

Preparing for the Expiration of COVID-19 Eviction Moratoria

This brief was written as part of our COVID-19 Housing Response plans series. Added: October 13, 2020.

In response to the economic crisis caused by the COVID-19 pandemic, cities, states, and the CDC have enacted eviction moratoria to temporarily protect tenants from housing instability and homelessness. As these moratoria get set to expire across the country, local governments must be proactive in preventing a massive wave of evictions. Drawing from [a recent Furman Center brief on the reopening of housing courts in New York City](#), this brief outlines four priorities for local policymakers to consider as they work to prevent a flood of nonpayment evictions, and recommends 10 policy tools that cities can begin implementing now to protect tenants as the moratoria expire in the coming months.

Priority 1: Public health and safety.

As long as COVID-19 remains a public health crisis, cities will need to continue to make the health and safety of their residents their top priority. Many nonpayment evictions force tenants to move into more crowded or transient accommodations such as homeless shelters, exacerbating the risk of COVID-19 transmission. Thus, there is an urgent need to prevent a surge in eviction filings by funding and designing upstream solutions that provide rental assistance to tenants and landlords, as described below.

Priority 2: Stability for tenants and landlords.

The eviction process is harmful both to tenants, who risk being blacklisted from future rental housing and left without viable housing options, and to landlords, who risk financial distress and foreclosure due to lack of rental revenue. These harms will only be exacerbated given the potential influx of eviction filings after the various moratoria expire, so the next priority for cities should be to resolve as many housing disputes as possible without needing to go through the court system. Below are four potential policies for cities to consider in carrying out this goal.

1. Provide emergency rental assistance to reduce the number of evictions.

A robust rental assistance program is one of the most impactful policies cities can

implement in anticipation of the expiration of COVID-19 eviction moratoria. [Local governments across the country have already begun creating these programs](#), but many will need to be expanded to prevent a devastating surge of nonpayment eviction filings in the coming months. There are several considerations policymakers should take into account when designing effective rental assistance programs:

- *Funding*: Given current budget constraints on state and city governments, federal funds will likely continue to be necessary to meet the need for rental assistance. Funneling existing and new federal housing assistance dollars into local rental assistance programs will be crucial to meet growing needs.
- *Program Mechanics*: Cities implementing rental assistance programs will need to consider whether their programs should be tenant- or landlord-facing. Having landlords apply for assistance directly will be more efficient in most contexts, as landlords tend to have easier access to key documentation, and assistance can be distributed to entire buildings rather than household-by-household. Additionally, rental assistance can take the form of direct payments, vouchers, tax credits, or emergency loans; policymakers should consider legal requirements and administrative efficiency in deciding which tools to use to carry out their rental assistance programs.
- *Targeting*: Policymakers may want to focus on providing assistance to households at imminent risk of homelessness, low-income households ineligible for other forms of assistance (such as families without immigration status), and property owners (particularly small landlords) at risk of financial distress. Cities will likely need to make difficult trade-offs in how they prioritize these criteria.

For more guidance in creating an effective local rental assistance program, see Local Housing Solutions' brief on [Designing a Rental Assistance Program for COVID-19](#).

2. Where appropriate, develop alternative dispute resolution mechanisms.

Where housing disputes arise between tenants and landlords in the coming months, cities may look to mediation and other alternative dispute resolution (ADR) mechanisms to divert cases from formal eviction proceedings. A free and confidential mediation process can help free up housing court dockets and save time and money for both tenants and landlords. Policymakers should note that mediators will need to be well-trained in the complexities of local housing laws, and a procedure will need to be established to identify cases for ADR before an eviction is filed. Additionally, because imbalances in legal representation can result in inequitable outcomes even in mediations, policymakers may consider pairing an ADR mechanism with an access-to-counsel program (discussed further below). Finally, where tenants simply cannot

repay arrears, ADR will likely fail to prevent cases from entering housing court, underscoring the importance of upstream rental assistance.

3. Narrow the issuance of possessory judgments.

Policymakers may also consider legislative reforms that make nonpayment eviction cases non-possessory. Such a change would allow landlords to receive only monetary judgments (and not possession of a unit) for nonpayment of rent, and make judgments collectible in civil or small claims court like other debts. Potential drawbacks to this approach include creating significant consumer debt for tenants, and making landlords more reticent to rent their units to low-income tenants and potentially inducing them to resort to constructive eviction tactics.

4. Provide resources to small landlords suffering financial distress.

The shortfall in rental revenues will likely strain landlords' abilities to make their mortgage payments, potentially resulting in a foreclosure crisis that would be disastrous for both landlords and tenants. As a result, policymakers may focus on targeting housing resources to properties at risk of financial distress, with priority given to landlords most at risk of losing their buildings. Depending on budgetary capacity, the resources provided may range from direct payments to technical assistance and guidance. Still, the administrative costs of identifying small, at-risk landlords may limit the ability of cities to effectively target them for the distribution of housing resources.

Priority 3: Racial equity.

Black and Latinx communities are bearing disproportionate burdens with respect to evictions, homelessness, and the effects of COVID-19. In order to avoid exacerbating the disparate impact of evictions on Black and Latinx tenants, cities can strive to keep as many cases as possible out of housing court and prioritize policies that promote equity and accessibility, as described below.

1. Track and respond to geographic disparities.

Policymakers can track geographic disparities in both eviction rates and COVID-19 infections, paying close attention to neighborhoods with higher proportions of Black and Latinx residents, which research shows are especially at risk. Based on these data, cities may want to geographically target the resources they develop to prevent neighborhoods from spiraling downward as a result of clustered building distress.

2. Protect the rights of persons with disabilities.

People with disabilities are at higher risk of both eviction *and* complications from

COVID-19. Although remote access to resources and virtual hearings may present some benefits by removing the need to come to a physical location, they may pose challenges for others, making it important for policymakers to prioritize web accessibility when designing virtual platforms for housing assistance programs and eviction proceedings.

3. Improve access to housing assistance for persons with limited English proficiency.

Policymakers can ensure that housing assistance is available to populations with limited English proficiency by expanding funding for interpreter services and translated informational materials. Housing courts can also adopt practices that ensure that tenants with limited English proficiency are able to participate in virtual hearings in the same manner as English-speaking individuals.

Priority 4: Due process for tenants.

Even in cities that have prepared by providing robust upstream rental assistance and diverting cases from housing court, there will likely still be evictions filed when the various COVID-19 moratoria expire. Protecting due process for those tenants who end up going through the eviction process will likely be a challenge. Below are three ideas for policymakers that can help protect the due process rights of tenants who are evicted in the near future.

1. Expand access to counsel.

Legal representation for tenants in eviction proceedings is crucial to level the playing field with landlords during normal times, and will be even more important as eviction moratoria expire in the coming months. Cities can establish programs similar to New York City's Universal Access to Counsel program for tenants being evicted in the wake of COVID-19 so that, at a minimum, all litigants in virtual eviction proceedings are guaranteed representation by counsel. Funding will be a core challenge in carrying out this recommendation; diverting more cases from housing court using the upstream policy tools described above will make universal access to counsel more feasible.

2. Communicate clearly, consistently, and universally.

Cities can provide prominent, plain-language guidance for tenants and landlords about electronic eviction filing procedures, remote hearing protocols, dates of scheduled hearings, and process for obtaining representation both online and via a dedicated COVID-19 hotline. This guidance should be available in multiple languages and for litigants who rely on assistive technology.

3. Provide access to technology.

Many tenants at risk of eviction do not have access to smartphones, computers, email, video cameras, or other technologies that enable remote hearings. In order to ensure due process in the eviction process, housing courts can strive to adapt court procedures and evidentiary rules and/or provide direct assistance with technology to level the playing field for under-resourced litigants.

Footnotes:

[1] In 2017, New York City became the first city in the country to establish a Universal Access to Counsel program to provide free legal representation in eviction proceedings to tenants with incomes below 200 percent of the federal poverty line.