

EMERGENCY COVID-19 PILOT EVICTION RESOLUTION PROGRAM (ERP)

Since February 2020, nearly one million people in Washington state lost their jobs or have had employment hours severely curtailed because of the COVID-19 emergency. This mass loss of income coupled with substantial barriers in accessing state and pandemic unemployment insurance has made it impossible for many families and individuals (tenants) to keep current in rental payments.

Recognizing the risk of mass evictions flowing from the COVID-19 emergency, federal, state, and local governments began enacting moratoria on evictions. These moratoria continue to operate, effectively denying landlords access to the only legal means of removing tenants for failure to pay all or part of their rents – the unlawful detainer process. The most recent extension of Governor Inslee’s eviction moratorium ([Proclamation 20-19.4](#)) is scheduled to expire December 31, 2020.

In recent months, state and local rent assistance programs – funded with emergency federal, state, local, and philanthropic funds – have been established with the objective of preserving tenancies threatened due to the non-payment of rent and providing some level of relief to landlords for whom tenants have fallen farther and farther behind in their rental payments.

Between April and August 2020 in accordance with various emergency orders promulgated by the Washington State Supreme Court and local court orders, trial courts suspended the majority of their in-court operations, stayed civil and criminal trials, established off-site virtual operational capacities, and focused judicial functions on the most critical and emergent judicial proceedings. In virtually every trial court, the disruption of court processes created lengthy backlogs of civil, criminal, juvenile, and child welfare trials. It will take these courts months to catch up.

The Residential Landlord-Tenant Act (RCW 59.18) and the Unlawful Detainer statute (RCW 59.12) set forth accelerated processes by which landlords can secure return of their property when tenants fail to pay their rent on time. The statutes employ compressed timelines designed to facilitate early review and determination by a judicial officer of a landlord’s claimed right to retake possession. In normal times, unlawful detainer proceedings are given priority status.

Recognizing the threat of mass unlawful detainer filings and the courts' inability to timely process them at a time they are digging out from the backlog of stayed civil, criminal, juvenile, and child welfare trials (and other proceedings placed on the back burner), the Superior Court Judges' Association (SCJA) established the Unlawful Detainer Work Group (UD Work Group). SCJA President Judith Ramseyer invited representatives of statewide rental housing associations, civil legal aid housing justice programs, local housing authorities, county clerks, and the courts to (a) provide training for judicial officers on recent changes to the unlawful detainer process; and (b) develop tools, bench cards, supporting materials, and possibly model court rules to facilitate the timely and fair resolution of unlawful detainer cases once the moratoria are lifted. The UD Work Group is chaired by Benton-Franklin Counties Superior Court Judge Jacqueline Shea-Brown.

During the course of its deliberations, Chief Justice Stephens and Judge Ramseyer invited the UD Work Group's members to consider the possibility of designing an eviction resolution system that might divert substantial numbers of cases away from overwhelmed, overburdened, and understaffed courts in ways that work to the mutual benefit of tenants and landlords. The UD Work Group embraced the challenge and quickly achieved consensus around the framework of a pilot Eviction Resolution Program (pilot ERP) that, if funded, would operate in the six Washington State counties that collectively see almost 80% of annual unlawful detainer filings.¹

COMPONENTS OF THE PILOT EVICTION RESOLUTION PROGRAM

Each pilot ERP will operate in accordance with (a) an enabling order from the Washington State Supreme Court, and (b) a standing order of the local superior court. These orders will require landlords to undertake efforts to engage tenants in resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation prior to filing an unlawful detainer action. The objective is to bring all parties to the table, with the assistance of qualified and trained Eviction Resolution Specialists, to explore the amount of rent arrears, the current and prospective circumstances of the tenant, the availability of rent and other assistance to cure or partially cure the arrearage, and the range of other terms that might resolve the matter in a way that allows the tenant to retain housing (and prevent the landlord's need to file an unlawful detainer action).

¹ Designated pilot counties include King, Snohomish, Pierce, Thurston, Clark, and Spokane.

Principal parties and their roles include:

- **Washington State Supreme Court:** Issue an enabling order for the courts in the six pilot counties.
- **Superior Courts** in each of the six pilot counties: Adopt a standing order mandating that landlords: (a) comply with the Pilot ERP, including Tier 1 and Tier 2 notification and engagement processes, prior to serving and/or filing a summons and complaint for non-payment of rent after expiration of the state eviction moratorium; and (b) file the DRC Certification form if and as applicable at the time of filing a summons and complaint for non-payment of rent. The standing order will also designate the judicial officer(s) who will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERP.
- **Local Dispute Resolution Centers (DRCs):** Hire and train Eviction Resolution Specialists (ERS's); receive landlord notices, engage tenants, civil legal aid attorneys associated with local Housing Justice Projects, administrators of local rent assistance programs, and others as necessary to commence early resolution of nonpayment of rent and related issues; provide conciliation and, where agreed upon by both parties, mediation; and issue a Certification form which will be required before a landlord may serve and/or file a summons and complaint for non-payment of rent after the state moratorium is lifted; and post the ERP materials and forms on their websites (if available).
- **Civil legal aid Housing Justice Projects (HJPs):** Receive notices from landlords, DRCs, or others; provide legal assistance to tenants participating in the Pilot ERP; participate in DRC-hosted conciliation and mediation services; and post the ERP materials and forms on their website (if available).
- **Washington State Office of Civil Legal Aid (OCLA):** Provide funding for civil legal aid HJPs in each of the pilot counties.
- **Washington State Administrative Office of the Courts (AOC):** On behalf of each pilot county's superior court, enter into a contract with Resolution Washington, the statewide umbrella organization for DRCs in Washington State. Funding will underwrite ERP operations at the DRCs in each of the pilot counties, including intake, conciliation, and mediation services, public outreach and awareness of the pilot ERP, interpreter

services, and translation of ERP forms into the languages deemed to be most useful given the demographics of the county, *e.g.* Spanish, Russian, Chinese, Korean, and Vietnamese.

While the pilot ERP establishes mandatory conditions precedent to service and/or filing of a summons and complaint for non-payment of rent in the participating counties when the moratoria are lifted, it is the intent of the UD Work Group and the superior courts in the pilot counties that landlords and tenants engage the pilot ERP even while eviction moratoria remain in place. Early resolution will help achieve better outcomes and should substantially reduce the anticipated demand on superior courts when these moratoria are lifted.

Because the pilot ERP will be underwritten initially with federal Coronavirus Relief Funds (CARES Act), it will terminate (along with CARES Act funded rent assistance programs) on December 30, 2020. The UD Work Group will continue to work with the Washington State Supreme Court, the Administrative Office of the Courts, the Office of Civil Legal Aid, the Superior Court Judges' Association, the Office of Financial Management, and legislative budget writers as necessary and appropriate to ensure ERP services are available when the current statewide eviction moratorium expires.