


Eviction Record Sealing and Expungement

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 ver the last two decades, eviction filings steadily increased across the nation. During an 18-year period, the Eviction Lab at Princeton University found that, on average, 3.6 million evictions had been filed every year since 2000 – that is, approximately nine evictions filed for every 100 households (Garnham et al., 2022). During the COVID-19 pandemic, these rates only compounded, with eviction filings having increased by more than 50% the pre-pandemic average in some cities across the country once the federal eviction moratorium expired in October 2021 (Fitzpatrick & Beheraj, 2023).

Eviction filings can have lasting and harmful consequences for individuals, regardless of the outcome of the eviction case. Even in instances where an eviction judgement does not result in the immediate displacement of a tenant, the mere presence of an eviction on a tenant's public record can be a barrier to securing safe, stable, accessible, and affordable housing long into the future. For low-income and marginalized renter groups particularly, the effects can be detrimental to aspects of life well beyond housing stability, impacting an individual's and their family's ability to access reliable transportation, quality schools, and work opportunities (Bell, 2021).

To help mitigate the negative effects of eviction records and support renters at risk of eviction, one safeguard that state and local lawmakers and advocates can pursue is to pass eviction record sealing and expungement protections. The general purpose of enacting such protections is to prevent eviction filings from impacting the ability of tenants to secure stable housing by removing a tenant's eviction record from public view or even erasing it altogether. When an eviction record is sealed, it is removed from public view, with restrictions put in place detailing who can access the eviction record. Expungement is a comparatively more permanent process that completely erases an individual's eviction record,

making it seem as if it were never there.

Currently, there are 12 states, including the District of Columbia, that have passed policies or programs related to the sealing or expunging of eviction records, with the State of Connecticut and the State of Rhode Island being the two most recent states to have passed such protections for renters in 2023.

As interest for such protections has been growing at the state and local levels, it is important to understand what factors contribute to a tenant having an eviction filed against them, who is most impacted by the threat of eviction, and what legal avenues lawmakers can take to enact eviction record sealing and expungement protections within their jurisdictions. Most importantly, there are several core components that housing advocates should consider when drafting eviction record sealing and expungement protections to ensure that tenants do not face the collateral consequences of having an eviction record.

WHAT CAUSES AN EVICTION?

Evictions can happen for many reasons. During or at the end of a tenant's lease term, a landlord can file to legally remove a tenant from their residence for reasons such as nonpayment of rent, violation of the lease agreement, criminal activity, or even verifiable intent by the landlord to move back into the unit occupied by the tenant. The most common cause of eviction, typically, is nonpayment of rent. In many states, clearing a rental balance with a landlord is one of the only options for diverting the threat of eviction once a "notice to quit" has been issued against a tenant. However, because eviction cases disproportionately impact low-income renters, many tenants who are evicted for nonpayment of rent find it difficult to pay back any arrears and have their eviction case dismissed. Consequently, a tenant who is aware that they have not met this requirement will often not challenge an eviction order brought against them. The tenant may then choose not to appear in court, resulting in

a default eviction judgement against the tenant, usually in favor of the landlord.

Lack of legal services, particularly for low-income renters, can also result in eviction judgements being brought against tenants. Low-income families usually cannot afford private lawyers, while legal aid attorneys are often unavailable due to high demand (indeed, approximately 50% of individuals seeking representation through legal aid are turned away). As a result, in eviction cases nationwide, approximately 82% of landlords are represented in court, while only 3% of tenants are.

Eviction lawsuits can be filed against tenants without good or “just” cause as well, meaning landlords can evict tenants for no reason – or fault of the tenant – whatsoever. In many states and localities around the country, landlords are not required to provide a reason for evicting a tenant at the end of a lease term or for evicting a tenant without a lease (i.e., a resident with a month-to-month tenancy). Moreover, a landlord who is unable to evict a tenant during their lease term may choose not to renew the tenant’s lease and use the lease holdover as grounds for eviction. In all but six states nationwide, including the District of Columbia, a landlord does not have to provide just cause for evicting a tenant and can instead do so with impunity.

EVICTION FILINGS DO NOT IMPACT RENTERS EQUALLY, BUT THE CONSEQUENCES CAN BE DETRIMENTAL FOR EVERYONE

Once an eviction has been filed with the court, the filing can follow an individual for years, making it more difficult to obtain and maintain future housing as a renter. Eviction filings pose a threat to individuals because they appear during tenant background screenings. Landlords often utilize background screenings through third-party screening companies during the rental application process, which can result in outdated and inaccurate or misleading information about applicants being shared with landlords (Duke & Park, 2019). As a consequence, property owners

and landlords often reject applications from prospective tenants whose screening reports reveal eviction filings, regardless of the outcome or circumstances surrounding the filing (Collatz, 2017).

Unfortunately, eviction filing rates are not felt equally across all population groups. Black and Indigenous renter households and households of color are more likely to feel the disparate impacts of having an eviction filed against them than white renters do, with low-income Black women experiencing the highest eviction rates. Over the course of their lifetime, one out of every five Black women is evicted, while one out of every 15 white women is evicted (Lake & Tupper, 2021). Low-income households with children are also disproportionately more likely to face eviction. More than 14% of children who live in low-income households have experienced an eviction by the time they are 15 years old (Benefer, 2022).

AVENUES FOR PASSING EVICTION RECORD SEALING AND EXPUNGEMENT PROTECTIONS

No federal legislation mandates the sealing or expungement of an individual’s eviction record, making state and local legislation even more important. State and local lawmakers can pursue eviction record sealing and expungement protections through statutory laws (employing legislative means) and through administrative policies and orders (using executive means).

STATUTORY LAWS

Statutory laws are passed in the form of bills or acts at either the federal or state levels that are signed into law by members of the executive branch. At the local level, statutory laws are passed by city or town councils and then signed into law by a mayor. Several benefits to enacting tenant protections through statutory – or legislative – means are:

- Clarity and permanence: as outlined in the text of a bill or act, statutory laws help individuals or organizations better understand their rights. Statutory laws,

once enacted, can also extend permanent protections to individuals, especially when these protections are codified into law.

- **Flexibility:** once passed, statutory laws can be updated or amended by a state or local legislature, allowing them to be responsive to the needs of the public.
- **Public input and transparency:** statutory laws allow public input and debate, which can in turn promote transparency and increase accountability.
- **Legitimacy:** insofar as they result from democratic processes, statutory laws can be seen as more legitimate, especially when such laws are passed with input from the public.

ADMINISTRATIVE POLICIES AND ORDERS

A second avenue for enacting eviction record sealing and expungement protections is through administrative policies and orders. Administrative policies are rules and regulations that deal specifically with the implementation and interpretation of laws. Administrative – or executive – orders, are temporary policies passed by the executive branch at the federal or state level that do not require support from a legislative body. When administrative policies and orders are issued, the court system oversees their implementation to ensure that the laws are upheld both consistently and efficiently. Administrative policy differs from statutory law. While statutory law deals with the creation of laws and legislation, administrative policy focuses on its implementation. Administrative policies are thus more technical than statutory laws, insofar as they detail the processes and procedures needed to implement and interpret laws and legislation. While administrative policies are not laws per se, they are rules and regulations that have a power akin to law. Currently, the State of Texas is the only jurisdiction nationwide to have implemented eviction record sealing protections through administrative means.

WHAT SHOULD BE INCLUDED IN EVICTION RECORD SEALING AND EXPUNGEMENT LEGISLATION

To date, 12 jurisdictions have passed eviction record sealing or expungement legislation: Arizona, California, Colorado, Connecticut, the District of Columbia, Indiana, Minnesota, Nevada, Oregon, Rhode Island, Texas, and Utah. California was the first state to enact such protections for tenants (in 2016), while other states followed suit during, and after, the COVID-19 pandemic.

While each jurisdiction has implemented their own, unique sealing and expungement protections, many of protections that have been implemented share similar components, including (1) when the sealing or expungement of an eviction record should be triggered; (2) how long an eviction record is sealed for; (3) the process for having an eviction record sealed or expunged; (4) who is able to access an eviction record once it has been sealed; and (5) how the law will be enforced.

Based on an examination of existing protections and their common components, NLIHC offer the following recommendations for lawmakers and advocates developing new eviction record sealing and expungement protections:

1. **Clarify the options available to individuals wishing to seal or expunge their eviction records,** including under what circumstances an individual can have their eviction record sealed or expunged (1) if a tenant prevails in court and is found to not be at fault, (2) if a tenant has their eviction record dismissed, (3) if a landlord and tenant resolve their case outside of court, (4) if the landlord and tenant file a joint request to have an eviction record sealed, and (5) if a certain amount of time passes following an eviction judgement, after which time the tenant may qualify for an expungement.
2. **Ensure the protections cover all types of eviction cases,** not just evictions that happen under specific circumstances such as noncompliance with a lease agreement or failure to pay rent.

3. **Require that eviction filings are sealed at the point of filing.** Eviction records can be sealed automatically, at the point of an eviction being filed, or at the end of the eviction process when a judgement is brought down. Yet because third parties can access eviction data as soon as a case is filed, it is imperative that eviction records be sealed at the point of filing.
4. **Streamline eviction record sealing and expungement processes by reducing documentation.** When eviction records are not sealed automatically, individuals must apply to have their records sealed. Typically, this process can create undue burden for a tenant, including having to fill out the proper and necessary paperwork needed to apply for respite. In some states, like Oregon, an individual must convince a landlord to affix a signature to a document asserting that an individual has satisfied the terms of an eviction judgement. Oftentimes, a landlord can refuse to sign the individual's paperwork – creating additional barriers for the tenant. To mitigate this challenge, lawmakers should implement policies that seal eviction records at the time of filing.
5. **Limit access to eviction data** by ensuring that an eviction record is not readily available to a third party, such as a credit reporting company. Instead, the law should clarify that a record may only be opened by a tenant named on the eviction case, or when the court shows compelling need for the record (such as when the data are being used for scholarly, educational, journalistic, or governmental purposes). Even when a court can show compelling need for the record, the tenant's identifying information is made private.
6. **Ensure that sealed records are sealed permanently** and closed off from public view for as long as possible.

IMPLEMENTATION

When eviction record sealing and expungement policies and programs are put in place, the courts play a critical role in their implementation.

Throughout the eviction process, the courts are involved in every aspect of a tenant's case. At the beginning of the eviction process, when an eviction order is levied against a tenant, court clerks are tasked with maintaining a tenant's eviction file. If sealing or expungement policies are in place, court clerks maintain the confidentiality of these records. A court's capacity and resources, or lack thereof, play an important role in its ability to effectively implement eviction record sealing and expungement policies or programs.

Due to budget constraints, local courts often have outdated infrastructures, leading to difficulties for court clerks when it comes to efficiently tracking or accessing individuals' records. Court clerks can also be hesitant to change processes because of a lack of staff capacity. Therefore, for states and localities working to enact sealing and expungement protections within their jurisdictions, it is imperative that lawmakers engage court staff when drafting these bills. In California, for example, when advocates were working to pass "Assembly Bill 2819," court staff were included in deliberations about the bill, ensuring that courts would have the capacity to implement the law effectively (Dada & Duarte, 2022).

CONCLUSION

Eviction record sealing and expungement protections can be important interventions for minimizing the impacts of eviction. While eviction record sealing and expungement protections do not prevent evictions from occurring, these protections can be used to reduce the threat of future housing instability for many renter households. It is imperative that state and local lawmakers work to enact protections for tenants that address evictions in all forms and at all stages of the eviction process.

FOR MORE INFORMATION

NLIHC, *Eviction Record Sealing and Expungement Toolkit*, <https://nlihc.org/sites/default/files/2023-04/eviction-record-sealing-and-expungement-toolkit.pdf>.

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