

SERIES: PREVENTING HOUSING INSTABILITY
Fact Sheet

Court Processes for Handling Eviction Cases During COVID-19

Background

While people are clamoring to get back to normal, the reality is that the pandemic is still here and still having significant impacts on our daily lives while we have yet to comprehensively address all of the fallout that has occurred over the past year and a half. According to the [National Equity Atlas](#), that fallout includes more than \$21 billion in past due rent affecting 6.4 million households, and those who are behind on rent are predominantly low income (81%), unemployed (51%), or people of color (64%).

We know that [safe, affordable, and stable housing is foundational](#) to the physical, mental, and economic health of individuals and communities. Housing has become even more critical during the pandemic – [recent research](#) shows that eviction increases the risk of COVID-19 infection and mortality, making keeping people housed a key strategy to reduce the spread of COVID-19. Keeping people housed also mitigates the [cascading effects of eviction](#) like economic instability, food insecurity, and depression and other psychological stress.

It is not too late to stem the tide of evictions and put into place policies and practices that will keep people in their homes and reduce health risks. While the most high-profile interventions are the [CDC's eviction moratorium](#) (as well as state and local moratoria) and the \$46.55 billion in [Emergency Rental Assistance](#) appropriated by Congress, the courts can [play a key role](#) in addressing the eviction crisis through the ways in which they handle the large number of evictions already filed (more than 480,000 cases in six states and 31 cities tracked by the [Eviction Lab](#)) and the onslaught of eviction filings that will ensue when the federal and state eviction moratoria are lifted.

The Network identified five key strategies that courts can deploy to respond to the eviction crisis in a manner that contributes to the health of the communities they serve:

- Require or encourage mediation, negotiation, or settlement conferences
- Extend and strengthen notice requirements
- Tie timeframes for eviction cases to rental assistance applications
- Require landlords to participate in rental assistance programs
- Create a formal plan for handling eviction cases

An explanation of each strategy with examples of actions taken by judges and court administrators, legislatures, and executives at the state and local level are detailed in the tables below.

Strategy 1: Require or encourage mediation, negotiation, or settlement conferences

States can require alternative dispute resolution as a way to triage cases and reduce the burden on court dockets while also increasing the chance that tenants can stay housed. Even absent a strict requirement, encouraging or incentivizing settlement can yield agreements that benefit both landlords and tenants.

STATE	ACTIONS TAKEN
Idaho	The Idaho Supreme Court established an Online Eviction Resolution pilot program in the state's largest county, Ada County, solely for cases based on non-payment of rent. Once a case is filed, parties are sent an invite to participate. The process is voluntary and parties can still go through the traditional court process.
Indiana	The Indiana Courts have implemented a voluntary , no-cost Landlord and Tenant Settlement Conference Program . The program provides an opportunity to see if a settlement can be reached before an eviction case is filed or, if an eviction case has already been filed, to see if an agreement can be reached between the parties before the court makes a decision in the eviction case. Both parties must agree to participate.
Massachusetts	Voluntary , no-cost mediation programs are offered by Community Mediation Centers as part of Governor Baker's Eviction Diversion Initiative, Statewide Housing Mediation program.
New Jersey	<p>The state Supreme Court issued orders on July 1, 2021 and July 14, 2021 requiring settlement conferences in more than 56,000 pending eviction cases. Key provisions:</p> <ul style="list-style-type: none">• Both parties must file case information statements on new and pending cases five days before a mandatory conference.• Priority will go to the oldest pending cases with the most unpaid rent, and newly filed cases where more than twelve months of rent is owed.• If no settlement is reached, trial will be set for a date after August 31, 2021. Evictions cannot occur until the eviction moratorium ends.• If the landlord does not appear, the case is dismissed. If the tenant does not appear, and the landlord establishes entitlement to relief, default judgment will be entered. <p>The state has since enacted Senate Bill 3691, which provides additional legal remedies for landlords and tenants including a provision that the courts must dismiss certain complaints upon receipt of certification that a tenant meets income requirements. On August 5, 2021, the Supreme Court issued additional guidance on the adjournment of cases where an application for rental assistance is pending.</p>
New Mexico	The state Supreme Court issued an order staying writs of restitution for non-payment of rent that is in effect until amended or withdrawn by further order of the Court. The courts have also expanded the free Online Dispute Resolution tool to include landlord-tenant actions involving the collection of money due only (but not evictions). Participation is mandatory for the landlord and referral happens automatically when the tenant receives formal notice of the suit. If no agreement is reached, the case moves forward in court. Bernalillo County Metropolitan Court offers free, voluntary mediation for eviction cases.
Nevada	Assembly Bill 486 (2021), effective June 4, 2021, makes a tenant's pending application for rental assistance or the landlord's refusal to participate in or accept rental assistance an affirmative defense, and requires that if this defense is asserted, any designated eviction proceeding (as

defined) must be stayed until the proceeding is referred to mediation, or until a determination on the application for rental assistance has been made. The bill also **requires** any designated eviction proceeding to be stayed for not more than 30 days to allow for alternative dispute resolution.

Tennessee The Music City Community Court in Nashville has established the [L.E.G.A.C.Y Housing Resource Diversionary Court and Program](#), a **voluntary** program to facilitate relationships between landlords and tenants while they are seeking emergency rental assistance. The program is intended to assist Davidson County residents with non-payment of rent due to a documented COVID-19 impact. Landlords and tenants enter into a stipulation agreement and, if accepted, a three- to six-month continuance is granted to ensure that all conditions can be met. Cases not successfully mediated are transferred back to the General Sessions Court to be set for trial once the eviction moratorium is lifted.

Washington In September 2020, the state Supreme Court issued [Order No. 25700-B-639](#) establishing a pilot eviction resolution program (ERP) and **requiring** landlords to engage in pre-filing resolution efforts for non-payment of rent or non-compliance with previously agreed-upon payment plans.

Governor Inslee subsequently issued [Proclamation 21-09](#), prohibiting eviction actions until both a rental assistance program and an eviction resolution pilot program are implemented and operational in the county where the action applies and a tenant has received notice of these programs and has either rejected the opportunity to participate or failed to respond. The Governor's Proclamation was intended to bridge the gap between the expiration of state protections and the implementation of Senate Bill 5160.

Senate Bill 5160 ([Chapter 115, Laws of 2021](#)) requires the Administrative Office of the Courts, subject to available funds, to establish a two-year statewide court-based ERP operated in accordance with the September 2020 Supreme Court Order. The bill further requires that the program **must be used** to facilitate resolution of non-payment of rent before the landlord files an action and the landlord must secure a certification of participation with the ERP before an action may be heard by the court.

Strategy 2: Extend and strengthen notice requirements

States can modify notice requirements to ensure that tenants are aware of their rights, of applicable procedures, and of available assistance programs. Establishing requirements for language accessibility can also help address current inequities in evictions by making sure that people who are most impacted are properly informed.

STATE	ACTIONS TAKEN
Connecticut	Governor Lamont signed Executive Order No. 12D , extended through September 30, 2021 by Executive Order 13 , requiring at least 30 days' notice to quit possession or occupancy, during which time the occupant or lessee has an opportunity to remedy any non-payment of rent. The Executive Order also requires that information about the state's rental assistance program, UniteCT, is provided in English and Spanish.
Illinois	The state Supreme Court issued Order M.R. 30370 , valid through September 1, 2021, enacting a 30-day stay on residential proceedings against a covered person (as defined) and requiring that the landlord provide certification of exemption from the stay for an action to proceed, stating that they have served the tenant with a form declaration that the tenant is a covered person and they either did not receive a completed form back or some other exemption applies.
Massachusetts	Under Acts 2020, Chapter 257 , and Acts 2021, Chapter 20 , a notice to quit must contain the following language: "THIS NOTICE TO QUIT IS NOT AN EVICTION. YOU DO NOT NEED TO

IMMEDIATELY LEAVE YOUR UNIT. YOU ARE ENTITLED TO A LEGAL PROCEEDING IN WHICH YOU CAN DEFEND AGAINST THE EVICTION. ONLY A COURT ORDER CAN FORCE YOU TO LEAVE YOUR UNIT.” The notice must also provide information on available rental assistance programs, applicable trial court rules and orders, and any relevant federal or state legal restrictions on evictions in the 5 most common languages spoken in the Commonwealth, in addition to English.

Minnesota

The omnibus housing finance bill [HF 4](#) (Senate companion bill SF 16), approved on June 29, 2021, establishes a 15-day notice requirement. A landlord must provide a tenant with written notice at least 15 days prior to filing an eviction action based on non-payment of rent that includes a statement that the eviction moratorium has ended and that the tenant may be subject to an eviction action, indicates the total amount of rent past due, and notifies the tenant that they may be eligible for emergency rental assistance. This notice requirement ends October 12, 2021.

Nevada

[Assembly Bill 486](#) (2021), effective June 4, 2021, requires notice of any designated eviction proceeding (as defined) to contain information relating to the availability of rental assistance and new procedural requirements. The law also allows the landlord to request an exemption from the required stay in designated eviction proceedings if the landlord provides written notice to the tenant of the exemption sought and files a motion with the court for an exemption, and the court finds that there is a pending eviction proceeding and that the landlord faces a realistic threat of foreclosure if the tenant is not evicted.

Texas

The state Supreme Court issued emergency order [No. 21-9078](#), effective through October 1, 2021, establishing the Texas Eviction Diversion Program and requiring that in actions for eviction based on non-payment of rent, the landlord must provide a statement that they have reviewed information about the Program. Notice to the tenant must include a statement about the Program including that the tenant may be eligible for up to 15 months of rent owed paid, in both English and Spanish. A copy of the Program brochure must also be attached to the notice.

Virginia

Under [Section 55.1-1227](#) (Code of Virginia), enacted during a Special Session in 2020 and effective until July 1, 2022, a landlord must give 14 days’ notice to a tenant before filing an eviction in court, if the tenant has not paid rent. Prior to the pandemic, this was a five-day notice. The notice must also offer the tenant a payment plan, with certain requirements related to acceptance of and compliance with the plan.

Under [House Bill 7001](#), the budget bill, approved August 10, 2021, if a tenant has past due rent or is non-compliant with a payment plan, the landlord is required to provide notice of the Virginia Rent Relief Program and information on how to reach 2-1-1 Virginia to find out about other available federal, state, and local rent relief programs. This notice must also inform the tenant that the landlord will apply for rental assistance on the tenant’s behalf within 14 days of serving the notice on the tenant unless the tenant pays in full, enters into a payment plan, or indicates that they have already applied for rental assistance.

Washington

Senate Bill 5160 ([Chapter 115, Laws of 2021](#)) requires a landlord to provide a tenant with written notice of the funding resources and programs established under the bill before serving or enforcing any notice to vacate due to non-payment of rent. A landlord must also include notice of the state’s eviction resolution program to a tenant with a 14-day notice to pay or vacate.

Strategy 3: Tie timeframes for eviction cases to rental assistance applications

States have distributed about \$4.2 billion of \$46 billion allocated to the states for emergency rental assistance. There is wide variation across the states in the percent distributed, from less than 10% to nearly 50% (see this [recent map](#) for more details). Adjusting timeframes for eviction cases to allow time for applications to be submitted and processed and for funds to be distributed will reduce caseloads and keep people housed while also attempting to make landlords whole.

STATE**ACTIONS TAKEN**

Connecticut

Under [Executive Order No. 12D](#), extended through September 30, 2021 by [Executive Order 13](#), if a UniteCT application for emergency rental assistance is filed by either the landlord or the tenant, further proceedings are stayed for 30 days or until a decision is made on the application, whichever is earlier, and if the application is approved, until the UniteCT payment is made and the summary process action is withdrawn or dismissed.

Massachusetts

Under [Acts 2020, Chapter 257](#), and [Acts 2021, Chapter 20](#), the courts shall grant a continuance in an action for summary process if the tenancy is being terminated solely for non-payment of rent, the non-payment was due to a financial hardship related to or exacerbated by COVID-19, and the tenant can demonstrate a pending application for short-term emergency rental assistance. The courts shall also issue a stay of execution on a judgment for possession if these same conditions are met and the courts shall not enter a judgment or issue a writ of execution before the tenant's application for assistance has been approved or denied.

Minnesota

The omnibus housing finance bill [HF 4](#) (Senate companion bill SF 16), approved on June 29, 2021, establishes an eviction moratorium phaseout. Effective immediately, landlords can file evictions based on non-payment of rent for tenants who refuse to apply for emergency rental assistance, provide the landlord information to apply for assistance on their behalf, or provide proof that they have applied for such assistance. As of August 13, 2021, landlords can terminate leases of renters who are behind on rent and not eligible for emergency rental assistance. Beginning September 1, 2021, landlords can file evictions based on non-payment of rent for tenants who are ineligible for emergency rental assistance. On October 12, 2021, landlords can file evictions for any legal reason except against tenants who have a pending application for assistance. This protection ends on June 1, 2022.

New York

[Senate Assembly Bill 2506](#) (starting on page 70, at 74), signed April 16, 2021, establishes an Emergency Rental Assistance Program. Under the program, tenants who submit a properly completed application are protected from eviction even if the case is being processed and aid has not been distributed.

Nevada

[Assembly Bill 486](#) (2021), effective June 4, 2021, makes a tenant's pending application for rental assistance or the landlord's refusal to participate in or accept rental assistance an affirmative defense, and requires that if this defense is asserted, any designated eviction proceeding (as defined) must be stayed until the proceeding is referred to mediation, or until a determination on the application for rental assistance has been made. If rental assistance is granted, the court must dismiss the eviction proceeding at the time the assistance is received by the landlord. If the tenant proves that the landlord refused to accept rental assistance or participate in the rental assistance application, the court shall deny the designated eviction proceeding and may award damages to the tenant.

Oregon

Effective June 25, 2021, Governor Brown signed Senate Bill 278 ([Chapter 420, 2021 Laws](#)) that provides for a 60-day period (90 days in Multnomah County) in which tenants are protected from eviction for non-payment of rent if they provide documentation to their landlord that they have applied for rental assistance. This eviction protection measure will be repealed on March 1, 2022.

Texas

Under state Supreme Court emergency order [No. 21-9078](#), effective through October 1, 2021, at trial for an eviction action, the judge must confirm whether the landlord has any pending application for rental assistance, discuss the Texas Eviction Diversion Program with both parties, ask whether they are interested in participating, and, if the landlord has a pending application or the parties

express interest in participating, abate the eviction action for 60 days, which may be extended upon the landlord's request, among other provisions.

Strategy 4: Require participation in rental assistance programs


Voluntary participation in emergency rental assistance programs only goes so far – requiring participation by one or both parties can ensure that all available resources are exhausted so that past due rent is paid, tenants stay housed, and court dockets are manageable. According to the recent Housing Crisis Research Collaborative report, [Eviction Prevention and Diversion Programs Early Lessons from the Pandemic](#), “rental and other forms of financial assistance are essential to making all other program elements work.”

STATE	ACTIONS TAKEN
Connecticut	Under Executive Order No. 12D , extended through September 30, 2021 by Executive Order 13 , a landlord is required to participate in the UniteCT emergency rental assistance program before delivering a notice to quit for non-payment of rent and this notice, when delivered, must include the relevant UniteCT case number.
Virginia	Under House Bill 7001 , the budget bill, approved August 10, 2021, landlords are required to provide tenants who are behind on rent or who are non-compliant with a payment plan notice of the Virginia Rent Relief Program and must inform the tenant that the landlord will apply for rental assistance on the tenant's behalf within 14 days of serving the notice on the tenant unless the tenant pays in full, enters into a payment plan, or indicates that they have already applied for rental assistance. The landlord is required to apply for rental assistance or cooperate with the tenant's application, among other provisions.
Washington	Governor Inslee issued Proclamation 21-09 to bridge the gap between the expiration of the state's eviction moratorium on June 30, 2021 and the implementation of Senate Bill 5160 (Chapter 115, Laws of 2021). This Proclamation, effective through September 30, 2021, requires landlords and tenants to participate in rental assistance and eviction resolution pilot programs to resolve rent past due through July 31, 2021, among other things. Under Senate Bill 5160, if a tenant has any unpaid rent accrued between March 1, 2020 and six months following the end of the eviction moratorium or the public health emergency, the landlord must offer the tenant a reasonable payment plan. If the tenant defaults, the landlord may apply for reimbursement through the Landlord Mitigation Program.

Strategy 5: Create a Formal Plan for Handling Eviction Cases

These are not normal times and courts cannot proceed with evictions under normal operational procedures. Perhaps the most important thing that courts can do right now is recognize the impending volume of cases and develop a plan for handling eviction actions in a manner that treats both tenants and landlords fairly and humanely. The National Center for State Courts has developed an Eviction Diversion Diagnostic Tool and a number of resources, including [Considerations for High-Volume Dockets During the Pandemic](#). One example at the state level is Indiana, which established a Landlord/Tenant Task Force early in the pandemic and has regularly updated a report that includes [Guidelines for Judges Handling Evictions After Moratoria Expire](#). The key takeaways from these guidelines are:

- Set aside court sessions exclusively for evictions and consider calendaring cases in smaller batches.
- Require pre-screening of cases regarding case status and prioritize scheduling based on factors like the age of the case and whether the parties have attempted to settle.

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- Schedule further out from filing (for example, 30 days) to allow time for the parties to explore other resources available.
 - Encourage pre-hearing resolution of disputes to support housing stability.
 - Follow health and safety recommendations for in-person hearings (consider the size of court for social distancing, allow text messaging check-in, provide rooms for negotiation and settlement to occur).
 - Provide telephonic and virtual alternatives for hearings and implement digital alternatives for procedural requirements that minimize in-person interactions (like notarization and fee payment).

A [recent letter](#) from the U.S. Assistant Attorney General Vanita Gupta to state courts outlines similar strategies to those described here and encourages the creation of more robust, comprehensive eviction diversion programs as a long-term strategy to avoid evictions. This letter also details some of the resources available from the federal government to support jurisdictions that invest in eviction diversion.

Conclusion

Taking action now will reduce the risks posed by the coronavirus and can mitigate the severe consequences of eviction on the health and well-being of families and communities. This moment is also an opportunity to improve a process that is [disproportionately impacting people of color](#). Putting these key strategies in place will not just keep people housed, it will provide the judiciary a way to remedy its role in perpetuating racial and ethnic health disparities by removing law as a barrier to housing and health.

Additional Resources:

- The Network for Public Health Law Resource Collection on [Legal and Policy Approaches Towards Preventing Housing Instability](#)
- The [American Bar Association Eviction Committee](#) resource page

SUPPORTERS



Robert Wood Johnson Foundation

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

This document was developed by Dawn Hunter, JD, MPH, Director of the Network for Public Health Law Southeastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

Updated: August 2021