



SB 5160 – New Guidance

Definitions

Unlawful Detainer Action: eviction process against tenants who have failed to pay rent or have violated their lease. The landlord must follow this legal process to ask a court to restore their right to possess a rental unit.

Tenant Protections

For renters:

These protections apply to:

- Tenants protected by the Residential Landlord-Tenant Act
- Mobile home park tenants
- Individuals who were living in transient lodging, such as a hotel or motel or camping area:
 - For 30 days or more prior to March 1, 2020; or
 - For more than 30 days after March 1, 2020, unless they receive a 7-day eviction notice.

If you were unable to pay rent between March 1, 2020 and December 30, 2021:

- Your landlord may not charge you late fees or other charges for unpaid rent during that time period; and
- Your landlord may not report to a prospective landlord that you did not pay rent, or that an unlawful detainer action was filed against you, because you did not pay rent during that time period.

A prospective landlord may not hold it against you that you did not pay rent between March 1, 2020 and December 30, 2021, in considering your rental application.

A current or future landlord may not deny, discourage application for, or make unavailable any rental unit because of your medical history, including prior or current COVID-19 exposure or infection.

A current or future landlord may not request or consider your medical records or history, unless they are necessary to evaluate your request for a reasonable accommodation or reasonable modification.

If a landlord or prospective landlord violates the requirements above, you may sue them for the violation and get them to pay your attorneys' fees and court costs.

For landlords:

These protections apply to:

- Tenants protected by the Residential Landlord-Tenant Act
- Mobile home park tenants
- Individuals who were living in transient lodging, such as a hotel or motel or camping area:
 - For 30 days or more prior to March 1, 2020; or
 - For more than 30 days after March 1, 2020, unless they receive a 7-day eviction notice.

If a tenant was unable to pay rent between March 1, 2020, and until December 30, 2021:

- You may not charge late fees or other charges for unpaid rent during that time period; and
- You may not report to a tenant's prospective landlord that a tenant did not pay rent, or that you filed an unlawful detainer action because the tenant did not pay rent during that time period.

You may not hold it against a prospective tenant that they did not pay rent between March 1, 2020 and December 30, 2021, in considering their rental application.

You may not deny, discourage application for, or make unavailable any rental unit because of a current or prospective tenant's medical history, including prior or current COVID-19 exposure or infection.

You may not request or consider a tenant's or prospective tenant's medical records or history, unless necessary to evaluate their request for a reasonable accommodation or reasonable modification.

If you violate the requirements above, your tenant or prospective tenant may sue you for the violation and get you to pay their attorneys' fees and court costs.

Repayment Plans

For renters:

Repayment plans are available to:

- Tenants protected by the Residential Landlord-Tenant Act
- Mobile home park tenants
- Individuals who were living in transient lodging, such as a hotel or motel or camping area:
 - For 30 days or more prior to March 1, 2020; or
 - For more than 30 days after March 1, 2020, unless they receive a 7-day eviction notice.

If you have remaining unpaid rent that accrued between March 1, 2020 and December 30, 2021, your landlord must offer you a reasonable schedule for repayment of the unpaid rent. For the repayment schedule to be considered reasonable, your monthly payments under the repayment plan cannot be more than one-third of your monthly rental charges at the time you were unable to pay. For example, if your rent was \$1,500 per month during the pandemic when you were unable to pay, you may not be offered a repayment plan that requires you to pay more than \$500 per month (1/3 of your monthly rental charges) to get caught up.

If you do not accept the terms of a reasonable repayment plan within 14 days, your landlord may start legal proceedings in court to evict you (called an unlawful detainer action). Unlawful detainer cases require a special court process, and can move quickly through the court system. In some counties, the Eviction Resolution Pilot Program requires that your landlord take steps to reach an agreement with you regarding repayment of your unpaid rent before your landlord can file an unlawful detainer action against you.

A repayment plan must:

- Not require payment until 30 days after the plan is offered to you;
- Cover rent only, and not any late fees, attorneys' fees, or any other fees and charges;
- Allow for payments from any source of income, or from non-profit organizations, churches or religious organizations, or governmental entities; and
- Not be conditioned on:
 - Your compliance with the rental agreement;
 - Your payment of attorneys' fees, court costs, or other costs related to litigation if you default on the rental agreement;
 - A requirement that you apply for governmental benefits or provide proof that you are receiving or have received governmental benefits; or
 - Waiver of your right to receive an eviction notice, and notice and an opportunity to respond to an unlawful detainer action, before your landlord can obtain an eviction order against you (called a writ of restitution).

If you default on rent owed under a repayment plan, your landlord may apply for reimbursement from the Landlord Mitigation Program (see the bottom of this page) or proceed with an unlawful detainer action, subject to any requirements under the Eviction Resolution Pilot Program (see page 4).

If funds for rental assistance from a federal, state, local, private, or nonprofit program are available, you and your landlord may continue to seek rental assistance to reduce or eliminate the unpaid rent balance.

In an unlawful detainer action, the court must consider your circumstances, including decreased income or increased expenses due to COVID-19, and the repayment plan terms offered.

If your landlord does not offer you a repayment plan as described here, you may raise that as a defense in court if your landlord files legal proceedings to evict you for non-payment of rent, and the judge could stop the eviction.

For landlords:

Repayment plans are available to:

- Tenants protected by the Residential Landlord-Tenant Act
- Mobile home park tenants
- Individuals who were living in transient lodging, such as a hotel or motel or camping area:
 - For 30 days or more prior to March 1, 2020; or
 - For more than 30 days after March 1, 2020, unless they receive a 7-day eviction notice.

If a tenant has remaining unpaid rent that accrued between March 1, 2020 and December 30, 2021, you must offer them a reasonable schedule for repayment of the unpaid rent. For the repayment schedule to be considered reasonable, the monthly payments under the repayment plan cannot be more than one-third of the tenant's monthly rental charges at the time the tenant was unable to pay. For example, a tenant whose rent was \$1,500 per month during the pandemic when he was unable to pay, may not be offered a repayment plan that requires him to pay more than \$500 per month (1/3 of the monthly rental charges) to get caught up.

If the tenant does not accept the terms of a reasonable repayment plan within 14 days, you may start legal proceedings in court to evict them (called an unlawful detainer action). In some counties, the Eviction Resolution Pilot Program requires that you take steps to reach an agreement with your tenant regarding repayment of their unpaid rent before you can file an unlawful detainer action against them (see page 4).

The repayment plan must:

- Not require payment until 30 days after the plan is offered to the tenant;
- Cover rent only, and not any late fees, attorneys' fees, or any other fees and charges;
- Allow for payments from any source of income, or from non-profit organizations, churches or religious organizations, or governmental entities; and
- Not be conditioned on:
 - The tenant's compliance with the rental agreement;
 - The tenant's payment of attorneys' fees, court costs, or other costs related to litigation if they default on the rental agreement;
 - A requirement that the tenant apply for governmental benefits or provide proof that they are receiving or have received governmental benefits; or
 - Waiver of the tenant's right to receive an eviction notice, and notice and an opportunity to respond to an unlawful detainer action, before you can obtain an eviction order against them (called a writ of restitution).

Landlord Mitigation Program (LMP): (<https://www.commerce.wa.gov/serving-communities/homelessness/landlord-fund-programs/landlord-mitigation-program/>)

The Department of Commerce provides information about its LMP on its website. SB 5160 added language to expand the scope of the LMP, as summarized on the next page:

Landlords may seek reimbursement from the LMP of up to \$15,000 in unpaid rent that accrued between March 1, 2020 and December 30, 2021 if:

- The tenant voluntarily vacated or abandoned the tenancy (but not because of an unlawful detainer action), and was low-income, limited resourced or experiencing hardship; or
- The tenant defaults on a repayment plan described above, the tenancy has not ended at the time or reimbursement.

Landlords who receive reimbursement from the LMP may not take legal action or pursue collection against the tenant for damages or unpaid rent.

Eviction Resolution Pilot Program (ERPP)

SB 5160 adopts the court-based Eviction Resolution Pilot Program currently operating in six counties: Clark, King, Pierce, Snohomish, Spokane, and Thurston. The ERPP requires that landlords take efforts to reach agreement with tenants on a repayment plan for unpaid rent through direct negotiation, conciliation, or mediation through a county Dispute Resolution Center before they are allowed to file an unlawful detainer action for non-payment of rent. While the ERPP currently operates in the six pilot counties listed above, SB 5160 requires the Administrative Office of the Courts to contract with dispute resolution centers in each county that establishes an ERPP.

A preliminary overview of the program can be found here: <https://www.courts.wa.gov/newsinfo/content/Eviction%20Resolution%20Program%20Overview.pdf>

Under the ERPP, a landlord must:

- Provide notice to the tenant of the ERPP. The landlord has to retain proof of service or mailing of the notice.
- Include the following information in the notice:
 - o Contact information for the local dispute resolution center;
 - o Contact information for the housing justice project for the county or a statewide organization providing housing advocacy services for low-income residents, a statement that the notice is available in multiple languages on our website [here](#);
 - o Contact information for the landlord, landlord's attorney, if any, and the tenant; and
 - o A statement that the failure to respond within 14 days may result in the filing of an unlawful detainer action with the court.
- The landlord then must send copies of notices to the local dispute resolution center and obtain a certificate of participation before taking an unlawful detainer action to hearing before the court.

Right to Counsel

The court must appoint an attorney to represent indigent tenants in unlawful detainer proceedings, subject to available funding. An indigent tenant is someone who receives the following kinds of public assistance, or has an annual income, after taxes, of 200 percent or less of the current federally established poverty level:

- Temporary Assistance for Needy Families (TANF)
- Aged, blind, or disabled assistance benefits
- Medical care services under RCW 74.09.035
- Pregnant women assistance benefits
- Poverty-related veterans' benefits
- Food stamps or Food stamp benefits transferred electronically (EBT)
- Refugee resettlement benefits
- Medicaid
- Supplemental security income (SSI)

In appointing attorneys to represent indigent tenants in unlawful detainer proceedings, priority will be given to indigent tenants in counties where the most evictions occur and to indigent tenants who are disproportionately at risk of eviction. The state will pay the cost of legal services provided by the appointed attorney.