**SUPERIOR COURT JUDGES ASSOCIATION**

**PILOT UNLAWFUL DETAINER 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. Some local moratoria have been extended through December 31st, while the Governor’s emergency moratorium is currently slated to expire October 15, 2020.[[1]](#footnote-1)

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 July 2020 in accordance with various emergency orders promulgated by the Washington State Supreme Court and local court orders, trial courts ceased 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 that will take months from which to dig out.

The Residential Landlord-Tenant Act (RCW 50.18) and the Unlawful Detainer statute (RCW 50.12) 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.

The most recent extension of Governor Inslee’s eviction moratorium ([Proclamation 20-19.3](https://www.governor.wa.gov/sites/default/files/proclamations/20-19.3%20Coronavirus%20Evictions%20%28tmp%29.pdf)) is scheduled to expire October 15, 2020. Recognizing the threat of mass unlawful detainer filings and the courts’ inability to timely process them while, at the same time, 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 landlord associations, civil legal aid housing justice programs, local housing authorities, 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 moratorium is lifted. The UD Work Group is chaired by Benton-Franklin Counties Superior Court Judge Jackie 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 seven Washington State counties that collectively see more than 80% of annual unlawful detainer filings.[[2]](#footnote-2)

**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 pre-filing resolution efforts including direct negotiation, facilitated conciliation services, and, upon agreement of both parties, formal mediation. 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 avoid the need for filing of an unlawful detainer action).

Principal parties and their roles include:

* **Washington State Supreme Court**: Issue an enabling order for the courts in the seven pilot counties.
* **Superior Courts** in each of the seven pilot counties: Adopt a standing order mandating that: (a) landlords 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; (b) file the DRC Certification form if and as applicable at the time of filing a summons and complaint for non-payment of rent; and (c) designates the judicial officer(s) that 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 (DRC’s)**: Receive landlord notices, engage tenants, civil legal aid 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, the issuance of which is a condition precedent to the landlord’s authority to serve and/or file a summons and complaint for non-payment of rent; and post the ERP materials and forms on their website (if available);
* **Civil legal aid Housing Justice Projects**: Receive notices from landlords, DRCs, or others; engage and provide legal assistants 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**: Provide funding for civil legal aid DRCs to assist and represent tenants in each of the pilot counties; contribute to the costs of DRC intake, conciliation, and mediation services; and post the ERP materials and forms on their website (if available);
* **Washington State Administrative Office of the Courts**: On behalf of each pilot county’s superior court, enter into a contract with the local DRC to reimburse that program for expenses associated with the DRC’s duties under the pilot ERP; contribute to the costs of DRC intake, conciliation, and mediation services; help promote public awareness of the pilot ERP through media and outreach assistance; ensure that the relevant ERP materials and forms are made available on the courts.wa.gov website and that the Notice #1 and Notice #2 forms be translated into the languages deemed to be most useful, *e.g.* Chinese, Korean, Russian, Spanish 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, 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. All understand that 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 31, 2020. The UD Work Group hopes that additional federal and state resources will allow extension and expansion of the ERP to other counties and, ultimately, a permanent, state-wide ERP in each county.

1. In the most recent Proclamation extending the moratorium through October 15th, Governor Inslee established an informal Eviction Moratorium Work Group comprised of legislators and stakeholders (a number of whom serve on the SCJA UD Work Group) which is scheduled to meet for the first time on September 4, 2020. [↑](#footnote-ref-1)
2. Designated pilot counties include King, Snohomish, Pierce, Thurston, Clark, Yakima, and Spokane. [↑](#footnote-ref-2)