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**HOUSE BILL 1446**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Jinkins, Macri, Robinson, Morgan, Gregerson, Santos, and Ormsby

AN ACT Relating to mediation under the residential landlord-tenant act; amending RCW 59.18.180, 59.18.200, 59.18.315, 59.18.375, 59.18.510, and 59.12.030; and adding new sections to chapter 59.18 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 59.18 RCW to read as follows:

(1) Compliance with the notice and mediation provisions in this section is required prior to commencement of an unlawful detainer action. The mediation program is not governed by chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.

(2) Every written notice to comply or vacate within thirty days or of termination of tenancy must specify the noncompliance or grounds for termination and be accompanied by a written notice of opportunity to mediate, both of which must be served in the manner provided in RCW 59.12.040. A landlord shall send a copy of the written notice of opportunity to mediate to the mediation program identified by the court for that county. The mediation program shall be a dispute resolution center established under chapter 7.75 RCW for that community or locale if one has been established and if the court is satisfied that the program has the requisite capacity to conduct the mediation program.

(3) Within five days of receiving the notice, the mediation program shall send a notice to the landlord and the tenant:

(a) Stating that the parties have been referred to mediation;

(b) Identifying the mediator selected;

(c) Indicating the date of the mediation, which shall be no more

than thirty days after receipt of the notice, together with the time and place;

(d) Specifying the documents, if any, required for mediation and the date by which they must be received by the mediator;

(e) Providing that either party may be represented in the mediation session by an attorney or other advocate;

(f) Stating that a person with authority to agree to a resolution must be present in person during the mediation session; and

(g) Stating that the parties have a duty to mediate in good faith and that failure to mediate in good faith may impair the landlord's ability to prevail in an unlawful detainer action or the tenant's ability to remain as a tenant or take advantage of other alternatives to an unlawful detainer action.

(4) The mediator may schedule phone conferences, consultations with the parties individually, and other communications to ensure that the parties have all the necessary information and documents to engage in a productive mediation.

(5) A violation of the duty to mediate in good faith as required under this section may include:

(a) Failure to timely participate in mediation without good cause;

(b) Failure to provide the documentation required before mediation or pursuant to the mediator's instructions; and

(c) Failure of a party to designate a representative with adequate authority to fully settle, compromise, or otherwise reach resolution in mediation.

(6) If the mediator reasonably believes a tenant will not attend a mediation session based on the tenant's conduct, such as the lack of response to the mediator's communications, the mediator may cancel a scheduled mediation session and send a written cancellation to the tenant and the landlord. The landlord may proceed with an unlawful detainer action after receipt of the mediator's written confirmation of cancellation.

(7) Within five days after the conclusion of the mediation session, the mediator must send a written certification to the tenant and the landlord stating:

(a) The date, time, and location of the mediation session;

(b) The names of all persons attending in person, or participating by telephone or video conference;

(c) Whether resolution was reached by the parties, including whether any failure to comply was cured or some other alternative to termination of tenancy or to an unlawful detainer action was agreed upon by the parties; and

(d) Whether the parties participated in the mediation in good faith.

(8) If the parties are unable to reach an agreement, the landlord may proceed with the unlawful detainer action after receipt of the mediator's written certification.

(9)(a) The mediator's certification that the landlord failed to

act in good faith in mediation constitutes a defense to an unlawful detainer action predicated on the notice to comply or vacate or notice of termination that was served with the notice of opportunity to mediate that initiated the mediation process.

(b) The mediator's certification that the landlord failed to act in good faith during the mediation does not constitute a defense to an unlawful detainer action if an agreement is reached and the tenant subsequently fails to comply with the agreement.

(10) The landlord shall pay the costs of mediation.

**Sec.**  RCW 59.18.180 and 2011 c 132 s 10 are each amended to read as follows:

(1) If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, ((~~and such noncompliance can (a) substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident, and (b) be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorneys' fees.~~

~~(2) Any other substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 constitutes a ground for commencing an action in unlawful detainer in accordance with chapter 59.12 RCW. A landlord may commence such action at any time after written notice pursuant to chapter 59.12 RCW.~~

~~(3) If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or 59.20.140(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action.~~

~~(4) If criminal activity on the premises as described in RCW 59.18.130(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who was arrested for this activity.~~

~~(5) If gang-related activity, as prohibited under RCW 59.18.130(9), is alleged to be the basis for termination of the tenancy, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action in accordance with chapter 59.12 RCW, and a~~)) the landlord may commence ((~~such~~)) an action ((~~at any time after written notice under chapter 59.12 RCW~~)) in unlawful detainer if the landlord has complied with the provisions of section 1 of this act and noncompliance continues.

((~~(6)~~)) (2) A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity, for creating an imminent hazard to the physical safety of others, or for engaging in gang-related activity that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW 59.18.380 to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out.

**Sec.**  RCW 59.18.200 and 2008 c 113 s 4 are each amended to read as follows:

(1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated: (i) By the landlord after service of a written notice to terminate of thirty days or more, preceding the end of any of the months or periods of tenancy, and compliance with the mediation provisions of section 1 of this act. The written notice to terminate must be accompanied by a written notice of opportunity to mediate, and both of which must be served in the manner provided in RCW 59.12.04; or (ii) by the tenant by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by ((~~either party to the other~~)) the tenant to the landlord.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2)(a) Whenever a landlord plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the thirty-day notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is delayed, the thirty-day notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

(b) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership, the landlord shall provide a written notice to a tenant at least one hundred twenty days before termination of the tenancy, in compliance with RCW 64.34.440(1), to effectuate such change. The one hundred twenty-day notice is in lieu of the thirty-day notice required in subsection (1) of this section. However, if after providing the one hundred twenty-day notice the change to a condominium form of ownership is delayed, the thirty-day notice requirements in subsection (1) of this section apply unless waived by the tenant.

**Sec.**  RCW 59.18.315 and 1983 c 264 s 11 are each amended to read as follows:

In addition to the mandatory mediation requirements of section 1 of this act, the landlord and tenant may agree in writing to submit any dispute arising under the provisions of this chapter or under the terms, conditions, or performance of the rental agreement, to mediation by an independent third party. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.18.320.

**Sec.**  RCW 59.18.375 and 2008 c 75 s 2 are each amended to read as follows:

(1) The procedures and remedies provided by this section are optional and in addition to other procedures and remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent ((~~as provided in RCW 59.12.030(3)~~)), the defendant shall pay into the court registry the amount alleged due in the notice described in this section and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. Such payment is not required if the defendant submits to the court a written statement signed and sworn under penalty of perjury that sets forth the reasons why the rent alleged due in the notice is not owed. In the written statement, the defendant may provide as a reason that the rent alleged due in the notice is not owed based upon a legal or equitable defense or set-off arising out of the tenancy.

(3) A defendant must comply with subsection (2) of this section on or before the deadline date specified in the notice, which must not precede the deadline for responding to the eviction summons and complaint for unlawful detainer. If the notice is served with the eviction summons and complaint, then the deadline for complying with the notice and the deadline for responding to the eviction summons and complaint must be the same date.

(4) Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without further notice to the defendant and without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not affect the defendant's right to schedule a hearing on the merits. If the defendant fails to comply with this section and a writ of restitution is issued, the defendant may seek a hearing on the merits and an immediate stay of the writ of restitution. To obtain a stay of the writ of restitution, the defendant must make an offer of proof to the court that the plaintiff is not entitled to possession of the property based on a legal or equitable defense arising out of the tenancy. The court shall only grant the stay upon such prior notice as the court deems appropriate to the plaintiff's attorney, or to the plaintiff if there is no attorney. The court may grant the stay on such conditions as the court deems appropriate. The court may set a show cause hearing as soon as possible, but no later than seven days from the date the stay is sought or the date the defendant moves the court for a show cause hearing. If the court concludes at the show cause hearing that the writ of restitution should not have been issued because of any legal or equitable defense to the eviction, then the writ of restitution must be quashed and the defendant must be restored to possession.

(5) The defendant shall deliver written notice that the rent has been paid into the court registry or deliver a copy of the sworn statement referred to in subsection (2) of this section to the plaintiff by any of the following methods:

(a) By delivering a copy of the payment notice or sworn statement to the person who signed the notice to the street address listed on the notice;

(b) By mailing a copy of the payment notice or sworn statement addressed to the person who signed the notice to the street address listed on the notice;

(c) By facsimile to the facsimile number listed on the notice. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the notice; or

(d) As otherwise authorized by the superior court civil rules.

(6) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(7) If the plaintiff intends to use the procedures in this section, the plaintiff must first file the summons and complaint with the superior court of the appropriate county and deliver notice to the defendant of the payment requirements or sworn statement requirements of this section. The notice must:

(a) State that the defendant is required to comply with this section by a deadline date that is not less than seven days after the notice has been served on the defendant;

(b) Be separate from the eviction summons and complaint;

(c) Contain the names of the parties to the proceeding, the attorney or attorneys, if any, and the court in which the proceeding is being brought;

(d) Be signed and dated by the plaintiff's attorney, or by the plaintiff if there is no attorney;

(e) Contain a street address for service of the payment statement or sworn statement and, if available, a facsimile number for the landlord; and

(f) Be no less than twelve-point font type, in boldface type or capital letters where indicated below, and be substantially in the following form:

IN THE SUPERIOR COURT OF THE STATE

OF WASHINGTON IN AND FOR . . . . . .

COUNTY

|  |  |  |
| --- | --- | --- |
|  | ) |  |
| Plaintiff, | ) | NO. |
|  | ) |  |
| vs. | ) | RCW 59.18.375 |
|  | )  ) | PAYMENT OR SWORN STATEMENT REQUIREMENT |
| Defendant, | ) |  |
|  | ) |  |

TO: . . . . . . . .(Name)

 . . . . . . . . .(Address)

**IMPORTANT NOTICE**

**READ THESE INSTRUCTIONS CAREFULLY**

YOU MUST DO THE FOLLOWING BY THE DEADLINE DATE:

THE DEADLINE DATE IS . . . . . . . .

1. PAY RENT INTO THE COURT REGISTRY;

**OR**

2. FILE A SWORN STATEMENT THAT YOU DO NOT OWE THE RENT CLAIMED DUE.

IF YOU FAIL TO DO ONE OF THE ABOVE ON OR BEFORE THE DEADLINE DATE, THE SHERIFF COULD EVICT YOU WITHOUT A HEARING EVEN IF YOU HAVE ALSO RECEIVED A NOTICE THAT A HEARING HAS BEEN SCHEDULED.

**YOUR LANDLORD CLAIMS YOU OWE RENT**

This eviction lawsuit is based upon nonpayment of rent. Your landlord claims you owe the following amount: $ . . . . .. The landlord is entitled to an order from the court directing the sheriff to evict you without a hearing unless you do the following by the deadline date:  . . . . . . . .

**YOU MUST DO THE FOLLOWING BY THE DEADLINE DATE:**

1. Pay into the court registry the amount your landlord claims you owe set forth above and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending;

**OR**

2. If you deny that you owe the amount set forth above and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a written statement signed and sworn under penalty of perjury that sets forth why you do not owe that amount.

3. You must deliver written notice that the rent has been paid into the court registry **OR** deliver a copy of your sworn statement to the person named below by personal delivery, mail, or facsimile.

 . . . . . . . . . .

Name

 . . . . . . . . . .

Address

 . . . . . . . . . .

Telephone Number

 . . . . . . . . . .

Fax Number

4. The sworn statement must be filed **IN ADDITION TO** delivering your written response to the complaint and **YOU MUST ALSO** appear for any hearing that has been scheduled.

Dated: . . . . . . . . . .

Signed: . . . . . . . . . .

(8) The notice authorized in this section may be served pursuant to applicable civil rules either with a filed eviction summons and complaint or at any time after an eviction summons and complaint have been filed with the court. If the defendant has served a response to the eviction summons and complaint, then the notice may be served before or with an order to show cause as described in RCW 59.18.370.

(9) This section does not affect the defendant's right to restore the tenancy under RCW 59.18.410.

**Sec.**  RCW 59.18.510 and 1998 c 276 s 5 are each amended to read as follows:

(1)(a) Any person whose life, safety, health, or use of property is being injured or endangered by a tenant's gang-related activity, who has legal standing and resides, works in, or owns property in the same multifamily building, apartment complex, or within a one-block radius may serve the landlord with a ten-day notice and demand that the landlord commence an unlawful detainer action against the tenant. The notice and demand must set forth, in reasonable detail, facts and circumstances that lead the person to believe gang-related activity is occurring. The notice and demand shall be served by delivering a copy personally to the landlord or the landlord's agent. If the person is unable to personally serve the landlord after exercising due diligence, the person may deposit the notice and demand in the mail, postage prepaid, to the landlord's or the landlord's agent's last known address.

(b) A copy of the notice and demand must also be served upon the tenant engaging in the gang-related activity by delivering a copy personally to the tenant. However, if the person is prevented from personally serving the tenant due to threats or violence, or if personal service is not reasonable under the circumstances, the person may deposit the notice and demand in the mail, postage prepaid, to the tenant's address, or leave a copy of the notice and demand in a conspicuous location at the tenant's residence.

(2)(a) Within ten days from the time the notice and demand is served, the landlord has a duty to take reasonable steps to investigate the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord must notify the person who brought the notice and demand that an investigation is occurring. The landlord has ten days from the time he or she notifies the person in which to conduct a reasonable investigation.

(b) If, after reasonable investigation, the landlord finds that the tenant is not in compliance with RCW 59.18.130(9), the landlord may proceed directly to ((~~an unlawful detainer action~~)) service of the notice to comply or vacate within thirty days and the notice of opportunity to mediate in accordance with section 1 of this act and RCW 59.18.180 or take reasonable steps to ensure the tenant discontinues the prohibited activity and complies with RCW 59.18.130(9). The landlord shall notify the person who served the notice and demand of whatever action the landlord takes.

(c) If, after reasonable investigation, the landlord finds that the tenant is in compliance with RCW 59.18.130(9), the landlord shall notify the person who served the notice and demand of the landlord's findings.

(3) The person who served the notice and demand may petition the appropriate court to have the tenancy terminated and the tenant removed from the premises if: (a) Within ten days of service of the notice and demand, the tenant fails to discontinue the gang-related activity and the landlord fails to conduct a reasonable investigation; or (b) the landlord notifies the person that the landlord conducted a reasonable investigation and found that the tenant was not engaged in gang-related activity as prohibited under RCW 59.18.130(9); or (c) the landlord took reasonable steps to have the tenant comply with RCW 59.18.130(9), but the tenant has failed to comply within a reasonable time.

(4) If the court finds that the tenant was not in compliance with RCW 59.18.130(9), the court shall enter an order terminating the tenancy and requiring the tenant to vacate the premises. The court shall not issue the order terminating the tenancy unless it has found that the allegations of gang-related activity are corroborated by a source other than the person who has petitioned the court.

(5) The prevailing party shall recover reasonable attorneys' fees and costs. The court may impose sanctions, in addition to attorneys' fees, on a person who has brought an action under this chapter against the same tenant on more than one occasion, if the court finds the petition was brought with the intent to harass. However, the court must order the landlord to pay costs and reasonable attorneys' fees to the person petitioning for termination of the tenancy if the court finds that the landlord failed to comply with the duty to investigate, regardless of which party prevails.

NEW SECTION. **Sec.**  A new section is added to chapter 59.18 RCW to read as follows:

A tenant of real property for a term less than life is guilty of unlawful detainer under this chapter:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her and after the landlord's service of a written notice to terminate of thirty days or more and compliance with the mediation provisions of section 1 of this act;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, and after the landlord's service of a written notice to terminate of thirty days or more, preceding the end of any of the months or periods of tenancy, and compliance with the mediation provisions of section 1 of this act; or

(3) When he or she continues in possession in person or by subtenant after failing to comply with any portion of RCW 59.18.130 or 59.18.140 after the landlord's service of a written notice to comply or vacate within thirty days and compliance with the mediation provisions of section 1 of this act.

**Sec.**  RCW 59.12.030 and 1998 c 276 s 6 are each amended to read as follows:

Except for tenancies under chapter 59.18 RCW to which section 7 of this act applies, a tenant of real property for a term less than life is guilty of unlawful detainer ((~~either~~)):

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit; or

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW((~~; or~~

~~(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130~~)).

**--- END ---**