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Recording Date – September 13, 2019

Recording Availability – September 17, 2019

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue – Suite 700 Seattle, WA	Friday, September 13, 2019	12:00 AM to 1:30 PM	Mobile Home Landlord Tenant Act

AGENDA

11:45 – 12:00 pm	Registration & Coffee Service
12:00 – 1:15 pm	Basic Statute – MHLTA Defending Evictions Options if Tenant Loses at Show Cause Hearing Homestead Protection Resources and Referrals Recent legislative changes
1:15 – 1:30 PM	Questions & Discussions
1:30 PM	Evaluations & Adjourn

Biographies

Chelsea Hicks is an attorney with Northwest Justice Project’s King County Consumer, Housing, Education, and Employment Rights (CHEER) Team. Chelsea also serves on the Affordable Housing Committee of the King County Growth Management Planning Council, volunteers at the King County Housing Justice Project in Kent, serves as a student mentor with the University of Washington School of Law Student Legal Services program, and serves on the board of directors at Seattle Education Access. Chelsea graduated from Seattle University School of Law in 2008. While pursuing her law degree, Chelsea interned with non-profit organizations serving low income clients at Seattle Community Law Center and Alaska’s Network on Domestic Violence and Sexual Assault. Additionally, Chelsea volunteered weekly as a drop-in center volunteer at Lambert House, King County’s GLBTQ teen center.

Prior to joining NJP, Chelsea worked for over three years at Alaska Legal Services Corporation (ALSC), a non-profit legal aid organization, where she represented low-income clients in a variety of areas including home foreclosure defense, public benefits, landlord/tenant, consumer protection, real property, and family law. In addition to her work with ALSC, Chelsea worked as a domestic violence advocate at the Alaska Family Services domestic violence shelter in Palmer, Alaska. Chelsea conducted intakes with domestic violence victims, answered crisis calls, and oversaw the daily operations of the shelter.

Dan Young has been practicing law since 1978. He is a member of the Washington State Bar Association, the Washington State Association for Justice, and the King County Bar Association. He was also a member of the WSBA's Pro Bono and Legal Aid Committee for many years and served as chair of the committee from 2006 – 2010. Dan practices through his own firm, Law Offices of Dan R. Young, and primarily represents consumers and clients opposed by people of position and power. Dan is passionate about seeing justice served for his clients and is unafraid to try a case or to appeal an unjust ruling. From time to time, Dan also testifies before Washington State legislative committees on consumer-related matters. He graduated from Stanford University and obtained his J.D. from the University of California, Berkeley in 1978.

HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

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- ❖ Go to the "mywsba" website at www.mywsba.org/.
- ❖ Log in.
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- ❖ Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

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Manufactured/Mobile Home Park Eviction Defense

DAN R. YOUNG
LAW OFFICES OF DAN R. YOUNG

CHELSEA HICKS
NORTHWEST JUSTICE PROJECT

HOUSING JUSTICE PROJECT
SEPTEMBER 13, 2019



Agenda

- ❑ Basic Statute – MHLTA
- ❑ Defending Evictions
- ❑ Options if Tenant Loses at Show Cause Hearing
- ❑ Homestead Protection
- ❑ Legislative Changes
- ❑ Resources and Referrals

Basic Statute - MHLTA

RCW 59.20



Importance of Eviction Defense

- Don't have freedom to relocate dwelling unit
- Costly to move or relocate
- Risk of losing single largest asset

The MHLTA (RCW ch. 59.20) arose to protect these tenant interests.

Statutes Governing Tenancies

RCW ch. 59.12

- ❑ Unlawful detainer

RCW ch. 59.18

- ❑ Residential tenancies

RCW ch. 59.20

- ❑ Mobile home/manufactured home/“park model” tenancies

Main Reasons for Eviction

RCW 59.20.080(1)

13 Reasons listed in RCW 59.20.080(1):

- (a) Rule violations
- (b) Non-payment of rent
- (c) Conviction of a crime
- (f) Engaging in criminal activity
- (i) Failure of the tenant to comply with applicable laws, ordinances, and regulations

Three Strikes:

- (h) Three 20-day notices of rule violations within 12 months
- (m) Three 14-day notices to pay rent within 12 months

**EVICTIION
NOTICE**

Defending Evictions

Show Cause Hearing – I

- ❑ RCW 59.18.380 incorporated in MHLTA – RCW 59.20.040
- ❑ A tenant may assert any legal or equitable defense arising out of the tenancy.
 - *RCW 59.18.380*
 - *Josephinium Associates v. Kahli*, 111 Wn. App. 617, 625 fn 25, 45 P.3d 627 (2002) (disability discrimination may be defense to non-payment of rent)
- ❑ Tenant May Answer Orally/In Writing at the Hearing
- ❑ Court Shall Examine Parties/Witnesses

Show Cause Hearing – II

□ Summary Judgment Standard

- If factual issue, tenant is entitled to a jury trial
- *Leda v. Whisnand*, 150 Wn. App. 69, 81, 207 P.3d 468 (2009) (court must set for trial)

□ Critical to Get Facts in the Record

- Declaration from client/other tenants

□ Object: Have the case set for jury trial

- Anticipate formal discovery needed

General Defenses

1. Improper Service of Notice
2. Waiver
3. Lack of Good Faith
4. Retaliation
5. Equitable Remedy

1. Improper Service of Notice

RCW 59.20.150 – Required notices must be served:

- a) “personally to the tenant,” or
- b) if the tenant is absent, affixing the notice in a conspicuous place on the MH and mailing to the tenant

2. Waiver

Waiver—acceptance of rent & 3 strikes statute

- *Wilson v. Daniels*, 31 Wn.2d 633, 640, 198 P.2d 496 (1948)
- *Commonwealth Real Estate Services v. Padilla*, 149 Wn. App. 757, 764-65, 205 P.3d 937 (2009) (park waived three strikes statute by accepting rent after the third notice was given to the tenant)

3. Lack of Good Faith

Lack of good faith—RCW 59.20.020:

- ❑ Good faith “excludes a variety of types of conduct characterized as involving ‘**bad faith**’ because they violate community standards of decency, fairness or reasonableness.” *Restatement (Second) of Contracts*, § 205 cmt. a (1979).
- ❑ Bad faith includes, “evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party’s performance.” *Restatement*, § 205 cmt. (d).

4. Retaliation

- ❑ LL takes adverse action against T because T in good faith:
 - Files complaint with governmental authority
 - Requests LL to comply with law
 - Files suit against LL
 - Participates or is a member of a homeowners' organization
 - RCW 59.20.070(5)
- ❑ Limited utility—hard to prove

5. Equitable Remedy

□ Tenant allowed to cure

- *Country Manor MHC, LLC v. Doe*, 176 Wn. App. 601, 612, 308 P.3d 818 (2013) (court fashioned equitable remedy in mobile home case at show cause hearing allowing tenants to cure default);

Defenses to Rule Violations

1. Failure to Properly Adopt Rules
2. Not a Substantial Violation
3. Failure to Give Specific Reason for Violation
4. Failure to Mediate
5. Unenforceable Rule
6. Ambiguous Rule

1. Failure to Properly Adopt Rules

- ❑ Defense: Valid rules as of the inception of the tenancy or as amended upon 30 days' written notice with a 3-month grace period for compliance.
 - RCW 59.20.080(1)(a)
- ❑ Defense: Invalid service
 - RCW 59.20.150

2. Not A Substantial Violation

- Defense: Must be “substantial violation, or repeated or periodic violations of an enforceable rule” of the park
 - RCW 59.20.080(1)(a)

3. Failure to Give a Specific Reason

- Defense: L's Failure to give “specific reason” for eviction in a “clear and concise manner”
 - RCW 59.20.150(3)
 - Tenant has at least one opportunity to cure
 - *Thisius v. Sealand*, 26 Wn.2d 810, 815-16, 175 P.2d 619 (1946)—can't be supplemented with complaint

4. Failure to Mediate

- ❑ Defense: Failure to participate in the mediation process in good faith for a period of 10 days
 - RCW 59.20.080(2)

5. Unenforceable Rule

□ Defense:

- 1) Must promote the convenience, health, safety, or welfare of the residents, . . .
- 2) Must be reasonably related to their purpose
- 3) Must apply to all tenants in a fair manner
- 4) Must not be for purpose of evading LL's obligation
- 5) Must not be retaliatory or discriminatory in nature
 - RCW 59.20.045

6. Ambiguous Rule

Construction of lease in favor of tenant—

- ❑ Unlawful detainer statutes strictly construed in favor of T.
 - *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231-32, 991 P.2d 1211 (2000) (RCW 59.20.080(1)(f) construed in favor of tenant)
 - *Negash v Sawyer*, 131 Wn. App. 822, 286, 129 P.3d 824 (2006) (unlawful detainer statute)
 - *Commonwealth Real Estate Services v. Padilla*, 149 Wn. App. 757, 763 (2009) (interpreting RCW 59.20.080(1)(h) in favor of the tenant)
 - *Truly v. Heuft*, 138 Wn. App. 913, 918, 158 P.3d 1276 (2007) (RCW 59.18.365 construed in favor of tenant)
- ❑ Ambiguous lease interpreted in favor of lessee
 - *Stevenson v. Parker*, 25 Wn. App. 639, 646, 608 P.2d 1263 (1980)

Other Specific Defenses

1. Engaging in Criminal Activity
2. Conviction of a Crime
3. T's Failure to Comply with Legal Obligations
4. Non-payment of Rent

1. Engaging in Criminal Activity

Commission of a criminal act that threatens the health, safety, or welfare of the tenants.

- *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231-32, 991 P.2d 1211 (2000) (Eviction of occupant versus tenant);
- RCW 59.20.080(1)(f)

2. Conviction of a Crime

Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants.

- *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231-32, 991 P.2d 1211 (2000) (Eviction of occupant versus tenant);
- RCW 59.20.080(1)(c)

3. Failure to Comply with Legal Obligations

T's failure to comply with obligations *imposed upon tenants* by statutes, ordinances, etc.

- RCW 59.20.080(1)(i)

4. Non-payment of Rent

- ❑ No real defense
 - ❑ RCW 59.20.080(1)(b)
- ❑ General and procedural defenses – improper service, etc.

**PAY OR
VACATE**

Options if Tenant Loses at Show Cause Hearing

Options if Tenant Loses at Show Cause Hearing

1. Payment of Rent
2. Motion for Revision
3. Motion for Relief from Forfeiture
4. Appeal

1. Payment of Rent

- ❑ Pay rent/fees/costs within 5 days after entry of judgment
 - Tenancy restored per RCW 59.18.410

- ❑ Does this apply to three strikes statute?

2. Motion for Revision

- ❑ Must be filed within 10 days - CR 59(b)
- ❑ Based on record before commissioner
- ❑ Some counties have specific rules about transcripts
 - ❑ Pierce County - PCLR 7(a)(12)(E)
- ❑ Try to get stay from commissioner

3. Motion for Relief from Forfeiture

- ❑ Made to Superior Court within 30 days
- ❑ “full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made.”
 - RCW 59.12.190
- ❑ Tenant may be restored to his or her tenancy

4. Appeal

- ❑ File notice of appeal in the trial court within 30 days
- ❑ File motion in trial court to post mobile home as alternate security in lieu of supersedeas bond
 - RAP 8.1(b)(2) and (b)(4)

5. Sell the Home in Place

- ❑ Within 120 days
- ❑ Tenant must be current on rent incurred after eviction
- ❑ Tenant pays past-due rent, attorney fees and court costs at time rental agreement is assigned
- ❑ RCW 59.20.080(3)—effective July 28, 2019
- ❑ Does not apply to eviction for crimes/criminal activity
- ❑ RCW 59.20.073 applies—transfer of rental agreements

Impact to Tenant: Loss of MH

When a manufactured home owner is threatened with eviction, rental lien foreclosure, or replevin, their asset and their equity are at risk.

Homestead Protection

Homestead Act: protects real or personal property (up to value of \$125,000) that the owner uses as a residence from attachment and from execution or forced sale for the debts of the owner. RCW 6.13.010; RCW 6.13.030; RCW 6.13.070.

Homestead Protection

- ❑ Client must own MH and use it as a residence. RCW 6.13.010.
- ❑ Value of MH must be \$125,000 or less for entire MH to be protected from attachment and from execution or forced sale for the debts of the owner. RCW 6.13.030.
- ❑ Certain debts are not subject to homestead protection, including security agreements describing as collateral the property that is claimed as a homestead. RCW 6.13.080(2).

Evaluate Homestead

- ❑ Whether MH owner has equity in MH
- ❑ Whether MH owner has proof of ownership
- ❑ Whether MH owner lives in MH as residence
- ❑ Whether MH owner has waived homestead rights
 - RCW 59.20.060(2)(g) allows manufactured home owners to waive their homestead rights in order to reach an agreement following a default in rent

Methods to Protect Homestead

- ❑ Record homestead declaration
- ❑ Sell the manufactured home to the LL or a third party and realize equity in manufactured home

New Manufactured Home Laws



Effective Date: July 28, 2019

New Manufactured Home Laws

- Notice to pay or vacate for nonpayment of rent increased to 14 days (from 5 days). RCW 59.20.080(1)(b).
- Notice cure rule violation or vacate increased to 20 days (from 15 days). RCW 59.20.080(1)(a).
- If utilities are changed to be charged independent of the rent during the rental agreement, the landlord must decrease the amount of the rent charged proportionately. RCW 59.20.060(1)(j).
- Tenants must be provided 30 days' written notice of new or amended park rules and three months to comply after the 30-day notice period. RCW 59.20.045(6).

New Manufactured Home Laws

- The landlord must provide a written statement containing accurate historical information regarding the past five years' rental amount charged for the lot. RCW 59.20.060(1)(o).
- 120 days to sell the manufactured home in place following eviction as long as the tenant keeps paying rent. RCW 59.20.080(3).
- When a manufactured home park closes, low-income tenants may be entitled to \$12,000 for a multi-section home or \$7,500 for a single section home; 40% can be cash assistance to secure new housing and 60% for reimbursement for relocation. RCW 59.21.021(3).
- Order of limited dissemination available under RCW 50.20. RCW 59.20.310.

Resources and Referrals

Housing Justice Project

County Courthouse

516 Third Avenue, Room-W314

Seattle, WA 98104

Monday-Friday: 8:00 a.m. - 10:30 a.m.

Regional Justice Center

401 Fourth Avenue North, Room

1281 Kent, WA 98032

Monday-Friday: 8:00 a.m. – 10:30 a.m.

Northwest Justice Project

CLEAR Hotline

Monday-Friday from 9:15 am to 12:15 pm,

at 1-888-201-1014

Seniors age 60 or over may call CLEAR*Sr

at 1-888-387-7111

Questions?
