

# Housing Case Record Sealing and Expungement

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Study Committee on the Use of Tenant Information in Rental Decisions

October 2021

This memo offers a guide to one of the potential approaches to regulating the use of tenant information in rental decisions: the sealing<sup>1</sup> of court records from eviction and other housing cases. It is common for states to have common law or statutory schemes for shielding some civil court records, or information contained in them, from public view. Most states also have laws permitting people to seal their criminal records under certain circumstances, in order to have a “Second Chance” or “Clean Slate” from which to build a better life. Some jurisdictions have adopted, or are considering, a similar approach to the court records of eviction and other housing cases.

Like any approach, record sealing has advantages and disadvantages, and we look forward to discussing those at our upcoming meeting. The purpose of this memo is to outline the different forms a record sealing measure might take.

## **1. Making only certain housing case records public/ automatic sealing upon filing**

Some states have passed or are considering laws that make court records in eviction cases nonpublic unless and until something happens to make them eligible for publication. In California, for example, eviction cases can be viewed only by the parties and certain other people connected to the case for 60 days, and a case remains sealed forever unless the landlord prevails within that time frame. Cal. Civil Procedure Code 1161.2. Colorado recently passed a similar law, without the 60-day rule; eviction cases are sealed upon filing and released to the public only where the landlord receives a judgment for possession, or by agreement of the parties. Colo. Rev. Stat. § 13-40-110.5. Similar bills are pending in other states, including Massachusetts and Connecticut, where finer distinctions are drawn between the types of cases that remain sealed and those that become public.

These “curtain” laws recognize the difficulty of removing information from the public domain after it has been released there. They also account for tenants’ near-universal lack of representation and legal expertise needed to successfully pursue sealing motions. In states with more stringent open-records laws or tendencies, automatic sealing may not be feasible.

## **2. Automatic sealing upon conclusion of a case**

Some laws and proposed laws provide for eviction case records to be sealed after filing, either because sealing is based on the outcome of the case or because the law imposes a “lookback period” after which eviction case records are considered stale and of limited relevance. A new Washington, D.C., law, for example, instructs courts to automatically seal the record of any eviction case resolved in favor of a tenant 30 days after the conclusion of the case and any case resolved in favor of a landlord 3 years after judgment, so long as the landlord did not secure a second judgment against

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<sup>1</sup> This memo uses the term sealing to refer to a means by which court records are shielded from public view. States may use other terms, like expungement or impoundment, and the precise mechanism of shielding records may vary by jurisdiction.

the tenant during that period. D.C. Code Sec. 42-3505.09. Automatic sealing has also been adopted to address evictions emerging from widespread economic crises, like COVID or the foreclosure crisis of the early 2000s. *See, e.g.*, Nevada’s N.R.S. 40.2545; 735 Ill. Comp. Stat. 5/9-121.

### **3. Establishing a right to seal records by motion**

Another option is creating a right to seal certain types of eviction records upon motion or petition to the court. States have created or are considering a right to seal under a variety of circumstances, e.g.:

- COVID-related nonpayment evictions;
- Cases with certain case outcomes (e.g., tenant judgments or dismissals);
- Cases brought by tenants to address housing code violations; and
- Older cases regardless of type or outcome (after a specified “lookback” period).

### **4. Outlining criteria for judges considering a motion to seal a housing case record**

Some provisions do not guarantee sealing but rather create a right (or codify a common law right) to seek discretionary sealing by a judge. For example, Minnesota lawmakers established a right for tenants to seek discretionary “expungement” of eviction cases they win. Minn. Stat. § 504B.3. Alternatively, a law might specify a framework for judges to apply in considering any motion to seal a housing case record. Nevada’s N.R.S. 40.2545 does both, permitting sealing upon motion under certain circumstances (e.g., a stipulation by the landlord and tenant to vacate the eviction order and seal the records) and offering criteria for judges to consider in one-party motions to seal. These laws generally build on a state’s existing common law right to seek record sealing in civil cases and make it easier to apply such rules to eviction cases.

### **5. Access to sealed case records**

Where records are sealed during the pendency of a case, they must remain open to the parties and may also be viewable by third party designees like social workers or friends who are assisting a litigant with their case. The interests of journalists, scholars, and others seeking either specific information about cases of public interest or aggregated, de-identified information about a locality’s eviction cases in general can be accommodated through a provision allowing for records to be viewed on motion for good cause. The District of Columbia’s law contains such a provision. D.C. Code Sec. 42-3505.09(e).