

MARIN COUNTY CODE CHAPTER 5.95 IMPLEMENTATION GUIDELINES
RENTAL HOUSING DISPUTE RESOLUTION ORDINANCE NO. 3697
Issued: September 28, 2018

1. **Title.** Sections 1 through 7, inclusive, and Appendix A: Forms and Model Documents, are individually and collectively referred to as the "Guidelines," as authorized by Marin County Code Chapter 5.95.
2. **Definitions.** Capitalized terms used in these Guidelines have the meanings provided below. Capitalized terms not otherwise defined in the Guidelines have the meanings provided in the Ordinance.
 - a. "Base Rent" means the rental amount to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase.
 - b. "CDA Director" means the County of Marin Community Development Agency Director or their designee.
 - c. "Designated Service Provider" means a party, organization, or County Department selected by the CDA Director to provide Mediation services and other tasks necessary to implement the program and procedures contained in the Ordinance and Guidelines.
 - d. "Mediation" or "Dispute Resolution" means one or more meetings in which a Landlord and Tenant have the opportunity to directly communicate with a Mediator and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute under ground rules designed to protect the confidentiality and neutrality of the communications.
 - e. "Noticed Rent Increase Date" means the date of a Rent increase properly noticed under Civil Code section 827 and Marin County Code § 5.95.080.
 - f. "Ordinance" means the Rental Housing Dispute Resolution Ordinance No. 3697.
 - g. "Qualifying Event" means any Rent increase notice that qualifies a Tenant to file a request for Mediation under Marin County Code § 5.95.040(a).
 - h. "Rent Increase" means any upward adjustment of the base rent amount.
3. **Tenant Rights and Required Notice.**
 - a. Eligibility for Protections.
 - i. At all times, Landlords must comply with federal, state, and local laws pertaining to the landlord-tenant relationship, including the affirmative obligation to refrain from engaging in certain activities in bad faith, such as those identified in Guidelines Sections 3(b)(i) through (vi), (viii) and (ix), and (xi) through (xiv).
 - ii. Once a Tenant has applied and is eligible for Mediation services, the Tenant's Landlord shall be prohibited from engaging in any activities towards that Tenant described in Guidelines Section 3(b) for the duration of that Tenant's tenancy.

- b. Anti-harassment and Other Prohibited Activities. In accordance with Marin County Code §§ 5.95.050(d) and 5.95.060, and Guidelines Section 3(a), above, a Landlord shall be prohibited from engaging in any of the following activities in bad faith:
- i. Interrupt, fail to provide, or threaten to interrupt or fail to provide any Housing Service under a lease or rental agreement, including but not limited to utility services and other amenities and services agreed to by contract;
 - ii. Fail to perform repairs or maintenance required by contract or by State, or County housing, health, or safety laws;
 - iii. Fail to exercise due diligence to complete repairs and maintenance once undertaken, including the failure to follow industry-appropriate safety standards and protocols;
 - iv. Abuse or otherwise improperly use Landlord's right to access the property;
 - v. Remove personal property of the Tenant(s) from the Dwelling Unit;
 - vi. Influence or attempt to influence the Tenant(s) to vacate the unit by means of fraud, intimidation, or coercion (including but not limited to threats based on immigration status in violation of California Civil Code section 1940.3);
 - vii. Offer payment or any other consideration, in return for the Tenant(s) vacating the Dwelling Unit, more often than once every six months;
 - viii. Threaten the Tenant(s) by word or gesture with physical harm;
 - ix. Interfere with the Tenant(s) right to quiet use and enjoyment of the Dwelling Unit;
 - x. Refuse to accept or acknowledge receipt of lawful Rent from the Tenant(s);
 - xi. Interfere with the Tenant(s) right to privacy;
 - xii. Request Information that violates the Tenant(s) right to privacy;
 - xiii. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the Tenant(s) comfort, repose, peace, or quiet enjoyment, and that cause, are likely to cause, or are intended to cause the Tenant(s) to vacate the Dwelling Unit;
 - xiv. Retaliate against the Tenant(s) for the Tenant(s) exercise of rights under state or federal law; or
 - xv. Retaliate against the Tenant(s) for the Tenant(s) exercise of rights under this Chapter.
- c. Notice of Tenant Rights.
- i. Marin County Code § 5.95.080 requires Landlords to provide a "Notice of Tenant Rights" to Tenants when entering into a new rental agreement, when renewing a rental agreement, and when providing notice of a Rent increase. The Notice of Tenant Rights

is required to describe the Mediation service and how to request service. A form Notice of Tenant Rights is included in Appendix A of these Guidelines.

- ii. Landlord failure to provide a Tenant with a Notice of Tenant Rights shall render any rental increase notice invalid and unenforceable.

4. Mediation Requests.

a. Timing of Mediation Requests.

- i. A Tenant request for Mediation services must be submitted no more than 10 calendar days after a Qualifying Event occurs.
- ii. A Landlord request for Mediation services may be submitted at any time in advance of, or within 10 days after, providing the Tenant with notice of a Rent increase greater than five percent within any 12-month period.

b. **Form Required.** All requests for Mediation shall specify the alleged Qualifying Event and provide sufficient information, and any supporting documents or other evidence, for the Designated Service Provider to evaluate whether the applicant is eligible for Mediation. All requests for Mediation shall be submitted to the Designated Service Provider on the Mediation Service Request form, a copy of which is included in Appendix A of these Guidelines.

c. **Eligibility Determination.** Eligibility for the Dispute Resolution program will be made by the Designated Service Provider based on the information provided by the requesting party on the Mediation Service Request form, and all documents or other pertinent information included and attached to the Mediation Service Request form, as described in Guidelines Section 4(b) above. The Designated Service Provider shall provide a notice of eligibility and initiate mediation as specified in Marin County Code § 5.95.050(c).

5. Good Faith Participation in Mediation Required.

a. **Good Faith Participation Requirements.** Marin County Code § 5.95.050(d) requires each party to a Mediation to participate in Mediation in Good Faith until the Mediation concludes as described in Guidelines Section 6. Good Faith includes, but is not limited to:

- i. **Landlord Requirements.** Landlords are prohibited from harassing the Tenant by engaging in behavior prohibited by Marin County Code § 5.95.030(f) and § 5.95.050(d), and Guidelines Section 3. In addition, Landlords may not commence an unlawful detainer proceeding other than for those actions authorized by subsections (3) and (4) of California Code of Civil Procedures section 1161 or any successor provisions.
- ii. **Tenant Requirements.** Tenants are required to continue to pay all Rent legally due to the Landlord and comply with the terms of their rental agreement throughout the Mediation process.

iii. Participation by an Authorized Representative Required.

- (1) In addition to the affirmative duties defined as Good Faith participation, and as summarized above in Guidelines Section 5(a)(i), Good Faith participation includes the obligation of each party to the Mediation, or the party's duly authorized representative, to personally participate in the Mediation.
- (2) Any duly authorized representative participating in Mediation on behalf of a party must possess decision-making authority regarding the subject of Mediation.
- (3) A Mediator may verify the decision-making authority of any representative, and may consider participation by a representative lacking adequate decision-making authority a failure to participate in Good Faith to be investigated under Guidelines Section 5(b).

b. Allegation of Failure to Participate in Good Faith.

- i. Parties Who Can Claim Lack of Good Faith. A Mediator or any party to the Mediation may request that the CDA Director investigate an alleged failure to participate in Good Faith.
- ii. Filing a Complaint. An alleged failure to participate in Good Faith must be submitted in writing using the Allegation of Failure to Participate in Good Faith form, which is included in Appendix A of these Guidelines. The form must be signed by the complainant under penalty of perjury, include specific facts and any supporting documentation or other evidence to support the claimed failure to participate in Good Faith, and be submitted to the assigned Mediator, who will provide a copy to Marin County CDA before the Mediation process concludes.
- iii. Time for Filing a Complaint. Allegations of Failure to Participate in Good Faith shall temporarily suspend the mediation process until the Allegations have been addressed through the procedures outlined in Guidelines sections 5(c) and 5(d) below. Allegation of Failure to Participate in Good Faith forms submitted either before or after the Mediation process will be rejected.

c. CDA Director Inquiry and Determination.

- i. A Mediator or party to the Mediation process may request that the CDA Director investigate a claim of failure to participate in Good Faith by another party. The CDA Director shall be responsible for investigating allegations of a lack of Good Faith participation by any party.
- ii. After reviewing a timely and complete Allegation of Failure to Participate in Good Faith, the CDA Director may:
 - (1) Discuss the allegation(s) with each party to the Mediation and with the Mediator; and
 - (2) Accept any documents or evidence that tends to support or disprove the alleged failure to participate in Good Faith; and

- (3) Determine whether there is sufficient evidence to warrant referral of the claim to a hearing officer pursuant to Guidelines Section 5(d).
- (4) The determination shall acknowledge the allegation(s), response(s), and relevant documentation relating to the allegation, as necessary, to determine whether further Mediation is warranted based on a party's failure to participate in Good Faith. The determination shall be provided to each party to the Mediation and the Mediator within 30 calendar days of receipt of the complete Allegation of Failure to Participate in Good Faith form.
- (5) If the CDA Director determines that sufficient evidence exists to warrant a fair hearing on the merits of the allegation, the CDA Director shall refer the matter to a hearing officer appointed by the CDA Director, as per Section (d)(i) below. This referral shall suspend the mediation process until a final decision regarding the Allegation of Failure to Participate in Good Faith is rendered. If the CDA Director determines that sufficient evidence to warrant further investigation does not exist, the CDA Director shall remand the matter back to the Mediator to resume the Mediation process without prejudice as to either party.

d. Hearings for Claim of Failure to Participate in Good Faith.

- i. Any determination that a party has failed to participate in Good Faith in a proceeding under this Chapter shall only be made after a fair hearing by a hearing officer appointed by the CDA Director and the rendition of factual findings supported by the record. All parties to such hearing must receive written notice of the hearing at least five business days prior to the hearing date. Following such a hearing, the CDA Director shall give prompt notice of the determination by first-class mail, postage prepaid, to the affected party. The hearing officer's decision shall be the final decision upon issuance.

6. Conclusion of Mediation Process.

a. Options to Conclude the Mediation.

- i. Mediation Agreement. If at any point after the Mediation process begins, the parties come to an agreement regarding the dispute, the Mediation process shall terminate upon the execution of an agreement that satisfies the requirements of Marin County Code § 5.95.050(e).
- ii. Agreement to Conclude Mediation. At any point after the Mediation process begins, the parties may agree in writing to conclude the Mediation, and such written agreement shall terminate the Mediation process. If the Mediation concludes under this Guidelines Section 6(a)(ii), the Mediator shall provide the parties with a Mediation Statement that meets the requirements of Marin County Code § 5.95.050(f) in the form provided in Appendix A to these Guidelines.
- iii. Mediator Determination and Statement. If at any point after the Mediation process begins, the Mediator determines that no further progress is likely to result from continued Mediation, the Mediator may notify the parties that the Mediator is terminating the Mediation. If the Mediation concludes under this Guidelines Section

- 6(a)(iii), the Mediator shall provide the parties with a Mediation Statement that meets the requirements of Marin County Code § 5.95.050(f) in the form provided in Appendix A to these Guidelines.
- b. Maximum Mediation Length. The Mediator shall endeavor to conclude the Mediation expeditiously, with the goal of concluding any Mediation before the actual date increased Rent is due following proper notification of a Rent increase under Civil Code section 827. In no event shall Mediation last longer than 30 calendar days from when the parties are notified, unless the parties agree in writing to extend the Mediation term.
 - c. Rent Increase Effective Date. In most circumstances, Mediation will conclude prior to the Noticed Rent Increase Date. In the event that Mediation has not concluded prior to the Noticed Rent Increase Date, the Tenant may, at the Tenant's option, withhold payment of the Rent increase pending conclusion of the Mediation process, although ultimate payment of the Rent increase remains a legal obligation of the Tenant unless and except if otherwise agreed to by the parties. If the Tenant chooses to withhold payment of the Rent Increase until conclusion of Mediation, the Tenant remains obligated to timely pay Base Rent as it becomes due and must comply with all other terms of the rental agreement. Upon conclusion of the Mediation process, Rent is due and payable as follows:
 - i. If the parties reach a Mediation agreement, the parties shall agree upon the amount of any Rent increase and when the first payment of the agreed-upon Rent shall be due. With the Landlord's agreement, the Tenant would not need to pay the Rent increase originally noticed.
 - ii. If the parties do not reach a Mediation agreement and the Mediation concludes prior to the date given under Civil Code section 827, the noticed Rent amount shall be due as specified in the notice.
 - iii. If the parties do not reach a Mediation agreement and the Mediation concludes after the date given under Civil Code section 827, the Tenant shall pay the Landlord any difference between Rent paid during the Mediation process and the noticed Rent amount within five business days, and all future Rent shall be due as specified in the notice.

7. Mediator Qualifications.

- a. Designated Service Provider. The CDA Director shall select a Designated Service Provider who will be responsible for overseeing and providing Mediation services authorized by Marin County Code Chapter 5.95. The Designated Service Provider may be a County department or a third-party service provider. The Designated Service Provider shall use Mediators who meet the criteria established in Guidelines Section 7(b).
- b. Mediators. Mediators must complete a Rental Housing Dispute Resolution Ordinance training, as specified by the CDA Director, and meet one of the following criteria:
 - i. Possess a Juris Doctor Degree with active or inactive membership in the California State Bar in Good Standing or other state bar; or

- ii. Have relevant experience, defined as:
 - (1) Served as a judge, commissioner, or other judicial officer for more than one year;
or
 - (2) Served as a hearing officer or administrative law judge or equivalent position for a public entity for more than three years; or
 - (3) Served as an arbitrator and heard at least five arbitration proceedings that required hearing witnesses, examining evidence, and issuing a written Decision; or
 - (4) Served as a hearing officer or arbitrator for a binding Rental dispute program, and has held that position for more than two years and has issued written Decisions in that position; or
 - (5) Completed a 40-hour mediation training course.
- c. Persons Disqualified from Acting as a Mediator. The following persons shall be ineligible to act as a Mediator:
 - i. Any current member of a Tenant or Landlord advocacy group or trade organization;
and
 - ii. Any individual who owns residential Rental property in unincorporated Marin County subject to the Rental Housing Dispute Resolution Ordinance.