
Chapter 7: TENANT PROTECTIONS AND EVICTION PREVENTION

State and Local Tenant Protections during and beyond the COVID-19 Pandemic

By Sarah Gallagher, Senior Project Director, and Victoria Bourret, Senior Project Coordinator, NLIHC

The COVID-19 pandemic has highlighted the connection between housing and public health, as millions of renters – predominantly people of color – struggled to remain safely and stably housed. To mitigate the spread of COVID-19 and keep people in their homes, the Center for Disease Control and Prevention issued a nationwide eviction moratorium, Congress appropriated 46.55 billion in emergency rental assistance, and many states and local jurisdictions across the country passed a variety of tenant protections to ensure access to Emergency Rental Assistance (ERA), prevent evictions, and ensure housing stability for the most marginalized households.

[The ERASE State and Local Tenant Protections Database](#) provides information about protections passed or implemented since January 2021. The database includes information about the jurisdictions enacting protections, the implementing authorities, the status of protections, brief descriptions of these protections, and links to more information on both short-term protections directly related to emergency rental assistance and long-term tenant protections intended to outlast the pandemic.

To date, more than 150 state and local laws have been passed to support tenants' rights and housing stability. These tenant protections can be separated into five categories and are described in detail below: (1) state and local eviction moratoriums (2) pauses on the eviction process to allow for ERA processing; (3) mandates that require landlords to apply for or share information on ERA before filing an eviction and that limit tenant fees; (4) increases to tenant representation during the eviction process; and

(5) protections that reduce discrimination and promote housing stability.

STATE AND LOCAL EVICTION MORATORIUMS

To further mitigate an eviction crisis during the public health emergency, many states and local jurisdictions supplemented Congress' and the CDC's eviction moratoriums with a patchwork of state and local moratoriums.

[According to Eviction Lab's "Preliminary Analysis: A Year of Eviction Moratoria,"](#) between March 2020 and March 2021, 43 states, the District of Columbia, and five territories implemented eviction moratoriums. The state actors instituting the moratoriums varied from court officials and governors to state legislatures. The characteristics and strengths of these protections also varied, as did the justifications of the moratoriums (e.g., public health measure or response to the economic crisis), the durations (ranging from one month to one year), and the stages of the eviction process in which the eviction was frozen (e.g., written notice, eviction filing, court hearing, court decision, or writ enforcement).

The eviction moratoriums passed during the pandemic demonstrated the power that federal, state, and local governments have in protecting citizens during a public health emergency and simultaneous economic crisis. [According to the American Journal of Epidemiology](#), COVID-19 infection and mortality rates steadily increased in states after the "CARES Act" eviction moratorium expired in the summer of 2020, due to households doubling up with other renters or entering homeless shelters. Thus, the eviction moratorium was necessary in halting the spread of COVID-19, and lawmakers should consider implementing eviction moratoriums in their jurisdictions when responding to future public health emergencies and natural disasters.

Pauses on the Eviction Process to Allow for ERA Processing

In 2021, with the rollout of the federal ERA program, several state and local courts issued rulings that tied tenant protections to the availability of ERA in their area. These protections varied in aim and structure, but in general they were designed to ensure that landlords and property owners had made every effort to resolve problems related to rental arrears before turning to the eviction process.

Some states, like California, Virginia, and Connecticut, enacted legislation or issued executive orders requiring that landlords apply for ERA prior to filing an eviction. In some cases, these policies also ensured tenants were given a 30-day notice before an eviction could be filed.

Jurisdictions also established wait periods and safe harbors to ensure that renters who applied for assistance were not evicted as they waited for their applications to be approved. Most such protections, like those enacted in Arizona, California, and Oregon, delayed eviction proceedings for 30 to 90 days, pending a tenant's successful ERA application. These safe harbor policies were critical in allowing ERA program administrators time to process large numbers of applications during the pandemic.

Eviction stays were another effective strategy in reducing eviction filings. During the pandemic, 16 state and local jurisdictions enacted protections that paused or delayed eviction judgements to allow time for tenants to apply for ERA and for the program to disburse assistance. In Illinois, for example, the state Supreme Court redirected every new eviction filing to the state's ERA program. Eviction stays were a critical intervention, helping delay final judgments and giving renters opportunities to apply for ERA and avoid eviction.

Mandates That Increase Access to Information and Limit Late Fees

The eviction process can be complicated and time-consuming. It often includes multiple steps, fees, and deadlines, which if missed, can lead to a judgement against the tenant. Increasing

access to information and reducing additional tenant late fees can reduce burdens and increase successful outcomes for tenants with multiple barriers.

To help ensure tenants and landlords had the information they needed to successfully apply for and access ERA and prevent evictions, in 2021, 10 states and localities implemented policies requiring that information on ERA be shared before an eviction could be filed, as well as throughout the eviction process.

Some policies required landlords to provide tenants facing eviction for nonpayment of rent with information about ERA during the court summons process. A court summons is issued to notify a tenant that their landlord intends to initiate eviction proceedings against them and is issued before an eviction has been filed. Providing information about ERA during the summons process helped increase awareness of the program and connected tenants to resources to address rental arrearage and prevent eviction.

Policies that reduce or limit late fees typically extend the period during which a tenant can pay rent without being charged a late fee or cap the size of the late fee a landlord can charge. Four states and three local jurisdictions passed such laws in 2021. Some ERA programs implemented policies requiring landlords to limit or reduce late fees as a condition of receiving ERA. For example, the ERA program in Lexington-Fayette County, Kentucky, required landlords who received ERA to forgive all late fees, penalties, and interest related to a tenant's rental arrears.

Increases to Tenant Representation during the Eviction Process

Data shows that when tenants have legal representation during the eviction process, they are more likely to remain in their homes. With legal representation, tenants may be more informed of their rights, better positioned to navigate complicated eviction processes, and more able to access tenant protections that reduce fees or rent owed and allow them to stay in their homes. Two long-term strategies to increase representation are to develop

mediation programs within state and local courts and develop and fund tenants' right to counsel programs.

LANDLORD AND TENANT MEDIATION

Landlord-tenant mediation, combined with emergency rental assistance and additional tenant protections, can be an important tool for reducing the prevalence and harmful consequences of eviction. During the pandemic, several states and localities enacted policies that required or incentivized landlords to participate in mediation prior to proceeding with an eviction.

Mediation policies' participation requirements vary by state and locality. Most policies, such as those in Illinois and Washington State, require landlords to provide notice of available mediation services prior to filing an eviction and to delay filing if a tenant agrees within a certain number of days to participate. Landlords in Philadelphia, however, are required by law to participate in mediation before filing an eviction for nonpayment of rent.

While mediation can be a useful tool, its effectiveness largely depends on whether additional renter protections are in place. Research indicates mediation works best with a combination of financial assistance, access to legal aid, and additional tenant protections and resources. The voluntary nature of some eviction mediation policies may be a barrier to widespread participation. Requiring landlords to engage in mediation prior to filing an eviction may reduce evictions and their devastating, enduring consequences.

ESTABLISHING RIGHT-TO-COUNSEL PROGRAMS

The most effective way of ensuring tenants facing eviction have access to legal aid is to implement and fund right-to-counsel laws, which guarantee defendants in a civil court case – including eviction cases – access to legal counsel. In eviction cases, access to legal representation can make the difference between a tenant remaining safely, stably housed and facing eviction and, in

the worst case, homelessness. In fact, one study estimates that 90% of tenants who have legal representation in eviction court avoid being displaced into homelessness. However, according to the American Civil Liberties Union (ACLU), only 10% of tenants have legal representation in eviction cases, compared to 90% of landlords.

Recognizing the importance of legal aid, three states and 15 cities have enacted right-to-counsel policies for tenants facing eviction in recent years. New York City was the first jurisdiction to pass right to counsel legislation and laid the groundwork for similar campaigns in other parts of the country. Many of these initiatives were led by grassroots organizers including tenants who had faced eviction and saw right to counsel as a way to access power.

A major component of many right-to-counsel programs is income eligibility, often because resources are limited. Programs that include income eligibility typically set income limits at or below 200% of the federal poverty line, or 80% or below of area median income (AMI). Some programs have additional requirements, such as the Louisville Kentucky program, which restricts participation to tenants with at least one child.

Funding is another critical component of right to counsel legislation, needed for program implementation and legal services. States and cities that implemented right-to-counsel laws before the pandemic utilized general revenue funds and private donations to help fund their programs. Federal relief packages, including the “American Rescue Plan Act” and the “CARES Act,” have funneled an unprecedented amount of flexible funds into states and cities, and have been used to establish right-to-counsel programs more recently.

Protections That Reduce Discrimination and Promote Housing Stability

Source of income protections and laws that allow for the sealing and expungement of eviction records are long term tenant protections that can help balance the unequal power dynamic between landlords and tenants.

SOURCE-OF-INCOME PROTECTIONS

Many low-income tenants who use housing subsidies like housing vouchers, emergency rental assistance, and other forms of public assistance struggle to find or maintain safe, quality, affordable housing due to source-of-income (SOI) discrimination – the practice of denying an individual the full and equal enjoyment of housing based on that individual’s lawful source of income. One of the most common examples of source of income discrimination is against section 8 voucher holders - many landlords refuse to accept the vouchers, often placing the perspective renters in a situation where they must return the vouchers to the housing agency because their allotted time to find housing ran out.

SOI laws prohibit landlords, owners, and real estate brokers from refusing to rent to current or prospective tenants based on the income they use to pay for their housing, although not all laws cover voucher holders. Research conducted by HUD in 2018 shows lower rates of discrimination against voucher holders in jurisdictions that include section 8 as a source of income protection.

A key element of source of income laws is enforcement, which is determined by the individual jurisdictions. Enforcement may be through the courts, such as pursuing legal action against landlords who violate the law, testing routine violators of the law, or through administrative action. Education is another key element of source of income protections. Many jurisdictions that have passed SOI laws created education campaigns to inform renters of their rights and help landlords understand the law’s expectations.

Before the pandemic, approximately 16 states and 90 municipalities had SOI laws in place. In 2021 and 2022, three states and 16 local jurisdictions passed SOI laws, bringing the total number of states and local jurisdictions with active SOI laws to 19 and 106, respectively.

SEALING AND EXPUNGEMENT OF EVICTION RECORDS

Laws that allow for the sealing and expungement of eviction records can help mitigate the devastating consequences of eviction and increase access to safe, stable housing moving forward. Expungement, while less common than sealing, means a record is removed from a court system’s public view, preventing prospective landlords from seeing an eviction on a tenant’s rental history and allowing the applicant to answer “no” when asked if they have been evicted. Eviction sealing refers to a court controlling and restricting access to a record. Tenants whose eviction records are sealed must still reveal those records on housing applications, which often triggers an automatic denial.

At least eight states currently have some form of eviction record-sealing laws in place: California, Colorado, Illinois, Minnesota, Nevada, New Jersey, New York, and Oregon. The Cleveland Municipal Housing Court and Toledo Housing Court have enacted local rules that allow for eviction records to be sealed in certain circumstances. Several states with existing eviction record-sealing and expungement legislation – California, Illinois, Nevada, New Jersey, Oregon, and Washington, DC – also passed new legislation or amended existing laws to limit sealing to cases filed specifically during the pandemic.

The strength of these laws varies, depending on the stage of the eviction process the law is sealing. For example, Colorado’s eviction sealing law requires that courts suppress records of eviction cases only while they are moving through the court process and that records are kept hidden only if the tenant wins. Therefore, tenants who are evicted are no longer protected from the eviction sealing law, meaning that displaced tenants with the greatest need for rehousing face the greatest barriers to safe affordable housing. Eviction sealing laws can also present a challenge to housing advocates and legal service providers trying to access eviction data to inform their advocacy and work supporting tenants.

States and localities must work to strengthen these laws by ensuring that all records of the eviction process – from notice to judgement – are sealed. They must also mitigate some of the unintended consequences involved in accessing eviction data by facilitating data-sharing agreements between eviction courts and nonprofit organizations, so that housing advocates and legal aid providers can better serve low-income and marginalized tenants.

RECOMMENDATIONS

The pandemic highlighted the need for additional tenant protections but also presented opportunities to learn how existing protections can be strengthened and expanded in the future. Emergency rental assistance and the short-term tenant protections tied to ERA will eventually expire, but long-term tenant protections, like source-of-income discrimination laws, right to counsel, and sealed eviction legislation, will outlast the pandemic and can guide housing advocates and policymakers looking to pass similar protections in their own jurisdictions.

NLIHC recommends the following actions at the state and local levels to protect tenants, prevent evictions, and support long-term housing stability:

- State and local governments should make permanent those ERA-era tenant protections enacted during the pandemic and continue to pass tenant protections focused on all stages of the eviction process to advance housing as a human right.
- States and localities must assess their tenant-protection laws and programs to ensure maximum effectiveness in preventing evictions, from improving enforcement of source-of-income discrimination laws to adequately funding right-to-counsel programs.
- ERA programs, states, and local courts should develop collaborative partnerships to ensure the successful implementation and enforcement of tenant protections at all stages of the eviction process.
- State and local courts should centralize eviction filing and outcome data for facilitating access to ERA to those in need, enforce existing tenant protections, and track housing stability outcomes for tenants who may have been evicted.
- Long-term federal tenant protections, such as a Tenant’s Bill of Rights, source-of-income discrimination laws, “just cause” eviction standards, right to counsel, and sealed eviction legislation, are needed to ensure that all renters – across all jurisdictions – share a basic level of protection.
- A permanent program to provide emergency rental assistance, such as that proposed in the “Eviction Crisis Act,” is needed to ensure housing stability for households that experience financial shocks in the future.

FOR MORE INFORMATION

“ERASE State and Local Tenant Protections Database,” National Low Income Housing Coalition, accessed November 30, 2022, <https://nlihc.org/tenant-protections>.

Alexander, A. K. & Lee, S. “Preliminary Analysis: A Year of Eviction Moratoria,” Eviction Lab Updates (blog), Eviction Lab, March 29, 2021, <https://evictionlab.org/one-year-of-eviction-moratoria/>.

Leifheit, K. et al. “Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality,” American Journal of Epidemiology 190, no. 12 (2021): 2503–2510, <https://academic.oup.com/aje/article/190/12/2503/6328194>.

Jade Vasquez et al. “Tenant Protections and Emergency Rental Assistance During and Beyond the COVID-19 Pandemic,” National Low Income Housing Coalition, January 2022, https://nlihc.org/sites/default/files/Tenant-Protections_Emergency-Rental-Assistance-during_beyond_COVID-19_Pandemic.pdf.

Park, S. & Pollock, J. “Tenants’ Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond,” News & Commentary, ACLU, January 12, 2021, <https://www.aclu.org/news/racial-justice/tenants-right->

[to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond.](#)

Parrish, D. “Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs,” American Bar Association & Harvard Law School, 2021, <https://hnmcp.law.harvard.edu/wp-content/uploads/2021/06/Deasigning-for-Housing-Stability.pdf>.

Steinkamp, N. “Right to Counsel: The Nationwide Movement to Fight the Eviction Crisis,” Stout, October 14, 2019, <https://www.stout.com/en/insights/article/right-to-counsel-nationwide-movement-fight-eviction-crisis#National>.

“The Right to Counsel for Tenants Facing Eviction: Enacted Legislation,” NCCRC, October 2022, http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf.

“Source of Income Laws,” Local Housing Solutions, accessed November 30, 2022, <https://localhousingsolutions.org/housing-policy-library/source-of-income-laws/>.

Bell, A., Sard, B., & Koepnick, B. “Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results,” Center on Budget & Policy Priorities, December 2018, <https://www.cbpp.org/sites/default/files/atoms/files/10-10-18hous.pdf>.

“Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local and Federal Laws Barring Source of Income Discrimination,” Poverty & Race Research Action Council, September 2022, <http://www.prrac.org/pdf/AppendixB.pdf>.