



EVICTION RESOLUTION PROGRAM(ERP)*

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*Not to be confused with ERAP for rental assistance.

SOURCES OF AUTHORITY/INFORMATION

- SB 5160 Section 7 and Section 4
- The implementing standing Order from your local Superior Court
- Guidance/Information from the Office of the Administrator for the Courts (OAC)
- Local Superior Court websites and forms

SCOPE OF THE ERP

- The program began in 6 counties
 - King
 - Clark
 - Pierce
 - Thurston
 - Snohomish
 - Spokane
- It *MAY* expand to any other county in the state dependent on:
 - Funding from OAC
 - Buy in from the local superior court-via a local order

ADOPTING THE ERP IS NOT MANDATORY!

SCOPE OF THE ERP

- After the moratorium ends participation by landlords is mandatory for non-payment of rent cases in any county with a program. This includes defaults on repayment plans.

(See SB 5160 Sections 7(2), 7(5), 4(2))

- There is no fee to the parties for participating in dispute resolution. Fees will be paid by the OAC.

CASE HANDLING-NOTICES

- Landlord must send a notice of the ERP, in addition to but concurrent with the 14 day notice to pay or vacate, to the tenant and to the local DRC.
- DRCs may then send additional notices to the tenant (or will call the tenant if they have a number.)

TENANT PARTICIPATION

- Tenant participation is voluntary
- DRCs will try to reach tenants to obtain their participation (3x w/in 14 days) (not in statute-See OAC flowchart)
- If tenant does not respond within the 14 days- DRC will issue certification and LL may file a UD
- DRCs will refer tenants to HJPs/local providers for legal assistance/rental assistance

DRC CASE HANDLING PROCESS*

- Step 1: Landlord sends the notice to tenant and DRC
- Step 2: DRC will attempt to contact the tenant
- Step 3: If tenant responds, DRC will attempt to reach a resolution over the phone using telephone conciliation
- Step 4: If no agreement is reached tenant will be given the option to mediate
- Step 5: If tenant agrees to mediate a mediation will be held
- Step 6: DRC will issue a certification following mediation or at any point at which the tenant fails or refuses to participate.

*Process may differ in each jurisdiction- in some jurisdictions DRC's may also offer a meet & confer option.

TELEPHONE CONCILIATION V. MEET & CONFER & MEDIATION

- Telephonic conciliation will work well for cases where a tenant is now able to make a full rental payment plus $1/3$ of a month's payment for past due rent.
- Telephonic conciliation provides fewer options to insure knowledge, understanding and fairness. Tenants may want to ask for mediation for that reason.
- Face to face meetings offer the best opportunity to convince the other side to reach an agreement both parties can keep and that is less than $1/3$ of a month's rent.
- Face to face meetings are likely best to negotiate a move out option that gives the tenant time to find new housing.

CERTIFICATION

- The DRC issues a certification noting either that an agreement was reached, or mediation was declined, or a mediation occurred but no agreement was reached
- The certification must set forth the agreement, or if no agreement was reached, it may note the last best offer made by each of the parties. (OAC Q&A guidance)
- “A landlord must secure a certification of participation with the eviction resolution program by the appropriate dispute resolution center before an unlawful detainer action for nonpayment of rent may be heard by the court.”
- Certification does not generally speak to good faith participation of the parties or the reasonableness of any offer(see certification forms).

CURRENT LOCAL ORDERS AND FORMS

- Each County has its local orders online, and many of its forms.
- These may change as the program develops and moves into the mandatory phase- so double check, or as orders expire and need to be renewed.
- Not all orders are the same, and not all the forms are the same, so look for those specific to each jurisdiction.

CONFIDENTIALITY AND PRIVILEGE

- Statements made during this process are generally confidential and privileged, and may not be revealed in court without permission of the participants- except the terms of any agreement reached.
- Landlords and Tenants may need to give permission for the last offer of each to be included in the certification (unless local court order requires it).

INFORMED DECISION-MAKING

Power and knowledge imbalances

- DRC Mediators are generally trained to balance power using various techniques.
- Legal Information from WashingtonLawHelp is available for anyone and can help balance the knowledge of the parties.
- Mediators should ask both tenants and landlords what they think is likely to happen if they don't reach an agreement, and what the best and worst possible outcomes are likely to be for each.

Legal representation and involvement in mediation

- Right to Counsel does not apply until a UD has been filed- so RTC attorneys presumably will not be handling these mediations.
- Legal services providers are still determining who will be available to advise/represent tenants in the telephone conciliation and mediation processes- capacity will likely be limited.

CONNECTING TO RENTAL ASSISTANCE OPTIONS

- DRCs will help tenants or landlords connect to local programs administering rental assistance dollars.
- Those programs should contact their local DRC to discuss referral mechanisms, points of contact, logistics etc...

HOW TENANTS CAN BEST USE MEDIATION

- Bring the landlord to the table
- Document an unreasonable offer or offer that violates the statute
- Mediator can help remind the parties of the law and what is reasonable
- Mediation will give T more time to obtain funds from rental assistance or other sources-or to find other housing.
- Negotiating an exit is always an option.

TENANT CAUTIONS

- Tenants must respond within 14 days of the first notice;
- Tenants must show up for their appointments and answer their phone calls from the DRC;
- Mediators will require respectful communication-remain respectful.
- Tenants need information on what a LL cannot demand (ie. late fees, threats of collection, attorney fees, limits on repayment plans)
Washingtonlawhelp.org will have that information;
- Tenants should only agree if they understand what they are agreeing to;
- Tenants should only agree to a payment plan they know they can keep;
- If an offer is too high, explain WHY with specifics, and ask for a lower payment;

TENANT CAUTIONS

- Agreements may NOT include provisions or be conditioned on:
 - a. The tenant's compliance with the rental agreement
 - b. Payment of late fees, attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the rental agreement;
 - c. A requirement that the tenant apply for governmental benefits or provide proof of receipt of governmental benefits; or
 - d. The tenant's waiver of any rights to a notice under RCW 59.12.030 or related provisions before a writ of restitution is issued-this means the LL should not demand the right to file an eviction or a writ of restitution without new notice to the tenant.
- SB 5160 implies that 1/3 of a month's rent is generally reasonable;

STATUTORY RESTRICTIONS ON AGREEMENTS

- SB 5160 Section 3
 - May not charge or impose late fees or other charges against any tenant for the nonpayment of rent that became due between March 1, 2020, and six months following the expiration of the eviction moratorium (December 31, 2021)

STATUTORY RESTRICTIONS ON AGREEMENTS

- SB 5160 Section 4
 - Covers period from March 1 2020 through at least December 31 2021, or the end of the public health emergency, whichever is later.
 - LL must offer a reasonable repayment plan for unpaid rent of no more than 1/3 the monthly rental charges during that period.

STATUTORY RESTRICTIONS ON AGREEMENTS

■ SB 5160 Section 4 continued:

Repayment plans must:

- 1. Not require payment until 30 days after the repayment plan is offered to the tenant;
- 2. Cover rent only and not any late fees, attorneys' fees, or any other fees and charges;
 - Note these other charges may still be owed by T but can't form the basis for an eviction.
- 3. Allow for payments from any source of income including pledges by nonprofit organizations etc..., and
- 4. Not include provisions or be conditioned on:
 - a. The tenant's compliance with the rental agreement
 - b. Payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the rental agreement;
 - c. A requirement that the tenant apply for governmental benefits or provide proof of receipt of governmental benefits; or
 - d. The tenant's waiver of any rights to a notice under RCW 59.12.030 or related provisions before a writ of restitution is issued.

REFUSALS TO ENTER INTO A REASONABLE REPAYMENT PLAN

- Last best offer of both parties may be provided to the court as part of certification-a tenant may use this to prove failure of LL to meet requirements of the legislation regarding a reasonable repayment plan.
 - That means the tenant must ensure the mediator accurately notes the last best offer of both parties. Ask the mediator to go over exact wording of last best offer prior to closing any mediation.
 - SB 5160 Section 4(4) “It is a defense to an eviction under RCW 59.12.030(3) that a landlord did not offer a repayment plan in conformity with this section.”
- A tenant refusal to accept an offer may also be noted. Tenants should be ready to explain why they did not accept, such as lack of understanding, inability to pay, improper terms etc...