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The Law of the Ownership and Occupation of Manufactured Homes and Manufactured Home Parks in British Columbia

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THE LAW OF THE OWNERSHIP AND OCCUPATION OF MANUFACTURED HOMES AND MANUFACTURED HOME PARKS IN BRITISH COLUMBIA

I. Introduction

II. The Tenancy Relationship

A. Overview

The tenancy relationship between the owner of a manufactured home park (the "Landlord") and the owner of the manufactured home who places the home on a manufactured home site located within the manufactured home park and pays rent to the Landlord in exchange for exclusive possession of that site (the "Tenant") is primarily governed by the *Manufactured Home Park Tenancy Act*, SBC 2002, c 77 (the "*MHPTA"*) and associated regulations. The MHPTA was enacted as a form of tenant protection legislation. The two most significant ways the MHPTA modifies the common law landlord-tenant relationship is as follows:

1. first, it overlays a tenant friendly statutory scheme over the landlord-tenant relationship, one which largely displaces the common law, although the common law of landlord-tenant still applies for matters not expressly dealt with by the MHPTA; and
2. second, it creates an informal and inexpensive (relative to the courts) means of mandatory dispute resolution by requiring all disputes between landlords and tenants to be adjudicated upon and resolved by delegates of the Director of the Residential Tenancy Branch of B.C. who are also known as arbitrators.

Currently, there is only one regulation associated with the *MHPTA*, the Manufactured Home Park Tenancy Regulation, BC Reg 481/2003 (the "MHPTA Regulation").

The *MHPTA* applies to all tenancy agreements, manufactured home sites, and manufactured home parks (s. 2, *MHPTA*), with the following two exceptions (s. 4, *MHPTA*):

- tenancy agreements whereby a manufactured home site and a manufactured home are both rented to the same tenant[1]; or
- prescribed tenancy agreements, manufactured home sites or manufactured home parks[2].

The MHPTA also does not apply to land located within the Agricultural Land Reserve except in unusual cases. See *Helgren v. Campbell*, 2010 BCSC 1247.

Therefore, the *MHPTA* applies in most cases where a Landlord, owning a manufactured home park, rents a manufactured home site to a Tenant, who owns the manufactured home located on the manufactured home site where the Tenant resides.

If the *MHPTA* applies, it is impossible for either the Landlord or the Tenant to contract out of the provisions of the *MHPTA* (s. 5, *MHPTA*). This is because the *MHPTA* is designed to protect Tenants and to give Tenants more rights than are available at common law. As a result of this

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1 In this circumstance where the Landlord rents both the manufactured home and the manufactured home site to the Tenant, the *Residential Tenancy Act*, SBC 2002, c 78 will apply to govern the landlord-tenant relationship.

2 Currently no prescribed tenancy agreements, manufactured home sites or manufactured home parks are set out in the MHPTA Regulation.

protective purpose, any attempts to abrogate a Tenant's rights under the *MHPTA* will be of no force or affect. In addition, ambiguities in the provisions of the *MHPTA* must be resolved in favour of the Tenant (*Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator*, 2007 BCSC 257).

Before embarking on a discussion of the specific provisions, it is important to note that the *MHPTA* preserves the application of the common law to any situation not covered by the *MHPTA* (s. 84, M*HPTA*). Therefore, while most aspects of the tenancy relationship will be governed by the *MHPTA*, if the Act is silent on an issue, the common law applies.

1. Manufactured Homes, Manufactured Home Sites, and Manufactured Home Parks

A manufactured home is defined in section 1 of the *MHPTA* to mean a structure, other than a float home, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried and which is used, or intended to be used, as living accommodations. Whether or not the structure in question is a manufactured home or something else, such as an RV trailer, is understandably a fact driven inquiry as set out below under the heading "When the MHPTA Will Not Apply".

A manufactured home site is defined in section 1 of the MHPTA to mean the site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

A manufactured home park is also defined in section 1 of the *MHPTA*, and means the parcel or parcels on which one or more manufactured home sites are located that the same Landlord rents or intends to rent and includes common areas. A manufactured home park can consist only of a single manufactured home site.

2. When the MHPTA Will Not Apply

a. Licenses to Occupy

As previously stated, the *MHPTA* will not apply to tenancy agreements where the tenant rents both the manufactured home site and the manufactured home, or to any relationship in which the rental does not involve renting a manufactured home site from a landlord of a manufactured home park.

In addition, the *MHPTA* will not apply to any occupation of land that would be considered a license to occupy under the common law (Residential Tenancy Policy Guideline 9, Tenancy Agreements and Licenses to Occupy ("RT Policy Guideline 9"). Typically, a license to occupy is identified as a relationship where the licensee has a short-term and revocable right of possession such as what is frequently found in a campground or an RV park. This is in contrast to a tenancy agreement, which grants a Tenant exclusive possession of a manufactured home site for a longer term, such as from month-to-month.

The MHPTA presumes a tenancy where the Tenant has exclusive possession of the manufactured home site for a term and has paid rent. This presumption may be rebutted by circumstances to the contrary. If there is any dispute regarding whether there is a valid tenancy, the Residential Tenancy Branch of B.C. will consider the parties intentions, and all the

circumstances surrounding the occupation of the manufactured home site. Some factors that weight against a tenancy in the context of a manufactured home site include (RT Policy Guideline 9 at pages 1-2):

- The owner of the manufactured home park retains access to, or control over, the manufactured home site;
- The occupier of the manufactured home site pays taxes and utilities but not a fixed amount in rent;
- The owner of the manufactured home site, or another person allowing occupancy, retains the right to enter onto the manufactured home site without notice;
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations;
- The parties agree that the occupier of the manufactured home site may be evicted without a reason, or may vacate without notice; and
- The written contract suggests that there was no intention that the *MHPTA* applies.

b. Recreational Vehicles

As previously discussed, the definition of a manufactured home is such that it might include recreational vehicles, such as tractor trailers. If there is a dispute as to whether a tractor trailer is the subject of a tenancy under the *MHPTA*, the following factors will be considered, in addition to the factors enumerated above (RT Policy Guideline 9 at page 2):

- the manufactured home is intended for recreational, rather than residential, use;
- the manufactured home is located in a campground or RV park rather than a manufactured home park;
- the rent is calculated on a daily basis, and GST is calculated on the rent;
- the property owner pays utilities (e.g., cable and electricity);
- there is no access to service s and facilities provided in ordinary tenancies; and
- visiting hours are imposed.

The MHPTA also does not apply to float homes (see RT Policy Guideline 27 and s. 1, *MHPTA*). A float home is defined in section 1 of the *MHPTA* to mean a structure that is designed, constructed or manufactured to float on water, used or intended to be used as living accommodation in a fixed location, and is not capable of movement under its own power. The definition of manufactured home in the section 1 of the *MHPTA* specifically exempts float homes from its definition.

c. Non-Living Accommodations and Commercial Tenancies

The *MHPTA* applies to manufactured home sites which, as discussed above, in the definition of manufactured home sites, are intended to be used for living accommodations. Therefore, the *MHPTA* will not apply if the manufactured home site is not being used for living accommodations.

There is an argument that if a Tenant (the “Head Tenant”) rents a number of manufactured home sites in a manufactured home park and re-rents them to different Tenants, there is a commercial tenancy between the Landlord and the Head Tenant. If this is the case, then the

MHPTA has no jurisdiction over the tenancy between the Landlord and the Head Tenant. However, British Columbia courts have typically held that these types of tenancy relationships will be governed by the *MHPTA* (see Residential Tenancy Policy Guideline 14, Type of Tenancy: Commercial or Residential, *Henricks, et al. v. Hebert, et al.,* (BCSC) October 22, 1998, Prince George Registry No. 02572 and *Blue Rentals Ltd. v. Hilbig et al.* (BCSC) February 1, 1999, Terrace Registry No. 10656).

d. First Nation Lands

Although section 88 of the *Indian Act*, RSC 1985, c I-5 ["*Indian Act*"]) makes provincial laws of general application applicable to Indians within the province, the court has held that provincial legislation does not apply to a right of possession on reserve land (*McCaleb v. Rose*, 2017 BCCA 318). A "Reserve" is defined in section 2(1) of the *Indian Act*, and means a tract of land, the legal title of which is vested in the federal Crown, for the use and benefit of a band, and includes designated lands, with some exceptions. "Designated land" is also defined in section 2(1) of the *Indian Act*, and refers to Reserve Land where the band for whose benefit the land was set apart has released or surrendered any of its rights or interests in that land. Therefore, provincial legislation does not apply to a right of possession to Reserve Land or Designated Land (collectively referred to as "Reserve Land").

This means that the *MHPTA* does not apply to tenancy agreements on Reserve Lands where the Landlord is an Indian or a band (as defined in the *Indian Act*) or if the dispute regards the use and possession of Reserve Land (see *Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262 and Residential Tenancy Policy Guideline 27: Jurisdiction). Simply because the *MHPTA* does not apply, however, this does not mean that there is no legislative or regulatory framework governing manufactured home park tenancies on Reserve Land. The framework that will apply, however, will depend on the First Nation in question.

The default legislation that will apply to Reserve Lands is the *Indian Act*. However, several First Nations have opted for First Nations Land Management ("FNLM") under the *First Nations Land Management Act*, SC 1999, c 24 ("*FNLMA*"). First Nations who have opted for FNLM have essentially opted out of the 32 sections of the *Indian Act* governing land management. First Nations under FNLM have the ability to create a land code to govern their Reserve Lands. Once this land code has gone through the necessary approvals, the sections of the *Indian Act* regarding land management no longer apply, and the First Nation has management authority and law-making powers with respect to its Reserve Lands. If the First Nation in question has opted for FNLM, it is the First Nation's land code that will govern manufactured home park tenancies on its Reserve Lands. As of January 2016, 95 First Nations had entered into FNLM and were either developing or operating their own land codes. Some examples of First Nations in BC that have opted for FNLM are the Tahltan Nation and the K'omoks First Nation.

In addition to FNLM, some First Nations have entered into self-governing agreements that include provisions regarding land management, such as the Westbank First Nation ("WFN"). The Westbank First Nation Self-Government Agreement gives the WFN jurisdiction over residential tenancy matters on WFN Reserve Lands. As a result of this self-governance agreement, the WFN have created the *Westbank Residential Premises Law* to govern residential tenancies on WFN Reserve Lands. Therefore, if you are dealing with a manufactured home park

tenancy on WFN Reserve Lands, the *Westbank Residential Premises Law* will govern.

Finally, there are also First Nations in British Columbia who have entered into treaties with the federal and provincial governments regarding their Reserve Lands ("Treaty Settlement Lands"). These Treaty Settlement Lands do not fall within the definition of "Reserve Lands", and therefore, the *MHPTA* may apply to these lands. Whether the *MHPTA* does apply depends on the Final Agreement in question. If the First Nation has enacted its own laws governing residential tenancies and these laws conflict with the *MHPTA*, the *MHPTA* may be inoperable to the extent of the conflict. It will depend on the priority rules set out in the Final Agreement regarding conflicts between the First Nation's laws and federal and provincial laws. Examples of First Nations who have entered into Final Agreements are the Nisga'a Nation and Tsawwassen Indian Band.

e. Military Housing

The federal government has exclusive jurisdiction over military housing that is administered by the Department of National Defense and is managed by the Canadian Forces Housing Agency. This is because section 91(7) of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. gives exclusive jurisdiction to make laws regarding the militia, military, naval services and defense to the federal government. As provincial legislation, the *MHPTA* does not apply to this type of housing. See RT Policy Guideline 26 at page 2 for more information.

f. Transferring Ownership and Co-Signers and Guarantors

Since a tenancy agreement transfers only the Landlord's possessory right to the Tenant and not an ownership interest, the MHPTA does not apply to disputes regarding ownership interests in manufactured homes or manufactured home parks.

Landlords frequently sell manufactured homes to tenants in "rent-to-own" financing arrangements. It is these arrangements that frequently give rise to jurisdictional issues when there is a dispute between the landlord and the tenant.

To decide whether the agreement in fact transfers an ownership interest, the arbitrator may consider the following (RT Policy Guideline 27 at page 5):

- whether money exchanged was rent or was applied to the purchase price;
- whether the agreement entered into between the parties transferred an interest higher than simply the right of possession; and
- whether there was a right to purchase in a tenancy agreement and whether that right was exercised.

The director only has jurisdiction to resolve disputes between parties to the tenancy agreement. Therefore, the director also does not have jurisdiction to resolve disputes between parties and co-signers and guarantors unless they are a party to the tenancy agreement (RT Policy Guideline 27 at page 5).

3. Service of Documents under the MHPTA

Documents, including the tenancy agreement, notices, applications, decisions, and orders, must

be properly served on the other party. This is to notify the other party being served and to allow the other party to prepare for a hearing, if necessary (Residential Tenancy Policy Guideline 12, Service Provisions ("RT Policy Guideline 12") ag page 2).

The MHPTA prescribes how documents must be served on landlords or tenants. It further prescribes when a document is "deemed" received, depending on the manner of service, in the event actual evidence of receipt is not available. The deeming provisions are a frequent source of confusion for landlords and tenants who are not aware of them.

For more details regarding specific service requirements, please refer to RT Policy Guideline 12 which sets out in detail how documents must be served or given generally under the MHPTA and how the deeming provisions provide when legal documents are considered received under the MHPTA.

4. Approved Forms

Frequently, the legislation will require that an approved form be used in order to provide notice of some action that a Tenant or Landlord will wish to take against the other party (e.g., the notice to end a tenancy must be in the "approved form"). It is important to note that deviations from the approved form that do not affect the form's substance and are not intended to mislead do not invalidate the form used (Residential Tenancy Policy Guideline 18, Use of Forms ("RT Policy Guideline 18")). This means that using a form that is not approved by the director may be valid, so long as it contains the required information and is not intended to mislead. However, it is always better to use the approved form and so a prudent practitioner will refer to the Residential Tenancy Branch of B.C.'s website to obtain the most current and up to date form.[3]

5. Extending Time Periods under the MHPTA

Section 59 of the *MHPTA* states that an arbitrator may only extend or modify a time limit established by the *MHPTA* in exceptional circumstances. An arbitrator may not extend the time to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within which rent must be paid without the consent of the Landlord (for more information see Residential Tenancy Policy Guideline 36, Extending a Time Period ("RT Policy Guideline 36")).

When deciding whether there are exceptional circumstances justifying an extension of a time period under the *MHPTA*, the arbitrator will likely consider (see RT Policy Guideline 36 at page 1):

- The party did not willfully fail to comply with the relevant time limit;
- The party had a *bona fide* intent to comply with the relevant time limit;
- Reasonable and appropriate steps were taken to comply with the relevant time limit;

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3 For more information on approved forms, please refer to Residential Tenancy Policy Guideline 18. An alphabetized list of approved forms is available on the RTB website at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms/forms-listed-alphabetically

- The failure to meet the relevant time limit was not caused or contributed to by the conduct of the party;
- The party has filed an application which indicates there is merit to the claim; or
- The party has brought the application as soon as practical under the circumstances.

The above is frequently of fundamental importance for determining whether or not a party, usually a tenant, who has neglected to file an application for dispute resolution in time after receiving a notice to end tenancy served under the MHPTA, should be permitted to dispute the notice despite non-compliance with the time limits set out in the MHPTA.

It is important to note that the above does not apply for time periods not established by the MHPTA but established by regulation, such as time periods set out in the Dispute Resolution Rules of Procedure. In such circumstances, the arbitrator frequently has added discretion to extend or modify time limits, such as for the service of evidence for use in a dispute resolution proceeding, without being constrained to the "exceptional circumstances" set out above.

6. Manufactured Home Parks and the Strata Property Act

On rare occasion a practitioner will encounter a stratified manufactured home park. In such a development, the manufactured home sites comprising the manufactured home park are stratified as strata lots. Each manufactured home site is owned separately by individual owners.

The MHPTA does not apply to such developments. There is no landlord who owns the entire manufactured home park who rents individual manufactured home sites to tenants. Instead, the *Strata Property Act*, SBC 1998, c 43 applies rather than the *MHPTA*. Like with any strata development, the individual owners who own the various manufactured home sites comprising the manufactured home park have common ownership interests in the common areas of the manufactured home park. It is the responsibility of the strata lot owner to repair and maintain the limited common property that the owner has the right to use, along with each owners' respective strata lot, whereas the strata corporation is responsible to repair and maintain the common property and common assets owned jointly by the strata lot owners (s. 72(1) and (2), *Strata Property Act*)[4].

B. Creating the Tenancy Relationship: Tenancy Agreements

In order to rent a site in a manufactured home park, the Landlord and Tenant will typically enter into a written tenancy agreement. Since January 1, 2004, a Landlord is required to prepare a written tenancy agreement for all tenancies entered into after that date (s. 13(1), *MHPTA*). The Landlord is also responsible for ensuring that any tenancy agreement entered into or renewed complies with Part 2 of the MHPTA Regulation.

It is important to note that a Landlord and Tenant may enter into a valid tenancy agreement with regards to a manufactured home site where there is currently no manufactured home on the manufactured home site. The agreement may stipulate that the Tenant is entitled to bring a manufactured home onto the site, and this is a valid tenancy agreement (RT Policy Guideline 9

4 For more information regarding stratified manufactured home parks, please see Residential Tenancy Policy Guideline 21, Repair Orders Respecting Strata Properties.

at page 2).

Furthermore, a tenancy agreement is entered into and the tenancy begins regardless of whether or not the tenant takes occupancy of the site (section 16 of the MHPTA), and whether or not the tenant signs a tenancy agreement. Because of the broad definition of "tenancy agreement" in the MHPTA, a tenancy agreement can arise by implication, and an arbitrator will usually infer the parties have entered into a tenancy agreement when a tenant has paid rent.

Part 2, Division 1 of the *MHPTA* governs the requirements for tenancy agreements. A Landlord must ensure that the tenancy agreement is in writing, signed and dated by both the Landlord and the Tenant, is in type no smaller than 8 point, and is written so as to be easily read and understood by a reasonable person (s. 11(1), MHPTA Regulation).

A tenancy agreement must include the following information (s. 13(2), *MHPTA* and s. 12(1), MHPTA Regulation):

- the standard terms;
- the boundaries of the manufactured home site, measured from a fixed point of reference;
    - frequently, a manufactured home park will not have a survey delineating the location of every manufactured home site within the park. Obtaining such a survey typically is very expensive, and so to comply with this obligation, a practice has developed among manufactured home park landlords to use the manufactured home itself as the fixed point of reference and then measure the boundaries of the manufactured home site from the preexisting location of the manufactured home;
- the correct legal name of both the Landlord and the Tenant;
- the address of the manufactured home site;
- the date the tenancy agreement is entered into;
- the address for service and telephone of the Landlord or the Landlord's agent;
- the park rules
- the agreed terms in respect of the following:
    - the date on which the tenancy starts;
    - if the tenancy is a periodic tenancy, whether it is on a monthly or on some other periodic basis;
    - if the tenancy is a fixed term tenancy, the date on which the term ends;
    - if the tenancy is a fixed term tenancy in circumstances prescribed under section 89(2)(a.1), that the tenant must vacate the manufactured home site at the end of the term[5];

5 The Lieutenant Governor in Council may make regulations prescribing the circumstances in which a Landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a manufactured home site at the end of the term (s. 89(2)(a.1)). Currently, no prescribed circumstances have been established by the Lieutenant Governor in Council in relation to fixed term tenancies (see MHTPA Regulation). Also, it is important to note that as of December 11, 2017, the laws regarding vacate clauses in fixed term tenancies have changed, and these clauses are no longer enforceable, except for in limited circumstances (see the RTB

- the amount of rent payable for a specified period;
- the day in the month, or in the other period on which the tenancy is based, on which the rent is due; and
- services and facilities included in the rent.

The standard terms of a tenancy agreement are included in every tenancy agreement by operation of law. The standard terms are set out in the Schedule to the MHPTA Regulation (s. 12(2), MHPTA Regulation). A tenancy agreement cannot be amended or changed to modify or remove a standard term (s. 14(1), *MHPTA*). This is true even if the tenancy agreement is not in writing (s. 12, *MHPTA*).

The Landlord and Tenant may agree to additional contractual terms, in addition to the standard terms, but these additional terms must not conflict with the standard terms, the MHPTA, or the Regulation to the MHPTA.

If a term of the tenancy agreement contradicts or changes a right, obligation or standard term under the *MHPTA*, that term of the tenancy agreement is void (s. 6(3)(a), *MHPTA*). A term of the tenancy agreement is also unenforceable if it is unconscionable or if the term is not expressed in a manner that clearly communicates the rights and obligations under it (s. 6(3)(b) and (c), *MHPTA*). In this context, unconscionable has been defined to mean a term which is oppressive or grossly unfair to one party (s. 2, *MHPTA*).

If the Landlord and Tenant agree to additional terms in the tenancy agreement other than those required by the *MHPTA*, the Landlord must ensure that the required terms of the tenancy agreement are set out in a manner that makes them clearly distinguishable from terms that are not required (s. 11(2), MHPTA Regulation).

Other terms frequently found in manufactured home site tenancy agreements which are inserted by landlords because they are not included in the standard terms include the following:

1. a covenant requiring the payment of an administration fee of up to $25 for late payment of rent or returned cheques for payment of rent. Such fees are permitted to be charged against tenants by section 5(1)(d) of the Regulation to the MHPTA, provided the tenancy agreement obliges payment of such fees when rent is paid late or when rent cheques or returned for insufficient funds;
2. covenants restricting subletting. Although a landlord cannot prohibit an assignment of a tenant's lease under the MHPTA, section 48(c) provides that a landlord can prohibit subletting, provided the prohibition is expressly set out in the tenancy agreement;
3. a covenant prohibiting pets (except where required to be permitted under the *Guide Dog and Service Dog Act*;
4. terms enumerating the tenant's responsibilities in respect of snow removal and landscaping of the manufactured home site;

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government website, 2017 News Items at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/news and Residential Policy Guideline 30, Fixed Term Tenancies).

5. terms restricting new occupants (i.e,. individuals who reside at a manufactured home site but who are not party to the tenancy agreement) of a manufactured home site without obtaining permission from the landlord in advance;
6. age restrictions. It is worth noting that a term of a tenancy agreement restricting use of the site by persons based on their age is prohibited by the *Human Rights Code* except in circumstances of age restricted parks in which every manufactured home site is subject to an age restriction requiring the tenant to be 55 years of age or older as set out at section 10 of the *Human Rights Code*;
7. use restrictions restricting the use of the manufactured home site to a residential purpose and restricting the use of the manufactured home site for the provision of short term recreational or vacation accommodation;
8. restrictions on the type and number of improvements the tenant may erect upon the manufactured home site outside of the manufactured home itself; and
9. covenants requiring the tenant to obtain liability and property insurance.

Once a tenancy agreement has been entered into between the Landlord and the Tenant, the Landlord must provide a copy of the agreement to the Tenant within 21 days of the parties entering into the agreement (s. 13(3), *MHPTA*). The effective date of the tenancy agreement is the date the tenancy agreement is entered into. This is true even if the tenant never occupies the manufactured home site (s. 16, *MHPTA*).

A tenancy agreement may only be amended if both parties agree to the amendment in writing (s. 14(2), *MHPTA* and s. 1(2), MHPTA Regulation). If the change is not agreed to in writing and is not initialed by both the Landlord and the Tenant, it is not enforceable (s. 1(2), MHPTA Regulation). Section 14(2) does not apply in the following changes or amendments:

- rent increases in accordance with Part 4 of the *MHPTA*;
- a withdrawal of, or a restriction on, a service or facility in accordance with section 21 of the *MHPTA*;
- park rules established in accordance with section 32 of the *MHPTA*; and
- a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

There are specific rules governing these types of changes, which will be discussed in more detail below.

1. Breaches of the Tenancy Agreement

Pursuant to section 7(1) of the *MHPTA*, if either a Landlord or a Tenant does not comply with the MHPTA, associated regulations, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. However, any Landlord or Tenant claiming this compensation must do whatever is reasonable to minimize the damage or loss (s. 7(2), *MHPTA*). This means that although a Landlord or Tenant may claim compensation for damage or loss if the other breaches the tenancy agreement or contravenes the *MHPTA* or associated regulations, the injured Landlord or Tenant also has a responsibility to mitigate their damage or loss. If damage or loss occurs due to non-compliance with the tenancy agreement, *MHPTA* or associated regulations, then the director may determine the amount of, and order

the non-complying party to pay compensation to the other party (s. 60, *MHPTA*).

It is important to note that the types of compensable damage are not limited to physical property, but also include (Residential Tenancy Guideline 16, Compensation for Damage or Loss ("RT Policy Guideline 16") at page 1):

- loss of access to any part of the residential property provided under the tenancy agreement;
- loss of a service or facility provided under the tenancy agreement;
- loss of quiet enjoyment;
- loss of rental income that was to be received under a tenancy agreement and any associated costs; and
- damage to a person, including both physical and mental damage.

In deciding whether compensation will be awarded, the arbitrator will consider whether (RT Policy Guideline 16 at pages 1-2)[6]:

- a party to the tenancy agreement has failed to comply with the *MHPTA*, associated regulations, or the tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize the damage or loss.

The purpose of compensation is to put the injured party in the same position they would be in had there been no infraction of the *MHPTA*, associated regulations, or tenancy agreement (if any). Therefore, to determine the amount of compensation, the arbitrator may consider the value of the damage or loss that resulted from the non-compliance, as well as the amount of money the *MHPTA* states the non-compliant party must pay. It is important to note that this award is for compensation only, and may not have a punitive element (RT Policy Guideline 16 at page 2).

The two-year limitation period for filing applications for dispute resolutions set out in section 53 of the *MHPTA* applies, unless the *MHPTA* specifically sets out a different limitation period for the type of claim at issue (RT Policy Guideline 16)[7].

2. Clauses Providing for Payment of Liquidated Damages

Often, tenancy agreements will include clauses that stipulate in advance the damages payable in the event of a breach of the tenancy agreement. Clauses stipulating for the payment of liquidated damages are typically enforceable, whereas penalty clauses are typically unenforceable. In order to be considered "liquidated damages", the amount agreed to in the

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6 Note that arbitrators may award nominal and aggravated damages in addition to compensatory damages. For further discussion, please refer to RT Policy Guideline 16 at page 2.

7 Note that a party to a claim may file a counterclaim outside the limitation period if they do so before the dispute resolution hearing takes place (RT Policy Guideline 16 at pages 2-3).

tenancy agreement must represent a genuine pre-estimate of the loss at the time the contract is entered into (Residential Tenancy Policy Guideline 4, Liquidated Damages ("RT Policy Guideline 4)).

To determine whether a clause is a penalty clause or a liquidated damages clause, the arbitrator will typically consider the circumstances at the time the contract was entered into, as well as the following considerations (RT Policy Guideline 4):

- a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach;
- if an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty; and
- if a single lump sum is to be paid on the occurrence of several events, some trivial and some serious, there is a presumption that the sum is a penalty.

The following will also be considered penalty clauses (RT Policy Guideline 4):

- a clause which provides for the automatic forfeiture of the security deposit in the event of a breach of the tenancy agreement, unless the Landlord can demonstrate that the amount of the security deposit is a genuine pre-estimate of loss; and
- a clause which provides for the payment of a late payment fee, if the amount charged is not proportionate to the costs the Landlord would incur as a result of the late payment.

If the clause is determined to be a liquidated damages clause and is therefore enforceable, the Tenant must pay the stipulated sum. This is true even if the Landlord's actual damages are negligible (or non-existent). A liquidated damages clause will only be unenforceable if it is oppressive to the party having to pay. For more information, see RT Policy Guideline 4.

If the clause is determined to be a penalty clause, it will be unenforceable, but will still serve as an upper limit on the damages payable resulting from the breach of the tenancy agreement. This is true even if the actual damages have exceeded the amount set out in the penalty clause. For more information, see RT Policy Guideline 4.

3. Unconscionable Terms of a Tenancy Agreement

Unconscionable terms in the tenancy agreement will be unenforceable. Section 2 of the Regulation to the MHPTA defines unconscionable as a term of a tenancy agreement which is oppressive or grossly unfair to one party.

Whether a term will be unconscionable depends on a variety of factors including the following (Residential Tenancy Policy Guideline 8, Unconscionable and Material Terms ("RT Policy Guideline 8"):

- the term exploits the age, infirmity or mental weakness of a party;
- the term provides a procedural advantage;
- the term limits available damages; or
- one party took advantage of the ignorance, need or distress of the weaker party.

The burden of proof to establish that a term of the tenancy is unconscionable always rests with the party alleging unconscionability (RT Policy Guideline 8).

It is worth noting that the common law still applies except where expressly supplanted by the MHPTA or the Regulation and it is unclear if common law principles concerning unconscionability are overruled by the statutory definition set out above.

4. Material Terms of a Tenancy Agreement

A material term is "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement" (RT Policy Guideline 8 at page 1). However, it is important to note that simply because the parties have called a term material does not in fact make that term a material term of the tenancy agreement. Whether a term of the tenancy agreement is a material term will depend on the true intentions of the parties and the facts and circumstances surrounding the creation of the tenancy agreement. The party alleging the materiality of the term must prove that it is a material term.

In order to end a tenancy for breach of a material term in the tenancy agreement, the party alleging the breach must inform the other party in writing of the following (RT Policy Guideline 8 at page 2):

- That there is a problem;
- That they believe the problem is a breach of a material term of the tenancy agreement;
- That the problem must be fixed by a deadline included in the letter (this deadline must be reasonable); and
- That if the problem is not fixed by the deadline, the party will end the tenancy.

In other words, the MHPTA codifies the requirement frequently found in commercial leases to give notice to cure a breach of a tenancy agreement before a party can end the tenancy on the basis of that breach.

It is important to note that a party may not be found to be in breach of a material term of the tenancy agreement if they were unaware of the problem (RT Policy Guideline 8 at page 2).

a. Pet Clauses

A tenancy agreement may include a clause prohibiting a Tenant from keeping animals on their manufactured home site or prohibiting the Tenant from keeping animals of a certain size, kind or number. The tenancy agreement may also include a clause setting out the Tenant's obligations regarding how animals must be kept. Collectively, these clauses will be referred to as "Pet Clauses".

If a pet clause is breached, the Landlord will usually give the Tenant written notice to remove the animal from the manufactured home site. If the Tenant fails to do so within a reasonable time, the Landlord may give the Tenant a notice to end the tenancy on the basis that the Tenant has breached a material term in the tenancy agreement (if the Pet Clause is a material term of the tenancy agreement) or the Landlord might apply for an order that the Tenant comply with the Pet Clause in the tenancy agreement.

A Landlord can usually only end the tenancy over a breach of a Pet Clause if the Pet Clause is a material term of the tenancy. However, if the pet causes extraordinary damage, unreasonably disturbs the enjoyment of other occupants of the manufactured home park, or threatens the safety or lawful rights or interests of the Landlord or other Tenants, the Landlord may be able

to end the tenancy without providing notice in advance. Whether or not a Pet Clause is a material term of the tenancy agreement will depend on what the parties intended as consequences for a breach of that term. If the Pet Clause captures trivial breaches which a reasonable person would not consider as justification for ending a tenancy, the term may not be found to be a material term. Even if the parties call the Pet Clause a material term, that is not determinative. It is for the arbitrator to determine whether the Pet Clause is a material term.

Finally, a Landlord may not discriminate against a person with a disability who intends to keep a guide or service dog in their manufactured home with them (s. 3, *Guide Dog and Service Dog Act*, SBC 2015, c 17).

For more information on Pet Clauses, please see Residential Tenancy Policy Guideline 28, Pet Clauses.

5. Frustration of the Tenancy Agreement

Section 85 of the MHPTA expressly provides that the *Frustrated Contract Act* and the common law doctrine of frustration of contract apply to tenancy agreements made under the MHPTA.

If the tenancy agreement is frustrated, the Landlord and Tenant are relieved from their obligations under the tenancy agreement. A contract, such as a tenancy agreement, is frustrated where, without the fault of either party, performance of the contract becomes impossible due to an unforeseeable event radically changing the circumstances within which the contract was to be performed (see Residential Tenancy Policy Guideline 34, Frustration ("RT Policy Guideline 34")).

The test for frustration is a high bar and requires the change in circumstances to totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both parties are concerned. Mere hardship is not sufficient so long as the contract could still be fulfilled according to its terms.

For more information on frustrated contracts, please refer to the *Frustrated Contracts Act*, the common law doctrine of frustration of contract, and RT Policy Guideline 34.

6. Co-Tenants

In its interpretation of the MHPTA, the Director has created a concept known as "co-tenancy" which is similar in many ways to the concept of joint tenancy which is more widely known in real property law.

Co-tenants are two or more Tenants who rent the same property under the same tenancy agreement, have equal, rights under the tenancy agreement and are jointly responsible for meeting the terms of the Tenancy Agreement (Residential Tenancy Policy Guideline 13, Rights and Responsibilities of Co-Tenants ("RT Policy Guideline 13") at page 1)[8]. If a Tenant merely

8 It is important to note the difference between joint tenants and tenants in common. Tenants in common are two or more tenants who share the same premises and enter into separate tenancy agreements with the Landlord. Tenants in common are responsible only for their own agreement, and are not responsible for debts and damages relating to the other tenancy (RT Policy Guideline 13 at page 2).

allows a person to move into the premises and share the rent, this person is an occupant only, not a Tenant, and has no rights or obligations under the tenancy agreement. An occupant may become a Tenant if all parties agree to enter into a new tenancy agreement to include the new occupant as a Tenant (RT Policy Guideline 13 at page 2).

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the Landlord is entitled to recover the full amount of any debts or damages from all or any one of the Tenants, and the responsibility to apportion among themselves the amount owing to the Landlord falls to the Tenants (RT Policy Guideline 13 at page 1). For more information regarding co-tenants, see RT Policy Guideline 13.

C. Quiet Enjoyment of the Manufactured Home Site

Section 22 of the *MHPTA* states that a Tenant is entitled to quiet enjoyment of their manufactured home site. A Landlord is required to ensure that the Tenant's entitlement to quiet enjoyment is protected. Quiet enjoyment includes, but is not limited to (Residential Tenancy Policy Guideline 6, Entitlement to Quiet Enjoyment at page 1 ("RT Policy Guideline 6")):

- reasonable privacy;
- freedom from unreasonable disturbances;
- exclusive possession, subject to the Landlord's right of entry under any applicable legislation; and
- se of common areas for reasonable and lawful purposes, free from significant interference.

A breach of the Tenant's right to quiet enjoyment occurs when their ordinary and lawful enjoyment of the manufactured home site is substantially interfered with, including when the Landlord has directly caused the interference or when the Landlord was aware of the interference, but didn't take reasonable steps to correct the interference. This can include actions by other Tenants, if the Landlord was aware of these actions and failed to take reasonable steps to correct the problem.

Note that substantial interference does not include temporary discomfort or inconvenience. For there to be a breach of the Tenant's right to quiet enjoyment of the manufactured home site, there must be frequent and ongoing interference or unreasonable disturbances. It a highly fact specific inquiry. Loss of a portion of the manufactured home site while the Landlord completes repairs or renovations can be a breach of the Tenant's right to quiet enjoyment, even if the Landlord has made reasonable efforts to minimize disruption to the Tenant. For example, there are arbitration decisions in which arbitrators have awarded rent abatement for a period of time in which the Landlord was engaged in a lengthy repair or renovation, one that took in excess of a month to complete, but completed in accordance with all applicable laws, on the basis the ongoing disruption and noise created by the work constituted significant interference and a breach of the Tenant's right to quiet enjoyment. It is therefore prudent for a Landlord about to engage in such a renovation to ensure that it takes reasonable steps to minimize the disruption the renovation or repair will cause at the manufactured home park to its residents.

A Landlord cannot enter onto a Tenant's manufactured home site unless they provide proper notice to the Tenant and the access is for a reasonable purpose (Residential Tenancy Policy

Guideline 7, Locks and Access ("RT Policy Guideline 7"). However, the Landlord may enter onto a manufactured home site in order to collect rent or to serve documents pursuant to the *MHPTA*. A Landlord can never enter a Tenant's manufactured home without that Tenant's permission (RT Policy Guideline 7 at page 3). This is unlike the *Residential Tenancy Act*, where delivery of proper notice entitles the Landlord to enter into the rental unit itself to conduct an inspection.

If the Tenant's entitlement to the quiet enjoyment of their manufactured home site has been breached, the Tenant may make a claim against the Landlord for compensation under section 60 of the *MHPTA*. To determine the amount of the award, the arbitrator will consider the value by which the tenancy has been reduced by taking into consideration the following (RT Policy Guideline 6 at pages 1-2):

- the seriousness of the situation or the degree to which the Tenant has been deprived of the right to quiet enjoyment; and
- the length of time over which the situation has existed.

A Tenant is not permitted to deduct any amount from their rent as compensation for a breach of their entitlement to quiet enjoyment of their manufactured home site unless such a deduction is authorized by the director (see RT Policy Guideline 6 at page 2).

Finally, it is important to note that a breach of the Tenant's right to quiet enjoyment of their manufactured home site has been held to be a fundamental breach of a material term of the tenancy agreement (RT Policy Guideline 6 at page 2). This means that pursuant to section 38 of the *MHPTA*, the Tenant may provide the Landlord with written notice to end the tenancy due to a breach of this material term. However, compensation for loss may be more appropriate, depending on the circumstances (RT Policy Guideline 6 at page 2). Note that if a Tenant provides notice to end the tenancy on the basis of a breach of a material term, the notice must comply with section 45 of the *MHPTA* (s. 38(4), *MHPTA*).

D. Moving a Manufactured Home into a Manufactured Home Park

Typically, a Tenant will own their manufactured home and will only be renting a site in the manufactured home park from the Landlord. This means that a Tenant will be required to physically move their manufactured home onto the site they have rented. The relocation is frequently performed by towing companies which specialize in the towing of unusual or large structures like manufactured homes.

A Tenant is required to provide the Landlord, on request, with a prescribed form of security against damage caused by the move if the Landlord makes such a request (s. 29, *MHPTA*). The only prescribed form of security that a Landlord can require is proof of third party insurance against damage to the park caused by moving the manufactured home on or off the manufactured home site (s. 2, MHPTA Regulation).

Landlords should be mindful of the fact that if a Tenant hasn't fully paid the builder of the manufactured home for the manufactured home or for any alterations made to the home, there may be a builders lien on the manufactured home park lands pursuant to the *Builders Lien Act*, SBC 1997, c. 45. To avoid any legal responsibility regarding builders liens, Landlords should arrange for a Notice of Interest under the *Builders Lien Act*. A Notice of Interest provides

notice to potential builders of the nature of the Landlord's interest in the park site and also notice that the owner's interest in the land will not be bound by a lien under the *Builders Lien Act* with respect to improvements on the land, unless that improvement is undertaken at the express request of the Landlord. As a further precaution, the Landlord should also make it a material term of the tenancy in the tenancy agreement that the Tenant is responsible for clearing any such liens.

The requirements for moving manufactured homes on and off manufactured home sites are set out in the *Manufactured Home Act*, SBC 2003, c 75 (the "*MHA*")[9,10]. Typically, a Tenant must not move a manufactured home unless the following criteria are met (s. 15(1), *MHA*):

- ownership of the manufactured home is registered under the *MHA*;
- the registrar has issued a transport permit authorizing the manufactured home to be moved; and
- the manufactured home is moved to the location, and in accordance with the terms and conditions, set out in the transport permit.

The manufactured home registry sets out the requirements for obtaining a transport permit. A transport permit application form must be completed, and proof of payment of outstanding property taxes on the manufactured home, in the form of a tax certificate, must be tendered with the application.

If a home is moved without obtaining a transport permit, section 19 of the *Manufactured Home Act* provides that the registry can send a notice of the unauthorized change to any secured party revealed by a search of the personal property registry, and to any tax collection authority. Furthermore, the registry can demand under section 19 that the manufactured home owner complete an application to process the change in location. Relocation of a manufactured home without a transport permit also is an offence under section 38 of the *Manufactured Home Act* punishable with a fine of up to $2,000.

One final consideration when moving a manufactured home is to consider any applicable municipal zoning bylaws[11] or other municipal regulations, such as whether a building permit is required by your local municipality. For example, the City of Nanaimo requires that a building

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9 The following classes of manufactured homes are exempted from the *MHA* (see s. 4, MHA Regulation): a floating home, a camper, a travel or tourist trailer, a park model trailer built to Canadian Standards Association Standards in the CAN/CSA-Z241 series, Park Model trailers, a manufactured home being transported in or through BC from a manufacturer's place of business within BC directly to a location outside BC or from a location outside BC directly to another location outside BC, and a manufactured home that is used as a bunkhouse for the duration of the time it is so used.

10 Note that the registrar may, on application by a person and in accordance with the regulations, order that a manufactured home is exempted from the *MHA*, or a provision of the *MHA*, on terms and conditions the registrar imposes (s. 21(1), *MHA*). For more details on this exemption application process, see section 21 of the *MHA* and section 5 of the MHA Regulation.

11 For an example of the importance of complying with all municipal bylaws and regulations, see *Stroshin Family Trust (Trustees) v. Parksville (City)*, 2010 BCSC 648, where the courts upheld a decision by the municipality to refuse applications for permits authorizing the removal of manufactured homes which were 12 feet wide and replacing them with those that were 14 feet wide because the manufactured homes were "structures" within the meaning of s. 911 of the *Local Government Act*, RSBC 1996, c 323, and the increased width of the replacement manufactured homes would not conform with all current and applicable municipal regulations.

permit be obtained whenever a manufactured home is moved onto a new site, even if the mobile home is moving from one site to another site within the same park. From the perspective of the municipality, it is the Landlord who owns the manufactured home park, and not the Tenant, who is responsible for ensuring that the building permit is obtained.[12] The Landlord can (and should) make obtaining a building permit the Tenant's responsibility under the tenancy agreement. Otherwise, the Landlord could have the responsibility of obtaining the building permit and paying any associated costs or fees.

E. Manufactured Home Park Services and Facilities

The term "services and facilities" is a defined term in section 1 of the *MHPTA*, and includes any of the following that are provided or agreed to be provided by a Landlord to the Tenant of a manufactured home site:

- water, sewage, electricity, lighting, roadway and other facilities;
- utilities and related services;
- garbage facilities and other related facilities;
- laundry facilities;
- parking and storage areas; and
- recreation facilities.

If a Landlord has agreed to provide a service or facility[13], the Landlord must not restrict or terminate this service or facility if the service or facility is essential to the Tenant's use of the manufactured home site as a site for a manufactured home or providing the service or facility is a material term of the tenancy agreement (s. 21(1), *MHPTA*). Otherwise, a Landlord may restrict or terminate a service or facility if the Landlord gives 30 days' written notice, in the approved form, of the termination or restriction and reduces the rent[14] in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination or restriction of the service or facility (s. 21(2), *MHPTA*).

Residential Tenancy Policy Guideline 22, Termination or Reduction of a Service or Facility ("RT Policy Guideline 22") includes definitions of both "essential service or facility" and "material term" (at page 1). An "essential service or facility" is necessary, indispensable, or fundamental. To decide whether a service or facility is essential, the arbitrator will hear evidence as to the importance of the service or facility, will determine whether a reasonable person in similar circumstances would find the loss of the service or facility has made it impossible or impractical

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12 For more information regarding building permits in the City of Nanaimo, see Development Services Building Inspection Division, Locate Mobile/Modular Homes and Additions or Detached Buildings in Mobile Home Parks, https://www.nanaimo.ca/docs/property-development/building-permits/mobilehomesinparks.pdf

13 Note that if the tenancy agreement doesn't state who is responsible for any added service or facility, that service or facility is not provided by a Tenant, and there is a cost associated with the service or facility, the Landlord is presumed responsible for the cost of this service or facility unless the Landlord has obtained the written agreement of the Tenant that they will be responsible for this cost (see RT Policy Guideline 22 at page 2).

14 If a service is terminated or restricted, even though the Landlord is not at fault, this may constitute breach of contract, and the Tenant may be entitled to an award of a reduction in rent as a result (RT Policy Guideline 22 at page 2).

for the Tenant to use their manufactured home site as living accommodations, and will consider whether the Tenant can obtain a reasonable substitute for the service or facility in question. A "material term" is a term that goes to the root of the agreement. To decide whether a term goes to the root of the agreement, the arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement and whether the Tenant can obtain a reasonable substitute for the service or facility in question.

If a service is terminated or restricted due to the Landlord's negligence, and the Tenant suffers damage or loss a result, the Tenant may be entitled to compensation for the damage or loss (see RT Policy Guideline 22 at page 2).

1. Septic, Water and Oil Tanks

If the septic tank does not have a field, the Landlord is responsible for emptying the holding tank and for cleaning any blockages to the pipe leading to the holding tank. The only exception to this is if the blockage was caused by the Tenant's negligence. If the septic tank has a field, the Landlord is responsible for emptying and maintaining the tank. The Landlord is also responsible for winterizing tanks and fields where necessary (RT Policy Guideline 1 at page 7).

The Tenant is responsible for leaving water and oil tanks in the condition that they were in at the start of the tenancy (RT Policy Guideline 1 at page 7).

F. Rent Increases

1. Regular Rent Increases

If a Landlord wishes to increase the rent during an existing tenancy, then the Landlord can only do so in accordance with Part 4 of the *MHPTA* (s. 34, *MHPTA*). Part 4 of the MHPTA creates a rent control regime in British Columbia. It restricts both the frequency of rent increases, and the amount of rent increases.

Part 4 is a lesser known, but very significant, source of potential liability for manufactured home park owners and purchasers of manufactured home parks in particular who may not be fully aware of the history of rent increases at the manufactured home park they are purchasing.

Section 36(5) of the MHPTA permits a tenant to "deduct [an illegal increase] from rent or otherwise recover [the illegal increase]". Section 53 of the MHPTA provides for a limitation period of two years after the date the tenancy ends for the resolution of disputes under the MHPTA. This means a landlord who has increased rent for years in contravention of the MHPTA could be ordered to refund years' worth of illegal rent increases, and could also find the rents for the manufactured home park reset by an arbitrator to be significantly lower than what they were previously, which can have a devastating impact of the market value of the manufactured home park.

Some policies of title insurance offer coverage against "illegal rents", but whether or not such a policy protects against rent increases imposed in excess of that permitted by Part 4 of the MHPTA is unknown to the authors of this paper. A prudent purchaser will request the opportunity to examine all rent increase notices issued in previous years for the purpose of independently confirming the legality of rents at the manufactured home park. Reviewing

years of rent increases is onerous, but the potential consequences of illegal rent increases obviously can be significant.

Part 4 states that a Landlord cannot increase a Tenant's rent for at least 12 months after either the date on which the Tenant's rent was first payable for the manufactured home site or if the Tenant's rent has already been increased, the effective date of the last rent increase (s. 35(1), *MHPTA*). What this means is that a Landlord may only increase a Tenant's rent once every 12 months, and the first rent increase cannot occur within the first 12 months of the tenancy.

If a Landlord decides to increase the rent, the Landlord must provide the Tenant with notice of the increase at least 3 clear months before the effective date of the increase (s. 35(2), *MHPTA*). If the effective date of the increase is within 12 months since the last rent increase or the start of the tenancy, the notice to increase the rent will take effect on the earliest date that complies with section 35(1) of the *MHPTA* (s. 35(4), *MHPTA*). The same is true if the Landlord does not provide at least 3 months' notice to the Tenant of the rent increase (s. 35(4), *MHPTA*). A Tenant may not dispute a rent increase that does not exceed the percentage permitted as an annual rent increase (s. 32, MHPTA Regulation and RT Policy Guideline 37 at page 12).

The Landlord's notice of the rent increase to the Tenant must be in the prescribed form (s. 35(3), *MHPTA*)[15]. In addition, the total amount of the rent increase cannot exceed the amount calculated in accordance with the MHPTA Regulation or agreed to by the Tenant in writing[16] (s. 36(1)(a) and (c), *MHPTA*).

Residential Tenancy Policy Guideline 37, Rent Increases ("RT Policy Guideline 37") and section 32(2) of the MHPTA Regulation state that a Landlord "may impose an annual rent increase up to, but not greater than, the percentage amount" calculated as the inflation rate + proportional amount[17], representing a pass through of certain operating expenses that are generally outside

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15 Note that the notice of a rent increase may be unilaterally withdrawn by the Landlord so long as the Tenant has not applied for arbitration of the rent increase and has not acted on the notice to his or her detriment (Residential Policy Guideline 11, Amendment and Withdrawal of Notices ("RT Policy Guideline 11") at page 2).

16 Even if the Tenant agrees in writing to a rent increase, the Landlord must still follow the requirements in the *MHPTA* and MHPTA Regulation regarding the timing and notice of rent increases. RT Policy Guideline 37 recommends that Landlords attach a copy of the agreement to the notice of rent increase provided by the Tenant (see page 3). Note that payment of rent in an amount more than the allowed annual increase is not a written agreement to a rent increase in that amount (see RT Policy Guideline 37 at page 3).

17 In September of each year, the maximum allowable rent increase percentage amount for the upcoming calendar year is published on the Residential Tenancies website at www.gov.bc.ca/landlordtenant/increase. The MHPTA Regulation defines "inflation rate" to mean the 12-month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect (see s. 32(1), MHPTA Regulation). The MHPTA Regulation defines "proportional amount" to mean "the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park" (see s. 32(1), MHPTA Regulation). The term "local government levies" is also defined in section 32(1) of the MHPTA Regulation and means "the sum of the payments respecting a manufactured home park made by the Landlord for property taxes and municipal fees under section 194 of the *Community Charter*". The change in local government levies is the local government levies for the 12-month period ending at the end of the month before the month in which notice under section 35(2) of the MHPTA was given, less the local government levies for the previous 12-month period (see RT Policy Guideline 37 at page 2). Lastly, the term utility fees is also defined in section 32(1) of the MHPTA Regulation to mean the sum of payments respecting a manufactured home park made by the Landlord for the supply of electricity, natural gas, water, telephone services or coaxial cable services provided by a public utility as defined in section 1 of the *Utilities Commission*

of the Landlord's control. If a Landlord wishes to use the proportional amount rent increase provision, the Landlord must provide Tenants with documentation regarding these amounts[18]. As set out above, if a Landlord collects a rent increase that doesn't comply with this rule, the Tenant is entitled to deduct the increase from their rent or otherwise recover the increase (s. 36(5), *MHPTA*).

2. Additional Rent Increases

There is an exception to the rule that a rent increase cannot exceed the amount calculated in the MHPTA Regulation. If the Landlord makes an application for dispute resolution, the director may order a rent increase in an amount greater than that prescribed by the MHPTA Regulation (s. 36(3) and s. 62, *MHPTA*). If the Landlord applies for an additional rent increase, the Application for Additional Rent Increase must be the total proposed rent, which is equal to the sum of the annual rent increase plus the additional rent increase (see RT Policy Guideline 37 at page 5).

A Landlord may apply under section 36(3) of the *MHPTA* for an additional rent increase if one or more of the following apply (s. 33(1), MHPTA Regulation):

- the Landlord has completed significant repairs[19] or renovations to the manufactured home park in which the manufactured home site is located that are reasonable and necessary and will not recur within a time period that is reasonable for the repair or renovation[20];

Act, a gas utility as defined in section 1 of the *Gas Utility Act,* a water utility as defined in section 1 of the *Water Utility Act*, or a corporation licensed by the Canadian Radio-television and Telecommunications Commission for the purposes of that supply. Expenses that do not meet the definition of either "local government fees" or "utility fees" cannot be included when calculating a rent increase (see RT Policy Guideline 37 at page 3 for more details).

18 This documentation may be posted in common areas for all Tenants, but the Landlord must provide a Tenant a copy upon written request, within 3 business days following receipt of the written request (see RT Policy Guideline 37 for more details).

19 A repair or renovation may be considered significant when the expected benefit of the repair or renovation can reasonably be expected to extend for at least one year and the repair or renovation is notable or conspicuous in effect or scope, or the expenditure incurred on the repair or renovation is of a noticeably or measurably large amount (see RT Policy Guideline 37 at page 7). In order for a capital expense for a significant repair or renovation to be allowed, the Landlord must demonstrate that the repair or renovation was both reasonable and necessary, and that the repair will not reoccur within a time period that is reasonable for that repair or renovation. A repair or renovation will be considered "reasonable" when the repair or renovation, the work performed to complete the repair or renovation, and the associated cost of the repair or renovation, are suitable and fair under the circumstances of the repair or renovation. A repair or renovation may be considered "necessary" when the repair or renovation is required to protect or restore the physical integrity of the manufactured home park, comply with municipal or provincial health, safety or housing standards, maintain water, sewage, electrical, lighting, roadway or other facilities, provide access for persons with disabilities, or promote the efficient use of energy or water. Please see RT Policy Guideline 37 regarding rent increases for more information.

20 When reviewing applications for additional rent increases on the basis that the Landlord has completed significant repairs or renovations, the director may use the table set out at pages 3-8 of Residential Tenancy

- the Landlord has incurred a financial loss[21] from an extraordinary increase in the operating expenses of the manufactured home park;
- the Landlord, acting reasonably, has incurred a financial loss for the financing cost of purchasing the manufactured home park, if the financing costs could not have been foreseen under reasonable circumstances; or
- the Landlord, as a Tenant, has received an additional rent increase for the same manufactured home site.

If the Landlord applies for an additional rent increase for any of the reasons listed above, the Landlord is required to provide all affected Tenants with copies of the evidence in support of the application for the additional rent increase. It is the Landlord's responsibility to prove any claim for an additional rent increase (RT Policy Guideline 37 at page 6).

If the Landlord applies for a rent increase due to having to complete significant repairs or because they have incurred a financial loss, the Landlord must make a single application to increase the rent for all sites in the manufactured home park by an equal percentage (s. 33(2), MHPTA Regulation). In addition, if the Landlord wishes to apply for an additional rent increase for either of these reasons, the application should be made before the first notice of rent increase for the calendar year is issued (RT Policy Guideline 37 at page 5).

If a Landlord applies to the director for an additional rent increase, the director must consider the following in deciding whether to approve the application (s. 33(3), MHPTA Regulation):

- the rent payable for similar sites in the manufactured home park immediately before the proposed increase is intended to come into effect;
- the rent history for the affected manufactured home site in the 3 years preceding the date of the application;
- a change in a service or facility that the landlord has provided for the manufactured home park in which the site is located in the 12 months preceding the date of the application;
- a change in operating expenses and capital expenditures in the 3 years preceding the

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Policy Guideline 40, Useful Life of Building Elements ("RT Policy Guideline 40") to determine whether the Landlord could have foreseen the repair or renovation. If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use. If an item does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution proceedings may submit evidence for the useful life of a building element, if the item isn't included in the table or if the item's useful life is substantially different from what appears in the table, and this evidence may include documentation from the manufacturer for the particular item claimed (RT Policy Guideline 40 at page 2).

21 "Financial loss" means the amount by which the total costs that have been experienced by the Landlord in respect of the rented property for an annual accounting period exceed the revenue for that same period. A Landlord is not required to provide a Tenant with more than an audited financial statement at the time of the application. If an audited financial statement is not available, the Landlord must provide before or at the hearing sufficient evidence to prove financial loss. See RT Policy Guideline 37 at pages 8-10).

date of the application that the director considers relevant and reasonable. In addition, the director must consider the relationship between this change and the rent increase applied for;

- a relevant submission from an affected Tenant;
- a finding by the director that the Landlord has contravened their obligations to repair and maintain the manufactured home park in accordance with section 26 of the *MHPTA*;
- whether, and to what extent, an increase in costs with respect to repair or maintenance of the manufactured home park results from inadequate repair or maintenance in a previous year;
- a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing the Landlord's obligation that has not been fulfilled;
- whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application; and
- whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the Landlord has submitted false or misleading evidence or failed to comply with an order of the director for the disclosure of documents.

After considering the Landlord's application for a special rent increase, the director may grant the application[22], either in full or in part, refuse the application, order that the increase granted be phased in over a period of time[23], or order that the effective date of an increase is conditional on the Landlord's compliance with an order of the director respecting the manufactured home park (s. 33(4), MHPTA Regulation). In considering an application for an additional rent increase, an arbitrator will examine and consider the following (RT Policy Guideline 37 at page 6):

- the application and supporting material;
- evidence provided that substantiates the necessity for the proposed rent increase;
- the Landlord's disclosure of additional information relevant to the arbitrator's considerations under MHPTA Regulation, s. 33; and
- the Tenant's relevant submissions.

The arbitrator may also order the Landlord to supply any financial records the arbitrator considers necessary. The arbitrator may issue a summons for these records and may refuse the application if the application is not adequately supported by these records (see RT Policy Guideline 37 at page 11).

If the director grants the Landlord's application for a special rent increase, the Landlord may

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22 If a Tenant receives a rent increase and has sublet their manufactured home site, that Tenant may request an increase under section 33(1)(e) of the MHPTA Regulation. This is to allow the Tenant to pass along the rent increase to the subtenant. See RT Policy Guideline 37 at pages 10-11 for more details.

23 If the arbitrator orders the increase to be phased in over time, this only applies to existing Tenants and assignees. New Tenants under new tenancy agreements cannot rely on phased increases previously ordered (see RT Policy Guideline 37 at page 11).

give a notice of rent increase to one or all Tenants for a rent increase of an amount up to the amount ordered. A Tenant is not required to pay additional rent until served with the notice of rent increase and a copy of the arbitrator's order granting the additional rent increase[24]. If the Landlord does not apply the total amount of the approved increase within 12 months of the date the increase comes into effect, the Landlord may not carry forward any unused portion or add it to a future rent increase unless the director otherwise orders (s. 33(5), MHPTA Regulation). Please see RT Policy Guideline 37 at page 12 for more information regarding rent increases.

In practice, applying for a special rent increase is an unpredictable and stressful process for a landlord and is likely not applied for frequently for that reason.

It is unpredictable because the MHPTA, the MHPTA Regulation, and the Policy Guideline afford an arbitrator a great deal of discretion in respect of determining the amount and the frequency of the special rent increase. For example, if a landlord applies for a special rent increase to recoup the cost of a capital expense, one arbitrator might order the cost of the capital expense be amortized over the life expectancy of the expense. Another arbitrator might order the cost of the capital expense be amortized over a much shorter period. Some arbitrators allow for landlords to recover the cost of capital, while others do not. Arbitration decisions are not binding and have no precedential value, and so it is difficult to predict if the special rent increase application will be successful or how it will be implemented by an arbitrator.

Similarly, a landlord may find the process stressful because the application requires the landlord to engage in an adversarial dispute resolution proceeding with its tenants before an arbitrator. Any tenant is entitled to appear at the special rent increase application hearing, to provide submissions, and to generally oppose its implementation. Obtaining a special rent increase generally does not improve relations between landlords and tenants and such applications should be made only when absolutely necessary.

G. Assignment and Subletting

Section 28 of the *MHPTA* and Part 7 of the MHPTA Regulation covers assignments and subleases. In the case of an assignment, the Tenant is permanently transferring their rights under a tenancy agreement to a third party, typically the purchaser of their manufactured home, who becomes the new Tenant of the Landlord.

In the case of a sublease, the original tenancy agreement remains in place between the original Tenant and the Landlord, and the original Tenant and the sub-tenant enter into a new agreement, called the sublease agreement[25]. Under a sublease agreement, the original Tenant

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24 If the Landlord unlawfully collects increased rent, the Tenant may deduct the increase from the rent or apply for an order for the amount of rent collected. In these circumstances, the Landlord may issue a new three month notice of rent increase (RT Policy Guideline 37 at page 12).

25 Note that for the purposes of subleases, whether the *MHPTA* applies at all depends on the factual circumstances at issue. If a Tenant sublets his or her manufactured home site as well as their manufactured home, they cannot be considered a "landlord" pursuant to the *MHPTA* (see RT Policy Guideline 19 at page 2 and the definition of "landlord" at section 1 of the *MHPTA*).

transfers their rights under the tenancy agreement to the subtenant.[26] The original Tenant becomes the landlord of the new subtenant, but remains the Tenant of the Landlord. The *MHPTA* defines "sublease agreement" in to mean a tenancy agreement under which the Tenant transfers their rights under the tenancy agreement for a period shorter than the term of the original Tenant's tenancy agreement and the subtenant agrees to vacate the manufactured home site at the end of the term of the sublease agreement and that specifies the date on which the tenancy under the sublease agreement ends (s. 1, *MHTPA*). The legal effect of an assignment versus a sublease can be quite different, and it is important for both the Tenant and Landlord to be mindful of the differences between the two.

A Tenant may only assign a tenancy agreement or sublet a manufactured home site if one of the following conditions applies (s. 28(1), *MHPTA*):

- the Tenant has obtained the prior written consent of the Landlord to the assignment or sublease, or is deemed to have that consent, in accordance with the MHPTA Regulation;
- the Tenant has obtained an order from the director authorizing the assignment or sublease; or
- the tenancy agreement authorizes the assignment or sublease.

Before a Tenant requests the Landlord's consent to an assignment or sublease, the Tenant must provide a copy of any part of the tenancy agreement that is in writing and applicable to the tenancy agreement to a proposed purchaser and any park rules and any part of the tenancy agreement that are in writing and applicable to the sublease, to a proposed subtenant (s. 43, MHPTA Regulation). This is because an assignee or subtenant must comply with the park rules that are in effect at the time of, or after, entering into the assignment or sublease (s. 52, MHPTA Regulation).

To request the Landlord's consent to an assignment or sublease, the Tenant must serve a written request for the Landlord's consent to the assignment or sublease (s. 45(1), MHPTA Regulation). This request must be served on the Landlord in accordance with section 81 of the *MHPTA* and must be served within sufficient time prior to the effective date of the proposed assignment or sublease to allow the Landlord to respond pursuant to section 45(1)(c) of the MHPTA Regulation. The service requirements pursuant to section 81 of the *MHPTA* were previously discussed in this paper.

The written request[27] to the Landlord for consent to assign or sublet from the Tenant must be signed the Tenant and provide all of the following information (s. 44(2), MHPTA Regulation):

- the name and address of the Tenant making the request;
- the name and address of the Landlord or the Landlord's agent;

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26 For more information on subleases and assignments, see Residential Tenancy Policy Guideline 19, Assignment and Sublet, https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl19.pdf.

27 Note there are two different forms depending on whether the Tenant wishes to request permission to assign or permission to sublet. If permission to assign is sought, the proper form is the "Request for Consent to Assign a Manufactured Home Site Tenancy Agreement". If the permission to be obtained is to sublet, the proper form is "Request for Consent to Sublet a Manufactured home Site". See RT Policy Guideline 19 at page 9 for more details.

- the proposed effective date for the assignment or sublease;
- the name of the proposed purchaser or subtenant;
- the current address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address, and the name and telephone number of the Landlord, if any, for that address. If the length of time at the address provided is less than 2 years, the previous address of the proposed purchaser or subtenant, the length of time the proposed purchaser or subtenant has lived at that address, and the name and telephone number of the Landlord, if any, for that address;
- the names and telephone numbers of two personal references for the proposed purchaser or subtenant;
- the signed consent of the proposed purchaser or subtenant authorizing the Landlord to contact the other Landlords and personal references provided for the purpose of verifying or obtaining information relevant to the request to assign or sublet;
- if the manufactured home site is in a park which reserves rentals to Tenants who have reached 55 years of age, or to two or more tenants, at least one of whom has reached 55 years of age in accordance with section 10(2)(b)(i) of the *Human Rights Code,* RSBC 1996, c. 210, the date of birth of the proposed purchaser or subtenant who meets the age requirement and proof of that person's age;
- if the request is for consent to sublet, a statement that the Tenant has included in the sublease the rules and the terms of the tenancy agreement that are relevant to the sublease and that the Tenant has ensured that the terms of the sublease do not conflict with the tenancy agreement as set out in section 50(2) of the MHPTA Regulation;
- if the request is for consent to assign, the current monthly rent for the manufactured home site, the effective date of the most recent legal rent increase, the proposed purchaser's signed contract authorizing the Landlord to obtain a credit report on the proposed purchaser, the proposed purchaser's signed statement that he or she has been informed of and agrees to comply with the tenancy agreement and the applicable park rules, a copy of any part of the tenancy agreement that is in writing and any of the park rules that are in written form and that apply to the tenancy of the home owner, and a copy of any outstanding orders or notices given under the *MHPTA* respecting the manufactured home park site; and
- any additional information required by the director.

If the Tenant does not request consent to assign or sublet from the Landlord in writing and in accordance with the criteria set out in section 44(3) of the MHPTA Regulations, sections 45 and 46 of MHPTA Regulation do not apply (s. 44(1), MHPTA Regulation). In addition, if the Landlord receives a request for consent to assign or sublet that is not in compliance with section 44(3) of the MHPTA Regulation, the Landlord must either consent to the request, notify the Tenant in writing that consent to the request is withheld, or promptly advise the Tenant that only a request that complies with section 44 of the MHPTA Regulation will be considered (s. 47(1), MHPTA Regulation).

Section 45(1)(c) of the MHPTA Regulation requires a Landlord to promptly provide the Tenant with a written response to their request in the form approved by the director. In this case, "promptly" means that the Tenant must receive the response within 10 days of the Landlord's

receipt of the request, keeping in mind the deemed service requirements in section 83 of the *MHPTA*. The Landlord and Tenant may agree in writing to extend the 10 day deadline to a specific date (s. 45(3), MHPTA Regulation). If the Landlord does not respond within either the 10-day deadline or the mutually agreed upon extended deadline, the Landlord's consent is conclusively deemed to have been given and the Tenant may assign or sublet to the proposed purchaser or subtenant identified in the written request (s. 46(1), MHPTA Regulation). If the Tenant can demonstrate that the request on the Landlord was served in accordance with the service requirements set out in section 81 of the *MHPTA*, the Tenant is entitled to consider that consent is deemed to have been given in the absence of a response from the Landlord (s. 46(2), MHPTA Regulation).

It is important to note that a Landlord may not charge a Tenant any fee in relation to considering, investigating or consenting to an assignment or sublease (s. 28(3), *MHPTA*).

A Landlord may only withhold their consent to assign a tenancy agreement or to sublet a tenant's interest in a manufactured home site in the circumstances prescribed in the regulations (s. 28(2), *MHPTA*). The only circumstances where a landlord may withhold their consent are as follows (see s. 48, MHPTA Regulation):

- the request is for consent to assign, and the Landlord has reasonable grounds, on the basis of relevant information, to conclude that the purchaser is unlikely to comply with the tenancy agreement or any applicable rules;
- the request is for consent to assign and the Landlord has reasonable grounds, on the basis of credit information, to conclude that the purchaser is unable or unlikely to pay rent;
- the request is for consent to sublet and the Landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- the request is for consent to sublet, and the Tenant has agreed in the tenancy agreement not to sublet;
- if the manufactured home park reserves rentals to tenants who have reached 55 years of age, or to two or more tenants, at least one of whom has reached 55 years of age in accordance with section 10(2)(b)(i) of the British Columbia *Human Rights Code*, RSBC 1996, c. 210, and there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement;
- the proposed purchaser or subtenant does not intend to reside in the manufactured home and intends to use the manufactured home for business purposes or has purchased more than one manufactured home in the Landlord's manufactured home park;
- the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;
- the Landlord, as a result of being unable to contact one or more references provided pursuant to section 44(3)(e), (f), or (g) of the MHPTA Regulation, has insufficient information to make a decision about the request, if the Landlord promptly advised the Tenant of his or her inability to contact one or more of those references and made

every reasonable effort to contact those references and any references provided by the Tenant in place of those references;

- the Tenant owes the Landlord arrears of rent or an amount due under an order of the director; or
- the manufactured home does not comply with housing, health and safety standards required by law.

If the Landlord withholds their consent to assign or sublet based on one of the permitted grounds, the Landlord's response must indicate the grounds on which they are withholding consent and the source and nature of the information that supports those grounds (s. 45(2), MHPTA Regulation). If the Landlord unreasonably withholds their permission to assign or sublet, the director has the authority to make an order for the payment of compensation to the Tenant, in accordance with Residential Tenancy Policy Guideline 19, Assignment and Sublet ("RT Policy Guideline 19")).

If the assignment is properly requested and consented to, the purchaser becomes the Tenant and assumes the rights and obligations under the *MHPTA* and the tenancy agreement, and the tenancy agreement continues on the same terms (s. 49(1), MHPTA Regulation). Generally, after the assignment takes effect, the former Tenant is not liable for any breach of, or obligation under, the *MHPTA* or the tenancy agreement relating to the period after the assignment, continues to be liable for any breach of, or obligation under, the *MHPTA* or the tenancy agreement relating to the period before the assignment, and may enforce his or her rights as a Tenant under the *MHPTA* or the tenancy agreement relating to the period before the assignment (s. 49(2), MHPTA Regulation). However, it is possible that the original Tenant may remain liable to the Landlord under the original tenancy agreement, for example if the assignment to the new Tenant was made without the Landlord's consent or if the assignment agreement does not expressly set out the assignment of the original Tenant's obligations to the new Tenant (RT Policy Guideline 19 at page 2).

If the sublease is properly requested and consented to, the Tenant who sublets is the landlord of the subtenant under the sublease agreement, continues to be the Tenant of the Landlord under the tenancy agreement and is liable to the Landlord for any breach of, or obligation under, the *MHPTA* or the tenancy agreement during the sublease (s. 50(1), MHPTA Regulation).

Frequently, tenants are unaware of their rights to assign under the MHPTA. They will request assignment, but will not follow the process set out in the MHPTA. A landlord is not obliged to accept an assignment that is not properly requested through the formalities set out in the MHPTA. Some landlords use this failure to comply with the MHPTA as an opportunity to renegotiate terms of the lease with the new purchaser, such as rent. This can be avoided if the tenant correctly requests consent to an assignment by following the steps set out in the MHPTA.

H. Repairs and Maintenance

Both the Tenant and the Landlord have specific obligations relating to the repair and maintenance of the manufactured home site and the manufactured home park. A Landlord must provide and maintain the manufactured home park in a reasonable state of repair and must comply with housing, health and safety standards required by law (s. 26(1), *MHPTA*). The

Landlord's responsibility to comply with the housing, health and safety standards required by law applies whether or not the Tenant knew of a breach by the Landlord of these standards at the time of entering into the tenancy agreement (s. 26(6), *MHPTA*). A Landlord is not required to maintain or repair improvements made to a manufactured home site by a Tenant occupying the site, or by an assignee of the Tenant, unless the obligation to do so is a term of their tenancy agreement (s. 26(5), *MHPTA*).

A Tenant is required to maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas (s. 26(2), *MHPTA*). A Tenant is also required to repair damage to the manufactured home site or common areas caused by the actions or neglect of the Tenant or of a person permitted in the manufactured home park by the Tenant (s. 26(3), *MHPTA*). However, a Tenant is not required to make repairs for reasonable wear and tear (s. 26(4), *MHPTA*). Reasonable wear and tear is described in the Residential Tenancy Policy Guideline 1, Landlord and Tenant – Responsibility for Residential Premises ("RT Policy Guideline 1")[28] to refer to "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion" (at page 1).

Because a Landlord does not own the manufactured home in which the Tenant resides, the Landlord's ability to regulate the Tenant's use of the interior of their manufactured home is limited. A Landlord does not even have the right under the MHPTA to inspect the interior of a manufactured home. However, a reasonable interpretation of the MHPTA could be that if the Tenant is doing something inside a manufactured home that is putting the manufactured home site itself at risk, then this could be a basis for the landlord to take enforcement action.

The Landlord is responsible for all major projects to the manufactured home site, such as tree cutting and insect control. The Landlord is also responsible for day-to-day maintenance, such as cutting grass, shoveling snow and weeding flower beds and gardens in common areas of the manufactured home park. However, if the Tenant has exclusive use of a yard, the Tenant will be responsible for routine yard maintenance, including cutting grass and clearing snow. Before a Tenant makes any changes to the landscaping in the manufactured home park, including adding a garden, the Tenant must obtain the consent of the Landlord.

For more information on property maintenance, please see RT Policy Guideline 1, at page 7. This policy guideline is important, because it sets out the RTB's opinion on an appropriate division of responsibility between the landlord and the tenant for the repair and maintenance of a manufactured home site. This policy guideline, in some respects, can be seen as "default provisions" concerning the division of responsibility for the repair and maintenance of a manufactured home site, which can be changed by written agreement between the landlord and tenant, but for clarity, neither a landlord nor a tenant can contract out of their responsibilities under the MHPTA.

1. Emergency Repairs

Special rules apply to emergency repairs. Emergency repairs are defined in section 27(1) of the *MHPTA* to mean repairs that are urgent, necessary for the health or safety of anyone or for the

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28 The full policy guideline may be accessed at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl01.pdf

preservation or use of property in the manufactured home park, and made for the purpose of repairing major leaks in pipes, damaged or blocked water or sewer pipes, the electrical system, or the manufactured home site or the manufactured home park in prescribed circumstances[29]. The Landlord must post and maintain in a conspicuous place in the manufactured home park, or give to a Tenant in writing, the name and telephone number of a person the Tenant is to contact for emergency repairs (s. 27(2), *MHPTA*).

A Tenant may have emergency repairs made only when all three of the following conditions are met (s. 27(3), *MHPTA*):

- the emergency repairs are needed; and
- the Tenant has made at least two attempts to telephone, at the number provided, the contact person for emergency repairs identified by the Landlord, and following these attempts, the Tenant has given the Landlord reasonable time to make the repairs.

If the Tenant has emergency repairs made, the Landlord can take over completion of the emergency repair at any time (s. 27(4), *MHPTA*). The Landlord must reimburse the Tenant for amounts paid for the emergency repairs if the Tenant claims reimbursement for those amounts from the Landlord and gives the Landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed (s. 27(5), *MHPTA*). If these conditions are met and the Landlord does not reimburse the Tenant for the emergency repairs, the Tenant may deduct the amount of the emergency repairs from their rent or otherwise recover the amount (s. 27(7), *MHPTA*).

A Landlord is not required to reimburse a Tenant for emergency repairs if the director, on application, finds that one or more of the following applies (s. 27(6), *MHPTA*):

- the Tenant made the repairs even though the conditions for emergency repairs set out in section 27(3) of the *MHPTA* were not met;
- the Tenant has not provided the account and receipt for the emergency repairs as required under section 27(5) of the MHPTA;
- the amounts represent more than a reasonable cost for the repairs; or
- the emergency repairs are for damage caused primarily by the actions or neglect of the Tenant or a person permitted in the manufactured home park by the Tenant.

I. Termination of the Tenancy Relationship

The tenancy relationship between Landlord and Tenant only ends if one or more of the following scenarios apply (see s. 37, *MHPTA*):

- the Tenant serves the Landlord with a notice to end the tenancy in accordance with section 38 or section 43 of the *MHPTA*;
- the Landlord serves the Tenant with a notice to end the tenancy for one or more of the following reasons:
    - non-payment of rent in accordance with section 39 of the *MHPTA*;
    - for cause in accordance with section 40 of the *MHPTA*;

29 There currently are no prescribed circumstances set out in the MHPTA Regulation.

  - the Tenant is no longer employed by the Landlord, as set out in section 41 of the *MHPTA*; or
  - the Landlord intends to use the property in accordance with section 42 of the *MHPTA*.
- the Landlord and Tenant agree in writing to end the tenancy;
- the Tenant abandons the manufactured home site or abandons a manufactured home on the site;
- the tenancy agreement is frustrated;
- the director orders that the tenancy is ended; or
- the tenancy agreement is a sublease agreement.

With the MHPTA being an administrative scheme, the abovementioned reasons for ending a tenancy are entirely statutory in nature. They are prescribed by the MHPTA. The procedure for ending a tenancy for any of the above reasons is dictated entirely by the process set out within the MHPTA. Although the common law respecting landlords and tenants applies to manufactured home park tenancies (see section 84 of the MHPTA), it can be displaced by the administrative scheme created by the MHPTA. For example, relief from forfeiture is not available for a statutory forfeiture of a tenancy under the MHPTA. See, for example, *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10 in which the Court of Appeal found that relief from forfeiture was not available to a tenant for a statutory forfeiture under the *Residential Tenancy Act* of British Columbia, legislation which is substantively identical to the MHPTA.

Each of the ways a tenancy relationship may be terminated will be discussed in more detail in the following sections. From the outset, it is important to note that in order to be effective, a notice to end the tenancy must be clear, unambiguous and unconditional (RT Policy Guideline 11 at page 2). It is also very important to note that in the case of a notice to end tenancy delivered by a landlord, the notice must be in the prescribed form published by the Director on the website for the Residential Tenancy Branch of British Columbia (section 45 of the MHPTA).

After a notice to end tenancy is issued, for any of the reasons discussed in more detail below, an application may be made to an arbitrator to amend the notice to end the tenancy if it does not comply with the form and content requirements set out at section 45. A notice to end a tenancy may be amended if the person receiving the notice knew, or should have known, the information that was omitted from the notice, and the amendment is reasonable in the circumstances (s. 61(1), *MHPTA* and RT Policy Guideline 11 at page 1).

A person receiving the notice should have known the omitted information if a reasonable person would have known these facts in the same circumstances. To determine whether an amendment will be reasonable in the circumstances, the arbitrator will consider all of the facts, but in particular, will consider whether one party would be unfairly prejudiced by the amendment (RT Policy Guideline 11 at page 1).

Neither party may unilaterally withdraw a notice to end the tenancy (RT Policy Guideline 11 at page 1). A notice to end the tenancy may only be waived (withdrawn or abandoned) if both parties consent. Waiver may be express or implied. If there has been a voluntary and intentional relinquishment of a right, this is an express waiver. If, however, one party pursues a course of conduct with reference to the other party which demonstrates an intention to waive

his or her rights, there will be an implied waiver[30]. Implied waiver may also arise in circumstances where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party has been induced by this conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment (RT Policy Guideline 11 at pages 1-2)[31].

Questions of implied waiver come up most frequently in circumstances where the Landlord has accepted rent for the period after the effective date of the notice to end the tenancy, because this puts the intentions of the parties in question[32]. The intention of the parties will likely be established with reference to the following (RT Policy Guideline 11 at page 1):

- whether the receipt shows the money was received for use and occupation only;
- whether the Landlord specifically informed the Tenant that the money would be for use and occupation only; and
- the conduct of the parties.

1. Tenant Chooses to End the Tenancy

When a Tenant gives a notice to end tenancy, the Tenant must remove all of his or her possessions from the manufactured home site, including the manufactured home itself. For this reason, it is rare and generally not recommended for a Tenant to give notice under the MHPTA. Most Tenants will instead sell their manufactured home to another individual wishing to reside in the manufactured home park, but make the sale conditional on the landlord consenting to an assignment of the existing tenancy agreement.

A Tenant may end the tenancy by providing the Landlord with a notice to end tenancy (s. 38, *MHPTA*). To be effective, the notice to end tenancy must be in writing and must be signed and dated by the Tenant, provide the address of the manufactured home site, and state the effective date of the notice (s. 45, *MHPTA*).

The notice period varies depending on the type of tenancy at issue. A Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement (s. 38(1), *MHPTA*). A Tenant may end a fixed term tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement (s. 38(2),

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30 Note that generally, the giving of a second notice to end a tenancy does not indicate waiver of the prior notice to end the tenancy (RT Policy Guideline 11 at page 2).

31 Note that in order for there to be an implied waiver of a legal right, "there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amounting to an estoppel" (RT Policy Guideline 11 at page 2).

32 Note that if the Tenant pays rent after the notice to end the tenancy has been given, but the rent is paid for the period during which the Tenant is entitled to possession (i.e., before the effective date of the notice to end the tenancy), this cannot establish implied waiver of the notice because the Landlord is entitled to that rent (see RT Policy Guideline 11 at page 1).

MHPTA)[33].

A Tenant also has the option to provide the Landlord with a notice to end the tenancy if the Landlord has failed to comply with a material term of a tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. In this instance, a Tenant may end the tenancy effective on a date that is after the date the Landlord receives the notice (s. 38(3), *MHPTA*).

2. Landlord Ends Tenancy for "Cause"

A Landlord may end a tenancy for "cause" if one or more of the following applies (s. 40(1), *MHPTA*):

- the Tenant is repeatedly late paying the rent;
- there are an unreasonable number of occupants on the manufactured home site;
- the Tenant, or a person permitted in the manufactured home park by the Tenant, has:
    - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
    - seriously jeopardized the health and safety or a lawful right or interest of the Landlord or another occupant; or
    - put the Landlord's property at significant risk;
- the Tenant, or a person permitted in the manufactured home park by the Tenant, has engaged in illegal activity that:
    - has caused, or is likely to cause, damage to the Landlord's property[34];

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33 If a Landlord or Tenant gives notice to end a tenancy effective on a date that does not comply with the *MHPTA* or MHPTA Regulation, the notice is deemed to be changed as follows (s. 46(1), *MHPTA*): If the effective date stated in the notice is earlier than the earliest date permitted under the Act, the effective date is deemed to be the earliest date that complies with the MHPTA (s. 46(2), *MHPTA*). If the effective date stated in the notice to end a tenancy, other than a notice to end tenancy from the Tenant to the Landlord for a breach of a material term of the tenancy agreement or to end the tenancy early, or from the Landlord to the Tenant for non-payment of rent, is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that the rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that the rent is payable under the tenancy agreement that complies with the required notice period or, if the landlord gives a longer notice period, that complies with the longer notice period (s. 46(3), *MHPTA*).

34 When a Tenant or a Tenant's guest or pet causes damage, the director may use the table set out at pages 3-8 of Residential Tenancy Policy Guideline 40, Useful Life of Building Elements ("RT Policy Guideline 40") to account for the useful life and age of the damaged item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item in the form of work orders, invoices, or other documentary evidence. If the Landlord makes repairs due to damage caused by the Tenant (or a guest or pet of the Tenant) the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost of replacement. If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use. If an item does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution proceedings may submit evidence for the useful life of a building element, if the item isn't included in the table or if the item's useful life is substantially different from what appears in the table, and this evidence may include documentation from the manufacturer for the particular item claimed (RT Policy Guideline 40 at page 2).

  - has adversely affected, or is likely to adversely affect, the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park; or
  - has jeopardized, or is likely to jeopardize, a lawful right or interest of another occupant or the Landlord;
- the Tenant, or a person permitted in the manufactured home park by the Tenant, has caused extraordinary damage[35] to a manufactured home site or the manufactured home park;
- the Tenant does not repair damage to the manufactured home site, as required pursuant to the *MHPTA*, within a reasonable time;
- the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the Landlord gives the Tenant written notice to do so;
- the Tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the Landlord's written consent or an order of the director as required under the *MHPTA*;
- the Tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;
- the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority; or
- the Tenant has not complied with an order of the director within 30 days of the later of the date the Tenant receives the order or the date specified in the order for the tenant to comply with the order.

If the Landlord wishes to end a tenancy for any of these statutory causes, then the Landlord must provide a written notice to end tenancy signed and dated by the Landlord and which includes the address of the manufactured home site, states the effective date of the notice and the grounds for ending the tenancy and is in the approved form (s. 45, *MHPTA*). If the notice to end tenancy does not comply with these requirements, it will not be valid (section 40(3), *MHPTA*). The effective date cannot be earlier than one month after the date the notice is received and the effective date must be the day before the day in the month that rent is payable under the tenancy agreement (s. 40(2), *MHPTA*).

If a Landlord provides the Tenant with a notice to end the tenancy for any of the reasons listed in this section, the Tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the Tenant receives the notice (s. 40(4), *MHPTA*).

If the Tenant receives a notice to end tenancy but does not make an application for dispute resolution within 10 days after receipt of the notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the manufactured home site by that date (s. 40(5), *MHPTA*). In that case, the arbitrator must uphold the eviction notice and issue an order of possession unless the tenant can establish the

35 The BC Supreme Court upheld the arbitrator's finding that cutting branches off of trees in the manufactured home park constituted "extraordinary damage" and was a valid basis for an eviction (*Kozlowski v. Mackey*, 2017 BCSC 257). In this case, the tenancy agreement specifically stated that "we will have no damage done to trees by nailing, attaching wire, climbing or cutting branches".

"exceptional circumstances" required by section 59 of the MHPTA in which an arbitrator has limited authority to allow a tenant additional time to respond to a notice to end tenancy. For a fulsome discussion of "exceptional circumstances", see RT Policy Guideline 36.

3. Landlord Ends Tenancy for Illegal Activity

Illegal activity includes serious violations of federal, provincial or municipal law, whether or not the activity constitutes an offence under the Criminal Code. In order to qualify as illegal activity justifying the end of the tenancy, the activity must meet either have caused or is likely to cause damage to the Landlord's property, or has adversely or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or the activity has jeopardized or is likely to jeopardize a lawful right or interest of another Tenant or the Landlord (see s. 47(1)(e), *MHPTA* and Residential Tenancy Policy Guideline 32, Illegal Activity ("RT Policy Guideline 32") at page 1).

The party alleging the illegal activity has the burden of proving that the activity was illegal. In considering whether the illegal activity is sufficient to justify ending the tenancy, the impact of the illegal activity on the tenancy must be considered. A minor breach of the Criminal Code does not necessarily justify ending the tenancy on this basis if the effect of the illegal activity has little to no impact on the tenancy or connection with the manufactured home site or manufactured home park. If however the illegal activity has been specifically set out in the tenancy agreement as a material term of the tenancy, this may be a basis for ending the tenancy. However, the actual reason for ending the tenancy in these circumstances will not be the illegal activity, but rather because the illegal activity breached a material term of the tenancy agreement.

In practice, arbitrators appear more likely to end a tenancy on this basis when there is evidence that the conduct in question has harmed, or has significant possibility of harming, the quiet enjoyment of other tenants in a manufactured home park, their property, the landlord's property, or the landlord itself.

For more information on illegal activity and how these activities impact a tenancy, please refer to RT Policy Guideline 32.

4. Landlord Ends Tenancy for Non-Payment of Rent36

A Tenant is always responsible to pay rent to the Landlord when it is due under the tenancy agreement. This is true whether or not the Landlord complies with the *MHPTA*, any associated regulations or the tenancy agreement (s. 20(1), *MHPTA*). The only exception to this is if the Tenant has a specific right enumerated under the *MHPTA* to deduct all or a portion of the rent (s. 20(1), MHPTA), such as for emergency repairs conducted involuntarily by a tenant under section 27 of the *MHPTA*, when an arbitrator orders that a tenant may deduct a sum from the rent, and when a Landlord collects an illegal rent pursuant to an illegal rent increase in excess of

36 It is important to note that a Landlord may also issue a notice to end tenancy for unpaid utilities under section 39 of the *MHPTA* if the tenancy agreement requires the Tenant to pay utility charges to the Landlord and the utility charges are unpaid more than 30 days after the Tenant is given a written demand for payment of them (s. 39(6), *MHPTA*).

the amount permitted to be charged under Part 4 of the *MHPTA*.

Although a Landlord may end a tenancy for late rent payments, the Tenant must be "repeatedly" late paying rent in order to justify termination of the tenancy for this reason. Three late payments are required in order for the Landlord to terminate the tenancy for non-payment of rent (Residential Tenancy Policy Guideline 38, Repeated Late Payment of Rent ("RT Policy Guideline 38) at page 1). These three late payments do not need to be consecutive, but if the late payments are far apart, the Tenant may not be considered to be "repeatedly" late paying rent. If the Landlord doesn't act in a timely manner after the more recent late payment, the Landlord may be considered to have waived reliance on section 40(1)(a) and will not be able to end the tenancy for late payment of rent. Whether the Landlord is inconvenienced or suffered damage as a result of the late rent payments is not a relevant factor in determining whether the tenancy may be terminated for late payment of rent (RT Policy Guideline 38).

In practice, the issuance of three notices to end tenancy within the last 12 months, coupled with written notice to the tenant after issuance of the second notice that the landlord will end the tenancy on the basis of repeatedly late rent if a third notice must be issued can be compelling evidence to an arbitrator that the tenancy should be ended on the basis of repeatedly late rent.

A failure to pay rent on time repeatedly can be a fundamental breach of the tenancy agreement (see Residential Tenancy Policy Guideline 3, Claims for Rent and Damages for Loss of Rent at page 1 ("RT Policy Guideline 3")). In the case of a fundamental breach, the Landlord may elect to end the tenancy and also may claim damages for loss of rent for the remainder of the term of the tenancy.

a. Ending the Tenancy for Non-Payment of Rent

A Landlord must end a tenancy for non-payment of rent in accordance with section 39 of the *MHPTA*. If a Tenant does not pay rent in accordance with the tenancy agreement, a Landlord cannot seize the manufactured home or any of the Tenant's personal property or prevent or interfere with the Tenant's access to their personal property unless the Landlord has a court order authorizing the action or the Tenant has abandoned the manufactured home or the manufactured home site and the Landlord complies with the regulations regarding abandonment (ss. 20(3) and (4), *MHPTA*). Abandonment will be discussed in greater detail below.

A Landlord may properly end a tenancy for unpaid rent (unless the amount of unpaid rent is an amount the Tenant is permitted to deduct from rent under the *MHPTA*) on any day after the day the rent is due by giving notice to end the tenancy, effective on a date that is not earlier than 10 days after the date the Tenant receives the notice (ss. 39(1) and (3), *MHPTA*). Therefore, the day after rent is due the Landlord may serve a notice to end the tenancy for unpaid rent on the Tenant, effective 10 days after that date.

Ending a tenancy for unpaid utilities is conducted pursuant to section 39 as well, except that the tenancy agreement must require the tenant to pay utility charges to the landlord and the payment must remain unpaid more than 30 days after the tenant receives a written demand for payment (ss. 39(6)(a) and 39(6)(b), MHPTA).

In order to be effective, a notice to end tenancy must meet all of the following criteria: It must

be in writing and must be signed and dated by the Landlord, give the address of the manufactured home site, state the effective date of the notice, and state the grounds for ending the tenancy (s. 45, *MHPTA*).

The notice to end tenancy for unpaid rent must also be properly served on the Tenant[37]. In order to properly effect service, the Landlord must give or serve the notice to end tenancy in one of the following ways (s. 81, *MHPTA*):

- by leaving a copy with the person;
- by sending a copy by ordinary or registered mail to the address at which the person resides or to a forwarding address provided by the tenant;
- by leaving a copy at the person's residence with an adult who apparently resides with the person;
- by leaving a copy in a mailbox or mail slot for the address at which the person resides;
- by attaching a copy to a door or other conspicuous place at the address where the person resides;
- by faxing a copy to a fax number provided as an address for service by the Tenant (if any);
- by substituted service, if so ordered by the director pursuant to s. 64(1) of the *MHPTA*; or
- by any other means of service prescribed by the regulations[38]

How a Landlord chooses to serve the notice to end tenancy for unpaid rent influences the date the notice is deemed to have been received. If the notice to end tenancy is served by mail, it is deemed to have been received on the 5th day after it is mailed (s. 83(a), *MHPTA*). If the notice is faxed, it is deemed to have been received by the Tenant on the 3rd day after it is faxed (s. 83(b), *MHPTA*). If notice is given by attaching a copy of the document to a door or other place or by leaving a copy of the notice in a mail box or mail slot, it is deemed to have been received on the 3rd day after it is attached or left (ss. 83(c) and (d), *MHPTA*).

If the Tenant pays the overdue rent within 5 days of receiving the notice to end the tenancy, the notice has no effect (s. 39(4), *MHPTA*), although the fact the notice was issued might be relevant to a separate notice to end tenancy for the Tenant repeatedly paying the rent late. The Tenant may also dispute the notice to end tenancy by making an application for dispute resolution (s. 39(4)(b), *MHPTA*). If the Tenant receives the notice to end the tenancy but does not exercise either of these options, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the manufactured home site to which the notice relates by the effective date (s. 39(5), *MHPTA*), subject only to the arbitrator's limited discretion to extend the period for disputing a notice where there are "extraordinary circumstances" pursuant to section 59 of the MHPTA.

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37 For a detailed description of various types of service requirements, such as service on corporations or persons under the age of 19, refer to Residential Tenancy Policy Guideline 12, Service Provisions.

38 There currently are no other means of service prescribed by the MHPTA Regulation.

b. Suing the Tenant for Damages for Breach of a Fixed Term Lease

From the outset, it is worth noting that fixed term manufactured home site leases are rare in British Columbia. Manufactured home site leases are usually month to month and can only be ended for cause. It is difficult and expensive to move a manufactured home, and so there is usually no practical benefit to either the landlord or the tenant to have a fixed term lease of a manufactured home site.

If the Landlord intends to make a claim against the Tenant for loss of rent over the remainder of the tenancy term, the Landlord must put the Tenant on notice of this intention. If the claim for damages for loss of rent is filed and served upon the Tenant while the Tenant is still in possession of the manufactured home site, the notice will likely be sufficient. However, if the claim is filed and served on the Tenant after the Tenant has vacated the manufactured home site, the arbitrator must consider the following, non-exhaustive list of factors when deciding whether the notice is sufficient (see RT Policy Guideline 3 at page 1):

- length of time since the end of the tenancy;
- whether the Tenant's whereabouts were known to the Landlord; and
- whether the Tenant has been prejudiced by the passage of time.

Typically, the damages awarded are calculated as the amount required to put the Landlord in the same position they would be in if the Tenant had not breached the agreement. This usually means compensating the Landlord for loss of rent up to the earliest time the Tenant could have legally ended the Tenancy, and can include the difference between what the Landlord would have received from the Tenant and what the Landlord was able to re-rent the manufactured home site for, for the balance of the tenancy period.

It is crucial to recognize that the Landlord has a duty to mitigate any losses resulting from the Tenant's non-payment of rent. Residential Tenancy Policy Guideline 5, Duty to Minimize Loss ("RT Policy Guideline 5") sets out the meaning of the duty to mitigate. Generally, this means that the victim of the breach is required to demonstrate that they have taken reasonable steps to keep their losses as low as reasonably possible. The victim of the breach will not be entitled to any compensation for losses that could reasonably have been mitigated. In the context of loss of rent, the duty to mitigate means that the Landlord must attempt to re-rent the manufactured home site at a reasonable rent[39]. What is reasonable varies and depends on factors such as where the manufactured home site is located and the nature of the site. A party entitled to claim damages is not required to do everything possible to minimize the loss or to incur excessive costs. If the Landlord tries to re-rent the manufactured home site at a greatly increased rent, this will not relieve the Landlord of their duty to mitigate their losses. However, even if the Landlord is able to re-rent the premises at a reasonable rent, the Landlord may still make a claim for lost rent if the Landlord can establish that there are other manufactured home sites that are vacant and these other sites would have been rented if the breached tenancy had continued. For more information on suing a Tenant for lost rent, see RT Policy Guideline 3.

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39 Note that the Landlord's requirement to re-rent takes effect on the date following the date that the notice takes legal effect and after the relevant dispute period set out in the *MHPTA* has expired. For more information on the duty to mitigate in the context of non-payment of rent, see RT Policy Guideline 5 at page 2.

If the Landlord fails to take reasonable steps to mitigate their losses, their damages award may be reduced by the amount that would have been saved had reasonable steps been taken. For more information regarding the duty to mitigate, see RT Policy Guideline 5.

5. Landlord Ends Tenancy Due to End of Employment with Landlord

A Landlord may end a tenancy of a Tenant who is employed as a caretaker, manager or superintendent of the manufactured home park of which the manufactured home site is a part by giving notice to end tenancy if the manufactured home site was rented or provided to the Tenant for the term of his or her employment, the Tenant's employment as a caretaker, manager or superintendent has ended and the Landlord intends, in good faith, to rent or provide the manufactured home site to a new caretaker, manager or superintendent (s. 41(1), *MHPTA*).

The Residential Tenancy Branch (the "RTB") has published a policy guideline regarding the meaning of "good faith" when a Landlord ends a tenancy (see Residential Tenancy Policy Guideline 2, Ending a Tenancy: Landlord's Use of Property ("RT Policy Guideline 2")). In order to meet this good faith requirement, a Landlord must establish that they honestly intend to use the manufactured home site for the purpose stated on the notice to end the tenancy. The RTB further states that the Landlord must not have an ulterior motive for ending the tenancy. If the Landlord has another purpose, in addition to the purpose stated on the notice to end the tenancy, this raises the question as to whether the Landlord has a dishonest purpose, and in this instance the RTB may consider the Landlord's motive in ending the tenancy when deciding whether to uphold a notice to end tenancy. Lastly, if the Landlord's good faith is called into question, the burden is on the Landlord to establish that they truly intend to do what they said they would do on the notice to end the tenancy.

For other types of employees, an employer (including the Landlord) may end the tenancy of an employee in respect of a manufactured home site rented or provided by the employer Landlord to the employee Tenant to occupy during the term of employment if the employment is ended (s. 41(2), *MHPTA*).

If the Landlord elects to terminate the tenancy for any type of employee (including caretakers, managers or superintendents), the Landlord must provide the Tenant employee with a notice to end the tenancy with an effective date that is not earlier than one month after the date the Tenant receives the notice, is not earlier than the last day the Tenant is employed by the Landlord, and is the day before the day in the month that rent, if any, is payable under the tenancy agreement (s. 41(3), *MHPTA*). The notice to end tenancy must be written notice, signed and dated by the Landlord and which includes the address of the manufactured home site, states the effective date of the notice and the grounds for ending the tenancy and is in the approved form(s. 45, *MHPTA*). If the notice to end tenancy does not comply with these requirements, it will not be valid (section 41(4), *MHPTA*).

If a Landlord provides the Tenant with a notice to end the tenancy due to the end of their employment with the Landlord, the Tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the Tenant receives the notice (s. 41(5), *MHPTA*). If the Tenant receives a notice to end tenancy but does not make an application for dispute resolution within 10 days after receipt of the notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must

vacate the manufactured home site by that date (s. 41(6), *MHPTA*).

6. Landlord Ends Tenancy for Landlord's Use of Property

A Landlord may end a tenancy agreement by giving the Tenant a notice to end the tenancy if the Landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park (s. 42(1), *MHPTA*). RT Policy Guideline 2 regarding a Landlord's good faith intention described above applies when a Landlord wishes to end a tenancy in order to make use of the property.

The requirement to "have all necessary permits and approvals that are required by law" includes any additional permits, permit amendments, and updates (see RT Policy Guideline 2 at page 2, but note that the current version of this policy guideline is based on a court decision under appeal). If a permit is not required, it may be prudent for a Landlord to obtain written proof from their local government that a permit is not required, in the event that a Tenant disputes the notice to end the tenancy.

It is important to note that the BC Supreme Court considered the requirement that the Landlord have "all necessary permits" in *Howe v. 3770010 Canada Inc.*, 2008 BCSC 330 ("*Howe*"). In *Howe,* the Landlord had obtained all permits required to close the manufactured home park, but had not obtained any of the required permits needed to build a single family residence on the manufactured home park. The court upheld the arbitrator's decision to allow the evictions on the basis that the Landlord only needed the permits required to close the park in order to properly evict the tenants. It was sufficient that the Landlord intended to use the land for a purpose other than a manufactured home park. The Landlord is not required to show any specific intended future use for the land.

The meaning of "significant part" of the manufactured home park means "consequential", "considerable", "material", "noticeable" and "important" (see *Stelco Inc. v. Ontario* (1994) 115 DLR (4^{th}) 437, approved on appeal (1995) 126 DLR (4^{th}) 767, *R v. Dupuis* (1998) 174 Sask. R 17, and Residential Tenancy Policy Guideline 33, Ending a Manufactured Home Park Tenancy Agreement – Landlord Use of Property ("RT Policy Guideline 33") at page 1).

If the Landlord wishes to terminate the tenancy on this basis, the Landlord must provide a written notice to end the tenancy signed and dated by the Landlord and which includes the address of the manufactured home site, states the effective date of the notice and the grounds for ending the tenancy and is in the approved form (s. 45, *MHPTA*). If the notice to end tenancy does not comply with these requirements, it will not be valid (section 42(3), *MHPTA*). The notice to end the tenancy must end the tenancy effective on a date that is not earlier than 12 months after the date the notice is received and is the day before the day in the month that rent is payable under the tenancy agreement (s. 42(2)(a), *MHPTA*). If the tenancy is a fixed term tenancy, the effective date cannot be earlier than the date specified as the end of the tenancy (s. 42(2)(b), *MHPTA*).

If a Landlord wishes to end a tenancy agreement in order to convert the manufactured home park, the Landlord must pay to the Tenant $20,000 on or before the effective date of the notice (RT Policy Guideline 33 at page 1). A Tenant may make an application for additional compensation, which is equal to the most recent assessed value of the Tenant's home minus

$20,000, if the following two criteria are established (see RT Policy Guideline 33 at page 1):

- The manufactured home is not capable of being moved before the Tenant is required to vacate the manufactured home site at the end of the tenancy. To meet this requirement, the Tenant must prove:
    - They are not able to obtain the necessary permits, licenses, approvals or certificates required by law to move the manufactured home; or
    - The Tenant is not able to move the manufactured home to another manufactured home site within a reasonable distance of the current manufactured home site and the Tenant does not owe any taxes in relation to the manufactured home[40].
- The most recent assessed value of the manufactured home, as determined under the *Assessment Act*, is greater than $20,000.

A Landlord who ends a tenancy agreement on this basis must take steps to accomplish the stated purpose within a reasonable period after the effective date of the notice. If the Landlord does not do so, he or she will be required to compensate a vacating Tenant the equivalent of 12 months' rent or $5,000, whichever is greater, unless excused by the arbitrator in extenuating circumstances as a type of punishment for the Landlord apparently not acting in good faith (s. 44(2) and 89(2)(g.2), *MHPTA* and section 33.1(2) of the Regulation to the MHPTA)[41].

If a Landlord provides the Tenant with a notice to end the tenancy, the Tenant may dispute the notice by making an application for dispute resolution within 15 days after the date the Tenant receives the notice (s. 42(4), *MHPTA*). If the Tenant receives a notice to end the tenancy but does not make an application for dispute resolution within 15 days after receipt of the notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the manufactured home site by that date (s. 42(5), *MHPTA*).

If the Landlord is ending the tenancy for a change in the use of the manufactured home park pursuant to section 42 of the *MHPTA*, the Tenant may choose to end the tenancy early, before the effective date in the notice to end the tenancy provided by the Landlord by giving the Landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the Landlord's notice and by paying the Landlord, on the date the Tenant's notice is given, the portion of the rent due to the effective date of the Tenant's notice (s. 43(1), *MHPTA*). If the Tenant has already paid rent prior to giving notice, the Landlord must refund any rent paid for a period after the effective date of the Tenant's notice (s. 43(2), *MHPTA*). It is important to note that if a Tenant decides to end the tenancy early, this does not affect the Tenant's right to any compensation owed by the Landlord to the Tenant pursuant to section 42 of the *MHPTA*.

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40 Note that if the Tenant is unable to move their home in these circumstances, the abandonment provisions set out in Part 6 of the MHPTA Regulation applies (see RT Policy Guideline 33 at page 2).

41 For a discussion of what constitutes a reasonable period and what is considered to be taking steps to accomplish the stated purpose in the context of the Residential Tenancy Act, please see Residential Tenancy Policy Guideline 50, Compensation for Ending a Tenancy at page 2.

J. Overholding Tenants

A Tenant is generally not liable for rent after a tenancy agreement has been terminated for non-payment of rent. However, if the Tenant remains in possession of the manufactured home site after the tenancy ends, the Tenant will be liable to pay occupation rent on a *per diem* basis until the Landlord actually recovers possession of the manufactured home site (RT Policy Guideline 3).

K. Abandonment of Personal Property

Abandonment is an issue frequently encountered by practitioners acting for manufactured home park owners. Frequently, manufactured homes are too expensive to relocate after a tenancy ends because of a lack of available manufactured home sites in a given area which would allow relocation to occur without substantial cost. It is also frequent that it is simply not possible or not practicable to move a manufactured home because of its age and the resultant wear and tear against the structure of the manufactured home that occurs over time which makes relocation without substantial damage to the home unlikely. In these circumstances, some tenants will simply abandon the manufactured home at the end of a tenancy with its contents.

A Landlord may consider that a Tenant has abandoned personal property (which includes the manufactured home itself and any other form of personal property) at the manufactured home site in two scenarios (section 34(1), MHPTA Regulation):

- the Tenant leaves personal property on a manufactured home site that he or she has vacated after the tenancy agreement has ended; or
- the Tenant leaves personal property on a manufactured home site that, for a continuous period of one month, the Tenant has not ordinarily occupied and for which he or she has not paid rent or from which the Tenant has removed substantially all of his or her personal property.

The Landlord is only entitled to consider the personal property abandoned in the second scenario if the Landlord receives an express oral or written notice of the Tenant's intention not to return to the manufactured home site or the circumstances surrounding the giving up of the manufactured home site are such that the Tenant could not reasonably be expected to return to the manufactured home site (s. 34(2), MHPTA Regulation).

If the Tenant's personal property was abandoned pursuant to one of the two scenarios just described, the Landlord may remove the Tenant's personal property from the manufactured home site (s. 34(3), MHPTA Regulation). However, the Landlord must deal with this personal property in accordance with Part 6 of the MHPTA Regulations (s. 34(3), MHPTA Regulation) and the Landlord cannot remove the personal property if the Landlord and Tenant have made an express agreement to the contrary respecting the storage of personal property (s. 34(4), MHPTA Regulation).

Frequently, abandoned property consists of items that are of little value. Section 35(2) of the MHPTA Regulation permits a landlord to immediately dispose of property having a market value of less than $500, or property that would cost more to remove, store, and sell than the expected proceeds of sale, or if storage of the property would be unsanitary or unsafe. A

landlord intending to dispose of property on this basis should be prepared to document what it has disposed of through photographic or other evidence, in case the tenant disputes that the landlord appropriately disposed of the property summarily without attempting to store it.

If the Landlord removes the Tenant's abandoned personal property from the manufactured home site, the Landlord must store this property in a safe place and manner for a period of not less than 60 days following the date of removal (the "60 Day Storage Period"), keep a written inventory of the property, keep particulars of the disposition of the property for 2 years following the date of disposition, and advise a Tenant or a Tenant's representative who requests the information either that the property is stored or that it has been disposed of, as the case may be (s. 35(1), MHPTA Regulation).

When dealing with a Tenant's abandoned personal property, a Landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage (s. 40, MHPTA Regulation). However, the Landlord may dispose of the property rather than storing it for 60 days following the date of removal if the property at issue has a total market value of less than $500, the cost of removing, storing and selling the property would be more than the proceeds of its sale, or the storage of the property would be unsanitary or unsafe (s. 35(2), MHPTA Regulation). If there is any dispute regarding the value of the abandoned property, a court may, on application, determine the value of the property (s. 35(3), MHPTA Regulation).

If the Landlord elects to dispose of the Tenant's property, not less than 30 days before disposing of the personal property, the Landlord must give notice of disposition to any person who has registered a financing statement in the Personal Property Registry using the name of the Tenant or the serial number of the property or to the knowledge of the Landlord claims an interest in the property[42]. This notice must be given in accordance with section 72 of the *Personal Property Security Act*, RSBC 1996, c. 359 (s. 37(4), MHPTA Regulation). If the notice has been served on a person who holds a security interest in the Tenant's personal property, the Tenant is deemed to be in default of the obligation secured (s. 38(1), MHPTA Regulation).

The Landlord must also publish this notice in a newspaper published in the area in which the manufactured home site is situated (s. 37(2), MHPTA Regulation). The notice must contain the name of the Tenant, a description of the property to be sold, the address of the manufactured home site, the address where the property is being stored, the name and address of the Landlord, and a statement that the Landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person (s. 37(3), MHPTA Regulation).

If a Landlord has complied with their obligations under s. 35 of the MHPTA Regulation, the Landlord may dispose of the property in a commercially reasonable manner unless, during the 60 Day Storage Period, a person entitled to notice of the disposition pursuant to section 37(2)

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42 If the abandoned personal property is a manufactured home, the Landlord must give notice of the disposition to any person who is registered as an owner of the manufactured home in the Manufactured Home Registry (s. 37(2)(a)(ii)).

of the MHPTA Regulation or a person who holds a security interest in the property has taken or demanded possession of the property or a person claiming an interest in the property has made an application or brought an action to establish his or her interest in or right to possession of the property and the Landlord has been notified of the application or action (s. 39(2), MHPTA Regulation). If the Landlord disposes of the Tenant's personal property pursuant to section 39(2) of the MHPTA Regulation, the Landlord is entitled to retain the proceeds of sale in order to reimburse the Landlord for their reasonable costs of removing, storing, advertising and disposing of the property and any required searches to comply with section 37 of the MHPTA (s. 39(3)(a), MHPTA Regulation). Note that the Manufactured Home Registry will also require an affidavit from a knowledgeable person that the requirements of Part 6 of the MHPTA Regulation have been complied with.

A Tenant may claim his or her personal property at any time before it is disposed of. If the Tenant chooses to claim their personal property prior to disposal, but after it has been removed by the Landlord, the Landlord may require the Tenant to reimburse the Landlord for his or her reasonable costs of removing and storing the property, any search required to comply with section 37 of the MHPTA Regulation, and to satisfy any amounts payable by the Tenant to the Landlord under the *MHPTA* or the tenancy agreement before returning the property to the Tenant (s. 36(1), MHPTA Regulation). If the Tenant claims their personal property but does not pay the Landlord the amount owed, the Landlord may dispose of the Tenant's property as provided for pursuant to the *MHPTA* and MHPTA Regulation. If a person holding a security interest in the Tenant's property claims the property, before taking possession of the property the person who holds the security interest must pay to the Landlord moving and storage charges incurred by the Landlord under Part 6 of the MHPTA Regulation (s. 38(2), MHPTA Regulation).

Note that any sums the Landlord collects in excess of what it is owed and entitled to retain under Part 6 of the MHPTA Regulation must be submitted to the provincial government pursuant to the *Unclaimed Property Act* (section 39, MHPTA).

1. Claims for Lost Rent

If the Tenant has abandoned their manufactured home, the Landlord may sue for any unpaid rent up to the date of the abandonment, and may also claim damages for loss of rent for the remainder of the term of the tenancy (see RT Policy Guideline 3 at page 1). The notice requirements for putting a Tenant on notice for such a claim from the Landlord apply, and were set out earlier in this paper. However, if a Tenant has abandoned their manufactured home and the tenancy ended with the abandonment, notice must be given within a reasonable time after the Landlord becomes aware of the abandonment and is in a position to serve the Tenant with the notice or claim for damages (see RT Policy Guideline 3 at page 1).

L. Deceased Tenants

Frequently, practitioners will be approached by a manufactured home park owner dealing with a deceased tenant. The Residential Tenancy Branch of B.C. has taken the position that, when a tenant dies:

1. the tenant's interest in the lease passes to the tenant's estate to be dealt with by his or

her executor or administrator;
2. if there is another tenancy on the tenancy agreement, the tenancy continues;
3. the estate of the tenant is responsible for the tenancy agreement. The executor or administrator can choose to pay the rent, give notice to end the tenancy, or ask for the landlord's permission to assign the tenancy to someone else; and
4. when a tenant is deceased and no action is taken by the administrator or executor to deal with the tenancy, and where the rent is unpaid, the landlord may take the position the manufactured home is abandoned.[43]

In practice, after an initial period of confusion in which the executor or administrator eventually assumes his or her responsibilities, arrangements for the home to be sold are usually made promptly and with the landlord's cooperation.

On less frequent occasion, the executor or administrator, who often a family member of the deceased, will ask to reside in the manufactured home and become the new tenant. If not acceptable to a landlord, arguably the executor or administrator does not have the right to insist on staying. The executor or administrator only holds the tenancy agreement in trust for the estate, and cannot cause the tenancy to be assigned to anyone else without first obtaining the landlord's permission. There are no authorities on point in the context of manufactured home tenancies in British Columbia.

III. Ownership of Manufactured Homes

A. Buying and Selling a Manufactured Home

1. Manufactured Home Registry

The Manufactured Home Registry (the "MHR") is a central registry which records ownership details and the movement of manufactured homes. It is easily accessed through BC Online. British Columbia is the only jurisdiction in Canada that has a central registration system for manufactured homes. It is designed both to protect owners, but also to facilitate property tax collection, because the registry allows municipal tax collectors to track the location of manufactured homes within British Columbia.

a. Submitting and Filing Records to the MHR

There is a specific process for submitting and filing records in the MHR. Any notice, application or other record required or permitted to be filed with the registrar by the *MHA* must (s. 8(1), *MHA*):

- be submitted in the prescribed manner and accompanied by the prescribed fee[44];
- be in the form established by or acceptable to the registrar;

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43 See e.g., https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/ending-a-tenancy-in-special-circumstances

44 The manner and fee for submitting a record will depend on the type of record (see Schedule 1 of the MHA Regulation for a list of fees).

- in the opinion of the registrar, be legible and suitable for photographing or for electronic or digital imaging or storage; and
- be in the English language or be filed with an English translation verified in a manner satisfactory to the registrar.

A notice, application or record is considered filed with the registrar when the registrar is satisfied that the notice, application or record and information contained in it appear to meet the requirements of the *MHA* and any associated regulations, and the registrar accepts the notice, application or other record and includes in the registry the information contained in the record (s. 8(2), *MHA*).

The registrar may refuse to file a notice, application or other record if, in the opinion of the registrar, any of the following criteria are met (s. 10(1), *MHA*):

- the notice, application or other record is not complete due to an omission or misdescription;
- the notice, application or other record does not comply with the requirements of the *MHA* or any associated regulations;
- the notice, application or other record contains an error, alteration or erasure; or
- another notice, application or record that, under the *MHA*, must be filed in conjunction with the notice, application or other record has not yet been submitted for filing.

It is important to note that the registrar is not under any duty to determine the authenticity or accuracy of the signature of a person named in a record filed under the *MHA*, the identity of a person named in a record filed under the *MHA*, or whether an application or other record filed with the registrar, or the information contained in it, meets the requirements of the *MHA* and any associated regulations (s. 10(2), *MHA*). Note also that a record to which the *MHA* applies is not invalidated or made ineffective merely by a defect, irregularity, omission or error in it or in its execution unless, in the opinion of the court, the defect, irregularity, omission or error has actually mislead a person whose interest is affected (s. 14, *MHA*).

b. Registering Ownership of a Manufactured Home

In order to register ownership of a manufactured home, the owner must submit to the registrar for filing a notice of ownership in the form established by the registrar and set out in the regulations (s. 5(1), *MHA*)[45]. The notice of ownership must include the name and address of the owner, the year of manufacture, the make or model, and the serial number of the manufactured home, as well as the current location of the manufactured home (s. 5(3), *MHA*). The notice must be accompanied by any other records required by the MHA Regulation[46] (s. 5(4), *MHA*).

If the notice of ownership conforms to the requirements listed above, the registrar must file the notice, register the name of the owner of the manufactured home and the interest claimed by

45 Currently, the only regulation under the MHA Regulation regarding registration is the requirement that a notice of ownership submitted by a manufacturer be submitted to the registrar electronically (s. 19(2)(c), MHA Regulation).

46 There are currently no other records required under the MHA Regulation.

the owner, and assign a registration number to the manufactured home (s. 5(2), *MHA*)[47]. Once the manufactured home is registered, the registrar must then issue to the owner a decal bearing the manufactured home's registration number (s. 5(5), *MHA*)[48]. When the owner of the manufactured home receives the decal, the owner must affix it, in the prescribed location, to the manufactured home (s. 5(5), *MHA*)[49]. If a decal is stolen, lost, defaced, mutilated or destroyed, the registered owner of the manufactured home must obtain and affix a replacement decal (s. 15(2), MHA Regulation).

Once the manufactured home is registered, the owner may apply to the registrar for a transport permit authorizing the move. Before a manufactured home is moved, the owner must apply for a transport permit[50].

c. Filing a Caution

Any person who has commenced or is a party to a proceeding, and is making a claim to property in a manufactured home, may submit for filing a caution in the form established by the registrar, together with a copy of the writ, notice or pleading in which the person claims the interest (s. 22(1), *MHA*). If the registrar receives a caution for filing, the registrar must file the caution or any court order containing or cancelling the caution (s. 22(2), *MHA*). If a caution is filed, the caution expires 3 months after it is filed unless within that period the court, on application, orders that the caution be cancelled or continued[51] until a further order is made or until the end of a period set by the court for determining that person's rights under the caution (s. 22(3), *MHA*). The person who filed or continued the filing of a caution may withdraw it at any time by notice in writing to the registrar (s. 22(5), *MHA*).

d. Correcting the Registry

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47 If an application is submitted by a lessor-owner or lessee-owner, the names and addresses of both the lessor-owner and lessee-owner must be included in the notice of ownership.

48 If a decal is stolen, lost, defaced, mutilated or destroyed, the registrar must, on application, issue a new decal (s. 6(1), *MHA*). The application for a new decal must be in the form established by the registrar, state the circumstances of the theft, loss, defacement, mutilation or destruction of the decal, and indicate the class of decal requested by the application (s. 6(2), *MHA*).

49 The MHA regulations state that the decal must be affixed to the manufactured home in a position authorized by the registrar (s. 15(1), *MHA*). Note that the legislation provides no further clarification about where "a position authorized by the registrar" is actually located.

50 It is not only the owner of a manufactured home who can apply for a transport permit. A landlord may apply for a transport permit under an order of possession granted pursuant to sections 48 or 49 of the *MHPTA* or if the landlord is exercising a right conferred on them under the *MHPTA* Regulation respecting disposal of abandoned property (s. 15(2)(b), *MHA*). If such an application is made by the Landlord, the registrar must not decline to issue a transport permit merely because the taxes on the manufactured home are due, in default, in arrears or delinquent, so long as the registrar is satisfied that the collector having taxing authority over the manufactured home has consented to the issue of the transport permit (s. 15(3), *MHA*). A secured party under a security agreement may also apply for a transport permit (s. 15(2)(c), *MHA*). Finally, any other person can apply for a transport permit under a court order (s. 15(2)(d), *MHA*). If a person other than the registered owner of the manufactured home applies for a transport permit, the registrar may provide confirmation of the issuance of the transport permit to the person recorded on the register as the registered owner (s. 14(2), MHA Regulation).

51 Note that any continuation order must be filed with the registrar before the caution expires (s. 22(4), *MHA*).

Section 11 of the *MHA* allows the registrar to correct errors or omissions in the registry. The registrar may correct an error or omission in the registry, either on an application or on the registrar's own initiative, if the registrar is satisfied that there is an error or omission in the registry and the registrar is satisfied as to the true facts that ought to have been incorporated into the registry (s. 11(1), *MHA*). This is true whether the error or omission was made by the person who submitted a record to the registrar for filing or if the registrar made the error (s. 11(2), *MHA*).

If a correction is made by the registrar, the correction must be shown on the register as a correction, and must list the date and time of the correction by the registrar (s. 11(3), *MHA*). The corrected registry, and every corrected entry, are effective and valid from the time the correction is made, as if the error or omission never existed (s. 11(4), *MHA*).

i. Correcting the Location of the Manufactured Home

If the location of a manufactured home on the registry is corrected pursuant to section 11 of the *MHA*, the registrar may send a notice of the change to the collector having taxing authority over the manufactured home at the location on the register before the change and any secured party revealed by a search of the personal property registry using the manufactured home registration number (s. 19(1)(a), *MHA*). The registrar may also send notice to the present registered owner, requiring the registered owner to complete any form established by the registrar to process the change in location or satisfy to the registrar that the change was made in accordance with the *MHA* and any associated regulations or by someone other than the present registered owner (s. 19(1)(b), *MHA*). If, within 60 days of the registrar sending notice to the registered owner, the registrar has not received the form, if any, or been satisfied that the change in location was made in compliance with the *MHA* and associated regulations or made by someone other than the registered owner, the registrar may decline to file a notice of transfer and decline to issue a transport permit (s. 19(2), *MHA*).

ii. Name Change of the Registered Owner

If the name of the registered owner changes, the name of the registered owner must be changed on the application of the registered owner, so long as the registrar is satisfied that the name of the registered owner has been changed (s. 12, *MHA*).

2. Moving a Manufactured Home

The purchase or sale of a manufactured home will often necessitate physically moving the manufactured home to its new location. Before a manufactured home can be moved, the registrar must issue a transport permit. Before a transport permit may be issued however, the manufactured home must be registered in the MHR.

Assuming the manufactured home has already been registered in the MHR, a transport permit application must be submitted for filing in an electronic format that is compatible with the technical requirements of the registrar, unless otherwise allowed or required by the registrar (s. 19(2)(d), MHA Regulation). If the registrar receives an application for a transport permit, and is satisfied that a certificate or confirmation in electronic format has been issued under section 25

of the *MHA*[52,53], the registrar must issue the transport permit authorizing the manufactured home to be moved to the location set out in the transport permit (s. 15(2), *MHA*)[54].

Once a transport permit has been issued, it is valid for 30 days after the date it was issued, unless otherwise stated on the permit (s. 17(1), *MHA*). The registrar may issue a transport permit subject to any conditions the registrar considers necessary to facilitate the transportation of the manufactured home (s. 17(2), *MHA*). If the transport permit includes conditions, a person must move the manufactured home in accordance with those conditions (s. 17(3), *MHA*).

When the registrar issues a transport permit, the registrar must enter in the registry the new location described in the permit as the location of the manufactured home (s. 12(1), MHA Regulation). If the location of a manufactured home differs from the location in the registry, the owner must submit for filing a report with the registrar in the form established by the registrar that disclosed that fact, provide the registrar with any other information the registrar considers necessary, and pay the transport permit application fee (s. 12(4), MHA Regulation).

If the manufactured home is not transported to the location described in the transport permit, the owner must submit to the registrar for filing a report specifying the new location of the manufactured home or that the manufactured home was not moved (s. 12(2), MHA Regulation). This report must be submitted for filing within 3 days of the earlier of the day the manufactured home was transported to the new location or the day the transport permit expires (s. 12(3), MHA Regulation). When this report is filed, the registrar must enter in the registry the new location of the manufactured home and given written notice of the new location to all secured parties, if any (s. 12(5), MHA Regulation).

B. Financing the Purchase of a Manufactured Home

A manufactured home may be offered as security for a loan, conceptually, just like any other personal property. Security interests in manufactured homes are registered in the Personal Property Registry under the *Personal Property Security Act*, RSBC 1996, c 359. This allows creditors to secure and maintain a security interest in the manufactured home in case of default.

There are however, some aspects of financing unique to manufactured homes. For instance, some lenders will require the Landlord to give notice of a Tenant's breach of the tenancy agreement to give the lender the opportunity to cure it before the Landlord can take

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52 Section 25 of the *MHA* refers to the taxes owing on the manufactured home. Note that section 25 of the *MHA* does not apply to a manufactured home that is located on a manufactured home dealer's lot and the ownership of which is registered in the name of a person who, under a transport permit, transported the manufactured home to the dealer's lot (s. 4(3), MHA Regulation).

53 A collector must not require the applicant to pay a deposit as a condition of issuing this certificate unless the manufactured home in respect of which the request is made has been assessed in the name of the owner, separately from the land on which it is located, and placed on the assessment roll of the taxing authority for the current year (s. 16(1), MHA Regulation).

54 If the application is for a transport permit to remove a manufactured home from British Columbia, the registrar must also be satisfied that no grants or mortgages have been made under the *Home Purchase Assistance Act* for the manufactured home, and no agreements have been made under the *Home Mortgage Assistance Program Act*, under which the government is entitled to repayment, before issuing the transport permit (s. 15(2)(f), *MHA*).

enforcement action. Such agreements may also require that the Landlord agree to cooperate with any seizure process or to help the lender secure a new Tenant for the manufactured home. All of this is intended to protect the lender's interest in the collateral and maximize the chances that the collateral will be realized without relocation. Generally speaking, a manufactured home loses value if it is removed from the manufactured home site pursuant to enforcement proceedings and so a lender has an interest in ensuring the manufactured home remains where it is located in case of default so that it can be sold at the highest price possible.

Another aspect of financing unique to manufactured homes is that there are a restricted number of lenders willing to finance the purchase of a manufactured home. To help address this issue, the Canada Mortgage and Housing Corporation (the "CMHC") has started the Affordable Housing Centre to help developers take advantage of manufactured housing to help keep housing projects affordable for buyers[55]. Local credit unions and several major banks are the only institutions which commonly loan against the security of manufactured homes.

Before loaning funds against the security of a manufactured home, a lender will want to conduct basic due diligence which should include, as a minimum, confirmation that:

1. the registered owner of the manufactured home. Sometimes, an individual will own a manufactured home despite it being registered in the name of another because the matter of registering the change of ownership was overlooked[56];
2. no property taxes are owing against the manufactured home, confirmed by obtaining a tax certificate from the local municipality;
3. the home complies with section 21 of the *Electrical Safety Regulation* of the *Safety Standards Act* of British Columbia. A manufactured home in British Columbia cannot be sold without proof of such compliance[57];
4. no caution notice has been filed with the Manufactured Home Registry setting out an adverse claim to the manufactured home;
5. no other financing statements are registered in the Personal Property Registry which could be relevant to the manufactured home; and
6. the manufactured home is registered to be located at the manufactured home site where it is represented by the owner to be located. This is done by conducting a manufactured home search.

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55 For more information on the CMHC, see "Manufactured Housing: Quality at an Affordable Price, at https://www.cmhc-schl.gc.ca/en/inpr/afhoce/afhoce/tore/tore_010.cfm.

56 The Manufactured Home Registry records the name of manufactured home owners, and the *Manufactured Home Act* does set out that an instrument purporting to transfer property in a manufactured home is not effective to transfer property in the manufactured home unless a notice of transfer in the form established by the registrar is filed with the registrar (s. 7(7), *MHA*). However, the Manufactured Home Registry doesn't function like a Torrens system in which there is indefeasibility of title. Arguably, a lender could take security against the unregistered owner's interest in the manufactured home, but lending funds to an unregistered owner of a manufactured home against the security of that home is less than desirable for obvious reasons, namely section 7(7) of the MHA.

57 See https://www.technicalsafetybc.ca/alerts/information-bulletin-approval-manufactured-homes-and-factory-built-structures for a complete discussion of the obligation for manufactured home to comply with the *Safety Standards Act* when it is sold.

C. Transferring Property in a Manufactured Home

Transfers of property in manufactured homes must be registered in the MHR by way of a notice of transfer. If property in a manufactured home is transferred, a person may submit for filing a notice of transfer in the form established by the registrar and in accordance with the regulations (s. 7(1), *MHA*)[58]. Note that the regulations may require that notices respecting particular classes of transfers be submitted for filing only through persons specified by regulation or designated as qualified suppliers by the registrar (s. 7(2), *MHA*). The regulations may also require these persons to provide copies of the records to other persons or to retain copies of the records for a prescribed period (s. 7(5), *MHA*).

The notice must set out the following information and must be accompanied by any records required by the regulations (s. 7(3) and (4), *MHA*):

- the name and address of the new owner;
- the name of the current registered owner[59];
- the registration number of the manufactured home;
- the current location of the manufactured home; and
- any other information required by the regulations[60].

Except as against the person making it, an instrument purporting to transfer property in a manufactured home is not effective to transfer property in the manufactured home unless a notice of transfer in the form established by the registrar is filed with the registrar (s. 7(7), *MHA*)[61].

1. Transfer as a Result of the Sale of the Manufactured Home

The most common way of transferring a property interest in a manufactured home is when an owner of a manufactured home sells the home to a buyer. A notice of transfer for a manufactured home must not be submitted for filing unless ownership of the manufactured

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58 See section 6 of the MHA Regulation for details regarding notices of transfer.

59 Or the name of the lessor-owner in the case of the transfer of the lessor-owner's property or of the lessee-owner in the case of the transfer of the lessee-owner's property (s. 7(3)(b), *MHA*).

60 If a notice of transfer is in relation to a transfer to a person as a co-owner with the transferor, the notice must state whether the co-owners are tenants in common or joint tenants and, if they are tenants in common, the respective fractional interest held by each tenant in common (s. 6(7), MHA Regulation).If a notice of transfer is in relation to a transfer to more than one person, whether or not as co-owners with the transferor, the notice must state whether the transferees are, in relation to each other, tenants in common or joint tenants and, if they are tenants in common, the respective fractional interest held by each tenant in common (s. 6(8), MHA Regulation). If a notice of transfer is in relation to a transfer by a co-owner as a joint tenant, the notice must state that the transferee is a tenant in common and the fractional interest held by each tenant in common (s. 6(9, MHA Regulation). Note however, that section 6(9) of the MHA Regulation does not apply if all of the co-owners have transferred their interests to a single transferee or to two or more transferees as joint tenants (s. 6(10), MHA Regulation). Lastly, if a notice of transfer is in relation to a transfer from an owner to a lessee owner, the name of both the owner and the lessee owner must be given on the notice (s. 6(11), MHA Regulation).

61 This is subject to the *Land Title Act* (s. 7(9), *MHA*). Note also that, subject to the *Land Title Act*, the giving of a security interest in a manufactured home does not sever a joint tenancy in the manufactured home (s. 7(8) and (9), *MHA*).

home has been registered under the *MHA* (s. 7(6), *MHA*).

A notice of transfer in relation to the sale of a manufactured home (evidenced by an instrument of transfer executed by a registered owner of the manufactured home) may be filed electronically (s. 6(1), MHA Regulation). If the notice of transfer is not filed electronically, the registered owner must submit for filing with the completed notice of transfer the original instrument of transfer, or a certified copy of the instrument, and any other record the registrar requires (s. 6(6), MHA Regulation).

A notice of transfer must be submitted on behalf of the registered owner of the manufactured home by a practicing lawyer, a practicing notary, or other qualified supplier, and must set out the date of execution of the instrument or transfer (s. 6(2), MHA Regulation). The lawyer, notary or qualified supplier submitting a notice of transfer must retain, for a period of 7 years, the original of or an image of the original of the instrument of transfer and the notice of transfer (s. 6(3), MHA Regulation). These records may be kept in electronic, microfilm, paper or other format, as long as the format allows copies to be made by means of a computer terminal or other electronic technology (s. 6(4), MHA Regulation). Any lawyer, notary or qualified supplier retaining the documents must, with 7 days and on payment of copying charges and charges for certified copies or for providing evidence of records, provide copies of those records or evidence to any person who requests them during normal business hours, at the address set out in the notice of transfer (s. 6(5), MHA Regulation).

Any lawyer acting for a purchaser will want to conduct, at a minimum, the due diligence set out above at section (b) Financing the Purchase of a Manufactured Home.

2. Transfer as a Result of Death of Manufactured Home Owner

a. Transfer When There is No Joint Tenant

If the transfer in ownership is a result of the death of the registered owner of the manufactured home, the personal representative of the deceased owner may submit for filing a notice of transfer, accompanied by a certified copy of the grant of probate or letters of administration issued from the court that made or resealed the grant (s. 7(1), MHA Regulation). However, if the fair market value of the deceased owner's estate is $25,000 or less, an executor named in the will of the deceased registered owner may submit for filing a notice of transfer, accompanied by an affidavit from each executor named in the will of the deceased that the executor (s. 7(2), MHA Regulation):

- is named in the will attached to the affidavit;
- believes that the will is a true copy of the last will and testament of the deceased, including any codicil to it,
- believes that the will was not revoked by the testator during the testator's lifetime or by operation of law before the testator's death,
- has personal knowledge of the affairs of the deceased,
- has searched the deceased's effects in order to ascertain whether there are any debts or liabilities for which the estate may be liable, and
- believes that the debts and liabilities of the deceased have been fully paid, and
- believes, with the exception of insurance policies payable to named beneficiaries and

jointly held assets, that the total value of the estate, including the manufactured home, does not exceed $25,000

The notice of transfer must also be accompanied by a death certificate or a certified copy of a death certificate for the deceased (s. 7(2), MHA Regulation). If the executor submits a notice of transfer in the case of an estate with a fair market value of $25,000 or less, the executor must, at the same time, submit a notice of transfer from the executor to the beneficiary (s. 7(3), MHA Regulation).

b. Transfers to a Joint Tenant

If a manufactured home was registered in the name of two or more persons as joint tenants and a transfer of the property interest results from the death of one of the joint tenants, a surviving joint tenant may apply to have the deceased removed from the registrar as an owner by submitting electronically for filing the notice of transfer or by submitting for filing, other than electronically, the notice of transfer, accompanied by a death certificate for the deceased joint tenant or a certified copy of the death certificate (s. 8(1), MHA Regulation).

If the notice is submitted electronically, it must be submitted on behalf of the surviving joint tenant by a practicing lawyer, a practicing notary, or a qualified supplier (s. 8(2), MHA Regulation). The practicing lawyer, practicing notary or qualified supplier must retain, for a period of 7 years, the original of or an image of the original of the notice of transfer and the death certificate for the deceased joint tenant or a certified copy of that death certificate (s. 8(3), MHA Regulation). These records may be kept in electronic, microfilm, paper or other format, if the format allows copies to be made by means of a computer terminal or other electronic technology. Any lawyer, notary or qualified supplier who retains records must, within seven days and on payment of copying charges and charges for certified copies or for providing evidence of records, provide copies of those records or evidence to any person who requests them during normal business hours at the address set out in the notice of transfer (s. 8(5), MHA Regulation).

3. Transfers under the Personal Property Security Act

If a transfer of property in the manufactured home results from the exercise of the rights of a secured party under section 55(6) or 59 of the *Personal Property Security Act*, the notice of transfer must be accompanied by (s. 9(1), MHA Regulation):

- an affidavit from the secured party or receiver who caused the sale to be made containing the following information:
    - that the secured party had, before the sale, a valid security interest in the manufactured home given by the registered owner of the manufactured home;
    - that the registered owner's interest in the manufactured home has been sold in compliance with section 55(6) or section 59 of the *Personal Property Security Act*; and
    - the personal property registry base registration number that relates to the financing statement or financing change statement filed in relation to the manufactured home;
- a statement from the transferee that the transferee was the purchaser at the sale and,

as such, is entitled to be registered as the owner of the manufactured home; and

- if a receiver has been appointed, a notice of the appointment of the receiver signed by the secured party, or a certified copy of the court order appointing the receiver.

4. Other Transfers

Other transfers include transfers of ownership by way of court order or for other reasons. If the transfer of a property interest in the manufactured home is being made pursuant to a court order, the notice of transfer must be accompanied by a certified copy of the court order (s. 10, MHA Regulation).

A transfer made in circumstances when a manufactured home is abandoned will not be accepted without an affidavit from the manufactured home park owner confirming that the abandonment procedures set out in Part 6 of the Regulation to the *Manufactured Home Park Tenancy Act* were followed.

For any other type of transfer, other than those made pursuant to sections 7 to 10 of the MHA Regulation, a person who submits a notice of transfer in relation to a transfer of property effected by the operation of an Act or law must indicate in the notice the Act or law under which the transfer of property occurred or which otherwise provided for the transmission (s. 11, MHA Regulation).

D. Title Searches for Manufactured Homes

A person may request[62] one or more of the following searches of the MHR (s. 20(1), *MHA*):

- a search according to the name of a person and the issue of a search result;
- a search according to the serial number of a manufactured home and the issue of a search result; or
- a search according to the registration number of a manufactured home and the issue of a search result.

The registrar may provide a copy or a certified copy of a record that is in paper form or electronic form in the register (s. 20(2), *MHA*). The signature of the registrar on the certified copy may be reproduced by any means, whether graphic, electronic, digital, mechanical or otherwise (s. 20(4), *MHA*). A record issued or provided under section 20 of the *MHA* is evidence of any of the matters stated in the record that relate to the registrar, and a certified copy is admissible in evidence as a true copy of the original record, without proof of the signature, seal or official position of the registrar (s. 20(3) and (5), *MHA*).

E. Registration and exemptions from registration

Registration of a newly constructed manufactured home is done by completing form REG727 – Initial Registration of a Manufactured Home.

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62 The request must be in the manner set out in the regulations (s. 20(1), *MHA*). Currently, the only regulation regarding searchers under section 20 of the *MHA* is that the search must be conducted in electronic format (s. 20, MHA Regulation).

A manufactured home may be removed from the Manufactured Home Registry if it is used for a non-residential purpose, or if it is dismantled or destroyed, by completing form REG759 – Non Residential Exemption. In order to complete the deregistration, the Manufactured Home Registry may require proof of payment of property taxes up to the date the manufactured home was dismantled or destroyed, or converted to a non-residential use.

In other circumstances, a manufactured home may be eligible for a "Residential Exemption" for the reasons set out at section 5 of the Regulation to the MHA which include circumstances such as where the manufactured home is owned by an individual who also owns the underlying land upon which is it located. This frequently occurs, for example, when an individual chooses to transport a manufactured home onto his or her property to be used as a primary residence instead of constructing a home at the property – in such circumstances there is no need to maintain a separation of ownership concerning the manufactured home and the underlying land. To apply for such an exemption, form REG732 – Residential Exemption must be completed and the application must be submitted by a practicing lawyer, notary, or qualified supplier of manufactured homes (section 5(2) of the Regulation to the MHA).

IV. Relationship between Manufactured Home Parks and the Municipality Regarding Land Use

A. Improvements to Land

A manufactured home, whether or not it falls within the definition of an "improvement" under the *Assessment Act*, RSBC 1996, c 20, *Community Charter*, SBC 2003, c 26, *Nisga'a Final Agreement Act*, SBC 1999, c 2, *Treaty First Nation Taxation Act*, SBC 2007, c 38, *Local Government Act*, RSBC 1996, c 323, *School Act*, RSBC 1996, c 412, *Taxation (Rural Area) Act*, RSBC 1996, c 448, the *Vancouver Charter*, SBC 1953, c 53, or any other Act, is an improvement for the purpose of real property assessment and taxation and, except as provided in sections 3 and 4 of the *Manufactured Home Tax Act*, RSBC 1996, c 281 (the "*MHTA*"), the manufactured home must be assessed and taxed in the name of the owner of the land on which the manufactured home is located at the time of assessment (s. 30(3), *MHA* and s. 2, *MHTA*).

Section 3 of the MHTA applies to manufactured homes in manufactured home parks. If a manufactured home is located within a manufactured home park and the owner of the manufactured home[63] is not the owner of the manufactured home park, the manufactured home, together with any improvement as defined in the *Assessment Act* that is either attached to the manufactured home or ancillary to the use of the manufactured home, and is not owned or leased by the owner of the manufactured home park or a person other than the owner of

63 For the purposes of s. 3(1) of the MHTA, the owner of the manufactured home is an owner of an improvement within the meaning of the *Assessment Act*, *Community Charter*, *School Act*, *Taxation (Rural Area) Act*, *Treaty First Nation Taxation Act*, or *Vancouver Charter*, as the case may be, and is liable for the taxes imposed under the relevant Act (s. 3(2), *MHTA*). If a manufactured home or a manufactured home and any improvement is assessed or assessed and taxed under s. 3(1) of the *MHTA* in the name of the owner of the manufactured home, the manufactured home and the improvement must not be assessed or assessed and taxed under section 3(2) of the *MHTA* as an improvement in the name of the owner of the land (s. 3(3), *MHTA*).

the manufactured home park who is using or occupying the land for the purpose stated in the definition of manufactured home park[64], must be assessed, or assessed and taxed, as applicable, under section 2 of the *MHTA* in the name of the owner of the manufactured home (s. 3(1), *MHTA*). In the case of taxes assessed under section 3 of the *MHTA*, the land comprising the manufactured home park is not subject to tax sale or forfeiture and the arrears of taxes or delinquent taxes do not constitute a lien on the land (s. 5(2), *MHTA*).

Section 4 lists the types of manufactured homes which are not covered by the *MHTA*. The *MHTA* does not apply to manufactured homes (s. 4, *MHTA*):

- owned and operated by the government or by a municipality and occupied by or on behalf of the government or the municipality;
- owned by a taxing treaty first nation, as defined in the *Treaty First Nation Taxation Act*, and occupied by or on behalf of the taxing treaty first nation;
- owned and occupied by or on behalf of one or more of the Nisga'a Nation and a Nisga'a Village;
- which are held in storage or which form part of the inventory of a manufacturer or dealer;
- licensed and equipped to travel on a public highway, that are occupied by a genuine tourist and are located within a manufactured home park for a period of less than 60 days; or
- that are exempted by regulations[65].

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64 Section 1 of the *MHTA* defines "manufactured home park" to mean land used or occupied by a person for the purpose of providing space for the accommodation of one or more manufactured homes and imposing a charge or rental for the use of that space (s. 1, *MHTA*).

65 A manufactured home, owned and occupied by an employee or a member of the Canadian Armed Forces and located on land owned by the Crown in right of Canada is exempt from taxation imposed under the *School Act* (s. 1, Exemption Regulation, BC Reg 670/76). Note also that the *MHTA* does not apply to a floating manufactured home, other than a floating manufactured home that is anchored and secured for a period of 60 days or more during a year to land, a structure or a buoy in a manufactured home park that is covered by water (s. 1(1), Floating Manufactured Home Tax Regulation, BC Reg 276/79). If this floating home is in a municipality, the *MHTA* does not apply unless the municipality has issued a certificate stating that the floating manufactured home complies with the municipal bylaws and the certificate is in effect (s. 1(2), Floating Manufactured Home Tax Regulation, BC Reg 276/79). If the MHTA does apply to a floating home, the portion of section 8 of the MHTA that deems an owner of a manufactured home that is assessable and taxable to be an owner for the purposes of the *Home Owner Grant Act* does not apply to a floating manufactured home that is owned by a person who has applied for, and received, a grant or loan under the *Provincial home Acquisition Act* in respect of that manufactured home (s. 2, Floating Manufactured Home Tax Regulation, BC Reg 276/79). A manufactured home to which an exemption under section 11(1) of the Indian Self Government Enabling Act would apply if the manufactured home were an interest in real property, is exempted from the *MHTA* (s. 1, Indian Land Manufactured Home Exemption Regulation, BC Reg 180/91). Finally, the MHTA does not apply to campers, motor homes or travel trailers (s. 1, Travel Manufactured Home Exemption Regulation, BC Reg 383/88). For the purposes of the *MHTA*, "travel trailer" means a vehicle that is capable of being towed on its own permanent wheels and undercarriage by a motor vehicle, licensed, or able to be licensed, as a trailer under the *Motor Vehicle Act* for use on a highway, and not used as a principal residence (s. 2, Travel Manufactured Home Exemption Regulation, BC Reg 383/88).

B. Municipal Taxes

1. Annual Property Tax

Taxes levied in respect of a manufactured home are recoverable in any manner in which taxes are recoverable under the *Local Government Act*, the *Taxation (Rural Area) Act*, the *Vancouver Charter* or any other act (s. 30(2), *MHA* and s. 5(1), *MHTA*[66]).[67] This means that owners of manufactured homes are assessed for property taxes just like any other residential property owner. However, the assessed value of the manufactured home will not include the value of the land if the manufactured home is in a manufactured home park not on reserve land or on land privately owned by someone other than the owner of the manufactured home[68].

The officers of any taxing authority are entitled, without charge, to search the manufactured home registry in respect of manufactured homes located on land over which it has authority, for the purposes of taxation, assessment and incidental matters (s. 24(1), *MHA*)[69]. If the officers of the taxing authority so request, the registrar may provide any information in the manufactured home registry required by them at a charge to be set in each case by the registrar, on the basis of reasonable compensation to the government for the cost of providing this information (s. 24(3), *MHA*). The owner or operator of a manufactured home park must, on demand, provide to the assessor (or an agent authorized in writing), full information respecting the owner of each manufactured home in the manufactured home park (s. 6(1), *MHTA*). The owner (or operator) must also promptly notify the assessor, in writing, after a manufactured home is moved into, or out of, the manufactured home park (s. 6(2), *MHTA*). Lastly, the assessor (or an agent authorized in writing) may, at all reasonable times, enter a manufactured home park or a manufactured home for assessing the manufactured home and inspecting any records kept by the owner or operator of the manufactured home park (s. 6(3), *MHTA*).

If a tax notice in respect of taxes imposed on a manufactured home for the current year has not been mailed to the person liable for them, and a person[70] under an order of possession granted under section 47 of the *MHPTA,* or in the exercise of a right conferred on them under the MHPTA Regulation respecting the disposal of abandoned property, has requested the collector to issue a certificate of confirmation in electronic format for the purposes of issuing a transport permit pursuant to section 25 of the *MHA*, the collector must issue the certificate or

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66 This statement applies to taxes in respect of a manufactured home assessed under sections 2 or 3 of the *MHTA* (s. 5(1), *MHTA*).

67 The *Community Charter*, *Local Government Act*, *Vancouver Charter*, *School Act*, and *Taxation (Rural Area) Act*, as the case may be, apply to the assessment and taxation of manufactured homes under the *MHTA*, unless inconsistent with the *MHTA* (s. 7, *MHTA*).

68 For more information, see the Government of British Columbia website regarding taxation of manufactured homes, Understand Your Taxes, located at https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax/understand/manufactured-home. Note that the owner of a manufactured home that is assessable and taxable under the MHTA must be considered to be an owner of a parcel of land within the meaning of, and for the purposes of, the *Home Owner Grant Act* and the *Provincial Home Acquisition Act* (s. 8, *MHTA*).

69 For this purpose, any person approved by the registrar and employed by the taxing authority has access to the register (s. 24(2), *MHA*).

70 This person cannot be the Landlord (s. 26(1)(b), *MHA*).

confirmation if there are no taxes in arrears or delinquent in respect of the manufactured home and the person making the request has paid to the collector a deposit in the prescribed amount[71]. [72] If a deposit is paid to the collector, the collector must issue a receipt for the payment and include with the receipt an application for a grant under the *Home Owner Grant Act*, RSBC 1996, c 194, in the form prescribed under the *MHA* (s. 17, MHA Regulation). If a tax notice or statement has been mailed to the person liable for the taxes, the collector may decline to issue the certificate or confirmation until all taxes due, in arrears or delinquent have been paid (s. 26(2), *MHA*).

If a person not primarily liable for taxes on a manufactured home, but who is the holder of a security interest in the manufactured home, pays the taxes in order to obtain a transport permit to move the manufactured home, they are entitled to add the amount paid to the principal money secured by the security interest or to deduct the amount from rent, purchase price or other money payable under the instrument in respect of which the person claims registration (s. 27(1), *MHA*)[73]. This holder of the security interest who pays the taxes owing on the manufactured home has a lien against the manufactured home, and that lien has priority over any security interest in the manufactured home, except a claim of the government (s. 27(3) and (4), *MHA*)[74]. This lien ceases to exist after the expiry of 15 days from the date the taxes were paid unless, before that date, the lien is registered in the personal property registry in the form and manner prescribed under the *Personal Property Security Act* (s. 27(5), *MHA*).

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71 The prescribed amount for the deposit is equal to the greater of $75 or the amount of taxes imposed or levied on the manufactured home, less the Provincial home owner grant under the *Home Owner Grant Act*, if any, levied on the manufactured home in the immediately preceding taxation year (see section 16(2), MHA Regulation). If it is subsequently determined that the deposit paid exceeds the difference between the total amount of taxes levied on the manufactured home and the grant under the *Home Owner Grant Act*, the taxing authority must, on request, pay the extra to the person who paid the deposit (s. 16(4), MHA Regulation). Interest on a deposit must be paid or credited by the taxing authority as follows: in a municipality other than the City of Vancouver, at the rate prescribed under s. 239(2) of the *Community Charter* from the date of payment to the first tax penalty date stated in, or established by, a bylaw under s. 234 or s. 235 of the *Community Charter*, in the City of Vancouver, at the rate stated in, or established by, a bylaw under s. 412 of the *Vancouver Charter*, and in a rural area, at the rate and by the method prescribed under s. 13(1) of the *Taxation (Rural Area) Act*. The payments and interest must be applied and credited by the collector against the current year's taxes imposed on the manufactured home in respect of which payment was made (s. 26(3), *MHA*).

72 This is true despite the *Local Government Act*, the *Taxation (Rural Area) Act*, or the *Vancouver Charter*.

73 Any amount paid bears interest at the prescribed annual rate from the date of payment (s. 27(3), *MHA*). The amount and any interest paid is a debt recoverable by action by the person paying the taxes against the person who is primarily liable (s. 27(8), *MHA*). A holder of a security interest who pays the amount of the taxes with interest to the date of payment to the secured creditor who originally paid the outstanding taxes is subrogated to all of the rights and priorities held by the original secured party (s. 27(9), *MHA*).

74 This priority does not apply with respect to the interest of a secured party who, at the date the taxes were paid, held a perfected security interest in the manufactured home and who has not been given written notice of the lien before the expiry of 60 days from the date the taxes were paid (s. 27(6), *MHA*). This written notice must be given in accordance with section 72 of the *Personal Property Security Act* or by registered mail to the address of the person to be notified as it appears in the security agreement or in the financing statement that relates to the manufactured home and that is registered in the personal property registry (s. 27(7), *MHA*).

2. Consequences of Unpaid Tax

The registrar cannot issue a transport permit unless satisfied that the collector having taxing authority over the manufactured home has issued a certificate or confirmed in electronic format that no taxes on the manufactured home are in arrears or delinquent and no taxes for the current year are unpaid (s. 25(1)(a), *MHA*)[75]. A collector must provide the confirmation or certificate free of charge and the certificate or confirmation must contain the date to which the taxes have been paid (s. 25(3), *MHA*).

If a tax notice in respect of taxes imposed on a manufactured home for the current year has not been mailed to the person liable for them, and a person has requested the collector issue a certificate or confirmation in electronic format, the collector must issue a certificate or confirmation if there are no taxes in arrears or delinquent in respect of the manufactured home and the person making the request has paid to the collector a deposit[76,77] equal to the greater of either $75.00 or the amount of taxes imposed or levied on the manufactured home, less the provincial home owner grant under the *Home Owner Grant Act*, if any, levied on the manufactured home in the immediately preceding taxation year (ss. 25(2)(b) and 26(1), *MHA* and s. 16(2), MHA Regulation).[78,79]

If taxes in respect of a manufactured home imposed under the *Local Government Act*, the *Taxation (Rural Area) Act*, the *Vancouver Charter*, or Part 2 of the *Drainage, Ditch and Dike Act*, RSBC 1996, c 102, have become due, the collector may, whenever the taxes and any related interest or penalties remain unpaid, register a financing statement in the personal property registry established under the *Personal Property Security Act* in the form and manner prescribed under that Act[80] (s. 28(1), *MHA*). On the registration of this financing statement, a

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75 Note that a collector cannot decline to issue a certificate under section 25(2) of the *MHA* if a manufactured home has not been separately assessed and placed on the assessment roll of the taxing authority for the current year or has been assessed as an improvement affixed to land (s. 18, MHA Regulation).

76 Interest on this deposit must be paid or credited by the taxing authority as follows: in the City of Vancouver, at the rate stated in, or established by, a bylaw under section 412 of the *Vancouver Charter*; in a municipality other than the City of Vancouver, at the rate prescribed under section 239(2) of the *Community Charter* from the date of payment to the first tax penalty date stated in, or established by, a bylaw under section 234 or 235 of the *Community Charter*; and in a rural area, at the rate and by the method prescribed under section 13(1) of the *Taxation (Rural Area) Act* (s. 16(3), MHA Regulation).

77 If it is subsequently determined that the deposit paid to the collector exceeds the difference between the total amount of taxes levied on the manufactured home and the grant under the *Home Owner Grant Act*, the taxing authority must, on request, pay the excess to the person who paid the deposit (s. 16(4). MHA Regulation).

78 This does not apply to a landlord applying for a transport permit under an order of possession granted pursuant to section 47, *MHPTA* or respecting the disposal of abandoned property (s. 26(1)(b), *MHA*).

79 Note that section 25 of the MHA does not apply to a manufactured home where ownership is registered in the name of a manufacturer and the location on the register is the manufacturer's lot or the manufactured home dealer's lot, to a manufactured home where ownership is registered in the name of a manufactured home dealer and the location on the register I the dealer's lot or the manufacturer's lot, or the manufactured home is located on a manufactured home dealer's lot and the ownership of the manufactured home is registered in the name of a person who, under a transport permit, transported the manufactured home to the dealer's lot (s. 4(3), *MHA* Regulation).

80 Note that sections 18, 43(1) to (3), (6) to (8), (12) and (13) as well as sections 46 to 48, 51, 52 and 54 of the *Personal Property Security Act* apply to these registrations (s. 28(2), *MHA*). A collector who registers a

lien for the unpaid taxes and any related interest and penalties is created on the manufactured home to which the registration relates, and the lien continues as long as the registration is effective (s. 28(3), *MHA*). This lien has priority over any security interest, charge or claim, except a claim of the government (s. 28(4), *MHA*).

When the unpaid taxes, interest and penalties charged against the manufactured home in respect of which a registration has been made under section 28(1) of the *MHA* have been paid, the collector must discharge the registration (s. 29(1), *MHA*). If the collector fails to discharge the registration, the person registered under section 5 of the *MHA* as the owner of the manufactured home to which the registration relates may require the registrar of the personal property registry to give a written notice to the collector[81] stating that the registration will be discharged by the registrar on the expiry of 40 days after the day the registrar gives notice to the collector[82] (s. 29(2), *MHA*). On application by a creditor, the court may also make an order to protect or enforce a lien on a manufactured home, including an order that the manufactured home be delivered to a collector or that the manufactured home be seized by the collector (s. 29(5), *MHA*)[83]. If a manufactured home has been delivered to or seized by a collector, it must not be sold or otherwise disposed of in a manner other than in compliance with the Act under which the taxes were levied (s. 29(6), *MHA*).

When default is made in the payment of taxes due and payable with respect to a manufactured home under the *Local Government Act*, the *Taxation (Rural Area) Act*, the *Vancouver Charter* or any other Act, the collector may file a certificate with any distract registrar of the Supreme Court (s. 31(1), *MHA*). The certificate to be filed must contain the registration number of the manufactured home, the amount of taxes and related interest or penalties owing in respect of the manufactured home, and the name and address of the taxing authority to which the taxes are owing (s. 31(3), *MHA*). If such a certificate is filed, it has the same effect and proceedings may be taken on it as if it were a judgment of the court for the recovery of a debt of the amount stated in the certificate against the person named in it (s. 31(2), *MHA*).

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financing statement pursuant to section 28(1) of the *MHA* must give a copy of that financing statement to each person registered under section 5 of the *MHA* as an owner of the manufactured home to which the financing statement relates (s. 28(6), *MHA*). The copy of the financing statement may be given in accordance with section 72 of the *Personal Property Security Act* or sent by registered mail to the person's address as it appears in the records of the register, in which case section 72(2) of the *Personal Property Security Act* applies (s. 28(6), *MHA*).

81 This notice may be given in accordance with section 72 of the *Personal Property Security Act* or sent by registered mail to the person's address as it appears in the records of the register, in which case section 72(2) of the *Personal Property Security Act* applies (s. 28(6), *MHA*)

82 An exception is if the collector gives the registrar a court order maintaining the registration (s. 29(2), *MHA*). On application by the collector, the court may order that the registration either be maintained or discharged (s. 29(3), *MHA*).

83 If a collector seizes or otherwise takes possession of a manufactured home, section 17(2) and (3)(a) and (b) of the *Personal Property Security Act* applies (s. 30(1), *MHA*).

C. Destruction of a Manufactured Home

If a manufactured home is destroyed in a given tax year, the owner of the manufactured home is still responsible for paying the full property taxes for that tax year. To make sure that the manufactured home is not assessed for taxes the following year, the owner of the manufactured home must contact the Manufactured Home Registry or BC Assessment by December 31 of that year[84].

V. Operation of Manufactured Home Parks

A. Park Committees[85]

1. Establishing a Park Committee

A park committee may be established by the Landlord and Tenants of a manufactured home park in order to facilitate the operation of the manufactured home park. Pursuant to section 31 of the *MHPTA*, the Landlord and Tenants of a manufactured home park may establish a park committee, and may select the members of this committee.

In practice, park committees are quite rare. It is unusual for a landlord to consent to the creation of a park committee, likely because of the reluctance landlords usually have to delegate control of the operation of a manufactured home park to the tenants themselves.

To establish a park committee, the Landlord or a Tenant of the manufactured home park must call a meeting of the Tenants and the Landlord to vote on whether to establish a park committee and, if it is decided to establish a park committee, to vote for the elected members of the park committee (s. 16(1), MHPTA Regulation). The person who calls the meeting must provide written notice of the meeting to each Tenant of the manufactured home park and the Landlord at least two weeks before the meeting is to take place (s. 16(2), MHPTA Regulation)[86]. This notice must contain a copy of section 31 of the *MHPTA* and a copy of Part 3 of the MHPTA Regulation, and must set out the purpose of the meeting, the time, date and place of the meeting, and name the person who is giving the notice (s. 16(3), MHPTA Regulation). Even if proper notice is given, the meeting must not be held unless the Landlord and Tenants representing a majority of the manufactured homes in the park are present in person or by

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84 For more information, see the Government of British Columbia website regarding taxation of manufactured homes, Understand Your Taxes, located at https://www2.gov.bc.ca/gov/content/taxes/property-taxes/annual-property-tax/understand/manufactured-home.

85 The provisions regarding park committees in the MHPTA Regulation do not apply to a subtenant (s. 14, MHPTA Regulation).

86 A Tenant or a member of a park committee may request that a Landlord supply a list of names and addresses of Tenants if the request is for the purpose of giving notice with regards to park committees under Part 3 of the MHPTA Regulation (s. 15(1), MHPTA Regulation). The Landlord may charge a maximum of $10 for the list of Tenants and must supply the list within two weeks of receiving the request (s. 15(2) and (3), MHPTA Regulation).

proxy (s. 16(4), MHPTA Regulation)[87].

At the meeting, the person who called the meeting must hold a vote to determine who will chair the meeting and who will keep minutes of the meeting (s. 16(5)(a), MHPTA Regulation). The elected chair must then hold a vote on whether to have a park committee and, if it is decided to have a park committee[88], must hold an election to elect the members of that committee (s. 16(5)(b), MHPTA Regulation). The person who is elected to keep the minutes must give them, at the end of the meeting, to a member of the park committee, if one has been established (s. 16(5)(c), MHPTA Regulation). To decide to establish a park committee a majority of Tenants who are present in person or by proxy must vote in favour of establishing the committee and the Landlord must vote in favour of establishing the committee (s. 18(5), MHPTA Regulation).

Voting to establish a park committee and voting at an annual general meeting must be in person or by proxy and must be by secret ballot if a resolution in favour of a secret ballot is passed (s. 18(1), (2) and (4), MHPTA Regulation). Only one Tenant of each manufactured home site and only one Landlord is eligible to vote (s. 18(3), MHPTA Regulation).

2. The Park Committee

The elected members of the committee must consist of the Landlord of the park or an individual nominated by the Landlord, and between 2 and 5 Tenants who ordinarily reside in the manufactured home park (s. 17, MHPTA Regulation). To elect a member of the park committee, a majority[89] of Tenants who are present, either in person or by proxy, must vote in favour of the election (s. 18(6), MHPTA Regulation). The Landlord is not eligible to vote in the election (s. 18(6), MHPTA Regulation). A park committee member is elected for a term which ends at the close of the annual meeting at which the new park committee is elected (s. 19(1), MHPTA Regulation). A person whose term as a park committee member has ended is eligible for reelection (s. 19(2), MHPTA Regulation).

A Tenant who is a park committee member may be removed for cause by the unanimous agreement of all the remaining members of the park committee before the expiry of his or her term in office (s. 20(1), MHPTA Regulation). If a park committee member is removed, or is unwilling or unable to act for an extended period, the remaining members of the park committee must call a meeting of Tenants to elect a replacement for the remainder of the term according to the procedure set out in section 21(2) to (5) of the MHPTA Regulation (s. 20(2), MHPTA Regulation)[90].

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87 If this requirement is not met, 60 days must elapse before another meeting may be held to consider establishing a park committee (s. 16(6), MHPTA Regulation).

88 If the vote defeats the establishing of a park committee, 60 days must elapse before another meeting may be held to consider establishing a park committee (s. 16(6), MHPTA Regulation).

89 An abstention is not counted in determining whether there is a majority (s. 18(7), MHPTA Regulation).

90 Note that this procedure for removing a committee member does not apply to the Landlord (see s. 20(1) and (2), MHPTA Regulation).

3. Park Committee Meetings

a. Annual Meetings

The park committee must hold an annual meeting to discuss park issues and to elect the park committee members (s. 21(1), MHPTA Regulation). The park committee must give at least two weeks' notice of the meeting by sending a written notice to the Landlord and to each Tenant (s. 21(2), MHPTA Regulation). This notice must set out the purpose of the meeting, as well as the time, date and place of the meeting (s. 21(3), MHPTA Regulation). The meeting must not be held unless the Landlord is present, either in person or by proxy, and Tenants of at least one third of the manufactured home sites in the park are present in person or by proxy (s. 21(5), MHPTA Regulation). If an annual meeting is not held within 15 months subsequent to a meeting to elect the members of the park committee or an annual meeting, the park committee is deemed to be disbanded and a new park committee may be established in accordance with the procedure for establishing park committees set out in section 16 of the MHPTA Regulation (s. 21(6), MHPTA Regulation). The park committee must make its decisions by unanimous agreement of all members of the committee, except that resolutions regarding secret ballots must be decided by majority vote (s. 22, MHPTA Regulation).

b. General Meetings

Any member of the park committee may call a meeting of the committee by giving the other members at least one week's notice[91] of the meeting (s. 25(1), MHPTA Regulation). However, the meeting may be held on less than one week's notice if all members consent (s. 25(2), MHPTA Regulation). If a meeting is called, no business may be conducted at the meeting unless the Landlord (or an individual nominated by the Landlord) and at least two elected Tenant members of the committee are present (s. 26, MHPTA Regulation). A Tenant who is not a member of the park committee may attend a meeting of the park committee as an observer (s. 28(1), MHPTA Regulation). However, no observer may attend a portion of a park committee meeting if, in the committee's opinion, the presence of the observer would unreasonably interfere with a resident's privacy (s. 28(2), MHPTA Regulation).

c. Meeting Minutes

The park committee must keep minutes of park committee meetings and annual meeting (s. 21(4) and s. 27(1)(a), MHPTA Regulation). The park committee must also make a copy of a rule established, changed or repealed by the park committee and the minutes of any meeting, including the meeting establishing the park committee, available to a Landlord or Tenant on request (s. 27(1)(b), MHPTA Regulation)[92].

B. Park Rules

The park committee, may establish, change or repeal rules for governing the operation of the

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91 This notice does not have to be in writing (s. 25(2), MHPTA Regulation).

92 The park committee may charge 25 cents per page for a copy of the minutes (s. 27(2), MHPTA Regulation).

manufactured home park (s. 32(1), *MHPTA*)[93]. These rules must not be inconsistent with the *MHPTA* or MHPTA Regulation or any other enactment that applies to a manufactured home park (s. 32(2), *MHPTA*). If an established park rule is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict (s. 32(4), *MHPTA*).

The park committee[94] may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects (s. 30(1), MHPTA Regulation):

- it promotes the convenience or safety of the Tenants;
- it protects and preserves the condition of the manufactured home park or the Landlord's property;
- it regulates access to or fairly distributes a service or facility; or
- it regulates pets in common areas[95].

If a rule is established, changed or repealed, the new or modified rule is only enforceable against a Tenant if the rule applies to all Tenants in a fair manner, the rule is clear enough that a reasonable Tenant can understand how to comply with the rule, proper notice of the rule is provided to the Tenant[96], and the rule does not change a material term of the tenancy agreement (s. 30(3), MHPTA Regulation).

If the members of the park committee do not agree on a proposal to establish, change or repeal a rule, they may, by unanimous agreement, refer the proposal to a vote of the Landlord and the Tenants of the Park (s. 21(1), MHPTA Regulation). A person may vote either in person, or by proxy (s. 23(7), MHPTA Regulation). A resolution may be passed in favour of a secret ballet. A vote must be by secret ballot if a resolution in favour of a secret ballot is passed at a meeting of the park committee by a majority of the members of the park committee (s. 23(8), MHPTA Regulation). Any proposal requires a majority vote in order to pass (s. 23(4), MHPTA Regulation). If a proposal receives a majority vote, the park committee must establish, change or repeal the rule in accordance with that proposal (s. 23(9), MHPTA Regulation).

In order to refer the proposal to a vote of the Landlord and the Tenants of the park, the park committee must give written notice of the proposal to the Landlord and to each Tenant in the park (s. 23(2), MHPTA Regulation). The notice provided must (s. 23(3), MHPTA Regulation):

- advise that only one Landlord may vote and only one Tenant from each manufactured

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93 Note that if there is no park committee, the Landlord may establish, change or repeal rules for governing the operation of the manufactured home park (s. 32(1), *MHPTA*).

94 If there is no park committee, the Landlord may establish, change or repeal a rule on this basis (see section 30(1), MHPTA Regulation).

95 A rule that prohibits a pet does not apply to a pet living with a Tenant or resident at the time the rule is passed and which continues to live there after the rule is passed (s. 31, MHPTA Regulation).

96 Prior to a person entering into a tenancy agreement with the Landlord, the Landlord must disclose, in writing, all rules in effect at the time the tenancy agreement is entered into. Once a tenancy agreement has been entered into, a Landlord must give notice, in writing, to Tenants of any rule at least two weeks before the rule becomes effective (s. 29, MHPTA Regulation).

home site may vote[97];

- set out the proposal;
- include a ballot;
- advise that the Landlord or Tenant may vote by returning the enclosed ballot to the park committee indicating whether he or she is in favour of or against the proposal;
- advise that a failure to vote will count as a vote in favour of the proposal[98];
- set out the address where the Landlord or Tenant should deliver the vote; and
- set out the date by which the vote must be received by the park committee[99].

C. Dispute Resolution

The park committee may also take a role in dispute resolution, by assisting the Landlord and a Tenant of the park to reach a voluntary resolution of the dispute between them (s. 33, *MHPTA*). To assist in voluntary dispute resolution, the park committee may canvass Tenants for their opinions (s. 24(1), MHPTA Regulation). If the park committee decides to canvass Tenants for their opinions on an issue, the park committee may not release any information concerning a particular dispute unless all the parties to the dispute agree to the release (s. 24(2), MHPTA Regulation).

In practice, park committees rarely play a role in dispute resolution, and disputes are overwhelmingly resolved by arbitration before the Residential Tenancy Branch of British Columbia.

VI. Director's Orders and Dispute Resolution Proceedings

A. Dispute Resolution Proceedings

1. Director's Authority and Jurisdiction

The director has the authority to determine disputes in relation to which the director has accepted an application for dispute resolution and also any matters relating to that dispute that arise under the *MHPTA* or a tenancy agreement (s. 55(1), *MHPTA*). The director may also make any finding of fact or law that is necessary or incidental to making a decision or an order under the *MHPTA*, may make any order necessary to give effect to the rights, obligations and prohibitions under the *MHPTA* (s. 55(2) and (3), *MHPTA*). In fact, the director has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or review of a decision and to make any order permitted to be made (s. 77.1(1), *MHPTA*). A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is

97 See section 23(6) of the MHPTA Regulation setting out this requirement.

98 See section 23(5) of the MHPTA Regulation setting out that an eligible voter who does not vote must be counted as voting in favour of the proposal.

99 This date must be at least two weeks after the notice is given to the Landlord and each Tenant (s. 23(3)(g), MHPTA Regulation).

final and conclusive and is not open to question or review in any court (s. 77.1(2), *MHPTA*). Although section 77.1 of the MHPTA removes the decisions of the director from review by any court, all decisions made by administrative tribunals, including the RTB, are subject to judicial review as a result of the court's inherent jurisdiction and constitutional requirements.

Section 5.1 of the *MHPTA* incorporates by reference sections 1, 44, 46.3, 48, 56 to 58 and 61 of the *Administrative Tribunals Act*, SBC 2004, c 45 (the "*ATA*"). Sections 44 and 46.3 of the *ATA* remove constitutional questions[100] and the application of the *Human Rights Code*, RSBC 1996 c. 210 from the director's jurisdiction. This means that the director has no jurisdiction to consider disputes involving constitutional questions or to apply the provisions of the *Human Rights Code*. Section 48 of the *ATA* gives the director the power to make orders or give directions regarding the maintenance of order at an oral hearing and may call on the assistance of any peace officer to enforce the order or direction. Lastly, section 56 of the *ATA* provides that any decision maker, including an RTB tribunal member, is immune from legal proceedings for damages for anything done or omitted in the performance or intended performance of any duty or in the exercise or intended exercise of any power under the *MHPTA*.

2. Initiating Dispute Resolution Proceedings: Application for a Dispute Resolution Hearing

Dispute resolution is governed by Part 6 of the *MHPTA*. A Landlord or Tenant may make an application to the director for dispute resolution in relation to a dispute in respect of any of the following (s. 51, *MHPTA*):

- rights, obligations and prohibitions under the *MHPTA*; or
- rights and obligations under the terms of a tenancy agreement that are required or prohibited under the *MHPTA* or relate to the Tenant's use, occupation or maintenance of the manufactured home or the use of common areas, services or facilities.

The director may refuse to accept an application for dispute resolution from either the Landlord or the Tenant if, in the director's opinion, the application does not disclosure a dispute that may be determined under Part 6 of the *MHPTA* (s. 52(5)(a), *MHPTA*). The director may also refuse to accept an application for dispute resolution if the application does not comply with the requirements set out in section 52(2) of the *MHPTA* or if the applicant owes outstanding fees or administrative penalties to the government pursuant to the *MHPTA* (s. 52(5)(b) and (c), *MHPTA*).

If the Landlord or Tenant applies for dispute resolution, and the director accepts the application, the director must resolve the dispute unless one of the following applies (s. 51(2), *MHPTA*):

- the claim is for more than the monetary limit for claims under the *Small Claims Act*, RSBC 1996, c 430 ["*Small Claims Act*"][101];

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100 A "constitutional question" means any question that requires notice to be given under section 8 of the *Constitutional Question Act*, RSBC 1996, c. 68.

101 As of June 1, 2017 the monetary limit for claims under the *Small Claims Act* is $35,000 (see s.1, Small Claims Court Monetary Limit Regulation, BC Reg 179/2005). Note that if the claim is for compensation under section

- the application was not made within the applicable period specified under the *MHPTA*[102]; or
- the dispute is linked substantially to a matter that is before the Supreme Court.

It is important to note that a court does not have any jurisdiction over a matter that must be submitted to the director for dispute resolution pursuant to the *MHPTA* (s. 51(3), *MHPTA*)[103]. The Supreme Court may however, on application, hear a dispute if the claim is for more than the monetary limit under the *Small Claims Act* or if the dispute is substantially linked to a matter that is already before that court (s. 51(4), *MHPTA*).

Dispute resolution proceedings are initiated on application by either the Landlord or the Tenant. The application for dispute resolution must (s. 52(2), *MHPTA*):

- be in the approved form;
- include full particulars of the dispute that is to be the subject of the dispute resolution proceeding, and
- be accompanied by the fee prescribed in the regulations[104].

The party who makes the application must give a copy of the application to the other party within 3 days of making the application (unless a different period is specified by the director) (s. 52(3), *MHPTA*).

The director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part, the application or part does not disclose a dispute that may be determined under the *MHPTA*, or the application or part is frivolous or an abuse of the dispute resolution process (s. 55(4), *MHPTA*).

44(2) or 44.1 of the *MHPTA*, the director will accept jurisdiction if the claim is for an amount over the small claims limit. This is because these claims are for damage or loss and the amount claimed is determined by a formula embedded in the statute, meaning that arbitrators have no jurisdiction to later these amounts (for more information see RT Policy Guideline 27 at page 3). Note also that the small claims limit only applies to monetary claims, and does not apply to repair claims (RT policy Guideline 27 at page 4).

102 If the *MHPTA* does not specify a time by which an application for dispute resolution must be made, the application must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned (s. 53(1), *MHPTA*). If an application for dispute resolution is not made within the 2 year period, then despite the *Limitations Act*, SBC 2012, c 13, the claim ceases to exist (s. 53(2), *MHPTA*). The only exception to this is if a Landlord or Tenant makes an application for dispute resolution within the applicable time period, then the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded (s. 53(3), *MHPTA*).

103 Note also that the *Arbitration Act* does not apply to a dispute resolution proceeding under the *MHPTA* (s. 51(5), *MHPTA*).

104 The current fee prescribed in the MHPTA Regulation is $300 plus $10 for each manufactured home site, to a maximum of $600 for an application for a rent increase above the regulated limit (s. 7(a), MHPTA Regulation). For any other dispute resolution application, the fee prescribed in the regulation is $100 (s. 7(b), MHPTA Regulation). Note that the director may waive or reduce this fee if satisfied that the applicant cannot reasonably afford to pay the fee or the circumstances do not warrant the fee being collected (s. 52(4), *MHPTA*).

3. Naming Parties

Parties to the dispute resolution proceeding must be properly named. If a party is not correctly named, the director may dismiss the matter with or without leave to reapply. Also, any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable. For more information regarding naming parties, including naming individuals, businesses, and estates of deceased persons, please refer to Residential Tenancy Policy Guideline 43, Naming Parties.

4. Amending the Application for a Dispute Resolution Hearing

Rule 4 of the RTB Rules of Procedure covers amending an application for dispute resolution (Residential Tenancy Policy Guideline 23, Amending an Application for Dispute Resolution ("RT Policy Guideline 23")[105]. The basic procedure to amend the application for a dispute resolution hearing is as follows (RT Policy Guideline 23 at pages 1-2):

- First, the applicant completes an amendment to the application for dispute resolution in the approved form;
- The applicant then submits this form and a copy of all supporting evidence to the RTB directly (or through a Service BC office) to allow service upon each other party as soon as possible, and in any event, to each party not less than 14 days before the date of the hearing;
- The RTB (or Service BC) will then accept the amendment, provided it was submitted in accordance with the RTB Rules of Procedure;
- The applicant serves each respondent with a copy of the amendment in the approved form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and
- The arbitrator, at the hearing, will consider whether the principles of administrative fairness have been met through the amendment submission process, whether any party would be prejudiced by accepting the amendment, determine whether to accept the amendment, and record the determination in a written decision.

The arbitrator may refuse an amendment, or may adjourn a hearing to allow sufficient time to respond, if proceeding at the scheduled time would prejudice either party, would not result in a fair opportunity for a party to be heard, or arises out of the intentional actions or neglect of the party seeking the adjournment (RT Policy Guideline 23 at page 5). For more information on the amendment process, including naming parties, adding or removing a party and amending the application particulars, please see RT Policy Guideline 23.

5. Dispute Resolution Hearing

If a Landlord or Tenant properly applies for dispute resolution, and the application is accepted

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105 According to Rule 4.7 of the RTB Rules of Procedure, a respondent may object to an amendment to the application for dispute resolution on the basis that they were not provided with sufficient time to respond to the amendment. However, Rule 4.2 allows an application to be amended at the hearing without serving an Amendment to the Application for Dispute Resolution on the other party if the amendment could reasonably have been predicted. See also RT Policy Guideline 23 for more information.

by the director, the director must set the matter down for a hearing (s. 54, *MHPTA*)[106]. The director may conduct a hearing in any manner he or she considers appropriate (s. 67(1), *MHPTA*)[107]. A party to a dispute resolution proceeding may be represented by an agent or lawyer (s. 67(4), *MHPTA*).

The director may hold a hearing in person, in writing, by telephone, video conference or other electronic means or by any combination of these methods (s. 67(2), *MHPTA*). If the hearing is to be an oral hearing, the director must specify the date, time and place of the hearing (s. 54(a), MHPTA). If the hearing will be a written hearing, the director must specify when written submissions are due (s. 54(b), *MHPTA*). Matters which are routinely scheduled as written hearings include hearings regarding administrative penalties, applications for review considerations, and when parties are known to have an abusive and/or litigious relationship.

RTB Rule of Procedure 6.4 allows a party to request that a hearing be held in a format other than the one routinely set by the director. If an applicant wishes to make such a request, they must submit the request in writing to the RTB directly or through a service BC office with supporting documentation within 3 days of the notice of hearing being made available by the RTB. If it is the respondent making the request, the written request with supporting documentation must be received within 3 days of receiving the notice of hearing or being deemed to have received the notice of hearing. The other party not making the request will be permitted to respond to the request. If the request is for a hearing in a format other than telephone conference call, the director will consider the reason for the request based on supporting documentation provided and why the party is unable to participate in a telephone conference call (or be represented by someone who could).

The director may consider requests for a hearing in an alternate format in limited circumstances, including when (Residential Tenancy Policy Guideline 44, Format of Hearings ("RT Policy Guideline 44") at page 2):

- there is a history of abusive interactions;
- a party has a medical condition that creates a barrier to participation in an oral hearing;
- there are physical, geographical or language barriers for which an oral hearing would result in prejudice to one or both parties;
- there is evidence that both parties have legal representation; or
- there are a large number of applicants and/or respondents, and they do not self-identify a lead spokesperson or agent.

For more information regarding each of these considerations, please refer to RT Policy

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106 If it is the director's opinion that another Tenant of a Landlord who is a party to the dispute resolution proceeding will be or is likely to be materially affected by the determination of the dispute, the director may order that the other Tenant be given notice of the proceeding and provide the other Tenant with an opportunity to be heard in the proceeding (s. 57(4), *MHPTA*). The director may also order that a Landlord be given notice of a dispute resolution proceeding and an opportunity to be heard in the dispute resolution proceeding if, in the director's opinion, the Landlord is a Landlord of a Tenant who is a party to that dispute resolution proceeding, the Landlord did not receive notice of the dispute proceeding, and the Landlord will be or is likely to be materially affected by the resolution of the dispute (s. 57(5), *MHPTA*).

107 This is subject only to the rules of procedure established under section 9(3) of the *MHPTA*. Section 9(3) allows the director to establish and publish rules of procedure for the conduct of dispute resolution proceedings.

Guideline 44 at pages 2 to 4.

The director will record the decision regarding the format of the hearing in the form of a letter that becomes part of the Notice of Hearing Package (RT Policy Guideline 44 at page 5).

During the dispute resolution hearing, the director may deal with any procedural issues that arise, make interim or temporary orders, and amend an application for dispute resolution or permit an application for dispute resolution to be amended (s. 57(3), *MHPTA*).

It is important to note that rules of evidence do not apply to these dispute resolution proceedings. The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary, appropriate and relevant to the dispute resolution proceeding (s. 68, *MHPTA*).

Any admissible evidence should be submitted to the RTB electronically and in digital form, in accordance RTB Rule of Procedure 3.0.1 (Residential Tenancy Policy Guideline 42, Digital Evidence ("RT Policy Guideline 42")[108]. RTB Rules 3.03 and 3.0.6 allow the RTB to convert the format of evidence as well as place restrictions on the size, format, or amount of evidence submitted or exchanged during the dispute resolution process. RTB Rule 3.0.7 allows the arbitrator to require that any evidence not submitted in an acceptable format or quality to support a fair and appropriate dispute resolution process be resubmitted in a different format or as exact copies. Parties to a dispute resolution proceeding must submit, organize and exchange electronic evidence in accordance with RTB Rules 3.10.1 to 3.10.5. Digital evidence must be labelled and include a description (RTB Rule 3.10.1 and 3.10.2).

Parties who submit digital evidence are required to maintain an exact copy of the evidence for at least 2 years after the conclusion of the dispute resolution proceeding, including reviews (RTB Rule 3.0.4). The RTB will not return copies of submitted evidence (RTB Rule 3.0.5). A Digital Evidence Details form (form RTB-43) must be used to describe and label the evidence (RTB Rules 3.10.4 and 3.10.3). The party submitting digital evidence must confirm that both the other party and the RTB are able to access the evidence before the hearing (RTB Rule of Procedure 3.10.5). The RTB may consider the reliability and authenticity of digital evidence, and the person submitting the digital evidence may be questioned about its authenticity and may be required to demonstrate that the digital evidence is what it claims to be (see RT Policy Guideline 42 at pages 2-3). For more information regarding file size and format restrictions, as well as how digital copies of various types of documents are to be submitted, please refer to RT Policy Guideline 42 at pages 2-3.

a. Direct Request Hearing Process

The director may also decide certain issues without holding a hearing at all, and by only considering written submissions. This is referred to as the "direct request" process (Residential Tenancy Policy Guideline, Direct Requests ("RT Policy Guideline 39") at page 1). The direct request process is limited to applications for orders of possession and monetary orders for

108 If it is not possible to submit evidence electronically, parties to a dispute resolution proceeding may also provide paper evidence in person through any Service BC location or the RTB office in accordance with Rule of Procedure 3.0.3 (RT Policy Guideline 42 at page 1).

unpaid rent and recovery of the filing fee associated with applying for a direct request (s 48(4), *MHPTA*). The direct request process is also only available if the Tenant does not dispute the 10 day notice to end tenancy for unpaid rent or utilities and does not pay all rent and utilities owing within 5 days of receiving the notice (RT Policy Guideline 39 at page 1).

If the Landlord wishes to make an application for dispute resolution through the direct request process, the Landlord must provide copies of the following (RT Policy Guideline 39 at pages 1-2):

- the written tenancy agreement;
- documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents;
- the Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing which may be accompanied by supporting documents such as a rent ledger or receipt book;
- the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and
- proof that the Landlord served the Tenant[109] with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and, if applicable, the Written Demand to Pay Utilities.

The Landlord must also serve a Notice of Dispute Resolution Proceeding Package to each Tenant on the tenancy agreement within 3 days of the Notice of Dispute Resolution Proceeding being made available by the RTB. The Notice of Dispute Resolution Package must include the following (RT Policy Guideline 39 at pages 4-5):

- the Notice of Dispute Resolution Proceeding, which includes the Application for Dispute Resolution;
- the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30);
- the written tenancy agreement;
- any written demand to pay utilities (if applicable);
- the Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34);
- the Direct Request Worksheet (form RTB-46); and
- any evidence submitted with the application.

The Notice of Dispute Resolution Proceeding Package may only be served on the Tenant in the following ways (s. 82, MHTPA)[110]:

- by registered mail;
- in person;
- by posting it on the Tenant's door or in an equally conspicuous place (this method cannot be used if the application includes a request for a monetary order); or

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109 For methods of service and what constitutes proof of service for each of these methods, please refer to pages 3-4 of RT Policy Guideline 39.

110 For more information regarding service, including deemed service, please refer to the section of this paper regarding the service provisions in the *MHPTA*. Documents served under the direct request process are deemed to be received based on the timelines established by the *MHPTA* and MHPTA Regulation.

- by leaving a copy with an adult who apparently resides with the Tenant (this method cannot be used if the application includes a request for a monetary order).

After the Notice of Dispute Resolution Proceeding Package has been served on the Tenants, the Landlord must complete and submit to the RTB a Proof of Service Notice of Direct Request Proceeding (form RTB-44) for each Tenant served.

The possible outcomes of a direct request proceeding are as follows (see also pages 5-7 of RT Policy Guideline 39):

- order of possession because the Tenant has not paid rent and/or utilities in full;
- order of possession because the Tenant has not paid rent and/or utilities in full and monetary order for unpaid rent and/or utilities and recovery of the filing fee, if requested;
- adjourned, with the hearing reconvened as a participatory hearing;
- dismissed with leave to reapply; or
- dismissed without leave to reapply.

The director may issue an order of possession when the Landlord has proven the Tenant failed to pay the full rent and/or utilities when due, the Tenant has failed to pay all overdue rent and/or utilities in full listed on the 10 Day Notice to End Tenancy within 5 days of receiving the notice, and the Tenant did not file an application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of receiving the notice. The director will issue an order of possession without an accompanying monetary order of the Landlord did not apply for a monetary order, did not provide the exact amount of rent and/or utilities that was not paid in full, but the director is satisfied that rent and/or utilities are owed, or the Landlord applied for a monetary order but served the Notice of Dispute Resolution Proceeding Package using a method other than registered mail or personal service to the Tenant. If the Landlord proves that the Tenant failed to pay rent and/or utilities in full when due and failed to pay any overdue rent and/or utilities in full within 5 days of receiving the notice and the Tenant did not file an application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of receiving the notice, the director may issue both an order of possession and a monetary order.

A direct request hearing may be adjourned and reconvened as a participatory hearing if the director has questions about the evidence that are best answered through oral testimony or if the director accepts a Tenant's Application for Dispute Resolution seeking more time to cancel the notice to end tenancy for unpaid rent and/or utilities once the direct request process has begun.

A direct request hearing may be dismissed without leave to reapply when the Landlord has not provided all required documents with the application for dispute resolution, has not provided proof of service of the required documents, or has included a matter which cannot be determined through the direct request process (such as for compensation other than unpaid rent and/or utilities). If the Landlord fails to prove their claim or the evidence indicates that the Landlord would not be successful in a participatory hearing, the director may dismiss the application without leave to reapply.

b. Dispute Hearing Process

Hearings can be conducted in any manner the director considers appropriate, and are often conducted over the phone with the parties providing oral evidence. Dispute resolution hearings may also be in writing. The director may also require other persons to attend the dispute resolution hearing. On the request of a party to the proceeding or on the director's own initiative, the director may issue a summons requiring a person to attend the dispute resolution hearing and give evidence (s. 69(1)(a), *MHPTA*) or to produce documents or any other thing relating to the subject matter of the dispute (s. 69(1)(b), *MHPTA*).

If a party to the proceeding (either the Tenant or Landlord) requests that a summons be issued requiring another person to attend the hearing or produce documents, the party making the request must make the request in accordance with Rule 5.3 of the RTB Rules of Procedure, must properly serve the summons on the person being summoned and other parties to the dispute, and must provide conduct money for the witness in accordance with the rules of procedure established by the director (s. 69(2), *MHPTA* and Residential Tenancy Policy Guideline 15, Summons to Attend or Produce Evidence ("RT Policy Guideline 15"))[111]. It is important to note that the person summoned to appear is the witness of the party requesting the summons, and that party will be bound by the summoned person's testimony (RT Policy Guideline 15).

Whether a summons will be issued is within the director's discretion. The director will consider whether to issue the summons by considering the following factors (RT Policy Guideline 15 at pages 1-2):

- the relevance of the information sought to the proceedings at issue;
- whether the summons is an abuse of process (a summons cannot be used to harass or annoy a party);
- whether the summons interferes with a privileged recognized by law (e.g., solicitor-client privilege);
- whether the person who will be subject to the summons resides in British Columbia (a summons cannot be issued where the person in question resides outside the province);
- the importance of the evidence weighed against the inconvenience to the person being summoned; and
- whether the summons is in the public interest.

If the person served with a summons does not comply with the summons, the person is liable, on application to the Supreme Court, to be committed for contempt as if in breach of a judgment or order of the Supreme Court (s. 69(3), *MHPTA*). The onus is on the party wishing to enforce the witness' attendance to apply to the Supreme Court to enforce attendance (RT Policy Guideline 15 at page 3).

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111 Rule 5.5 of the RTB Rules of Procedure requires that if a party to a proceeding requests that a person be summoned, the party requesting the summons must pay the reasonable costs of giving that evidence. For the production of documents, reasonable costs may include the costs of printing or copying materials, producing photographs, submitting digital evidence or mailing the documentary evidence to the party who requested it. For reasonable costs associated with other types of expenses, such as teleconference hearings or in person hearings, and for other details regarding summoning witnesses, please see RT Policy Guideline 15 at pages 2-3.

Lastly, if two or more applications for dispute resolution are accepted in respect of related disputes with the same Landlord, or for different disputes between the same Landlord and Tenant, the director may hear the disputes at the same time (s. 66, *MHPTA*).

During the dispute resolution proceedings, the director may make any finding of fact or law necessary or incidental to making a decision or order under the *MHPTA* (s. 55(2), *MHPTA*). The director is not bound to follow other, prior decisions decided pursuant to the *MHPTA* (s. 57(1), *MHPTA*). The director must make each decision or order on the merits of the case as disclosed by admissible evidence (s. 57(1), *MHPTA*).

One way in which disputes are often resolved is by way of settlement between the parties. The director may assist the parties, or offer the parties the opportunity, to settle the dispute (s. 56(1), *MHPTA*). If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order (s. 56(2), *MHPTA*). If the parties cannot agree to a settlement, the director will decide the issue. The director may make any order necessary to give effect to the rights, obligations and prohibitions under the MHPTA (s. 55(3), *MHPTA*).

A decision of the director must be in writing, be signed and dated by the director, include the reasons for the decision, and be given promptly, or within 30 days after the proceeding concludes (s. 70(1), *MHPTA*). The validity of the decision, and the director's authority to make that decision, are not affected if a decision is given after the 30 day deadline (s. 70(2), *MHPTA*). A decision or an order of the director is final and binding on the parties (s. 70(3), *MHPTA*). However, the director may, with or without a hearing, correct typographic, grammatical, arithmetic or other similar errors in his or her decision (s. 71(1), *MHPTA*). The director may also clarify the decision or order and deal with an obvious or inadvertent omission in the decision or order, with or without a hearing (s. 71(1)(b) or (c), *MHPTA*). The director may clarify the decision or order either on the director's own initiative or at the request of a party (s. 71(1.1), *MHPTA*). If a party wishes to request a clarification, the party must make the request within 15 days after the decision or order is received (s. 71(1.1)(b), *MHPTA*). A party requesting a clarification may make the request without notice to the other party. However, the director may order that the other party be given notice (s. 71(2), *MHPTA*). A director must not act to correct or clarify the decision or order unless the director considers it just and reasonable to do so in all the circumstances (s. 71(3), *MHPTA*).

c. Advocates and Agents at the Dispute Resolution Hearing

Any party to a dispute resolution proceeding is entitled to be represented by a lawyer, agent, advocate, interpreter or any other person whose assistance is required in order for that party to present his or her case to the arbitrator (Residential Tenancy Policy Guideline 26, Advocates, Agents and Assistances ("RT Policy Guideline 26") at page 1).

An advocate is a person who advises the party to the dispute resolution hearing (either the Landlord or Tenant), attends the hearing with them, and helps that party present his or her case. An advocate may help prepare for the hearing as well as make legal arguments and submissions and question witnesses on behalf of the party at the hearing (for more information on advocates, please see RT Policy Guideline 26 at pages 1-2).

An agent acts on behalf of the Landlord or Tenant. This means that the agent will speak on

behalf of the party and may appear in place of the party at the dispute resolution hearing. Agents are often a person who has acted for the Landlord or Tenant during the tenancy, such as a property manager (for more information on agents, please see RT Policy Guideline 26 at page 2).

Assistants assists the party during the dispute resolution process. For example, an assistant may be a translator or a family member who helps the party through the dispute resolution proceeding (for more information on assistants, please see RT Policy Guideline 26 at page 3).

Occasionally, an advocate, agent or assistant may appear as a witness at the dispute resolution hearing. Whenever possible, these witnesses should be called before other witnesses so that their evidence is not influenced by the testimony of other witnesses (RT Policy Guideline 26 at page 3).

d. Adjourning Hearings

The director may reschedule a dispute resolution hearing if the director receives written, signed consent from both parties not less than 3 days before the scheduled date for the hearing (RTB Rule of Procedure 5.1). If one party will not consent, either party (or their agent) may request at the hearing that it be adjourned under RTB Rule of Procedure 7.8 (RTB Rule of Procedure 5.2). However, the party asking for the adjournment should be prepared to proceed with the hearing in the event the director decides that the circumstances do not warrant an adjournment of the dispute resolution hearing (Residential Tenancy Policy Guideline 45, Adjourning and Rescheduling a Dispute Resolution Hearing ("RT Policy Guideline 45") at page 1). If the director decides that an adjournment will not be granted, RTB Rule of Procedure 7.11 directs that the hearing will proceed as scheduled. If the director refuses to allow the adjournment, the director will provide reasons for the refusal in the written decision (RT Policy Guideline 45 at page 3).

RTB Rule of Procedure 7.9 sets out the following criteria that the director will consider when determining a request for an adjournment:

- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

If the parties are actively working towards a settlement, the director may decide that the dispute resolution hearing should be adjourned in order to give the parties an opportunity to resolve the issues without a need for a hearing (RT Policy Guideline 45 at page 2). A log of negotiations or a letter signed by both parties indicating that they are trying to settle the matter are both evidence that the parties are actively working towards a settlement.

If the party seeking the adjournment has made the request because they did not exchange their evidence in a timely manner or if that party has another commitment scheduled at the same time as the hearing, the director may not adjourn the hearing if the other party will be

prejudiced or their fair opportunity to be heard[112] might be impacted (RT Policy Guideline 45 at page 2). However, if a party seeks an adjournment because they need more time to review the evidence, the director may consider an adjournment. If a party is seeking an adjournment for circumstances outside their control, the adjournment might be granted if that party truly had no opportunity to make alternative arrangements and if the circumstance arose close to the time of the dispute resolution hearing. Examples of circumstances beyond a party's control are a natural disaster in that party's community or if that party was involved in a car accident the morning of the hearing (RT Policy Guideline 45 at page 3).

Finally, if a party is likely to suffer a financial loss in the event of an adjournment, or if possession of the manufactured home site is at issue, this might be sufficient to establish prejudice. In these circumstances, the prejudice to one party must be weight against the fairness of the opportunity to be heard (RT Policy Guideline 45 at page 3).

6. Bias and Conflicts of Interest

An arbitrator will not conduct a hearing if satisfied that there is a reasonable apprehension of bias. A reasonable apprehension of bias will be established if "a person who is informed of all the facts would reasonably conclude that there is an appearance of bias on the part of the arbitrator", such as where the arbitrator has a financial interest in the case (for more examples of situations which may indicate a reasonable apprehension of bias, see Residential Tenancy Policy Guideline 10, Bias and Conflict of Interest ("RT Policy Guideline 10") at page 1). Simply having appeared before the arbitrator previously, or that the arbitrator declined an application by one of the parties in the past, is not bias (RT Policy Guideline at page 2). If a party to an arbitration proceeding is related to or personally knows one of the arbitrators in their region, that party should advise the Residential Tenancy Office ("RTO") of that fact as soon as possible. This allows the RTO to ensure that a different arbitrator conducts the hearing.

Either party to the arbitration may allege bias. If bias is alleged at the hearing of a matter, the arbitrator will decide whether there is a basis for the allegation of bias[113]. If there is a reasonable apprehension of bias, the arbitrator will withdraw and forward the file to the Director in order for another arbitrator to be assigned. If there is no reasonable apprehension of bias, the arbitration will continue and the decision regarding the allegation of bias will be noted in the arbitrator's decision (RT Policy Guideline 10 at page 2).

B. Enforcement of Director's Orders

A director's decision or order may be filed in the Supreme Court and enforced as a judgment or order of that court. However, the decision or order may only be filed in the Supreme Court after a review of the director's decision or order has been refused, dismissed or concluded or

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112 For more information regarding the meaning of a fair opportunity to be heard, please refer to RT Policy Guideline 45 at pages 2-3.

113 The arbitrator may reserve his or her decision and obtain further information relevant to the issue, if necessary, before coming to a decision regarding the existence of bias. Any information obtained by the arbitrator regarding the issue of bias will be disclosed to both parties to the arbitration (RT Policy Guideline 10 at page 2).

the time period to apply for a review has expired (s. 77(1), *MHPTA*)[114].

A director's decision or order may also be filed in Provincial Court if the decision or order is for financial compensation or the return of personal property and the amount required to be paid under the decision or order (excluding interest and costs) or the value of the personal property is within the monetary limit for claims under the *Small Claims Act* (s. 78(1), *MHPTA*). The decision or order may only be filed in the Provincial Court and enforced as a judgment or an order of that court after a review of the director's decision or order has been refused, dismissed or concluded or the time period to apply for a review has expired (s. 78(2), *MHPTA*).

C. Application for Review of Director's Decision

The director has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review of the decision and to make any order permitted to be made (s. 77.1(1), *MHPTA*). A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is final and conclusive and is not open to question or review in any court (s. 77.1(2), *MHPTA*). However, despite the exclusive jurisdiction of the director, a party to the dispute resolution proceeding may apply to the director for a review of the director's decision or order on one or more of the following grounds (s. 72(1) and (2), *MHPTA*)[115]:

- a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond that party's control;
- a party has new and relevant evidence that was not available at the time of the original hearing; or
- a party has evidence that the director's order was obtained by fraud.

If a party wishes to apply for a review of the director's decision or order, the party must do so within the following time periods:

- if the decision or order relates to the withholding of consent by a Landlord to assign or sublet contrary to section 28(2) of the *MHPTA*, a notice to end the tenancy under s. 39 of the *MHPTA* for non-payment of rent, or an order of possession under sections 47, 48, 49 or 49.1 of the *MHPTA*, the application for review must be made within two days after a copy of the decision or order is received by the party (s. 73(a), *MHPTA*);
- if the decision or order relates to repairs or maintenance under section 26 of the *MHPTA*, terminating or restricting services or facilities pursuant to section 21 of the *MHPTA*, or a notice to end tenancy other than for non-payment of rent pursuant to section 39 of the *MHPTA*, the application for review must be made within five days after a copy of the decision or order is received by the party (s. 73(b), *MHPTA*); or
- in all other cases the application for review must be made within 15 days after the order or decision is received by the party (s. 73(c), *MHPTA*).

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114 This enforcement procedure applies to interim, temporary and final decisions or orders (s. 77(2), *MHPTA*).

115 Note that a party to a dispute resolution proceeding may only make an application for a review of the decision or order once with respect to a proceeding (s. 72(7), *MPHTA*).

An application for review of a decision or order of the director must be made in the approved form and in the manner approved by the director, must be accompanied by the fee prescribed in the regulations[116], must be accompanied by full particulars of the grounds for review and the evidence on which the applicant intends to rely, and may be made without notice to any other party (s. 72(3), *MHPTA*). The director may refuse to accept an application for review of a decision or order if the application does not comply with these criteria (s. 72(5), *MHPTA*).

If a party to the dispute resolution proceeding applies for a review, the director may dismiss or refuse to consider the application for one or more of the following reasons[117] (s. 74(1), *MHPTA*):

- the issue raised by the application can be dealt with by a correction, clarification, or otherwise pursuant to section 71 of the *MHPTA*;
- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied;
- the application is frivolous or an abuse of process; or
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Unless the director dismisses or refuses to consider an application for review, the director must review the decision or order (s. 75(1), *MHPTA*). If an applicant applying for review of a decision or order receives a decision to proceed with a review, the applicant must provide to the other party a copy of the decision and of any order giving effect to the decision within three days[118] of receiving the decision to proceed with the review (s. 74(4), *MHPTA*). The director may also order that a decision or order for which an application for review has been made be suspended, with or without conditions, until the review has been completed and a decision given to the parties (s. 74(3), *MHPTA*).

The director may conduct a review based solely on the record of the original dispute resolution proceeding and the written submissions of the parties (if any), by reconvening the original hearing, or by holding a new hearing (s. 75(2), *MHPTA*). Following the review, the director may confirm, vary or set aside the original decision or order (s. 75(3), *MHPTA*). For more information regarding the review process, please refer to Residential Tenancy Policy Guideline 24, Review Consideration of a Decision or Order.

D. Judicial Review of an RTB Decision

If a party wishes to appeal a decision made by the director, that party may apply for judicial

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116 The current fee for applying for a review of a decision or order is set at $50 (s. 8, MHPTA Regulation). The director may waive or reduce the fee if satisfied that the applicant cannot reasonably afford to pay the fee or the circumstances do not warrant the fee being collected (s. 72(4), *MHPTA*).

117 The director's decision to dismiss or refuse to consider the application for review may be based solely on the written submissions of the applicant (s. 74(2), *MHPTA*).

118 The director may also specify a different time period (s. 74(4), *MHPTA*).

review pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c 241 (the "*JRPA*") and the *ATA*. The purpose of a judicial review was set out by the British Columbia Supreme Court in *Sager v. Boudreau*, 2017 BCSC 837 at paragraphs 5-6:

> The Director, in its response to Petition, at page 4, sets out the role of the court in a judicial review:
>
> > … the role of the court on judicial review is not to hear new evidence or argument or to decide or re-decide the case; it is simply to ensure that the tribunal (1) acted within its jurisdiction by deciding what it was directed to decide by its constituent legislation; and (2) did not lose jurisdiction by failing to provide a fair hearing or by rendering a decision outside the degree of deference owed by the reviewing court
>
> In a judicial review, no new arguments are permitted, nor can new evidence be adduced. Stated another way, the reviewing court cannot decide or re-decide the case before the court.

An application for judicial review must be brought by way of a petition proceeding (s. 2(1), *JRPA*), and allows the court to grant the following types of relief (s. 2(2), *JRPA*):

- relief in the nature of mandamus, prohibition or certiorari; and
- a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

As previously discussed, the *MHPTA* incorporates by reference sections 57, 58 and 61 of the *ATA*. Although section 11 of the *JRPA* states that there is no time limit for applications for judicial review, section 57 of the *ATA* states that an application for judicial review of a final decision by the RTB must be commenced within 60 days of the date the decision is issued (s. 57(1), *ATA*). However, the court may extend the time limit for the application, on any terms the court considers proper, if satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay, and no substantial prejudice or hardship will result to a person affected by the delay (s. 57(2), *ATA*).

Section 58 sets out the standard of review the court must apply when judicially reviewing a decision of the RTB. Because the *MHPTA* includes a privative clause, the RTB is considered an expert tribunal in relation to all matters over which it has exclusive jurisdiction (s. 58(1), ATA and s. 77.1, *MHPTA*). In a judicial review proceeding relating to expert tribunals, such as the RTB, the court must apply the following standards of review, depending on the issue being considered (s. 58(2), *ATA*):

- a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable;
- a question about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
- for all other matters, the standard of review is correctness.

Most judicial reviews will likely involve a review of a finding of fact, law or an exercise of

discretion by the RTB. Therefore, the most common standard of review is that the decision will not be interfered with unless it is "patently unreasonable". Past case law has established that the patently unreasonable standard is a "severe test" of whether there exists a rational basis for the decision of the tribunal, and not whether the reviewing court agrees with the outcome (*Crest Holding Group v. British Columbia (Attorney General)*, 2014 BCSC 1651 at para. 31). A patently unreasonable decision is one where there is no evidence to support the decision or the decision is obviously unreasonable (*Gichuru v. Palmar Properties Inc.,* 2011 BCSC 827 at para. 34). This high standard is a message from the British Columbia Legislature to the courts that decisions made by administrative tribunals, including the RTB, are not to be interfered with or set aside without a very good reason for doing so.

VII. Offences and Administrative Penalties

There are a number of offences and administrative penalties under the *MHPTA* and MHPTA Regulation[119]. The main difference between an offence and an administrative penalty is that offences are prosecuted by Crown counsel as summary conviction offences pursuant to the *Offence Act*, RSBC 1996, c 338 (see s. 2 of the *Offence Act*). Administrative penalties, on the other hand, do not require a court determination and are levied by the RTB directly. Typically, the RTB will only issue administrative penalties for serious, repeat, or deliberate situations of failing to comply with the law or orders of the director.[120]

The authors are unaware of any prosecutions pursuant to the *Offence Act* for a breach of the *Residential Tenancy Act*, and very few administrative penal proceedings.

A. Offences Pursuant to the *MHPTA* and MHPTA Regulation

A contravention or failure to comply with a decision or order of the director is an offence and a person who contravenes or fails to comply is liable on conviction to a fine of not more than $5,000 (s. 87(3), *MHPTA*). Giving false or misleading information in a proceeding pursuant to the *MHPTA* is also an offence and on conviction, the person giving false or misleading information is liable to a fine of not more than $5,000 (s. 87(4), *MHPTA*). A Tenant, or a person permitted in the manufactured home park by a Tenant, who intentionally, recklessly or negligently causes damage to the manufactured home park commits an offence and is liable on conviction to a fine of not more than $5,000 (s. 87(5), *MHPTA*).

It may also be an offence to contravene a specific section of the *MHPTA*. A person who contravenes or fails to comply with any of the following commits an offence and is liable on

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119 Note that section 5 of the *Offence Act*, RSBC 1996, c 338, does not apply to the MHPTA or the MHPTA Regulation (s. 87(7), *MHPTA*). Section 5 of the *Offence Act* states that a person who contravenes an enactment by doing an act that it forbids, or omitting to do an act that it requires to be done, commits and offence against the enactment. Therefore, in order for a contravention or omission under the *MHPTA* to be an offence, the offence must be expressly set out in the *MHPTA* or MHPTA Regulations.

120 For more information on administrative penalties, see the Residential Tenancy Branch Administrative Penalties Review, dated March 21, 2016 at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/20476_review_report.pdf.

conviction to a fine of not more than $5,000[121] (s. 87(1), *MHPTA* and s. 53, MHPTA Regulation):

- Section 13(1), (2), or (3) of the *MHPTA* regarding the requirements for tenancy agreements;
- Section 15 of the *MHPTA*, which prohibits the Landlord from charging application or processing fees;
- Section 17(2) of the *MHPTA*, which prohibits the Landlord from collecting a security deposit from the Tenant;
- Section 20(3) of the *MHPTA*, which prohibits the Landlord from seizing or interfering with access to the Tenant's property;
- Section 21(1) of the *MHPTA*, which prohibits the Landlord from terminating or restricting certain services or facilities;
- Section 23 of the *MHPTA*, which restricts the Landlord's right to enter a manufactured home site;
- Section 24(1) or (2) of the *MHPTA*, which protects a Tenant's reasonable right of access to the manufactured home park;
- Section 25(1) of the *MHPTA*, prohibiting a Landlord from changing the locks to the manufactured home park;
- Section 28(3) of the *MHPTA*, prohibiting the Landlord from charging a tenant a fee for considering, investigating or consenting to an assignment or sublease;
- Section 35(1) and (2) of the *MHPTA*, involving the timing and notice of rent increases; and
- Section 36(1) of the *MHPTA*, setting out the amount of a rent increase;
- Section 50(2) of the *MHPTA*, prohibiting the Landlord from taking possession of a manufactured home site occupied by an overholding Tenant until the Landlord has a writ of possession issued under the Supreme Court Civil Rules;
- Section 3(1) of the MHPTA Regulation, prohibiting the Landlord from charging a guest fee;
- Section 4(2) of the MHPTA Regulation, prohibiting the Landlord from charging a fee for a key that is the Tenant's sole means of access to the manufactured home park;
- Section 10 of the MHPTA Regulation, requiring that a tenancy agreement must comply with the *MHPTA*;
- Section 11 of the MHPTA Regulation, regarding disclosure and the form of the tenancy agreement; or
- Section 12 of the MHPTA Regulation regarding the terms which must be included in the tenancy agreement.

Note also that a person who coerces, threatens, intimidates or harasses a Landlord or Tenant in order to deter the Tenant or Landlord from making an application pursuant to the *MHPTA* or in retaliation for seeking or obtaining a remedy under this Act, commits an offence and is liable on conviction to a fine of not more than $5,000 (s. 87(2), *MHPTA*).

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121 Note also that in addition to the $5,000 fine, the court may also order that the person comply with or cease contravening the MHPTA (s. 87(6), *MHPTA*).

The limitation period for prosecuting offences under the *MHPTA* is 2 years from the date the facts on which the proceeding is based first come to the knowledge of the director (s. 88(1), *MHPTA*). A document which purports to have been issued by the director, certifying the date on which the director become aware of the facts on which the information is based, is admissible without proof of the signature or official character of the person appearing to have signed the certificate and is proof of the certified facts unless there is evidence to the contrary (s. 88(2), *MHPTA*).

B. Administrative Penalties Pursuant to the *MHPTA* and MHPTA Regulation

The director may conduct investigations to ensure compliance with the *MHPTA* and MHPTA Regulation, whether or not the director has accepted an application for dispute resolution in relation to the matter (s. 80.1, *MHPTA*). This means that a director may investigate whether an administrative penalty is warranted on his or her own initiative, without prompting from any party. The director also has the power to require a person being investigated with regards to a possible administrative penalty to provide, within a reasonable time, all documents in the person's possession or control related to the investigation in any way (s. 80.2(1), *MHPTA*). A person cannot refuse to comply with the request for documents (s. 80.2(2), *MHPTA*).

The director may order a person to pay a monetary penalty (an administrative penalty) if the director is satisfied on a balance of probabilities that the person has either contravened a provision of the *MHPTA* or MHPTA Regulation, or failed to comply with a decision or order of the director (s. 80.3(1), *MHPTA*)[122]. However, before the director imposes an administrative penalty, the director must give the person an opportunity to be heard[123] (s. 80.3(2)(a), *MHPTA*) and must consider all of the following (s. 80.3(2)(b), *MHPTA*):

- previous enforcement actions for contraventions of a similar nature by the person;
- the gravity and magnitude of the contravention;
- the extent of the harm to others resulting from the contravention;
- whether the contravention was repeated or continuous;
- whether the contravention was deliberate;

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122 If a corporation contravenes the MHPTA or the MHPTA Regulation or fails to comply with a decision or order of the director, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under section 80.3 of the *MHPTA* even though the corporation is liable for or pays a monetary penalty under this section (s. 80.3(7), *MHPTA*).

123 The opportunity to be heard may be, as the director considers appropriate in the circumstances, in writing (including by facsimile transmission or electronic mail), in person, or by video conference, audio conference or other electronic means, if available (s. 54(1), MHPTA Regulation). The director must give notice of the opportunity to be heard, and the notice must include the provision of the *MHPTA* or MHPTA Regulation which the person is alleged to have contravened or the decision or order of the director with which the person is alleged to have failed to comply, as well as the particulars of the alleged contravention or failure, and the due date for written submissions or the time, date, place and manner of hearing (s. 54(2), MHPTA Regulation). The notice must be provided to the person not less than 21 days before the due date of a submission or the date of the hearing (s. 54(3), MHPTA Regulation). If the person to whom notice is provided fails to provide submissions or to appear when required by the notice, the director may proceed without further notice to make an order in respect of the person (s. 55, MHPTA Regulation). Finally, note also that the director may, on application, change a time or date specified for the hearing and the due date for written submissions (s. 54(4), MHPTA Regulation).

- any economic benefit derived by the person from the contravention; and
- the person's efforts to correct the contravention.

The director's decision to impose an administrative penalty must be in writing, be signed and dated by the director, and must include the reasons for the director's decision to impose the penalty (s. 80.6(1), *MHPTA*). A decision or order regarding administrative penalties is final and binding on the person subject to the decision or order (s. 80.6(2), *MHPTA*), subject to a review of the director's decision (s. 80.8(1), *MHPTA*) and subject to the director's ability to correct or clarify the decision.

The process for reviewing the director's decision regarding administrative penalties is the same as set out above on reviews of decisions made pursuant to dispute resolution proceedings (s. 80.8(2), *MHPTA*). In terms of correction or clarification, the director may, with or without a hearing, correct typographic, grammatical, arithmetic or other similar errors, clarify the decision or order, and deal with an obvious error or inadvertent omission in the decision or order (s. 80.7(1), *MHPTA*). An obvious error is a "mistake which is immediately and clearly apparent upon reading the evidence or reviewing the hearing notes. An obvious error does not include a different interpretation or assessment of facts or law applicable to the hearing or a change of mind about the outcome of the hearing or the Director's decision (Residential Tenancy Policy Guideline 25, Requests for Clarification or Correction of Orders and Decisions ("RT Policy Guideline 25") at page 2). An inadvertent omission is "a matter which the Director would have addressed in the decision but failed to address because of an oversight" (RT Policy Guideline at page 3).

The director may take steps to correct or clarify a decision or order on his or her own initiative or at the request of the person subject to the order (s. 80.7(2), *MHPTA*). If the person subject to the order wants to request that the director clarify the decision or order or deal with an obvious error or inadvertent omission in the decision or order, the person must so request within 15 days after the decision or order is received (s. 80.7(2), *MHPTA*). A director must not act to correct or clarify the decision or order unless the director considers it just and reasonable to do so in all the circumstances (s. 80.7(3), *MHPTA*). For more information on clarification and correction, please refer to RT Policy Guideline 25.

If the director decides to impose an administrative penalty on a person, the director must give to the person a notice specifying the contravention or failure to which the penalty relates, the amount of the penalty, the date by which the penalty must be paid, and the person's right to have the director reconsider the decision imposing the penalty (s. 80.5, *MHPTA*). The administrative penalty must be paid within 60 days after the date of the order (s. 80.3(3), *MHPTA* and s. 56, MHPTA Regulation).

If the director imposes a monetary administrative penalty, the total penalty imposed must not exceed $5,000 (s. 80.4(1), *MHPTA*). If the contravention or failure to comply with the *MHPTA* occurs over more than one day, or continues for more than one day, separate monetary penalties, each not exceeding the maximum penalty of $5,000, may be imposed for each day of the contravention or failure to comply (s. 80.4(2), *MHPTA*)[124]. The director may calculate the amount of an administrative penalty in accordance with the provisions set out in Residential

124 An administrative penalty imposed under the MHPTA is a debt due to the government (s. 80.9(1), *MHPTA*).

Tenancy Policy Guideline 41, Administrative Penalties ("RT Policy Guideline 41").

The director may, instead of enforcing an administrative penalty, enter into an agreement with the person who would otherwise be liable for the penalty[125]. Such an agreement may provide for the reduction or cancellation of the penalty subject to the terms and conditions the director considers necessary or desirable (s. 80.3(5), *MHPTA*). The agreement must specify the time for performing the terms and conditions and, if the person fails to perform those terms and conditions by the date specified, the penalty which would otherwise have been ordered becomes due and payable on the date of the failure (s. 80.3(6), *MHPTA*). It is important to note that the director's decision whether to enter into such an agreement, as well as the terms and conditions of the agreement, may not be the subject of an application for dispute resolution (s. 80.3(7), *MHPTA*). For more information regarding these types of settlement agreements, please refer to RT Policy Guideline 41 at pages 6-7.

If a person fails to pay an administrative penalty after receiving proper notice of the penalty, and the time for requesting a review under section 80.8 of the *MHPTA* has expired, the director may file a certificate in a court that has jurisdiction. The certificate must be in the approved form, be signed by the director and must set out the name of the person who is liable for the penalty, the contravention or failure in relation to which the penalty is imposed, and the amount of the penalty (s. 80.9(3), *MHPTA*). Once the certificate is properly filed, it has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it was filed (s. 80.9(2), *MHPTA*).

The limitation period for administrative penalties is two years after the facts giving rise to the penalty first came to the knowledge of the director (s. 57(1), MHPTA Regulation). Any document purporting to have been issued by the director, certifying the date on which the director became aware of the facts giving rise to the penalty, is admissible without proof of the signature or official character of the person appearing to have signed the certificate and is proof of the certified date unless there is evidence to the contrary (s. 57, MHPTA Regulation).

C. Offences Pursuant to the *MHA*[126] and MHA Regulation

The following are offences under the *MHA* (s. 38, *MHA*):

- making false or misleading statements. If a person makes, or assists in making, a statement that is included in a record required or permitted to be made by or for the purposes of the *MHA* or MHA Regulation and that is, at the time and in light of the

125 The director's ability to enter into an agreement with a person who would otherwise be liable for an administrative penalty, and the terms of that agreement, are subject to the MHPTA Regulation (s. 80.3(4) and (5), *MHPTA*). The MHPTA Regulation sets out requirements for these types of agreements. The agreement must set out the name and addresses of both parties, the date of the agreement, and the address of the manufactured home park where the contravention or failure to comply occurred (s. 58(1), MHPTA Regulation). The agreement must also include the following terms and conditions: the actions the person liable for the administrative penalty will take under the agreement, the date by which those actions will be carried out, the amount by which the administrative penalty will be reduced, or that the administrative penalty will be cancelled, if those actions are carried out by that date, and that the full amount of the administrative penalty is payable on the date the actions were to have been carried out if the actions are not carried out as required by that date (s. 58(2), MHPTA Regulation).

126 Note that section 5 of the *Offence Act* does not apply to the MHA (s. 37, *MHA*).

circumstances under which it is made, false or misleading in respect of any material fact or which omits any material fact and the omission makes the statement misleading, that person commits an offence (s. 38(1), *MHA*). However, this person would not be guilty of an offence if they did not know that the statement was false or misleading and with the exercise of reasonable diligence, could not have known that the statement was false or misleading (s. 38(2), *MHA*);

- failing to affix a decal. A registered owner who fails to affix, or knowingly fails to keep affixed, in the prescribed manner the decal issued under section 5 or 6 of the *MHA*, to the manufactured home in respect of which the decal was issued, commits an offence (s. 38(3), *MHA*);
- Contravening section 15(1), regarding moving a manufactured home (s. 38(5), *MHA*);
- Contravening section 17(3), regarding conditions under which a manufactured home may be moved (s. 38(5), *MHA*);
- Contravening section 18(1), regarding the importing and sale of manufactured homes (s. 38(5), *MHA*);
- Contravening section 32(1), regarding manufactured homes manufactured after May 15, 1992 (s. 38(5), *MHA*); and
- Contravening section 33(1), regarding disclosure statements to be provided to prospective purchasers of manufactured homes (s. 38(5), *MHA*).

Anyone who commits an offence listed above is liable to a fine of not more than $2,000 (s. 38(4) and (5), *MHA*).