

2007

Maxine B. Nickel Trust, Palatial Living Mobile Home Park v. Craig Carlsen, D. Craig Carlsen, David Craig Carlson : Brief of Appellant

Utah Court of Appeals

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David, Craig, Carlsen.

Robert W. Thompson; Snow, Christensen & Martineau.

DAVID CRAIG CARLSEN P.O.Box 148 Logan. Utah 84323-0148 Defendant-Appellant in Pro Se Robert W. Thompson SNOW. CHRISTENSEN & MARTINEAU P.O. Box 45000 Salt Lake City, Utah 84145 Attorne} for Plaintiff-Appellee

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IN THE UTAH COURT OF APPEALS

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff-Appellee.

-vs-

CRAIG CARLSEN, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Defendant-Appellant

Case No. 20070621-CA

District Court Case No. 040100970

ADDENDUM TO BRIEF OF APPELLANT

DAVID CRAIG CARLSEN
P.O. Box 148
Logan, Utah 84323-0148

Defendant-Appellant in Pro Se

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Attorney for Plaintiff-Appellee

**FILED
UTAH APPELLATE COURTS**

NOV - 6 2007

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FIRST JUDICIAL DISTRICT COURT
COUNTY OF BOX ELDER, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

vs.

CRAIG CARLSEN, also known as D.
CRAIG CARLSEN, also known as DAVID,
CRAIG CARLSEN,

Defendant, Counterclaimant and
Third-Party Plaintiff,

vs.

J.S. OLSEN, BILL (Last name unknown),
TAWNYA FRANCKOWIAK, Individually
and in her capacity as Manager of Palatial
Living, LYLE COOPER, MILE P.
JENSEN, OLSON & HOGGAN, a
Professional Corporation, and JOHN and
JANE DOES, I through XX,

Third-Party Defendant.

MEMORANDUM DECISION

Case No. 040100970

Judge: Ben H. Hadfield

THE ABOVE MATTER is before the Court pursuant to Counterclaim Defendant's Motion for Summary Judgment on Counterclaim and Third-Party Plaintiff's Motion to Strike the Plaintiff's Motion for Summary Judgment and Supporting Memorandum. In preparation of its decision, the Court has reviewed Counterclaim Defendant's Motion, Counterclaim Defendant's Memorandum in Support, Third-Party Plaintiff's Memorandum to Strike and Memorandum in Opposition, Counterclaim Defendant's Reply, Counterclaim Defendant's Memorandum in Opposition, and the applicable case law and statutory provisions.

3607

The first Motion that will be addressed is Third-Party Plaintiff's Motion to Strike the Plaintiff's Motion for Summary Judgment and Memorandum in Support. Paul H. Matthews & Associates is counsel for Palatial Living Mobile Home Park on the defense of the counterclaim only. Counterclaim Defendant was represented by Miles P. Jensen and Kevin J. Fife in the portion of this suit in which Counterclaim Defendant was the Plaintiff. That part of the suit has been dismissed. Paul H. Matthews has filed with the Court an Appearance of Counsel for Counterclaim Defendant and is recognized as such.

Further, in the case of *Bluffdale City v. Smith*, 2007 UT App 25, P5 (Utah Ct. App. 2007) the court stated, "the trial court has discretion in requiring compliance with [rule 7 of the Utah Rules of Civil Procedure]." (citations omitted). Third-Party Plaintiff cites *Salt Lake County v. Metro West Ready Mix, Inc.*, 89 P.3d 155 (2004), but mis-states the case and misunderstands the court's finding. The court in *Metro West Ready Mix, Inc.* stated, "the party's failure to comply with the technical requirements of Rule 4-501(2)(B) is harmless." (emphasis added). Counterclaim Defendants failure to comply with the technical requirements of URCP 7(c)(3)(A) is harmless in this case. For these reasons, Third-Party Plaintiff's Motion is denied.

Counterclaim Defendant's Motion for Summary Judgment will now be addressed.

Count I and II

Third-Party Plaintiff argues that there was no disclosure to him by Lyle Cooper of a letter from Counterclaim Defendant dated January 30, 2001, requiring removal or repairs to the mobile home. Third-Party Plaintiff argues this constitutes a fraudulent non-disclosure and that he would not have entered into an agreement with Lyle Cooper had he known of this letter. The issue raised by Third-Party Plaintiff is between him and Lyle Cooper and does not pertain to Counterclaim Defendant. For this reason, this issue will not be addressed. Third-Party Plaintiff

also argues that approval for residency was unreasonably withheld. Third-Party Plaintiff's Exhibit "E" clearly shows Third-Party Plaintiff was aware that certain repairs were required as a "condition to acceptance of the new owner and permitting him to move into the park." (exhibit "E"). There is no evidence that approval for residency was unreasonably withheld by Counterclaim Defendant. Third-Party Plaintiff was aware of what was required and signed the documents that required repairs were to be made before he was permitted to move into the park.

The fact that Third-Party Plaintiff entered into an agreement with Lyle Cooper regarding who was responsible for making certain repair does not pertain to Counterclaim Defendant. Again, Third-Party Plaintiff has brought his claim against the wrong party. For these reasons, Counts I and II are dismissed.

Count III

Utah Code Ann. § 57-16-7(1)(a) states, "a mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park." § 57-16-7(2) goes on to state:

A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

Exhibits "K1-K6" referred to by Third-Party Plaintiff are letters sent to all residents of the mobile home park detailing the park rules. As stated above, a mobile home park can make rules relating to the "health, safety, and appropriate conduct of its residents and to the maintenance and upkeep of such park." § 57-16-7(1)(a).

Third-Party Plaintiff's argues that Counterclaim Defendant exercised unauthorized

dominion and control and committed conversion. Third-Party Plaintiff supports his argument by referencing exhibits “K1-K6.”

In the case of *Benton v. State, Div. of State Lands & Forestry, Dep't of Natural Resources*, 709 P.2d 362 (Utah 1985) the court stated:

A conversion is an act of wilful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession. (citations omitted).

There is no indication of “wilful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession.” *Id.* Counterclaim Defendant promulgated certain rules for the “health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park.” § 57-16-7(1)(a). All residents of the park are required to follow these rules. For these reasons, Count III is dismissed.

Therefore, the Court grants Counterclaim Defendant’s Motion, denies Third-Party Plaintiff’s Motion and Counterclaim Defendant’s counsel is directed to prepare an order in conformance herewith.

Dated this 6 day of March, 2007.

BY THE COURT:


Ben H. Hadfield
DISTRICT COURT JUDGE



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IN THE FIRST JUDICIAL DISTRICT COURT

COUNTY OF CACHE, STATE OF UTAH

THE MAXINE B. NICKEL TRUST dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

v.

CRAIG CARLSEN also known as D.
CRAIG CARLSEN also known as DAVID
CRAIG CARLSEN,

Defendant, Counterclaimant and
Third-Party Plaintiff,

v.

J.S. OLSEN; BILL (Last name unknown);
TAWNIA FRANCKOWIAK, Individually
and in her capacity as Manager of Palatial
Living; LYLE COOPER; MILE P.
JENSEN; OLSON & HOGGAN, a
Professional Corporation; and JOHN and
JANE DOES, I through XX,

Third-Party Defendants.

**SUMMARY JUDGMENT ON
COUNTERCLAIM
&
RULING ON MOTION TO STRIKE**

Case No. 040100970

Judge ~~Thomas L. Willmore~~
Ben Hadfield

MAY 13 2007


The Counterclaim Defendant, The Maxine B. Nickel Trust, dba Palatial Living Mobile Home Park, filed a Motion for Summary Judgment on the Counterclaim which had been filed against it by the Defendant-Third Party Plaintiff-Counterclaimant, Craig Carlsen, also known as D. Craig Carlsen, also known as David Craig Carlsen. Defendant-Third Party Plaintiff filed a memorandum opposing the Motion for Summary Judgment and also filed a Motion to Strike the Counterclaim Defendant's Motion for Summary Judgment and supporting memorandum.

The Court, having reviewed the Counterclaim Defendant's Motion for Summary Judgment with accompanying Memorandum in Support of that Motion, having reviewed Third Party Plaintiff-Counterclaimant's Motion and Memorandum to Strike and the Memorandum opposing Summary Judgment, and having reviewed the Reply of the Counterclaim Defendant, and the Counterclaim Defendant's Memorandum in Opposition to the Motion to Strike, having reviewed the applicable case law, rules and statutory provisions, and for good cause therefor, hereby grants Counterclaim Defendant's Motion for Summary Judgment on the Counterclaim and hereby denies Defendant-Third Party Plaintiff-Counterclaimant's Motion to Strike. The Court issued a Memorandum Decision outlining the reasons for its rulings, and that Memorandum Decision Dated March 6, 2007, by this reference is incorporated into this Summary Judgment Order and Ruling on the Motion to Strike.


Accordingly, for the reasons stated above and for the reasons stated in the Memorandum Decision dated March 6, 2007, IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT the Defendant-Counterclaimant, The Maxine B. Nickel Trust, dba Palatial Living Mobile

Home Park's Motion for Summary Judgment against the Counterclaim filed by Defendant-Third Party Plaintiff-Counterclaimant, Craig Carlsen, also known as D. Craig Carlsen, also known as David Craig Carlsen, is hereby granted and all Counts contained therein are hereby dismissed, with prejudice and upon the merits. It is further ORDERED ADJUDGED AND DECREED THAT, the Defendant-Third Party Plaintiff's Motion to Strike the Defendant's Motion for Summary Judgment and Memorandum in Support thereof is hereby denied.

Dated this 14 Day of ^{May}~~March~~ 2007



Ben H. Hadfield, District Court Judge



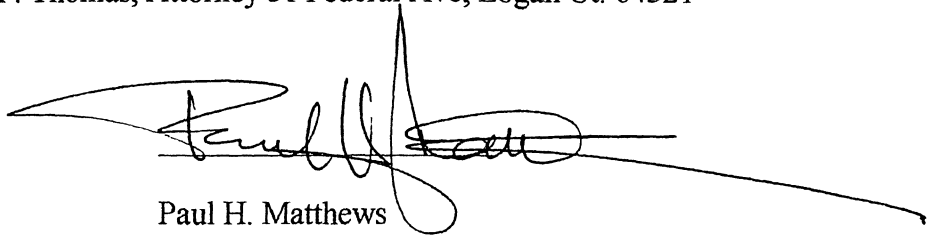
CERTIFICATION OF MAILING AND NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 040100970 by mailing through the US Mail, postage prepaid to the following individuals and firms on March 9, 2007.

Craig Carlsen, 481 West 640 North, Logan, Utah 84321

Miles P. Jensen, Attorney, 130 South Main P.O. Box 525, Logan Ut 84323-0525

Jonathan P. Thomas, Attorney 31 Federal Ave, Logan Ut. 84321

A handwritten signature in black ink, appearing to read "Paul H. Matthews", with a long horizontal line extending to the right.

Paul H. Matthews

Attorney for Counterclaim Defendant

2004 NOV 24 PM 4:03

FIRST JUDICIAL DISTRICT COURT IN AND FOR
BOX ELDER COUNTY, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

vs.

CRAIG CARLSON, also known as D. CRAIG
CARLSEN, also known as DAVID CRAIG
CARLSEN,

Defendant and Third-Party Plaintiff.

J.S. OLSEN; BILL (Last name unknown);
TAWNYA FRANCKOWIAK, Individually, and
in her capacity as Manager of Palatial Living;
LYLE COOPER; MILES P. JENSEN; OLSON
& HOGGAN, a Professional Corporation; and
JOHN and JANE DOES, 1 through XX,

Third-Party Defendants.

OPINION

Case No. 040100970

JUDGE LARRY E. JONES

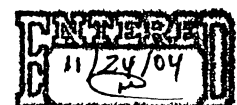
On April 28, 2004, a *Complaint for Eviction* was filed with the court. This case was initially assigned to Judge Thomas L. Willmore.

On June 30, 2004, Judge Willmore filed a *Memorandum Decision* and an *Order of Recusal*, recusing himself from this case. As a result of the recusal, Judge Gordon J. Low, Associate Presiding Judge in the First Judicial District, assigned Judge Ben H. Hadfield to this case.

On July 26, 2004, David Craig Carlsen, defendant and third-party plaintiff, pro se, filed *Defendant's Motion for Change of Judge and Affidavit of Prejudice*. On July 27, 2004, Mr. Carlsen filed *Defendant's Certificate of Good Faith*.

On August 5, 2004, the Maxine B. Trust, dba Palatial Living Mobile Home Park, Plaintiff, through its attorneys Miles P. Jensen and Kevin J. Fife of Olson and Hoggan, P.C., filed *Plaintiff's Objection to Defendant's Motion to Disqualify Judge Ben H. Hadfield*.

On August 9, 2004, Mr. Carlsen filed *Reply Memorandum to the Plaintiff's Objections to Defendant's Motion to Disqualify Judge Ben H. Hadfield*.



On August 11, 2004, plaintiff, through its attorneys, filed *Notice to Submit Defendant's Motion to Disqualify Judge Ben H. Hadfield for Decision*.

On October 14, 2004, Judge Hadfield filed *Order Certifying Motion and Affidavit to a Reviewing Judge*.

On October 18, 2004, Mr. Carlsen filed *Defendant and Third-Party Plaintiff's Objection to Order Certifying Motion and Affidavit to a Reviewing Judge*.

Rules deemed critical by this judge in the consideration of the issues now before the court, are as follows:

Utah Rules of Civil Procedure (URCP) 63(b)(1)(A), (b)(1)B, (b)(2), (b)(3)(A) and (B)(3)(B):

(b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of interest.

(b)(1)(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(b)(1)(B)(i) assignment of the action or hearing to the judge;

(b)(1)(B)(ii) appearance of the party or the party's attorney; or

(b)(1)(B)(iii) the date of which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based. If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(b)(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. The presiding judge of the court, any judge of the district, any judge of the court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(b)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed,

filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(b)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

URCP Rule 63(b)(2) requires that if a motion to disqualify is not granted by the judge against whom the motion is filed, that judge shall certify “the motion and affidavit to a reviewing judge.” A reviewing judge may be “the presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the judicial council....”(emphasis added). This judge is a juvenile court judge of the First Judicial District, the same district of which Judge Hadfield is a district court judge. Being a “judge of the district” of which Judge Hadfield is also a judge, this judge will review the motion for disqualification.

This judge will first consider whether Mr. Carlsen’s affidavit was timely filed. Rule 63(b)(1)(B) requires that a motion to disqualify be filed “no later than 20 days after the last of the following: (i) assignment of the action or hearing to the judge; (ii) appearance of the party or the party’s attorney; or (iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.” Judge Low appointed Judge Hadfield in a July 1, 2004, order, which in the court file is attached to the June 30, 2004 Order of Recusal signed by Judge Willmore. Neither Judge Low’s order nor Judge Willmore’s Order of Recusal include a mailing certificate certifying mailing to Mr. Carlsen. Mr. Carlsen states in his August 9, 2004, memorandum that he first learned of the assignment to Judge Hadfield from a Notice to Submit for Decision filed by plaintiff on July 13, 2004. Where it appears from the court file that Mr. Carlsen did not learn of Judge Hadfield’s assignment to the case until receipt of the July 13, 2004 Notice to Submit for Decision, it appears that Mr. Carlsen’s July 26, 2004 Defendant’s Motion for Change of Judge and Affidavit of Prejudice was filed within 20 days of July 13, 2004, the date Mr. Carlsen learned “or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.” This judge concludes that the motion and

affidavit were timely filed.

As to the legal standard applicable to a consideration of Mr. Carlsen's motion, Mr. Carlsen correctly cites State of Utah, in the interest of M.L., 965 p2d 551,556 (Utah App. 1998) for the proposition that for a judge to be disqualified, "the affidavit must allege facts indicating that '[the] judge's behavior toward a party during [those prior] proceedings [was] extreme' and reflected 'a deep-seated antagonism' toward the party requesting recusal."

The law provides that a judge be presumed to be qualified. As stated In re Affidavit of Bias, 947 p.2d 1152, 1153-4 (Utah 1997)(Memorandum Decision of Zimmerman, C.J., sitting alone):

...judges are presumed to be qualified. 46 Am. Jur. 2d Judges § 218 (1994). Therefore an affiant alleging bias on the part of a judge bears the burden of demonstrating that the judge is not qualified to act on the case. Id. It is true that a judge must avoid hearing a case "in which the judges's impartiality might reasonably be questioned." Utah Code of Judicial Conduct Canon 3(E)(1). However, "no deduction of bias and prejudice may be made from adverse rulings by a judge. "46 Am. Jur. 2d Judges § 219 (1994). In other words, the mere fact that a judge decides a case against a party may not be considered in determining bias.

Utah Code of Judicial Conduct Canon 3(E)(1) provides in its pertinent part:

E. Disqualification.

E.(1) A judge shall enter a disqualification in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

E.(1)(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, a strong personal bias involving an issue in a case, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Mr. Carlsen's affidavit sets out the following substantive claims:

1. Mr. Carlsen alleges that Judge Hadfield is biased because Mr. Carlsen filed a complaint against Judge Hadfield with the Utah Judicial Conduct Commission.

Affidavit, paragraph 3.

2. Mr. Carlsen alleges that Judge Hadfield is biased because in Carlsen v. Riley, case number 010100013, Judge Hadfield, Mr. Carlsen alleges, "denied each and every

motion, request, and objection made by [Mr. Carlsen]," referred to Mr. Carlsen in numerous memorandum decisions as "pro se", "has failed to sign orders," and "has retained records...and has refused to allow [Mr. Carlsen] access to such records that are being retained in his possession." Affidavit paragraphs 2, 4, 5 and 6.

3. Mr. Carlsen alleges that Judge Hadfield is biased because "while [Judge Hadfield] presided over a jury trial involving a traffic offense against [Mr. Carlsen] in the circuit court," Judge Hadfield, Mr. Carlsen alleges, "denied each and every motion, request, and objection made by [Mr. Carlsen]", and "allowed a witness...to commit a crime in open court and on the record by allowing him to impersonate a police officer...with the purpose and intent [to bolster the witness'] testimony and to deceive the jury."

As to Mr. Carlsen's allegation that Judge Hadfield is biased because Mr. Carlsen filed a complaint against Judge Hadfield with the Judicial Conduct Commission, the filing of the complaint does not, of itself, require a finding of bias. Two Utah Judicial Advisory Opinions, Informal Opinion 96-3 and Informal Opinion 97-8, make clear that an adversary proceeding against a judge, "standing alone," does not require disqualification of the judge. The general rule is set out in Informal Opinion 97-8:

"As a general rule, bias or prejudice that is caused by occurrences in the context just be rooted in an extrajudicial source. When not flowing from an extrajudicial source, bias or prejudice will not necessitate disqualification unless it is so egregious as to destroy all semblance of fairness." Jeffrey M. Shaman, et al. Judicial Conduct and Ethics, 102 (2d ed. 1995). A lawsuit complaining of a judge's official acts is not considered extrajudicial and disqualification is not automatically required.

The policy behind the general rule is explained:

This rule is necessary to insure that litigants are not able to judge shop or continually delay actions with well-timed lawsuits against judges. "A party should not be able to engage in "judge-shopping" by manufacturing bias or prejudice that previously did not exist... That a party... files a complaint against a judge will not usually require the judge to be disqualified on account of bias or prejudice." Id. at 104, 105.

The mere filing of Mr. Carlsen's complaint against Judge Hadfield, standing alone, does not constitute bias or require disqualification. Mr. Carlsen does not cite any extrajudicial act by Judge Hadfield. Accordingly, this judge concludes that no bias may

be inferred from Mr. Carlsen's filing of a complaint against Judge Hadfield with the Judicial Conduct Commission.

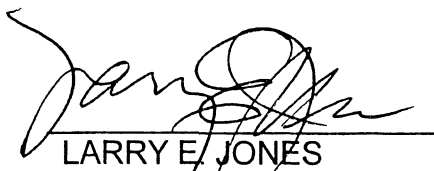
As to Mr. Carlsen's allegation that Judge Hadfield is biased because of Judge Hadfield's alleged actions in two cases in which Mr. Carlsen was a party, all of the actions alleged of Judge Hadfield involve judicial actions by Judge Hadfield. Judge Hadfield ruling against Mr. Carlsen on motions, requests, objections, signing of orders, retaining of records, rulings as to witnesses, and ruling on ultimate issues in the cases, as alleged by Mr. Carlsen, are all in-court actions that do not, without something more, constitute bias. Referring to Mr. Carlsen as pro-se, as alleged by Mr. Carlsen, is not only an in-court statement, but is an accurate characterization of Mr. Carlsen's own description of his pro se status in the cases. No extrajudicial actions are alleged by Mr. Carlsen. Again, this judge concludes that no inference of bias may be inferred from Mr. Carlsen's allegations of Judge Hadfield's in court actions in which Mr. Carlsen was a party.

Further, this judge finds that none of the allegations raised in Mr. Carlsen's affidavit rise to the level of extreme behavior or behavior reflecting a deep-seated antagonism toward Mr. Carlsen.

For the foregoing reasons, this judge concludes that an inference of bias cannot be reasonably raised regarding Judge Hadfield's being named in a complaint allegedly filed by Mr. Carlsen with the Judicial Conduct Commission and regarding Judge Hadfield's actions in two cases in which Judge Hadfield allegedly presided and Mr. Carlsen allegedly was a party.

Mr. Carlsen having failed in his affidavit to establish bias by Judge Hadfield, Mr. Carlsen's affidavit is legally insufficient to mandate recusal of Judge Hadfield from this case.

Dated this 24th day of November, 2004.


LARRY E. JONES
Associate Presiding Judge
First Judicial District



FIRST JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF
CACHE COUNTY, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiffs,,

vs.

CRAIG CARLSON, also known as D. CRAIG
CARLSEN, also known as DAVID CRAIG
CARLSEN,

Defendants and Third-Party
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J.S. OLSEN; BILL (Last name unknown);
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Living; LYLE COOPER; MILES P. JENSEN;
OLSON & HOGGAN, a Professional
Corporation; and JOHN and JANE DOES, 1
through XX,

Third-Party Defendants.

MEMORANDUM DECISION

Case No. 040100970

JUDGE BEN H. HADFIELD

This matter is before the Court on several motions. An issue concerning the disqualification of the Honorable Thomas L. Willmore was resolved by his voluntary recusal. The matter is now assigned to Ben H. Hadfield, District Court Judge. Judge Larry E. Jones issued a Memorandum Decision on November 24, 2004, denying Defendant's Motion to Disqualify Judge Hadfield. Having reviewed the various motions and memoranda, the Court now issues this *Memorandum Decision*.

This case started as a simple unlawful detainer action. Plaintiff asked that Defendant's mobile home be removed from the pad it occupies pursuant to the Utah Unlawful Detainer Statute, *Utah Code Ann.* § 78-36-1 et. Seq. and the Utah Mobile Home Park Residency Act, *Utah Code Ann.* § 57-16-1 et. seq.. This matter has grown in complexity due to a counterclaim and third party complaint



filed by Defendant, and numerous other motions and other filings made by both sides. Defendant alleges claims against his neighbors and the manager of Plaintiff, Palatial Living Mobile Home Park (“Palatial Living”), including nuisance, conversion of his property (Count III and Count XII [by Attorney Miles Jensen]), assault (Count VII), violation of his First Amendment rights of speech and association, unauthorized dominion and control over his property (water, garden hose, heat tape, swamp cooler, and satellite dish), fraud-trickery-deceit (Count IV), illegal repairs required (Count I; II), breach of implied warranty of habitability depriving Defendant of the use and quiet enjoyment of his property (Count V), injunction demand against Olsen (Count VI), negligent securing of debris in high winds (Count VIII), bad faith complaint for eviction (Count IX), declaratory judgment and injunction (Count X), and finally, fraudulent nondisclosure by Lyle Cooper (Count XI).

Motion for Expedited Hearing Regarding Eviction and to Bifurcate Trial

Palatial Living’s motion was supported by memorandum. Carlsen responded in the same manner. Palatial Living inadvertently submitted its motion before Carlsen’s responsive memorandum was filed. Palatial Living voluntarily withdrew its *Notice to Submit*. Palatial Living then filed a reply memorandum in support its motion. Carlsen objects to Palatial Living’s reply, stating that it waived the ability to reply after it submitted its motion in error. Carlsen’s objection is noted.¹ However, the Court will not strike Palatial Living’s reply memorandum. Contrary to Carlsen’s assertions, the withdrawal of Palatial Living’s *Notice to Submit* was not a motion necessitating either a memorandum in support, or judicial action to resolve. *UtahR. Civ. Pro. 7* does not bar submission of a reply memorandum after a notice to submit has been withdrawn.

Palatial Living asks that its eviction action be tried separately from the contract, tort, and equity claims raised by Carlsen. Palatial Living makes its motion pursuant to *UtahR. Civ. Pro. 42*. Carlsen objects to bifurcation. He states that it would be unfair and prejudicial to his case to separate the issues.

¹Carlsen filed a Notice to Submit for his objection. For clarity and judicial economy, the Court will not deal with Carlsen’s objection separately.

He also states that his claims against alleged third-party defendants are not separable from the eviction action.

All of Carlsen's claims arise from his residence in the Palatial Living Mobile Home Park. However, that does not mean that the eviction action may not be bifurcated from the remainder of the claims. In the interest of justice and fairness and for reasons as set forth hereafter, the Court orders that the eviction complaint made by Palatial Living be tried separately from the numerous issues raised by Carlsen in his "Counterclaim, and Third-party Complaint."

Defendant's Motion for Judgment on the Pleadings

Defendant moves for judgment on the pleadings pursuant to UtahR. Civ. Pro. 12 on counts I, II, and III of his counterclaim and third-party complaint. In his memorandum in support, Carlsen incorporates exhibits and case law into his arguments. In its reply, Palatial Living incorporates an affidavit. Because these matters outside the pleadings were submitted, the motion will properly be converted into one for summary judgment, pursuant to *UtahR. Civ. Pro. 12(c)*. There are several disputed issues of material fact surrounding Carlsen's Counterclaim, Counts I, II, and III, including whether approval for residency was interfered with, whether the facts are in accordance with the mobile home residency act, whether Carlsen was unreasonably kept from selling his mobile home, and whether the facts alleged support Carlsen's conversion argument. *Defendant's Motion for Judgment on Pleadings* is denied.

Motion to Disqualify Miles P. Jensen and the Law Firm of Olsen and Hoggan, P.C.

Carlsen moves to disqualify Attorney Miles Jensen, Esq.. The basis of Carlsen's motion is that he intends to call Attorney Jensen as a witness in this matter. Carlsen cites *Utah R. Prof. Con. 3.7* for the proposition that Attorney Jensen should be disqualified in this case. Carlsen further states that he intends to amend his third-party complaint to include the Law Firm of Olsen and Hoggan, P.C..

Utah R. Prof. Con. 3.7 deals with conflicts between attorneys and their clients, not opposing counsel. It is inappropriate for Carlsen to raise these

LOGAN COURTS
2007 JUN 12 PM 3:17

DAVID CRAIG CARLSEN
Defendant in Pro Se
P.O. Box 148
Logan, Utah 84323-0148
Telephone: (435) 512-1730

IN THE FIRST JUDICIAL DISTRICT COURT
COUNTY OF CACHE, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

-vs-

CRAIG CARLSEN, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Defendant.

NOTICE OF APPEAL

Judge: Ben H. Hadfield

Case No. 040100970

PLEASE TAKE NOTICE that the defendant, David Craig Carlsen, hereby appeals to the Supreme Court of the State of Utah from the Order Granting Summary Judgment entered on or about the 17th day of May, 2007, in favor of the plaintiff and against the defendant on the defendant's Counterclaim and the defendant appeals also from all other Orders entered in favor of the plaintiff and against the defendant in this matter.

6-12-07
aaw

DATED this 12th day of June, 2007.


DAVID CRAIG CARLSEN

CERTIFICATE OF SERVICE

I certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL and NOTICE OF FILING OF BOND OF COSTS, postage prepaid to the following listed below on this 12th day of June, 2007:

Paul H. Mathews
Attorney for Plaintiff
10 West Broadway, Suite 700
Salt Lake City, Utah 84101-2060


DAVID CRAIG CARLSEN

DAVID CRAIG CARLSEN
Defendant and Third-Party Plaintiff in Pro Se
P.O. Box 148
Logan, Utah 84323-0148
Telephone: (435) 787-2230

LOGAN COURTS
2006 JUL 26 AM 10:49

IN THE FIRST JUDICIAL DISTRICT COURT

COUNTY OF CACHE, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

-vs-

**DEFENDANT'S MOTION FOR
CHANGE OF JUDGE AND
AFFIDAVIT OF PREJUDICE**

CRAIG CARLSEN, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Judge: Ben H. Hadfield

Defendant and Third-Party Plaintiff,

-vs-

J. S. OLSEN; BILL (Last name unknown);
TAWNIA FRANKOWIAK, Individually,
and in her capacity as Manager of Palatial
Living; LYLE COOPER; MILES P. JENSEN;
OLSON & HOGGAN, a Professional
Corporation; and JOHN and JANE DOES,
I through XX.

Case No. 040100970

Third-Party Defendants.

COMES NOW, the above-named Defendant and Third-Party Plaintiff, David
Craig Carlsen, and pursuant to Rule 63 of the Utah Rules of Civil Procedure, and hereby

2006-07-26
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moves for a Change of Judge in this case on the basis of the following affidavit, Judge Ben H. Hadfield is extremely bias and prejudice against him and because of such prejudice, he cannot fairly and impartially decide any matter in this case.

DATED this 26th day of July, 2004.


DAVID CRAIG CARLSEN

STATE OF UTAH)
 :
County of Cache)

DAVID CRAIG CARLSEN, being first duly sworn upon oath, deposes and says:

1. I am the Defendant and Third-Party Plaintiff named in the above-entitled cause of action and I am competent to testify as to matters therein.
2. I verily believe that Judge Ben H. Hadfield is extremely bias and prejudice against me by his involvement in two other cases.
3. I verily believe that Judge Hadfield is bias and prejudice against me because I have previously filed a complaint against him with the Utah Judicial Conduct Commission and that in retaliation of my filing such complaint, he cannot fairly and impartially decide any matter in this case.
4. I verily believe that Judge Hadfield is bias and prejudice against me because he has denied each and every motion, request, and objection made by me in those two cases.
5. I verily believe that Judge Hadfield is bias and prejudice against me because I am a pro se litigant and in the Carlsen v. Riley case, Case No. 010100013 pending in this

court, he has made references in numerous Memorandum Decision, that I was representing myself in that case, pro se, and suggesting he is bias and prejudice against pro se litigants. Whether I was representing myself pro se in that case was completely irrelevant to any decision on the issues in that case.

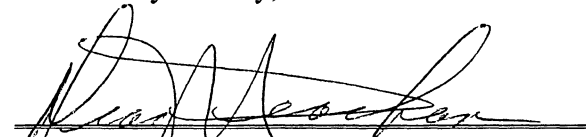
6. I verily believe that Judge Hadfield is bias and prejudice against me because in the Carlsen v. Riley case, Case No. 010100013 pending in this court, he has failed to timely render decisions on Objections made by me to proposed orders, and he has failed to sign orders relating to Memorandum Decisions entered by the court for a period of over two years. That Judge Hadfield has retained the records in that case and has refused to allow me access to such records that are being retained in his possession. That Judge Hadfield's extreme bias and prejudice and misconduct in that case has prevented me from timely prosecuting the case and obtaining a lawful judgment against the defendants.

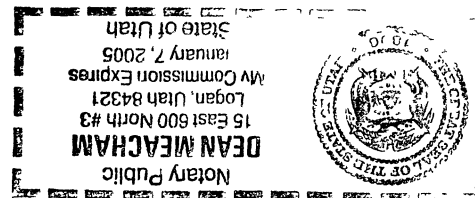
7. I verily believe that Judge Hadfield is bias and prejudice against me because while he presided over a jury trial involving traffic offenses against me in the Circuit Court, he allowed a witness, Tim Gil Duron, to commit a crime in open court and on the record by allowing him to impersonate a police officer in violation of Utah Code Ann. § 76-8-512, with the purpose and intent bolster's Duron's testimony and to deceive the jury. At the time and on the date of that trial, Tim Gil Duron was employed by the United States Forest Service as a laborer and was not employed by any law enforcement agency in the State of Utah as a peace officer.

8. I verily believe that Judge Hadfield is extremely bias and prejudice against me and because of his bias and prejudice, he cannot fairly and impartially render any decision in this case based upon the applicable laws and facts and on the merits of the issues.


DAVID CRAIG CARLSEN

SUBSCRIBED and SWORN to before me on this 26th day of July, 2004.


NOTARY PUBLIC



DAVID CRAIG CARLSEN
Defendant and Third-Party Plaintiff in Pro Se
P.O. Box 148
Logan, Utah 84323-0148
Telephone: (435) 787-2230

LOGAN COURTS
2004 JUL 27 AM 9:43

IN THE FIRST JUDICIAL DISTRICT COURT

COUNTY OF CACHE, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

**DEFENDANT'S CERTIFICATE
OF GOOD FAITH**

-VS-

CRAIG CARLSEN, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Judge: Ben H. Hadfield

Defendant and Third-Party Plaintiff,

-VS-

J. S. OLSEN; BILL (Last name unknown);
TAWNYA FRANCKOWIAK, Individually,
and in her capacity as Manager of Palatial
Living; LYLE COOPER; MILES P. JENSEN;
OLSON & HOGGAN, a Professional
Corporation; and JOHN and JANE DOES,
I through XX.

Case No. 040100970

Third-Party Defendants.

COMES NOW, the above-named Defendant and Third-Party Plaintiff, David

Craig Carlsen, and pursuant to Rule 63 of the Utah Rules of Civil Procedure, and hereby

727-50
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respectfully submits that the Motion for a Change of Judge and Affidavit of Prejudice filed in this matter regarding Judge Ben H. Hadfield was filed in good faith and not for the purpose of any delay.

DATED this 27th day of July, 2004.


DAVID CRAIG CARLSEN

CERTIFICATE OF SERVICE

I certify that I mailed true and correct copy of the foregoing DEFENDANT'S
CERTIFICATE OF GOOD FAITH to the following listed below on this 27th day of July,
2004:

Miles P. Jensen
Attorney for Plaintiff
88 West Center
Logan, Utah 84321

Paul H. Matthews
Attorney for Franckowiak
10 West Broadway, Suite 700
Salt Lake City, Utah 84101-2060

June Olsen
475 West 640 North
Logan, Utah 84321


DAVID CRAIG CARLSEN

LOGAN COURTS
2004 AUG -5 PM 3:43

Miles P. Jensen (#1686)
Kevin J. Fife (#5692)
OLSON & HOGGAN, P.C.
Attorneys for Plaintiff
88 West Center
P.O. Box 525
Logan, Utah 84323-0525
Telephone: (435) 752-1551

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

vs.

CRAIG CARLSEN, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Defendant.

**PLAINTIFF'S OBJECTION TO
DEFENDANT'S MOTION TO
DISQUALIFY JUDGE BEN H.
HADFIELD**

Case No. 040100970

Judge

Plaintiff, by and through its attorneys, Olson & Hoggan, P.C., Miles P. Jensen and Kevin J. Fife, hereby objects to Defendant's Motion to Disqualify Judge Ben H. Hadfield in the above-captioned matter and, as a basis for the same, submits the following:

1. Judge Ben H. Hadfield should not be disqualified based on the allegations of the Defendant. Defendant's allegations are not timely, are improper, and are not made in good faith. There is a pattern here. In this or other cases, the Defendant has either filed Motions to Disqualify

OLSON & HOGGAN, P.C.
ATTORNEYS AT LAW
88 WEST CENTER
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LOGAN, UTAH 84323-0525
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TREMONTON OFFICE
123 EAST MAIN
P.O. BOX 115
TREMONTON, UTAH 84337
(435) 257-3885

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AB

or taken other actions that have caused recusal by all three (3) First Judicial District Court Judges based in Cache County.

2. Rule 63(b)(1)(B) of the Utah Rules of Civil Procedure, upon which Defendant's Motion is based, allows the motion to disqualify a judge to be made "after commencement of the action, *but not later than 20 days after the last of the following: (i) assignment of the action or hearing to the judge.*" (Emphasis added). Rule 63 further provides that "the reviewing judge may deny a motion not filed in a timely manner." Utah Rules of Civil Procedure, Rule 63(b)(3)(C). Defendant filed his Motion to Disqualify more than twenty (20) days after the assignment of the action to Judge Hadfield, and has given no justification for the delay in filing. Judge Hadfield was assigned to this action on or about July 1, 2004, and Defendant filed his current Motion to Disqualify on July 26, 2004. Therefore, Defendant's motion is not timely, and should be denied.

3. Defendant's Motion to Disqualify is improper because Rule 63(b)(1)(C) of the Utah Rules of Civil Procedure allows a party to file only one motion to disqualify in an action: "No party may file more than one motion to disqualify in an action." Utah R.Civ.P. 63(b)(1)(C). Defendant has already effectively filed a Motion to Disqualify Judge Thomas L. Willmore on June 21, 2004, and has now filed a second Motion to Disqualify in the same action in violation of the Rules of Civil Procedure (which may be grounds for sanctions). Therefore, Defendant's motion is improper, and should be denied.

4. Plaintiff disputes that Defendant's Motion is filed in good faith. Defendant has intentionally filed the Motion to Disqualify Judge Hadfield to further delay and stall the action. Defendant has shown a consistent pattern of dilatory tactics by attempting to disqualify Judge Hadfield, Judge Willmore, Attorney Miles P. Jensen, and the law firm of Olson & Hoggan. This pattern is further evidenced by Defendant's tactics to delay in other actions. Most notably, in a criminal case in the Logan City Municipal Justice Court during the summer of 2001, the Defendant, as defendant in State of Utah/City of Logan v. Carlsen, David C., Case Number MC LC CR-M - 01 - 0000559 - 001, had Judge Cheryl A. Russell disqualified and excused on July 20, 2001. Then, in the same case, Defendant had Judge Jack L. Stevens disqualified and excused on August 27, 2001, three days before the jury trial because Defendant felt prejudiced merely because Judge Stevens denied his motion to suppress. At that hearing, Defendant threatened filing a complaint with the Judicial Conduct Commission against Judge Stevens five times. Then, at the jury trial a few days

later, Defendant again made an objection to the assignment of Judge Terry Moore, which objection was denied.

5. Now, the Defendant appears to be trying the same maneuvers in this action in order to frustrate and delay proper judicial process. This is a matter of urgency, and needs to be decided without delay—there are residents of the Palatial Living Mobile Home Park who are living in fear of the safety and security of their lives and property. Any delay in this action only serves to prolong this fear, and allows the Defendant to continue his bullying tactics. By filing the various Motions to Disqualify, and other motions, Defendant has shown his intent to delay the action at every turn. Such dilatory tactics cannot be made in good faith. Therefore, Defendant's Motion should be denied.

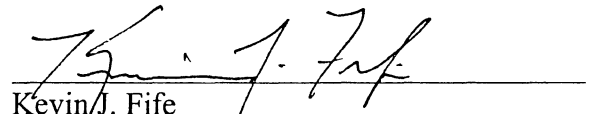
6. Further, the Court on its own may determine for other reasons that Defendant's Motion is not timely, not filed in good faith, or legally insufficient. See generally In Re Affidavit of Bias, 947 P.2d 1152 (Utah 1997).

WHEREFORE, Plaintiff requests that Defendant's Motion to Disqualify Judge Ben H. Hadfield be denied, and the lawsuit go forward, and for such other relief as the Court deems just.

DATED this 4th day of August, 2004.

OLSON & HOGGAN, P.C.


Miles P. Jensen
Attorneys for Plaintiffs


Kevin J. Fife
Attorneys for Plaintiffs

SON & HOGGAN, P.C.
ATTORNEYS AT LAW
88 WEST CENTER
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(435) 752-1551

TREMONTON OFFICE.
123 EAST MAIN
P.O. BOX 115
TREMONTON, UTAH 84337
(435) 257-3885

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N-4300.25

DAVID CRAIG CARLSEN
Defendant and Third-Party Plaintiff in Pro Se
P.O. Box 148
Logan, Utah 84323-0148
Telephone: (435) 787-2230

LOGAN COURTS
2007 AUG -9 AM 8:49

IN THE FIRST JUDICIAL DISTRICT COURT

COUNTY OF CACHE, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

-vs-

CRAIG CARLSEN, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Defendant and Third-Party Plaintiff,

-vs-

J. S. OLSEN; BILL (Last name unknown);
TAWNIA FRANCKOWIAK, Individually,
and in her capacity as Manager of Palatial
Living; LYLE COOPER; MILES P. JENSEN; Case No. 040100970
OLSON & HOGGAN, a Professional
Corporation; and JOHN and JANE DOES,
I through XX.

Third-Party Defendants.

**REPLY MEMORANDUM TO
THE PLAINTIFF'S OBJECTIONS
TO DEFENDANT'S MOTION TO
DISQUALIFY JUDGE BEN H.
HADFIELD**

Judge: Ben H. Hadfield

COMES NOW, the above-named Defendant, David Craig Carlsen, and hereby

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respectfully submits the following Reply Memorandum to the Plaintiff's Objection to the Defendant's Motion to Disqualify Judge Ben H. Hadfield:

There is no legal basis for the PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISQUALIFY JUDGE BEN H. HADFIELD for the following reasons:

(a). The Plaintiff's Objection to the Motion to Disqualify Judge Ben H. Hadfield is not permitted under the provisions of Rule 63 of the Utah Rules of Civil Procedure. Additionally, the Plaintiff's Objection to the Plaintiff's Motion cannot be submitted to the reviewing judge who is reviewing the Defendant's Affidavit of Prejudice under Rule 63 when there has been no request by the reviewing judge for legal memoranda by the parties on the issue of the disqualification of Judge Ben H. Hadfield *Barnard v. Murphy*, 852 P.2d 1023 (Utah App. 1993); and *Young v. Patterson*, 922 P.2d 1280 (Utah 1996).

(b). The Plaintiff's Motion to Disqualify Judge Hadfield was timely because the Defendant was not notified by any clerk or by any party to this action of Judge Hadfield's assignment to this case until he received a Notice to Submit for Decision, dated, July 13, 2004 from the Plaintiff in which that document shows Judge Hadfield's assignment. The documents filed by both the Plaintiff and Defendant between the period of July 1, 2004 and July 13, 2004 do not show that any Judge was assigned to this case. The record in this case reflects that the Plaintiff is notified of actions by the Court when the Defendant is not notified.

(c). To support a claim of bias based on a judge's presiding over prior proceedings, "it must appear that apart from the judge's analysis of the issues of fact or law in those proceedings, he had such a bias in favor of one party or prejudice against the other that he could not fairly and impartially determine the issues.: *Poulsen v. Frear*, 946 P.2d 738, 742 (Utah App. 1997) (quoting *Ordenville Irrig. Co. v. Glendate Irrig. Co.*, 17 Utah2d 282, 288, 409 P.2d 616, 621 (1965); this is, the affidavit must allege facts indicating that "the judge's behavior toward a party during those prior proceedings was extreme" and reflected a "deep seated antagonism" toward the party requesting recusal. *State, In re M.L.*, 965 P.2d 551, 556 (Utah App. 1998).

Defendant's Affidavit of Prejudice states facts that Judge Hadfield's conduct in the Circuit Court case allowed the prosecution to knowingly use false evidence to obtain a conviction in violation of Carlsen's due process rights, *Miller v. Pate*, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed.2d 690 (1967). Judge Hadfield in those prior proceedings allowed the prosecution witness, Tim Gil Duron to impersonate a peace officer on the record and in open court which constitutes a criminal offense in the State of Utah. Judge Hadfield's conduct in the two prior cases that is referenced in the Defendant's Affidavit of Prejudice shows that his conduct was extreme and reflected a deep seated antagonism towards Carlsen.

(d). The Defendant is not required to show actual bias, but is only required to show a reasonable appearance of bias to require recusal of the Judge Ben H. Hadfield

under Canon 3E. *State, Department of Human Services v, Oddone*, 2004 UT 8, ¶ 3, 84 P.2d 1170.

(e). As per the Disqualification Order entered by Judge Willmore stating that the Defendant *did not file a Rule 63 Motion*, the Defendant has not previously filed a Rule 63 Motion to Disqualify any Judge in this case except the current Motion to Disqualify Judge Ben H. Hadfield. The Court in *Barnard v. Murphy, supra*, made it clear that there is a distinction between a Motion to Disqualify and a Rule 63 Motion for a Change Judge and Affidavit of Prejudice. The Plaintiff's Objections stating that the Defendant has previously filed a Rule 63 Motion to Disqualify Judge Willmore is false, and Objection contains an insufficient defense, redundant, immaterial, impertinent and scandalous matter in violation of Rule 12(f) of the Utah Rules of Civil Procedure. The Plaintiff's Objections should be stricken by this court under Rule 12(f) of the Utah Rules of Civil Procedure. Furthermore, Judge Willmore disqualified himself under Canon 3E from this case after the Defendant refused to waive the disqualification requirements. That Judge Willmore was an attorney/shareholder in the law firm of Olson & Hoggan, P.C., immediately prior to becoming a Judge of the First Judicial District Court.

(f). Paragraph 4 of the Plaintiff's Objections contains false, libelous, and slanderous matters which should be stricken under Rule 12(f) of the Utah Rules of Civil Procedure. The Plaintiff's attorney, MILES P. JENSEN, makes reference to a trial held in the Logan City Municipal Justice court in Case No. CLC CR-M-01-00559 whereby

Judge Russell on her own initiative disqualified herself from that case before arraignment of the charge of which Carlsen was later found **NOT GUILTY** by a jury. Carlsen did not cause her to disqualify herself when she did so on her own initiative. The proceedings were not recorded in the Logan City Municipal Court, and such court is not a court of record. MILES P. JENSEN, under ¶ 4 of his Objections states as a fact from the records that during proceedings before that court, Carlsen made threats regarding Judge Stevens. These allegations are false, libelous, and slanderous and should be stricken under Rule 12(f) of the Utah Rules of Civil Procedure. Carlsen did file a Motion and Affidavit against Judge Stevens in that case and Judge Stevens without certifying the matter to another judge to determine the legal sufficiency of the affidavit, recused himself from the case. There is currently litigation regarding the claims of malicious criminal prosecution of Carlsen regarding the referenced Logan City Municipal Court criminal case without any probable cause pending in the case of Carlsen v Riley, Case No. 010100013 in the First Judicial District Court of County of Cache, State of Utah.

Additionally, there is a substantial legal basis for the disqualification of Miles P. Jensen and the law firm of Olson & Hoggan, P.C. from this case. First, the Defendant does intent to call upon Miles P. Jensen and other employees in the law firm of Olson & Hoggan, P.C., to testify as to the vast amounts of documents prepared by them and of which the Defendant intends to introduce at trial and Miles P. Jensen's acts and conduct before filing the Complaint in this case.. Secondly, the record and evidence in this case

shows that Miles P. Jensen acting on behalf of the law firm of Olson & Hoggan, P.C., have attempted to defraud the Defendant of a mobile home and other personal property prior to the filing of the Complaint in this case.. This conduct required not only the filing of a complaint with the Utah Bar, but the Defendant has also requested the Court to join him and the law firm as Third-Party Defendants. Such acts and conduct of the attempts to defraud the Defendant of his personal property may also be criminal in nature and require his disqualification. The document attached to the Plaintiff's Reply to Defendant's Opposition to Plaintiff's Request for Expedited Status Hearing and is entitled: Miles P. Jensen Telephone Conversation with Craig Carlsen June 21, 2004, indicates that Miles P. Jensen telephoned the Defendant on that date to electronically record that such conversation without the Defendant's knowledge and consent in violation of Utah Code Ann. § 76-9-403 and Utah Code Ann. § 77-23a-4. Thirdly, the record, documents, and evidence in this case shows that Miles P. Jensen, acting on behalf of the law firm of Olson & Hoggan, P.C., has instructed the Plaintiff and Third-Party Defendants in this case to violate municipal, state, and federal laws and to commit torts against the Defendant.

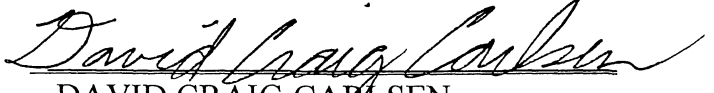
(g). Paragraph No. 5 of the Plaintiff's Objections should also be stricken by the Court under Rule 12(f) of the Utah Rules of Civil Procedure. The records in this case shows that it is the Plaintiff, their attorney, and others in the law firm of Olson & Hoggan, P.C., who has caused substantial delays in this case by their failure to abide by the time

frame imposed by the Utah Rules of Civil Procedure. The record shows that the Plaintiff failed to produce documents or respond to the Defendant's Request to Produce Documents within the time frame of thirty (30) days imposed under Rule 34 of the Utah Rules of Civil Procedure after the Request to Produce Documents was served. The record shows that the Plaintiff failed to answer Interrogatories propounded to them within the 30 day time frame of Rule 33 of the Utah Rules of Civil Procedure. The record in this case also reflects that lawyers or nonlawyers in the law firm of Olson & Hoggan, P.C., have been preparing documents for the Third-Party Defendant, June S. Olsen. The defenses raised in Olsen's Answer to the Third-Party Complaint is identical or similar to the defenses raised by Plaintiff in their Reply to the Defendant's Counterclaim. Other evidence also suggest that they are representing the Third-Party Defendant Olsen when there is a substantial conflict of interest in representing her and the Plaintiff in this case when they are named Third-Party Defendants. It took a period of twenty-one (21) days for Olsen to Answer the Third-Party Complaint. She has filed a document that may have been prepared by a lawyer or nonlawyer in the law firm of Olson & Hoggan, claiming that Olson should not be required to answer Interrogatories served upon her from the Third-Party Plaintiff because of the lack of a scheduling order under Rule 26 of the Utah Rules of Civil Procedure. However, the Third-Party Plaintiff is exempt from the requirement of a scheduling order under Rule 26 of the Utah Rules of Civil Procedure before serving the Interrogatories because he is not represented by counsel and is not a member of the bar.

The evidence in this case suggests that it is the conduct of Plaintiff's attorney, Miles P. Jensen, and others in the law firm of Olson & Hoggan, P.C., that is causing substantial delays in this case.

(h). The facts as alleged and as stated in the Plaintiff's Objections to the Disqualification of Judge Ben H. Hadfield have not been sworn to by any person under oath.

DATED this 9th day of August, 2004.


DAVID CRAIG CARLSEN


CERTIFICATE OF SERVICE

I certify that I mailed a true and correct copy of the foregoing REPLY
MEMORANDUM TO THE PLAINTIFF'S OBJECTIONS TO THE DEFENDANT'S
MOTION TO DISQUALIFY JUDGE BEN H. HADFIELD to the following listed below
on this 9th day of August, 2004:

Miles P. Jensen
Attorney for Plaintiff
88 West Center
Logan, Utah 84321

June Olsen
475 West 640 North
Logan, Utah 84321

Paul H. Matthews
Attorney for Franckowiak
10 West Broadway, Suite 700
Salt Lake City, Utah 84101-2060


DAVID CRAIG CARLSEN

TYPE: CRIMINAL MISDEMEANOR STATUS: FINAL 8/31/01
CITATION # J 0141569

-----JUDGE-----
CURRENT: MOORE, TERRY
INAC 7/20/01: RUSSELL, CHERYL A
INAC 8/27/01: STEVENS, JACK L.

-----ATTORNEYS-----

AGENCY: STATE OF UTAH/CITY OF LOGAN
VS.

DF 001: CARLSEN, DAVID C NONE
DOB: 3/05/49

CHARGE 1: M CRIMINAL MISCHIEF* 6/16/01 CLASS:B UT 76-6-106
DISPOSITION: JURY TRIAL ACQUITTAL DATE: 8/31/01

MAJOR EVENTS

8/31/01 DATE FIN DISP CASE DISP: JURY TRIAL ACQUITTAL
8/31/01 DATE COMPLIED

FILING PROCEEDINGS
DATE EVENT COMMENT EVENT DATE ENTRY/UPD*

6/26/01 ARRAIGNMENT MAND 6/26/01 13:30 DANDERSO
DISPO DATE.: 06/26/01
DISPOSITION: ARRAIGN CONT MAN
EVENT JUDGE: RUSSELL, CHERYL A
D PRESENT FOR ARRAIGNMENT. W/OUT ATTY.
LEGAL NAME, ADDRESS & DOB VERIFIED: 481 W 640 N.
NOTICE OF DISQUALIFICATION.
D'S RIGHTS & WAIVER READ, SIGNED & COPY TO D.
ARRAIGNMENT CONTINUED TO 7-6-01 @ 9:30 AM.
OTHER: JUDGE JACK STEVENS.
D TO MAKE MOTION FOR DISCOVERY & WAIVE OF SPEEDY
TRIAL BEFORE JUDGE STEVENS.
D BOOKED.
COPY OF NOTICE TO D AND PROS.

6/27/01 MAILED COPIES DANDERSO
MAILED COPIES OF CORRECTED NOTICE TO D
REFLECTING: CONTINUED ARRAIGNMENT AND FILE #.

7/05/01 CLERK'S MEMO DTURNER
DEF. FILED FOLLOWING: DEF.'S REQUEST FOR A JURY
TRIAL; AND NOTICE OF DEFENSE OF ENTRAPMENT. DDT

7/06/01 ARRAIGN CONT MAN 7/06/01 9:30 DTURNER
DISPO DATE.: 07/06/01
DISPOSITION: PRE-TRIAL CONFERENCE
EVENT JUDGE: STEVENS, JACK L.
JUDGE JACK STEVENS: DEF. APPEARED WITHOUT COUNSEL
FOR CONT. ARRAIGNMENT. DEF. WAIVED RIGHT TO
COUNSEL. DEF. ENTERED NOT GUILTY PLEA TO CT 1,
VANDALISM. DEF. WAIVED RIGHT TO SPEEDY TRIAL.
CASE SET FOR JURY TRIAL, TO BE SET FOLLOWING PRE-
TRIAL. CASE SET FOR PRE-TRIAL ON FRIDAY, 7/20/01
AT 9:30 A.M. PREPARED NOTICE AND DEF. GIVEN COPY.

LOGAN COURTS
2004 AUG 11 PM 3:19

Miles P. Jensen (#1686)
Kevin J. Fife (#5692)
OLSON & HOGGAN, P.C.
Attorneys for Plaintiff
88 West Center
P.O. Box 525
Logan, Utah 84323-0525
Telephone: (435) 752-1551

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

vs.

CRAIG CARLSON, also known as D.
CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Defendant.

NOTICE TO SUBMIT DEFENDANT'S
MOTION TO DISQUALIFY JUDGE
BEN H. HADFIELD FOR DECISION

Civil No. 040100970

Judge Ben H. Hadfield

Plaintiff, by and through its attorneys, Olson & Hoggan, P.C., Miles P. Jensen and Kevin J. Fife, requests the Court, pursuant to Rule 7(d) of the Utah Rules of Civil Procedure, to submit to the Reviewing Judge the Defendant's Motion To Disqualify Judge Ben H. Hadfield for decision.

Defendant filed the Motion to Disqualify Judge Ben H. Hadfield on or about July 26, 2004; Plaintiff filed a Response on August 4, 2004; and Defendant filed a Reply objecting to Plaintiff's Response on or around August 9, 2004, as permitted by the Utah Rules of Civil Procedure. Therefore, the Plaintiff requests the Clerk to submit Defendant's Motion to Disqualify Judge Ben H. Hadfield to the Reviewing Judge for decision.

OLSON & HOGGAN, P.C.
ATTORNEYS AT LAW
88 WEST CENTER
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LOGAN, UTAH 84323-0525
(435) 752-1551

TREMONTON OFFICE
123 EAST MAIN
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(435) 257-3885

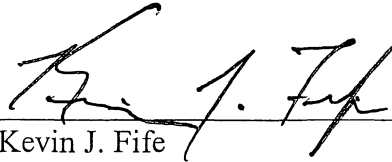
8-11-04
M

DATED this 11 day of August, 2004.

OLSON & HOGGAN, P.C.



Miles P. Jensen
Attorneys for Plaintiff



Kevin J. Fife
Attorneys for Plaintiff

J:\MP\JPleadings\Palatul Living\carlsen nts dq hadfield wpd
N-4300 25

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(435) 257-3885

brannick & larsen
cc. cooper, town & country mobile
FILE COPY

OLSON & HOGGAN, P.C.

ATTORNEYS AT LAW

✓ BRENT HOGGAN
MILES P. JENSEN
BRUCE L. JORGENSEN
JAMES C. JENKINS
MARLIN J. GRANT
ROBERT B. FUNK
KEVIN J. FIFE
JEFF B. ADAIR
—
CHARLES P. OLSON (1916-1975)

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www.olson-hoggan.com

January 30, 2001

N. Brannick and Emily Larsen
481 West 640 North
Logan, UT 84321

N. Brannick and Emily Larsen
P.O. Box 146
Joseph City, AZ 86032

Re: *Palatial Living Mobile Home Space at 481 West 640 North, Logan, Utah*
Our File No. N-4300.04B

Dear Mr. and Mrs. Larsen:

We are now advised that you have sold or attempted to sell your home to Lyle Cooper of 487 East 180 South, Smithfield, Utah 84335. Please be advised of the following with respect to your Lease Agreement and the Rules and Regulations of the Park:

1. Paragraph 7 of the Lease specifically prohibits assignment or subletting of the property.
2. Paragraph 11 of the Lease has specific terms and conditions required prior to sale of a mobile home in order for the mobile home to remain in the Park. That has not occurred.
3. Pursuant to paragraph 11.b of the Lease, the Park has made the determination that the mobile home is not in sufficiently good condition to remain in the Park and is in disrepair and rundown condition and must be moved. The items which are unacceptable are the siding on the home, the skirting and the east side porch.
4. We have also received information that this mobile home has been advertised on a "rent to own" basis and have enclosed a copy of the classified ad from the Herald Journal dated January 16, 2001. Rent to own is not accepted in Palatial Living Mobile Home Park.
5. The Utah Code § 57-16-5(4) states, "The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase."

N. Brannick and Emily Larsen
January 30, 2001
Page 2

6. We now have information and belief that the home has been sold to Lyle Cooper, who has made no application and who has not received any preapproval to retain the mobile home in the Park.

7. I have enclosed a copy of a summary of information regarding the sale of any mobile homes in Palatial Living for your reference. I would also call your attention to Section IV, paragraphs 2 and 3 of the Rules and Regulations, which also govern assignment, renting and sale of mobile homes.

8. A copy of the Lease Agreement and Rules and Regulations signed by you is enclosed for each of your references.

We wanted to write you informally to see if this can be handled on an informal basis and to advise you of the situation with the mobile home. We will await response for seven (7) days from the date of this letter, to have or make arrangements to have the mobile home removed immediately, and if we have not heard a response, then we will give you a formal notice and proceed accordingly. We trust that such action will not be needed, and that you will voluntarily move the home.

Sincerely,

OLSON & HOGGAN, P.C.



Miles P. Jensen

MPJ/sgj
j:\mpj\ltr\blarsen 1

Enclosures

cc: Lyle Cooper
487 East 180 South
Smithfield, UT 84335

Town & Country Realty
1450 East 1140 North
Logan, UT 84341



Utah State Tax Commission
Motor Vehicle Division
210 N 1950 W
Salt Lake City Utah 84134

UTAH CERTIFICATE OF TITLE

MFG HOUSING
DATE ISSUED 05/25/99
LICENSE 741873UX
11049918508

TITLE NO.

8880490

741873UX
COOPER LYLE
487 E 180 S
SMITHFIELD UT 84335

PREVIOUS JURISDICTION BRAND

VIN-51873U/X
YEAR-74 MAKE-HACI MODEL-518
BODY TYPE-DW

NAME AND ADDRESS OF VEHICLE OWNER(S)

UTAH BRAND

LARSEN M BRANNICK & EMILY B
481 W 640 N
LOGAN UT 84321

LIEN - HOLDER

COOPER LYLE
487 E 180 S
SMITHFIELD UT 84335

REQUEST FOR LIEN CHANGE

Title fee subject to change. Contact the Utah Motor Vehicle Division
Complete this section. Send the title and required fee to the Utah
Motor Vehicle Division

Please check one box

☐ Please issue a
title free of liens

☐ Please issue a title showing the
following as the NEW LIEN HOLDER

LIEN RELEASE - Signature of lien-holder (releasing interest)

New lien holder name

Address

Title of signer

Date

City

State

ZIP Code

CONTROL NO (not title no)

OPERATOR NO

Vehicle owner(s) signature requesting lien change

Date

A 6135562

CXC

ANY ALTERATION OR ERASURE VOIDS THIS TITLE

#8

PALATIAL LIVING MOBILE HOME SUBDIVISION

December 16, 2000

Mr. and Mrs. Brannick Larsen
481 West 640 North
Logan, UT 84321

Dear Mr. and Mrs. Larsen:

You are hereby notified that you are in arrears in payment of lot rent as indicated below. As provided in our lease agreement with you, lot rent is due and payable on the **first** day of every month. A grace period is given until the 5th, after which an initial late fee of \$15 is incurred with an additional \$1 per day thereafter until payment is received in full. Payment will not be accepted without late fees included. Please pay promptly. Your cooperation in this matter will be appreciated.

Lot Rent Due (December 2000)	\$190.00
Late Fee Accumulated Through December 16 (continuing to accrue until paid)	25.00
TOTAL DUE	\$215.00

Palatial Living Management

OLSON & HOGGAN, P.C.

ATTORNEYS AT LAW

L. BRENT HOGGAN
MILES R. JENSEN
BRUCE L. JORGENSEN
JAMES C. JENKINS
MARLIN L. GRANT
ROBERT B. FLUNK
KEVIN J. RIFE
JEFF B. ADAIR
—
CHARLES P. OLSON (1916-1975)

June 13, 2001

VIA FACSIMILE (435) 753-2091

88 WEST CENTER
PO BOX 325
LOGAN, UTAH 84321-0325
TELEPHONE (435) 752-1551
TELEFAX (435) 752-2295
—
TREMONTON OFFICE
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TREMONTON, UTAH 84317-0115
TELEPHONE (435) 237-3185
TELEFAX (435) 237-0165
E-MAIL oh@oh-pc.com
www.olson-hoggan.com

Stephen Jewell
Attorney at Law
15 South Main, Suite #301
Logan, UT 84321

*Re: Palatial Living / Lyla Cooper
Our File No. N-4300.04B*

Dear Steve,

This will confirm our agreement and understanding reached by telephone on Tuesday, June 12, 2001 in the above-captioned matter. As a condition to acceptance of the new owner and permitting him to move into the park, he has agreed as follows:

1. To execute a lease and acknowledge receipt of a copy of the rules and regulations of the park.
2. To reskirt the entire mobile home. Acceptable colors are white, off-white, etc. as stated in the lease and/or rules or as approved by Management.
3. To repair the entire mobile home.
4. To remove chicken wire that is exposed in connection with the vines.
5. To repair, reinforce, and repaint the entire porch, to replace the carpeting with new indoor/outdoor carpet, and to do so that it is aesthetically pleasing and also so that it is aesthetically satisfactory to the park and meets applicable building codes.
6. To repair dents and separating seams in siding.
7. To weed the flower gardens.


These items must be completed on or before August 12, 2001

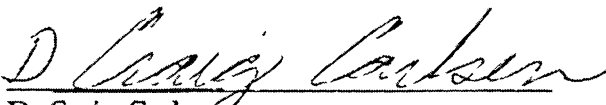
Stephen Jewell
June 13, 2001
Page 2

I would appreciate your having Mr. Cooper and the new owner execute a copy of this letter and forward a copy to me, along with your signature. A signed fax copy is acceptable. After this letter is signed and returned to us the new owner should contact the Park Manager directly to clarify references, sign the Lease and Rules. If you have any questions in this matter, please contact me, or if I am unavailable, our paralegal Michelle Hewitt. Thank you.

Sincerely yours,

OLSON & HOGGAN, P.C.


Miles P. Jensen


D. Craig Carlson


Lyle Cooper

Steve Jewell
Attorney at Law

MPJ/pjs
mpj/tr/sjewell ?

OLSON & HOGGAN, P.C.

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www.olson-hoggan.com

June 13, 2001

VIA FACSIMILE (435) 753-2091

Stephen Jewell
Attorney at Law
15 South Main, Suite #301
Logan, UT 84321


Re: *Palatial Living / Lyle Cooper*
Our File No. N-4300.04B

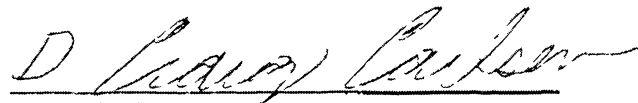
Dear Steve:

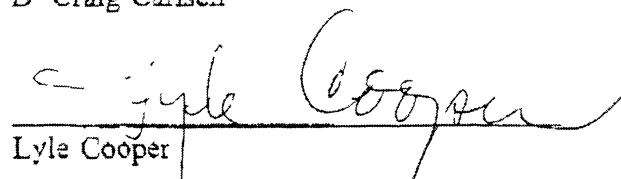
There is one item I neglected to mention in my last letter and that is that the mobile home will probably need to be resided when it is subsequently sold and that this has been disclosed to the Buyer and is accepted. Please sign below and return along with the other letter.

Sincerely yours,

OLSON & HOGGAN, P.C.


Miles P. Jensen


D. Craig Carlsen


Lyle Cooper

Steve Jewell, Attorney at Law

**ADDENDUM/COUNTER OFFER
TO EARNEST MONEY SALES AGREEMENT**

This ADDENDUM/COUNTER OFFER constitutes: ☒ a COUNTER OFFER ☐ an ADDENDUM to that EARNEST MONEY SALES AGREEMENT (THE AGREEMENT) dated the 6 day of June 2001, between Craig Carlson as buyer(s), and Lyle Cooper as seller(s), covering real property described as follows:

481 W. 6th N,
Logan, Utah

The following terms are hereby incorporated as part of THE AGREEMENT:

East side - Paint - Buyer to paint,
skirting so, side Replaced - see below
Porch Painted - Restructure Supports
by Seller
Seller to weed flower beds,
Seller to replace north west corner sea.
Seller to weed flower beds
Buyer willing to paint porch & east siding,
Seller to supply paint, good quality,
Buyer to replace skirting up to
\$300.00, seller to pay difference.

All other terms of THE AGREEMENT shall remain the same. () Seller () Buyer shall have until 5:00 (A.M./P.M.)

June 6, 01, to accept the terms specified above. Unless so accepted this Addendum shall lapse.

Date June 6, 01
Time 12:10 (A.M./P.M.)

Signature of () Seller ☒ Buyer
Craig Carlson

ACCEPTANCE/COUNTER OFFER/REJECTION

Check One

☒ I hereby ACCEPT the foregoing on the terms specified above.

() I hereby ACCEPT the foregoing SUBJECT TO the exceptions shown on the attached Addendum.

() I hereby reject the foregoing (Initials)

Lyle Cooper Signature 06/06/01 Date 12:05 pm Time

DOCUMENT RECEIPT

() I acknowledge receipt of a final copy of the foregoing bearing all signatures.

Craig Carlson Signature of Buyer(s) Lyle Cooper Signature of Seller(s)

() I personally caused a final copy of the foregoing bearing appropriate signatures to be mailed on

19____, by Certified Mail and return receipt attached hereto to the () Seller () Buyer.

Sent by _____

This form has been approved by the Utah Real Estate Commission

Exhibit A

INSTALLMENT PROMISSORY NOTE

\$32,500.00

Logan, UT 84321 June 6, 2001

The undersigned, jointly and severally, promise to pay to the order of Lyle Cooper at
in or at such other place as the holder hereof may designate in writing, the sum of
Thirty-Two Thousand Five Hundred And 00/100 (\$32,500.00), in 240 successive monthly installments of
\$300.00 each, due on the same day of each month commencing 7/6/01 and continuing until the whole amount
thereof has been paid.

The ANNUAL PERCENTAGE RATE is 9.35%.

If any installment is not paid in full within 10 days after its due date, a charge may be assessed of 5%, or at
holder's election, an amount equal to the annual percentage rate stated above times the unpaid amount of the
installment from the due date of the installment until paid in full.

If the holder deems itself insecure or default be made in payment in whole or in part of any installment at the
time when or the place where the same becomes due and payable as aforesaid, then the entire unpaid balance, shall,
at the election of the holder hereof and without notice of said election, at once become due and payable. In event of
any such default or acceleration, the undersigned, jointly and severally, agree to pay to the holder hereof reasonable
attorney's fees, legal expenses and lawful collection costs in addition to all other sums due hereunder. Any balance
unpaid on maturity of this note shall bear interest thereafter, both before and after judgment, at the annual
percentage rate stated above.

Presentment, demand, protest, notice of dishonor and extension of time without notice are hereby waived and
the undersigned consent to the release of any security, or any part thereof, with or without substitution.

Address


Craig Carlsen

Address

Address

Address

11 E 11

"THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE"

Bill of Sale

(With Warranties)

Know all Men by These Presents:

That **Lyle Cooper**, the SELLER, for and in consideration of the sum of: \$10.00 Ten dollars and other good and valuable consideration.....DOLLARS to him in hand paid by **Craig Carlsen**, the BUYER, the receipt whereof is hereby acknowledged, has bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto said BUYER that certain personal property now at:

Mobile Home 481 West 640 North, Logan, UT 84321
CACHE County, State of UTAH

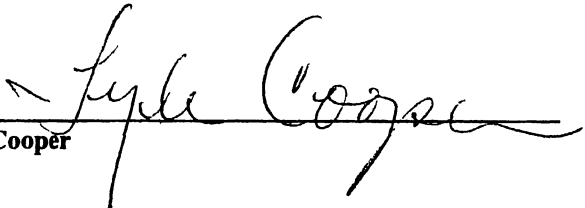
particularly described as follows:

Mobile Home - 1974 Hacienda, Model-519, VIN #51873U/X

And the Seller upon consideration recited above warrants ownership of and good title to said property, the right to sell the same and that there are no liens, encumbrances or charges thereon or against the same and to defend the title and possession transferred to the Buyer against all lawful claims.

In Witness Whereof, **Lyle Cooper** have hereunto set his hands this **6th** day of **June, 01**.

Witness:



Lyle Cooper

"E"

Palatial Living Mobile Home Subdivision

August 6, 2001

Mr. Craig Carlsen
481 West 640 North
Logan, UT 84321

Dear Mr. Carlsen:

I am writing to remind you of the repairs to your home that must be completed on or before August 12, 2001. So there is no misunderstanding as to what those repairs are, they are as follows:

1. Reskirt the entire mobile home. Acceptable colors are white, off white, beige, sand, or light gray. Other colors must be approved by the Palatial Living Manager.
2. Repaint the entire mobile home. Acceptable colors are white, off white, beige, sand, or light gray. Other colors must be approved by the Palatial Living Manager.
3. Repair, re-enforce, and repaint the entire east side porch.
4. Repair dents and separating seams in the siding.
5. Remove the chicken wire in connection with the creeping vines around the mobile home.
6. Weed all flower gardens and landscaped areas.

All of the above must be completed on or before August 12, 2001, without exception. We appreciate your cooperation in these matters.

Sincerely,

A handwritten signature in cursive script that reads "Tawnya Franckowiak".

Tawnya Franckowiak, Manager
Palatial Living Mobile Home Subdivision

August 6, 2001

Mr. Stephen Jewell
Attorney at Law

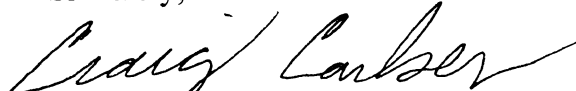
RE: *Palatial Living/Lyle Cooper*

Dear Mr. Jewell:

On the 30th day of May, 2001, I signed an Earnest Money Agreement whereby I agreed to buy a mobile home from you client, Lyle Cooper. The Earnest Money Agreement provided that I be allowed to participate in an Inspection one hour before closing and I was not allowed to participate in the Inspection. At the closing on the 6th day of June, 2001, I and your client signed an Addendum to the Earnest Money Sales Agreement. Your client was to provide paint and painting supplies and I was to paint the porch and mobile home. It is now six days from the 12th day of August, 2001 and you client has failed to provide such paint or supplies. Your client also agreed to provide a license contractor to replace the skirting and I was to pay up to the amount of \$ 300.00. Your client was also to make repairs on the porch which I found myself doing because of the lack of time. I work ten hours a day and have no time now to paint.

I have again been contacted by the Manager of Palatial Living regarding these improvements and I have no intentions of being harassed because of your clients failure to abide by the contracts that he signs. I was also never informed that Palatial Living required a \$ 380.00 security deposit at the time of signing the lease. I believe that it is time for me to hire an attorney to protect all of my interests in this matter.

Sincerely,


Craig Carlsen

OLSON & HOGGAN, P.C.

ATTORNEYS AT LAW

L. BRENT HOGGAN
MILES P. JENSEN
BRUCE L. JORGENSEN
JAMES C. JENKINS
MARLIN J. GRANT
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TELEFAX (435) 257-0365

E-MAIL oh@oh-pc.com
www.olson-hoggan.com

August 9, 2001

Craig Carlsen
481 West 640 North
Logan, UT 84321

*Re: Palatial Living / Brannick Larsen
Our File No. N-4300.15*

Dear Mr. Carlsen:

We received a request today to give you an extension to have the repairs and other items that were agreed to be completed by August 12, 2001 completed. The weeding of the flower and garden areas must be completed on or before August 12, 2001. If this is completed by August 12th, then Palatial Living will extend the due date for the other items to September 1, 2001. If the flower and garden areas are not completely and thoroughly weeded and cleaned by August 12, 2001, then no extension will be given. In addition, the old tire "planter" must be removed by the 12th. It may be best to simply put grass into the flower/garden areas for ease of maintenance. If you have any questions please advise.

Sincerely yours,

OLSON & HOGGAN, P.C.



Miles P. Jensen

MPJ/pjs
cc: Stephen Jewell

mpj/ltr/ccarlsen.3



REAL ESTATE PURCHASE CONTRACT

This is a legally binding contract. Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY RECEIPT

Buyer Craig Carlson offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$ 1,000 in the form of personal check which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

Received by: J. Kean on acceptance from Buyer (Date)

Brokerage: TOWN & COUNTRY REALTY Phone Number 753-2639

OFFER TO PURCHASE

1. PROPERTY: 481 W. 640 N.
also described as: single family mobile home
City of Logan, County of Cache, State of Utah (the "Property").

1.1 Included Items. Unless excluded herein, this sale includes the following items if presently attached to the Property: plumbing, heating, air conditioning fixtures and equipment; ceiling fans; water heater; built-in appliances; light fixtures and bulbs; bathroom fixtures; curtains, draperies and rods; window and door screens; storm doors and windows; window blinds; awnings; installed television antenna; satellite dishes and system; permanently affixed carpets; automatic garage door opener and accompanying transmitter(s); fencing; and trees and shrubs. The following items shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: Fridge over-range, shed

1.2 Excluded Items. The following items are excluded from this sale: none

1.3 Water Rights. The following water rights are included in this sale: no

1.4 Survey. (Check applicable boxes): A survey ☐ WILL ☒ WILL NOT be prepared by a licensed surveyor. The Survey Work will be: ☒ Property corners staked ☐ Boundary Survey ☐ Boundary & Improvements survey ☐ Other (specify) no. Responsibility for payment: ☒ Buyer ☐ Seller ☐ Buyer and Seller share equally. Buyer's obligation to purchase under this Contract ☐ IS ☒ IS NOT conditioned upon Buyer's approval of the Survey Work. If yes, the terms of the attached Survey Addendum apply.

2. PURCHASE PRICE. The Purchase Price for the Property is \$ 33,500

2.1 Method of Payment. The Purchase Price will be paid as follows:

- \$ 1,000 (a) Earnest Money Deposit. Under certain conditions described in this Contract, THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.
- \$ 0 (b) New Loan. Buyer agrees to apply for a new loan as provided in Section 2.3. Buyer will apply for one or more of the following loans: ☐ CONVENTIONAL ☐ FHA ☐ VA ☐ OTHER (specify) _____
If an FHA/VA loan applies, see attached FHA/VA Loan Addendum.
If the loan is to include any particular terms, then check below and give details:
☐ SPECIFIC LOAN TERMS _____
- \$ 0 (c) Loan Assumption (see attached Assumption Addendum if applicable)
- \$ 0 (d) Seller Financing (see attached Seller Financing Addendum if applicable)
- \$ 0 (e) Other (specify) cash
- \$ 0 (f) Balance of Purchase Price in Cash at Settlement

\$ 33,500 PURCHASE PRICE. Total of lines (a) through (f)

2.2 Financing Condition. (check applicable box)

- (a) ☐ Buyer's obligation to purchase the Property **IS** conditioned upon Buyer qualifying for the applicable loan referenced in Section 2.1(b) or (c) (the "Loan"). This condition is referred to as the "Financing Condition."
(b) ☒ Buyer's obligation to purchase the Property **IS NOT** conditioned upon Buyer qualifying for a loan. Section does not apply.

2.3 Application for Loan.

(a) **Buyer's duties.** No later than the Application Deadline referenced in Section 24(a), Buyer shall apply for Loan. "Loan Application" occurs **only** when Buyer has: (i) completed, signed, and delivered to the lender ("Lender") the initial loan application and documentation required by the Lender; and (ii) paid all loan application as required by the Lender. Buyer agrees to diligently work to obtain the Loan. Buyer will promptly provide the Lender with any additional documentation as required by the Lender.

(b) **Procedure if Loan Application is denied.** If Buyer receives written notice from the Lender that the Lender will not approve the Loan (a "Loan Denial"), Buyer shall, no later than three calendar days thereafter, provide a copy to Seller. Buyer or Seller may, within three calendar days after Seller's receipt of such notice, cancel this Contract providing written notice to the other party. In the event of a cancellation under this Section 2.3(b): (i) if the Loan Denial was received by Buyer on or before the 01 day of January, 2020, the Earnest Money Deposit shall be returned to Buyer; (ii) if the Loan Denial was received by Buyer after that date, Buyer agrees to forfeit, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money as liquidated damages. A failure to cancel as provided in this Section 2.3(b) shall have no effect on the Financing Condition set forth in Section 2.2(a). Cancellations pursuant to the provisions of any other section of this Contract shall be governed by such other provisions.

2.4 Appraisal of Property. Buyer's obligation to purchase the Property ☒ **IS** ☐ **IS NOT** conditioned upon the Property appraising for not less than the Purchase Price. If the appraisal condition applies and the Property appraises for less than the Purchase Price, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after Buyer's receipt of notice of the appraised value. In the event of such cancellation, the Earnest Money Deposit shall be released to Buyer. A failure to cancel as provided in this Section 2.4 shall be deemed a waiver of the appraisal condition by Buyer.

3. SETTLEMENT AND CLOSING. Settlement shall take place on the Settlement Deadline referenced in Section 24(d) on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when **all** of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under the documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Tenant deposits (including, but not limited to, security deposits, clear deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when **all** of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within three calendar days of Settlement.

4. POSSESSION. Seller shall deliver physical possession to Buyer within: ☒ 1 hours ☐ 2 days after Closing. ☐ Other (specify) _____

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this Contract:

☐ Seller's Initials ☐ Buyer's Initials

The Listing Agent, [Signature], represents ☐ Seller ☒ Buyer ☐ both Buyer and Seller as a Limited Agent
The Selling Agent, [Signature], represents ☐ Seller ☒ Buyer ☐ both Buyer and Seller as a Limited Agent
The Listing Broker, [Signature], represents ☐ Seller ☒ Buyer ☐ both Buyer and Seller as a Limited Agent
The Selling Broker, [Signature], represents ☐ Seller ☒ Buyer ☐ both Buyer and Seller as a Limited Agent

6. TITLE INSURANCE. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(b), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance;
- (c) a copy of any leases affecting the Property not expiring prior to Closing;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and
- (e) Other (specify) _____

8. BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS. Buyer's obligation to purchase under this Contract (**check applicable boxes**):

- ☒ **IS** ☐ **IS NOT** conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7
- ☒ **IS** ☐ **IS NOT** conditioned upon Buyer's approval of a physical condition inspection of the Property;
- ☒ **IS** ☐ **IS NOT** conditioned upon Buyer's approval of the following tests and evaluations of the Property: (specify) _____

If any of the above items are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as the "Evaluations & Inspections." Unless otherwise provided in this Contract, the Evaluations & Inspections shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with the Evaluations & Inspections and with the walk-through inspection under Section 11.

8.1 Evaluations & Inspections Deadline. No later than the Evaluations & Inspections Deadline referenced in Section 24(c) Buyer shall: (a) complete all Evaluations & Inspections; and (b) determine if the Evaluations & Inspections are acceptable to Buyer.

8.2 Right to Cancel or Object. If Buyer determines that the Evaluations & Inspections are unacceptable, Buyer may no later than the Evaluations & Inspections Deadline, either: (a) cancel this Contract by providing written notice to Seller whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

8.3 Failure to Respond. If by the expiration of the Evaluations & Inspections Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Evaluations & Inspections, the Evaluations & Inspections shall be deemed approved by Buyer.

8.4 Response by Seller. If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.

9. ADDITIONAL TERMS. There ☒ **ARE** ☐ **ARE NOT** addenda to this Contract containing additional terms. If there are the terms of the following addenda are incorporated into this Contract by this reference: ☐ **Addendum No.** _____
☐ **Survey Addendum** ☐ **Seller Financing Addendum** ☐ **FHA/VA Loan Addendum** ☐ **Assumption Addendum**
☐ **Lead-Based Paint Addendum (in some transactions this addendum is required by law)**
☒ **Other (specify)** _____

10. SELLER WARRANTIES & REPRESENTATIONS.

10.1 Condition of Title. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed, unless the sale is being made pursuant to a real estate contract which provides for title to pass at a later date. In that case, title will be conveyed in accordance with the provisions of that contract. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment

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for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Except for any loan(s) specifically assumed by Buyer under Section 2.1(c), Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

10.2 Condition of Property. Seller warrants that the Property will be in the following condition **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER:**

- (a) the Property shall be broom-clean and free of debris and personal belongings. Any Seller or tenant moving-related damage to the Property shall be repaired at Seller's expense;
- (b) the heating, cooling, electrical, plumbing and sprinkler systems and fixtures, and the appliances and fireplaces will be in working order and fit for their intended purposes;
- (c) the roof and foundation shall be free of leaks known to Seller;
- (d) any private well or septic tank serving the Property shall have applicable permits, and shall be in working order and fit for its intended purpose; and
- (e) the Property and improvements, including the landscaping, will be in the same general condition as they were on the date of Acceptance.

11. WALK-THROUGH INSPECTION. Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a "walk-through" inspection of the Property to determine **only** that the Property is "as represented," meaning that the items referenced in Sections 1.1, 8.4 and 10.2 ("the items") are respectively present, repaired/changed as agreed, and in the warranted condition. If the items are not as represented, Seller will, prior to Settlement, replace, correct or repair the items or, with the consent of Buyer (and Lender if applicable), escrow an amount at Settlement to provide for the same. The failure to conduct a walk-through inspection, or to claim that an item is not as represented, shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any existing leases shall be made; (b) no new leases shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; and (d) no further financial encumbrances to the Property shall be made.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract ☐ **SHALL** ☒ **MAY** (upon mutual agreement of the parties) first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

16. DEFAULT. If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. It is agreed that denial of a Loan Application made by the Buyer is not a default and is governed by Section 2.3(b).

17. ATTORNEY FEES AND COSTS. In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15.

18. **NOTICES.** Except as provided in Section 23, all notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. **ABROGATION.** Except for the provisions of Sections 10.1, 10.2, 15 and 17 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. **RISK OF LOSS.** All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

21. **TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, receipt of the Seller Disclosures, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

22. **FAX TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

23. **ACCEPTANCE.** "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. **CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this Contract:

(a) **Application Deadline** _____ (Date)

(b) **Seller Disclosure Deadline** _____ (Date)

(c) **Evaluations & Inspections Deadline** _____ (Date)

(d) **Settlement Deadline** _____ (Date)

25. **OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: _____ [] AM [] PM Mountain Time on _____ (Date), this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

(Buyers' Names) (PLEASE PRINT) (Notice Address) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

- ☐ **ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.
- ☐ **COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. _____.

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

(Sellers' Names) (PLEASE PRINT) (Notice Address) (Phone)

- ☐ **REJECTION:** Seller Rejects the foregoing offer.

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

DOCUMENT RECEIPT

State law requires Broker to furnish Buyer and Seller with copies of this Contract bearing all signatures. (Fill in applicable section below.)

A. I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

(Buyer's Signature) (Date) (Buyer's Signature) (Date)

(Seller's Signature) (Date) (Seller's Signature) (Date)

B. I personally caused a final copy of the foregoing Contract bearing all signatures to be ☐ faxed ☐ mailed ☐ hand delivered on _____ (Date), postage prepaid, to the ☐ Seller ☐ Buyer.

Sent/Delivered by (specify) _____

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL,
EFFECTIVE AUGUST 17, 1998. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

FILE COPY
✓ to SJ CCF
4-21-04 SP

Miles P. Jensen (#1686)
OLSON & HOGGAN, P.C.
Attorneys for Plaintiff
88 West Center
P.O. Box 525
Logan, Utah 84323-0525
Telephone: (435) 752-1551

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

THE MAXINE B. NICKEL TRUST, dba
PALATIAL LIVING MOBILE HOME
PARK,

Plaintiff,

vs.

CRAIG CARLSON, also known as
D. CRAIG CARLSEN, also known as
DAVID CRAIG CARLSEN,

Defendant.

STIPULATION FOR JUDGMENT

Case No _____

Judge _____

Plaintiff, by and through its Attorneys, Olson & Hoggan, P.C., Miles P. Jensen, and the
Defendant, by and through his Attorney, Stephen W. Jewell, hereby stipulate and agree as follows:

1. Defendant has received a copy of Plaintiff's Complaint for Eviction in the above-captioned matter; waives service of process; accepts service of process; enters his appearance through his counsel; and consents to the entry by Plaintiff of a Default Judgment on the terms and conditions in this Stipulation.

2. In the event that the Defendant conveys the mobile home located at 481 West 640 North in Logan, Utah to the lienholder, Lyle Cooper, on or before April 30, 2004, and provides

OLSON & HOGGAN, P.C.
ATTORNEYS AT LAW
88 WEST CENTER
P.O. BOX 525
LOGAN, UTAH 84323-0525
(435) 752-1551

TREMONTON OFFICE
123 EAST MAIN
P.O. BOX 115
TREMONTON, UTAH 84337
(435) 257-3885

evidence of the same to the Plaintiff, and provided the Defendant individually removes all of his personal possessions and no longer resides on the premises in any manner whatsoever on or before April 30, 2004, then Plaintiff shall not file the Complaint for Eviction; this Stipulation will be of full force and effect; and this matter will be terminated and resolved as between the parties.

3. In the event that the Defendant fails either to convey title as provided in paragraph 2 and to vacate the premises as provided in paragraph 2, on or before the times indicated, time being of the essence, then Plaintiff may forthwith file the Complaint for Eviction, may file this Stipulation and upon providing an Affidavit with the Stipulation verifying that the conditions required to paragraph 2 have not been met, shall forthwith be entitled to entry of a Default against the Defendant and a Default Judgment against the Defendant for the relief prayed for in Plaintiff's Complaint including but not limited to a Judgment and Order for Writ of Eviction and for issuance of a Writ of Eviction, in order for Plaintiff to obtain physical possession of the premises.

DATED this 21 day of April, 2004.

OLSON & HOGGAN, P.C.


Miles P. Jensen
Attorneys for Plaintiff

DATED this _____ day of April, 2004.

OLSON & HOGGAN, P.C.
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123 EAST MAIN
P.O. BOX 115
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(435) 257-3885

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N-4300 25

Stephen W. Jewell
Attorneys for Defendant

**Federal Communications Commission
Washington, D.C. 20554**

July 30, 2004

Mr. Craig Carlsen
481 West 640 North
Logan, UT 84321

Re: Antenna Restrictions of the Palatial Living Mobile Home Subdivision

Dear Mr. Carlsen:

This letter acknowledges receipt on April 27, 2004 of the petition that you filed with the Federal Communications Commission concerning antenna restrictions enforced by the Palatial Living Mobile Home Subdivision ("Subdivision") in Logan, Utah. Your petition contends that the Subdivision's restrictions do not comply with the Commission's Over-the-Air Reception Devices rule.

The Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000) addresses governmental and non-governmental restrictions on installation, maintenance or use of antennas that receive television broadcast signals, satellite dish antennas one meter or less in diameter that receive or transmit video, data or other programming, and antennas one meter or less in diagonal measurement that receive or transmit video, data or other programming via multipoint distribution services. The rule applies to restrictions "on property within the exclusive use or control of the antenna user where the antenna user has direct or indirect ownership or leasehold interest in the property" (47 C.F.R. § 1.4000(a)(1)). The rule further provides that once a petition is filed with respect to antenna restrictions, the entity seeking to enforce these restrictions (e.g., the Association, developer, etc.) must suspend all enforcement efforts pending completion of the review, and no fines, fees, or other penalties may accrue during this period (47 C.F.R. §1.4000(a)(3)).

Among other provisions, the restriction enclosed with your petition limits to one the number of satellite dish antennas that a viewer may install on his/her property; and prohibits their installation unless prior written consent is obtained from the Subdivision's Management. The restriction at issue also establishes placement preferences where satellite dishes may be installed. In that regard, we note that a homeowners' association may establish and enforce placement preferences provided installation in the preferred location does not impose unreasonable expense or delay or preclude reception of an acceptable signal quality. To the extent restrictions prohibit or impair the installation, maintenance or use of antennas covered by the Commission's rule (e.g., satellite dishes

one meter (39.37 inches) or less in diameter) that are installed within a resident's exclusive use area, such restrictions would be preempted by the rule. For your information, in general, requirements for prior approval are impermissible under the Commission's rule unless they are necessary to ensure safety or historic preservation. In addition, a Subdivision or other restricting entity cannot impose an arbitrary limit on the number of antennas a viewer may install provided they are necessary to receive the video programming available for reception in the viewer's viewing area.

As noted above, the rule provides that pending completion of our review, the Association must suspend all enforcement efforts with respect to the antenna restrictions in question. No fees may be assessed or collected, and no fines or other penalties shall accrue against the antenna user while the proceeding is pending to determine the validity of the restrictions. The rule also provides that the Association bears the burden of proof that the restrictions do not impair the installation, maintenance or use of the antenna(s) in question.

While the petition is pending, we welcome the opportunity to resolve the issues informally, if possible. You, as well as the Subdivision or its representative, should call Roberto Rodas, the attorney assigned to this case, at 202-418-1024 to discuss your petition.

Sincerely,

A handwritten signature in black ink, appearing to be 'Eloise Gore', with a stylized, flowing script.

Eloise Gore
Assistant Chief
Policy Division
Media Bureau

cc: Palatial Living Mobile Home Subdivision
c/o Tawnya Franckowiack
Palatial Living Manager
410 West 725 North
Logan, UT 84321

**Federal Communications Commission
Washington, D.C. 20554**

August 11, 2004

Mr. Craig Carlsen
481 West 640 North
Logan, Utah 84321

Re: Antenna Restrictions of the Palatial Living Mobile Home Subdivision

Dear Mr. Carlsen:

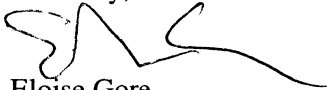
This letter acknowledges resolution of the petition that you filed with the Federal Communications Commission concerning antenna restrictions enforced by the Palatial Living Mobile Home Subdivision ("Subdivision") in Logan, Utah.

The Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000) addresses governmental and non-governmental restrictions on installation, maintenance or use of antennas that receive television broadcast signals, satellite dish antennas one meter or less in diameter that receive or transmit video, data or other programming, and antennas one meter or less in diagonal measurement that receive or transmit video, data or other programming via multipoint distribution services. The rule applies to restrictions "on property within the exclusive use or control of the antenna user where the antenna user has direct or indirect ownership or leasehold interest in the property" (47 C.F.R. § 1.4000(a)(1)). The rule further provides that once a petition is filed with respect to antenna restrictions, the entity seeking to enforce these restrictions (e.g., the Association, developer, etc.) must suspend all enforcement efforts pending completion of the review, and no fines, fees, or other penalties may accrue during this period (47 C.F.R. § 1.4000(a)(3)).

Among other provisions, the restrictions described in your petition prohibit the installation of satellite dishes unless they have been pre-approved by Management and are installed "on the rear center of the home."

On August 9, 2004, Roberto Rodas, the attorney assigned to your case, spoke to Mr. Miles P. Jensen, the Subdivision's attorney, who indicated that the Subdivision has no further objections to the installation of your satellite dish antenna and will not pursue the matter further. In light of the assurances from Ms. Miller, no further action on the petition is necessary and it is no longer in a pending status with us. Mr. Rodas also explained to Mr. Jensen that the Subdivision's Rules and Regulation must be revised to delete the prior approval requirement for the installation of satellite dishes in a viewer's exclusive use area. Should you have further questions on this matter, please contact Mr. Rodas at (202) 418-1024.

Sincerely,



Eloise Gore
Assistant Chief
Policy Division
Media Bureau

cc: Palatial Living Mobile Home Subdivision
c/o Miles P. Jensen, Esq.
Olson & Hoggan, P.C.
88 West Center
Logan, UT 84321

Palatial Living Mobile Home Subdivision Residents

Here are a few reminders about what needs to be done at the end of the winter season.

1. Heat tapes can be turned off.
2. If you have not done so already, lawns need to be mowed. Lawn mowers are now out regularly. Do not let younger children use the mowers. Be sure bags are on the mowers at all times. You are responsible to provide your own gas (unleaded).
3. **Always trim your yard following mowing. This is not optional!** Yards are very unsightly when they are not trimmed, regardless of whether they are mowed or not. This should be done after each mowing. You are responsible to provide your own trimmer.
4. Yards should be watered regularly and during early morning or early evening hours in order to maximize the use of our water.
5. We will be around to spray the yards for weeds and dandelions starting this week, weather permitting. If you have flower beds, you must maintain them regularly. Weeds should be removed often. If they are not taken care of, we will ask that you remove them and plant grass.
6. Swimming pools are not permitted. Children's wading pools may be used if drained and stored away at the end of the day. Palatial Living assumes no liability for accidents or incidences that occur because of your voluntary use of such items.
7. Satellite dishes are only to be installed on the **rear center** of the home. If you have a satellite dish that is not in this location, you will need to move it. This is considered to be an alteration to the exterior of the home and all changes must first be approved by management, according to your lease agreement. We will not allow more than one satellite dish per residence.
8. Homes cannot be sold in the subdivision until they are in acceptable condition. All buyers must be approved for a lease with Palatial Living prior to purchase. We do not allow "For Sale" signs to be placed out in the yards.
9. Shed doors should always be closed, unless in immediate use. **Ladders need to be stored away.** They will not be permitted to be left leaning up against the house or stored up against the skirting.
10. Residents and their guests are not allowed to have animals or pets in our subdivision. It's an automatic eviction of you and your home.
11. Children should play in their own yards. Be respectful of neighbors, as they may not want children playing on their lots. Also, we have allowed toys to be **neatly** stored on porches. However, toys, bikes, etc. are often seen strewn all over the yard. If toys are not put away at the end of the day, then we will have to require that they be kept in your storage shed.

Palatial Living Mobile Home Subdivision Residents

The time has come to get our homes and yards ready for winter. Here are a few reminders about what needs to be done before it gets too much colder.

1. Turn heat tapes on and test to be sure they are functioning properly.
2. Drain and cover your swamp coolers.
3. Disconnect hoses from the outside spickets and store.
4. Mow **AND TRIM** your yard one last time. This will help keep mice away. Weather permitting, the mowers will be put out in the afternoons for another week or so.
5. Rake up and properly dispose of leaves.
6. Clean up flower beds, pull up dead flowers, and trim bushes back so they can have a new start in the spring.
7. When plowing of snow from the streets is necessary, the center of the road will be plowed first. Once that has been done, we ask that you move your parked car into the middle of the road so the curb lane can be plowed.
8. Homes cannot be sold in the subdivision until the buyer has submitted an application and been approved for a lease. If this does not happen, the buyer will be unconditionally denied and the home will have to be removed from the subdivision.
9. If you have a driveway, please park your cars there during the winter.
10. Each residence is permitted to have 2 vehicles. We will not allow any extra vehicles.
11. The manager's office hours are 9-5, Monday through Saturday, by appointment only. The office is closed on Sunday. If an emergency arises, please call me at 753-9552.
12. A few storage units (both large and small) are available for rent. If you are interested, please contact me.
13. Once again, I will remind you that the speed limit through Palatial Living is **10 mph**. Please stop at all stop signs. This regulation is just as important as keeping up your homes.

I want to thank those of you that have done such a good job helping to make our subdivision pleasant and attractive by keeping your homes and yards cared for. Have a Happy Halloween!

Tawnya Franckowiak, Manager
Palatial Living Mobile Home Subdivision
October 30, 2003

Palatial Living Mobile Home Subdivision Residents

Here are a few reminders about what needs to be done at the end of the winter season.

1. Heat tapes can be turned off.
2. Lawn mowers are now out regularly. Hopefully, you have already mowed your yard a few times. If not, you are well overdue! Do not let younger children use the mowers. Be sure bags are on the mowers at all times. You are responsible to provide your own gas (unleaded).
3. **Always trim your yard following mowing. This is not optional!** Yards are very unsightly when they are not trimmed, regardless of whether they are mowed or not. This should be done after each mowing. You are responsible to provide your own trimmer.
4. Yards should be watered regularly and during early morning or early evening hours in order to maximize the use of our water.
5. We will be around to spray the yards for weeds and dandelions starting this weekend, weather permitting.
6. Homes cannot be sold in the subdivision until they are in acceptable condition. All buyers must be approved for a lease with Palatial Living prior to purchase. We do not allow "For Sale" signs to be placed out in the yards.
7. Shed doors should always be closed, unless in immediate use. Ladders need to be stored away. They will not be permitted to be left leaning up against the house or stored up against the skirting.
8. Residents and their guests are not allowed to have animals or pets in our subdivision. It's an automatic eviction of you and your home.
9. Garbage cans should be kept out of sight, behind porches or put away in sheds. They should ONLY be on the street on collection day.
10. Children should play in their own yards. Be respectful of neighbors, as they may not want children playing in their yards.
11. The speed limit through our subdivision is **10 mph**. Please stop at all stop signs. Many children are out playing during this season and all residents need to be watchful for children who may have wandered into the street.
12. We have one small storage unit for rent. It is \$15 a month and measures approximately 5 x 10. Please contact me if you are interested.

We appreciate your cooperation. This is a pleasant place to live when everyone is doing their part to care for and maintain their homes the way we expect. Have a great summer!

Tawnya Franckowiak
Palatial Living Manager
May 1, 2003

Palatial Living Mobile Home Subdivision Residents

The time has come to get our homes and yards ready for winter. Here are a few reminders about what needs to be done before it gets too much colder.

1. Turn heat tapes on and test to be sure they are functioning properly. Frozen pipes are totally your responsibility.
2. Drain and cover your swamp coolers.
3. Take hoses off the outside water shut off and store.
4. Mow **AND TRIM** your yard one last time. This especially will help keep mice away. Weather permitting, the mowers will be put out in the afternoons for another week or so.
5. Rake up leaves and keep them cleaned up.
6. Clean up flower beds, pull up dead flowers and cut bushes back so they can have a new start in the spring.
7. When plowing of snow from the streets is necessary, the center of the road will be plowed first. Once that has been done, we ask that you move your parked car into the middle of the road so that the curb lane can be plowed.
8. Homes cannot be sold in the subdivision until the buyer has submitted an application and been approved for a lease. If this does not happen, the buyer will be unconditionally denied and the home will have to be removed from the subdivision.
9. If you have a driveway, cars must be parked there during the winter.
10. Each residence is permitted to have 2 vehicles. We will not allow any extra vehicles.
11. The manager's office hours are 9-5 Monday through Saturday, by appointment only. The office is closed on Sunday. If an emergency arises, please call me at 753-9552.
12. A few storage units are available for rent. If you are interested, please contact me.
13. Once again, I will remind you that the speed limit through Palatial Living is **10 mph**. Please stop at all stop signs. This regulation is just as important as keeping up your homes.

I want to thank those of you that have done such a good job helping to make our subdivision pleasant and attractive by keeping your homes and yards cared for. Have a happy Halloween.

Tawnya Franckowiak, Manager
Palatial Living Mobile Home Subdivision
October 31, 2002

Palatial Living Mobile Home Subdivision Residents

Here are a few reminders about what needs to be done at the end of the winter season.

1. Spring is here and many are expecting to move. Please remember, as per your lease, that you must register your home with management before placing it for sale. Homes cannot be sold in the subdivision until they are in acceptable condition.
2. It's time to start cleaning up your yards. Leaves, leftover from the fall, still need to be raked. Remove dead flowers and weeds from your flower beds and any other litter or debris from the yard.
3. We have new lawn mowers again. Be sure bags are on the mowers at all times.
4. Always trim your yard following mowing. Yards should be watered regularly.
5. We will be around to spray the yards for weeds, weather permitting.
6. Residents and their guests are not allowed to have animals or pets in our subdivision. It's an automatic eviction of you and your home if you are in violation.
7. The speed limit through our subdivision is **10** mph. Please stop at all stop signs. We also expect your guests and visitors to comply with this. Please be sure they are adequately informed. Many children are out playing during this season and all residents need to be watchful for children who may have wandered into the street. If we continue to have problems with vehicles exceeding the speed limit we will have no other option except to put more speed bumps throughout the subdivision.
8. Ladders need to be stored away. They will not be permitted to be left leaning up against the house or stored up against the skirting.
9. Heat tapes may be turned off.
10. Each residence is permitted to have 2 (two) vehicles on the premises. If you have more than two, you will be expected to remove them from the subdivision.

We appreciate your cooperation. This is a pleasant place to live when everyone is doing their part to care for and maintain their homes the way we expect. Have a great summer!

Tawnya Franckowiak
Palatial Living Manager
April 24, 2002

Palatial Living Mobile Home Subdivision Residents

The time has come to get our homes and yards ready for winter. Here are a few reminders about what needs to be done before it gets too much colder.

1. Turn heat tapes on and test to be sure they are functioning properly. Frozen pipes are totally your responsibility.
2. Drain and cover your swamp coolers.
3. Take hoses off the outside water shut off and store.
4. Continue to mow **AND TRIM** your yard. This especially will help keep mice away.
5. Keep leaves raked up.
6. Clean up flower beds, pull up dead flowers and cut bushes back so they can have a new start in the spring.
7. Homes cannot be sold in the subdivision until they are in acceptable condition. Get in touch with the manager to tell you what needs to be done.
8. When plowing of snow from the streets is necessary, the center of the road will be plowed first. Once that has been done, we ask that you move your parked car into the middle of the road so that the curb lane can be plowed.
9. If you have a driveway, cars must be parked there during the winter.
10. Each residence is permitted to have 2 vehicles. Please obey this rule.
11. Once again, I will remind you that the speed limit through Palatial Living is **10 mph**. Please stop at all stop signs. This regulation is just as important as keeping up your homes.

I want to thank those of you that have done such a good job helping to make our subdivision pleasant and attractive by keeping your homes and yards cared for. Have a happy Halloween.

Tawnya Franckowiak, Manager
Palatial Living Mobile Home Subdivision
October 12, 2001

FIRST DISTRICT - CACHE COURT
CACHE COUNTY, STATE OF UTAH

THE MAXIME B NICKEL TRUST,	:	NOTICE OF
Plaintiff,	:	STATUS CONFERENCE
	:	
vs.	:	Case No: 040100970 EV
	:	
CRAIG CARLSON,	:	Judge: BEN HADFIELD
Defendant.	:	Date: December 28, 2004

STATUS CONFERENCE is scheduled.

Date: 01/10/2005

Time: 02:00 p.m.

Before Judge: BEN HADFIELD

LOCATION: 43 NORTH MAIN

BRIGHAM CITY UT 84302

Dated this 28 day of Dec, 2004.



District Court Deputy Clerk

IF YOU NEED AN INTERPRETER, PLEASE NOTIFY THE COURT at 435-750-1300 (five days before your hearing, if possible). In all criminal cases and in some other proceedings, the court will arrange for the interpreter and will pay the interpreter's fees. You must use an interpreter from the list provided by the court.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this proceeding should call Louise Nielsen at 435-750-1300 at least three working days prior to the proceeding.

Case No: 040100970
Date: Dec 28, 2004

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 040100970 by the method and on the date specified.

METHOD	NAME
Mail	CRAIG CARLSON DEFENDANT 481 W 640 N LOGAN, UT 84321
Mail	KEVIN J. FIFE ATTORNEY PLA 88 WEST CENTER P.O. BOX 525 LOGAN UT 84323-0525
Mail	MILES P. JENSEN ATTORNEY PLA 88 W CENTER P. O. BOX 525 LOGAN UT 84321-0000
Mail	PAUL H MATTHEWS ATTORNEY 10 WEST BROADWAY #700 SALT LAKE CITY UT 84101-2060
Mail	JONATHAN P THOMAS ATTORNEY 31 FEDERAL AVE LOGAN UT 84321

Dated this 28 day of Dec, 2004.

S.
Deputy Court Clerk

Rule 63. Disability or disqualification of a judge.

(a) Substitute judge: Prior testimony. If the judge to whom an action has been assigned is unable to perform the duties required of the court under these rules, then any other judge of that district or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom the case is assigned may in the exercise of discretion rehear the evidence or some part of it.

(b) Disqualification.

(b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of interest.

(b)(1)(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(b)(1)(B)(i) assignment of the action or hearing to the judge;

(b)(1)(B)(ii) appearance of the party or the party's attorney; or

(b)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(b)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(b)(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(b)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(b)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(b)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

76-8-512. Impersonation of officer.

A person is guilty of a class B misdemeanor who:

(1) impersonates a public servant or a peace officer with intent to deceive another or with intent to induce another to submit to his pretended official authority or to rely upon his pretended official act;

(2) falsely states he is a public servant or a peace officer with intent to deceive another or to induce another to submit to his pretended official authority or to rely upon his pretended official act; or

(3) displays or possesses without authority any badge, identification card, other form of identification, any restraint device, or the uniform of any state or local governmental entity, or a reasonable facsimile of any of these items, with the intent to deceive another or with the intent to induce another to submit to his pretended official authority or to rely upon his pretended official act.

Amended by Chapter 210, 1991 General Session

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[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

53-13-103. Law enforcement officer.

(1) (a) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Law enforcement officer" specifically includes the following:

(i) any sheriff or deputy sheriff, chief of police, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Sections **23-20-1.5** and **63-11-17.2**;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators employed by the attorney general, district attorneys, and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law;

(viii) school district police officers as designated by the board of education for the school district;

(ix) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division;

(x) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993;

(xi) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety;

(xii) airport police officers of any airport owned or operated by the state or any of its political subdivisions; and

(xiii) transit police officers designated under Section **17B-2a-823**.

(2) Law enforcement officers may serve criminal process and arrest violators of any law of this state and have the right to require aid in executing their lawful duties.

(3) (a) A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

(b) (i) A local law enforcement agency may limit the jurisdiction in which its law enforcement officers may exercise their peace officer authority to a certain geographic area.

(ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise his authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the limited geographic area.

(c) The authority of law enforcement officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections -- State Prison.

(4) A law enforcement officer shall, prior to exercising peace officer authority, satisfactorily complete:

(a) the basic course at a certified law enforcement officer training academy or pass a certification examination as provided in Section **53-6-206**, and be certified; and

(b) annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council.

Amended by Chapter 329, 2007 General Session

Download Code Section Zipped WP 6/7/8 53_0B004.ZIP 3,644 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

57-16-9. Lienholder's liability for rent and fees.

(1) Notwithstanding Sections **38-3-2** and **70A-9a-402**, the lienholder of record of a mobile home, or if there is no lienholder, the owner of a mobile home, is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within ten days after receipt of written notice that a mobile home has been abandoned, as defined in Section **57-16-13**, or that a writ of restitution has been issued. The lienholder or owner of a mobile home, however, is only liable for rent that accrues from the day the lienholder or owner of a mobile home receives notice. Rent shall be paid on a monthly basis on the due date established in the lease agreement. The lienholder or owner of a mobile home is not responsible for any rent if the mobile home is removed within ten days after receipt of the notice.

(2) If the lienholder pays rent and service charges as provided by this section, the lienholder shall have the unconditional right to resell the mobile home within the park, subject to the purchaser being approved for residency by the park, which approval cannot be unreasonably withheld, and subject to Subsection (4). If the lienholder or owner of a mobile home does not commence paying rent and service charges to the mobile home park within 30 days after receipt of a written notice provided by Subsection (1), the mobile home park may require the lienholder or owner of a mobile home to remove the mobile home from the park and the lienholder or owner of a mobile home shall be liable for all rent which accrues from the date of the notice to the date the mobile home is removed from the park.

(3) The notice required under Subsection (1) shall be sent to the lienholder or owner of a mobile home by certified mail, return receipt requested, and shall inform the lienholder or owner of a mobile home that the mobile home park may require the lienholder or owner of a mobile home to remove the mobile home from the park if the lienholder or owner of a mobile home has not commenced paying rent and service charges to the park within 30 days after receipt of the notice.

(4) The mobile home park may require the lienholder to remove a mobile home covered by this section from the park if the mobile home, at the time of sale, is in rundown condition or disrepair, if the mobile home does not meet the park's minimum size specifications, or if the mobile home does not comply with reasonable park rules. The lienholder shall have 60 days to make repairs and comply with park rules after notice of required repairs and rule violations is given to the lienholder by the park owner or its agent.

(5) If a lienholder or owner of a mobile home does not commence paying rent and service charges to the park within 30 days after receipt of a written notice provided under Subsection (1), and if the lienholder or owner of a mobile home does not remove the mobile home from the park within the 30-day period, the park has the right to immediately remove the mobile home from the park and store it on behalf of the lienholder or owner of a mobile home. The mobile home park has the right to recover moving and storage costs from the lienholder or owner of a mobile home.

(6) The prevailing party is entitled to court costs and reasonable attorney fees for any action commenced to enforce any rights under this section.

(7) If a lienholder pays rent and service charges as provided in Subsection (2), the mobile home is not considered abandoned under Section **57-16-13**; however, the personal property in the mobile home is considered abandoned.

Amended by Chapter 256, 2001 General Session

Download Code Section Zipped WP 6/7/8 57_12012.ZIP 3,178 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

57-16-1. Short title.

This act shall be known and may be cited as the "Mobile Home Park Residency Act."

Enacted by Chapter 178, 1981 General Session

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[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

57-16-13. Abandonment.

Abandonment of a mobile home space and a mobile home within a mobile home park is presumed in either of the following situations:

(1) (a) the resident or occupant of the mobile home has not notified the park that the resident or occupant will be absent from the mobile home space or mobile home, and the resident or occupant fails to pay rent within 45 days after the due date; and

(b) the mobile home park owner has no reasonable evidence, other than the presence of the resident's or occupant's personal property, that the resident or occupant is continuing to occupy the mobile home space and the mobile home; or

(2) (a) the resident or occupant of the mobile home has not notified the park that the resident or occupant will be absent from the mobile home space where the mobile home is located, and the resident or occupant fails to pay rent when due; and

(b) the resident's or occupant's personal property has been removed from the mobile home, and there is no reasonable evidence that the resident or occupant is occupying the mobile home space or mobile home.

Amended by Chapter 91, 2002 General Session

Download Code Section Zipped WP 6/7/8 57_12016.ZIP 1,978 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

57-16-7. Rules of parks.

(1) (a) A mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park. No change in rule that is unconscionable is valid.

(b) (i) No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least:

(A) 120 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses greater than \$2,000 in order to comply with the rule;

(B) 90 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses greater than \$250 up to \$2,000 in order to comply with the rule; or

(C) 60 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses of \$250 or less in order to comply with the rule.

(ii) Each resident, as a condition precedent to a rule under this Subsection (1)(b) becoming effective, shall be provided with a copy of each new or amended rule that does not appear in the resident's lease agreement promptly upon promulgation of the rule.

(iii) For purposes of determining which period of time applies under Subsection (1)(b)(i), the mobile home park may rely upon a good-faith estimate obtained by the mobile home park from a licensed contractor.

(c) Within 30 days after the mobile home park proposes amendments to the mobile home park rules, the mobile home park shall schedule at least one meeting for the purpose of discussing the proposed rule amendments with residents and shall provide at least ten days advance written notice of the date, time, location, and purposes of the meeting to all residents.

(2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

(3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.

(4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit.

Amended by Chapter 255, 2002 General Session

Download Code Section Zipped WP 6/7/8 57_12009.ZIP 3,022 Bytes

[Sections in this Chapter](#)|[Chapters in this Title](#)|[All Titles](#)|[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

57-16-2. Purpose of chapter.

The fundamental right to own and protect land and to establish conditions for its use by others necessitate that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks.

Enacted by Chapter 178, 1981 General Session

Download Code Section Zipped WP 6/7/8 57_12003.ZIP 1,905 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

57-16-12. Waiver of rights and duties prohibited.

No park or resident may agree to waive any right, duty, or privilege conferred by this chapter.

Enacted by Chapter 178, 1981 General Session

Download Code Section /ipped WP 6/7/8 57_12015.ZIP 1,589 Bytes

[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

57-16-4. Termination of lease or rental agreement -- Required contents of lease -- Increases in rents or fees -- Sale of homes -- Notice regarding planned reduction or restriction of amenities.

(1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.

(2) Each agreement for the lease of mobile home space shall be written and signed by the parties. Each lease shall contain at least the following information:

(a) the name and address of the mobile home park owner and any persons authorized to act for the owner, upon whom notice and service of process may be served;

(b) the type of the leasehold, whether it be term or periodic, and, in leases entered into on or after May 6, 2002, a conspicuous disclosure describing the protection a resident has under Subsection (1) against unilateral termination of the lease by the mobile home park except for the causes described in Section **57-16-5**;

(c) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis;

(d) the date or dates on which the payment of rent, fees, and service charges are due;

(e) all rules that pertain to the mobile home park which, if broken, may constitute grounds for eviction, including, in leases entered into on or after May 6, 2002, a conspicuous disclosure regarding:

(i) the causes for which the mobile home park may terminate the lease as described in Section **57-16-5**; and

(ii) the resident's rights to terminate the lease at any time without cause, upon giving the notice specified in the resident's lease, and to advertise and sell the resident's mobile home.

(3) (a) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days after notice of the increase is mailed to the resident. If service charges are not included in the rent, service charges may be increased during the leasehold period after notice to the resident is given, and increases or decreases in electricity rates shall be passed through to the resident. Annual income to the park for service charges may not exceed the actual cost to the park of providing the services on an annual basis. In determining the costs of the services, the park may include maintenance costs related to those utilities which are part of the service charges.

(b) The mobile home park may not alter the date or dates on which rent, fees, and service charges are due unless a 60-day written notice precedes the alteration.

(4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable. The mobile home park may, however, reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident, but the approval may not be unreasonably withheld. The mobile home park may require proof of ownership as a condition of approval. The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase.

(5) If all of the conditions of Section **41-1a-116** are met, a mobile home park may request from the Motor Vehicle Division the names and addresses of the lienholder or owner of any mobile home located in the park.

(6) A mobile home park may not restrict a resident's right to advertise for sale or to sell his mobile home. However, the park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

(7) A mobile home park may not compel a resident who desires to sell his mobile home, either directly or indirectly, to sell it through an agent designated by the mobile home park.

(8) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

(a) the mobile home does not meet minimum size specifications; or

(b) the mobile home is in rundown condition or in disrepair.

(9) Within 30 days after a mobile home park proposes reducing or restricting amenities, the mobile home park shall schedule at least one meeting for the purpose of discussing the proposed restriction or reduction of amenities with residents and shall provide at least ten days advance written notice of the date, time, location, and purposes of the meeting to all residents.

(10) A copy of this chapter shall be posted at all times in a conspicuous place in the mobile

Rule 7. Pleadings allowed; motions, memoranda, hearings, orders, objection to commissioner's order.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial or in proceedings before a court commissioner, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

(c) Memoranda.

(c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) Length. Initial memoranda shall not exceed 10 pages of argument without leave of the court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) Content.

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

(e) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing shall be separately identified in the caption of the document containing the request. The court shall grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed

Rule 15. Amended and supplemental pleadings.

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to conform to the evidence. When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

(c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 77. District courts and clerks.

(a) District courts always open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and hearings; orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers without the attendance of the clerk or other court officials and at any place within the state, either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the county wherein the matter is pending without the consent of all the parties to the action affected thereby.

(c) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but such action may be suspended or altered or rescinded by the court upon cause shown.

Advisory Committee Notes

Article I, Section 11. [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

No History for Constitution

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Last revised: Monday, December 18, 2006

Article I, Section 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

No History for Constitution

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Last revised: Monday, December 18, 2006

78-13-11. Duty of clerk -- Fees and costs -- Effect on jurisdiction.

When an order is made transferring an action or proceeding for trial, the court must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees therefor and filing the papers anew must be paid by the party at whose instance the order was made; provided, that when such order is made for the reason that the cause was commenced in the wrong county, the costs of transfer and filing the papers anew shall be paid by the plaintiff in the action within ten days after the making of such order, or said cause shall be dismissed for want of jurisdiction. The court to which an action or proceeding is transferred shall have and exercise the same jurisdiction as if it had been originally commenced therein.

No Change Since 1953

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Last revised Thursday, July 19, 2007

78-3-30. Duties of the clerk of the district court.

The clerk of the district court shall:

- (1) take charge of and safely keep the court seal;
- (2) take charge of and safely keep or dispose of all books, papers, and records filed or deposited with the clerk, and all other records required by law or the rules of the Judicial Council;
- (3) issue all notices, processes, and summonses as authorized by law;
- (4) keep a record of all proceedings, actions, orders, judgments, and decrees of the court;
- (5) take and certify acknowledgments and administer oaths;
- (6) supervise the deputy clerks as required to perform the duties of the clerk's office; and
- (7) perform other duties as required by the presiding judge, the court executive, applicable law, and the rules of the Judicial Council.

Enacted by Chapter 153, 1989 General Session

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Last revised Thursday, July 19, 2007

Rule 4-205. Security of court records.

Intent:

To assure that the security and accuracy of court records are maintained.

To assure that authorized personnel have access to court records when appropriate.

To establish responsibility of court personnel for security of court records.

To establish the procedures for securing non-public records.

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

(1) Court records restricted. All court records shall be kept in a restricted area of the court closed to public access.

(2) The clerk of the court may authorize, in writing, abstractors, credit bureau representatives, title company representatives and others who regularly research court records to have direct access to public court records. The clerk of the court shall ensure that persons to whom such authorization is granted are trained in the proper retrieval and filing of court records. The clerk of court may set reasonable restrictions on time and place for inspecting and copying records.

(3) Removal of records. Court records shall not be removed from their normal place of storage except by court personnel or by individuals obtaining the written authorization of the clerk of the court or the judge assigned to the case. Court records shall not be removed from the courthouse without permission of the court. Records removed from the courthouse shall be returned within two days, except that records removed for the purpose of an appeal shall be returned within such time as specified by the clerk of the court, unless otherwise ordered by the judge. Any person removing a record is responsible for the security and the integrity of the record.

(4) Management of non-public records.

(4)(A) Method of sealing and storage. Non-public records which are part of a larger public record shall be filed apart from the public record or in a manner that clearly distinguishes the record as not public. Sealed records shall be placed in an envelope which is securely sealed. The clerk of the court shall record the case number and record classification on the envelope and shall inscribe across the sealed part of the envelope the words "Not to be opened except upon permission of the court."

(4)(B) Expunged records. Upon entry of an order of expungement, the clerk of the court shall:

(4)(B)(i) obliterate or destroy all reference to the expunged portion of the record in the paper copy of the index and maintain a separate index of expunged records not available to the public;

(4)(B)(ii) cover, without obliterating or destroying, all entries in the paper copy of the register of actions, including case identifying information other than the court docket number; and

(4)(B)(iii) place an entry in the computer record that restricts retrieval of case identifying information and the register of actions to court personnel with authorization to review such information. The security restriction shall not be removed except upon written order of the court

(4)(C) Record of event. The record of expunging or sealing a record shall be entered in the register of actions.

Rule 3-104. Presiding judges.

Intent:

To establish the procedure for election, term of office, role, responsibilities and authority of presiding judges and associate presiding judges.

Applicability:

This rule shall apply to presiding judges and associate presiding judges in the District and Juvenile Courts.

Statement of the Rule:

(1) Election and term of office.

(1)(A) Presiding judge. The presiding judge in multi-judge courts shall be elected by a majority vote of the judges of the court. The presiding judge's term of office shall be at least two years. A district, by majority vote of the judges of the court, may re-elect a judge to serve successive terms of office as presiding judge. In the event that a majority vote cannot be obtained, the presiding judge shall be appointed by the presiding officer of the Council to serve for two years.

(1)(B) Associate presiding judge.

(1)(B)(i) In a court having more than two judges, the judges may elect one judge of the court to the office of associate presiding judge. An associate presiding judge shall be elected in the same manner and serve the same term as the presiding judge in paragraph (1)(A).

(1)(B)(ii) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge or by the court.

(1)(C) A presiding judge or associate presiding judge may be removed as the presiding judge or associate presiding judge by a two-thirds vote of all judges in the district. A successor presiding judge or associate presiding judge shall then be selected as provided in this rule.

(2) Court organization.

(2)(A) Court en banc.

(2)(A)(i) Multi-judge courts shall have regular court en banc meetings, including all judges of the court and the court executive, to discuss and decide court business. The presiding judge has the discretion to excuse the attendance of the court executive from court en banc meetings called for the purpose of discussing the performance of the court executive. In single-judge courts, the judge shall meet with the court executive to discuss and decide court business.

(2)(A)(ii) The presiding judge shall call and preside over court meetings. If neither the presiding judge nor associate presiding judge, if any, is present, the presiding judge's designee shall preside.

(2)(A)(iii) Each court shall have a minimum of four meetings each year.

(2)(A)(iv) An agenda shall be circulated among the judges in advance of the meeting with a known method on how matters may be placed on the agenda.

(2)(A)(v) In addition to regular court en banc meetings, the presiding judge or a majority of the judges may call additional meetings as necessary.

(2)(A)(vi) Minutes of each meeting shall be taken and preserved.

(2)(A)(vii) Other than judges and court executives, those attending the meeting shall be by court invitation only.

(2)(A)(viii) The issues on which judges should vote shall be left to the sound discretion and judgment of each court and the applicable sections of the Utah Constitution, statutes, and this Code.

(2)(B) Absence of presiding judge. When the presiding judge and the associate presiding judge, if any, are absent from the court, an acting presiding judge shall be appointed. The method of designating an acting presiding judge shall be at the discretion of the presiding judge. All parties that must necessarily be informed shall be notified of the judge acting as presiding judge.

(3) Administrative responsibilities and authority of presiding judge.

(3)(A)(i) Generally. The presiding judge is charged with the responsibility for the effective operation of the court. He or she is responsible for the implementation and enforcement of statutes, rules, policies and directives of the Council as they pertain to the administration of the courts, orders of the court en banc and supplementary rules. The presiding judge has the authority to delegate the performance of non-judicial duties to the court executive. When the presiding judge acts within the scope of these responsibilities, the presiding judge is acting within the judge's judicial office.

(3)(A)(ii) Caseload. Unless the presiding judge determines it to be impractical, there is a presumption that the judicial caseload of the presiding judge shall be adjusted to provide the presiding judge sufficient time to devote to the management and administrative duties of the office. The extent of the caseload reduction shall be determined by each district.

(3)(A)(iii) Appeals. Any judge of the judicial district may ask the Chief Justice or Judicial Council to review any administrative decision made by the presiding judge of that district.

(3)(B) Coordination of judicial schedules.

(3)(B)(i) The presiding judge shall be aware of the vacation and education schedules of judges and be responsible for an orderly plan of judicial absences from court duties.

(3)(B)(ii) Each judge shall give reasonable advance notice of his or her absence to the presiding judge consistent with Rule 3-103(4).

(3)(C) Court committees. The presiding judge shall, where appropriate, make use of court committees composed of other judges and court personnel to investigate problem areas, handle court business and report to the presiding judge and/or the court en banc.

(3)(D) Outside agencies and the media.

(3)(D)(i) The presiding judge or court executive shall be available to meet with outside agencies, such as the prosecuting attorney, the city attorney, public defender, sheriff, police chief, bar association leaders, probation and parole officers, county governmental officials, civic organizations and other state agencies. The presiding judge shall be the primary representative of the court.

(3)(D)(ii) Generally, the presiding judge or, at the discretion of the presiding judge, the court executive shall represent the court and make statements to the media on matters pertaining to the total court and provide general information about the court and the law, and about court procedures, practices and rulings where ethics permit.

(3)(E) Docket management and case and judge assignments.

(3)(E)(i) The presiding judge shall monitor the status of the dockets in the court and implement improved methods and systems of managing dockets.

(3)(E)(ii) The presiding judge shall assign cases and judges in accordance with supplemental court rules to provide for an equitable distribution of the workload and the prompt disposition of cases.

(3)(E)(iii) Individual judges of the court shall convey needs for assistance to the presiding judge. The presiding judge shall, through the Administrative Office, request assistance of visiting judges or other appropriate resources when needed to handle the workload of the court.

(3)(E)(iv) The presiding judge shall discuss problems of delay with other judges and offer necessary assistance to expedite the disposition of cases.

(3)(F) Court executives.

(3)(F)(i) The presiding judge shall review the proposed appointment of the court executive made by the state court administrator and must concur in the appointment before it can be effected. The presiding judge shall obtain

the approval of a majority of the judges in that jurisdiction prior to concurring in the appointment of a court executive.

(3)(F)(ii) The presiding judge for the respective court level and the state level administrator shall jointly develop an annual performance plan for the court executive.

(3)(F)(iii) Annually, the state level administrator shall consult with the presiding judge in the preparation of an evaluation of the court executive's performance for the previous year, also taking into account input from all judges in the district.

(3)(F)(iv) The presiding judge shall be aware of the day-to-day activities of the court executive, including coordination of annual leave.

(3)(F)(v) Pursuant to Council policy and the direction of the state level administrator, the court executive has the responsibility for the day-to-day supervision of the non-judicial support staff and the non-judicial administration of the court. The presiding judge, in consultation with the judges of the jurisdiction, shall coordinate with the court executive on matters concerning the support staff and the general administration of the court including budget, facility planning, long-range planning, administrative projects, intergovernmental relations and other administrative responsibilities as determined by the presiding judge and the state level administrator.

(3)(G) Courtrooms and facilities. The presiding judge shall direct the assignment of courtrooms and facilities.

(3)(H) Recordkeeping. Consistently with Council policies, the court executive, in consultation with the presiding judge, shall:

(3)(H)(i) coordinate the compilation of management and statistical information necessary for the administration of the court;

(3)(H)(ii) establish policies and procedures and ensure that court personnel are advised and aware of these policies;

(3)(H)(iii) approve proposals for automation within the court in compliance with administrative rules.

(3)(I) Budgets. The court executive, in consultation with the presiding judge, shall oversee the development of the budget for the court. In contact sites, the court executive shall supervise the preparation and management of the county budget for the court on an annual basis and in accordance with Utah Code Ann. Section 78-3-29(5).

(3)(J) Judicial officers. In the event that another judge or commissioner of the court fails to comply with a reasonable administrative directive of the presiding judge, interferes with the effective operation of the court, abuses his or her judicial position, exhibits signs of impairment or violates the Code of Judicial Conduct, the presiding judge may:

(3)(J)(i) Meet with and explain to the judge or commissioner the reasons for the directive given or the position taken and consult with the judge or commissioner.

(3)(J)(ii) Discuss the position with other judges and reevaluate the position.

(3)(J)(iii) Present the problem to the court en banc or a committee of judges for input.

(3)(J)(iv) Require the judge or commissioner to participate in appropriate counseling, therapy, education or treatment.

(3)(J)(v) Reassign the judge or commissioner to a different location within the district or to a different case assignment.

(3)(J)(vi) Refer the problem to the Judicial Council or to the Chief Justice.

(3)(J)(vii) In the event that the options listed above in subsections (i) through (vi) do not resolve the problem and where the refusal or conduct is willful, continual, and the presiding judge believes the conduct constitutes a violation of the Code of Judicial Conduct, the presiding judge shall refer the problem to the Council or the Judicial Conduct Commission.

(3)(K) Cases under advisement.

(3)(K)(i) A case is considered to be under advisement when the entire case or any issue in the case has been

submitted to the judge for final determination.

(3)(K)(ii) Once a month each judge shall submit a statement on a form to be provided by the Administrative Office notifying the presiding judge of any cases or issues held under advisement for more than two months and the reason why the case or issue continues to be held under advisement.

(3)(K)(iii) Once a month, the presiding judge shall submit a list of the cases or issues held under advisement for more than two months to the appropriate state level administrator and indicate the reasons why the case or issue continues to be held under advisement.

(3)(K)(iv) If a case or issue is held under advisement for an additional 30 days, the state level administrator shall report that fact to the Council.

(3)(L) Board of judges. The presiding judge shall serve as a liaison between the court and the Board for the respective court level.

(3)(M) Supervision and evaluation of court commissioners. The presiding judge is responsible for the development of a performance plan for the Court Commissioner serving in that court and shall prepare an evaluation of the Commissioner's performance on an annual basis. A copy of the performance plan and evaluation shall be maintained in the official personnel file in the Administrative Office.

Rule 3-108. Judicial assistance.

Intent:

To establish the authority, procedure and criteria for judicial assistance.

Applicability:

This rule shall apply to judicial assistance provided by active senior judges and judges of courts of record.

Statement of the Rule:

(1) Criteria for requesting assistance. Judicial assistance shall be provided only for the following reasons:

(A) to prevent the occurrence of a backlog in the court's calendar;

(B) to reduce a critical accumulated backlog;

(C) to handle a particular case involving complex issues and extensive time which would have a substantial impact on the court's calendar;

(D) to replace a sitting judge who is absent because of assignment as a tax judge, illness or to replace the judges in that location because of disqualification in a particular case;

(E) to handle essential cases when there is a vacant judicial position;

(F) to handle high priority cases during vacation periods or during attendance at education programs by the sitting judge, following every effort by that judge to adjust the calendar to minimize the need for assistance and only to handle those matters which cannot be accommodated by the other judges of the court during the absence;

(G) to provide education and training opportunities to judges of one court level in the disposition of cases in another court level; and

(H) in district court, to handle cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration.

(2) Criteria for transferring or assigning judges. The transfer or assignment of judges shall be based upon the following priorities:

(A) experience and familiarity with the subject matter, including in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, knowledge of the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation.

(B) active judges before active senior judges with consideration of the following:

(i) active judges from a court of equal jurisdiction in a different geographical division than the court in need, who are physically situated nearest and are most convenient to that court;

(ii) active senior judges from a court of equal jurisdiction to the court in need who are physically situated nearest and are most convenient to that court;

(iii) active judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is most closely related to that court and who are in close proximity to it.

(iv) active judges from a court of equal jurisdiction in a different geographical division than the court in need who are far removed from that court;

(v) active or active senior judges from a court of different jurisdiction than the court in need whose subject matter jurisdiction is similar to that court who are not in close proximity;

(C) availability;

(D) expenses and budget.

(3) Assignment of active judges.

(A) Any active judge of a court of record may serve temporarily as the judge of a court with equal jurisdiction in a different judicial district upon assignment by the presiding judge of the district in which the judge to be assigned normally sits or, in district court cases involving taxation, as defined in Rule 6-103(4) of the Utah Code of Judicial Administration, assignment by the supervising tax judge with the approval of the presiding officer of the Council.

(B) Any active judge of a court of record may serve temporarily as the judge of a court with different jurisdiction in the same or a different judicial district upon assignment by the presiding officer of the Council or assignment by the state court administrator with the approval of the presiding officer of the Council.

(C) The assignment shall be made only after consideration of the judge's calendar. The assignment may be for a special or general assignment in a specific court or generally within that level of court and shall be for a specific period of time, or for the duration of a specific case. Full time assignments in excess of 30 days in a calendar year shall require the concurrence of the assigned judge. The state court administrator shall report all assignments to the Council on an annual basis.

(D) Requests for the assignment of a judge shall be conveyed, through the presiding judge, to the person with authority to make the assignment under paragraphs (A) and (B). A judge who is assigned temporarily to another court shall have the same powers as a judge of that court.

(4) Notice of assignments made under this rule shall be made in writing, a copy of which shall be sent to the state court administrator.

(5) Schedule of trials or court sessions. The state court administrator, under the supervision of the presiding officer of the Council, may schedule trials or court sessions and designate a judge to preside, assign judges within courts and throughout the state, reassign cases to judges, and change the county for trial of any case if no party to the litigation files timely objections to the change.