

AMERICAN BAR ASSOCIATION

**STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENSE
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
COMMISSION ON HOMELESSNESS AND POVERTY
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association adopts the ABA Ten Guidelines for
2 Residential Eviction Laws, black letter and commentary, dated February 2022; and
3
4 FURTHER RESOLVED, That the American Bar Association urges all federal, state, local,
5 territorial, and tribal legislative, judicial, and other governmental bodies to implement the
6 ABA Ten Guidelines for Residential Eviction Laws.

ABA TEN GUIDELINES FOR RESIDENTIAL EVICTION LAWS**February 2022****1. Tenants should receive reasonable notice and an opportunity to cure before facing eviction for a lease violation.**

COMMENTARY: Under the residential landlord-tenant laws of most U.S. states, a landlord may not terminate a tenancy for a failure to pay rent or other ordinary lease violation without first giving notice of the breach and providing an opportunity to correct the problem before terminating the tenancy.¹ Ensuring that tenants have a chance to cure minor lease violations rather than lose their housing over them promotes security of tenure,² a key component of the right to housing as the ABA has long recognized and supported.³ Statutes of this kind are also consistent with common law doctrines, under which a landlord could not evict the tenant for unpaid rent without first making a demand for payment.⁴ All states should provide a right to cure with a reasonable notice period and such notice should be provided in plain language. Courts and local government should assist tenants with translation services. Tenants with limited English proficiency need all legal notices (including eviction notices) translated into a language they understand. and with resources for individuals with limited English proficiency.⁵

In nonpayment of rent cases, typically a landlord must notify the tenant of the amount due (whether precisely or approximate⁶) and provide a minimum number of days in which to

¹ See Janet Portman, State Laws on Termination for Violation of Lease, Nolo.com, <https://www.nolo.com/legal-encyclopedia/state-laws-termination-violation-lease.html>, last visited Oct. 5, 2021.

² See Ofc of the UN High Commissioner for Civil Rights, *The Right to Adequate Housing*, Fact Sheet No. 21 (Rev. 1) (2014) at 8 (“Security of tenure, the cornerstone of the right to adequate housing, can take a variety of forms, including rental accommodation . . . lease Given the broader protection afforded by the right to adequate housing, a sole focus on property rights might in fact lead to violations of the right to adequate housing”)

³ See American Bar Ass’n, Resolution 117 at 5 (2013) (“In implementing the human right to adequate housing, the American Bar Association calls upon . . . governments to (1) Implement policies promoting the human right to adequate housing for all . . . which, at minimum, includes: . . . b. Provision of security of tenure”).

⁴ See, e.g., *Roach v. Matanuska Valley Farmers Cooperating Assoc.*, 12 Alaska 512, 87 F Supp 641 (1949); *Smith v. Holt*, 29 Tenn App 31, 193 SW2d 100 (1945); *Mossi v. Fairbanks*, 19 Cal App 355, 125 P 1071 (1912).

⁵ See American Bar Ass’n, *Standards for Language Access in Courts* (2012), Forward (“Access to justice is unattainable for those who are not proficient in English unless they also have access to language services that will enable them to understand and be understood.”); see also *Standards* at 45 (“The right to an interpreter in civil cases has been established in many states by statute. In passing such statutes, states have reaffirmed the importance of legal issues at stake in civil proceedings such as . . . eviction.”)

⁶ “In order for a lease to be forfeited at common law, the landlord was required to have first made a demand for the precise sum of rent due.” *WDT-Winchester v. Nilsson*, 27 Cal. App. 4th 516, 526, 32 Cal. Rptr. 2d 511, 515 (1994). However some states have modified this rule, allowing a “reasonable estimate” to suffice. See *Winchester* at 526; see *Erz v. Reese*, 157 Wash. 32, 35, 288 P. 255, 256 (1930) (“notice of unlawful detainer was sufficient when it states with reasonable certainty the amount of payment due”).

pay.⁷ Nonpayment cure periods vary from as little as 3 to as many as 30 days, with most states providing between 3-7 days to cure.⁸ For lease violations other than nonpayment, a landlord must usually describe the violation and what must be done to correct it.⁹ Cure periods for non-financial breaches tend to be longer, often between 10-30 days and sometimes longer.¹⁰ Note that most states exempt certain egregious lease violations, such as violent criminal activity or willful damage to rental premises, from the right-to-cure provisions.¹¹

2. An eviction court should have emergency procedures for tenants who are locked out or otherwise extrajudicially evicted from their homes.

COMMENTARY: Substantially all states prohibit extrajudicial “self-help” eviction (often referred to as “lockouts”),¹² which includes various methods of excluding or driving a tenant out of possession such as changing the door locks, terminating essential utility services, threatening physical violence, and other such tactics.¹³ Most states provide significant statutory remedies that impose liability and damages on landlords who resort

⁷ See, e.g., Fl. Stat. § 83.56(3) (authorizing eviction “If the tenant fails to pay rent when due and the default continues for 3 days ... after delivery of written demand by the landlord for payment of the rent or possession of the premises, ... in substantially the following form: ‘You are hereby notified that you are indebted to me in the sum of ____ dollars for the rent and use of the premises (address of leased premises, including county) , Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the ___ day of ___, (year) . (landlord's name, address and phone number)’); Iowa Code § 562A.27(2) (authorizing eviction on three days’ notice to pay or vacate premises).

⁸ See Legal Services Corporation, LSC Evictions Laws Database, Q. 12.1, <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>, last visited Oct. 6, 2021

⁹ See, e.g., *Lee v. Kotyluk*, 59 Cal. App. 5th 719, 731, 274 Cal. Rptr. 3d 29, 36 (2021) (“[T]he notice's purpose is to inform the tenant of the breach so the tenant can rationally choose whether to cure the breach and retain possession, quit the property, or contest the allegations.”); *M. 1695 G.C. LLC v. Perez*, 66 Misc. 3d 320, 327, 113 N.Y.S.3d 514, 519 (N.Y. Civ. Ct. 2019) (Although a person cannot “undo” an act of vandalism or assault, one can refrain from engaging in those behaviors in the future. This is the meaning of cure which the lease contemplates in allowing a tenant an opportunity to “stop ... the default within 10 days.”)

¹⁰ See Legal Services Corporation, LSC Evictions Laws Database, Q. 12.2, <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>, last visited Oct. 6, 2021

¹¹ See Portman, Janet, “State Laws on Unconditional Quit Terminations,” Nolo.com, <https://www.nolo.com/legal-encyclopedia/state-laws-unconditional-quit-terminations.html>, last visited Oct 6, 2021

¹² See, e.g., Marcia Stewart, “Don’t Lock Out or Freeze Out a Tenant—It’s Illegal,” Nolo.com, <https://www.nolo.com/legal-encyclopedia/lock-out-tenant-illegal-29799.html>, last visited Oct. 6, 2021

¹³ See Findlaw Staff, reviewed by Maddy Tekka, “Illegal Evictions Can Get You in Trouble for Landlord Harassment,” Findlaw.com (Apr. 17, 2020), <https://www.findlaw.com/realestate/landlord-tenant-law/illegal-evictions-can-get-you-in-trouble-for-landlord-harassment.html>

to self-help evictions, as well attorney fees to incentivize lawyers to take lockout cases.¹⁴ Some states even impose criminal liability for extrajudicial lockouts.¹⁵

All states should have strong substantive remedies such as these to deter lockouts and enable tenants who experience lockouts to recover just compensation. But equally important are fast and reliable procedures tenants can use to regain possession when an illegal lockout occurs. A tenant who is unlawfully excluded from her home cannot afford to endure a long wait for a court hearing. Some states have quick and practical remedies for tenants who experience such unlawful lockouts, such as statutory emergency hearings which pro se tenants may initiate by filing a court form.¹⁶ Making illegal lockouts a crime minimizes this problem by enabling tenants to call law enforcement and regain access with police assistance.¹⁷ But in other states, the only way to secure an emergency hearing is through invoking a court's ordinary procedures for preliminary injunctions or temporary restraining orders. This is seldom a practical solution for tenants without legal representation.

3. No tenant should be evicted without a meaningful opportunity to present proofs and arguments in a hearing and before a trained judicial officer that has the authority to consider any legal or equitable defense.

¹⁴ See Clark-Kilcoyne, Meg, "Cause of Action Against Residential Landlord for Wrongful Eviction," 90 Causes of Action 2d 185, § 4 (2019) ("In the past, a variety of common law theories were available to the tenant claiming wrongful eviction, including breach of the rental contract, trespass on the tenant's possessory interest in the real property, conversion of property, and tort theories of intentional infliction of physical harm and intentional infliction of mental and emotional distress. ... As more states have adopted detailed landlord-tenant laws, statutory causes of action have also become available."); see, e.g., ALA. CODE § 35-9A-407 ("If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to not more than three months' periodic rent or the actual damages sustained by the tenant, whichever is greater, and reasonable attorney's fees.); HAW. REV. STAT. § 521-63(c) ("If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney's fees.").

¹⁵ See, e.g., CONN. GEN. STAT. § 19A-109 (evicting tenant through disruption of utility service a class D misdemeanor); N.Y. REAL PROP. ACTS. LAW § 768(2)(A)-(B) (class A misdemeanor for intentional violation of law against forcible eviction).

¹⁶ See, e.g., Va Code § 55.1-1245, and form ADP85DO "Tenant's Petition for Relief from Unlawful Exclusion" at <https://www.vacourts.gov/forms/district/dc431.pdf>; see Minn. Stat. 504B.375(e) ("The court shall direct the order to the sheriff of the county in which the premises are located and the sheriff shall execute the order immediately by making a demand for possession on the landlord, if found, or the landlord's agent or other person in charge of the premises. If the landlord fails to comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the residential tenant in possession of the premises.").

¹⁷ See, e.g., CtlawHelp.org, "Evictions and Lockouts" (Aug. 2020), <https://ctlawhelp.org/en/evictions-process-laws-connecticut> ("What can I do if I get locked out? Call the police right away. A lockout is a crime ... You have the right to ask the police to order your landlord to let you back into your apartment. If the landlord refuses, you can ask the police to arrest your landlord.

Can I break into my apartment? Call the police first and let them talk to your landlord. If the police can't find your landlord or your landlord won't let you back in, tell the police that you are going in on your own. Try not to break anything unless there is no other way to get back in. Caution! If you expect trouble from your landlord, ask the police to be there when you go back in. The police should stop your landlord from getting in your way.").

612

COMMENTARY: The right to be heard is fundamental to our system of justice.¹⁸ Some states, however, continue to “treat[] the undertakings of the tenant and those of the landlord as independent rather than dependent covenants,”¹⁹ an archaic practice of treating a landlord’s violation of the lease, landlord-tenant law, or other tenant protection such as an anti-discrimination law^{20/21} as not necessarily supplying a defense to eviction.²² In such jurisdictions, a tenant evicted for an unlawful reason such as discrimination, or in violation of a building code or common law rule, may only bring a separate lawsuit for damages.²³

This practice occurs in considerable tension with the core constitutional premise that “[d]ue process requires that there be an opportunity to present every available defense.”²⁴ While the U.S. Supreme Court has held that such “segregat[ion of] an action for possession of property from other actions arising out of the same factual situation” does not necessarily violate the Due Process Clause,²⁵ allowing a tenant to be evicted

¹⁸ American Bar Ass’n, Model Code of Judicial Conduct, Canon 2, Rule 2.6 (2020) (“The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.”)

¹⁹ See *Lindsey v. Normet*, 405 U.S. 56, 67 (1972).

²⁰ The American Bar Association has adopted policies calling upon local, state, and federal lawmakers to prohibit discrimination in housing, see e.g. American Bar Ass’n, Resolution 119A (2017) (urging governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income); American Bar Ass’n, Resolution 109b (2015) (urging governments to prohibit housing discrimination due to perpetrator behavior or status as a victim to ensure victims of domestic violence, dating violence, sexual assault, and stalking have meaningful access to safety and autonomy in their homes); see also Resolutions adopted 8/65 (addressing race, color, creed, national origin); 8/78 (race); 8/72, 2/74, 2/78, 8/74, 8/75, 8/80, 8/84 (gender); 8/86 (race and gender); 2/72 (sex, religion, race, national origin); 8/77 (“handicap”); 8/89 (urging prohibition of sexual orientation discrimination in employment, housing and public accommodation); 9/91 (urging study and elimination of judicial bias based on race, ethnicity, gender, age, sexual orientation and disability); 8/06 (addressing gender identity and expression).

²¹ See, e.g., Dillman, B., “Tenant Defenses to Eviction Notices in Florida,” Nolo.com, <https://www.nolo.com/legal-encyclopedia/tenant-defenses- eviction- notices- florida. html>, visited Oct. 25, 2021 (“If a landlord does evict a tenant in violation of the federal Fair Housing act or the Florida Fair Housing Act, the tenant can use that discrimination as a defense against the eviction.”).

²² For example, the Missouri Court of Appeals has held that allowing tenants to defend on the ground that an eviction was motivated by race discrimination would violate the “strong public policy” of disallowing counterclaims or “[i]ssues relating to title or matters of equity, such as mistake, estoppel and waiver” as defenses in eviction cases. See *Lake in the Woods Apartment v. Carson*, 651 S.W.2d 556, 558 (Mo. Ct. App. 1983) (“Tenant-defendants still have the right to litigate their claim of racial discrimination using the appropriate statute in the proper forum.”). In New York, public housing tenants who exercise their rights to administrative grievance hearings may lose the ability to raise fair housing defenses in subsequent eviction lawsuits. See, e.g., *Siniscallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 328 (E.D.N.Y. 2012) (“Plaintiffs have met their burden of showing that they cannot assert their federal disability claims in the pending state court eviction proceeding.”).

²³ See *Lindsey v. Normet*, 405 U.S. at 68-69 (“The substantive law of landlord-tenant relations differs widely in the various States. In some jurisdictions, a tenant may argue as a defense to eviction for nonpayment of rent such claims as unrepaired building code violations, breach of an implied warranty of habitability, or the fact that the landlord is evicting him for reporting building code violations or for exercising constitutional rights. Some States have enacted statutes authorizing rent withholding in certain situations. In other jurisdictions, these claims, if cognizable at all, must be litigated in separate tort, contract, or civil rights suits.”).

²⁴ See *Lindsey v. Normet*, 405 U.S. at 66, citing *American Surety Co. v. Baldwin*, 287 U.S. 156, 168, (1932).

²⁵ See *Lindsey v. Normet*, 405 U.S. at 69.

without consideration of an applicable legal defense²⁶ or especially in violation of an anti-discrimination law or other express tenant protection is contrary to modern notions of justice and undercuts the public policies those laws were enacted to serve.

Even where affirmative defenses and other counterarguments are available, eviction cases are often heard in tribunals where the adjudicator may lack basic legal training.²⁷ Residential eviction cases are too important, and the governing law too complex, to be left in the hands of decisionmakers without legal training.²⁸

4. A tenant should have an adequate opportunity to prepare for an eviction hearing, including by conducting civil discovery.

COMMENTARY: Eviction hearings are high stakes legal proceedings and tenants should have access to the basic facts and evidence that underlie a landlord's claims, as well as the opportunity to gather evidence and present affirmative defenses. Federal law prohibits eviction for discriminatory reasons,²⁹ and most states prohibit retaliation based on a tenant's exercise of rights under the lease or under state or local law, such as requests for repairs, organizing activity, complaints to code enforcement offices or other government agencies about illegal landlord conduct.³⁰ Many tenants who face eviction reside in properties that are not properly-maintained, and may have defenses or set-off claims based on implied warranties of habitability or statutory or regulatory housing conditions requirements.³¹ Even simply verifying the amount of a landlord's charges and

²⁶ See, e.g., American Bar Ass'n Resolution 109b (2015) (urging governments to ensure that victims of domestic violence, dating violence, sexual assault, and stalking have meaningful access to safety and autonomy in their homes by "providing options such as . . . *eviction defense*" and anti-discrimination protections) (emphasis added).

²⁷ For example, in the states of Louisiana, Mississippi, and Texas, evictions are heard in Justice Courts. See Lou. Code of Civ. Proc. Art. 4912(a); MISS. CODE § 11-25-5; Tex. Prop. Code § 24.004. The only educational qualifications for a Justice of Peace in Louisiana include "able to read and write the English language correctly [and] a high school diploma or its equivalent[.]" Lous. Rev. Stat. § 13:2582. Texas requires: "within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and (2) each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters." Tex. Gov. Code § 24.005. Neither state requires a law degree or even an undergraduate degree in a related field. In Mississippi, most justice court judges must complete a "course of training and education conducted by the Mississippi Judicial College, pass a "minimum competency examination," and meet continuing education requirements thereafter. Miss. Code §§ 9-11-3, 9-11-4. But these requirements do not apply to judges in office as of July 24, 2008. Judges in office before 1976 need not even have a high school diploma or GED. Miss. Const. Art. 6, § 171.

²⁸ See, e.g., *Shepherd v. Weldon Mediation Servs., Inc.*, 794 F. Supp. 2d 1173, 1184 (W.D. Wash. 2011) (hearing officer who had "no training or experience in applicable law" was not qualified to hear and decide public housing grievances); see also, c.f., *Vitek v. Jones*, 445 U.S. 480, 499 (1980) (Powell, J. concurring) (a decision-maker without legal training but with expertise in a technical field may be preferable where the subject matter is that technical area, as "the necessary qualifications for an impartial decisionmaker . . . turn on the nature of the determination which must be made").

²⁹ See 42 U.S.C. § 3604.

³⁰ See, e.g., GA. CODE § 44-7-24(E) ("if a landlord retaliates against a tenant pursuant to this Code section, such retaliation shall be a defense to a dispossessory action, and the tenant may recover from the landlord a civil penalty..."); ARIZ. REV. STAT. § 33-1381; MD. CODE, REAL PROPERTY § 8-208.1.

³¹ "Today, the doctrine of the implied warranty of habitability has attained majority status in the United States, the doctrine having been embraced by the appellate courts and/or the legislatures of some 40 state jurisdictions and the

a tenant's payments is an important aspect of tenant representation in the eviction context.

Effectively verifying the facts in an eviction case and preparing defenses often requires judicial discovery procedures, which are insufficient or nonexistent in many jurisdictions. Some states have discovery rules designed specifically for summary eviction cases, with condensed timelines and certain compulsory disclosures that a landlord must provide without a request or file in the court record.³² But many states make no provision for formal discovery, leaving tenants to use the ordinary civil discovery procedures—the timelines for which are seldom remotely practical in a summary proceeding.³³ Some states discourage³⁴ or even expressly disallow formal discovery altogether in summary eviction cases.³⁵

5. Courts should require landlords and tenants to participate in pre-litigation diversion programs focused on maintaining housing stability.

COMMENTARY: Eviction diversion programs are a form of alternative dispute resolution specific to residential eviction cases that typically connect landlords and tenants with a rental assistance providers and sometimes other social services.³⁶ Eviction diversion aims to enable the parties to negotiate a resolution that resolves the rent arrearage and allows the tenancy to continue, or at least enables the tenant to transition into suitable new housing rather than face judicial eviction. The best programs divert cases to negotiations before court filings, which enables the tenant to avoid an electronic eviction record (which makes finding new housing difficult and thereby complicates settlement

District of Columbia. The warranty recognizes that the modern tenant is not interested in land, but rather bargains for a dwelling house suitable for habitation." Pugh v. Holmes, 486 Pa. 272, 280–82, 405 A.2d 897, 901–02 (1979); see also Mease v. Fox, 200 N.W.2d 791, 796 (Iowa 1972) ("Recognition of an implied warranty of habitability makes available to the tenant the basic contract remedies of damages, reformation and rescission."); Foisy v. Wyman, 83 Wash.2d 22, 515 P.2d 160 (1973).

³² See Cal. Code of Civ. Proc. §§ 2030.260(b), 2031.260(b), 2033.250(b), and 2025.270(b); see Mass. Uniform Summary Process Rule 7; see also Tex. R. of Civ. Proc. 507 (authorizing discovery upon motion, with rules and terms to be set by court specific to case); Del. Justice of the Peace Court Civ. R. 26-27 (authorizing defendant to request bill of particulars describing monetary claim and to conduct other discovery by motion).

³³ For example, in Washington eviction cases may be heard as soon as seven days after filing and must be heard within 30 days. See RCW 59.18.370. Yet the ordinary discovery rules provide at least 30 days for responding to written discovery requests, see Wash. Sup. Ct. CR 33-34, 36, and require notice of at least five days' notice to take a deposition, see Wash. Sup. Ct. CR 30. In Kansas, trial is required within 14 days, Kan. Stat. § 61-3807, while parties served written discovery have between 14-30 days to respond, Kan. Stat. §§ 61-3101-3106).

³⁴ See Ind. Small Claims R. 6 ("Discovery may be had in a manner generally pursuant to the rules governing any other civil action, but only upon the approval of the court and under such limitations as may be specified. The court should grant discovery only upon notice and good cause shown and should limit such action to the necessities of the case.").

³⁵ Md. R. Civ. P. Dist. Ct. 3-711 (2021) ("[N]o pretrial discovery . . . shall be permitted in a grantee action, or an action for summary ejection, wrongful detainer, or distress for rent, or an action involving tenants holding over.")

³⁶ See Treskon, Mark, Solomon Greene, et al., "Eviction Prevention and Diversion Programs," Urban Institute at 3 (Apr. 2021), <https://www.urban.org/sites/default/files/publication/104148/eviction-prevention-and-diversion-programs-early-lessons-from-the-pandemic.pdf>

options), connect tenants with additional social services as needed, and measure outcomes based on success at keeping tenants stably housed.³⁷

6. No tenant should face eviction without access to full, quality representation by an attorney.

COMMENTARY: Right to counsel in eviction proceedings for tenants who cannot afford an attorney is well-established American Bar Association policy to protect the basic human need for shelter.³⁸ Eviction defense is a complicated and increasingly high-stakes area of legal practice. Many of the most effective defenses are highly-technical and require detailed knowledge of state and local landlord-tenant laws and court procedures.³⁹ Fair housing arguments⁴⁰ are likewise a key component of any eviction defense advocate’s arsenal,⁴¹ along with various consumer laws, habitability codes, equitable doctrines, and local caselaw. For tenants participating in subsidized housing programs or invoking protections related to COVID-19 or other emergencies, the complexity level is even greater—as are the stakes. Expecting tenants to effectively defend themselves in such a judicial proceeding is not realistic, and even limited-service legal clinics where tenants may receive advice or brief services on a case or representation on the day of the hearing tends to be inadequate, as many tenant defenses require advance investigation and preparation.⁴²

7. A tenant facing eviction for nonpayment of rent should have the right to redeem the tenancy by paying off a judgment at any time before an eviction judgment.

³⁷ See Hammer, Melissa and Sean Martin, “Benefits of Eviction Diversion Programs,” PD&R Edge (June 21, 2021), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-062121.html>

³⁸ American Bar Ass’n, Resolution 112A (2006) (“RESOLVED, That the American Bar Association urges . . . governments to provide legal counsel as a matter of right . . . in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter . . .”); see also American Bar Ass’n Resolution 117 (2013) (“Without a right to counsel in housing cases, renters must often choose between pushing for basic repairs or facing unjust eviction.”)

³⁹ See Petersen, Ericka, “BUILDING A HOUSE FOR GIDEON: THE RIGHT TO COUNSEL IN EVICTIONS,” 16 *Stanford J. of Civ. Rights & Civ. Liberties*, 63, 101 (2020) (“In many cases, tenants may have a valid defense that they would not know about without the assistance of an attorney. For example, there are many technical procedural defenses that a lawyer can raise that are too complicated for a tenant to successfully raise on their own. In other cases, a tenant may know they have a defense but decide it is not worth raising because the judge will not believe them, or the landlord’s attorney will make it impossible to win.”).

⁴⁰ *Supra* notes 20-22.

⁴¹ “Discrimination may be a defense that arises out of the tenancy. When it does, the statute permits a tenant to assert the defense and requires the court to consider it.” *Josephinium Assocs. v. Kahli*, 111 Wash. App. 617, 626, 45 P.3d 627, 632 (2002); see also *Douglas v. Kriegsfield Corp.*, 884 A.2d 1109, 1121 (D.C. 2005); *Mascaro v. Hudson*, 496 So. 2d 428, 429 (La. Ct. App. 1986).

⁴² See Petersen, Ericka, “BUILDING A HOUSE FOR GIDEON: THE RIGHT TO COUNSEL IN EVICTIONS,” 16 *Stanford J. of Civ. Rights & Civ. Liberties*, 63, 102 (2020)

COMMENTARY: State laws differ widely on the timelines and circumstances under which a tenant who has been sued for eviction based on nonpayment of rent can pay off the full amount owed to the landlord and thereby preserve the housing. Some states allow tenants to make such payments up until the eviction lawsuit is filed,⁴³ or until a particular trial phase,⁴⁴ until a judgment⁴⁵ or within so many days after a judgment is entered,⁴⁶ others until a physical eviction occurs⁴⁷—while others do not provide such a right of redemption at all.

A right of redemption also serves public policy more generally by increasing housing stability.⁴⁸ Allowing tenants to redeem a tenancy imposes no hardship on a landlord, who is made whole by the tenant’s payment of all amounts owed.

8. A tenant should have the right to appeal an eviction judgment and without unreasonable bond requirements.

Tenants should have the opportunity to appeal legal errors that occur in their cases the same as any other litigant. While substantially all states provide a right of appeal from eviction judgments, often tenants cannot practically exercise that right because of poorly-conceived bond requirements.⁴⁹

If a tenant will continue living at rental premises during the appeal, a bond equal to the monthly rent, and due at the usual time, protects the landlord’s interests during the appeal.⁵⁰ Some states require tenants to post amounts incurred prior to the entry of the

⁴³ See ARIZ. REV. STAT. § 33-1368(B) (“Before the filing of a special detainer action the rental agreement shall be reinstated if the tenant tenders all past due and unpaid periodic rent and a reasonable late fee set forth in a written rental agreement.”).

⁴⁴ See, e.g., D.C. CODE § 16-1124(D) (“At any time before the trial”); MD. CODE, REAL PROPERTY § 8-401 (“at the trial, or adjournment of the trial”); N.Y. REAL PROP. ACTS LAW § 731(4) (“any time prior to the hearing on the petition”); W. VA. CODE § 37-6-23 (“at any time before the trial in such action”).

⁴⁵ See, e.g., ARIZ. REV. STAT. § 33-1368(B) (“After a special detainer action is filed” but before judgment has been entered); see also ALASKA STAT. § 9.45.690 (“at any time before judgment”); N.J. STAT 2A:18-55 (“at any time on or before entry of final judgment”); N.C. GEN. STAT. § 42-33 (“before judgment given”).

⁴⁶ See, e.g., MO. REV. STAT. § 535.160 (“If the defendant, on the date any money judgment is given in any action pursuant to this chapter, either tenders to the landlord, or brings into the court where the suit is pending, all the rent then in arrears, and all the costs, further proceedings in the action shall cease and be stayed.”).

⁴⁷ See, e.g., VT. STAT. TIT. 12, § 4773 (“Before a writ of possession is executed”); Rev. Code of Wash., § 59.18.410(2) (“Before entry of a judgment or until five court days have expired after entry of the judgment”).

⁴⁸ See American Public Health Assn., “Housing and Homelessness as a Public Health Issue,” Policy No. 20178 (Nov. 7, 2017), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>

⁴⁹ See Gold, Allyson E. “How Eviction Courts Stack The Deck Against Tenants,” *The Appeal* (Aug. 13, 2021), <https://theappeal.org/the-lab/explainers/how-eviction-courts-stack-the-deck-against-tenants/>

⁵⁰ See *Kargman v. Dustin*, 5 Mass. App. Ct. 101, 106–07, 359 N.E.2d 971, 974–75 (1977) (“On the one hand, tenants are entitled to their day in court before they can be evicted since courts were not intended to function simply as rubber stamps for landlords seeking to remove their tenants ... On the other hand, landlords are entitled to reasonable assurance that rent due will continue to be paid while protracted eviction proceedings for nonpayment of rent are pending.”), citing *Pernell v. Southall Realty*, 416 U.S. 363, 385, 94 S.Ct. 1723, 40 L.Ed.2d 198 (1974).

judgment,⁵¹ which does not protect the landlord against further harm but effectively makes the bond into a collection instrument for the landlord and forces the tenant to pay an amount to the court that is often in dispute in the underlying case.⁵²

Some states make posting a bond a condition of maintaining the appeal even if the tenant is no longer living in the premises.⁵³ A tenant who does not occupy the property during the appeal should have the right to have the appeal heard and decided without posting a bond.⁵⁴ This right is especially important for subsidized housing tenants or others with a special interest in appealing eviction from specific premises.

9. Lease termination, including non-renewal, should be limited to circumstances where good cause exists.

COMMENTARY: A tenant who occupies a rental home under a term lease may not lawfully be evicted absent good cause—which usually means a serious or repeated violation of material terms of the lease.⁵⁵ But for periodic (e.g., month-to-month) tenancies or expiring term leases, only a minority of jurisdictions require any valid reason be given for terminating or for declining to renew the tenancy.⁵⁶ When such good cause requirements are absent, renters and their families lack basic security of tenure.⁵⁷ Forcing a household to relocate imposes significant disruption and potential hardship on the tenant, and should not be allowed without a legitimate reason. Allowing eviction without cause invites abuse, enabling a discriminatory, retaliatory, or otherwise illegitimate motive for ending a tenancy to be easily concealed behind a “no cause” eviction.⁵⁸

⁵¹ See, e.g., Alabama Code § 35-9A-461(d) (tenant must post “all rents properly payable under the terms of the lease since the date of the filing of the action, and continues to pay all rent that becomes due and properly payable under the terms of the lease as they become due, during the pendency of the appeal”);

⁵² American Bar Ass’s, Ten Guidelines on Fines and Fees (2018) (“in no event should . . . the bond amount . . . be set purposely to correspond with the amount . . . owed.”); Colo. Rev. Stat. § 13-40-118 (requiring “the amount of rent found due and specified in such judgment” as well as additional rents “at the time when the rents become due as specified in the judgment appealed from”).

⁵³ See, e.g., Ark. Code § 18-17-910(b) (“If the tenant fails to file the bond within five (5) days after service of the notice of appeal, the appeal shall be dismissed.”); Colo. Rev. Stat. § 13-40-118 (failure to deposit rent bond precludes appeal from being heard).

⁵⁴ See *Housing Authority v. Pleasant*, 126 Wash. App. 382, 109 P.3d 422, 426 (2005) (“The bond need be filed only if the tenant seeks a stay pending review. A bond is not a jurisdictional condition precedent to the maintenance of an appeal under the unlawful detainer statutory scheme.” Also holding that an eviction case does not become moot if the tenant vacates the premises unless the tenant also relinquishes any claim for possession); *Marshall v. San Antonio Hous. Auth.*, 198 S.W.3d 782, 787 (Tex. 2006) (same); see also *Kingsbury v. Buckner*, 134 U.S. 650, 649 (1890) (appeal bond not essential to the jurisdiction of state appellate court).

⁵⁵ See Portman, Janet, “State Laws on Termination for Violation of Lease,” Nolo.com <https://www.nolo.com/legal-encyclopedia/state-laws-termination-violation-lease.html>, last visited Oct 6, 2021

⁵⁶ See, e.g., Cal. Civil Code § 1946.2; Rev. Code of Washington § 59.18.650.

⁵⁷ See American Bar Ass’n, Resolution 117 at 5 (2013).

⁵⁸ See Greenberg, Deena, Carl Gershenson and Matthew Desmond, “Discrimination in Evictions: Empirical Evidence and Legal Challenges,” 51 Harv. Civ. Rights-Civ. Lib. Law R. 115, 146-153 (2016) (discussing difficulties tenants experiencing discriminatory or retaliatory eviction face in establishing legal defenses)

Jurisdictions which do require good cause for ending a tenancy recognize and allow non-renewal or termination for a range of permissible reasons other than tenant lease violations, such as a landlord’s intent to sell, substantially rehabilitate, or change the use of the property or to move in a family member.⁵⁹ Good cause does not prevent a landlord from increasing the rent or otherwise changing the terms of the lease.

10. A court that hears eviction cases should automatically seal the names of defendants before a final judgment and in dismissed cases, and courts should have practical procedures for sealing or otherwise protecting the privacy of defendants where other good cause exists.

COMMENTARY: Several jurisdictions have enabled the sealing of eviction records,⁶⁰ in recognition that being associated with an existing eviction court record can devastate a person’s ability to obtain rental housing in the future.⁶¹ Even when an eviction case is dismissed, the mere record of the case filing – whether in public record or on a credit report – often results in denial of a rental housing application.⁶² Many landlords automatically decline rental housing to applicants with records of being sued for eviction—even if the cases were dismissed or otherwise resolved in favor of the tenant—and substantially all landlords treat such applicants less favorably.⁶³ This practice incentivizes tenants to move out before an eviction case is filed, even when tenants have meritorious defenses—a dynamic that undermines the fundamental legitimacy of the judicial forum.

⁵⁹ See, e.g. Cal. Civil Code § 1946.2(b)(2) (listing types of “no fault just causes” for lease termination); Rev. Code of Washington § 59.18.650; D.C. Code § 42-3505.01.

⁶⁰ See e.g., Ill. Comp. Stat. 735 ILCS 5/9-121; see Minn. State. 484.014; Cleveland Municipal Housing Court Local Rule 6.13 (2018). . . .; see also American Bar Ass’n Resolution 10H (2020) (“FURTHER RESOLVED, That the American Bar Association urges . . . governments to mitigate the long-term consequences of eviction on renters and housing markets at a time of high unemployment by precluding the use of nonpayment of rent or eviction records in tenant screening practices, where non-payment is due solely to economic loss resulting from the pandemic, and which nonpayment or record was filed or accrued during, or in the 90 days immediately following, the COVID-19 pandemic state of emergency in a particular jurisdiction.”)

⁶¹ See American Bar Ass’n Report to Resolution 10H (2020) (“Many property owners screen families for prior evictions and reject applicants with evictions on their record,” citing Matthew Desmond & Monica Bell, Housing, Poverty, and the Law, 11 ANN. REV. OF L. & SOC. SCI. 15, 19 (2015)); see also Sabbeth, K, “Erasing the Scarlet ‘E’ of Eviction Records,” The Appeal, <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/> visited Oct. 25, 2021 (“Private companies collect and sell housing court data, culling court records for names of defendants in eviction proceedings—whether they win or not—and then compiling them to profit off the tenants’ misfortune.”); and American Bar Ass’n Resolution 109b (2015) (urging governments to preserve “privacy and confidentiality to the greatest extent possible” for victims of domestic violence, dating violence, sexual assault, and stalking in housing matters).

⁶² Matthew Desmond, Eviction and the Reproduction of Urban Poverty, 118 AM. J. OF SOC. 88, 120 (2012); see also Sophie Beiers et al., Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color, ACLU (Jan. 10, 2020), https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/?initms_aff=nat&initms_chan=soc&initms=200110_tw&ms_aff=nat&ms_chan=soc&ms=200110_tw (describing the housing search challenges of a domestic violence survivor whose dismissed eviction case was filed after she notified the landlord of a “no trespass” order against her abuser).

⁶³ See Waddell, Kaveh, “How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times,” Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>

A tenant's inability to secure new rental housing with an eviction case record can also complicate settlement efforts. Because a disproportionate number of eviction filings are levied against Black renters,⁶⁴ the barrier created by an eviction case filing has a disproportionate effect on Black women.⁶⁵

Courts have begun to mitigate these problems by establishing procedures for eviction defendants to seal their names, so as to avoid being denied housing or other long-term consequence⁶⁶ because of a filed case.⁶⁷ The efficacy of this approach is limited where the records are not sealed until after they are released to the public, hence where permissible under state open court rules eviction cases should be filed under seal and remain sealed unless and until the landlord prevails in a final judgement.⁶⁸ Post-judgement sealing should be available when tenants can demonstrate good cause such as when the petitioner is a survivor of domestic or sexual violence and the eviction stems from that violence.

⁶⁴ Beiers, Clearing the Record ("The ACLU's Data Analytics team analyzed national eviction data from 2012 to 2016, provided by the Eviction Lab, and found that on average, Black renters had evictions filed against them by landlords at nearly twice the rate of white renters.")

⁶⁵ Id. (finding that Black female renters received eviction filings at double or greater the rate of White women renters in 17 of 36 states studied).

⁶⁶ Supra note 63, Sabbeth, K. ("Eviction judgments also undermine opportunities for employment, insurance, and, more broadly, any activities that depend on good credit.")

⁶⁷ See *Indigo Real Estate Services v. Rousey*, 151 Wn. App. 941 (Wash.App. 2009) (state's generally-applicable rules for sealing court records could be used to redact name of eviction defendant from electronic judicial indices).

⁶⁸ See Cal. Code of Civ. Proc. §1161.2.

REPORT

Introduction

Housing has become increasingly expensive in the United States over recent decades, and with the rise in housing unaffordability has come a corresponding crisis of evictions. Even before the COVID-19 pandemic, which subjected renters to historic rates of housing insecurity,¹ the U.S. saw approximately 3.6 million eviction cases filed each year with 1.5 million ending in judgments.² The large majority of these evictions are driven by nonpayment of rent—a predictable consequence of a rental market in which nearly half of all U.S. renters (47.5%) are rent-burdened (i.e., paying more than the recommended 30% of income on rent and utilities) and fully one-fourth are severely rent-burdened (paying over 50% of income for rent and utilities).³ Housing supply has consistently lagged behind population growth, with the country currently facing an estimated deficit of about 3.8 million homes;⁴ with starter homes increasingly unaffordable for young families,⁵ more and more households remain in the rental housing market, where they are exposed to increasing rents and the risk of eviction.⁶ The COVID-19 pandemic greatly exacerbated this crisis of evictions, with over 10 million tenant households (roughly one-fourth of all U.S. renters) falling behind on rent at some point during the pandemic and still over 8 million behind on rent by late 2021.⁷

The alarming frequency with which U.S. renters face eviction, as well as the destructive consequences of evictions on both displaced tenants and their surrounding communities, has brought into sharp relief the great variation in state landlord-tenant laws and judicial procedures regarding eviction. In most states, tenants may be evicted without legal cause and on very short notice. Court procedures are fast and inexpensive, and in some jurisdictions this speed comes at the expense of affording tenants a genuine opportunity to defend. Outmoded judicial eviction procedures such as these fail to reflect the true importance of rental housing in today's economy and practical changes to how landlords use the eviction process.

The large majority of evictions are based on nonpayment of rent—a natural consequence of rental markets with high levels of rent-burden. A high percentage are brought for surprisingly small amounts of money—frequently less than \$1200.⁸ Yet many states fail to protect tenants from eviction for non-payment even when they have come up with the

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

² Ashley Gromis, *Eviction: Intersection of Poverty, Inequality, and Housing*, Princeton University, Eviction Lab (2019) (measuring the number of evictions from 2000 to 2016).

³ Joint Center for Housing Studies of Harvard University, “America’s Rental Housing 2020” (2020), https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf

⁴ See Freddie Mac, “Housing Supply: A Growing Deficit” (May 2021), http://www.freddiemac.com/fmac-resources/research/pdf/202105-Note-Housing_Supply-08.pdf

⁵ Jared Bernstein, Jeffrey Zhang, et al., “Alleviating Supply Constraints in the Housing Market,” The White House (Sep. 1, 2021), <https://www.whitehouse.gov/cea/blog/2021/09/01/alleviating-supply-constraints-in-the-housing-market/>

⁶ See Irina Ivanova, “Rents are going through the roof across much of the U.S.,” CBS News (July 19, 2021), <https://www.cbsnews.com/news/us-apartment-rent-hike-pre-pandemic-price-levels/>

⁷ <https://www.census.gov/data/tables/2021/demo/hhp/hhp35.html>

⁸ <https://evictionlab.org/covid-eviction-claims/>

Standard 6.6 on Providing Adequate Resources for Research and Investigation

funds to cure a previous default. And though most evictions are better resolved through diversion to programs that draw upon governmental resources to assist with the rent arrearage or facilitate the tenant's transition to other housing, eviction diversion programs remain uncommon, and some programs that do exist aim only to lessen judicial caseloads rather than truly mitigate housing insecurity.

Residential eviction cases are high-stakes legal matters, and jurisdictions should uniformly treat them as such. Given the familial and societal consequences of evictions, it behooves states and municipalities to institute policies which encourage settlements that minimize displacement and housing insecurity. And where bona fide legal disputes arise, courts must afford judicial procedures that both properly regard the importance of the consequences to the tenant and minimize the likelihood of erroneous evictions.

Societal Impacts of Eviction

Evictions can have harsh consequences for tenants, and the downstream consequences for communities are likewise significant and expensive. Eviction is linked to a range of negative social outcomes, both for individual tenant families as well as communities. It disrupts employment, education, social networks, and access to services.⁹ Eviction leads to prolonged housing instability and overcrowding and is a frequent contributor to homelessness.¹⁰

Eviction is associated with decreased access to health care, including difficulty attending appointments or complying with prescribed treatments.¹¹ Eviction also increases the likelihood of a range of other negative outcomes including depression, drug use and suicide.¹² Eviction can trigger mental health hospitalization,¹³ with a recent study finding that “[d]ifficulty paying rent and loneliness were most associated with suicidal ideation”

⁹ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROB. 46, 46 (2016). Desmond et al., *supra* at 320.

¹⁰ ROBERT COLLINS & DAVID REED, N.Y.U.: WAGNER SCH. OF PUB. SERV., THE EFFECTS OF EVICTIONS IN LOW-INCOME HOUSEHOLDS 3 (2018) at 3. See also, U.S. Department of Housing and Urban Development, “The 2016 Annual Homeless Assessment Report to Congress,” December 2016, <https://files.hudexchange.info/resources/documents/2016-AHAR-Part-2.pdf> (40% of people living in homeless shelters have a disability).

¹¹ See Danya E. Keene, “That Wasn’t Really a Place to Worry About Diabetes”: Housing Access and Diabetes Self-Management Among Low-Income Adults, 197 Soc. Sci. & Med. 71 (2018); Linda M. Niccolai, Kim M. Blankenship & Danya E. Keene, Eviction from Renter-Occupied Households and Rates of Sexually Transmitted Infections: A County-Level Ecological Analysis, 46 Sexually Transmitted Diseases 63, 66 (2019); Mary Clare Kennedy et al., Residential Eviction and Risk of Detectable Plasma HIV-1 RNA Viral Load Among HIV-Positive People Who Use Drugs, 21 AIDS & BEHAV. 678, 681, 683 (2017).

¹² Desmond & Tolbert Kimbro, *supra* note 26, at 316-19.; *Homelessness as a Public Health Law Issue: Selected Resources*, CDC: PUB. HEALTH PROF. GATEWAY, <https://www.cdc.gov/phlp/publications/topic/resources/resources-homelessness.html> (last updated Apr. 23, 2020). 37 *Id*; Taylor, *supra* note 25.

¹³ Robert Collinson & David Reed, The Effects of Evictions on Low-Income Households (Dec.2018), <https://bit.ly/3lrYftK>

during the COVID-19 pandemic.¹⁴ Even the mere anticipation of eviction has been proven to exacerbate stress, anxiety, depression.¹⁵

Eviction is particularly devastating for children, with even more pronounced impacts including academic decline and decreased school performance,¹⁶ as well as damaged physical and emotional health.¹⁷ The impact on children is not just an ancillary consequence of eviction; in fact, the single greatest predictor of eviction is the presence of a child.¹⁸

Evictions also radiate harms and burdens into the surrounding communities where they occur. Not only do evictions impair academic progress for students in households facing eviction, but “[h]igh student turnover can spill over onto students who do not move and undermine the school’s social climate.”¹⁹ Other adverse effects on schools include an increased need for remedial schoolwork and social services, failure to meet yearly progress goals, increasing chronic absence rates and fail[ure] to meet the demands of accreditation due to failing test scores.²⁰ For employers, evictions cause job loss and turnover and contribute to absenteeism, tardiness, and reduced job performance.²¹ Evictions burden local governments as well, including through decreased tax and utility bill collection and increased costs of social and emergency services.²² In practice, this happens because eviction disrupts many aspects of a family’s life including destabilizing their home, forcing a change of schools and further damaging the financial situation of the family. An eviction frequently forces families to double up, to live in substandard housing or to move to neighborhoods with higher crime and poverty rates.²³

¹⁴ Julia Raifman, Catherine K. Ettman, et al., Economic precarity, social isolation, and suicidal ideation during the COVID-19 pandemic (Oct. 7, 2020). <https://www.medrxiv.org/content/10.1101/2020.10.05.20205955v1>

¹⁵ Dusica Lecic Tosevski & Milica Pejovic Milovancevic, Stressful Life Events and Physical Health, 19 *Current Op. Psychiatry* 184, 185, 187 (2006); see Hugo Vásquez-Vera et al., The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systemic Review, 175 *SOC. SCI. & MED.* 199, 202–05 (2017).

¹⁶ Maxia Dong et al., *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences*, 159 *ARCHIVES OF PEDIATRICS & ADOLESCENT MED.* 1104, 1107 (2005).

¹⁷ See Am. Acad. of Pediatrics, *Providing Care for Children and Adolescents Facing Homelessness and Housing Insecurity* (2020), <https://bit.ly/3dbi0CT>; Heather Sandstrom & Sandra Huerta, *Urb. Inst.*, The Negative Effects of Instability on Child Development: A Research Synthesis 6 (2013), <https://urbn.is/2SCVfhB>; Gabriel Schwartz, *Cycles of Disadvantage: Eviction and Children’s Health in the United States* (Apr. 2020), <https://nrs.harvard.edu/URN-3:HUL.INSTREPOS:37365869>

¹⁸ Matthew Desmond et al., *Evicting Children*, 92 *SOC. FORCES* 303, 303 (2013).

¹⁹ Brett Theodos et al., *Family Residential Instability: What Can States and Localities Do?* URBAN INSTITUTE 8 (May 2018), https://www.urban.org/sites/default/files/publication/98286/family_residential_instability_what_can_states_and_localities_do_1.pdf

²⁰ Kathryn Howell, *Eviction and Educational Instability in Richmond, Virginia*, RVA EVICTION LAB 4, <https://cura.vcu.edu/media/cura/pdfs/cura-documents/EvictionandEducationalInstabilityinRichmond.pdf>.

²¹ Matthew Desmond et al., *Housing and Employment Insecurity Among the Working Poor*, 63 *SOCIAL PROBLEMS* 46, 59 (2016), https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson_socprob.2016.pdf.

²² Signe-Mary McKernan et al., *Thriving Residents, Thriving Cities: Family Financial Security Matters for Cities*, URBAN INSTITUTE 14 (Apr. 21, 2016), https://www.urban.org/sites/default/files/publication/79776/2000747-thriving-residents-thriving-cities-family-financial-security-matters-for-cities_0.pdf.

²³ <https://www.journals.uchicago.edu/doi/abs/10.1086/681091>; <https://pubmed.ncbi.nlm.nih.gov/26286885/>

Standard 6.6 on Providing Adequate Resources for Research and Investigation

During the pandemic, research has consistently demonstrated that evictions are tied to higher levels of COVID-19 infection and higher rates of death.²⁴ Communities with high rates of eviction have been shown to have lower coverage of COVID-19 vaccination.²⁵ Persons experiencing housing instability and eviction also tend to have worse overall health, through such pathways as living in substandard housing that exposes occupants to toxins such as lead, mold, or pests, or by diverting funds needed to afford nutritious food and medication, or by driving increases in the use of tobacco or other harmful substances.²⁶ The mere threat of eviction can increase stress levels, anxiety, and depression, and weaken the immune system.²⁷ These risk factors place renters undergoing eviction or living with high levels of housing insecurity at greater risk of contracting COVID-19 or of experiencing more serious cases if infected.²⁸

Overview of U.S. Residential Landlord-Tenant Law and Evictions

In most U.S. jurisdictions, residential tenancies are governed by a combination of landlord-tenant statutes and common law rules that establish the rights and duties of the relationship, as well as the lease itself. Tenants are generally obligated to pay rent, comply with reasonable rules, and lease provisions respecting the tenancy, and avoid causing damage to the premises beyond ordinary wear & tear. Landlords must maintain the premises in a safe condition fit for occupancy, and otherwise avoid interfering with the tenant's right to use and enjoyment of the leased dwelling.

An eviction occurs when the landlord involuntarily terminates the tenancy and forces the tenant to leave the premises. This can occur through numerous forms, ranging from legal action to the physical exclusion of the tenant to “constructive eviction”—i.e., driving a tenant out of possession through neglect of maintenance and repair obligations. Most evictions are “informal,” and occur when a tenant vacates in accordance with the non-renewal of an expiring term lease or the receipt of a legal notice to terminate the tenancy.²⁹ Almost all others are carried out judicially, with a landlord filing a summary

²⁴ Centers for Disease Control and Prevention, “Temporary Halt in Residential Evictions in Communities With Substantial or High Transmission of COVID-19 To Prevent the Further Spread of COVID-19,” 86 Fed. Reg. 43244, 43248 (Aug. 6, 2021) (discussing studies finding that “anywhere from 1,000 to 100,000 excess cases per million population could be attributable to evictions” and that “nationally, over 433,000 cases of COVID-19 and over 10,000 deaths could be attributed to lifting state [eviction] moratoria.”).

²⁵ Centers for Disease Control and Prevention, “Temporary Halt in Residential Evictions in Communities With Substantial or High Transmission of COVID-19 To Prevent the Further Spread of COVID-19,” 86 Fed. Reg. 43244, 43249 (Aug. 6, 2021).

²⁶ Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 316-19 (2015); Lauren Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFF. (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

²⁷ Hugo Vásquez Vera et al., *The Threat of Home Eviction and its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MED. 199, 202 (2017).

²⁸ Katherine E Goodman, Laurence S. Magder, et al., “Impact of Sex and Metabolic Comorbidities on COVID-19 Mortality Risk Across Age Groups: 66,646 Inpatients Across 613 U.S. Hospitals.,” *Clinical Infectious Diseases*, (Dec. 18, 2020); <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1787/6041643>

²⁹ Ashley Gromis and Matthew Desmond, “Estimating the Prevalence of Eviction in the United States: New Data from the 2017,” 23 *Cityscape* 279, 281 (2021) (finding a “ratio of informal-to-formal evictions for the United States [of] 5.5 informal evictions for every formal eviction”), <https://www.huduser.gov/portal/periodicals/cityscpe/vol23num2/ch15.pdf> American Housing Survey 5.5 informal evictions for every judicial eviction, per Desmond

eviction lawsuit (often called an “unlawful detainer” action) in a state court seeking to displace the tenant and recover possession of the rental premises.

Summary eviction proceedings are statutorily created mechanisms and therefore differ greatly by jurisdiction in the precise details, given the nuances of specific state procedures. But in general, such actions may be filed by a landlord (or sometimes a management agent or other such representative of the landlord) who claims that they have the present right to possession of the premises, but is being denied the enjoyment of that right by a tenant who is holding over (or “unlawfully detaining”) the premises beyond the expiration or termination of the tenant’s lease, or despite the tenant’s breach of one or more obligations imposed by the term of the lease. The cases are generally heard within a matter of days, so there is seldom any opportunity for discovery or extensive factual development. The cases are limited to deciding only the present right to possession, and any ancillary issues or counterclaims not directly bearing on the right to possession are usually excluded.

The reason for these limitations is to enable summary eviction cases to be adjudicated as quickly and as inexpensively as possible—a feature governments of antiquity felt necessary to incentivize landlords to take eviction cases to court rather than resort to extrajudicial violence.³⁰ Nevertheless, non-judicial lockouts and other so-called “self-help” evictions (such as utility service disruptions, removal of access doors, or threats of physical violence) continue to account for a small but persistent wedge of the total number of evictions.³¹

Race and Segregation Impacts of Eviction

Pre-COVID studies showed that renter households of color, especially Black women with children, faced eviction at substantially higher rates than other groups.³² This disproportionality has only continued since COVID-19 arrived.³³ Indeed, the racial impact has likely worsened, for as the CDC has recognized (referring to Black and Latinx

³⁰ See *Lindsey v. Normet*, 405 U.S. 56, 71 (1972) (“The landlord-tenant relationship was one of the few areas where the right to self-help was recognized by the common law of most States, and the implementation of this right has been fraught with ‘violence and quarrels and bloodshed.’ *Entelman v. Hagood*, 95 Ga. 390, 392, 22 S.E. 545 (1895). An alternative legal remedy to prevent such breaches of the peace has appeared to be an overriding necessity to many legislators and judges.”).

³¹ See, e.g., National Housing Law Project, “Stopping COVID-19 Evictions Survey Results” (July 2021) (listing “illegal evictions and lockouts by landlords” as a top concern of legal aid housing lawyers during COVID-19, with 91% reporting having seen illegal evictions in their areas, including 53% who observed lockouts and 18% who “saw tenants facing landlord intimidation and other eviction threats.”).

³² See, e.g., Matthew Desmond, “Poor Black Women Are Evicted at Alarming Rate, Setting Off a Chain of Hardship,” MacArthur Foundation How Housing Matters (March 2014), https://www.macfound.org/media/files/HHM_Research_Brief_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf; see Tim Thomas, et al., *The State of Evictions: Results from the University of Washington Evictions Project* (Feb. 2019), <https://evictions.study/washington/>; see David Robinson & Justin Steil, “Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color,” *City Life Vida Urbana* (2020), <https://www.bostonevictions.org/>; Marvin J. Kelley IV, *Testing One, Two, Three: Detecting and Proving Intersectional Discrimination in Housing Transactions*, 42 *Harv. J. L. & Gender* 301, 339 (2019), <https://harvardjlg.com/wp-content/uploads/sites/19/2020/05/Testing-One-Two-Three.pdf>

³³ See, e.g., Paul M. Ong, “Systemic Racial Inequality and the COVID-19 Renter Crisis,” UCLA Luskin Institute (Aug. 7, 2020), <https://ucla.app.box.com/s/t8x503d781kfmoclgdqeibiolo0q234>

Standard 6.6 on Providing Adequate Resources for Research and Investigation

households) “[t]here is increasing evidence that some racial and ethnic minority groups are being disproportionately affected by COVID-19.”³⁴

Housing loss is a greater threat in communities of color because of numerous factors. Black and Latinx households tend to have less wealth than white households, making them more likely to fall behind in rent if an income disruption occurs.³⁵ They are less likely to own their homes, which both impedes wealth building and also keeps them susceptible to eviction in difficult financial times.³⁶ Black, Asian, and Latinx workers are overrepresented in industries that faced some of the most significant pandemic-related disruptions, such as restaurants and hotels, and “often hold occupations that are less stable, such as jobs in retail and home health and jobs as nursing home aides.”³⁷ The same types of jobs also tend to be lower paying, unable to be performed remotely, offer inferior benefits such as paid sick leave, and to present higher risks of COVID-19 infection.³⁸ People of color are more likely to live in housing that exposes them to other health hazards--such a mold or other unsafe conditions within the housing itself, or proximity to environmental pollution.³⁹ All of these factors contribute to housing instability, and help explain why there have not only been more evictions, but also “more COVID-19 cases, hospitalizations, and deaths in areas where racial and ethnic minority groups live, learn, work, play, and worship.”⁴⁰

Accordingly, eviction itself is a core racial justice issue that has been exacerbated by the COVID-19 pandemic. Ensuring that all states afford a core set of basic tenant protections and judicial procedures that reliably afford a meaningful opportunity to defend against an improper eviction is a critical component in reducing residential segregation and assuring equal housing opportunities across all racial and ethnic lines.

Conclusion

³⁴ Centers for Disease Control and Prevention, “Health equity considerations and racial and ethnic minority groups” (Jul. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>

³⁵ See Kriston McIntosh et al., “Examining the Black-white wealth gap,” Brookings Institution (Feb. 2020); see also McKernan, *supra* (finding “[l]ow-income families with savings are more financially resilient than middle-income families without savings”).

³⁶ See Jung Hyun Choi, “Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets,” Urban Institute (Oct. 2019), <https://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closerlook-disparities-across-local-markets>

³⁷ Danyelle Solomon & Derrick Hamilton, “The Coronavirus Pandemic and the Racial Wealth Gap,” Center for American Progress (Mar. 2020):

<https://www.americanprogress.org/issues/race/news/2020/03/19/481962/coronavirus-pandemicracial-wealth-gap/>

³⁸ Christian E. Weller, “African Americans Face Systemic Obstacles to Getting Good Jobs,” Center for American Progress (Dec. 2019),

<https://www.americanprogress.org/issues/economy/reports/2019/12/05/478150/african-americans-face-systemic-obstacles-getting-good-jobs/>; Elise Gould & Heidi Shierholz, “Not everybody can telework,” Economic Policy Institute (Mar. 2020),

<https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/>

³⁹ See David E. Jacobs, “Environmental Health Disparities in Housing,” 101 *Am. J. Pub. Health* 115 (Dec. 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222490/>

⁴⁰ Danyelle Solomon & Derrick Hamilton, “The Coronavirus Pandemic and the Racial Wealth Gap,” Center for American Progress (Mar. 2020):

<https://www.americanprogress.org/issues/race/news/2020/03/19/481962/coronavirus-pandemicracial-wealth-gap/>

Given the wide variety of statutory schemes governing the eviction process from jurisdiction to jurisdiction, the ABA Ten Guidelines for Residential Eviction Laws have been developed as a means of establishing a baseline set of standards, based on the latest data and demonstrated best practices, to ameliorate the above-described adverse experiences and outcomes for tenants involved in residential evictions. Moreover, the Ten Guidelines seek to ensure that tenants facing eviction are afforded a reasonable level of due process to which they are entitled when faced with the loss of shelter in a judicial proceeding, recognized previously in ABA policy as a matter in which basic human needs are at stake.⁴¹ In the wake of COVID-19, the Ten Guidelines represent a clear statement of ABA policy on the critical necessity of fairness in the residential eviction process, more important now than ever.

Respectfully submitted,

Hon. Bryant Y. Yang
Chair, Standing Committee on Legal Aid
and Indigent Defense
February 2022

⁴¹ 06A112A.

Standard 6.6 on Providing Adequate Resources for Research and Investigation

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Legal Aid and Indigent Defense

Submitted By: Hon. Bryant Y. Yang, Chair

1. Summary of the Resolution(s). This resolution urges federal, state, local, territorial, and tribal legislative, judicial, and other government bodies to promulgate law and policy consistent with and otherwise adhere to, the proposed guidelines for residential eviction laws.
2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

Providing the guidance set forth in the Ten Guidelines advances Goals 3 and 4. The Guidelines work to eliminate bias (Goal 3) by providing that residential eviction proceedings provide equal participation in the justice system by all persons, and advance the rule of law (Goal 4) by ensuring that such proceedings are conducted in a manner consistent with due process and fundamental fairness, resulting in a fair legal process and meaningful access to justice for all persons.

3. Approval by Submitting Entity. The Standing Committee on Legal Aid and Indigent Defense approved submission of the Ten Guidelines at its regular business meeting on October 25, 2021.
4. Has this or a similar resolution been submitted to the House or Board previously?
No.
5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? The ABA has adopted numerous policies regarding the importance of preservation of housing, protecting tenants' rights, and ensuring due process in judicial proceedings affecting housing. Some examples include:

17A119A: Urges governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.

13A117: Urging governments to promote the human right to adequate housing for all through increased funding, development, and implementation of affordable housing strategies and to prevent infringement of that right.

10M105A: Supports the development of comprehensive, systemic approaches to address the special needs of veterans within civil and criminal court contexts; urges

state, local, and territorial courts to facilitate the development of Veterans Treatment Courts; and adopts six principles for Veterans Treatment Courts.

06A112A: Urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

06A108A: Adopts principles for Homeless Court Programs and approves the criteria for individual participation, recognizing that administration of the programs will differ depending on the particular needs, goals and challenges of a jurisdiction.

Neither these nor any other previously adopted policies would be affected by this Resolution.

6. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
7. Status of Legislation. (If applicable) There is no pending legislation, state or Federal.
8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. This policy will enable the ABA and relevant ABA committees to provide guidance to courts, legislatures, and advocates on the ground on the best means of ensuring due process for tenants involved in residential eviction proceedings.
9. Cost to the Association. (Both direct and indirect costs) It is not anticipated that this resolution will result in any direct or indirect costs to the Association.
10. Disclosure of Interest. (If applicable) None
11. Referrals.

Commission on Domestic and Sexual Violence
Commission on Homelessness and Poverty
Commission on Immigration
General Practice, Solo and Small Firm Division
Government and Public Sector Lawyers Division
Judicial Division
Real Property, Trust and Estate Law Section
Section of Civil Rights and Social Justice
Section of Litigation
Section of State and Local Government Law
Standing Committee on the Delivery of Legal Services
Standing Committee on Ethics and Professional Responsibility

612

Standard 6.6 on Providing Adequate Resources for Research and Investigation

Standing Committee on Legal Assistance for Military Personnel
Standing Committee on Pro Bono and Public Service
Tort Trial & Insurance Practice Section
Young Lawyers Division

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*) Jason Vail (Staff Counsel), Ph: 312-988-5755, Email: jason.vail@americanbar.org

13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.* Hon. Bryant Y. Yang (Chair), Ph: 909-802-1165, Email: byang@lacourt.org.

EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution adopts the ABA Ten Guidelines for Residential Eviction Laws and urges federal, state, local, territorial, and tribal legislative, judicial, and other governmental bodies to promulgate law and policy consistent with, and otherwise to adhere to, the Guidelines.

2. Summary of the issue that the resolution addresses.

The ABA Ten Guidelines for Residential Eviction Laws seek to establish a baseline set of standards, based on the latest data and demonstrated best practices, to directly address the adverse experiences and outcomes for tenants involved in residential evictions as well as to ensure that tenants facing eviction are afforded the fullest extent of due process to which they should be entitled when faced with the loss of shelter in a judicial proceeding.

3. Please explain how the proposed policy position will address the issue.

A policy position from the ABA will provide much needed leadership and guidance to federal, state, local, territorial, and tribal legislative, judicial, and other government bodies, and to advocates before those bodies, on how to best conduct residential eviction proceedings consistent with the principles of due process and fundamental fairness.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

To date, no minority views or opposition has been identified.