costs and attorney fees. CP 164. The Homeowner deposited the amount of the judgment into the court registry in order to reinstate her current one year tenancy pursuant to RCW 59.18.410. CP 172. The Homeowner filed a motion for reconsideration which was denied by the court. CP 120-125; 171. The Homeowner then filed this appeal. CP 174-182.

C. SUMMARY OF ARGUMENT.

The Homeowner's appeal has a fatal defect that is dispositive to this appeal: it presumes that her 10-year-old, unacknowledged, 2001 one year rental agreement with her *prior landlord* is somehow enforceable

against her current Landowner in 2011. Her opening brief is riddled with a purportedly interchangeable but incorrect reference to her "landlord" as both her prior and subsequent landlords. But, this is incorrect as a matter of law, and the undisputed fact that the Homeowner's original one year rental agreement was with a prior landlord and it expired over 10 years ago, is dispositive to this appeal.

As the trial court correctly ruled, there is a statutory way to confirm the enforceability of any agreement that requires performance longer than one year, but that agreement must comply with Washington's statute of frauds. RP 5/4/12, at 14. The Homeowner's 10-year-old rental agreement with a different landlord does not satisfy the statute of frauds because it is not acknowledged and does not include a legal description or satisfy the common law prerequisites for any contractual obligation to "run with the land." *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 254-55, 84 P.3d 295, 299-300 (2004).

Neither RCW 59.20.050 nor .090 changes these dispositive legal conclusions. The plain language of both statutes more generally reaffirm that the Homeowner is entitled to the legal right to a one year ***term*** of her tenancy, unless the Landowner elects to exercise its legal right to not renew that one year tenancy, and terminate the tenancy for cause. *See* RCW 59.20.080(1). Although RCW 59.20.050 and .090 expressly renew

the ***term*** or length of time of the Homeowner's legal right to occupy her lot, neither statute automatically renews the actual ***terms*** or provisions of her 10-year-old unenforceable rental agreement that expired long ago in 2002.

The plain and unambiguous statutory language confirm the opposite of what the Homeowner now argues, because the plain language of RCW 59.20.090 does not resurrect the Homeowner's written one year rental agreement that terminated in 2002, as a matter of law. This is especially confirmed when .090 is read in conjunction with each of its subparagraphs, and each provision is given meaning as is required by well accepted cannons of statutory interpretation. *Dot Foods, Inc. v. Wash. Dep't of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009).

For example, the only statutory limitation on any amendment of any term of the parties' written rental agreement is that the Landowner must first provide three months' written notice of the change in rental, prior to the expiration of the Homeowner's current one year term. RCW 59.20.090. By omission of any other limitation on any other *terms or provisions* governing the renewed tenancy, the legislature manifested its intent that there are no other limitations except those otherwise required by the MHLTA. ***Express mention of one thing in a statute implies the***

exclusion of another. *McGahuey v. Hwang*, 104 Wn. App. 176, 182-83, 15 P.3d 672, 675-76 (2001).

The Homeowner's repeated mantra disparaging the Landowner for arguing that it can do anything it wants upon any renewal is just another red herring which the Homeowner raises with her battalion of straw arguments, because it should be self-evident that any tenancy remains subject to each provision of the MHLTA unless terminated for any one of the 13 reasons contained in RCW 59.20.080. As noted by the trial court, the parable of horribles that the Homeowner contends will occur are not presented in the unique facts of this case, and the sky will not fall should this Court affirm the judgment against the Homeowner. RP 5/4/12, at 14-15.

Regardless, the Homeowner cannot shoehorn her parable of horribles into bad faith by the Landowner. Washington case law confirms that it is not bad faith for the Landowner to insist on enforcement of its legal and fundamental property rights under the MHLTA, and the Homeowner's opening brief ignores this contrary common law. *Manufactured Hous. Cmtys. of Wash. v. State*, 142 Wn.2d 347, 364, 13 P.3d 183 (2000). This additional defect is equally dispositive and pierces the veil of confusion that the Homeowner proffers in each of her straw arguments. Even if it did not, the Homeowner has many sufficient legal

remedies under the MHLTA that precludes the one-sided equitable consideration she seeks, including the legal right to continue to occupy a lot in perpetuity.

Ultimately, the Homeowner raises the same legal arguments that were rejected in her counsel's prior appellate cases that resulted in published opinions from both Division I and II of the Court of Appeals. *McGahuey v. Hwang*, 104 Wn. App. 176, 182-183, 15 P.3d 672 (2001); *Seashore Villa v. Hagglund*, 163 Wn. App. 531, 540, 260 P.3d 906 (2011). Nothing has changed since this Court's recent ruling in *Seashore Villa*, when it reaffirmed the landlord's legal right to change the terms of any rental upon three months' written notice given prior to the expiration of the tenant's current one year term. Here, the Court of Appeals disagreed with the Homeowner's counsel's same parable of horribles, because any notice of change of rental must still comply with the rest of the MHLTA which protects tenants (including RCW 59.20.135 which was at issue in the *Seashore Villa* appeal). *Seashore Villa, supra* at 539-540.

This Court should reaffirm its prior common law, and affirm the trial court's judgment for unlawful detainer, and award attorney fees and costs on appeal to the Landowner. *See* RAP 18.1.

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D. ARGUMENT.

(1) Principles of Statutory Interpretation and Standard of Review.

This Court reviews statutory interpretation issues de novo. *Dot Foods, Inc. v. Wash. Dep't of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). "The primary goal of statutory construction is to carry out legislative intent." *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington's traditional process of statutory interpretation, this analysis begins by looking at the words of the statute. "If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself." *Id.* The Court looks to the statute as a whole, giving effect to all of its language. *Dot Foods,* 166 Wn.2d at 919. The Court must look to what the Legislature said in the statute and related statutes to determine if the Legislature's intent is plain. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the language of the statute is plain, that ends the Court's role. *Cerrillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006).

Merely because two interpretations of a statute are conceivable, does not render a statute ambiguous. *Tesoro Refining & Marketing Co. v. State, Dep't of Revenue,* 164 Wn.2d 310, 318, 190 P.3d 28 (2008). The object of statutory construction is still best to effectuate the Legislature's

intent. *Dep't of Ecology*, 146 Wn.2d at 9-10, 11-12; *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 459, 869 P.2d 56 (1994). But this Court does not read language into a statute even if it believes the Legislature *might* have intended it. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Statutes must be interpreted and construed so that all the language used is given effective, with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988).

Furthermore, interpretation of the statutory regime under the MHLTA must be done in the context of the common law, in particular recognizing that the MHLTA is a limitation on a landowner's property rights. The Park, as a private property owner, has a constitutional right to the fundamental attributes of ownership (the right to possess, exclude other and to dispose of property), *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 355, 13 P.3d 183, 187 (2000).

More recently, Division III reviewed and cited both *MHCW* and its preceding progeny of common law interpreting Article 1 §7 of Washington's state constitution, and once again reaffirmed the property owner is entitled to fundamental property rights:

> ...The right to exclude others is an essential stick in the bundle of property rights. *City of Sunnyside v. Lopez*, 50 Wn. App. 786, 795 n.7, 751 P.2d 313 (1988) (citing *Kaiser*

> *Aetna v. United States*, 444 U.S. 164, 179-80, 100 S. Ct.; *Excelsior Mortg. Equity Fund II v. Schroeder*, 383, 62 L. Ed. 2d 332 (1979)); and see *Manufactured Hous. Cmtys. of Wash. v. State*, 142 Wn.2d 347, 364, 13 P.3d 183 (2000) (the right of unrestricted use, enjoyment, and disposal is a substantial part of property's value (quoting *Ackerman v. Port of Seattle*, 55 Wn.2d 400, 409, 348 P.2d 664 (1960), abrogated on other grounds by *Highline Sch. Dist. No. 401 v. Port of Seattle*, 87 Wn.2d 6, 548 P.2d 1085 (1976)).

Excelsior Mortgage Equity Fund II, LLC v. Steven F. Schroeder, et al., October 18, 2012 Slip Opinion, at p. 4, *5, ¶ 22 (copy attached to Appendix).

The Homeowner's arguments fail to recognize that the MHLTA is a statutory scheme that limits common law property rights, and therefore must be strictly construed. Statutes in derogation of the common law are always strictly construed. *State ex rel. McDonald v. Whatcom County Dist. Court*, 92 Wn.2d 35, 593 P.2d 546 (1979); *In re Tyler's Estate*, 140 Wash. 679, 250 P. 456 (1926) (Statutes are to be construed in reference to common laws since it must not be presumed that Legislature intended to make any innovation upon common law further than case absolutely requires).

While it is true that the common law provides that the procedural unlawful detainer provisions of the MHLTA should be interpreted in favor of the tenant, it remains equally true that the common law requires that MHLTA's substantive provisions be strictly construed so as to preserve the landlord's remaining legal rights and common law property rights.

Manufactured Hous. Cmtys. of Wash. v. State, supra, at 364; *Keller v. City of Bellingham*, 92 Wn.2d 726, 730, 600 P.2d 1276, 1279 (1979) (enactments in derogation of the common law are to be strictly construed, citing *Pearson v. Evans*, 51 Wn.2d 574, 320 P.2d 300 (1958)).

(2) Landowner May Modify Its One-Year Rental Agreement Upon Expiration of Its Term, Upon Three Months' Written Notice Given Prior to the Effective Date of the Increase.

The MHLTA is a statutory scheme that regulates rental agreements between landlords and tenants. RCW 59.20.040. By doing so, it places certain limitations on what may be included in a rental agreement, and what must not be included in a rental agreement. *See* e.g. RCW 59.20.050; 060. However, as noted below, where the MHLTA is silent, the landlord's common law property rights remain intact.

For example, the MHLTA provides the Homeowner with both an express and implied legal right to occupy her leased lot that automatically renews for consecutive one year periods until terminated for cause under RCW 59.20.080. *See* RCW 59.20.050. However, as the Court of Appeals has repeatedly held, the MHLTA most certainly does not hamstring a subsequent owner in perpetuity to an earlier now-expired personal agreement between her prior landlord and the Homeowner. *McGahuey v. Hwang*, 104 Wn. App. 176, 182-183, 15 P.3d 672 (2001).

Indeed, a landlord can amend the rent or the amenities it includes upon three months' notice prior to the expiration of the current one year term. *Little Mountain Estates Tenants Ass'n. v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 269, 236 P.3d 193, 195 (2010); *Seashore Villa v. Hagglund*, 163 Wn. App. 531, 540, 260 P.3d 906 (2011); *McGahuey v. Hwang*, 104 Wn. App. 176, 182-183, 15 P.3d 672 (2001).

In opposition to this common law, the Homeowner presents a "slippery slope" argument that if the Landowner can change the rent provision, it can change any provision no matter how inequitable, and thereby "do anything the landlord wants". This is a misstatement of the Landowner's position. At issue here is rent, and the landlord is explicitly permitted to change the amount of rent under the MHLTA. RCW 59.20.090(2) provides as follows:

> (2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

The Homeowner asks this Court to deem unenforceable any new provision that alters the original rental agreement upon renewal, except rent. The Homeowner's interpretation of RCW 59.20.090 flies in the face of her counsel's prior failed appeals that allowed the park owner to alter the terms of a rental agreement with the tenant upon its annual renewal

under MHLTA. Nothing in RCW 59.20.090 or anything else in the MHLTA mandates that a lease remain static into perpetuity as if it were some kind of life estate property interest that renews in one year increments for the life of the Homeowner, and even after her death if the Homeowner assigns her rental agreement as required by RCW 59.20.073.

Here, the right to automatic renewal is not a contractual right bargained for between the parties, but one imposed by the State. RCW 59.20.090 imposes a limitation on the property owner's common law bundle of rights with respect to their private property and therefore such limitation must be strictly construed. As our courts have already recognized, the language in RCW 59.20.090 does not preclude changes in lease terms upon renewal; it simply clarifies that in the case of an increase in rent, a notice procedure is required.

The Court should not read any more into RCW 59.20.090 than what it says. Where a change or amendment to the lease is prohibited, the MHLTA specifically states the provision. *See* e.g. 59.20.135 (Transfer of responsibility for maintenance of permanent structures prohibited). When some material changes in the rental agreement or Park Rules occur, RCW 59.20.080(1)(a) provides the tenant with six months' notice to comply, rather than just 15 days. The homeowner cannot cite to any provision of the MHLTA that limits the ability of the property owner to change the

lease provisions concerning the rent amount upon its expiration and renewal. Absent that, the common law as cited in this response is controlling in this appeal.

The Homeowner's inference that because a term is a required term pursuant to RCW 59.20.060(1)(a) through (l), it cannot be changed is preposterous. Brief of Appellant, 20-22. There is nothing in the MHLTA that prohibits the landlord from changing any of these terms upon expiration of the rental agreement, so long as any change still complies with the MHLTA.[1]

Contrary to the Homeowner's mischaracterizations, the Landowner agrees that where the statute prohibits an action, any lease term contrary to a valid statute, is unenforceable. However, the Homeowner fails to note that there is no prohibition on changes in rent; indeed, rent increases are specifically authorized by the MHLTA. RCW 59.20.090(1).

In *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied,* 144 Wn.2d 1004 (2001), the landlord sent a notice to tenants with a change of rental indicating that the park would no longer pay for utilities. The Court of Appeals upheld such a change, *rejecting* the homeowner's same contention that the original lease agreements were

[1]In addition, the MHLTA mandates that before a person can exercise any right under the Act, there is a good faith obligation to perform under the law. RCW 59.20.020. *See* para. (6), p. 31, for further discussion.

frozen forever in time. In *McGahuey*, 104 Wn. App. at 183, the court reasoned:

> [The legislature] recognized that mobile homes are difficult and expensive to move and, to protect tenants from the instability inherent in most rental arrangements, it provided for automatic renewal and a long notice period for rent increases. But it did not require that all original lease terms remain in force through every automatic renewal because renewals could extend for countless years. By not regulating them, the [l]egislature did allow changes in the lease terms to permit the landlord to charge for utilities, so long as they were limited to the actual cost. This is nothing more than a practical acknowledgement that costs increase and those using a service may be required to pay for it.
>
> *McGahuey, supra* at 181.

In fact, at the time of any renewal, a park owner may also alter the rental agreement to offer fewer services or amenities in the park. Pursuant to RCW 59.20.060(1)(i), the landlord is required in the rental agreement to list the "utilities, services, and facilities" that will be available to the tenant during the term of the tenancy. This implies that they can be added to or eliminated upon renewal of the tenancy.

The Homeowner's appeal is unworkable, because leased premises and the amenities offered by mobile home parks change over time. They are not frozen in time to the terms of the very first rental agreement. For example, a rental agreement that may have been signed 10 or 30 years ago does not require a park owner to have a swimming pool forever, even

though that park owner's insurance company will cancel liability insurance unless the pool is removed. Similarly, if a beach cabana or clubhouse deteriorates, nothing in the MHLTA prevents a park owner from tearing them down.

In sum, the law provides that the term/length of the lease continues one year at a time in perpetuity until terminated for cause by operation of RCW 59.20.050 and .080, but the actual provisions of the lease only continue until proper notice of any change in the lease is given to the tenant. Indeed, the landlord may change any term of any lease after three months' written notice prior to the effective date of the change, including perhaps the most material term of any lease: the amount of the rent or the amenities it includes under RCW 59.20.090. RCW 59.20.090(2); *Seashore Villa* at 540; *McGahuey* at 183.

The trial court correctly ruled that the Homeowner was in unlawful detainer for her failure to pay the difference in rent between what she paid since July 2010, and what she was required to pay as stated in the Landowner's notice of change of rental. Therefore, this Court should affirm the trial court's Judgment in its entirety.

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(3) **The Lease Provision Limiting Future Rent Increases Terminated Upon Expiration of the Original Lease Term, or in the Alternative, When Landlord Erlitz Was No Longer the Landlord.**

The Homeowner argues that the parties are free to bargain for and enter into a lease that limits future rent increases. Appellant's Brief, 15-19. But, what the Homeowner ignores is that under the terms of the agreement here, the lease was for a term of one year.[2] The issues that are before the Court require its review of the clause limiting rent increases to "every other year" for the "remaining tenancy." This clause is in conflict with the lease provision that states the lease is "for a term of one year, commencing on the 12th day of October, 2001...". CP 31, lease para. 1. The only other evidence of the parties' intent within the four corners of the lease is the reference to "Landlord Erlitz."

Washington follows the objective manifestation theory of contract interpretation, under which courts attempt to ascertain the intent of the parties "by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

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[2]The lease also expressly provides that rent would remain at $345 for two years. Interpretation of this clause is not before the court.

Specific terms of a contract are to be given greater weight than general terms. Thus the intent of the rental agreement covenant is bounded by the term of the express limitation "Landlord Erlitz". In order to give meaning to these words, the Court should conclude that this agreement was personal to Landlord Erlitz so long as he owned the Park. *Berg v. Hudesman*, 115 Wn.2d 657, 669, 801 P.2d 222 (1990)(Purpose of interpretation is to establish meaning of words and properly construe the writing).

There are no provisions in the lease here concerning lease renewals, other than the unenforceable conversion from a one year lease to a month-to-month lease in paragraph 1. CP 31; *Holiday Resort Community Association v. Echo Lake Associates, LLC,* 134 Wn. App. 210, 223, 135 P.3d 499 (2006), *review denied,* 160 Wn.2d 1019 (2007) (establishes right to automatic one year renewal unless waived by separate writing); RCW 59.20.040 (Rental agreements "shall be unenforceable to the extent of any conflict with any provision of this chapter").

Thus, according to the terms of the one year rental agreement, and consistent with the MHLTA, the Homeowner's right to occupy her lot terminates one year from its commencement, and automatically renews for future terms of one year. Other than the provision in RCW 59.20.090(2) pertaining to notice required for adjustment of rent, the MHLTA is silent

regarding other lease term amendments upon renewal, but tacitly acknowledges this legal right in RCW 59.20.080(1)(a).[3] The Homeowner's argument for tenancies in perpetuity based upon *Little Mountain Estates Tenants Association v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 273. 236 P.3d 193 (2010) is misguided. In *Little Mountain Estates*, the lease bargained for between the parties was a term of 25 years. That is not the case here. The parties here bargained for a one year lease term.

The lease here contemplated a limitation on the rent for the "remaining tenancy." It is black letter law that expiration of a lease term results in termination of the tenancy. Where a lease is for a specific period of time, the tenancy is deemed terminated at the end of the specified time. RCW 59.04.030. See also *Oak Bay Properties, Ltd. v. Silverdale Sportsman's Center, Inc.*, 32 Wn. App. 516, 648 P.2d 465 (1982), *review denied* (leases which are perpetual in nature are disfavored and must be interpreted to avoid such a result whenever possible).

Furthermore, by the specific terms of the lease, amendments to the lease are contemplated. CP 32, para. 30. There are no limitations on amendment of the agreement other than that any amendment must be in

[3]This was the question before the court in *McGahuey*, which held that it is "untenable" to interpret the MHLTA to mean that the Landowner was locked into the original lease terms into perpetuity. *McGahuey* is discussed herein at para. (4), pp. 24-27.

writing. CP 32, para. 30. The Homeowner correctly notes that the parties may enter into a contract that determines the term of their rental agreement, but the Homeowner expressly agreed to a one year term. RCW 59.20.090(1). The automatic renewal provisions of this statute and the provisions for termination of leases under RCW 59.20.080 impose a statutory limitation on the parties' freedom to bargain. However, within the confines of these limitations, the MHLTA acknowledges the freedom of the parties, for example, to bargain for and determine the rent by a formula in the context of limitations on alterations of the rent due dates. RCW 59.20.060(2)(c).

In addition, RCW 59.20.090(1) specifically provides that the rental amount may be amended upon three months' notice, prior to the anniversary date, during which time the Homeowner is afforded an opportunity to prepare for the change and/or terminate the tenancy as she has a right to do under the same statute. RCW 59.20.090(3). Upon exercise of the landlord's common law right to change the rent, a right that is limited by the notice requirement in the statute, the tenant continues to have all the options it otherwise has to mutually agree and continue the lease or to terminate the lease. The tenant may freely continue the tenancy, remove or sell the manufactured home, or assign the tenancy. RCW 59.20.070(1); RCW 59.20.073. Thus, the tenant is always free to

agree or disagree with a change in the terms of the rental agreement, and is thus free to continue the tenancy, terminate the tenancy, or sell the manufactured home.

The Homeowner's argument, however, would impose a lease term that is enforceable until the end of time if it occurs, locking in terms as if the Homeowner's one year rental agreement is a 25-year or 99-year lease. However, this is not what the parties bargained for. As the Homeowner notes, courts do not have the power to rewrite contracts. Appellant's Brief at 15; citing *Little Mountain Estates Tenants Association v. Little Mountain Estates MHC, LLC*, 169 Wn.2d 265, 273 fn 3, 236 P.3d 193 (2010). The lease is a one year lease. The Court does not have the power to rewrite this contract to impose a term other than what the lease itself specifies. Thus, the parties agreed to and bargained for an annual lease subject in its initial term to the handwritten limitations, but also subject to change upon its renewal.

Finally, the lease terms limiting the amount of any increase here are applicable to "Landlord Erlitz" for the Homeowner's "remaining tenancy" with *him*. It was an agreement with the prior landlord to limit rent adjustments during that landlord's ownership and the Homeowner's tenancy, whichever first ended; thus, it was a private agreement between

the Homeowner and Joel Erlitz, and hence terminated upon purchase of the Park by Landowner.

For purposes of this matter, the Landowner does not dispute that the multiple provisions cited by the Homeowner impose limitations upon rental agreements; however, none of those are applicable here. Brief of Appellant 19–21. The Landowner is not seeking to change the term of the rental agreement or abandon the written rental agreement requirement. RCW 59.20.050(1); 060(1). Neither is the landlord seeking to change the time or place of payment, guest parking provisions, or any other of the provisions delineated in RCW 59.20.060(1)(a) through (l).[4] Likewise, the landlord is not changing the Park Rules.[5]

The Landowner does not dispute that the MHLTA requires certain terms and limits other terms that may be contained in rental agreements; however, there is no limitation upon whether the Landowner may change the terms of the lease. For example, RCW 59.20.060(2)(c) prohibits landlords from making mid-term changes to the rent; however, it does not

[4]However, even if the landlord were trying to change one of these provisions, it does not necessarily follow that the landlord cannot. For example, 59.20.060(1)(i) provides for a listing of the utilities, services and facilities, but our courts have repeatedly upheld the landlord's right to change these terms. *McGahuey v. Hwang*, 104 Wn. App. 176, 182-183, 15 P.3d 672 (2001); *Seashore Villa v. Hagglund*, 163 Wn. App. 531, 540, 260 P.3d 906 (2011).

[5]There is no limitation in the MHLTA on the right to change the Park Rules. They simply must comply with the provisions of RCW 59.20.045.

otherwise preclude changes in rent.[6] RCW 59.20.060 states in relevant part as follows:

> (2) Any rental agreement executed between the landlord and tenant shall not contain any provision:
>
> (c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: ...

The statute itself allows for alteration of the due date and the amount of rent. Accordingly, the landlord has a right to adjust the rental amount at the end of a term, provided such increase may not be made more frequently than annually.[7]

The Homeowner also argues that the purposes of the MHLTA as cited by various courts mandates adoption of her position. However, the Homeowner fails to show why in this case, otherwise applicable provisions of the MHLTA do not already protect her "long-term and stable mobile home lot tenanc[y]." Brief of Appellant, at 24; citing *Holiday Resort Community Association v. Echo Lake Associates, LLC, supra,* 134 Wn. App. 210, 224.

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[6]This particular statute even allows for mid-term changes in rent pursuant to escalation clauses meeting its requirements.

[7]Arguably, this limitation with respect to rent infers that by not limiting other changes to rental agreements, the Legislature intended that only amendments to rental agreements increasing the rent require a specific notice period. *See also* RCW 59.20.090(2).

The Homeowner's protections under the MHLTA remain in place, and the Landowner's exercise of its already provided for right to adjust the rental amount upon renewal of the rental agreement do not compromise them. An extension of these protections to allow for a guaranteed rent rate, without a written lease extending these benefits beyond its term, is an unwarranted impairment upon the parties' ability to negotiate the term of the lease. If the parties intended to be bound by the same terms under a multi-year lease, they could have entered into such a lease. They did not in this case.

The Homeowner's interpretation of the statute's legislative history is also not necessary or helpful, because the statutes at issue in this appeal are unambiguous. In the alternative, under the statutory scheme in place in 1977, there was a provision allowing the landlord to "terminate any tenancy without cause." *See* Exhibit D of attached Appendix. The termination of a tenancy without cause language was removed by the legislature in 1993 as a "compromise worked out between park owners and tenants to address mobile home landlord tenant issues." *See* ESSB 5482, House Bill Report, at p. 3, Laws 1993 Ch. 66 S. 19(2), attached to Appendix as Exhibits B, C. The 1998 amendment simply updated RCW 59.20.090 to reflect the 1993 change in the law. *See* SB 5164 Final Bill Report, Laws 1998 Ch. 118 attached to Appendix as Ex H. ("Outdated

references to eviction without cause are removed"). One can hardly glean a legislative intent from such a change.

The Homeowner's legislative history may support the *Holiday Resort* Court's interpretation that the one year term, with a right to a one year renewal is indicative of the Legislature's desire to promote long-term and stable mobile home tenancies, *Holiday Resort Community Ass'n v. Echo Lake Associates*, LLC, 134 Wn. App. 210, 224; 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007). But, it does not indicate a legislative intent to preclude changes in rental agreements with proper notice, as the *Seashore Villa* and *McGahuey* cases so held. *Seashore Villa v. Hagglund*, 163 Wn. App. 531, 260 P.3d 906 (2011); *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672 (2001).

The trial court's judgment against the Homeowner for unpaid rent is correct, and should be affirmed by this Court in its entirety.

(4) *McGahuey* Permits the Landowner to Adjust Rent Upon Exercise of Notice Pursuant to RCW 59.20.090(2).

The Homeowner argues that *McGahuey* limits changes in rental agreements to those which protect the tenant and are equitable. Brief of Appellant, 32–40. The *McGahuey* court rejected this argument as "untenable."

In *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001), the park owner sent a notice to tenants with a change of rental indicating that the park would no longer pay for utilities. The Court of Appeals upheld such a change, *rejecting* the tenants' contention that the original lease agreements were frozen forever in time. The Court stated:

> Citing RCW 59.20.090(1), which provides that leases automatically renew at the end of their term, the Tenants claim the MHLTA prohibits a landlord from requiring a tenant to pay for utilities once any lease requiring the landlord to do so is signed. According to the Tenants, the landlord is not permitted to increase or add any fee or charge except to increase the rent when the lease agreement expires as provided in RCW 59.20.090(2). ***This reading of the statute is untenable.***

McGahuey, at 181-182.

The court additionally stated:

> While we recognize that one significant purpose of the MHLTA is to give heightened protection to mobile home tenants, there are two related reasons for rejecting the Tenants' interpretation of the statute. First and most obvious, it nowhere provides that a landlord may not increase or impose fees for services in addition to the rent. Rather, portions of the statute ensure that whatever alterations the landlord seeks must be equitable. For example, the landlord may not charge a utility fee in excess of actual utility costs[14] or increase a tenant's obligations or decrease services in retaliation for a tenant's good faith lawsuit or membership in a homeowners association.[15] And even these provisions, which relate directly to the kinds of services and charges at issue here, do not bar increases or changes in fees. Second, the only limitation on

> increases of any kind found in the MHLTA is the requirement discussed above that rental rates-not fees-be increased only upon lease expiration and three months' notice. ***Express mention of one thing in a statute implies the exclusion of another*** [citing *Kreidler v. Eikenberry*, 111 Wn.2d 828, 835, 766 P.2d 438 (1989)]. ***Thus, we cannot accept the Tenants' argument that the limitation on raising rent prohibits raising or imposing fees. Legally and logically, it does just the opposite.*** By omitting any limit on assessing or raising fees or other charges, the statute has imposed no restrictions on them.

McGahuey v. Hwang, 104 Wn. App. 176, 182-83, 15 P.3d 672, 675-76 (2001).

In *Seashore Villa*, the court distinguished *McGahuey*, but still recognized its ruling, as follows:

> The reasoning in *McGahuey* arguably supports the Park's assertion that the MHLTA does not require original lease terms to stay in effect through every automatic renewal. But this case is factually distinguishable from *McGahuey*, because here there is language in the MHLTA prohibiting the landlord from transferring the duty to maintain the structures to the Park's tenants. Additionally, the trial court only found that transferring the duty to care for the permanent structures during the current lease term would violate RCW 59.20.135. The trial court used contract law to support its conclusion that the landlord could not remove the carports and sheds during the leaseholders' tenancies. We hold that the Park violated RCW 59.20.135 by asking tenants to sign an agreement transferring the ownership and responsibility for maintenance of the storage shed and carport from the landlord to the tenants.

In *Seashore Villa*, the park allegedly attempted to transfer responsibility for maintenance of carports in violation of RCW 59.20.135. In this case, as in *McGahuey*, there is no language in the MHLTA

prohibiting the landlord from altering a term related to rent. The restrictions on leases quoted by the Homeowner in her Brief, are the "equitable" restrictions that are imposed upon the park by statute, e.g. utilities charges cannot exceed actual cost, improper transfer of maintenance responsibilities, proscriptions regarding rules, et al. *See* RCW 59.20.070(6); RCW 59.20.135; RCW 59.20.045. There are no such comparable restrictions related to adjustment of rent.

Thus, this Court should apply the reasoning of *McGahuey* to find that rent may be adjusted upon termination and renewal of the lease as the trial court did in this case. The Homeowner here entered into a one year lease dated October 9, 2001. CP 25. Under the MHLTA, the *one year term* of the lease automatically renewed from October through September of each following year, but the actual provisions of the lease (not the length of the lease) could be amended upon three months' written notice given prior the expiration of any one year lease. *Seashore Villa v. Hagglund*, 163 Wn. App. 531, 260 P.3d 906 (2011); *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672 (2001). The notice was properly given. The rent increase was valid. The Homeowner's failure to pay rent was grounds for termination of the tenancy, and this Court should affirm the trial court's Judgment in its entirety.

(5) **The Right to Adjust Rent Upon the Anniversary Date of the Original Tenancy is Renewed Each Year; Thus, There Was No Waiver of that Right in 2010.**

The Homeowner argues that the Landowner waived its right to raise rent under RCW 59.20.090(2) by agreeing to the limitation in the original contract.

Waiver is defined as the intentional and voluntary relinquishment of a known right in existence at the time of the waiver. *Meyers Way Development Ltd. Partnership v. University Sav. Bank*, 80 Wn. App. 655, (1996); *Bowman v. Webster*, 44 64 Wn.2d 667 (1954). The burden of proving a waiver is on the party asserting it. *Perez v. Perez*, 11 Wn. App. 429, 523 P.2d 455 (1974).

The Landowner does not dispute that during the original term, or in the alternative, so long as Landlord Erlitz was the Lessor, that the expressed limitation waived that landlord's right to raise rent. However, as noted above, the limitation survives only the "remaining tenancy," which has long since been terminated. *See* pp. 17-18, above.

The right to adjust the rent renews upon each one year anniversary of the original tenancy. Thus, upon termination of the lease and renewal, the landlord has a right to adjust the rent. Although that right may have been waived upon subsequent anniversary dates, such right remains at any

future anniversary date; thus, there is not a waiver, where the landlord properly adjusts the rents upon renewal of the tenancy.

In addition, our Supreme Court has long held that any waiving party may reinstate the rights that have been waived upon reasonable notice that gives a reasonable opportunity to comply. *Crutcher v. Scott Pub. Co.*, 42 Wn.2d 89, 97, 253 P.2d 925 (1953). Thus, although the acceptance of the rent pursuant to the terms of the original rental agreement constitutes acceptance of that agreement and waiver of its rights under the MHLTA, upon reasonable notice, the landlord may reinstate its rights under RCW 59.20.090(2).

Furthermore, the Homeowner's 10-year-old rental agreement with a different landlord does not satisfy the statute of frauds because it is not acknowledged and does not include a legal description or satisfy the common law prerequisites for any contractual obligation to "run with the land." *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 254-55, 84 P.3d 295, 299-300 (2004).

In order to be a covenant that is binding upon any purchaser of the Park, the lease must satisfy the statute of frauds in order to "run with the land" and be enforceable against any subsequent owner of the land. The covenant must have been enforceable between the original parties, "*such enforceability being a question of contract law* except insofar as the

covenant must satisfy the statute of frauds." *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 254-55, 84 P.3d 295, 299-300 (2004) [emphasis added].

Because the Homeowner's one year rental agreement does not satisfy any statute of frauds, and the Landowner did not waive its right to enforce the statute of frauds, this Court should affirm the trial court's judgment against the Homeowner in its entirety.

(6) <u>The Landowner Has an Express Right in the MHLTA to Adjust Terms Related to Rent and the Exercise of that Right Cannot be Bad Faith.</u>

The Landowner has a fundamental property right to adjust rents as provided by RCW 59.20.090(2), as well as any other provision of the Homeowner's now expired 2001 rental agreement, so long as any later amendment of the rental agreement also complies with the rest of the MHLTA. *See* e.g., RCW 59.20.060.

The MHLTA imposes a general duty of good faith in the performance of any duty or condition precedent to the exercise of a right or remedy under the chapter. RCW 59.20.020. The courts will not find a breach of the duty of good faith when a party stands on its rights to require performance of a contract according to its terms. *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 570, 807 P.2d 356 (1991) (implied duty of good faith in the performance of a contract). Further, equity cannot provide a

remedy where legislation denies it. *Stephanus v. Anderson*, 26 Wn. App. 326, 334, 613 P.2d 533 (1980).

It is not bad faith for the Landowner to insist on its legal and property rights, by adjusting rent at the start of a new lease term. Notice of the rent increases did not conflict with the provisions of RCW 59.20.090(2) because the notices were given in writing three months before the effective date of the rent increases. Consequently, the rent increase was enforceable under chapter 59.20 RCW, and this Court should affirm the trial court's Judgment in its entirety.

(7) <u>The Homeowner Cannot Rely On Future Promissory or Equitable Estoppel Where the Agreement Terminates By Its Terms.</u>

The Homeowner cannot rely on the theory of promissory estoppel in the absence of a legally binding promise. A statement of future intent is not sufficient to constitute either contractual consideration or a promise for the purpose of promissory estoppel. *Elliott Bay Seafoods, Inc. v. Port of Seattle*, 124 Wn. App. 5, 13, 98 P.3d 491, 495 (2004). The Homeowner cannot justifiably rely on a promise to limit future rents where the term of the agreement specifically terminates on a date certain and may be amended as provided in the MHLTA.

The defense of equitable estoppel is similarly inapplicable here. As the court states in *Cornerstone Equip. Leasing, Inc.*:

> The principle of equitable estoppel is based upon the reasoning that a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon. *Wilson v. Westinghouse Elec. Corp.*, 85 Wn.2d 78, 81, 530 P.2d 298 (1975). Equitable estoppel requires: (1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission. *Robinson v. City of Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318, *cert. denied*, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992). Equitable estoppel is not favored, and a party asserting it must prove each of its elements by clear, cogent, and convincing evidence. *Robinson*, 119 Wn.2d at 82, 830 P.2d 318.

Cornerstone Equip. Leasing, Inc. v. MacLeod, 159 Wn. App. 899, 907, 247 P.3d 790, 795 (2011).

Here, the issue is whether the Homeowner had clear, cogent, and convincing evidence, let alone any evidence, to rely on a one year lease agreement subject to annual renewal and amendment. There is no such factual or legal basis to hamstring the Landowner in perpetuity to the Homeowner's original now long-expired one year rental agreement, and this Court should affirm the trial court's Judgment against the Homeowner in its entirety.

E. CONCLUSION AND REQUEST FOR ATTORNEY FEES.

This Court should affirm the trial court's judgment for unlawful detainer. In addition, the Landowner requests its costs on appeal, and

reasonable attorney fees, as the prevailing party before the trial court and on appeal, and as allowed by RCW 59.20.110, the parties' rental agreement, and RAP 18.1.

DATED this 13th day of November, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 13, 2012, I caused a true and correct copy of this *Respondent's Brief*, to be sent to:

Dan R. Young 1000 Second Avenue, #3310 Seattle, WA 98104 *Attorney for Appellant*	☑ U.S. Mail (1st Class) ☐ Federal Express ☐ Email to *danryoung@netzero.net* ☐ Fax to *253.593.2806* ☐ Legal Messenger
Court of Appeals, Div. II ATTN: Clerk/Administrator 950 Broadway, Ste. 300 Tacoma, WA 98402	☑ U.S. Mail (1st Class) ☐ Federal Express ☐ Email to *coa2filings@courts.wa.gov* ☐ Fax to *253.593.2806* ☐ Legal Messenger

Dated this 13th day of November, 2012, at Puyallup, Washington.

Janice L. Munson

Janice L. Munson

APPENDIX

Tab

1. Chapter 59.20 RCW - Mobile Home Landlord-Tenant Act . . . . . A

2. Washington Laws, 1993 Ch. 66 § 19 . . . . . B

3. House Bill Report, ESSB 5482, April 8, 1993 at p.3 C

4. Washington Laws, 1977 1st Ex. Sess., Ch. 279 § 8 . . . . . D

5. Washington Laws, 1984 Ch. 58 § 4 . . . . . E

6. Senate Bill Report, ESSB 5482 . . . . . F

7. Final Bill Report, ESSB 5482 . . . . . G

8. SB 5164, Final Bill Report, Laws 1998 Ch. 118.....H

9. Excelsior Mortgage Equity Fund II, LLC v. Schroeder, et al., October 18, 2012, Slip Opinion.....I

EXHIBIT A

West's Revised Code of Washington Annotated Currentness
Title 59. Landlord and Tenant (Refs & Annos)
Chapter 59.20. Manufactured/Mobile Home Landlord-Tenant Act (Refs & Annos)

59.20.080. Grounds for termination of tenancy or occupancy or failure to renew a tenancy or occupancy--Notice--Mediation

(1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes, manufactured homes, or park models or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

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(f) Engaging in "criminal activity." "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant or occupant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. The requirement that any tenant or occupant register as a sex offender under RCW 9A.44.130 is grounds for eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including this chapter. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

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(2) Within five days of a notice of eviction as required by subsection (1)(a) of this section, the landlord and tenant shall submit any dispute to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section. It is a defense to an eviction under subsection (1)(a) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park.

CREDIT(S)

[2003 c 127 § 4, eff. July 27, 2003; 1999 c 359 § 10; 1998 c 118 § 2; 1993 c 66 § 19; 1989 c 201 § 12; 1988 c 150 § 5; 1984 c 58 § 4; 1981 c 304 § 21; 1979 ex.s. c 186 § 6; 1977 ex.s. c 279 § 8.]

<(Formerly Mobile Home Landlord-Tenant Act)>

HISTORICAL AND STATUTORY NOTES

Legislative findings--Severability--1988 c 150: See notes following RCW 59.18.130.

Severability--1984 c 58: See note following RCW 59.20.200.

Severability--1981 c 304: See note following RCW 26.16.030.

Severability--1979 ex.s. c 186: See note following RCW 59.20.030.

Laws 1979, Ex.Sess., ch. 186, § 6, rewrote the section, which formerly read:

"Tenancy during the term of a rental agreement may be terminated by the landlord only for one or more of the following reasons:

"(1) Substantial or repeated violation of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant. The tenant shall be given written notice of a fifteen day period in which to comply or vacate. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in termination;

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"(2) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

"(3) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate."

Laws 1981, ch. 304, § 21, in subsec. (1)(e), following "park" inserted "including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision"; and, in subsec. (a), in the proviso, added "or is intended to circumvent the provisions of (1)(e) of this section".

Laws 1984, ch. 58, § 4, rewrote subsec. (1)(a), which previously read:

"Substantial or repeated violation of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140 as now or hereafter amended. The tenant shall be given written notice of a fifteen day period in which to comply or vacate: *Provided,* That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice of a six month period in which to comply or vacate. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in termination":

in subsec. (2), in the second sentence, preceding the proviso, substituted "twelve" for "six"; and, in the proviso, substituted "shall" for "may"; and following "RCW 59.20.070(3) or (4)" deleted "as now or hereafter amended"; and added subsec. (3).

Laws 1988, ch. 150, § 5, in subsec. (1), added subd. (f).

Laws 1989, ch. 201, § 12, in subsec. (1)(e), in the proviso, prior to "effective" deleted "proposed"; and following "change" added the language beginning with "except".

Laws 1993, ch. 66, § 19, rewrote the section.

Laws 1998, ch. 118, § 2, in subsec. (1), in the introductory paragraph, following "fail to renew a tenancy" inserted "of a tenant or the occupancy of an occupant"; in subsec. (1)(f), in the second sentence, following "to evict a tenant" inserted "or occupant"; inserted the fifth sentence; and made a nonsubstantive change in the second sentence of subsec. (1)(l).

Laws 1999, ch. 359, § 10, in subsecs. (1)(d) and (1)(e), following "mobile homes" inserted ", manufactured homes, or park models".

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Laws 2003, ch. 127, § 4 rewrote subsec. (3), which formerly read:

"(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles from mobile home parks."

LIBRARY REFERENCES

2004 Main Volume

Landlord and Tenant ⚷ 388 to 394.
Westlaw Topic No. 233.
C.J.S. Landlord and Tenant §§ 716, 729 to 731, 734, 736, 737, 744, 758,759, 780.

RESEARCH REFERENCES

ALR Library

43 ALR 5th 705, Validity, Construction, and Application of Mobile Home Eviction Statutes.

100 ALR 2nd 465, Construction and Application of Statute Authorizing Forfeiture or Termination of Lease Because of Tenant's Illegal Use of Premises.

Encyclopedias

108 Am. Jur. Proof of Facts 3d 449, Landlord's Right to Evict Tenants or Other Occupants from Residential Property.

Treatises and Practice Aids

44 Causes of Action 2d 447, Cause of Action by Residential Landlord to Evict Tenants or Other Occupants.

17 Wash. Prac. Series § 6.44, Remedies for Rent Default.

17 Wash. Prac. Series § 6.72, Termination of Periodic Tenancy.

17 Wash. Prac. Series § 6.83, Summary Eviction Under RCWA Chapter 59.08.

17 Wash. Prac. Series § 6.84, Government Regulation of Evictions.

UNITED STATES SUPREME COURT

Takings clause, rent control, mobile home parks, limitation on termination of tenancy, see Yee v. City of Escondido, Cal., U.S.Cal.1992, 112 S.Ct. 1522, 503 U.S. 519, 118 L.Ed.2d 153.

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NOTES OF DECISIONS

Construction and application 1
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1. Construction and application

City ordinance prohibiting the placement of recreational vehicles in residential mobile home parks did not irreconcilably conflict with Manufactured/Mobile Home Landlord-Tenant Act, which encompassed landlord-tenant relationships arising from rental of lot spaces for recreational vehicles used as primary residences; Act did not require a landlord to rent a mobile home park lot for placement of a recreational vehicle in any or every particular place within the state, ordinance did not attempt to restrict or contradict the provisions of the Act, and statute and ordinance could each operate distinctly without inconsistency. Lawson v. City of Pasco (2008) 144 Wash.App. 203, 181 P.3d 896, review granted 165 Wash.2d 1012, 199 P.3d 410, affirmed 168 Wash.2d 675, 230 P.3d 1038. Landlord and Tenant ⚷ 376; Municipal Corporations ⚷ 592(1)

Tenant, who failed to tender the past due rent due within five days of receiving the notice to pay rent or vacate, was in unlawful detainer, despite any purported defense regarding her liability for unpaid utilities. Hwang v. McMahill (2000) 103 Wash.App. 945, 15 P.3d 172, review denied 144 Wash.2d 1011, 31 P.3d 1185. Landlord And Tenant ⚷ 290(3)

Provision of Mobile Home Landlord-Tenant Act authorizing eviction of tenants or occupants for engaging in criminal activity is ambiguous in failing to specify either who must be engaging in criminal activity or who may be evicted if such activity is shown. Hartson Partnership v. Goodwin (2000) 99 Wash.App. 227, 991 P.2d 1211. Landlord And Tenant ⚷ 281

Provision of Mobile Home Landlord-Tenant Act that authorizes eviction for engaging in criminal activity is the functional equivalent of an unlawful detainer statute, and as such, it must be construed strictly in favor of the tenant. Hartson Partnership v. Goodwin (2000) 99 Wash.App. 227, 991 P.2d 1211. Landlord And Tenant ⚷ 389

1.5. Preemption

Manufactured/Mobile Home Landlord-Tenant Act did not preempt local action in the field of regulating mobile home park landlord-tenant relationships, as Act expressly conferred concurrent jurisdiction to local municipalities in the field of regulating landlord-tenant compliance with ordinances. Lawson v. City of Pasco (2008) 144 Wash.App. 203, 181 P.3d 896, review granted 165 Wash.2d 1012, 199 P.3d 410, affirmed 168 Wash.2d 675, 230 P.3d 1038. Landlord and Tenant ⚷ 370; Municipal Corporations ⚷ 592(1)

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2. Term of tenancy

The provisions of § 59.20.080, limiting the reasons for which a mobile home lot tenancy may be terminated by the landlord, do not apply in the case of a month-to-month tenancy not covered by written rental agreement. Op.Atty.Gen.1978, L.O. No. 37.

3. Notice of criminal activity

Written notification that was sent by police to landlord of apparent illegal drug activity on certain spaces in mobile home park, describing such activity as the manufacture, sale, use, or possession of illegal drugs, was in substantial compliance with statute authorizing eviction of a tenant for engaging in criminal activity. Hartson Partnership v. Goodwin (2000) 99 Wash.App. 227, 991 P.2d 1211. Landlord And Tenant ⚷ 393

4. Eviction for criminal activity

Eviction of a tenant or an occupant, under provision of Mobile Home Landlord-Tenant Act authorizing eviction for engaging in criminal activity that threatens health, safety, and welfare of landlord's tenants, is limited to the person or persons engaging in such activity. Hartson Partnership v. Goodwin (2000) 99 Wash.App. 227, 991 P.2d 1211. Landlord And Tenant ⚷ 389

Restitution order was prematurely entered for landlord at show cause hearing in unlawful detainer action arising from tenant's refusal to vacate premises after police seized marijuana and drug paraphernalia from mobile home; tenant denied knowledge of the seized items, thus placing in issue whether he was himself engaged in criminal activity, and that issue had to be determined before tenant's eviction was authorized under Mobile Home Landlord-Tenant Act. Hartson Partnership v. Goodwin (2000) 99 Wash.App. 227, 991 P.2d 1211. Landlord And Tenant ⚷ 392

5. Waiver

Landlord's acceptance of $200 in partial payment of the $385 due for past rent, after expiration of the five-day period set forth in notice to pay rent or vacate, did not waive the prior default or landlord's right to proceed with an unlawful detainer action. Hwang v. McMahill (2000) 103 Wash.App. 945, 15 P.3d 172, review denied 144 Wash.2d 1011, 31 P.3d 1185. Landlord And Tenant ⚷ 290(3)

Landlord who accepts rent with knowledge of prior breaches of the terms of the lease waives his right to rely on such prior breaches as a basis for setting in motion his statutory remedy of unlawful detainer. Hwang v. McMahill (2000) 103 Wash.App. 945, 15 P.3d 172, review denied 144 Wash.2d 1011, 31 P.3d 1185. Landlord And Tenant ⚷ 290(3)

Landlord does not waive his or her right to proceed with an unlawful detainer action by accepting only partial rent. Hwang v. McMahill (2000) 103 Wash.App. 945, 15 P.3d 172, review denied 144 Wash.2d 1011, 31 P.3d 1185. Landlord And Tenant ⚷ 290(3)

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6. Mediation

Landlord was not required to mediate dispute with tenants in mobile home park under Mobile Home Landlord-Tenant Act (MHLTA) before evicting tenants from park; although mediation was required under MHLTA for substantial, repeated, or periodic violations of park rules, plain language of statute and its legislative history indicated that mediation was not required under provision of MHLTA that applied to tenants in present case, whereby tenants had received three 15-day notices to comply with park rules or vacate the premises within a 12-month period. Hartson Partnership v. Martinez (2004) 123 Wash.App. 36, 96 P.3d 449, reconsideration denied, review denied 154 Wash.2d 1010, 114 P.3d 1198. Alternative Dispute Resolution ⚷ 444

West's RCWA 59.20.080. WA ST 59.20.080

Current with all Legislation from the 2011 2nd Special Session and 2012 Legislation effective through May 31, 2012

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EXHIBIT B

(2) A tenant who sells a mobile home within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home and mobile home lot.

(3) The landlord shall notify the selling tenant of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(5) Failure to notify the landlord ((~~of the intended sale and transfer of the agreement~~)) in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer.

NEW SECTION. Sec. 18. A new section is added to chapter 59.20 RCW to read as follows:

Rules are enforceable against a tenant only if:

(1) Their purpose is to promote the convenience, health, safety, or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally;

(2) They are reasonably related to the purpose for which they are adopted;

(3) They apply to all tenants in a fair manner;

(4) They are not for the purpose of evading an obligation of the landlord; and

(5) They are not retaliatory or discriminatory in nature.

Sec. 19. RCW 59.20.080 and 1989 c 201 s 12 are each amended to read as follows:

(1) ((~~Except as provided in subsection (2) of this section, the~~)) A landlord shall not terminate or fail to renew a tenancy, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "((~~drug-related~~)) criminal activity." "((~~Drug-related~~)) Criminal activity" means ((~~that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW~~)) a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including chapter 59.20 RCW. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure

to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall be give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

(2) ((~~A landlord may terminate any tenancy without cause. Such termination shall be effective twelve months from the date the landlord serves notice of termination upon the tenant or at the end of the current tenancy, whichever is later: PROVIDED, That a landlord shall not terminate a tenancy for any reason or basis which is prohibited under RCW 59.20.070 (3) or (4) or is intended to circumvent the provisions of (1)(e) of this section.~~

~~(3)~~)) Within five days of a notice of eviction as required by subsection (1)(a) ((~~or (2)~~)) of this section, the landlord and tenant shall submit any dispute((~~, including the decision to terminate the tenancy without cause,~~)) to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section((~~, or for a period of thirty days for an eviction under subsection (2) of this section~~)). It is a defense to an eviction under subsection (1)(a) ((~~or (2)~~)) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles from mobile home parks.

Sec. 20. RCW 59.20.130 and 1984 c 58 s 5 are each amended to read as follows:

It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair.

NEW SECTION. Sec. 21. (1) Sections 1 through 8 of this act shall constitute a new chapter in Title 59 RCW.

(2) Sections 10 through 14 of this act are each added to chapter 59.22 RCW.

Passed the Senate March 12, 1993.
Passed the House April 8, 1993.
Approved by the Governor April 19, 1993.
Filed in Office of Secretary of State April 19, 1993.

CHAPTER 67

[Senate Bill 5275]

ABANDONED CEMETERIES—MAINTENANCE BY NONPROFIT CORPORATIONS

Effective Date: 7/25/93

AN ACT Relating to abandoned cemeteries; and amending RCW 68.60.030.

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

Sec. 1. RCW 68.60.030 and 1990 c 92 s 3 are each amended to read as follows:

(1)(a) The archaeological and historical division of the department of community development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds pursuant to chapter 68.44 RCW, and shall report in accordance with chapter 68.44 RCW to the state cemetery board.

(2) Except as provided in subsection (1) of this section, the department of community development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of community development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner.

Passed the Senate March 4, 1993.
Passed the House April 8, 1993.
Approved by the Governor April 19, 1993.
Filed in Office of Secretary of State April 19, 1993.

CHAPTER 68

[Substitute House Bill 1064]

CORPORAL PUNISHMENT PROHIBITED IN COMMON SCHOOLS

Effective Date: 7/25/93

AN ACT Relating to corporal punishment; and adding a new section to chapter 28A.150 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.150 RCW to read as follows:

The use of corporal punishment in the common schools is prohibited. The state board of education, in consultation with the superintendent of public instruction, shall develop and adopt a policy prohibiting the use of corporal punishment in the common schools. The policy shall be adopted by the state board of education no later than February 1, 1994, and shall take effect in all school districts September 1, 1994.

EXHIBIT C

HOUSE BILL REPORT

ESSB 5482

As Passed House
April 8, 1993

Title: An act relating to mobile home parks.

Brief Description: Defining rights of tenants in mobile home parks.

Sponsors: Senate Committee on Trade, Technology & Economic Development (originally sponsored by Senators Skratek, M. Rasmussen, Spanel, Prentice, Franklin, McAuliffe, A. Smith, Drew and von Reichbauer).

Brief History:
Reported by House Committee on:
Trade, Economic Development & Housing, March 31, 1993, DP;
Passed House, April 8, 1993, 98-0.

HOUSE COMMITTEE ON TRADE, ECONOMIC DEVELOPMENT & HOUSING

Majority Report: Do pass. Signed by 12 members: Representatives Wineberry, Chair; Shin, Vice Chair; Forner, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Campbell; Casada; Conway; Quall; Schoesler; Sheldon; Springer; and Valle.

Staff: Charlie Gavigan (786-7340).

Background: The Mobile Home Landlord Tenant Act regulates the relationship between the owner of a mobile home park and the tenants of the park. Key provisions of the act require the tenant be offered a written rental agreement for a term of at least one year, require the tenant be provided with a copy of all park rules, prohibit entrance fees or exit fees, prohibit certain actions by the landlord, and specify the duties of the landlord and the tenant. Of the other states, 32 have established Mobile Home Landlord Tenant acts.

Under current law, a landlord is authorized to terminate any tenancy without cause if at least one year's notice is provided. In addition, a tenant may be evicted for substantial repeated violations of park rules, nonpayment of rent, conviction of a crime which threatens the health and safety of other tenants, failure to comply with state and

local laws, change in land use of the park, and engaging in drug related activity.

Summary of Bill: Modifications are made to the mobile home landlord-tenant relationship.

Modifications to the Mobile Home Landlord Tenant Act

Mobile home park rules can only be enforced against a tenant if: (1) their purpose is to promote the convenience, safety or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities that are generally available to tenants; (2) they are reasonably related to the purpose for which they are adopted; (3) they apply to all tenants in a fair manner; (4) they are not for the purpose of evading an obligation of the landlord; and (5) they are not retaliatory or discriminatory in nature.

A mobile home park owner may no longer terminate tenancy in a mobile home park without cause. The list of reasons for which a mobile home tenancy may be terminated is expanded. *

Door-to-door solicitation by political candidates in mobile home parks and political forums or meetings of organizations that represent the interest of tenants may not be prohibited in mobile home parks.

A tenant that sells or transfers the title of his or her mobile home and the rental agreement for the mobile home lot to another individual is required to notify the landlord within 15 days of the intended transfer.

Landlords are given the authority to patrol the park grounds to assure that tenants are complying with all codes, laws, rental agreements and park rules.

Sale of the Mobile Home Park or Individual Mobile Homes

Qualified tenant organizations, consisting of 60 percent of the tenants in a mobile home park that provide a written notice to the mobile home park owner of their intention to purchase the park, must be notified by the park owner if an agreement to purchase the park is reached with a prospective buyer. The tenant organization has 30 days after the notice is received from the park owner to present a fully executed purchase and sale agreement to the owner along with 2 percent of the agreed purchase price. The agreement must be as favorable to the park owner as the original agreement. If the above conditions are met, the park owner must sell the mobile home park to the tenant organization.

The tenants must be ready to close the sale under the same terms as contained in the original purchase agreement. Conditions under which a park owner may sell to another buyer are outlined. In the event the park owner violates the notice provisions of the act and proceeds with the sale of the park, the sale may be voided by a Superior Court.

The Department of Community Development may make loans from the mobile home park purchase fund to resident organizations for the financing of park conversion costs if a significant portion of the residents are low-income or infirm, or to low-income residents of mobile home parks converted or planning to be converted to resident ownership. Additional loan eligibility requirements are outlined. Loans may be made for terms of up to 30 years. The department shall establish the rate of interest to be paid on the loans. The department must obtain security for the loans.

The Department of Community Development may provide technical assistance to resident organizations desiring to convert a mobile home park to resident ownership.

Mobile home park owners are given the right of first refusal on mobile homes that are put up for sale in their parks. The mobile home park owner has 10 days from the date of the home owner's notice of receiving a purchase agreement to provide the mobile home owner with a fully executed purchase and sale agreement and a down payment equal to 5 percent of the agreed purchase price. The mobile home owner must be ready to close the sale under the same terms of the original purchase agreement.

The sale or transfer of mobile home parks or mobile homes to relatives are excluded from the right of first refusal provisions.

Fiscal Note: Requested March 29, 1993.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a compromise worked out between park owners and tenants to address mobile home landlord-tenant issues. Agreement has been reached on such issues as removing problem tenants from the park, eliminating no-cause evictions with 12 months notice, allowing tenants to purchase parks when the owner is selling to other than a relative, and allowing park owners to purchase mobile homes for sale by the tenant to other than relatives. This bill will improve the relationship between good tenants and park owners, and will better enable the few problem tenants and

the few problem park owners to be addressed more effectively.

Testimony Against: None.

Witnesses: Senator Sylvia Skratek, prime sponsor (supports); Arnold Livingston, Senior Lobby (supports); Nikki Phillips-Baker, Mobile Home Owners of America (supports); Morton Clark, Washington Mobile Park Owners (supports); and John Woodring, Washington Mobile Park Owners (supports).

EXHIBIT D

(c) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement.

(2) Any rental agreement executed between the landlord and tenant shall not contain:

(a) Any provision which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Any provision which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of said vehicle;

(c) Any provision which allows the landlord to increase the rent or alter the due date for rent payment during the term of the rental agreement: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year;

(d) Any provision by which the tenant agrees to waive or forego rights or remedies under this chapter; or

(e) Any provision allowing the landlord to charge an "entrance fee" or an "exit fee".

NEW SECTION. Sec. 7. A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home within a park or require the removal of the mobile home from the park solely because of the sale thereof: PROVIDED, That:

(a) A rental agreement for a fixed term shall be assignable by the tenant to any person to whom he sells or transfers title to the mobile home, subject to the approval of the landlord after fifteen days' written notice of such intended assignment;

(b) The assignee of the rental agreement shall assume all the duties and obligations of his assignor for the remainder of the term of the rental agreement unless, by mutual agreement, a new rental agreement is entered into with the landlord; and

(c) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant; or

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home lot: PROVIDED, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement.

NEW SECTION. Sec. 8. Tenancy during the term of a rental agreement may be terminated by the landlord only for one or more of the following reasons:

(1) Substantial or repeated violation of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant. The tenant shall be given written notice of a fifteen day period in which to comply or vacate. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in termination;

(2) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(3) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate.

NEW SECTION. Sec. 9. (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement for a term of one year and any rental agreement renewed for a six-month term shall be automatically renewed for an additional six-month term unless:

(a) Otherwise specified in the original written rental agreement; or

(b) The landlord notifies the tenant in writing three months prior to the expiration of the rental agreement that it will not be renewed or will be renewed only with the changes contained in such notice.

A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(2) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the landlord is not able to rent the mobile home lot at a fair rental. If the landlord is not able to rent the lot, the tenant shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends;

(3) Any tenant who is a member of the armed forces may terminate a rental agreement with less than thirty days notice if he receives reassignment orders which do not allow greater notice.

NEW SECTION. Sec. 10. Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home lot shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy: PROVIDED, That a tenant shall leave the mobile home lot in substantially the same or better condition than upon taking possession.

NEW SECTION. Sec. 11. In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs.

NEW SECTION. Sec. 12. Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located.

NEW SECTION. Sec. 13. 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.

EXHIBIT E

(2) of this section. It is a defense to an eviction under subsection (1)(a) or (2) of this section that a landlord did not participate in the mediation process in good faith.

Sec. 5. Section 8, chapter 186, Laws of 1979 ex. sess. and RCW 59-.20.130 are each amended to read as follows:

It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

((~~(2)~~)) (3) Keep any shared or common premises reasonably clean, ıry, and safe from defects to reduce the hazards of fire or accident;

((~~(3)~~)) (4) Keep all common premises of the mobile home park, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

((~~(4)~~)) (5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home as a result of infestation existing on the common premises;

((~~(5)~~)) (6) Maintain and protect all utilities provided to the mobile home in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home utilities "hook-ups" connect to those provided by the landlord or utility company;

((~~(6)~~)) (7) Respect the privacy of the tenants and shall have no right of entry to a mobile home without the prior written consent of the occupant, ·ot in case of emergency or when the occupant has abandoned the mo- home. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home is situated for maintenance of utilities and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment;

((~~(7)~~)) (8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes; ((and

~~(8)~~)) (9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair.

NEW SECTION. Sec. 6. There is added to chapter 59.20 RCW a new section to read as follows:

If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.20.130, the tenant may, in addition to pursuit of remedies otherwise provided the tenant by law, deliver written notice to the landlord, which notice shall specify the property involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control:

(1) Not more than twenty-four hours, where the defective condition is imminently hazardous to life;

(2) Not more than forty-eight hours, where the landlord fails to provide water or heat;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under section 5(3) of this act;

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

Where circumstances beyond the landlord's control, including the availability of financing, prevent the landlord from complying with the time limitations set forth in this section, the landlord shall endeavor to remedy the defective condition with all reasonable speed.

NEW SECTION. Sec. 7. There is added to chapter 59.20 RCW a new section to read as follows:

The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded the tenant under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

NEW SECTION. Sec. 8. There is added to chapter 59.20 RCW a new section to read as follows:

(5) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs; or

(6) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order.

Sec. 3. Section 6, chapter 152, Laws of 1980 and RCW 59.20.075 are each amended to read as follows:

Initiation by the landlord of any action listed in RCW 59.20.070(4) within one hundred twenty days after a good faith and lawful act by the tenant or within one hundred twenty days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if the court finds that the tenant made a complaint or report to a governmental authority within one hundred twenty days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter. ((~~In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit, including reasonable attorney's fee. PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.~~))

Sec. 4. Section 8, chapter 279, Laws of 1977 ex. sess. as last amended by section 21, chapter 304, Laws of 1981 and RCW 59.20.080 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the landlord shall not terminate a tenancy, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140 ((~~as now or hereafter amended. The tenant shall be given written notice of a fifteen day period in which to comply or vacate~~)). The tenant shall be given written [illegible] The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate((~~. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in termination~~));

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the proposed effective date of such change.

(2) A landlord may terminate any tenancy without cause. Such termination shall be effective ((six)) twelve months from the date the landlord serves notice of termination upon the tenant or at the end of the current tenancy, whichever is later: PROVIDED, That a landlord ((may)) shall not terminate a tenancy for any reason or basis which is prohibited under RCW 59.20.070 (3) or (4)((~~, as now or hereafter amended,~~)) or is intended to circumvent the provisions of (1)(e) of this section.

(3) Within five days of a notice of eviction as required by subsection (1)(a) or (2) of this section, the landlord and tenant shall submit any dispute, including the decision to terminate the tenancy without cause, to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section, or for a period of thirty days for an eviction under subsection

EXHIBIT F

SENATE BILL REPORT

ESSB 5482

AS PASSED SENATE, MARCH 12, 1993

Brief Description: Defining rights of tenants in mobile home parks.

SPONSORS: Senate Committee on Trade, Technology & Economic Development (originally sponsored by Senators Skratek, M. Rasmussen, Spanel, Prentice, Franklin, McAuliffe, A. Smith, Drew and von Reichbauer)

SENATE COMMITTEE ON TRADE, TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5482 be substituted therefor, and the substitute bill do pass. Signed by Senators Skratek, Chairman; Sheldon, Vice Chairman; Bluechel, Deccio, Erwin, M. Rasmussen, and Williams.

Staff: Traci Ratzliff (786-7452)

Hearing Dates: February 19, 1993; March 2, 1993

BACKGROUND:

Development pressures, particularly in urban areas, have resulted in the conversion of mobile home parks to other uses at an alarming rate. As a result, a significant number of mobile home park tenants, many of whom are elderly and low income have been forced to find alternative living arrangements. This is increasingly difficult, given the low vacancy rate in many parks in this state.

It is suggested that mobile home park tenants should be given the opportunity to purchase the mobile home park in which they live should it become available for sale.

Mobile home park owners have also expressed a desire to be able to purchase mobile homes that are put up for sale in their parks.

The Mobile Home Landlord Tenant Act regulates the relationship between the owner of a mobile home park and the tenants of the park. Key provisions of the act require the tenant be offered a written rental agreement for a term of at least one year, require the tenant be provided with a copy of all park rules, prohibit entrance fees or exit fees, prohibit certain actions by the landlord, and specify the duties of the landlord and the tenant. Thirty-two other states have established Mobile Home Landlord Tenant Acts.

Under current law, a landlord is authorized to terminate any tenancy without cause if at least one year's notice is provided. In addition, a tenant may be evicted for the

following re[illegible] substantial repeate[illegible] [illegible]ations of park rules; nonpa[illegible]ment of rent; conviction [illegible]of a crime which threatens the health and safety of other tenants; failure to comply with state and local laws; change in land use of the park; and engaging in drug related activity.

SUMMARY:

Qualified tenant organizations, consisting of 60 percent of the tenants in a mobile home park, that provide a written notice to the mobile home park owner of their intention to purchase the park must be notified by the park owner if an agreement to purchase the park is reached with a prospective buyer.

The tenant organization has 30 days after the notice is received from the park owner to present a fully executed purchase and sale agreement to the owner along with 2 percent of the agreed purchase price. The agreement must be as favorable to the park owner as the original agreement. If the above conditions are met, the park owner must sell the mobile home park to the tenant organization.

The tenants must be ready to close the sale under the same terms as contained in the original purchase agreement.

Conditions under which a park owner may sell to another buyer are outlined.

In the event the park owner violates the notice provisions of the act and proceeds with the sale of the park, the sale may be voided by a superior court.

The Department of Community Development may make loans from the mobile home park purchase fund to: resident organizations for the financing of park conversion costs if a significant portion of the residents are low-income or infirm; or low-income residents of mobile home parks converted or planning to be converted to resident ownership. Additional loan eligibility requirements are outlined.

Loans may be made for terms of up to 30 years. The department shall establish the rate of interest to be paid on the loans. The department must obtain security for the loans.

The Department of Community Development may provide technical assistance to resident organizations desiring to convert a mobile home park to resident ownership.

Mobile home park owners are given the right of first refusal on mobile homes that are put up for sale in their parks. The mobile home park owner has ten days from the date of the home owner's notice of receiving a purchase agreement to provide the mobile home owner with a fully executed purchase and sale agreement and a down payment equal to 5 percent of the agreed purchase price. The mobile home owner must be ready to close the sale under the same terms of the original purchase agreement.

The sale or tr[illegible] of mobile home parks [illegible] mobile homes to relatives are exc[illegible]ded from the right o[illegible]rst refusal provisions.

Modifications to the Mobile Home Landlord Tenant Act: Mobile home park rules can only be enforced against a tenant if: (1) their purpose is to promote the convenience, safety or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities that are generally available to tenants; (2) they are reasonably related to the purpose for which they are adopted; (3) they apply to all tenants in a fair manner; (4) they are not for the purpose of evading an obligation of the landlord; and (5) they are not retaliatory or discriminatory in nature.

A mobile home landlord may no longer terminate tenancy in a mobile home park without cause. The list of reasons for which a mobile home tenant may be terminated is expanded. *

Recreational vehicles are specifically exempt from the eviction requirements of the Mobile Home Landlord Tenant Act.

Door-to-door solicitation by political candidates in mobile home parks and political forums or meetings of organizations that represent the interest of tenants may not be prohibited in mobile home parks.

A tenant that sells or transfers the title of his or her mobile home and the rental agreement for the mobile home lot to another individual is required to notify the landlord within 15 days of the intended transfer.

Landlords are given the authority to patrol the park grounds to assure that tenants are complying with all codes, laws, rental agreements and park rules.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR: None

TESTIMONY AGAINST: None

TESTIFIED: No one

EXHIBIT G

FINAL BILL REPORT

ESSB 5482

C 66 L 93

SYNOPSIS AS ENACTED

Brief Description: Defining rights of tenants in mobile home parks.

SPONSORS: Senate Committee on Trade, Technology & Economic Development (originally sponsored by Senators Skratek, M. Rasmussen, Spanel, Prentice, Franklin, McAuliffe, A. Smith, Drew and von Reichbauer)

SENATE COMMITTEE ON TRADE, TECHNOLOGY & ECONOMIC DEVELOPMENT

HOUSE COMMITTEE ON TRADE, ECONOMIC DEVELOPMENT & HOUSING

BACKGROUND:

Development pressures, particularly in urban areas, have resulted in the conversion of mobile home parks to other uses at an alarming rate. As a result, a significant number of mobile home park tenants, many of whom are elderly and low income, have been forced to find alternative living arrangements. This is increasingly difficult, given the low vacancy rate in many parks in this state.

It is suggested that mobile home park tenants should be given the opportunity to purchase the mobile home park in which they live should it become available for sale.

Mobile home park owners have also expressed a desire to be able to purchase mobile homes that are put up for sale in their parks.

The Mobile Home Landlord-Tenant Act regulates the relationship between the owner of a mobile home park and the tenants of the park. Key provisions of the act require the tenant be offered a written rental agreement for a term of at least one year, require the tenant be provided with a copy of all park rules, prohibit entrance fees or exit fees, prohibit certain actions by the landlord, and specify the duties of the landlord and the tenant. Thirty-two other states have established Mobile Home Landlord-Tenant Acts.

A landlord is authorized to terminate any tenancy without cause if at least one year's notice is provided. In addition, a tenant may be evicted for the following reasons: substantial repeated violations of park rules; nonpayment of rent; conviction of a crime which threatens the health and safety of other tenants; failure to comply with state and local laws; change in land use of the park; and engaging in drug-related activity.

SUMMARY:

Qualified tenant organizations, consisting of 60 percent of the tenants in a mobile home park, that provide a written notice to the mobile home park owner of their intention to purchase the park must be notified by the park owner if an agreement to purchase the park is reached with a prospective buyer.

The tenant organization has 30 days after the notice is received from the park owner to present a fully executed purchase and sale agreement to the owner along with 2 percent of the agreed purchase price. The agreement must be as favorable to the park owner as the original agreement. If the above conditions are met, the park owner must sell the mobile home park to the tenant organization.

The tenants must be ready to close the sale under the same terms as contained in the original purchase agreement.

Conditions under which a park owner may sell to another buyer are outlined.

In the event the park owner violates the notice provisions of the act and proceeds with the sale of the park, the sale may be voided by a superior court.

The Department of Community Development may make loans from the mobile home park purchase fund to: resident organizations for the financing of park conversion costs if a significant portion of the residents are low-income or infirm; or low-income residents of mobile home parks converted or planning to be converted to resident ownership. Additional loan eligibility requirements are outlined.

Loans may be made for terms of up to 30 years. The department shall establish the rate of interest to be paid on the loans. The department must obtain security for the loans.

The Department of Community Development may provide technical assistance to resident organizations desiring to convert a mobile home park to resident ownership.

Mobile home park owners are given the right of first refusal on mobile homes that are put up for sale in their parks. The mobile home park owner has ten days from the date of the home owner's notice of receiving a purchase agreement to provide the mobile home owner with a fully executed purchase and sale agreement and a down payment equal to 5 percent of the agreed purchase price. The mobile home owner must be ready to close the sale under the same terms of the original purchase agreement.

The sale or transfer of mobile home parks or mobile homes to relatives are excluded from the right of first refusal provisions.

Mobile home [illegible]-ules can only be enforc[illegible] against [illegible] enience, safety if: (1) th[illegible] pose is to promote t[illegible] the premises or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities that are generally available to tenants; (2) they are reasonably related to the purpose for which they are adopted; (3) they apply to all tenants in a fair manner; (4) they are not for the purpose of evading an obligation of the landlord; and (5) they are not retaliatory or discriminatory in nature.

A mobile home landlord may no longer terminate tenancy in a mobile home park without cause. The list of reasons for which a mobile home tenant may be terminated is expanded.

Recreational vehicles are specifically exempt from the eviction requirements of the Mobile Home Landlord-Tenant Act.

Door-to-door solicitation by political candidates in mobile home parks and political forums or meetings of organizations that represent the interest of tenants may not be prohibited in mobile home parks.

A tenant that sells or transfers the title of his or her mobile home and the rental agreement for the mobile home lot to another individual is required to notify the landlord within 15 days of the intended transfer.

Landlords are given the authority to patrol the park grounds to assure that tenants are complying with all codes, laws, rental agreements and park rules.

VOTES ON FINAL PASSAGE:

Senate	41	0
House	98	0

EFFECTIVE: July 25, 1993

EXHIBIT H

FINAL BILL REPORT

SB 5164

C 118 L 98
Synopsis as Enacted

Brief Description: Removing certain tenants and occupants from a mobile home park.

Sponsors: Senators Haugen, Long, Goings, Patterson, Franklin and Bauer.

Senate Committee on Financial Institutions, Insurance & Housing
House Committee on Trade & Economic Development

Background: Mobile home park landlords may only evict tenants for the reasons listed in the Mobile Home Landlord-Tenant Act. One of the reasons listed is engaging in criminal activity,– which is defined as a criminal act defined by statute that threatens the health, safety, or welfare of the tenants.– Conviction of a crime is not required. Notice from a law enforcement agency of criminal activity on the part of a tenant is grounds for eviction.

Mobile home park tenants sometimes require the assistance of a live-in care giver. The occupancy rights of care givers are unclear.

Summary: The term occupant– is added to the definitions section of the Mobile Home Landlord-Tenant Act. It is defined as any person, including a live-in care provider, other than a tenant, who occupies a mobile home and mobile home lot.

The eviction provisions of the Mobile Home Landlord-Tenant Act are amended to include occupants.–

The requirement that a tenant or occupant register as a sex offender with local law enforcement is grounds for eviction.

Outdated references to eviction without cause are removed.

Votes on Final Passage:

Senate	43	5	
House	97	0	(House amended)
Senate	37	6	(Senate concurred)

Effective: June 11, 1998

EXHIBIT I

2012 WL 4959624
Court of Appeals of Washington,
Division 3.

EXCELSIOR MORTGAGE EQUITY FUND II, LLC, an Oregon limited liability company, Respondent,

v.

Steven F. SCHROEDER, a married man, Appellant, Anthony Bell, an individual, Defendant.

No. 30333-1-III. | Oct. 18, 2012.

Synopsis

Background: Purchaser of a ranch at a trustee's sale filed an action for unlawful detainer against former owner of the ranch. After obtaining summary judgment in its favor, purchaser later discovered that former owner's personal property remained at the ranch. Purchaser filed a motion for an order allowing it to dispose of the property. The Superior Court, Stevens County, Allen C. Nielson, J., granted the motion and entered an order authorizing former owner to enter the ranch to remove his property until a certain date and directing that proceeds from a subsequent sale of the property be applied first to purchaser's associated costs and then to offset the outstanding judgment. Former owner appealed after his motion for partial reconsideration was denied.

[Holding:] The Court of Appeals, Siddoway, J., held that trial court had jurisdiction to enter the order.

Affirmed.

Attorneys and Law Firms

Matthew Franklin Pfefer, Attorney at Law, Spokane Valley, WA, for Appellant.

Phillip Justin Haberthur, Schwabe Williamson & Wyatt, Vancouver, WA, for Respondent.

Opinion

SIDDOWAY, J.

***1** ¶ 1 When a landowner fails to remove personal property following foreclosure of his real property and a determination that he is in unlawful detainer, does a trial court act within its jurisdiction in authorizing the purchaser of the land to sell or dispose of the personal property for the former landowner's benefit? We hold that it does, affirm the reasonable postjudgment order entered by the court in this case, and award Excelsior Mortgage Equity Fund II LLC its attorney fees.

FACTS AND PROCEDURAL BACKGROUND

¶ 2 This is the fourth time these parties and this dispute have reached this court. We recount only the limited background relevant to this appeal. [1]

¶ 3 Steven Schroeder formerly owned a 200-acre ranch in Stevens County. He obtained a loan from Excelsior Mortgage that was secured by a deed of trust against the real property. When he defaulted in payment of the loan, Excelsior filed an action to judicially foreclose its deed of trust. It later negotiated to foreclose nonjudicially. The nonjudicial foreclosure process culminated in a trustee's sale on February 19, 2010, at which Excelsior purchased the property. Excelsior was entitled to possession 20 days later, on March 11. RCW 61.24.060(1).

¶ 4 Before borrowing from Excelsior, Mr. Schroeder had owned the ranch for decades. Over the years, he accumulated and stored an enormous amount of personal property on it, including hundreds of old vehicles, bicycles, vehicle and bicycle parts, tires, and household appliances. He also kept animals on the property, including two dozen cows, several horses, and a large bull.

¶ 5 Excelsior agreed following its purchase at the trustee's sale to extend the time for Mr. Schroeder to remove his personal property and animals and for Mr. Schroeder's tenant, Anthony Bell, to vacate a mobile home that he rented on the property. It granted them an additional three weeks' occupancy, to April 1. On March 10, Mr. Schroeder obtained an estimate from a moving company of the cost of removing his personal property. The company estimated that to remove what it was capable of moving would require "approximately 4 people[,] 2 straight trucks per day ... for a minimum of 90 days," explaining that its estimate did not include "the cars and many items that we are just prohibited to move." Clerk's Papers (CP) at 22. It estimated the cost of its partial removal of the property at $15,750 plus $3,000 in packing material.

¶ 6 April 1 arrived, and Mr. Schroeder and Mr. Bell had not enlisted the moving company's services or otherwise vacated the property. On April 30, Excelsior filed a complaint for unlawful detainer. The trial court eventually entered summary judgment in Excelsior's favor and entered a final order and judgment on December 7. Its order adjudged Mr. Schroeder to be in unlawful detainer and stated that Excelsior "is granted immediate possession of the Premises." CP at 319. It also provided that a writ of restitution "should be issued to the county sheriff directing him to deliver possession of the Premises to the Plaintiff." *Id.*

*2 ¶ 7 An inspection by Excelsior in the spring revealed that Mr. Schroeder had made few, if any, attempts to remove his property and animals. Its manager's chance encounter with Mr. Schroeder during the inspection confirmed that Mr. Schroeder continued to claim ownership to the personal property; according to the manager, Mr. Schroeder "even went so far as to question whether we had entered any of the buildings and stolen anything." CP at 14.

¶ 8 The unlawful detainer act, chapter 59.12 RCW, does not spell out a procedure by which Excelsior could sell or dispose of Mr. Schroeder's property. Excelsior explains on appeal that it did not pursue the writ of restitution ordered by the court because Mr. Schroeder and Mr. Bell were no longer living at the property, implying that removal of the two individuals would have been the only reason for pursuing execution of the writ. Seeking to avoid any further litigation with Mr. Schroeder, Excelsior identified provisions of the Residential Landlord–Tenant Act of 1973, chapter 59.18 RCW, which—while not applicable by its terms—nonetheless address how a landlord may dispose of personal property left behind by an evicted tenant. It decided to ask that the court adapt that procedure for its disposal of Mr. Schroeder's property, later explaining:

> The Residential Landlord–Tenant Act of 1973 was enacted in order to provide residential tenants greater protection from landlords. Because these statutes provide the highest level of protection for tenants, it is more than reasonable for Excelsior to follow the procedures under the residential act for sale/disposal of Schroeder's personal property. By doing so, Excelsior gives this former owner the highest level of protection available, despite the fact that he is not entitled to that protection by statu[t]e.

CP at 6.

¶ 9 On March 25, 2011, Excelsior sent Mr. Schroeder what it entitled a "Notice of Sale or Disposal of Abandoned Property," providing Mr. Schroeder 45 days, or until May 12, to remove anything of value he had stored on the property. Mr. Schroeder took no action to comply.

¶ 10 On May 24, Excelsior moved the trial court for an order allowing it to dispose of the personal property remaining on the property. Mr. Schroeder opposed the motion, contending that "this Court has no authority to grant the Plaintiff's Motion to dispose of Mr. Schroeder's personal belongings." CP at 30. The trial court granted Excelsior's motion. Its order, entered on September 26, authorized Mr. Schroeder to enter the property until October 15 "only for purposes of removing his personal property and animals." CP at 141. Its order excluded him from the property thereafter, and, with respect to any property remaining on the property that was thereafter sold, ordered:

> Any proceeds obtained from the sale of personal property or animals belonging to Steven F. Schroeder shall be applied first toward Plaintiff's costs associated with storing, removing, and/or selling the property, and second toward off-setting the outstanding judgment in this case.

*3 CP at 142.

¶ 11 After Mr. Schroeder's motion for partial reconsideration was denied, he timely appealed. [2]

ANALYSIS

I

¶ 12 The deed of trust act, chapter 61.24 RCW, provides that the purchaser at a trustee's sale is entitled to possession on the twentieth day following the sale and "shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW," the unlawful detainer act. RCW 61.24.060(1), RCW 59.12.170

provides that if the trial court in a commercial unlawful detainer action finds in favor of the plaintiff, "judgment shall be entered for the restitution of the premises." In those cases where a defendant found in unlawful detainer does not voluntarily vacate, the usual remedy for restoring the plaintiff's possession is to enforce the judgment "for the possession of the premises," RCW 59.12.170, by causing the county sheriff to execute a writ of restitution.

[1] [2] ¶ 13 The sheriff's authority under a writ of restitution extends to removing a defendant's personal property from the premises. *See Christensen v. Hoover*, 643 P.2d 525, 528 (Colo.1982) (finding it to be the officer's duty under a writ of restitution "not only to remove the tenant, but also to remove the tenant's personal property and effects" where unlawful detainer statute provided that landlord was entitled to restitution, or full possession, of the premises); *cf. Chung v. Louie Fong Co.*, 130 Wash. 154, 156, 226 P. 726 (1924) ("[the plaintiff] remaining in possession, the sheriff dispossessed him, putting his personal property in the road adjacent to the premises"); *Johnson v. Nelson*, 146 Wash. 500, 501, 263 P. 949 (1928) (following service of the writ of restitution and the occupant's failure to vacate, the sheriff "secured the services of some men and removed the belongings of respondents from the premises into the highway near by"); RCW 36.28.010(3) (sheriff is the "conservator of the peace of the county" and shall execute "the process and orders of the courts of justice or judicial officers ... according to law"), .050 ("Any sheriff ... may require an indemnifying bond of the plaintiff in all cases where he or she has to take possession of personal property."). In this connection, Excelsior's implicit position that a writ of restitution authorizes a sheriff to assist in removing only people, not property, is mistaken. [3]

¶ 14 But while the sheriff can remove or oversee the landowner's removal of a dispossessed defendant's personal property pursuant to a writ of restitution, it is understandable that Excelsior would not regard a customary writ of restitution as a practical or adequate means of enforcing Excelsior's right of possession. The 90–day, 4–man, $15,000 estimate for *partial* removal that Mr. Schroeder received from the moving company is compelling evidence that the writ procedure was inadequate. And, as described by Excelsior's manager:

> *4 The 200 acre property remained littered with old vehicles (approximately 200 to 300 of them), most of which were rusted shells that showed obvious signs of having been there for decades. In fact, many had sunk deeply into the soil. All appearances suggested that the vehicles were little more than rusted scrap with little to no value, especially given the amount of work and associated cost that would be required to remove them from the Premises. In addition, there were hundreds of old and rusted bicycles, vehicle and bicycle parts, tires, and miscellaneous junk, all of which appeared to be old, dilapidated, and of little or no value. The vast majority of the items were unprotected from the elements and badly damaged by decades of neglect.

CP at 13. Yet Excelsior was faced with Mr. Schroeder's position these items were his personal property, in which he claimed a continuing interest. Under these circumstances, Excelsior reasonably sought an alternative to enlisting the Stevens County Sheriff to supervise removal of Mr. Schroeder's property to the county's right of way on an adjacent highway.

[3] ¶ 15 The process for disposing of property ordered by the court was largely adapted, as suggested by Excelsior, from a residential landlord's rights and duties to store, sell, or dispose of personal property left behind by an evicted tenant. *See* RCW 59.18.312. Mr. Schroeder does not identify any respect in which the process was unreasonable; as Excelsior points out, Mr. Schroeder was ultimately afforded 602 days to remove his personal property following the trustee's sale. Br. of Resp't at 20. Instead, Mr. Schroeder argues that the trial court lacked jurisdiction to order the procedure in an unlawful detainer proceeding that was not subject to the Residential Landlord–Tenant Act.

[4] ¶ 16 An unlawful detainer action is a "narrow one, limited to the question of possession and related issues such as restitution of the premises and rent." *Munden v. Hazelrigg*, 105 Wash.2d 39, 45, 711 P.2d 295 (1985). Mr. Schroeder argues that the trial court lacked jurisdiction to entertain what he characterizes as a claim of "abandonment" that Excelsior was raising for the first time by its postjudgment motion. Determining subject matter jurisdiction is a question of law reviewed de novo. *ZDI Gaming, Inc. v. State Gambling Comm'n*, 173 Wash.2d 608, 624, 268 P.3d 929 (2012) (J.M. Johnson, J., dissenting).

¶ 17 Mr. Schroeder characterizes the term "abandon" as used in the court's order[4] as referring to the common law defense to conversion. Relying on a 63–year old Kentucky decision, *Ellis v. McCormack*, 309 Ky. 576, 578, 218 S.W.2d 391 (1949), he argues that to prove abandonment, Excelsior must prove his "(1) voluntary relinquishment of possession, and (2) intent to repudiate ownership."

¶ 18 In *Ellis*, the lessor of a coal mine sold coal slack left at its property by a former lessee, who had quit all mining operations and terminated its lease seven years earlier. The lessee nonetheless sued to recover the proceeds of the lessor's sale of the slack, arguing that the lessor had converted property that belonged to the lessee. The lessor defended on the basis that the slack had been abandoned by the lessee and that it was therefore entitled to sell the slack for its own account. The former owner of property that is "abandoned" in this sense loses any ownership interest it once had. *State v. Kealey*, 80 Wash.App. 162, 171–72, 907 P.2d 319 (1995).

*5 ¶ 19 Mr. Schroeder also argues that if Excelsior's motion is not a claim for "abandonment," it must necessarily have been some other, new cause of action, but was fatally vague, since he was not able to identify affirmative defenses or conduct discovery.

¶ 20 Mr. Schroeder's error in both cases is in construing Excelsior's motion as seeking to establish any new rights or duties at all. It was not. It was merely seeking an order setting forth a framework for enforcing the judgment the court had already entered.

¶ 21 It is clear from the face of the order that the words "abandon" or "abandoned" were used colloquially by the trial court and do not reflect any finding by the court that Mr. Schroeder *intended* to relinquish ownership. And Excelsior never asked for a determination that what it characterized as Mr. Schroeder's "junk" belonged to it. The trial court's order did not operate to deprive Mr. Schroeder of ownership. To the contrary, it gave Mr. Schroeder an additional 19 days to remove "*his* personal property and animals" from the property. CP at 141 (emphasis added). If his belongings were not removed, the order denied Mr. Schroeder further access to the real property and authorized Excelsior to sell or otherwise dispose of the personal property, but with all proceeds to be applied to costs for which Mr. Schroeder would be responsible or to his judgment liability—in other words, for Mr. Schroeder's benefit. *Cf. Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wash.App. 710, 722, 225 P.3d 266 (2009) (there can be no claim of conversion where the owner declines to retrieve its property from a party in possession who makes no claim that the property is its own).

¶ 22 Rather than assert any new claim or different rights, Excelsior's motion simply asked the court to approve a procedure by which it could effectuate the judgment to which it had already proved it was entitled: a judgment "for the restitution of the premises." RCW 59.12.170. The right to exclude others is an essential stick in the bundle of property rights. *City of Sunnyside v. Lopez*, 50 Wash.App. 786, 795 n. 7, 751 P.2d 313 (1988) (citing *Kaiser Aetna v. United States*, 444 U.S. 164, 179–80, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979)); *and see Manufactured Hous. Cmtys. of Wash. v. State*, 142 Wash.2d 347, 364, 13 P.3d 183 (2000) (the right of unrestricted use, enjoyment, and disposal is a substantial part of property's value (quoting *Ackerman v. Port of Seattle*, 55 Wash.2d 400, 409, 348 P.2d 664 (1960), *abrogated on other grounds by Highline Sch. Dist. No. 401 v. Port of Seattle*, 87 Wash.2d 6, 548 P.2d 1085 (1976))).

¶ 23 The request for an order effectuating the court's judgment for restitution of the premises to Excelsior did not stray beyond the trial court's narrow jurisdiction in an unlawful detainer action. "Although the court [in an unlawful detainer action] does not sit as a court of general jurisdiction to decide issues unrelated to possession of the subject property, it may resolve any issues necessarily related to the parties' dispute over such possession." *Port of Longview v. Int'l Raw Materials, Ltd.*, 96 Wash.App. 431, 438, 979 P.2d 917 (1999) (citation omitted). "When jurisdiction is ... conferred on a court or judicial officer all the means to carry it into effect are also given." RCW 2.28.150. The plain and principal authority of the court in an unlawful detainer proceeding is to determine who has the right of possession of real property and to restore that person to possession. While the unlawful detainer provisions identify the writ of restitution as the ordinary means for enforcing the court's award of possession, they do not prescribe the terms of the writ or deprive the court of authority to enforce its judgment by other means.

*6 ¶ 24 The trial court had jurisdiction to enter the order, which is affirmed.

II

¶ 25 Both parties request attorney fees on appeal as prevailing parties under RCW 4.84.330, relying on an attorney fee provision in their deed of trust. Excelsior is the prevailing party. A party may be awarded contractual attorney fees at the trial and appellate level under any law that grants the right to recover them. RAP 18.1.

[5] ¶ 26 Washington law generally provides for an award of attorney fees when authorized by contract, a statute, or a recognized ground of equity. *Labriola v. Pollard Group, Inc.*, 152 Wash.2d 828, 839, 100 P.3d 791 (2004); *Bingham v. Lechner*, 111 Wash.App. 118, 133–34, 45 P.3d 562 (2002) (stating that the party that prevails in a proceeding to foreclose a deed of trust is entitled to an award of fees if the deed of trust provides for such an award). RCW 4.84.330 addresses a different circumstance; it extends the right to recover fees to a prevailing party whose contract with its adversary contains an attorney fee provision, but one that is unilateral, operating only if its adversary prevails. As to those contracts, RCW 4.84.330 provides a statutory award that, as a practical matter, makes the unilateral contractual fee provision bilateral.

¶ 27 The attorney fee provision in Mr. Schroeder's deed of trust in favor of Excelsior is bilateral, so the contractual right, rather than RCW 4.84.330, is the source of any entitlement to fees. *Cornish Coll. of the Arts v. 1000 Va. Ltd. P'ship*, 158 Wash.App. 203, 231, 242 P.3d 1 (2010) ("When a contract includes a bilateral attorney fees provision, 'it is the terms of the contract to which the trial court should look to determine if such an award is warranted.' " (quoting *Kaintz v. PLG, Inc.*, 147 Wash.App. 782, 790, 197 P.3d 710 (2008))), *review denied*, 171 Wash.2d 1014, 249 P.3d 1029 (2011). The fee provision in the parties' deed of trust states:

> In the event suit or action is instituted to enforce or interpret any of the terms of this Trust Deed, including, but not limited to, any action or participation by Borrower as a debtor in, or in connection with, a case or proceeding under the Bankruptcy Code or any successor statute, the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, including, without limitation, attorney fees.

CP at 222. The parties' mutual requests for fees reflect their agreement that the action below is one that was "instituted to enforce ... the terms of this Trust Deed." *Id.*

¶ 28 In his reply brief, Mr. Schroeder belatedly argues that we should deny Excelsior's request for fees on account of insufficient argument under RAP 18.1, as well as its mistaken reliance on RCW 4.84.330. Excelsior devoted a section of its brief to its fee request, cited RAP 18.1, and placed its ultimate reliance on its contractual right to fees under its deed of trust and promissory note from Mr. Schroeder. Its mistaken additional reliance on RCW 4.84.330 was not unusual, was a mistake also made by Mr. Schroeder in his opening brief, and is no reason to deny its otherwise sufficient fee request.

*7 ¶ 29 Excelsior's request for attorney fees on appeal is granted, subject to compliance with RAP 18.1(d).

¶ 30 Affirmed.

WE CONCUR: KORSMO, C.J., and KULIK, J.

Footnotes

1 For additional detail, see *Schroeder v. Excelsior Management Group, LLC*, noted at 162 Wash.App. 1027, 2011 WL 2474337, *review granted*, 173 Wash.2d 1013, 268 P.3d 943 (2012); *Schroeder v. Haberthur*, noted at 164 Wash.App. 1012, 2011 WL 4599661, *review granted*, 173 Wash.2d 1020, 272 P.3d 850 (2012); and *Excelsior Mortgage Equity Fund II, LLC v. Schroeder*, noted at 166 Wash.App. 1004, 2012 WL 210921, *petition for review filed*, No. 87057–8 (Wash. Feb. 28, 2012).

2 In filing his notice of appeal, Mr. Schroeder posted a $500 bond. Excelsior objected to it as insufficient. On November 15, the trial court agreed with Excelsior and set the bond amount at $24,400. Mr. Schroeder evidently did not post the required bond.

We understand that Excelsior has proceeded to dispose of at least some of the property, but the extent of its action taken on the court's order is outside the record. No one has argued that the appeal is moot.

3 Mr. Schroeder is equally mistaken in his position that Excelsior's failure to cause execution of the writ means that he—not Excelsior—remained entitled to legal possession of the real property, a conclusion that he incorrectly draws from the statement in *Port of Longview v. International Raw Materials, Ltd.*, 96 Wash.App. 431, 446, 979 P.2d 917 (1999) that "[a] writ of restitution does not

have any immediate effect on the tenant's property interests." This statement in *Port of Longview* refers to service of a prejudgment writ, which cannot be executed until a defendant has had an opportunity to be heard. The decision nowhere states or implies that execution of the writ is essential to establishing the plaintiff's right of possession. RCW 59.12.090 states that the plaintiff "may" apply for a writ of restitution. By its plain terms, the party entitled to restitution of the premises is not required to obtain execution of a writ of restitution, and parties found to be in unlawful detainer often vacate without being compelled to do so by the county sheriff. While a writ of restitution is a tool for securing compliance with the judgment, it is the judgment itself that grants legal possession to the landowner.

4 The court entered a finding that because Mr. Schroeder had not removed his personal property and animals despite more than reasonable notice, he "has *abandoned* any personal property or belongings remaining on the Real Property after October 15, 2011," and ordered that any personal property not removed by October 15 "will be considered *abandoned* and [Excelsior] may proceed with disposing of all remaining items at that time." CP at 141 (emphasis added).

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