

Eviction Defense During COVID-19

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Eric Dunn, National Housing Law Project

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National Housing Law Project

The National Housing Law Project (NHLP) is a non-profit legal advocacy and resource center focused on increasing, preserving, and improving affordable housing; expanding and enforcing the rights of low-income tenants and homeowners; and increasing housing opportunities for underserved communities. NHLP provides technical assistance and policy and litigation support and advocacy on a range of housing issues to legal services and other advocates nationwide.

Introduction

The federal CARES Act eviction moratorium—which reaches at least 28% (and likely a significantly higher, albeit unknown) of U.S. rental housing,¹ will expire July 25. Many of the states and localities that have imposed their own eviction moratoria have withdrawn them, allowed them to lapse, or will do so soon. The expiration of these moratoria and resumption of judicial unlawful detainer proceedings threatens to result in an unprecedented wave of evictions and homelessness that would overwhelm our communities.

Data needed to analyze and estimate the size and scope of the problem are still being compiled and gathered. At the time of this writing, nearly 7.5 million U.S. renters expressed no confidence in being able to pay their next month's rent, and over 32 million others expressed only slight or moderate confidence.² An earlier study in Los Angeles predicted over 365,000 evictions in Los Angeles County alone.³ These evictions will impose incalculable human costs, as well as destabilize communities and trigger or perpetuate cycles of poverty—especially in communities of color and lower-income areas. Many of those evicted will likely become homeless; as a 2018 New York study reported, evictions correspond to a 14 percentage-point increase in the likelihood of applying to a homeless shelter.⁴ Mass evictions that occur during a pandemic pose additional threats to public health and efforts at controlling the spread of COVID-19.

This Chapter Summary focuses on ways eviction defense advocates can work to slow down, stave off, and prevent as many of these evictions as possible, and mitigate the impacts of those that do occur.

Key Lessons

1. **Mass evictions during Covid-19 will be devastating to families and communities.** Eviction is a devastating occurrence for individual households; allowing mass evictions to occur will be deeply destabilizing to communities and threatens to worsen pandemic effects.

1 Urban Institute, “The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That’s One in Four US Rental Units,” Urban Wire (Apr. 2, 2020), [urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units](https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units).

2 U.S. Census Bureau, Household Pulse Survey, Housing Table 2b (June 18-23, 2020), [census.gov/data/tables/2020/demo/hhp/hhp8.html](https://www.census.gov/data/tables/2020/demo/hhp/hhp8.html).

3 Gary Blasi, UCLA Luskin Institute on Inequality and Democracy, “UD Day: Impending Evictions and Homelessness in Los Angeles” (May 28, 2020), escholarship.org/uc/item/2gz6c8cv.

4 Robert Collinson and Davin Reed, NY Furman Center for Real Estate & Urban Policy, “The Effects of Evictions on Low-Income Households” (February 2019), robcollinson.github.io/RobWebsite/jmp_rcollinson.pdf.

2. **Hearing and deciding eviction cases in the midst of a pandemic is difficult or impossible to do while respecting tenants' due process rights.** Pandemic conditions create new barriers to preparing for or appearing at hearings. Hastily adopted remote hearing procedures can be confusing or inaccessible to some tenants. Notices may lack information or mislead tenants about their hearing rights or how to exercise them.
3. **Tenants may require legal assistance to benefit from eviction moratoria or other pandemic-related legal protections.** Many tenants have legal protections against eviction during the pandemic, but may need counsel to identify or assert those defenses or to comply with procedural hurdles such as notice and documentation requirements.
4. **Advocates should use all available means to slow down or stop evictions.** Numerous public officials touch the eviction process in some way and may be called upon to stop or slow evictions, create defenses for tenants, or mitigate the effects of eviction.

Eviction Litigation Under Pandemic Conditions: Due Process

Tenants are entitled to notice and a meaningful opportunity to defend against an eviction. In courts that continue to hear or resume evictions, pandemic circumstances may prevent tenants from receiving these essential procedural due process protections. Many courts have adopted rules that prevent persons who have or are suspected of having been exposed to COVID-19 from accessing the court. These policies can prevent tenants from appearing for hearings or witnesses from testifying, especially if notice of such restrictions and available alternatives is not provided. Pandemic conditions make it difficult to seek representation, investigate defenses, secure the attendance of witnesses, and otherwise prepare for court.

Some courts are adapting technological approaches to hear cases remotely, but there are limits to this solution. For example, video-conference hearings may not be accessible for some tenants, may not allow for jury trials or public access, and may present technical challenges with respect to exhibits, interpretation, and other important aspects of judicial procedure. Over 40% of older Americans do not use the internet at all, and many experience physical conditions that limit their use of technology.⁵ At the same time, courts that do not adopt new policies to protect court staff and users from infection may deter tenants or witnesses from appearing, or force them to choose between their health and their housing—especially those who are elderly or have underlying conditions that make a COVID-19 infection more dangerous to them.

PRACTICE TIP

Abstention doctrines generally prevent a federal court from enjoining a state lawsuit that is already underway, or from collaterally attacking a state judgment. Therefore, advocates looking to challenge due process violations in state eviction courts should file on behalf of tenants who anticipate eviction but have not yet been sued (e.g., those who have received only pre-suit notices directing them to vacate). For more on this topic, see NHLP's [Memorandum on Federal Legal Challenges to State Court Eviction Proceedings](#).

Eviction Litigation Under Pandemic Conditions: CARES Act

The federal CARES Act took effect March 27, 2020, and imposes a 120-day moratorium on evictions for non-payment of rent or other charges from so-called “covered dwellings.” The 120-day period ends on July 25, 2020, and thereafter landlords may evict tenants only upon 30 days notice in writing—thus providing protection through late August at minimum. Yet, determining whether an eviction is barred by the CARES

⁵ See Aaron Smith, Pew Research Center, “Older Adults and Technology Use” (Apr. 3, 2014), [pewresearch.org/internet/2014/04/03/older-adults-and-technology-use/](https://www.pewresearch.org/internet/2014/04/03/older-adults-and-technology-use/).

Act can be challenging, and finding out whether a tenancy is in a “covered dwelling” is difficult and sometimes impossible without the landlord’s cooperation.

PRACTICE TIP

Advocates should prepare lists of federal programs and agencies that can subject a property to coverage under the CARES Act moratorium, and use those lists to cross-examine landlords both about whether rental premises are covered, as well as whether the landlord made a reasonable inquiry to find out whether the premises were covered before filing suit. A list of programs covered under the Violence Against Women Act is available in NHLP’s summary of the [CARES Act Eviction Moratorium](#).

Eviction Litigation Under Pandemic Conditions: Other COVID-19 Related Rules

Many state and local jurisdictions have their own eviction moratoria, and other local pandemic-related emergency orders may place limitations on eviction proceedings. Often, these local rules carry their own ambiguities and procedural concerns. At the same time, they may create new defenses for tenants. Advocates should look out for these types of wrinkles, and be prepared both to assist tenants in overcoming obstacles and to capitalize on opportunities.

CASE EXAMPLES

A state eviction moratorium in Arizona only protects tenants who notify their landlords, in writing, that their failure to pay rent was related to COVID-19—and provide supporting documentation.⁶ Helping tenants obtain such documentation and document notice to their landlords is important advocacy in Arizona. Meanwhile, a Michigan order requires courts to sort eviction cases into several different priority tiers and schedule the highest-priority cases first.⁷ The complexity of sorting cases into tiers and prioritizing them correctly creates another procedural challenge advocates hope will encumber and slow evictions and any errors or other violations that occur in these processes could establish new defenses.

Advocating for Broad-Based Relief

There are many ways jurisdictions can impose eviction moratoria. Acting under emergency powers, state legislatures or governors can prohibit landlords from evicting tenants, prohibit law enforcement officers from executing eviction orders, or impose new conditions. Courts can restrict filings, suspend dockets, and continue cases. Other public officials, such as health departments, can often prevent at least some evictions. Advocates should use legal and communication tools to ensure all officials who touch the eviction process understand the gravity of the mass eviction emergency and the powers available to respond.

Lesser procedural devices can slow eviction dockets, create defenses for tenants, and lessen the impacts on tenants. These include such measures as prohibiting evictions based on rent arrearages (for tenants who can afford current rent), mandatory payment plans, notice requirements, eviction diversion programs, case triage and scheduling rules, appointment of counsel, new pleading requirements, and automatic continuances. While no substitute for moratoria, advocates should be familiar with these lesser protections and urge public officials and courts to consider them if evictions are to continue.

⁶ See Arizona Executive Order 2020-14, available at: azgovernor.gov/sites/default/files/eo_2020-14_0.pdf.

⁷ See Michigan Administrative Order No. 2020-17, available at: courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-06-09_FormattedOrder_AO2020-17.pdf.

CASE EXAMPLE

In Virginia, both the governor and state supreme court initially refused to extend the state's eviction moratorium after it expired on May 18. Advocates responded by (i) filing petitions⁸ in the state supreme court seeking to enjoin local trial courts that had not adopted procedures to assure due process and safe social distancing from hearing eviction cases; (ii) generating and disseminating data showing the scope of the mass eviction emergency and the number of families at risk; (iii) generating local awareness of the need to impose local eviction moratoria (as authorized by state law); and (iv) educating the public, governor, and supreme court about the need to protect the public from mass evictions. After several weeks, the governor's office asked the supreme court to issue a new moratorium,⁹ which it did—ostensibly because of the gubernatorial request.¹⁰

Mitigating Mass Evictions Through Post-Eviction Remedies

For tenants who are actually evicted, avoiding homelessness and securing new housing is exceedingly difficult. Many housing providers will categorically deny admission to rental applicants with eviction records or who owe money to past landlords. Policies of this nature can prolong bouts of homelessness, force tenants into substandard housing markets and communities of lesser opportunity, and feed into cyclical poverty. Jurisdictions can mitigate these dynamics through rental admissions laws, such as prohibiting landlords from denying admission due to COVID-19 related evictions or landlord-tenant debts.¹¹ Advocates should urge states and localities that will not prevent evictions to at least curb some of their harshest, long-term effects.

CASE EXAMPLE

Proposed legislation in California would assist tenants who lose their housing during the pandemic in securing future rental housing by prohibiting housing providers and tenant-screening services from using a COVID-19 rent default as a negative factor in considering a rental housing application.¹²

Conclusion

The threat of mass evictions during COVID-19 requires housing advocates to fight as hard as they can to stop evictions, slow down those that cannot be stopped, and lessen the harms to those who are evicted. Moratoria blocking evictions en masse are necessary to halt a rise in homelessness and increase in poverty. Where that is not possible, advocates should use all tools to fight evictions in court—both on an individual case basis and in collection actions that seek to block entire courts from hearing large categories of eviction cases, or even hearing eviction cases at all. This Chapter Summary, and the accompanying presentation, should equip advocates with strategies and tools to protect housing for older adults.

8 See In Re Shakori Edwards, Petitioner (May 18, 2020), available at: nhlp.org/wp-content/uploads/Petition-Edwards.pdf.

9 Press release, "Virginia Announces Temporary Moratorium on Evictions" (June 8, 2020), governor.virginia.gov/newsroom/all-releases/2020/june/headline-857262-en.html.

10 See Virginia Supreme Court, Fifth Order Modifying and Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency (June 8, 2020), available at: vacourts.gov/news/items/covid/2020_0608_scv_amendment_to_fifth_order.pdf.

11 NHLP has a full set of recommendations for post-pandemic housing polices at: nhlp.org/wp-content/uploads/Non-Monetary-Policy-on-COVID-for-Renters.pdf.

12 See California AB 1436, available at: leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1436.

Additional Resources

- [Coronavirus Aid, Relief, and Economic Security Act](#), Pub. L. 116-136, § 4024
- [Eviction Moratorium Spreadsheet](#), Columbia Law School (Emily A. Benfer)
- National organizations providing additional resources:
 - » [National Housing Law Project](#)
 - » [Eviction Lab](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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