

# UNLAWFUL DETAINER BENCH CARD

## 2021

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*The Administrative Office of the Courts (AOC) has approved the contents of this bench card as of August 9, 2021; however, AOC is not the originator and will not be maintaining or updating content to ensure accuracy beyond this date. Please contact the Eviction Resolution Pilot Program (ERPP) Work Group or the Superior Court Judges' Association ad hoc Unlawful Detainer Work Group with questions regarding this resource.*

# 1) OVERVIEW OF EVICTION PROCEDURES

## IN GENERAL

- 1) Title 59 RCW regulates several types of leasehold estates and provides for statutory procedures to remove people from property.
- 2) Several of the chapters incorporate provisions within other chapters as discussed briefly below and chapters outside of Title 59 authorize removal of an individual from land under RCW 59.12.
- 3) Residential Tenancies are governed by the Residential Landlord-Tenant Act, RCW 59.18, [RLTA] with the general unlawful detainer [UD] statute, RCW 59.12, applicable to the extent it is not supplanted by the RLTA. *Housing Authority of the City of Pasco et al. v. Pleasant*, 126 Wn. App. 382 (2005). UD's are narrow summary proceedings to determine the right of possession and related issues such as restitution of premises and rent. *Munden v. Hazelrigg*, 105 Wash. 2d 39 (1985). Thus, counterclaims, affirmative defenses, and set-offs are generally not allowed in UD actions unless they are based on facts which excuse tenant's breach (e.g. landlord's breach of implied warranty of habitability or covenant of quiet enjoyment). *Munden*, 105 Wash. 2d 39. RCW 59.18.380 permits tenants to raise any defense arising out of the tenancy, but courts have held that for UD purposes, a defense "arises out of the tenancy" only when it affects tenant's right of possession or is based on facts which excuse tenant's breach. See, e.g., *Josephinium Associates v. Kahli*, 111 Wn. App. 617 (2002). If, however, possession/right of possession has been resolved, then courts may convert UD actions into general civil actions where any applicable crossclaims, counterclaims and affirmative defenses may be asserted. See, e.g., *Barr v. Young*, 187 Wn. App. 105 (2015) (citing *Munden*, 105 Wash. 2d at 45-46).

## UNLAWFUL DETAINER ACT (CHAPTER 59.12)

- 1) Creates statutory proceeding to remove an individual from property either through forcible or unlawful detainer. RCW 59.12.010; RCW 59.12.020; RCW 59.12.030
- 2) The summary procedure may be used by a party seeking possession when authorized by statute. *Puget Sound Inv. Grp. v. Bridges*, 92 Wn. App. 523 (1998)

## RESIDENTIAL LANDLORD-TENANT ACT (RLTA) (CHAPTER 59.18)

- 1) Modifies RCW 59.12 eviction procedures for residential tenancies
- 2) Incorporates notice and service provisions from RCW 59.12.030 and RCW 59.12.040
- 3) Summons and hearing procedures are governed by RCW 59.18.365 through RCW 59.18.410

### LOCAL MANDATES

Eviction Resolution Programs have additional requirements in participating Counties. Some local codes are more restrictive than statute.

### FEDERALLY SUBSIDIZED HOUSING

Tenants receiving a federal subsidy (e.g., Housing Choice Voucher (Section 8), Public Housing, Low-Income Housing Tax Credit) may be subject to federal regulations with additional requirements.

## MOBILE HOME LANDLORD-TENANT ACT (CHAPTER 59.20)

- 1) Applies to tenants who own a manufactured housing model and rent a lot in a mobile home community with at least two mobile home lots within it. RCW 59.20.030(9); RCW 59.20.040
- 2) The grounds for termination are contained in RCW 59.20.080, not RCW 59.12.030.
- 3) Service of pre-eviction notice governed by RCW 59.20.150.
- 4) Incorporates RLTA hearing procedures. RCW 59.20.040

## OTHER EXAMPLES OF RCW 59.12 SUMMARY PROCEEDINGS

- 1) Real Estate Contract Forfeitures. RCW 61.30, applies when a seller retains the title to the property as security to payment within a real estate contract of sale.
- 2) Condominium conversions. RCW 64.90.655

## EVICTIONS FOLLOWING FORECLOSURE/DEED OF TRUST SALE

Owners and tenants may be removed through Ch. 59.12 RCW after deed of trust sale. RCW 59.12.032, 61.24.060

## 2) PRE-LITIGATION NOTICE AND JUST CAUSE EVICTIONS

### IN GENERAL

Landlord must (a) strictly comply with time and manner in serving the notice and (b) substantially comply with the required contents of the notice. RCW 59.18.057, RCW 59.18.365, *Christensen v. Ellsworth*, 162 Wash. 2d 365 (2007). Service is prescribed by RCW 59.12.040 and RCW 59.18.365.

- **Just Cause Evictions.** Applies to all periodic leases. A **periodic lease** is a **month-to-month** lease or a lease for a period of time that automatically converts to month-to-month lease at the end of that period. A periodic lease cannot convert to a lease of a specified time without an agreement.
- A lease of a **specified time** is a lease with a defined ending date of at least 12 months at initiation of the tenancy, and of at least 6 months thereafter. A lease of a specified time is terminated upon at least 60-days' written notice and good cause is not required to terminate the lease.
- **Notice period:** This is the minimum notice period required to terminate under this "just cause to evict." A lawsuit may be filed if the tenant does not move out after the expiration of this minimum time period. Premature filing results in dismissal of the lawsuit.

| JUST CAUSE TO EVICT (all listed in ESHB 1236 unless otherwise cited)   | NOTICE PERIOD      |
|--|--------------------|
| <ul style="list-style-type: none"> <li>• Waste, nuisance, or unlawful activity</li> </ul>  | 3 day              |
| <ul style="list-style-type: none"> <li>• Comply with rules or vacate (also see "four or more 10-day notices")</li> </ul>   | 10 day             |
| <ul style="list-style-type: none"> <li>• Rent failure RCW 59.12.030</li> </ul>   | 14 day             |
| <ul style="list-style-type: none"> <li>• Shared housing (owner shares kitchen or bathroom)</li> <li>• Unwanted sexual advances or sexual harassment by tenant against landlord or another tenant.</li> </ul>   | 20 day             |
| <ul style="list-style-type: none"> <li>• Rental agreement expires and tenant fails to sign proposed, reasonable rental agreement (not for month-to-month tenancies)</li> <li>• Fraud in application</li> </ul>   | 30 day             |
| <ul style="list-style-type: none"> <li>• Condemnation of property, certified condemnation</li> <li>• Transitional Housing – tenant no longer qualifies, or program expired</li> </ul>  | 30 day             |
| <ul style="list-style-type: none"> <li>• Four or more 10-day comply notices given within preceding 12 months and containing specific required language explaining violations, etc.</li> <li>• Other legitimate business or economic reason not otherwise specified in the law</li> <li>• Sex offender</li> </ul> | 60 day             |
| <ul style="list-style-type: none"> <li>• Owner to Sell property</li> </ul>   | 90 days for others |
| <ul style="list-style-type: none"> <li>• Occupancy by owner or their immediate family member where no other substantially equivalent unit available and vacant to house them in same building</li> </ul>   | 90 days            |
| <ul style="list-style-type: none"> <li>• Rehabilitate or Change Use of Property RCW 59.18.200(1)(c)</li> <li>• Convert to condominiums RCW 64.90.655</li> </ul>  | 120 days           |

### 3) RIGHT TO COUNSEL

#### APPLICABILITY OF RIGHT TO COUNSEL (RTC)

- 1) Applies only to low-income tenants.
- 2) Court must appoint counsel for indigent tenants in UD proceedings under RCW Chapters 59.12 and 59.20. E2SSB 5160 §8.
- 3) Check the local agreement between your Court and RTC providers, which will have specific procedures for your county.

#### SCREENING FOR ELIGIBILITY

- If the tenant does not have an attorney at the hearing, the tenant is to be referred either to the Eviction Defense Screening line or to the Court's designated RTC provider.
- If the tenant has not been screened, the hearing may be continued to a future hearing date (generally between 7-14 days).
- If the tenant has completed the screening and is either ineligible (not indigent) or waives the appointment of counsel, the hearing may proceed on the merits.

#### SAMPLE SCRIPT FOR SELF-REPRESENTED TENANTS

- *"You may have a right to be represented by an attorney in this case at no cost to you."*
- *"To be eligible, you must be low-income. This is an income test. Do you want to be screened to see if the court will appoint you an attorney?"*
- *"To get an attorney appointed for you, you must go through the screening process. You will need to contact \_\_\_\_\_ (either the Eviction Defense Screening Line or the name of the local RTC provider, depending on your court's protocol)."*
- *"We are providing you with the telephone number/website." (Alternatively) "This person will help you today to complete the screening process before you leave the building."*

**For continuances:** *"I will continue the eviction hearing for \_\_ days to allow you to complete the screening process. If you are eligible, this will give you time to meet with an attorney about this case. You must contact \_\_\_\_\_ (designated screening entity) right away. If you do not, the court might decide that you waived your right to an attorney at the next hearing and you would need to represent yourself."*

**Eviction Defense Screening Line: 1-855-657-8387**

#### **4) SHOW CAUSE HEARINGS (RCW 59.18.380)**

##### **OBJECTIVE OF THE HEARING. RCW 59.18.380. Determine whether:**

- 1) Landlord has met burden of proof for claim of possession.
- 2) The tenant has “any legal or equitable defense or set-off arising out of the tenancy.” For UD purposes, a defense arises out of the tenancy only when it affects tenant’s right of possession or is based on facts which excuse tenant’s breach. *Josephinium Associates*, 111 Wn. App. 617.
- 3) A trial is necessary because of a “substantial issue of material fact of the right of the plaintiff to be granted other relief [other than possession].
- 4) Landlord should be in possession pending trial.

##### **CONDUCT OF HEARING**

- 1) Court shall examine the parties and witnesses to ascertain the merits of the complaint and answer. RCW 59.18.380, *Leda v. Whisnand*, 150 Wn. App. 69 (2009).
- 2) Must allow tenant to present evidence supporting defenses. *Leda*, 150 Wn. App. 69 (2009).
- 3) Rules of evidence apply at show cause hearings. *Leda*, 150 Wn. App. 69.

##### **LANDLORD’S BURDEN OF PROOF**

- 1) By preponderance of evidence, show compliance with Unlawful Detainer statutes. *FPA Crescent Assoc., LLC v. Jamie’s, LLC*, 190 Wn. App. 666 (2015).
- 2) Strict compliance with time, place, and manner of pre-eviction notice. *Christensen v. Ellsworth*, 162 Wn.2d 365 (2007).
- 3) Substantial compliance with notice form. *Provident Mut. Life Ins. Co. of Philadelphia v. Thrower*, 155 Wn.(1d) 613 (1930).
- 4) Allegations in support of basis for termination. *Indigo Real Estate v. Wadsworth*, 169 Wn. App. 412 (2012).
- 5) Tenant is still in possession or right to possession remains in issue. *Munden*, 105 Wn.2d 39.

##### **TENANT DEFENSES**

- 1) Tenant in UD may assert any legal or equitable defense or other set-off arising out of the tenancy. RCW 59.18.380. An UD defense arises out of the tenancy when it affects tenant’s right of possession or is based on facts which excuse tenant’s breach. *Josephinium Associates*, 111 Wn. App. 617; *Barr*, 187 Wn. App. 105, 109.
- 2) If dispute over breach of lease, summary judgment may be improper. *Housing Authority*, 126 Wn. App. 382.



**IF TENANT’S DEFENSE IS DISPOSITIVE, DENY LANDLORD’S REQUEST FOR RELIEF. OR...**

##### **A) IF SUBSTANTIAL ISSUE OF MATERIAL FACT, SEND TO TRIAL and DETERMINE IF WRIT SHOULD ISSUE PENDING TRIAL**

1. If it appears landlord has right to possession by preponderance of evidence, may issue writ pending trial. RCW 59.18.380
2. If writ is to be issued, must require bond to be posted by Plaintiff. RCW 59.18.380
3. Tenant may stay writ within 3 days by posting rent owed. RCW 59.18.380

##### **B) IF NO SUBSTANTIAL ISSUE OF MATERIAL FACT, THEN ORDER WRIT & JUDGMENT:**

1. No monetary judgment if alternative service (e.g., mail + post) was used. RCW 59.18.055
2. Judgment may only include rent, a late fee up to \$75 if lease provides for it, court costs, and attorney fees. RCW 59.18.410(1)
3. Attorney fees may not be awarded if: a) tenant failed to respond; or b) the total amount of rent awarded in the judgment for rent is equal to or less than two months of the tenant's monthly contract rent or one thousand two hundred dollars, whichever is greater. RCW 59.18.290(3)

##### **PAYMENT PLAN**

Tenant may seek payment plan under RCW 59.18.410(3) at Show Cause Hearing or before writ executes.

## 5) COMMON TENANT DEFENSES

### IN GENERAL

Tenant may assert defenses orally or in writing at Show Cause Hearing. RCW 59.18.380

### PROCEDURAL DEFENSES

- 1) No Landlord-Tenant relationship.
- 2) Tenant vacated and relinquished all claim to possession. *Munden*, 105 Wash. 2d 39.
- 3) Improper service of pre-eviction notice. *Christensen*, 162 Wn.2d 365.
- 4) Failure to abide by Federal or local rules regarding evictions pertaining to tenant's housing.
- 5) Tenant is tenant-at-will. *Turner v. White*, 20 Wn. App. 290 (1978)
- 6) Improper Summons – must strictly comply with form requirements. RCW 59.18.365, *Truly v. Heuft*, 138 Wn. App. 913 (2007).
- 7) Failure to substantially comply with statutory requirements for notice to pay or vacate form. *Thrower*, 155 Wn.(1d) 613 (1930)
- 8) Corporate entity has no attorney or no capacity to sue. *Dutch Vill. Mall v. Pelletti*, 162 Wn. App. 531, 535 (2011); *Reese Sales Co., Inc. v. Gier*, 16 Wn. App. 664, 667 (1977)
- 9) Landlord fails to offer reasonable repayment plan [RRP] for rent owing between March 1, 2020 and 6 months following expiration of eviction moratorium equal to three months for every one month of rent owing. *Chapter 115, laws of 2021, E2SSB 5160, section 4, p. (2)-(4)*.
- 10) Landlord failed to provide notice and Eviction Resolution Pilot Program [ERPP] notice to local dispute resolution center where available. *Chapter 115, laws of 2021, E2SSB 5160, section 10, p. (2)(a)*.

### EQUITABLE DEFENSES

- 1) Waiver of right to declare a forfeiture for prior breaches by accepting rent *Wilson v. Daniels*, 31 Wn.2d 633 (1948)
- 2) Acceptance of rent after commencing unlawful detainer. *Hous. Auth. of Grant Cty. v. Newbigging*, 105 Wn. App. 178, 187, 19 P.3d 1081, 1086 (2001)

### SUBSTANTIVE DEFENSES

- 1) Implied Warranty of habitability [IWH]. *Foisy v. Wyman*, 83 Wn.2d 22 (1973)
- 2) Relocation assistance for Landlord's Breach of IWH. *Pham v. Corbett*, 187 Wn. App. 816 (2015)
- 3) Discrimination and reasonable accommodation. *Josephinum Assoc.*, 111 Wn. App. 617.
- 4) Retaliation. RCW 59.18.240; RCW 59.18.250
- 5) Covenant of Quiet Enjoyment, *Income Properties Inv. Corp v. Trefethen*, 155 Wash. 493 (1930), *Munden*, 105 Wn. 2d 39

#### REINSTATEMENT UNDER RCW 59.18.410

- 1) After 14-day notice to pay or vacate expires and up to five court days after judgment, tenant may reinstate tenancy by paying to the court or landlord rent, late fees, costs, & attorney fees if awarded. RCW 59.18.410(2)
- 2) At Show Cause Hearing or before writ executes, tenant may seek payment plan under .410(3).

#### ORDER OF LIMITED DISSEMINATION

- 1) Prohibits tenant screening company from sharing information about unlawful detainer. RCW 59.18.580(1)
- 2) Awarded if a) complaint had no basis in law or fact, b) tenant reinstated under RCW 59.18.410, or c) other good cause. The Order must set forth a basis for the "good cause" finding.

## **6) POST-JUDGMENT RELIEF**

### **IN GENERAL**

- 1) Tenants may seek post-judgment relief under the Civil Rules or *RCW 59.18.410* or *RCW 59.12.190*.
- 2) Tenant may seek a stay of the writ of restitution pending outcome. *RCW 59.18.410(3)-(4)*; *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).

### **EX PARTE STAYS OF THE WRIT OF RESTITUTION**

- 1) Court may issue ex parte stay. *RCW 59.18.410(4)*; *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).
- 2) Bond is not required. *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).
- 3) Court may require service of motion by delivery, mail, fax, or other means. *RCW 59.18.410(4)*

### **CIVIL RULE MOTIONS**

- 1) Court may set aside order or judgment under *CR 55(c)* and *60(b)* per Civil Rules. *Randy Reynolds & Assoc. v. Harmon*, 193 Wn.2d 143 (2019).

### **RCW 59.18.410(2) REINSTATEMENT BY RIGHT**

- 1) After 14 day notice to pay or vacate expires, tenant may reinstate tenancy by paying: a) rent owed, b) late fee up to \$75.00 if lease provides, c) court costs incurred at time of payment, and d) attorney's fees if court has awarded at judgment. *RCW 59.18.410(2)*
- 2) Tenant may reinstate before judgment or until five court days after judgment. *RCW 59.18.410(2)*
- 3) Tenant may extend time by using pledge letter covering full amounts. *RCW 59.18.410(2)*

### **RCW 59.18.410(3) REINSTATEMENT AND PAYMENT PLANS BY COURT DISCRETION**

- 1) At Show Cause Hearing or before writ executes, tenant may ask court for reinstatement, .410(3).
- 2) Tenant may not have payment plan if tenant has received three or more pay or vacate notices in last 12 months, .410(3)(d).
- 3) Court weighs seven factors listed at *RCW 59.18.410(3)(a)* when deciding whether to reinstate.
- 4) The court shall not stay the writ of restitution for more than 90 days. *RCW 59.18.410(c)(i)*
- 5) If granted, court may permit payment using any of 3 methods:
  - i. Out of pocket (writ is stayed, payment plan subject to a statutory schedule, max length of 90 days);
  - ii. By emergency rental assistance (charity provides pledge to pay the judgment), .410(3)(c)(iv); **OR**
  - iii. Tenancy Preservation Program (TPP) (writ is stayed; court must find the tenant is low-income, limited resourced, or experiencing hardship; court authorizes payment of judgment from TPP account, court includes required findings in .410(3)(e), landlord applies for reimbursement).

### **Tenancy Preservation Program (TPP)**

- TPP was created in 2019 to assist tenants facing extraordinary life events in avoiding homelessness.
- TPP payments are a loan from the Department of Commerce to the tenant, paid directly to the landlord.
- Requirements for payment are set out at *RCW 59.18.410(3)(c)-(e)* and *RCW 43.31.605(1)*.
- Instructions for claims and a list of required documents are available at the Department of Commerce's Tenancy Preservation Program web page.

### **PETITION FOR RELIEF FROM FORFEITURE**

- 1) Separate from *RCW 59.18.410*, 30 days after court issues judgment, tenant may ask for relief from forfeiture by: a) tendering rent owed, or b) remedying breach of lease. *RCW 59.12.190*
- 2) Tenant may not use *RCW 59.12.190* to cure where UD based on nuisance activities. *Burgess v. Crossan*, 189 Wn. App. 97 (2015)