

Settlement and Mediation *In Landlord and Tenant Court*

This information sheet describes the different ways landlords and tenants can resolve their disputes through settlement and mediation. A landlord or tenant who would like more help can visit the Landlord Tenant Resource Center or talk to another lawyer. There is information at the end of this sheet on where to find legal help.

■ **What does it mean to settle my case?** *Settling* means negotiating with the other side to see if you can reach a compromise to resolve your case. While a judge might have to approve any settlement you reach, the landlord and tenant create the terms of the settlement. The settlement contains whatever the two parties in the case can agree to, which might include things a judge cannot or will not do if you have a trial.

■ **Is settling my case a good idea?** Maybe. When you settle a case, you have more control over the outcome because a judge or jury is not listening to the evidence and deciding for you. You also have a written document that explains exactly what each person must do to comply with the settlement. Even if you have a strong case, you should consider whether settling is a good idea. You should think about:

- How much time you want to spend in court
- What you would lose if you do not win your case
- What you could gain if you win your case
- Whether a judge or jury will be convinced by your evidence
- How a judge can and cannot rule if you have a trial

You may want to talk to an attorney about these questions.

■ **Do I have to settle my case?** No, in most cases you can go forward to a trial. A judge might encourage you to settle the case, but a judge cannot order the parties to settle a case. A judge cannot create the terms of a settlement or make you or the other side agree to anything.

Please Note: There will only be a trial if the tenant has defenses to the landlord's claims. You should speak to a lawyer if you are not sure whether there is a reason for a trial in your case.

■ **What is a good settlement?** A *good settlement* for you is any agreement you are comfortable with and gives you the best chance to get the things you want. Each person's situation is different, both legally and personally, so the terms of a good settlement for you and another person may be different.

Most people do not get exactly what they want when they settle a case because each side will have to give a little bit to reach a compromise. It might be a *bad settlement*, however, if there are terms you know you cannot comply with, or if you feel confident you would have been able to get everything you wanted at trial.

Remember, though, settlements give you the chance to include terms a judge cannot include when he or she rules on your case. A common example is a payment plan. If you have a trial about rent, the judge will simply rule whether the tenant or landlord owes the other party money. Whoever owes the money must pay all of it right away. If you settle your case, you can negotiate a payment plan. This might give the tenant a better chance of keeping the house or apartment, or it might give the landlord a better chance to get all of the money owed.

■ **What are some possible terms of a settlement agreement?**

The terms of a settlement agreement are entirely up to the people entering into it. There are some common terms, however:

A tenant might agree to:

- Move out after a certain period of time
- Pay back rent over a period of time
- Pay rent on time for a certain period
- Behave in a certain way (for example, not having too much trash in the unit) for a certain period of time
- Make sure unauthorized occupants leave the unit

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A landlord might agree to:

- Give the tenant a neutral reference
- Not raise the rent for a certain period of time
- Not collect some or all of the back rent owed
- Make repairs by a certain date

All of these terms can be complicated and have consequences. You should try to talk with a lawyer before you agree to a settlement.

■ **Is a settlement agreement enforceable?** Yes. Both parties can enforce the agreement in court after it is filed. Many agreements explain what will happen if either side does not do what it promised. If the agreement does not say what will happen if either party fails to follow it, the judge may decide what to do. A judge can order one side to do what it promised and enforce that by fining that person if he or she does not comply. A judge also may enter a judgment against one side or the other if a promise is broken. Or, a judge might consider some other remedy. The side that wants the judge to do something must file a motion in Landlord and Tenant Court to enforce the agreement.

A court hearing will be set at least five days, not including weekends or holidays, after the motion is filed. Both the landlord and tenant will have a chance to tell the judge what happened. Both sides should come to court with pictures, receipts, witnesses, or other evidence to prove what happened and why.

■ **Does the judge have to approve the settlement agreement?** If either the landlord or the tenant is not represented by a lawyer, the judge must approve the agreement. This is to make sure both parties understand all the terms to which they have agreed. If this happens, you should ask the judge any questions you might have about the agreement. Make sure you understand the full consequences of what you are signing. If the judge cannot answer all of your questions, you may want to ask the judge to pass the case to give you time to have a lawyer look at the agreement before it is approved.

■ **What if I want a lawyer to look over a settlement agreement before I sign it?** That is a very good idea. Lawyers are available in the mornings at the Landlord Tenant Resource Center. You can ask the clerk if there are any lawyers who can look over the agreement before you sign it. If you are unclear about any term, you should tell the other side you need a few minutes to have a lawyer look at the agreement.

Remember, if you are a tenant, the landlord's lawyer is not your lawyer. If you are a landlord, the tenant's lawyer is not your lawyer. Each lawyer must do the best possible job for his or her client.

■ **What if I enter into a settlement, but then I change my mind?** Once a settlement is filed with the court, it is almost always final and enforceable by either side. On rare occasions, you might be able to undo a settlement, but there must be a very strong argument to set aside the agreement. Simply claiming you did not understand the agreement is rarely going to be enough for the court to set aside the settlement.

■ **What if I am uncomfortable negotiating with my landlord or tenant or need help to settle my case?** The court has mediators available to assist parties who want to try to settle their cases. The mediator is introduced at roll call each morning, and there is a sign-up sheet in the courtroom. If the other side agrees, you can just sign up or wait until your case is called before the judge and then tell the judge you would like to mediate. Sometimes, the judge will encourage you or actually send you to mediation.

■ **What is mediation?** *Mediation* is simply a negotiation to try to settle your case with the help of a neutral party. It gives both parties a chance to tell their side of the story to someone who has no stake in the outcome of the case. The mediator will then try to help you reach a compromise.

■ **When does mediation occur?** It can occur at any time. Usually, mediation occurs on the day a bench or judge trial is set. But you can ask for the help of a mediator before you even ask for a trial. If either the landlord or the tenant has requested a jury trial, you will receive a notice of a separate mediation date in the mail.

■ **Who are the mediators and what is their role?** The *mediators* are neutral parties. They are not on either side of the case. They are trained by the court to help people reach agreements, and that is their only job. Mediators have been trained in landlord-tenant law, but they may not be lawyers or experts in the law. At the beginning of mediation, the mediator will explain how the mediation process works. The mediator usually writes down whatever agreement you reach. The mediator cannot be a witness for your case or give you legal advice.

■ **How does mediation work?** The mediator will listen to each party explain its side of the story and what each is hoping to accomplish. Then the mediator usually will discuss the case with you while the other party waits outside the room. Then the parties will switch places. The mediator will relay settlement offers and concerns to the other side. The mediator will keep confidential any information you want.

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The mediator acts as a go-between for the parties, explaining concerns, perhaps pointing out strengths and weaknesses of each side's case, and reviewing the potential results, including certain terms in the agreement. Each party can speak honestly without having to worry about getting into an argument with the other side. If it looks as if an agreement has been reached, the mediator will write it down, go over it with each party, have both parties sign it, and bring it into the courtroom for the judge's approval.

■ **How long does mediation take?** As long as it takes. If the parties are not far apart in what each thinks is fair, mediation could be over in 30 minutes. More likely, the parties will have to work through a number of different terms, and it will take longer. Many cases can be resolved in about two hours, but it can take much longer than that.

■ **Do I have to mediate my case?** Usually. If you have asked for a bench trial, the judge will almost always recommend—sometimes very strongly—that you try to mediate on the trial day. You can say you want to go straight to trial, but it is unwise to decline the judge's request at that point. For jury trials, you will be sent a separate notice of a mediation date. You must attend that court date at the mediation center. If you have not asked for a trial, it is your choice whether you want to try to mediate the case before you file more documents.

Remember, even if you are required to go to mediation, you are never required to make an agreement with the other side. If you are not comfortable with an agreement, you should not sign it.

■ **Can I have a lawyer in mediation?** Yes. If you do not have your own lawyer, you can check with the clerk or the Landlord Tenant Resource Center to see if there is a lawyer who can help you in court. It is always a good idea to have a lawyer with you, especially if the other side has a lawyer.

■ **After we have an agreement worked out, can I think about it for a day or two?** Yes, but most mediators and attorneys would advise against it. Usually, an agreement gets worked out after a long period of discussion and compromise. Both sides tend to give up a little bit more with each offer and counteroffer. By the time the parties are close to an agreement, they often feel a mix of being tired, frustrated, and relieved. This is all part of the process. If you wait another day, either side might change its mind. Parties may not remember why they softened their position during the negotiation and all of the work they did to reach an agreement. The deal may fall through. That said, you should never sign an agreement with which you are not comfortable.

■ **If I do not settle my case today, will I have another opportunity to settle it?** It depends on what stage your case is at when you are trying to settle. If your case is scheduled for a trial that day, you most likely will have to go forward with the trial if you do not settle your case. If the negotiation is not on the trial date, you can try to settle before trial. However, the other side might not be interested in settling after they have invested more time or money in the case.

■ **What happens if I do not settle my case?** The case will proceed to the next stage. You might have a trial that day if the case is scheduled for a bench trial. If there is a jury trial demand and you cannot come to an agreement on the mediation date, the clerk will schedule a pretrial conference. If you are trying to settle early in your case before you have filed any documents, you might still have the opportunity to ask for a bench or jury trial. You should always try to consult an attorney to help you understand your rights.

■ **What is a Consent Judgment Praecept (CJP) or Form 4?**

Consent Judgment Praecept (CJP or Form 4) is a payment plan between a landlord and a tenant that usually favors the landlord. Many tenants choose to enter into such agreements because they do not know they have other choices, they want to do something quickly, or they have no legal defenses to the case against them. A tenant who enters into this kind of agreement is giving the landlord a judgment in the case. This means the tenant agrees the landlord wins the case. However, the landlord cannot take the next step to evict the tenant as long as the tenant makes all the payments agreed to on the form. To stay in the property, the tenant must make every payment in full and on time.

If the tenant pays even a day late or the payment does not include all of the money, the landlord will have the right to enforce the judgment after giving the tenant notice. If that happens, the tenant must pay all of the money he or she owes under the agreement, not just the money the tenant agreed to pay by that day. Even if the tenant makes all the payments on time, the judgment will stay on the tenant's record, even though the landlord cannot act on it.

CJPs also have a section for repairs the landlord agrees to make. If the landlord agrees but fails to make the repairs on time, the tenant can ask the judge to enforce the agreement. Even if the landlord does not make the repairs he or she agreed to on the CJP, the tenant must still make the payments he or she agreed to make

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on time. The tenant does not have the right to stop paying even if the landlord does not make the repairs. The tenant must go to court to enforce the landlord's promise.

The judge or the interview and judgment clerk must approve all CJPs, so do not leave the courthouse until that happens.

■ **How is a Consent Judgment Praecipe (Form 4) different from a settlement?** As discussed above, a CJP gives the landlord a judgment. If the tenant violates the agreement, it is very difficult for the tenant to prevent the landlord from evicting him or her. If a tenant signs a settlement agreement that is not a CJP, the tenant might have additional legal arguments in front of the judge if the landlord accuses the tenant of violating the agreement. Most settlement agreements do not give a judgment to the landlord from the beginning. The judgment is only entered if the tenant violates the terms of the settlement.

Finding Legal Help

Visit www.LawHelp.org/DC for more information, including how to contact free legal services providers, or visit the Landlord Tenant Resource Center:

Landlord Tenant Resource Center
Superior Court of the District of Columbia
510 4th Street NW
Building B, Room 115
Washington, DC 20001

Telephone: 202-508-1710
Open 9:15 a.m. to noon, Monday through Friday,
except legal holidays

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