

Advocating for Tenants in the Aftermath of COVID-19

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National Housing Law Project

The National Housing Law Project's mission is to advance housing justice for poor people and communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes.

We are committed to an environment of inclusion and equitable opportunity for members of the Housing Justice Network, our partner organizations, clients, staff, and board. We seek to hire individuals from diverse backgrounds, especially people with lived experiences impacted by housing insecurity and discrimination, or who have experienced the intersection of multiple systems of discrimination. We actively promote mutual respect, acceptance, appreciation, and teamwork across all lines of difference.

Key Lessons

1. Pandemic-related tenant protections staved off mass evictions, but housing precarity is now very high.
2. CARES Act 30-day notice provision provides significant ongoing protection for many renters.
3. Many legal defenses unique to late pandemic conditions are still applicable.
4. Emergency Rental Assistance Program (ERAP) funds remain available in some jurisdictions.
5. Some landlords continue resorting to using extrajudicial means to try and remove tenants.
6. Legal Assistance is needed for many renters seeking to secure new housing.

Introduction

Shortly after the COVID-19 pandemic began, experts predicted the U.S. could see over 20 million evictions displacing as many as 40 million people.¹ Through a series of policy initiatives, including eviction restrictions and rental assistance programs, the U.S. was able not only to avoid this threat of mass evictions but additionally reduced the number of evictions during COVID-19 to levels far beneath typical averages.² However, as pandemic-era rental protections end, rental assistance funds become depleted, and rents rise sharply,³ the number of tenants experiencing housing precarity remains high and eviction numbers have begun to surpass historical rates.

1 Emily Benfer et al., "The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk," Aspen Institute (Aug. 7, 2020), aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/

2 Jacob Hass, et al., "Preliminary Analysis: Eviction Filing Trends After the CDC Moratorium Expiration," Eviction Lab (Dec. 9, 2021), evictionlab.org/updates/research/eviction-filing-trends-after-cdc-moratorium/

3 See U.S. Census Bureau, Week 46 Household Pulse Survey (June 22, 2022), census.gov/data/tables/2022/demo/hhp/hhp46.html; Eviction Lab, evictionlab.org/eviction-tracking/

CARES Act Notice Requirement

A significant federal protection created for tenants during the pandemic is a statute requiring landlords of properties with certain federal financing or financial assistance to give 30 days' notice before terminating a tenancy for nonpayment of rent or other charges.⁴ Unfortunately, compliance with this notice requirement is inconsistent, evidently for two reasons. First, many landlords and courts operate under the impression that the notice requirement expired along with a 120-day eviction filing moratorium enacted in the same statute. Second, it is often difficult to determine which properties are covered by the provision.⁵ Since noncompliance with the 30-day notice requirement may be a defense to eviction, advocates need to understand how it works and how best to utilize the notice requirement in defending eviction cases. Typically, this will involve making sure the landlord has either given 30 days' notice to terminate the tenancy or, if not, pleading and proving non-coverage of the statute (by showing that none of the possible avenues of coverage apply to the property).

Advocates may find more information about the CARES Act 30-day notice requirement, including links to some resources available for determining whether a property is covered, by accessing the National Housing Law Project's [memorandum](#) on enforcing the CARES Act notice provision.⁶

Lockouts and Extrajudicial Evictions

Perhaps due to the increase in rent defaults as well as restrictions against judicial eviction, housing advocates have also witnessed a significant increase in non-judicial evictions (“lockouts”) during the pandemic.⁷ Substantially all states prohibit extrajudicial, self-help evictions such as changing locks, cutting essential utility services, removing doors or safety locks, or threatening physical violence.⁸ Yet, the remedies available to tenants who experience lockouts, though commonly strong, tend to differ significantly across the states—both in substantive content and in the procedures to be followed.

Advocates should familiarize themselves with the content and procedure of any local anti-lockout statute because locked-out tenants often need immediate assistance. Advocates should also understand how to advise tenants on the best way to prepare claims for damages and other monetary relief, such as by having clients prepare inventories of personal belongings and keep records of where they stayed and costs incurred during the time excluded from their homes. This will be important in determining whether the tenant will seek an order restoring possession of the premises.

Dealing with Rent Arrearages

Tenants who face eviction due to rent delinquencies will usually need to find some way of resolving the arrearage, either to avoid eviction from their present home or to be accepted into a new rental home elsewhere. Advocates should be familiar with the various methods most common for dealing with such rent arrearages during the late pandemic stage: primarily emergency rental assistance programs (ERAP), as well as non-evictable debt schemes, payment plans, bankruptcy petitions, and reasonable accommodation requests. Specifically, with respect to rental assistance programs, advocates should understand the typical impediments to accessing rent relief—such as burdensome application requirements or landlord resistance—and how to push back against these barriers. Rental assistance funds are approaching the end of the appropriated dollars and it remains to be seen whether additional federal ERAP will be appropriated.

⁴ See 15 U.S.C. § 9058.

⁵ See National Housing Law Project, “Evictions Survey: What’s Happening on the Ground” (Dec. 7, 2021), nhlp.org/covid/survey/

⁶ See National Housing Law Project, “Enforcing the CARES Act 30-Day Eviction Notice Requirement (June 21, 2022), nhlp.org/wp-content/uploads/Enforcing-CARES-Act-30-Notice.pdf

⁷ Id.

⁸ American Bar Ass., Res. 612, “ABA Ten Guidelines for Residential Eviction Laws” at p. 3 (Feb. 2022), americanbar.org/content/dam/aba/directories/policy/midyear-2022/612-midyear-2022.pdf

Non-evictable debt schemes exist in a few large states (California, New Jersey, and New York) as well as some localities. These schemes fundamentally entail the legislative establishment of a “cutoff date” after which a tenant who remains current in rent cannot be evicted, even if the tenant owes delinquent rent from before the cutoff date.⁹ These schemes stabilize families struggling with Covid-era rent debts, but note renters remain liable for the arrearages even though landlords may not evict tenants for owing them.

Advocates negotiating payment plans on behalf of tenants should seek agreements that establish a new lease with a separate and independent payment plan on the arrearage—meaning a default on the payment plan does not constitute a violation of the lease. Similarly advocates should resist terms by which landlords apply all funds received to the payment plan first, and to current rent last. Advocates should also be wary of payment plans that charge interest on the arrearage (which may not have been provided for in the lease under which the arrearage is owed), or terms such as confession of judgment or waiver of notice clauses that may violate state landlord-tenant acts.

Note that tenants with disability-related rent arrearages may be able to utilize reasonable accommodation requests to secure more favorable repayment terms than a landlord might otherwise be willing to offer.

Late/Post-Pandemic Rental Admissions

Millions of tenant households acquired negative rental history during the pandemic, whether in the form of late payment histories, ongoing rental debts that remain unsatisfied, eviction filings, or eviction judgments. These records will impede renter households from accessing new housing in the future. Advocacy on rental admission will therefore take on increased significance in the coming years. Also, understanding the limited opportunities and impediments to securing new rental housing may be critical in correctly advising tenants facing eviction on their options.

Effective rental admissions advocacy requires both an understanding of the substantive reasons why rental applications are commonly rejected, as well as the procedures by which applications are screened and admission decisions made. For certain substantive grounds for denial, such as landlord tenant debts, simply paying (or potentially discharging or otherwise eliminating) the account may clear it from a tenant-screening report and enable admission. For other records like eviction filings, more extensive measures may be necessary. For example, a motion to seal the eviction record or a fair housing-based challenge to the underlying admission policy may allow a tenant to have their application approved. Many tenant screening reports also contain erroneous or incomplete information, which may be challenged and corrected using the Fair Credit Reporting Act procedure.¹⁰ Advocates should be aware that some jurisdictions have already enacted rental admission protections specifically related to or driven by pandemic era rent defaults, and additional protections may be forthcoming.

Conclusion

Effective tenant advocacy in the aftermath of COVID-19 requires familiarity not only with traditional landlord-tenant laws, but also a host of new laws and programs that remain in a constant state of change. It also requires an understanding of the market realities that tenants face. Advocates must take a broad view of tenant advocacy to include the ability to facilitate a tenant’s access to new rental housing even when a previous home may no longer be affordable or desirable due to a diminished relationship with the landlord.

⁹ See, e.g., New Jersey P.L. 2021, CHAPTER 188 (Aug. 4, 2021), <https://www.njleg.state.nj.us/bill-search/2020/S3691/bill-text?f=AL21&n=188> (prohibiting eviction of households at or below 120% of median income for rent defaults occurring between March 1, 2020, and August 31, 2021).

¹⁰ See 15 U.S.C. § 1681i.

Additional Resources

- NCLER: [Housing Trainings](#)
- CARES Act notice provision: 15 U.S.C. § 9058(c)
- National Housing Law Project: [Memo on enforcing the CARES Act notice provision](#)
- Consumer Financial Protection Bureau: [CARES Act Notice Requirement](#)
- National organizations with helpful resources:
 - » [National Housing Law Project](#)
 - » [National Low Income Housing Coalition](#)
 - » [Center for Budget & Policy Priorities](#)
 - » [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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