

# Eviction Diversion Agreement Information Sheet

## Confidentiality of Mediation and Settlement Agreements

In order to encourage parties to a dispute to discuss settlement, the law makes settlement discussions inadmissible in court.<sup>1</sup> This means anything said during mediation, including offers to settle a case, cannot later be used in court if the parties do not reach an agreement. As a result, parties who take part in mediation do not risk having their participation in mediation used against them at a later date.

If the parties reach a settlement agreement, however, the agreement is treated like a contract.<sup>2</sup> While anything said during mediation is confidential, the agreement itself is not. The agreement may be used in a court case, including in an eviction case, at a later date, unless the parties specifically write into the agreement that the agreement cannot be used in court. For example, if the parties write into their agreement that certain facts are true, such as the amount of back rent due or that a violation of a lease occurred, that statement could later be used in court if one of the parties does not follow through on the agreement.

**Parties should carefully review any settlement agreement before signing the agreement. You have the right to have an attorney review the settlement agreement before signing it.**

## Effect of a Settlement Agreement

A settlement agreement reached during pre-filing mediation is not a court order. Instead, it is a contract between the parties. In some cases, an agreement reached in mediation may change the terms of an existing lease agreement between the landlord and tenant or establish a new lease agreement.

Each party must fulfill their part of the bargain. If one party fails to fulfill their side of the agreement, the other party may go to court to seek enforcement of the agreement and may be entitled to monetary damages caused by the violation of the contract. If the agreement modifies or replaces the parties' lease, a violation of the agreement may be grounds for eviction.

One thing a settlement agreement cannot do is waive a tenant's rights under the eviction statute, RSA chapter 540.<sup>3</sup> However, a settlement agreement may contain binding admissions to certain facts that would support an eviction.

For information on how an agreement may impact your particular situation, you may choose to seek legal advice or talk to an attorney.

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<sup>1</sup> N.H. R. Evid. 408

<sup>2</sup> See Poland v. Twomey, 156 N.H. 412, 414–15 (2007); In re Taber-McCarthy, 160 N.H. 112, 115 (2010)

<sup>3</sup> RSA 540:28.

## **How to Enforce an Eviction Diversion Settlement Agreement in Court**

You might seek enforcement of this agreement through using the court process in several different ways:

### **Eviction Action**

- If the tenant is covered by RSA chapter 540 and the settlement agreement modifies the lease, the landlord can file for an eviction case based on a violation of the settlement agreement.
- If the settlement agreement was based on the tenant taking some action in exchange for the landlord not filing for an eviction and the tenant fails to take the agreed upon action, the landlord may proceed with the eviction.

### **540-A Petition**

- If the landlord or tenant violates the settlement agreement in a way that also violates the rights set out in RSA 540-A, the other party may file a 540-A petition in Circuit Court.
- For more information about 540-A petitions, please visit the Court's website.

### **Small Claims Suit in Circuit Court**

- If one party violates the agreement, the other party can sue for money damages of up to \$10,000 by filing a small claims case. The amount of damages will generally be based on the value of the unfulfilled promise.

### **Civil Complaint in Circuit Court**

- If one party violates the agreement, the other party can sue for money damages of up to \$25,000 by filing a civil claim in the Circuit Court. The amount of damages will generally be based on the value of the unfulfilled promise.

### **Civil Suit in Superior Court**

- If one party violates the agreement and the amount of money damages exceeds \$1,500 or a party is seeking specific performance of the contract (an order to fulfill the promise made in the contract), a suit may be filed in Superior Court.

Small Claims, Civil Complaints, and Superior Court Civil Suits must be filed electronically. Check out <https://www.courts.nh.gov/resources/electronic-services> or call the Court at 1-855-212-1234 for more information about electronic filing.