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STATE OF WASHINGTON
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No. 36165-9-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THOMAS SILVER, Petitioner,

vs.

RUDEEN MANAGEMENT COMPANY, INC., Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Thomas Silver asks this Court to accept review of the Division III Court of Appeals' decision designated in Part B herein.

B. COURT OF APPEALS DECISION

Mr. Silver asks this Court to review the Division III Court of Appeals published Opinion, *Silver v. Rudeen Mgmt. Co.*, 10 Wn. App. 2d 676 (2019), ruling that an action to recover residential tenants' deposit trust funds is neither an action for "taking, detaining, or injuring personal property, including an action for the specific recovery thereof," that is subject to a three-year statute of limitations under RCW 4.16.080(2), nor an action for "injury to the ... rights of another," and therefore also subject to a three-year statute of limitations under RCW 4.16.080(2). Instead, the lower court found that the two-year "catchall" statute of limitations under RCW 4.16.130 applies to claims for the recovery of these trust funds. Mr. Silver submits that this ruling contradicts previous rulings of Washington's Supreme Court and appellate courts, including the Division III Court of Appeals, and presents an issue of substantial public interest affecting hundreds of thousands of residential tenancies in Washington.¹

¹ See University of Washington, Washington Center for Real Estate Research, *Washington Apartment Market Spring 2019* (2019) (<http://realestate.washington.edu/wp-content/uploads/2019/06/2019SpringApartmentMarketReport.pdf>) (including a survey of 302,589 apartment units, not including single-family dwellings, in the state). A copy of this report is provided as Appendix B.

Mr. Silver filed his Complaint in Spokane County Superior Court for the recovery of his deposit trust funds on August 10, 2017, claiming that Respondent Rudeen Management Company, Inc., his former landlord, wrongfully withheld these monies both 1) for damages for which he was not responsible and 2) beyond the period of time allowable under RCW 59.18.280. On or about January 5, 2018, Rudeen filed a motion to dismiss, alleging that a two-year “catchall” statute of limitations, RCW 4.16.130, should apply to Mr. Silver’s claims, rather than the three-year statute of limitations for actions “for taking, detaining, or injuring personal property, including an action for the specific recovery thereof . . . or for any other injury to the person or rights of another not hereinafter enumerated.” RCW 4.16.080(2).

On April 6, 2018, the Superior Court concluded that “the claims in the complaint are [exclusively] statutory in nature,” and therefore a two-year “catchall” statute of limitations under RCW 4.16.130 applied. (SN 23). Mr. Silver timely moved for reconsideration, emphasizing that his claims for the recovery of his trust funds were not exclusively statutory in nature. (SN 27). On June 26, 2018, the Superior Court entered an order denying reconsideration, (SN 33), and Mr. Silver timely appealed.

After hearing without oral argument,² the lower court published its Opinion affirming the Superior Court’s decision on October 1, 2019. The lower court entered an order denying Mr. Silver’s subsequent Motion for Reconsideration on November 21, 2019. Mr. Silver therefore petitions this Court for final review.

A copy of the appellate court’s published Opinion is in the Appendix herein at pages A-1 through A-6.

C. ISSUES PRESENTED FOR REVIEW

1. Is a claim for the recovery of residential tenants’ trust funds an action for “taking, detaining, or injuring personal property, including an action for the specific recovery thereof,” that is subject to a three-year statute of limitations under RCW 4.16.080(2)?
2. Is a claim for the recovery of residential tenants’ trust funds an action for “injury to the ... rights of another,” and therefore subject to a three-year statute of limitations under RCW 4.16.080(2)?
3. Do residential tenants, as trust beneficiaries under RCW 59.18.270, have a legally protected interest in the recovery of their deposit trust funds, which is subject to a three-year statute of limitations under RCW 4.16.080(2)?

² The lower court denied Mr. Silver’s Unopposed Motion for Oral Argument on June 19, 2019.

D. STATEMENT OF THE CASE

Mr. Silver, as a residential tenant, sued Rudeen, as his former landlord, to recover deposit monies being held in a trust account for his benefit as provided in RCW 59.18.270. (Verified Compl.). Rudeen claimed that Mr. Silver owed money for excessive “wear and tear” to the premises, which Mr. Silver expressly denied. (*Id.* at ¶¶ 4.11-4.12). Although Rudeen’s standard lease agreement specified that “Tenant shall forfeit unclaimed [deposit] funds after 45 days,” Rudeen did not actually provide a “final” deposit disposition statement until 48 days after the termination of Mr. Silver’s tenancy. (*Id.* at ¶¶ 4.6, 4.13). Rudeen has never refunded any portion of Mr. Silver’s trust funds to him.

Washington’s Residential Landlord Tenant Act (RLTA) prohibits landlords from withholding tenants’ deposit monies “on account of normal wear and tear resulting from ordinary use of the premises.” RCW 59.18.260; RCW 59.18.280(1)(a). The RLTA provides specific remedies for landlords that fail to provide full, specific, and timely statements regarding the disposition of tenants’ deposit monies, as well as any refund due from tenants’ trust accounts. RCW 59.18.280(2). A tenant’s claim to recover their trust funds supersede all others, including bankruptcy trustees and receivers, even if the funds are commingled. RCW 59.18.270.

Mr. Silver filed an action in Spokane County Superior Court to recover his deposit monies from his trust account on August 10, 2017. On January 5, 2018, Rudeen moved to dismiss his claims, arguing that a two-year “catchall” statute of limitations [RCW 4.16.130] should apply to Mr. Silver’s case, rather than the three-year statute of limitations for actions “for taking, detaining, or injuring personal property ... or for any other injury to the person or rights of another,” RCW 4.16.080(2). The Superior Court granted Rudeen’s motion, and Mr. Silver timely appealed.

On October 1, 2019, the Division III Court of Appeals affirmed the April 6, 2018, decision of the trial court in favor of Respondent Rudeen Management Company, Inc., concluding that:

... this is an action to enforce the statute [RCW 59.18.280], not an action for return of property. It is the difference between saying “I did not do \$300 worth of damage, return my deposit,” and saying “you did not respond in a timely fashion as required, so pay me the statutory remedies.” The former involves a personal right of the plaintiff to possession of his own funds. The latter involves a breach of statutory duty in derogation of the plaintiff’s rights.

Silver, 10 Wn. App. 2d at 681.

Contrary to the lower court’s conclusion, Appellant Thomas Silver’s sworn and verified Complaint expressly and repeatedly states that “Mr. Silver was not responsible for the allegedly excessive wear and tear” (Verified Compl., ¶¶ 4.11 – 4.12, 4.19). These facts were also recited in

the Brief of Appellant that was submitted to the lower court in conjunction with Mr. Silver's appeal (Br. Appellant, 3, 11).

Mr. Silver's verified Complaint first and foremost presents an action to recover funds being held in trust pursuant to RCW 59.18.270. Mr. Silver alleges that his landlord failed to provide not just a timely statement regarding the disposition of these trust funds, as required under RCW 59.18.280(2), but also that his landlord failed to return the "refund due from his trust account." (CP 5, ¶ 4.12; CP 6, ¶¶ 4.19, 4.21-4.23). In this respect, the lower court may have understated Mr. Silver's claims under RCW 59.18.280 in summarizing a landlord's singular duty as being "to respond within 21 days by either returning a damage deposit or providing a final statement justifying the withholding of some or all of the deposit." *Silver*, 10 Wn. App. 2d at 680. However, RCW 59.18.280(1)(a) also expressly states: "No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises," regardless of the notice and timing provisions of the statute. Mr. Silver explicitly claims that he "was not responsible for the allegedly excessive wear and tear to the premises." (Verified Compl., ¶ 4.12). This is the essence of Mr. Silver's claims, that his landlord had no basis for withholding his money, with or without the statutory timelines, and therefore he is entitled to get it back.

Like every other residential tenant residing in Washington, Mr. Silver has an ongoing right to recover his deposit trust funds under RCW 59.18.270 and RCW 59.18.280(1)(a), and he has never relinquished his independent claim of right to these monies, (*see, e.g., Heidelberg v. Campbell*, 95 Wn. 661, 667 (1917) (“The right of a beneficiary to reclaim a trust fund is based upon his right of property.”); *and see id.* at 249 (“The right to follow and appropriate ceases only when the means of ascertainment fail.”)), regardless of remedies that may or may not be specific to the statute. *Id.* A tenant’s absolute and independent right to recover these deposit trust funds is further emphasized under RCW 59.18.270, which affirms that “[t]he tenant’s claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.”

In these respects, the lower court erred not only in its factual analysis regarding Mr. Silver’s insistence that “I did not do \$300 worth of damage, return my deposit,” *Silver*, 10 Wn. App. 2d at 681, (Verified Compl., ¶¶ 4.11 – 4.12, 4.19), but also in its indifference toward the special character of tenants’ deposit trust funds, as well as the corresponding and continuing rights of tenants as beneficiaries, which

exist independently from the statutory remedies provided in RCW 59.18.280.

These errors served as the basis for the lower court's conclusion that Mr. Silver's action was merely "an action to enforce the deposit return obligation of the RLTA," and not also "an action for return of personal property." *Silver*, 10 Wn. App. 2d at 681. Although the lower court correctly noted that *both* kinds of actions involve injuries to the personal and property rights of tenants, being either "a personal right of the plaintiff to possession of his own funds," or "a breach of statutory duty in derogation of the plaintiff's rights," the lower court did not find that the three-year statute of limitations applied to the legally protected rights of the latter. *Id.* This reasoning conflicts with the previous rulings of this court, *see, e.g., Stenberg v. Pac. Power & Light Co.*, 104 Wn.2d 710, 720 (1985) ("The language of RCW 4.16.080(2) is clear and should apply to any other injury to the person or rights of another not enumerated in other limitation sections."), as well as Division III's own prior rulings. *Sorey v. Barton Oldsmobile*, 82 Wn. App. 800, 806 (1996) (violation of a legally protected interest of a plaintiff is subject to the three-year statute of limitations under RCW 4.16.080(2)).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court may accept a petition for review of a Court of Appeals decision if the decision conflicts with other decisions of this Court or the Court of Appeals. RAP 13.4(b)(1)-(2). This Court may also accept review if the petition involves an issue of substantial public interest that should be determined by the Supreme Court, RAP 13.4(b)(4). This Court should accept review for both of these reasons.

1. Division III's Decision Contradicts Longstanding Authority of Both the Supreme Court and Appellate Courts.

In its Opinion, the court does not appear to consider the special character of Mr. Silver's deposit as monies being held in trust, *see* RCW 59.18.270, and his right to recover these funds is based upon an independent right to reclaim these funds based on a right of property, *Heidelbach*, 95 Wn. at 667, which is supplemented by the right to recover deposit trust monies in RCW 59.18.280. In other words, the right being asserted by Mr. Silver is protected by *both* law and statute. *Silver*, 10 Wn. App. 2d at 681; *Seattle Prof'l Eng'g Emples. Ass'n (SPEEA) v. Boeing Co.*, 139 Wn.2d 824, 838 (2000). Common law has created the right of tenants, as beneficiaries, to recover their deposit monies from their deposit trust accounts, and RCW 59.18.280 supplements that right by adding specific notice and timing requirements that apply in the context of residential tenancies. Consistent with longstanding authorities, the three-

year statute of limitations should therefore apply in this case. *Silver*, 10 Wn. App. 2d at 681; *Lewis*, 36 Wn. App. at 612; *SPEEA*, 139 Wn.2d at 838; *Sorey*, 82 Wn. App. at 806; *Heidelberg*, 95 Wn. at 667.

This broadly accepted conclusion is consistent with the law of trusts and the provisions of the Residential Landlord Tenant Act (RLTA), RCW 59.18, *et seq.* A trustee, as a fiduciary, owes beneficiaries the “highest degree of good faith, care, loyalty and integrity.” *Esmieu v. Schrag*, 88 Wn.2d 490, 498 (1977). “It is the duty of a trustee to administer the trust in the interest of the beneficiaries.” *Tucker v. Brown*, 20 Wn.2d 740, 768 (1944). “The trustee must exclude from consideration not only his own advantage or profit, but also that of third parties in dealing with trust properties and in all other matters connected with the administration of the trust estate. No exception can be made to this rule. Courts have fixed a very high and exceptionally strict standard for trustees to follow in the conduct of their trust activities. *Id.* at 768. With regard to the administration of trust accounts holding tenants’ deposit monies, RCW 59.18.280 is simply an extension of any trustee’s duty to beneficiaries “to give [them] upon [their] request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him or a person duly authorized by him to inspect the subject matter of the trust and the accounts and vouchers and other documents

relating to the trust.” *Id.* at 769 (citing Restatement of the Law of Trusts 447, § 173).

With regard to tenants’ right to recover their monies from trust, the RLTA establishes that tenants’ claims to these monies “shall be prior to that of any creditor of the landlord . . . even if such moneys are commingled.” RCW 59.18.270. Furthermore, it is a “well settled rule that a trustee can make no profit out of his trust.” *In re Wash. Builders Benefit Tr.*, 173 Wn. App. 34, 82 (2013) (citing cases). In these respects, Mr. Silver has an independent right to recover his trust property that supersedes any claims by his landlord’s contractors or other creditors under RCW 59.18.270. Because landlords who administer deposit trust accounts cannot profit from the same, the Respondent’s failure to provide “at reasonable times [i.e., statutorily mandated timelines] complete and accurate information as to the nature and amount of the trust property,” *Tucker*, 20 Wn.2d at 769, constitutes a breach of its fiduciary duties to Mr. Silver. Instead of providing a timely, full, and specific statement of the basis for withholding Mr. Silver’s trust monies, the Respondent brushed off its fiduciary and statutory duties with a generalized, overstated, and unsubstantiated “estimate”³ of allegedly excessive wear and tear.”

³ The Respondent issued its \$3,000 “estimate” to Mr. Silver on June 30, 2015, the same date as the tenancy terminated, even though the Respondent did not commission work or

(Verified Compl., ¶¶ 4.11 – 4.18). Given that Mr. Silver disputed that he was liable for any allegedly excessive “wear and tear,” the Respondent’s continuing refusal to return those monies constitutes an ongoing breach of fiduciary duties as well as a violation RCW 59.18.280(1)(a).

The RLTA’s requirement that tenants’ deposit funds be held in trust affords them special protections of fiduciary care as well as the notice and timing requirements of RCW 59.18.280. At the same time, Mr. Silver’s right to a proper accounting and the recovery of his trust monies is not created by the statute. Rather, they arise from the common law pertaining to trusts, supplemented by statutory provisions that apply in a residential landlord-tenant context. In this case, Mr. Silver’s claims involve the invasion of his “legally protected interest,” *Lewis*, 36 Wn. App. at 612, as a trust beneficiary and, as such, the three-year statute of limitations pertaining to actions “for the taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another,” should apply to his claims. RCW 4.16.080(2).

Division III’s published Opinion contradicts and undermines these principles by overlooking the special character of residential tenants’

receive invoices until nearly six weeks later, and ultimately claimed a total of \$2,281.35 due. (Verified Compl., ¶¶ 4.12 – 4.18)

deposit monies under RCW 59.18.270, as well as tenants' corresponding rights to recover their trust funds as an action "for taking, detaining, or injuring personal property ... or for any other injury to the person or rights of another." RCW 4.16.080(2).

2. Division III's Decision Will Profoundly Affect the Public Interests of Tenants and Trust Beneficiaries Throughout Washington.

The manner in which residential tenants' deposit monies are regulated and managed is an issue of widespread public interest throughout Washington. The magnitude of the economic and social impacts associated with residential deposit reserves is substantial. According to the US Census Bureau's 2018 estimates, more than one-third of Washington residents live in non owner-occupied housing.⁴ The University of Washington's Washington Center for Real Estate Research (WCRER) estimates that there are at least 302,589 one and two-bedroom rental apartments (i.e., not including single-family dwellings) in the state in 2019, with an average monthly rent of \$1,513. (App. B: University of Washington, Washington Center for Real Estate Research, *Washington Apartment Market Spring 2019* at 6). Based on these estimates, if the amount of a standard rental deposit generally corresponds with one

⁴ See United States Census Bureau, Washington QuickFacts from the US Census Bureau, <http://quickfacts.census.gov/qfd/states/5300.html>. A copy of this report is provided as Appendix C.

month's rent, the aggregate pool of rental reserves in the state would amount to more than half a billion dollars. All of these funds are regulated by the special provisions of RCW 59.18.260, 59.18.270, and 59.18.280, which provide the basic framework for landlords' collection, accounting, withholding, and refunding of monies in tenants' deposit trust accounts.

In these respects, the lower courts' indifference to the special character of tenants' deposit trust accounts, and those tenants' corresponding rights to recover those funds, implicates potentially hundreds of millions of dollars based on whether a two-year or three-year statute of limitations applies to the recovery of those funds. While the economic impacts of the lower courts' decisions are felt most acutely by Mr. Silver and other individual tenants, the public as a whole has a significant economic interest in limiting tenants' recovery of potentially hundreds of millions of dollars.

As Washington courts, including Division III, have previously acknowledged, "[t]he RLTA represents a series of compromises" between landlords and tenants. *Lian v. Stalik*, 106 Wn. App. 811, 819, (2001). The RLTA maintains this balance by ensuring that a "tenant benefits from the imposition of specific affirmative duties imposed upon the landlord," while a "landlord benefits because while the RLTA imposes a lengthy list of specific duties, it also limits the remedies available to the tenant for

breach of those duties.” *Id.* As a remedial statute, the RLTA should be construed liberally in favor of the remedies it provides. *See, e.g., Naches Valley Sch. Dist. No. JT3 v. Cruzen*, 54 Wn. App. 388, 399 (1989)

(“remedial statute should be liberally construed to effect its purpose”).

Applying the RLTA in a manner that limits tenants’ common-law rights as trust beneficiaries, including limitations on tenants’ recovery of their trust funds, is anathema to the fundamental purposes the RLTA.

Moreover, Division III’s ruling in this case extends beyond just actions to recover trust funds established by RCW 59.18.270, but also those for members of health clubs under RCW 19.14.060; alleged debtors subjected to debt collection actions under RCW 19.16.240; and consumers of motor vehicles under RCW 46.70.180(9); manufactured homes under RCW 46.70.029; retail travel services under RCW 19.138.140; and credit services under RCW 19.134.030, just to name a few of the countless statutes under which a beneficiary of a trust account may sue to recover trust funds. Under Division III’s reasoning, any person who sued to recover trust funds under a statute that established the trust would be subject to a two-year “catchall” statute of limitations, rather than the three-year statute that otherwise applies to actions involving the “taking, detaining, or injuring personal property, including an action for the

specific recovery thereof ... or for injury to the person or rights of another,” under RCW 4.16.080(2)

The lower court’s published opinion therefore involves an issue of widespread economic and social interest, not only for residential tenants themselves, but also for the communities in which they reside. This court should accept review of Mr. Silver’s case not only for his benefit, but also for other trust beneficiaries who may be similarly limited by other courts’ reliance on Division III’s ruling in this case.

3. Mr. Silver is Entitled to an Award of Costs and Fees.

Pursuant to RCW 59.18.260 and RCW 59.18.280(2), Mr. Silver is entitled to recovery of his costs and fees as the prevailing party in this action. Pursuant to RAP 18.1, he requests that this Court make such an award per RCW 59.18.260 and 59.18.280(2).

F. CONCLUSION

Based upon the authorities and arguments herein, Mr. Silver petitions this Court to accept final review of this matter.

DATED this 23rd day of December, 2019, and respectfully submitted,



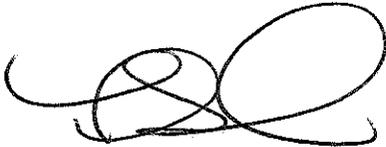
Brian G. Cameron, WSBA #44905
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the **23rd day of December, 2019**, at Spokane, Washington, I caused to be served the foregoing document(s), and accompanying exhibits, on the following person(s) and/or entity(ies) in the manner indicated:

Timothy W. Durkop <i>Attorney at Law</i> 2906 N. Argonne, Rd. Spokane, WA 99212	<input type="checkbox"/> VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA EXPRESS DELIVERY <input checked="" type="checkbox"/> VIA COURT SERVICE
--	--

DATED this 23rd day of December, 2019.



TERI BRACKEN
Paralegal

APPENDICES

APPENDIX A

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APPENDIX B

App. B: University of Washington, Washington Center for Real Estate Research, *Washington Apartment Market Spring 2019*.....B-1
<http://realestate.washington.edu/wp-content/uploads/2019/06/2019SpringApartmentMarketReport.pdf>

APPENDIX C

See United States Census Bureau, Washington QuickFacts from the US Census Bureau, <http://quickfacts.census.gov/qfd/states/5300.html>.....C-1
<https://www.census.gov/quickfacts/fact/table/WA#>

APPENDICES

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

THOMAS SILVER, an individual, and all) those similarly situated,)		No. 36165-9-III
)	
Appellant,)		
)	
v.)		
)	
RUDEEN MANAGEMENT COMPANY,)		PUBLISHED OPINION
INC., a Washington corporation,)		
)	
Respondent.)		

KORSMO, J. — Thomas Silver appeals from the dismissal at summary judgment of his class action against a property management company. We affirm the trial court’s determination that his claim was barred by the statute of limitations.

FACTS

Mr. Silver rented an apartment managed by respondent Rudeen Management Company for about 40 months. Upon entering into the tenancy, Mr. Silver paid Rudeen a \$300 damage deposit. He vacated the premises June 30, 2015, after giving timely notice of his intention. On that same day, Rudeen provided Silver a “preliminary” “Deposit Disposition” statement. The disposition claimed Silver owed \$2,516.00 for excessive

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wear and tear. On August 18, 2015, Rudeen sent Silver a “final” “Deposit Disposition” statement claiming a revised amount of \$2,281.35 for excessive wear and tear.

Rudeen sometime thereafter began efforts to collect on its claim. Silver responded by filing this action. On August 10, 2017, he filed a complaint for damages against Rudeen. The complaint asserted the existence of a class of plaintiffs and a single cause of action: a contention that Rudeen had violated the Residential Landlord-Tenant Act of 1973 (RLTA), ch. 59.18 RCW, by not providing within twenty-one days a final statement concerning the damage deposit pursuant to RCW 59.18.280. Plaintiff requested that the court refund each class member’s security deposit, give each class member double the amount of the deposit, and award attorney fees costs. Clerk’s Papers (CP) at 10.

Rudeen eventually moved for summary judgment, arguing that the action was filed outside the two-year statute of limitations. Silver contended that his action was subject to the three-year statute of limitations governing recovery of personal property. The trial court concluded that the only cause of action asserted was a violation of the RLTA governed by a two-year statute of limitations. The court granted summary judgment and dismissed the case for untimely filing.

Mr. Silver timely appealed to this court. A panel considered his appeal without hearing oral argument.

ANALYSIS

The sole issue presented is whether the two- or three-year statute of limitations period applied to this complaint. We agree with the trial court that the two-year period applied.

The issue of which statute of limitations applies is a legal question that this court considers de novo. *Sorey v. Barton Oldsmobile*, 82 Wn. App. 800, 802, 919 P.2d 1276 (1996). If there is uncertainty about which statute applies, “the longer statute will be applied.” *Stenberg v. Pac. Power & Light Co.*, 104 Wn.2d 710, 715, 709 P.2d 793 (1985).

The RLTA does not contain a statute of limitations. Typically, when a statute does not contain its own statute of limitations, RCW 4.16.130 applies. That statute provides:

An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

However, not every cause of action predicated on statutory liability is subject to the two-year statute of limitations. *Sorey*, 82 Wn. App. at 805. Here, Mr. Silver argues that a three-year limitation period applies:

An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

RCW 4.16.080(2).

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Mr. Silver pleaded his action under RCW 59.18.280. In pertinent part, that statute provides:

Within twenty-one days after the termination of the rental agreement and vacation of the premises . . . the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement.

RCW 59.18.280(1). In case of violation of § 280, the legislature provided that the entire damage deposit would be returned to the tenant and the trial court was authorized to provide for damages in double the amount of the damage deposit and reasonable attorney fees. RCW 59.18.280(2). These were the remedies demanded by the complaint. Clerk's Papers (CP) at 10.

Mr. Silver argues that his claim is for return of his damage deposit and accompanying damages and should be considered an action for return of personal property under the three-year statute of limitations. He likens his situation to that in *Seattle Professional Engineering Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 991 P.2d 1126 (2000) (SPEEA). There, new Boeing employees were required to attend a "pre-employment" orientation session without pay. *Id.* at 827. An employee union brought a class action suit against the company, arguing that the mandatory unpaid orientation violated state wage and hour laws. *Id.* at 827-28. As relevant to this appeal, the court ruled that the three-year statute of limitations of RCW 4.16.080(3) governing unjust enrichment applied rather than the two-year catchall statute. *Id.* at 836-38. In

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Silver v. Rudeen Mgmt. Co.

doing so, the court also rejected the employees' argument that RCW 4.16.080(2) applied. *Id.* at 836-37. The court noted that the right being asserted was protected both by law and statute. *Id.* at 838. However, not all tort-related actions were governed by the three-year statute. *Id.* at 837.

Rudeen argues that where the common law creates a right of recovery and a statute supplements that cause of action, the three-year limitation statute applies, but where the statute creates its own new cause of action unrelated to an existing action, the two-year catchall is applicable. It finds support for this view in the noted comments from *SPEEA* and the synthesis of the case law found in *Lewis v. Lockheed Shipbuilding & Construction Co.*, 36 Wn. App. 607, 676 P.2d 545 (1984). In *Lewis*, the court found that an employment discrimination claim based on the Washington Law Against Discrimination, ch. 49.60 RCW, enforced a "valuable right or privilege enjoyed by Lewis." *Id.* at 612. Canvassing the case authority, *Lewis* ruled that where a defendant "directly invades a legally protected interest," the three-year limitation statute applied. *Id.*

Thus, the ultimate question concerns the nature of the right invaded. Silver argues that he was seeking return of his damage deposit, a property right protected by RCW 4.16.080(2). If he had filed a replevin action, we would agree with him. However, his complaint is expressly predicated on the landlord's duty under RCW 59.18.280(1) to respond within twenty-one days by either returning a damage deposit or providing a final

No. 36165-9-III
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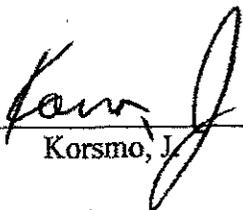
statement justifying the withholding of some or all of the deposit. He seeks the remedies accorded by that statute. He does not assert that he did less than \$300 damage to the apartment.

We conclude that this is an action to enforce the statute, not an action for return of property. It is the difference between saying "I did not do \$300 worth of damage, return my deposit," and saying "you did not respond in a timely fashion as required, so pay me the statutory remedies." The former involves a personal right of the plaintiff to possession of his own funds. The latter involves a breach of statutory duty in derogation of the plaintiff's rights.

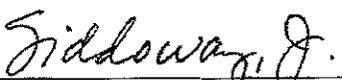
This was an action to enforce the deposit return obligation of the RLTA. It was not an action for return of personal property. The two-year statute of limitations period applied. RCW 4.16.130.

This action was brought more than two years after it had accrued. The trial court correctly determined that it was untimely.

Affirmed.


Korsmo, J.

WE CONCUR:


Siddoway, J.


Lawrence-Berrey, C.J.

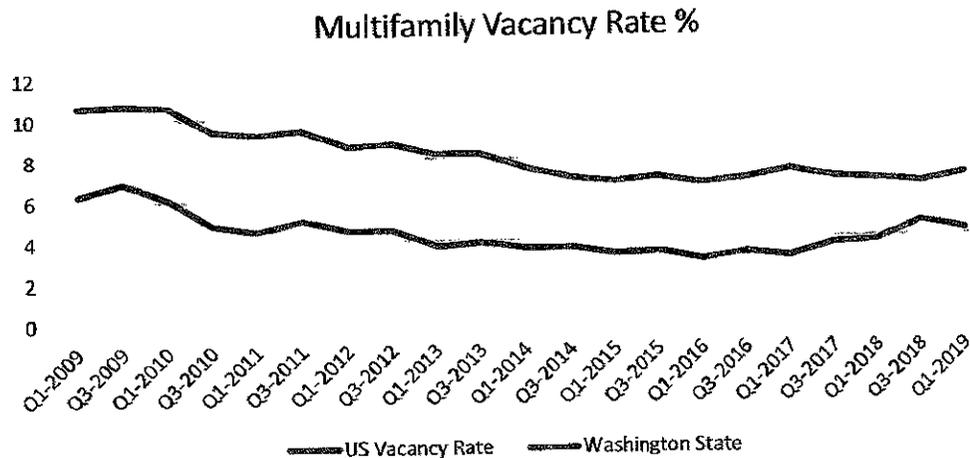
WASHINGTON STATE APARTMENT MARKET REPORT – SPRING 2019

Vacancy Summary

The statewide apartment vacancy rate declined slightly from 4.7% to 4.3% in Spring 2019. While there is variability among the individual county rates, all of the counties outside of the Puget Sound region included in the survey had vacancy rates below 5%, which is usually considered the threshold for a tight rental market. An acute shortage of rental units is typically characterized as a vacancy rate below 3%. This was the case in every county outside of the Puget Sound region. While vacancy rates are rising in the Puget Sound region as well as Spokane and Clark Counties, most other counties are experiencing a tightening of the rental market as new rental supply has been slow to materialize.

Market Summary

Apartment markets nationwide have shown declining vacancy rates with a current rate of 7.0%, slightly lower than the figure reported for Q3-2018 and higher than the 15 year low of 6.8% recorded in Q3-2016. Washington has shown a more exaggerated trend thanks to inward migration and increased demand for housing, particularly in more urbanized areas of the state. While the statewide vacancy rate stands at 4.3%, this is primarily driven by higher vacancy rates occurring in more urban areas of the state, particularly King and Snohomish Counties. As new supply continues to come into the Puget Sound, Spokane, and Clark county markets, this vacancy rate highlights key regional issues in the rental housing market and an increased divergence of residential housing costs within the state.



Source: US Census Bureau, WCRER

Over the past year, Benton/Franklin counties (Tri-Cities area) recorded the greatest decline in vacancy rates falling to 1.1%. Out of the 18 counties covered, 7 saw an increase in the number of vacancies while 11 showed a decrease or no change in the percentage of units vacant. The lowest vacancy rate was observed in Skagit County with a vacancy rate of 0.0%, a change from 0.5% recorded in the same period last year. The highest vacancy rate was recorded in King County with a vacancy rate of 5.3%. While this rate is difficult to compare with past periods due to methodological changes, this vacancy rate is the highest recorded for the county on any broad survey since 2016.



Washington State Apartment Market Report – Fall 2018

Data and Methods

Since the Fall 2017 survey, Dupre + Scott Apartment Advisors (D+S) ceased operations and no longer provide market data for 5 counties in the Puget Sound region (King, Pierce, Snohomish, Kitsap, and Thurston). In Spring 2018, surveys were conducted by WCRER in cooperation with several key management companies in the area to produce interim statistics for use in the market report. Since that time, the WCRER was granted permission use to audited statistics from Apartment Insights survey of 50+ unit developments for the region. Survey and field data was then cross referenced with other sources (such as appraisers and brokers) in order to provide a reliable base for comparison in relation to geography and unit mix.

Caution is advised in using this data as a substitute for D+S for investment decision making, particularly when comparisons are made between the past rental data provided in previous WCRER reports. While all due and reasonable care has been used, response rates differ markedly between the surveys and there are significant sample differences between the Apartment Insights survey of 50+ unit developments, past WCRER surveys, and past D+S surveys of 20+ unit developments. As a result, the rental rate data contained in this report for King, Snohomish, Pierce, Kitsap and Thurston counties is not directly comparable with past reports. Further, weights in computing statewide averages will vary considerably from past reports because of the relatively high number of multi-family units in the Puget Sound Region and different in response rates. Methods in surveying rents and vacancies in other counties of the state remain unchanged and data for other areas of the state is comparable between surveys subject to sample and response rate differences.

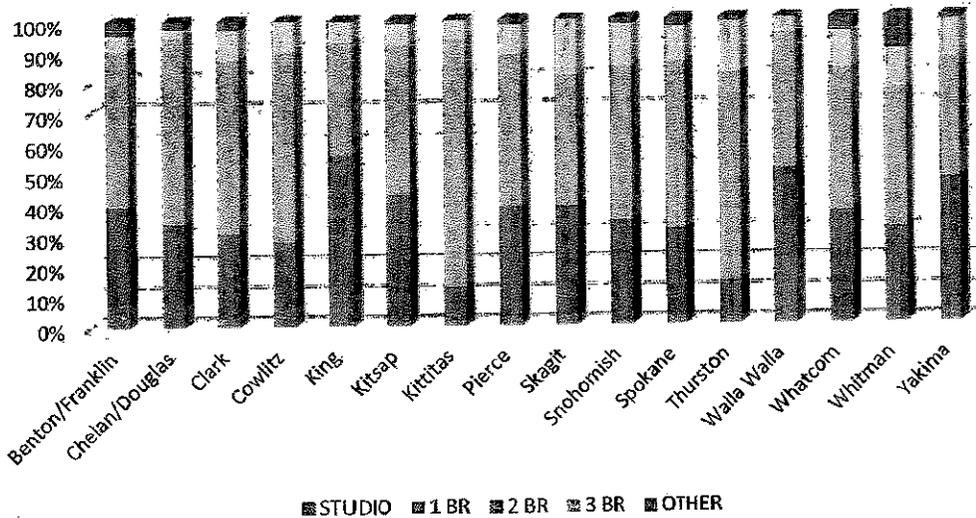
Coverage Statistics – Apartment Market Surveys

	Units Surveyed/Inventory	1 Bedroom Units	2 Bedroom / 1 Bath units
Benton/Franklin	10,847	3,716	2,476
Chelan/Douglas	1,638	479	577
Clark	18,009	4,815	4,708
Cowlitz	1,262	327	607
King	147,271	61,419	23,396
Kitsap	7,115	2,426	1,992
Kittitas	2,717	581	1,028
Pierce	38,331	13,996	10,459
Skagit	1,752	830	417
Snohomish	32,800	13,110	7,008
Spokane	8,447	2,564	2,030
Thurston	10,703	4,193	2,346
Walla Walla	906	281	408
Whatcom	12,851	2,316	2,364
Whitman	4,439	1,382	1,511
Yakima	3,501	1,745	997
STATEWIDE	302,589	114,180	62,324

Washington State Apartment Market Report – Fall 2018

While the WCRER survey excludes government-assisted housing, the total universe of rental units within the state includes both subsidized and market rate properties. This is a significant issue particularly within smaller counties where a greater proportion of the multifamily market is dependent on some form of federal, state or local funding. Note that several counties are combined where they are both contiguous and there is urban development to support defining them as a single 'market area.'

**WCRER Apartment Market Survey Unit Composition
Spring 2019**



Summary Statistics by Unit Type

Examining the average floor area of apartments throughout the state reveals significant differences in the price per unit floor area within individual markets. The largest apartment sizes are found in Clark County with an average unit size of 909 square feet. On average, the smallest units are found in Walla Walla County with an average floor area of 720 square feet.

As noted in the graph above, one-bedroom apartments are the most popular type of unit in the state, accounting for about 29.4% of all units. The statewide vacancy rate for one-bedroom units has steadily fallen for the past 8 years from a peak of 6.5% in September 2009 to 1.7% in Spring 2018, excluding the Puget Sound counties.

One Bedroom Apartments

While vacancy rates varied throughout the state, every county outside of the Puget Sound surveyed had vacancy rates below 3% for one-bedroom apartments. The lowest vacancy rate for one-bedroom apartments was recorded in Walla Walla County at 0.0%. The highest vacancy rate recorded for one-bedroom apartments was in Spokane County at 2.96%. Data on vacancies by bedroom for the Puget Sound region was not available for this survey. Outside of the Puget Sound region, the one bedroom vacancy rate stands at 1.2%

Washington State Apartment Market Report – Fall 2018

Apartment Summary Statistics – One-Bedroom Apartments

	Average Size (SF)	Units Surveyed	Vacancies	Average Rent	Rent/Unit Floor Area	Vacancy Rate*
Benton/Franklin	681	3,716	62	\$850	\$1.25	1.7%
Chelan/Douglas	632	479	6	\$1,152	\$1.82	1.2%
Clark	696	4,815	72	\$1,126	\$1.62	1.5%
Cowlitz	750	327	3	\$706	\$0.94	0.9%
King	678	61,419	-	\$1,661	\$2.45	0.0%
Kitsap	653	2,426	-	\$1,225	\$1.88	-
Kittitas	610	581	0	\$688	\$1.13	0.0%
Pierce	672	13,996	-	\$1,100	\$1.64	-
Skagit	659	830	4	\$955	\$1.45	0.5%
Snohomish	671	13,110	-	\$1,312	\$1.95	-
Spokane	666	2,564	44	\$887	\$1.33	1.7%
Thurston	677	4,193	-	\$1,059	\$1.56	-
Walla Walla	598	281	2	\$767	\$1.28	0.7%
Whatcom	616	2,316	12	\$947	\$1.54	0.5%
Whitman	584	1,382	8	\$702	\$1.20	0.6%
Yakima	633	1,745	12	\$642	\$1.01	0.7%
Statewide	673	114,180	225	\$1,396	\$2.07	1.2%

*calculation of vacancy by unit type excludes units in Puget Sound counties.

With an average rent of \$1,152, the Chelan/Douglas county area (Wenatchee) recorded the highest rent levels for one-bedroom apartments outside of the Puget Sound region, a slight increase on \$1,143 recorded last quarter. Yakima County had the lowest rents at \$642 per month. On a floor area basis, the highest rent for one-bedroom units was found in King County at \$2.45 per square foot with the lowest found in the Longview market area at \$0.94 per square foot.

Two Bedroom – One Bathroom Apartments

The second most prevalent type of apartment in Washington consists of 2 bedrooms and 1 bathroom (2BR/1Bath) accounting for 28.9% of all apartment units according to the 2010 Census. King County had the highest average 2BR/1Bath unit rent (\$1,746) as well as the highest average rent per square foot (\$2.03). Yakima County recorded the lowest average rent of \$807 and had lowest price per square foot (\$0.96). Outside of the Puget Sound Region, the average vacancy rate was 1.4% for two bedroom apartments.

Apartment Summary Statistics – Two Bedroom Apartments

	Average Size (SF)	Units Surveyed	Vacancies	Average Rent	Rent/Unit Floor Area	Vacancy Rate
Benton/Franklin	872	2,476	37	\$827	\$0.95	1.5%
Chelan/Douglas	867	577	14	\$1,131	\$1.30	2.4%
Clark	887	4,708	94	\$1,228	\$1.38	2.0%
Cowlitz	822	607	4	\$858	\$1.04	0.7%
King	863	23,396	-	\$1,746	\$2.03	-
Kitsap	858	1,992	-	\$1,325	\$1.54	-
Kittitas	722	1,028	7	\$1,012	\$1.40	0.7%
Pierce	873	10,459	-	\$1,258	\$1.44	-
Skagit	822	417	0	\$1,060	\$1.29	0.0%
Snohomish	867	7,008	-	\$1,450	\$1.68	-
Spokane	850	2,030	35	\$1,005	\$1.18	1.7%
Thurston	858	2,346	-	\$1,134	\$1.32	-
Walla Walla	815	408	7	\$914	\$1.12	1.7%
Whatcom	847	2,364	19	\$1,091	\$1.29	0.8%
Whitman	779	1,511	17	\$851	\$1.09	1.1%
Yakima	837	997	10	\$807	\$0.96	1.0%
Statewide	860	62,324	244	\$1,397	\$1.62	1.4%

*calculation of vacancy by unit type excludes units in Puget Sound counties.

Among 2BR/1Bath apartments, vacancies were lowest in the Mt. Vernon market area with a vacancy rate of 0.0%. The highest vacancy rate outside of the Puget Sound Region was found in Spokane County with a vacancy rate of 1.7%. Extraordinarily low vacancy rates were noted throughout all counties in the state outside of the Puget Sound Region.

All Unit Types

Using the sample of all units surveyed vacancy rates increased with an overall vacancy rate of 4.3%. Primarily driven by relatively high vacancy rates in the Puget Sound region and the large volume of rental units in comparison to other areas of the state, King County recorded the highest overall vacancy rate at 5.3% while the lowest was found in Skagit County with a vacancy rate of 0.0%. It should be noted that all Outside of the Puget Sound Region, the average vacancy rate is 1.3% and no counties recorded a vacancy rate above 3%, indicating that rental markets are extremely tight outside of the Seattle/Tacoma area.

Washington State Apartment Market Report – Fall 2018

Apartment Summary Statistics – All Apartment Units

	Average Unit Size (SF)	Units Surveyed	Vacancies	Average Rent	Rent/Unit Floor Area	Vacancy Rate
Benton/Franklin	844	10,847	177	\$983	\$1.16	1.6%
Chelan/Douglas	826	1,638	26	\$1,151	\$1.39	1.6%
Clark	910	18,009	324	\$1,319	\$1.45	1.8%
Cowlitz	779	1,262	8	\$853	\$1.10	0.6%
King	816	147,271	7,808	\$1,806	\$2.26	5.3%
Kitsap	830	7,115	348	\$1,400	\$1.69	4.9%
Kittitas	818	2,717	14	\$1,118	\$1.37	0.5%
Pierce	865	38,331	1,732	\$1,283	\$1.48	4.5%
Skagit	772	1,752	7	\$1,100	\$1.42	0.4%
Snohomish	832	32,800	1,701	\$1,465	\$1.77	5.2%
Spokane	879	8,447	169	\$1,091	\$1.24	2.0%
Thurston	861	10,703	433	\$1,205	\$1.40	4.0%
Walla Walla	696	906	10	\$816	\$1.17	1.1%
Whatcom	792	12,851	51	\$989	\$1.25	0.4%
Whitman	800	4,439	40	\$966	\$1.21	0.9%
Yakima	724	3,501	42	\$740	\$1.02	1.2%
Statewide	831	302,589	12,890	\$1,513	\$1.82	4.3%

With all unit types analyzed, the influence of unit mix plays a significant role in determining the average rent. For example, King, Walla Walla, and Yakima counties have a proportionally high number of 1 bedroom and studio units which will provide downward influence on overall rents compared to places with a high proportion of 3 bedroom units which tend to rent for a higher amount. Given those influences, King county recorded the highest average overall rent as well as the highest rent per unit floor area of \$1,806 and \$2.26 per square foot. Yakima County recorded the lowest average rent of \$740 as well as the lowest rent of floor area at \$1.02 per square foot.

Time and Seasonality

The WCRER Apartment Market Report uses March and September data so that seasonal variation between markets is minimized. For example, Whitman and Kittitas counties are greatly influenced by the academic year. Yakima and Chelan/Douglas counties are greatly influenced by agricultural cycles. Taking the surveys at 6 monthly intervals incorporating the timing ensures that more accurate reflections of the market are recorded. Please note that there is limited comparability between this survey and previous versions of this report.

QuickFacts
Washington

QuickFacts provides statistics for all states and counties, and for cities and towns with a population of 5,000 or more.

Table

 **PEOPLE**

Population	
Population estimates, July 1, 2018, (V2018)	7,535,591
Population estimates base, April 1, 2010, (V2018)	6,724,540
Population, percent change - April 1, 2010 (estimates base) to July 1, 2018, (V2018)	12.1%
Population, Census, April 1, 2010	6,724,540
Age and Sex	
Persons under 5 years, percent	▲ 6.1%
Persons under 18 years, percent	▲ 22.1%
Persons 65 years and over, percent	▲ 15.4%
Female persons, percent	▲ 50.0%
Race and Hispanic Origin	
White alone, percent	▲ 78.9%
Black or African American alone, percent (a)	▲ 4.3%
American Indian and Alaska Native alone, percent (a)	▲ 1.9%
Asian alone, percent (a)	▲ 9.3%
Native Hawaiian and Other Pacific Islander alone, percent (a)	▲ 0.8%
Two or More Races, percent	▲ 4.8%
Hispanic or Latino, percent (b)	▲ 12.9%
White alone, not Hispanic or Latino, percent	▲ 68.0%
Population Characteristics	
Veterans, 2014-2018	537,713
Foreign born persons, percent, 2014-2018	14.0%
Housing	
Housing units, July 1, 2018, (V2018)	3,148,129
Owner-occupied housing unit rate, 2014-2018	62.7%
Median value of owner-occupied housing units, 2014-2018	\$311,700
Median selected monthly owner costs -with a mortgage, 2014-2018	\$1,826
Median selected monthly owner costs -without a mortgage, 2014-2018	\$564
Median gross rent, 2014-2018	\$1,194
Building permits, 2018	47,746
Families & Living Arrangements	
Households, 2014-2018	2,800,423
Persons per household, 2014-2018	2.55
Living in same house 1 year ago, percent of persons age 1 year+, 2014-2018	82.2%
Language other than English spoken at home, percent of persons age 5 years+, 2014-2018	19.4%
Computer and Internet Use	
Households with a computer, percent, 2014-2018	92.7%
Households with a broadband Internet subscription, percent, 2014-2018	86.5%
Education	
High school graduate or higher, percent of persons age 25 years+, 2014-2018	91.1%
Bachelor's degree or higher, percent of persons age 25 years+, 2014-2018	35.3%
Health	
With a disability, under age 65 years, percent, 2014-2018	8.8%
Persons without health insurance, under age 65 years, percent	▲ 7.5%
Economy	
In civilian labor force, total, percent of population age 16 years+, 2014-2018	63.5%
In civilian labor force, female, percent of population age 16 years+, 2014-2018	58.4%
Total accommodation and food services sales, 2012 (\$1,000) (c)	14,297,278
Total health care and social assistance receipts/revenue, 2012 (\$1,000) (c)	43,966,889
Total manufacturers shipments, 2012 (\$1,000) (c)	131,530,601
Total merchant wholesaler sales, 2012 (\$1,000) (c)	83,313,366
Total retail sales, 2012 (\$1,000) (c)	118,924,049
Total retail sales per capita, 2012 (c)	\$17,249

Transportation	Washington	27.6
Mean travel time to work (minutes), age 16 years+, 2014-2018		
Population estimates, July 1, 2018, (V2018)		7,535,591
Median household income (in 2018 dollars), 2014-2018		\$70,116
Per capita income in past 12 months (in 2018 dollars), 2014-2018		\$36,888
Persons in poverty, percent		▲ 10.3%

BUSINESSES

Businesses		
Total employer establishments, 2017		191,045 ¹
Total employment, 2017		2,768,660 ¹
Total annual payroll, 2017 (\$1,000)		169,766,372 ¹
Total employment, percent change, 2016-2017		3.1% ¹
Total nonemployer establishments, 2017		478,331
All firms, 2012		541,522
Men-owned firms, 2012		262,860
Women-owned firms, 2012		187,677
Minority-owned firms, 2012		92,807
Nonminority-owned firms, 2012		428,897
Veteran-owned firms, 2012		49,331
Nonveteran-owned firms, 2012		461,401

GEOGRAPHY

Geography		
Population per square mile, 2010		104.2
Land area in square miles, 2010		66,455.52
FIPS Code		53

About datasets used in this table

Population estimates, July 1, 2018, (V2018)

7,535,591

Value Notes

- Includes data not distributed by county.

Estimates are not comparable to other geographic levels due to methodology differences that may exist between different data sources.

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info icon to the left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2018) refers to the final year of the series (2010 thru 2018). *Different vintage years of estimates are not comparable.*

Fact Notes

- Includes persons reporting only one race
- Hispanics may be of any race, so also are included in applicable race categories
- Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

Value Flags

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest or upper interval of an open ended distribution.
- D Suppressed to avoid disclosure of confidential information
- F Fewer than 25 firms
- FN Footnote on this item in place of data
- N Data for this geographic area cannot be displayed because the number of sample cases is too small.
- NA Not available
- S Suppressed; does not meet publication standards
- X Not applicable
- Z Value greater than zero but less than half unit of measure shown

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Income and Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

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 Survey of Business Owners

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 2010 Census
 American Community Survey
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 Poverty
 Population Estimates
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KIRK D. MILLER, P.S.

December 23, 2019 - 4:45 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Thomas Silver v. Rudeen Management Company, Inc. (361659)

The following documents have been uploaded:

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