PRACTICE OF LAW BOARD
STATE OF WASHINGTON

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#05-29ADVISORY OPINION
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WHO MAY REPRESENT LANDOWNERS IN UNLAWFUL DETAINER ACTIONS

QUESTION PRESENTED:

The following inquiry was submitted to the Practice of Law Board. May an individual person who is a real property manager, designated as a representative of the property owner pursuant to RCW 59.18.030(2) and RCW 59.18.06 (12) [thereby meeting the statutory definition of a "Landlord"] represent himself or herself pro se as plaintiff in an unlawful detainer action, seeking a writ of restitution and money judgment in his or her favor?

We are unsure about the effect of RCW 59.18.030 (2) which says "as used in this chapter, 'landlord' manes the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord." It would appear that this statute confers upon property managers (or perhaps even other persons) the right to bring as Plaintiff an unlawful detainer action so long as they met the statutory requirements to be considered a representative of the landlord. If so, it would seem that it would then follow that an individual property manager so designated could bring the unlawful detainer action pro-se.

SHORT ANSWER:

No, a property manager may not represent himself or herself pro se in an unlawful detainer action. A property manager, as the owner's legally designated representative, may be the proper plaintiff in an unlawful detainer action, but cannot represent the property owner in court. A property manager who selects and completes unlawful detainer forms or represents the owner in court is engaged in the unauthorized practice of law and defined in RCW 2.48.020 and GR 24.

ANALYSIS:

Unlawful Detainer Actions are only available to plaintiffs owning a possessory interest in the leased premises.

The Plaintiff in an unlawful detainer action (RCW 59.12) must have a possessory interest in the property to provide jurisdiction for the court to hear the action. MacRae v. Way, 64 Wn.2d 544, 392 P.2d 827 (1964). Sufficient possessory interests include: successor in interest of owner's (landlord's) estate, Capital Brewing Co. v. Crosbie, 22 Wash 269, 60 Pac. 652 (1900); landlord who leased premises to a third party, Schreiner v. Stanton, 26 Wash. 563, 671 Pac. 1134 (1901); landlord against original tenant who sublet, Agen v. Nelson, 51 Wash. 431, 98 Pac 1115 (1909); and pledgee of lease assigned for security, Erz v. Reese, 157 Wash. 32, 288 Pac. 255 (1930). Unlawful detainer is not available to recover possession of leased premises unless the conventional relation of landlord and tenant exists between the parties. Meyer v. Beyer, 43 Wash. 398, 86 Pac. 661 (1906).

RCW 59.18.030(2) and RCW 59.18.060(14) allow the owner to designate a representative as landlord and Plaintiff in an unlawful detainer action.

By statute, a "landlord" is the owner, lessor, sublessor, or person designated in the rental agreement or designated by a notice conspicuously posted on the premises. The statute defines Landlord as "the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part and in additional means any person designated as representative of the landlord." RCW 59.18.030(2). A person designated as the representative of the landlord must be designated as provided in RCW 59.18.060(14). A property management company, if properly designated may be the landlord. The statutory requirements for that designation must be met in order for a property management company to be the named Plaintiff in an unlawful detainer action.

Designation as Landlord or Plaintiff does not convey an ownership interest in the leased premises to the management company.

The owner's appointment of a property manager satisfies the statutory requirements for naming a Plaintiff in an unlawful detainer action, but does not transfer ownership of the premises to the property manager. The property owner could file an unlawful detainer action on his or her own behalf without legal representation. The property manager cannot prepare, file or prosecute an unlawful detainer action without legal representation. GR 24 defines selecting, drafting or completing legal documents or agreements which affect the legal rights of an entity or person, and representation of

another entity or person in a court as the practice of law. RCW 2.48.180 states that a nonlawyer practicing law constitutes the unauthorized practice of law. The property manager's actions in selecting, drafting and filing unlawful detainer pleadings and appearing in court to protect the owner's interests constitutes the unauthorized practice of law.

The ability of the owner to designate a landlord (RCW 59.18.030) and the provision allowing for delivery of notice on behalf of the person to whom rent is owed [RCW 59.12.030(3)] is granted by legislative authority. Regulation of the practice of law is a judicial power.

Articles II, III, and IV of the Washington Constitution separate the state's powers into the legislative, executive, and judicial branches. The judicial power inherently includes the power to regulate the practice of law and those who practice law. In re Bruen, 102 Wash. 472, 476, 172 Pac. 1152 (1918). In Bruen, the Court held that a legislatively created board of bar examiners could not exercise the Court's power to admit or disbar attorneys:

> Such a system is not warranted under our constitutional form of government. The legislative, executive, and judicial functions have been carefully separated…. The courts are jealous of their own prerogatives and, at the same time, studiously careful and sedulously determined that neither the executive nor legislative department shall usurp the powers of the other, or the courts.

In re Bruen, 102 Wash. At 478.

The Court's inherent power to regulate the practice of law extends to appearances in a court of justice and also to the preparation of legal instruments and contracts. State Ex rel. Laughlin v. Washington State Bar Assoc., 26 Wn.2d 914, 919, 927-28, 176 P.2d 301 (1947).

Relying on these precedents, the Court disapproved of the Legislature's attempt to authorize laypersons to practice law by drafting legal documents in connection with real estate transactions. Hagen v. Kassler Escrow, Inc., 96 Wn2d 443, 635 P.2d 730 (1981). Judicial power inherently includes the power to regulate the practice of law and the court concluded:

> Since regulation of the practice of law is within the sole province of the judiciary, encroachment by the Legislature may be held by this Court to violate the separation of powers doctrine. The separation of powers doctrine is a fundamental principle of the American political system… thus, the power to regulate the practice of law is solely within the

> province of the judiciary and this Court will protect against any improper encroachment on such power by the legislative or executive branches. In passing RCW 19.62, allowing laypersons to practice law, the Legislature impermissibly usurped the Court's power. Accordingly, RCW 19.62 is unconstitutional as a violation of the separation of powers doctrine.

Id. 96 Wn.2d at 453.

The Washington Supreme Court has consistently held, along with the vast majority of other courts in this country, that the judicial branch inherently has the power to regulate the practice of law and those who engage in the practice.

The Court has repeatedly asserted its ultimate primacy in regulating the practice of law, despite legislative action to regulate the field through statutes. In such cases, the Court respected the statute insofar as possible, but has never allowed the legislature to override judicial power. E.g.: State v. Cook, 84 Wn.2d 342, 525 P.2d 761 (1974) (the Court controls who can practice before the courts of the state, despite RCW 36.16.170, authorizing the prosecuting attorney to employ deputies and "other necessary employees" to carry out the duties of office); In re Schatz, 80 Wn.2d 604, 497 P.2d 153 (1973) (the Washington State Bar Association is an arm of the Court and the Court ultimately controls admission and disbarment of attorneys, despite the fact that the Association was created by the Legislature in RCW 2.48); In re Levy, 23 Wn.2d 607, 161 P.2d 651 (1945) (the Court ultimately controls admission of attorneys, despite statutes regulating the admission of veterans to practice); In re Bruen, 102 Wash. 472, 172 Pac. 1152 (1918) (the Court ultimately controls admission and disbarment of attorneys, despite a statute creating a board of bar examiners and authorizing the board to disbar attorneys). Statutes which purport to regulate some aspect of the practice of law are effective only so far as they do not trespass upon the Court's superior inherent power:

> Are such [statutes] wholly ineffective? The answer to that question is that they are not, in so far as, under the police power, they provide minimum requirements. But the legislative power cannot be exercised in such a way as to deprive the courts of the power to require additional qualifications.

In re Levy, 23 Wn.2d at 614.

By the definition of "landlord" in RCW 59.18.030(2), a person designated as representative is purportedly allowed by RCW 59.18.180, to maintain an unlawful detainer action. Those statutes, if construed in that manner, are in violation of the ultimate primacy of the court to regulate the practice of law. The statutes cannot grant the authority to practice law. A property manager, even if she were a properly designated landlord, may not appear "pro se" to evict tenants in an unlawful detainer

action and may not represent the property owner's interests, unless as the owner's agent, the property manager appears through an attorney.

In *Hogan v. Monroe*, 8 Wn. App. 60, 984 P.2d 757 (1984), the court found that pro se exceptions allowing non lawyers to engage in legal services does not apply to a person receiving compensation for those services. The court explained that the exception only applies when the layperson is acting solely for his own benefit. The Hogan court found that payment of a commission was conclusive evidence that the layperson was acting on behalf of another. Similarly here, a property manager received compensation for acting as the landlord. This compensation is conclusive evidence that the property manager is acting on behalf of another and cannot file unlawful detainer actions without representation.

Non-attorneys cannot present the case of another person. Unless property managers are attorneys, they are not properly "before the bar" and may be committing a criminal offense. The unlawful practice of law is a gross misdemeanor. RCW 2.48. The Washington Supreme Court has exclusive power to admit persons to the practice of law.

> Prerequisites to the Practice of Law. Except as may be otherwise provided in these rules, a person shall not appear as an attorney or counsel in any of the courts of the State of Washington, or practice law in this state, unless that person has passed the Washington State bar examination, has complied with the other requirements of these rules, and is an active member of the Washington State Bar Association (referred to in these rules as the Bar Association). A person shall be admitted to the practice of law and become an active member of the Bar Association only by order of the Supreme Court.

APR 1(b).

Unauthorized Practice of Law defined.

The unauthorized practice of law is generally acknowledged to include not only the doing or performing of services in the courts of justice, but in a larger sense includes legal advice and counsel and the preparation of legal instruments by which legal rights and obligations are established. In re Estate of Marks, 91 Wn.App. 325, 957 P.2d 235 (1998).

The practice of law includes the following:

> (1) Doing or performing services in the courts of justice;
>
> (2) Giving legal advice and counsel;
>
> (3) The preparation of legal instructions and contracts by which legal rights and obligations are established, including the completion of

> pre-printed legal document forms. The completion of pre-printed legal forms, preparation of legal instruments and the giving of legal advice and counsel are the practice of law irrespective of whether they are used in an action or proceeding pending in a court.

State v. Hunt, 75 Wn.App. 795 at 807 (FN 4), 880 P.2d 96 (1994).

Subsequent to the Hunt decision, the Washington Supreme Court adopted a court rule that defines the practice of law. General Rule 24 provides as follows:

> The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:
>
> (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
>
> (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
>
> (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
>
> (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

GR 24(a).

A property manager (unless a licensed attorney) is not authorized by the Washington Supreme Court to practice law; by signing pleadings or appearing in court to present pleadings. The property manager is the property owner's representative. RCW 59 appears to make the representative the proper plaintiff in the unlawful detainer action. The statute does not confer the authority for the property manager to practice law. A nonlawyer property manager who selects, signs or files unlawful detainer pleadings is engaged in the unlawful practice of law.