

# Licensing vs. Leasing at Marinas

**Washington Public Ports Association Annual Meeting Legal Committee**

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# License vs. Lease

# License vs. Lease Basics

- **LEASE**

- Provides an exclusive right of possession and control over a specific real property
- Leasehold is an interest in real property
- Usually month-to-month or longer durations
- Unless restricted in the agreement, freely transferable

- **LICENSE**

- Gives permission to perform a particular act upon real property
- Can provide for exclusive or non-exclusive use
- Does not transfer an interest in the real property
- Generally, more easily revoked than a lease
- Generally, specific to the licensee and not transferable

# Benefit of License in a Marina

- Does not create an interest in real property
- Limits the control afforded to moorage customer over slip
- Port has flexibility to move vessels within the marina
- Greater ability to terminate without cause
- Alternative termination processes to unlawful detainer
  - No cause termination in less time than statutory notice in RCW 59.12.030
  - RCW 53.08.320
  - RCW 79.100

# *City of Tacoma v. Smith,* 50 Wn. App. 717 (Div. 2 1988)

- Overview of Decision
- Take Aways
  - Slips are “real property”
  - Reserving the right to move vessels alone does not create a license
  - Merely calling an agreement a “license” or a “lease” does not make it so
  - Factors to consider in determining whether an agreement is a “lease” or a “license” includes ease of termination, duration, exclusivity and control of real property, obligations concerning maintenance and upkeep, etc.
  - Intent of the parties’ matters

# Tips for Moorage Agreements

- Expressly identify the Moorage Agreement as a license between moorage customer / licensee and Port – avoid using terms such as “lease” or “tenant”
- Clarify the action permitted / use is limited to moorage of the vessel
- Expressly provide that use is not exclusive
  - Restriction use of pier for personal use (planters, chairs, storage, etc.)
  - Guest moorage
- Prohibit transfers or assignment of slip or Moorage Agreement
- Reserve the right to move vessels to other slips or moorages
- Reserve the right to terminate without cause



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# **Moorage Agreements & Residential Tenant Protections**

# Concerns Expressed by Ports

- Housing shortages and COVID-19 pandemic increased use of vessels as primary residences
- Increase in state and local regulations of residential tenancies, especially providing tenant protections
- Residential Landlord Tenant Act (RLTA)
  - No statutory exemption for Port facilities / live-a-boards
  - Applies to “dwelling units” – i.e., structures, not slips
- Sneak-a-boards

# Tips to Help Your Ports

- Review and update Moorage Agreements and Marina Rules & Regulations
- Immediately take action to address sneak-a-boards
- Take advantage of Port authority in RCW 53.08.320 and Chapter 79.100
- Where appropriate, seek exemptions of Port facilities from local regulations concerning residential tenant protections

# Questions / Discussion

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