



STATE OF WASHINGTON
— OFFICE OF GOVERNOR JAY INSLEE —

**EMERGENCY PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 and 21-09**

21-09.01

Tenancy Preservation – A Bridge to E2SSB 5160

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, continues to persist throughout Washington State; and

WHEREAS, the COVID-19 pandemic caused a sustained global economic slowdown, and an economic downturn throughout Washington State with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce due to substantial reductions in business activity impacting our commercial sectors that support our State's economic vitality, including severe impacts to the large number of small businesses that make Washington State's economy thrive; and

WHEREAS, many in our workforce were impacted by these layoffs and substantially reduced work hours, and economic hardship disproportionately affected low and moderate income workers resulting in lost wages and potentially the inability to pay for basic household expenses, including rent; and

WHEREAS, members of our workforce who are unable to pay rent due to the COVID-19 pandemic face an increased risk of being evicted from their homes, and the resulting increases in life, health and safety risks; and

WHEREAS, to avoid unnecessary and avoidable economic hardship to landlords, property owners, and property managers who are economically impacted by the COVID-19 pandemic, tenants, residents, and renters who are not materially affected by COVID-19 should and must continue to pay rent; and

WHEREAS, under RCW 59.12 (Unlawful Detainer), RCW 59.18 (Residential Landlord-Tenant Act), and RCW 59.20 (Manufactured/Mobile Home Landlord-Tenant Act), tenants seeking to avoid

default judgment in eviction hearings must appear in court in order to avoid losing substantial rights to assert defenses or access legal and economic assistance; and

WHEREAS, as Washington state recovers from the COVID-19 pandemic, the Legislature intends to provide housing stability through passage of Engrossed Second Substitute Senate Bill (E2SSB) 5160, Chapter 115, Laws of 2021, which bolsters tenant protections, and it further intends to preserve tenancies through passage of Engrossed Substitute House Bill (ESHB) 1236, Chapter 212, Laws of 2021, which enumerates allowable grounds for eviction under residential landlord-tenant law; and

WHEREAS, while almost 4.5 million Washingtonians have become fully vaccinated to limit the severity and spread of COVID-19, the state needs more of its residents to become vaccinated before this pandemic emergency will end; and

WHEREAS, currently, COVID-19 vaccines are authorized only for people 12 years of age and older, so children under 12 years of age cannot yet be vaccinated and must rely on low levels of community transmission and health measures including face coverings, physical distancing, and hand hygiene to reduce their risk for COVID-19; and

WHEREAS, genomic sequencing shows that variants of concern that are more transmissible and may cause more severe disease, including Alpha, Gamma, and Delta, now represent the majority of new COVID-19 cases in Washington state; and

WHEREAS, vaccination rates vary across the state, leaving communities with low vaccination rates at risk for ongoing transmission of COVID-19 and unvaccinated people in these communities at risk for illness, hospitalization, and death from COVID-19; and

WHEREAS, during the 2021 legislative session, the Legislature appropriated hundreds of millions of dollars from the federal American Rescue Plan Act (ARPA) in rental assistance, but the program to disperse those funds is still in its early stages of operation; and

WHEREAS, although tremendous progress has been made, at this time, neither the eviction resolution pilot program nor the right to counsel program as provided by E2SSB 5160 are operational statewide; and

WHEREAS, data from the Census Bureau Pulse Survey released on August 30, 2021, shows that 129,997 renters, or 8% of all Washington renters, are behind on rent. Over 55,000 of those households have children under the age of 18; and

WHEREAS, the state of Washington has implemented a Roadmap to Recovery to assist businesses restart and to increase hiring, yet unemployment remains roughly 5% with slow recovery in significant industry sectors; and

WHEREAS, the U.S. Department of Justice, Office of the Associate Attorney General, encourages courts to consider eviction diversion strategies that can help families avoid the disruption and damage caused by eviction, and directs courts to federal resources to help them navigate this crisis.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that as of the date of this proclamation the majority of available rental assistance funding has not yet been distributed, and that because full implementation of Senate Bill 5160 has not yet occurred, Proclamation 20-05 et seq. and 21-09, are hereby amended to temporarily impose certain prohibitions and shall continue to preserve residential tenancy until 11:59 p.m. on October 31, 2021, as provided herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout State government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Washington State Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

ACCORDINGLY, based on the above noted situation and under the provisions of RCW 43.06.220(1)(h), and to help preserve and maintain life, health, property or the public peace, except where federal law requires otherwise, through 11:59 p.m. on October 31, 2021, I hereby prohibit the following activities related to residential dwellings in Washington State.

STATEMENT OF INTENT:

It is the intent of this order to bridge the operational gap between the eviction moratorium enacted by prior proclamations and the protections and programs subsequently enacted by the Legislature, and to reduce uncertainty as the state implements post-COVID-19 long-term housing recovery strategies contained in legislative enactments such as E2SSB 5160. To that end, any ambiguities contained in this proclamation shall be resolved by applying the processes, timelines, and definitions established in E2SSB 5160.

Furthermore, because the Legislature answered the call to help thousands of landlords and tenants who have endured great hardship during this pandemic by appropriating hundreds of millions of dollars (which are not yet fully disbursed to local communities) and establishing thorough and thoughtful programs to address the ongoing housing crisis (which programs are not yet operational statewide), I respectfully ask that local jurisdictions, rental assistance programs, eviction resolution

pilot programs, housing advocacy organizations, courts, landlords, and tenants work collaboratively, patiently, and in good faith to enable the Legislature's remarkable efforts to be effectuated.

PAST RENT OWED (February 29, 2020 through July 31, 2021)

- If based in whole or in part on any arrears (rent owed) that accrued due to COVID-19 from February 29, 2020 through July 31, 2021, landlords, property owners, and property managers (collectively, landlords) are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a tenant to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate until both (1) a rental assistance program and an eviction resolution pilot program as contemplated by Section 7 of E2SSB 5160 have been implemented and are operational in the county in which the rental property is located; and (2) a tenant has been provided with, and has, since the effective date of this order, rejected or failed to respond within 14 days of receipt of such notice to an opportunity to participate in an operational rental assistance program and an operational eviction resolution pilot program provided by E2SSB 5160.
 - Attestation to program implementation shall be provided by each county rental assistance grant recipient to the Department of Commerce, and by each eviction resolution pilot program to the Administrative Office of the Courts, Office of Civil Legal Aid, and the Office of Financial Management, and such attestations shall be posted to the local county or court public-facing website.
 - Tenants must respond to landlords regarding establishing reasonable repayment plans and participate in eviction resolution programs per the timelines established in SB 5160.
 - Landlords and tenants are encouraged to address payment of rent through September 30, 2021, as part of the eviction resolution pilot program process.
 - There is a presumption that any rent payment made on or after August 1, 2021, is applied to current rent before applying toward arrears.
 - Each rental assistance program is authorized to share the application status of a tenant with the tenant's landlord.
 - For purposes of this order, an operational rental assistance program means a program located in the county in which the rental property is located, is receiving or able to receive applications for rental assistance from eligible renters and landlords, is currently disbursing or is able to disburse funds, and remains open throughout the time period of this order.
 - For purposes of this order, an operational eviction resolution pilot program means a program that complies with the provisions of Section 7 of E2SSB 5160, is located in the county in which the property is located, is serving or is able to serve pilot program clients, and is located in a jurisdiction in which a standing judicial order of the relevant superior court exists. If an out-of-county resolution program is accepting out-of-county applications, a tenant and landlord may agree, but are not required, to use an operational eviction resolution program located in a different county.
 - In addition, both the in-county rental assistance programs and the eviction resolution pilot program must be accessible to persons with limited English proficiency (including access to appropriate professional interpreter services) and either

accessible to persons with disabilities or able to serve persons with disabilities by providing a reasonable accommodation.

ENFORCEABLE DEBT (February 29, 2020 through July 31, 2021)

- If based in whole or in part on any arrears that accrued due to COVID-19 from February 29, 2020 through July 31, 2021, landlords are prohibited from treating any unpaid rent or other charges related to a dwelling as an enforceable debt or obligation that is owing or collectable, where such non-payment was, in whole or in part, a result of the COVID-19 crisis, until such time as the landlord and tenant have been provided with an opportunity to resolve nonpayment of rent through a rental assistance program and an eviction resolution pilot program as provided by Section 7 of E2SSB 5160. This prohibition includes attempts to collect, or threats to collect, independently or through a collection agency, by filing an unlawful detainer or other judicial action, by withholding any portion of a security deposit, by reporting to credit bureaus, or by any other means.

FUTURE RENT OWED (August 1, 2021 through October 31, 2021)

- For rent accruing on August 1, 2021, or thereafter, it is the expectation that tenants will pay rent in full, negotiate a lesser amount or a payment plan with the tenant's landlord, or actively seek rental assistance if assistance is needed. For rent accruing on August 1, 2021, or thereafter, and unless an exception or other state law allows for eviction, landlords are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a tenant to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate, if, unless otherwise permitted by this order or under state law, a tenant has (1) made full payment of rent; or (2) made a partial payment of rent based on their individual economic circumstances as negotiated with the landlord; or (3) has a pending application for rental assistance that has not been fully processed; or (4) resides in a jurisdiction in which the rental assistance program is anticipating receipt of additional rental assistance resources but has not yet started their program or the rental assistance program is not yet accepting new applications for assistance.
 - There is a presumption that any rent payment made on or after August 1, 2021, is applied to current rent before applying toward arrears.
 - A landlord is not required to accept partial payment of rent but is required to offer a tenant a reasonable repayment plan under this order and pursuant to Section 4 of E2SSB 5160.
 - A rental assistance program is authorized to share the application status of a tenant with the tenant's landlord.

LATE FEES (February 29, 2020 through October 31, 2021)

- Landlords are prohibited from assessing, or threatening to assess, late fees for the non-payment or late payment of rent or other charges related to a dwelling where such non-payment or late payment occurred due to COVID-19 on or after February 29, 2020, through October 31, 2021.

RENT INCREASES (February 29, 2020 through October 31, 2021)

- While this order does not prohibit rent increases, any rent notice increases that were prohibited pursuant to Proclamation 20-19 et seq., continue to be prohibited and may not be retroactively imposed. Any rent increases issued within the effective dates of this order must conform to RCW 59.18.140. Landlords accepting funds through state and/or federal rent assistance program may be prohibited from increasing rents as part of state or local program guidelines.

WRITTEN NOTICE OF RESOURCES AND PROGRAMS (February 29, 2020 through October 31, 2021)

- For rent owed that accrued due to COVID-19 on or after February 29, 2020, landlords are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate without first providing the tenant with written notice of the funding resources and programs established in E2SSB 5160. The written material may be provided in hard copy or electronically. Links to these materials may also be found on the Washington state Attorney General Office's website.

REASONABLE REPAYMENT PLANS (February 29, 2020 through October 31, 2021)

- For rent owed that accrued due to COVID-19 on or after February 29, 2020, landlords are prohibited from serving or enforcing, or threatening to serve or enforce, any notice requiring a resident to vacate any dwelling, including but not limited to an eviction notice, notice to pay or vacate, unlawful detainer summons or complaint, notice of termination of rental, or notice to comply or vacate if the landlord has made no attempt to establish a reasonable repayment plan with the tenant per E2SSB 5160, or if they cannot agree on a plan and no local eviction resolution pilot program per E2SSB 5160 exists.
 - “Reasonable repayment plan” has the same meaning as “reasonable schedule for repayment,” as defined in Section 4 of E2SSB 5160, and means a repayment plan or schedule for unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt.
 - Tenants must respond to landlords within 14 days of the landlord's offer, per the timeline established in E2SSB 5160.
 - If a tenant fails to accept the terms of a reasonable repayment plan or if the tenant defaults on any rent owed under a repayment plan, a landlord must first provide notice to the tenant informing the tenant of the eviction resolution pilot program, and then follow the procedures provided by E2SSB 5160, before filing an unlawful detainer action. The pilot program must be operational at the time the notice is sent and must be able to provide the tenant with an opportunity to participate in the program.

PERMISSIBLE UNLAWFUL DETAINER ACTIONS

- Excepting the prohibitions stated herein, all other allowable evictions under ESHB 1236 and the current Residential Landlord-Tenant Act (RCW 59.18) and Manufactured/Mobile Home Landlord-Tenant Act (RCW 59.20) may proceed as otherwise allowed by law.

LOCAL LAW ENFORCEMENT

- Local law enforcement entities are prohibited from serving, threatening to serve, or otherwise acting on eviction orders affecting any dwelling unless the eviction order, including a writ of restitution, contains a finding that the landlord has complied with this order and the unlawful detainer action is permitted under this order.

COMMUNICATIONS

- Nothing in this order precludes a landlord from engaging in customary and routine communications with tenants. “Customary and routine” means communication practices that were in place prior to the issuance of Emergency Proclamation 20-19 on March 18, 2020, but only to the extent that those communications reasonably notify a tenant of upcoming rent that is due; provide notice of community events, news, or updates; document a lease violation; are related to negotiating a reasonable repayment plan or other program provided by E2SSB 5160; or are otherwise consistent with this order. Within these communications and parameters, landlords may provide information to tenants regarding financial resources, including coordinating with tenants in applying for rent assistance through the state’s Emergency Rent Assistance Program (ERAP) or an alternative rent assistance program, and to provide tenants with information on how to engage with them in discussions regarding reasonable repayment plans as described in this order.
- Tenants must respond to landlords regarding establishing reasonable repayment plans and participation in eviction resolution programs per the timelines established in SB 5160.

RETALIATION

- Landlords are prohibited from retaliating against individuals for invoking their rights or protections under Proclamations 21-09 et seq., Proclamations 20-19 et seq., or any other state or federal law providing rights or protections for residential dwellings.

RIGHT TO COUNSEL

- Nothing in this order modifies the requirement in Section 8 of E2SSB 5160 that a court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding while this order is in effect.

EXCLUSIONS

- This order and these prohibitions do not apply to emergency shelters where length of stay is conditioned upon a resident’s participation in, and compliance with, a supportive services program. Emergency shelters should make every effort to work with shelter clients to find alternate housing solutions. In addition, this order and these prohibitions do not apply to long-term care facilities licensed or certified by Department of Social and Health Services; transient housing in hotels and motels; “Airbnbs”; motor homes; RVs; public lands; and camping areas.

