

EVICTION RESOLUTION PILOT PROGRAM GUIDE

I. POLICY STATEMENT

The Dispute Resolution Center of Thurston County (“DRC”) was incorporated in 1990 and has been providing structured, interest-based conflict resolution services to Thurston and south Mason counties since 1991. This policy addresses DRC services as applied to the statutory Eviction Resolution Pilot Program (“ERPP”) as passed by the Washington State Legislature in SB 5160, and the enabling resources.

II. OVERVIEW and SUMMARY

ERPP is designed to reduce the number of unlawful detainer actions for nonpayment of rent that would otherwise be filed in Superior Court after the end of the eviction moratorium created in response to impacts from the global Covid-19 pandemic. This is accomplished by leveraging the history, skills and experience of the DRC, along with federal and state coronavirus relief funds distributed via rental assistance organizations, as well as additional referral services that increase opportunities for impactful legal representation for tenants and landlords before court filing.

Effective ERPP implementation requires consistent coordination and collaboration among the DRC, rental assistance agencies and civil legal aid services, along with consistent coordination and collaboration with the judicial officers and staff members charged with implementing and administering ERPP. As of July, 2021, Rebekah Zinn is the Court Commissioner designated to work with relevant stakeholders on the implementation and ongoing administration of ERPP in Thurston County.

Tenants and landlords have been working with the DRC voluntarily during the eviction moratorium through a judicially created program stemming from an order issued by the Washington Supreme Court, confusingly also called the Eviction Resolution Program (ERP). For clarity, this document refers to the judicial program during the moratorium as ERP, and the statutory program, effective as the statewide moratorium lifts, as ERPP. These programs are also distinguished as the voluntary (moratorium) ERP program and the mandatory (post-moratorium) ERPP program.

III. CONFIDENTIALITY AND PRIVILEGE

The DRC operates under state laws governing mediation. All case-related DRC communications are privileged under the state’s Uniform Mediation Act, [Chapter 7.07 RCW](#). Under the act, mediation

communications may not be disclosed in any legal proceedings unless they come within an exception under the Act.

Any information that may come up during case-related DRC communications about abuse of a minor, elder, or person with a disability is not confidential or privileged. The DRC will report any such information to the proper authorities as required by law.

The DRC may disclose to proper parties whether conciliation, meet and confer, or a mediation session was scheduled, if it actually happened, who attended, and whether or not an agreement was reached. Information about conciliation, meet and confer, and mediation sessions may be used anonymously for research and educational purposes.

Any DRC staff member, conciliator, mediator or observer shall not be subpoenaed to testify or to produce records, notes, or work product in any current or future legal proceedings.

IV. SCOPE OF PRACTICE

The DRC provides interest-based conciliation and mediation services that empower disputants to reach their own informed and mutually-acceptable settlement agreements. DRC conciliators and mediators are impartial facilitators; as such, they facilitate dialogue, define issues, clarify situations, explore interests, and support the development of options for resolution.

DRC conciliators and mediators do not evaluate information or arguments for truth or accuracy. They do not serve as advocates for one side or another, and they do not give legal or financial advice or interpret the law.

DRC Community Resource Navigators can provide information and referrals for financial and other resources that may be used by parties as they see fit to resolve the dispute. With the proper signed release of confidential information, the navigators can provide updates on rental assistance case status, as well as assist parties in accessing resources and finalizing applications.

V. DEFINITIONS

All DRC services are structured, voluntary and confidential in nature.

Intake is a process where parties are oriented to DRC services and to the scope and purpose of ERPP. Intakes are conducted by a DRC Conciliator by phone, who will offer appropriate referrals and help parties to determine procedural next steps.

Conciliation is a mediated negotiation where the DRC Conciliator acts as an impartial go-between and facilitator. Conciliation can be conducted by phone, email, SMS text message, or USPS first class mail. Conciliation can facilitate a partial or full written agreement, or can prepare parties for mediation when necessary.

Mediation and “Meet and Confer,” are processes where mediators, acting as impartial facilitators, work with parties in scheduled negotiation sessions wherein procedural next steps and/or mutually acceptable and informed settlement agreements are reached and agreed to by all parties. Meet and confers occur in a clinic setting.

We reserve the right to determine what service is most appropriate at any given time.

VI. ERPP PROCESS – BALANCING TIME CONCERNS

The DRC is committed to conducting its work with all deliberate speed, and to communicating response times, progress, delays and other relevant information to all parties throughout the engagement. To promote equity for our clients and staff well-being during the period of peak volume, we communicate status updates on active cases within 1 business day of new information received and respond to requests for status updates on current cases within 3 business days.

14 Day Period Activity Summary: Under the statute and the local standing order, ERPP begins with the landlord serving the tenant and sending to the DRC a 14-day Notice to Pay or Vacate (14-Day Notice) and the Singular Mandatory ERPP Notice and Resource Information (“ERPP Notice”).

The 14-day period offered by the ERPP Notice provides a timeframe for the tenant to contact the DRC by phone or in writing, and to confirm that they will participate in the program in good faith, or to decline participation.

Day of Notice	DRC Activity	Potential Outcomes	Additional Resources
Day 0	DRC receives the 14-Day Notice and the ERPP Notice from the landlord and reviews to confirm the 14-Day Notice has included complete and useful contact information for the tenant or tenants.	If the Notice does not have complete and correct contact information for the tenant, per the local standing order, DRC will inform the landlord of the need for complete and correct contact information and request a new Notice be served before commencing ERPP.	
Days 1 - 14	DRC strives to contact the tenant(s) to offer ERPP services and to connect the tenant(s) to rental assistance and/or legal services, as appropriate.	The DRC will make 3 attempts to reach the tenant(s) during the 14-day period using the provided contact information, by means that may include phone call, email, SMS text	

		message and/or USPS first class mail.	
	If the DRC reaches the tenant and the tenant accepts ERPP services, the DRC conducts an intake process of both the tenant and the landlord	DRC delivers conflict coaching, conciliation services and supporting services to advance the dialogue between tenant and landlord, helping them move forward toward achieving resolution of their conflict.	
	If the DRC was able to contact the tenant(s) and the tenant(s) refuse(s) ERPP services, the DRC will issue a Certificate, send it to both parties, and close the case.	In this case the Certificate will be issued within one business day of the date the tenant refused services.	
	If the DRC was able to contact the tenant but was unable to offer services (due to needs beyond the DRC's capacity -- <i>for example</i> , the tenant's ability to communicate with the DRC staff, for reasons other than language accessibility (<i>e.g.</i> , inability to focus on the questions asked), the DRC will issue a Certificate, send it to both parties, and thereafter close the DRC's case file.	In this case the Certificate will be issued within 1 business day of the date the DRC discovered the structural limitation and the Additional Information on the Certificate will note the additional resources needed to fully serve the client.	
Day 14 - 15 (Within one business day after the "respond by" date on the 14-day Notice to Pay or Vacate)	If DRC was unable to make contact with the tenant(s), the DRC will issue a Certificate, send it to the parties, and thereafter close the DRC's case file.		

	If the DRC was able to contact the tenant(s) and the tenant(s) refuse(s) ERPP services, the DRC will issue a Certificate, send it to the parties, and close the case.		
	If the DRC was able to contact the tenant(s) but was unable to offer services (due to a structural limitation), the DRC will issue a Certificate, send it to the parties, and thereafter close the DRC case.		
After 14 Days	If the Tenant(s) is/are engaged in the ERPP process, the DRC will continue to work with them via conciliation and may schedule a Meet and Confer and/or Mediation session for the first available date on the DRCs calendar.	Between the date the tenant(s) agree(s) to participate in ERPP and the Meet and Confer or Mediation session, the DRC will continue to provide conflict coaching, conciliation services and supporting services to advance the dialogue between tenant and landlord, helping them move forward toward achieving resolution of their conflict.	

VII. ENCOURAGE TENANTS AND LANDLORDS TO SEEK AND SECURE LEGAL ADVICE AND/OR REPRESENTATION

The DRC encourages tenants and landlords to seek legal advice and representation for ERPP services in order to know their rights and privileges. The DRC provides tenants with referrals and an opportunity to seek legal advice and/or representation through the local Housing Justice Project (HJP) or Northwest Justice Project (NJP). The DRC provides the landlord with referrals to the Thurston County Bar Association’s website, the Washington State Moderate Means Program and/or walawhelp.org so they may have the opportunity to seek legal advice and/or representation through local agencies or firms

offering such services. Tenants and landlords may also, of course, secure private representation (fee-based or pro bono).

VIII. ENCOURAGE TENANTS AND LANDLORDS TO SEEK AND SECURE RENTAL ASSISTANCE AND/OR OTHER COMMUNITY RESOURCES

The DRC encourages tenants and landlords to seek rental assistance, landlord mitigation and relief programs, and any other community resources that can be utilized to resolve the unpaid rent debt and provide housing stability. The DRC provides tenants with referrals to Community Action Council, Community Youth Services, one of their respective by and for partners, and/or charitable organizations to apply for rental and utilities assistance funds. The DRC provides landlords with referrals to the Dept. Of Commerce's landlord fund programs. The DRC Community Resource Navigator assists in tracking the status of tenant applications and facilitating timely submission of all necessary information to complete the application.

IX. SCHEDULING MEDIATION/MEET AND CONFER; ADDRESSING TENANT AND/OR LANDLORD SECURING LEGAL REPRESENTATION AFTER MEDIATION/MEET AND CONFER IS SCHEDULED

When appropriate, the DRC offers to schedule Mediation/Meet and Confer sessions at tenant intake, and the case file notes if the tenant (and/or landlord, if not already represented) is pursuing legal representation. The DRC recognizes that if the tenant and/or landlord later secures counsel, the Meet & Confer date may be rescheduled based upon the availability of the parties' attorney(s) because the attorney had not been secured at the time of intake. If both the landlord and the tenant are represented by counsel, the DRC directs both parties to identify a date and time for the Mediation/Meet and Confer session that is available on the DRC's calendar.

X. PARTIES WHO HAVE COUNSEL

Prior to and at the onset of an ERPP engagement, frequently one party (the landlord) has retained legal counsel while another party (the tenant) has not. The purpose of this policy is to support ethical and equitable engagement during the ERPP engagement for all parties.

If a party is represented, the DRC must initially speak with both the client and the client's attorney. The DRC will communicate only with the attorney, if put in writing at the direction of the client. The DRC will communicate only with the client if the attorney (for reasons of efficiency, managing costs to their client, or any other reason) notifies the DRC **IN WRITING** via email or other written document. Such direction from the attorney should indicate whether they wish to be copied on email correspondence with their client.

Whether or not a party (landlord or tenant) has representation, the landlord and tenant must themselves attend any conflict resolution session facilitated by the DRC (Meet & Confer, Mediation). The

parties may bring, but are not required to bring, their attorney to these sessions. Attorneys in DRC Mediations are expected to abide by the DRC's policy on Support Persons in Mediation Sessions (see section XI below).

XI. LANDLORD'S AUTHORIZED REPRESENTATIVE

When a landlord manages their property through another (for example, a property manager or property management company), and, if the landlord wishes their representative to perform as the landlord in the ERPP process, the landlord must provide written confirmation, via email or other written document, that their representative is acting on their behalf and is authorized to negotiate and reach agreement on the landlord's behalf, in a manner substantially similar to this:

_____ (Landlord(s)) authorizes _____ to represent my/our interests in the eviction resolution pilot program (ERPP) process. I/We understand that representing my/our interests includes the authority to share all relevant information, negotiate openly and freely, and come to agreements with the tenant(s). My representative understands the limits of negotiating power (my/our limits or limitations) and I agree to be available by phone in the event my representative wishes to contact me during negotiations, if needed, to clarify or request to exceed any limit or limitation.

XII. MULTIPLE TENANTS

If more than one person is identified as a tenant on the 14-Day Notice to Pay or Vacate, each will be treated as a separate party in the ERPP process. If multiple tenants wish to authorize one tenant to serve as their authorized representative in the ERPP process, each tenant who wishes this must provide written confirmation, via email or other written document, that their representative is acting on their behalf and is authorized to negotiate and reach agreement on their behalf, in a manner substantially similar to this:

_____ (Tenant(s)) authorize(s) _____ (another Tenant) to represent my/our interests in the eviction resolution pilot program (ERPP) process. I/We understand that representing my/our interests includes the authority to share all relevant information, negotiate openly and freely, and come to agreements with the landlord. My/our representative understands my/our limits or limitations on this power and I/we agree to be available by phone in the event my/our representative wishes to contact me/us during negotiations, if needed, to clarify or request to exceed any limit or limitation.

XIII.SUPPORT PERSONS IN MEDIATION SESSIONS

The DRC facilitates interest-based mediation where parties to a dispute are empowered to negotiate their own mutually-acceptable and informed settlement agreements. To maintain the integrity of this process, the DRC must ensure the interested parties themselves remain in control of their participation in the conflict resolution process and its outcome.

Parties to a mediation may request a Support Person be present during the mediation session. DRC ERPP policy states that Support Persons:

- Must be approved by all parties to the mediation prior to the mediation session date;
- Do not speak for the party;
- May caucus with the party throughout the process to review information, talk through proposals and provide other perspective and support *when initiated by the party*;
- Support people should:
 - Remember the mediating party is responsible for living up to the agreements they create so suggestions and ideas that would work for them may not be the best choices for the party.
 - Remember that their participation should contribute to the positive working environment mediation creates. This includes a willingness to be present in good faith, openness to the parties finding a mutually agreeable solution to the problem, and willingness to abide by rules of common courtesy.
- If the mediators and all parties agree, they may, at some point after the opening statements, take part in the general discussion.

Additional information for Support People:

- All information shared during mediation is considered private and confidential. All notes taken during the process will be collected and shredded. Any formal agreements will be put into writing by the mediators and copies distributed to the parties.
- You will be required to sign an **Agreement to Mediate** prior to the mediation session in order to participate in the mediation. This agreement indicates your willingness to abide by the rules and guidelines of mediation and will be signed by the mediators, clients, support people and any others who participate in the mediation.

XIV. MEET AND CONFER AND/OR MEDIATION ATTENDANCE and ISSUING OF CERTIFICATION

The DRC will confirm with all parties and their attorneys, if any, the date and time of any Meet and Confer and/or Mediation session not less than 3 days before the scheduled session.

Attendance expected: All parties are expected to attend the Meet and Confer and/or Mediation session. If the parties resolve the case among themselves before the Meet and Confer and/or Mediation session, the parties are expected to inform the DRC in writing or by phone that they have resolved the case and

request the DRC cancel the scheduled Meet and Confer and/or Mediation session. The DRC will then close the case file.

Method of attending: The attendance expectation is defined by the method of Meet and Confer and/or Mediation session scheduled - in-person, telephonic and/or video conference. Recognizing that multiple participation avenues in a joint session can disrupt conflict resolution, if a party or representative, including an attorney for a party, wishes to participate in an in-person session via remote means (*e.g.*, phone or video conference), this must be agreed upon among all participants in advance of the session.

No Call/No Show: If the DRC does not receive a written request to cancel the Meet and Confer and/or Mediation session, and neither party attends, the DRC will notify the parties of the missed session and reschedule to another available date and time for a Meet & Confer and/or Mediation session. No Certificate will be issued.

Landlord attends, but tenant does not: If the landlord attends but the tenant does not, the tenant will have 2 business days to respond to the DRC to explain their absence and reschedule to the closest available date and time for a Meet & Confer and/or Mediation session. If the tenant fails to contact the DRC within 2 business days, unless the landlord directs otherwise, the DRC will issue the Certificate to all parties within 1 business day and thereafter close the DRC case file.

If the landlord attends the rescheduled session but the tenant does not, unless the landlord directs otherwise, the DRC will issue the Certificate to all parties within 1 business day and thereafter close the DRC case file.

Tenant attends, but landlord does not: If the tenant attends but the landlord does not, the DRC will notify the parties of the landlord's failure to attend and reschedule to another available date and time for a Meet & Confer and/or Mediation session. No Certificate will be issued.

If the tenant attends the rescheduled session but the landlord does not, no Certificate will be issued and the DRC will thereafter close the DRC case file.

XV. ERPP PROCESS – INTAKE

Intakes are conducted when a DRC Conciliator first speaks to a party (tenant or landlord) or party's verified representative by phone, or by electronic or written communication in cases of disability or limited phone access.

The DRC Conciliator confirms with each party that all information provided to date is complete and accurate. Parties are oriented to DRC services and to the purpose and scope of ERPP.

Landlords are asked to submit a complete and accurate tenant ledger, and given the opportunity to make a first offer of repayment to their tenant using the Landlord Reasonable Repayment Offer form. The DRC Conciliator will offer a referral to legal resources for advice and/or representation.

Tenants are asked specific questions intended to help them accurately represent why they were unable to pay rent during the eviction moratorium, and encouraged to assemble any relevant documents that demonstrate loss of income, increase in necessary expenses, or other forms of hardship that may be considered by parties in negotiation. The DRC Conciliator will offer a referral to legal resources for advice and/or representation. The DRC Conciliator may also assist the tenant in making an appointment to apply for rental assistance funds, or refer them to other community resources intended to help resolve the unpaid rent debt or provide housing stability.

Both parties are offered the opportunity to schedule a Meet & Confer to briefly speak to their perspective in the dispute, and to reach a negotiated agreement about procedural next steps.

XVI. ERPP PROCESS – CONCILIATION

Conciliation begins when parties or their representatives agree to negotiate a first offer of repayment through a DRC Conciliator who acts as an impartial go-between and facilitator. All parties are informed of the DRC's definition of good faith negotiation, and asked to confirm that they are willing and able to abide by this minimum expected standard going forward.

Conciliation can be conducted by phone, email, SMS text message, and/or USPS first class mail. The DRC Conciliator will provide conflict coaching and other resolution strategies intended to help each party create their own best offer that may lead to a mutually acceptable and informed settlement agreement.

The DRC Conciliator will communicate or transmit one party's offer to the other, and provide them an opportunity to respond. Each party has 3 business days to accept the offer or submit a counter offer by phone or email; 6 business days by USPS 1st class mail. If a tenant fails to respond to an offer verbally or in writing in 3 business days (6 days by USPS 1st class mail), or if they reject an offer without submitting a counter offer, unless the landlord directs otherwise, the DRC will issue the Certificate to all parties within 1 business day and thereafter close the DRC case file.

Parties are encouraged to make all offers and counter offers in writing as much as possible. The DRC Conciliator will transmit all offers or counter offers to the other party within 2 business days.

After each offer/counter offer cycle, the DRC Conciliator will give the parties an opportunity to schedule a mediation session. Parties will be expected to schedule a mediation after 2 offer/counter offer cycles unless they both choose to voluntarily continue the conciliation process.

XVII. ERPP PROCESS – MEDIATION

Mediation is a structured, voluntary, confidential process where mediators, in pairs, act as impartial facilitators to formal, scheduled negotiation sessions wherein mutually acceptable and informed settlement agreements are reached and agreed to by all parties. Mediators are not judges, jurors, lawyers or therapists, but are instead impartial facilitators; as such, they facilitate dialogue, define issues, clarify situations, explore interests, and support the development of options for resolution.

All parties to the mediation must be able to comprehend and be willing to use the third-party role of the DRC in order for mediation to proceed. Parties with impaired mental or emotional functioning are often unable to enter into productive negotiating.

XVIII. WITHDRAWAL OF DRC SERVICES

All parties are expected to engage with DRC staff and volunteers using common courtesy. The DRC will withdraw services if either party is unable to abide by this base-line expectation, directs abusive language towards DRC staff or volunteers, or is, for other reasons, unable to engage DRC services in a productive manner.

XIX.ACCESS TO DRC SERVICES

The DRC is committed to provide access to all members of our community by:

Serving persons with limited English proficiency

The DRC provides bilingual (English/Spanish) accessibility for DRC clients, including:

- Bilingual Case Support Specialist(s) to provide access to services and information;
- A designated phone number extension (extension 150) for Spanish speakers;
- Forms, documents, and written information in Spanish and English;
- A website that has a Spanish version of the programs and other information;
- DRC staff and volunteers use online interpreter resources for all other language needs.

Serving persons with disability:

- The DRC staff makes every effort to adjust and find pertinent solutions within the scope and capacity of the organization to provide the services and information to persons with disability;
- The DRC building is wheelchair accessible.

Serving persons with limited access to technology:

The DRC staff works with clients to assist them with technology needs which could include:

- Scheduling appointments to access rental assistance and/or other community services;

- Providing “tech intakes” to orient clients’ access to online platforms that may be used in the ERPP process;
- By late 2021 the DRC will have tech rooms available for clients who otherwise would not have access to computers/Wi-Fi when it is needed to engage the ERPP process;
- Sending initial information via USPS 1st Class Mail;
- Using text to communicate initial and non-confidential information.