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Eviction Record Expungement Can Remove Barriers to Stable Housing

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Contents

- 1 Introduction and summary**
- 2 The eviction process**
- 5 The consequences of an eviction**
- 7 Eviction record expungement,
clearing, and sealing**
- 10 Recommendations**
- 11 Conclusion**
- 11 About the authors**
- 11 Acknowledgments**
- 12 Endnotes**

Introduction and summary

Eviction records keep individuals and families locked in a cycle of poverty; force people to live in unsafe housing; and cause homelessness and a host of other collateral consequences. One commonsense reform to help minimize the negative effects of eviction records is to increase access to and ease of eviction record sealing or expungement and to minimize public access to these records. Eviction record sealing, in combination with additional tenant protections and reforms, would greatly improve access to safe and affordable housing, especially for the people most often forced to the margins of society.

For renters who have faced eviction, which is often described as the “Scarlet E,”¹ a path toward eviction record clearing and additional renter protections is essential. This report includes a discussion of current state policies to expunge and seal eviction records and makes the following recommendations for state policymakers:

- Automating eviction record sealing
- Excluding current eviction filings from public view
- Guaranteeing a right to counsel
- Enacting and enforcing sanctions against private background screening companies
- Enacting and enforcing laws that prevent landlords from considering evictions in rental application screenings
- Enacting and enforcing sanctions for landlords who file discriminatory or retaliatory evictions

Evictions have lasting impacts on millions of low-income and vulnerable populations. With the U.S. Supreme Court verdict that stopped the federal eviction moratorium in August 2021, an estimated 750,000 renters will likely lose their homes this year alone.² But states have the power and ability to protect renters, especially as millions still struggle to recover from the pandemic; they should use this influence to prevent evictions, helping families build long-term security and stability.

The eviction process

An eviction is the process by which a landlord forces a tenant out of the property the tenant is renting—in the case of residential tenancies, their home. The vast majority of evictions are for nonpayment of the full rental amount, although they can also be issued for alleged lease violations, foreclosure on the property, the property being converted to a different use, and other reasons.

Landlords initiate the eviction process by serving a tenant with notice to vacate. In many cases, these notices fail to comply with applicable legal requirements. But because of the lack of legal advocates available to tenants, these defective notice claims generally go unchallenged. Tenants are then issued a legal complaint and a summons to appear in court. Many tenants—especially those who are being evicted for nonpayment and who do not have the funds to pay—do not appear in court because they do not see the utility in doing so when they have no defense. When tenants fail to appear, courts in most states issue default judgments against them—meaning that unlike in criminal court, where a defendant cannot be convicted in their absence, the court in an eviction action can order the tenant to be evicted and left with an eviction record even if the tenant never appeared in court. When tenants do appear, most states allow cases to be resolved through settlement or a stipulated agreement between the tenant and the landlord as well as through a full hearing. The lack of legal representation for tenants appears again in this process and results in the inability of many tenants, who for the most part have no legal knowledge, to raise potential defenses to eviction. This, in turn, leads to unfair evictions that mar tenants' records for years, making it difficult to pass background screenings for suitable housing.

During the COVID-19 pandemic, the government enacted a number of tenant protections to prevent evictions, including federal- and state-level moratoriums on evictions and the development of emergency rental assistance programs across the country. However, as COVID-19 cases continue to surge, hospitals continue to be overwhelmed; rent debt continues to pile up, nearing an estimated \$17 billion;³ and emergency rental assistance funds are slow to distribute.⁴ The 15 percent of

all households that report being behind on rent⁵ may be at risk of eviction with the premature rollback of protections. But even with these protections and moratoriums in place, a number of states and cities have continued to proceed with eviction cases.⁶ Recent research has shown that evictions increase the spread of COVID-19, and lifting eviction moratoriums prematurely will increase virus spread and death⁷—affirming that housing is indeed health care. Without further protections for renters, the nation will face the largest mass eviction crisis to occur in the United States.

What leads to eviction

Overall, rent burden has grown as housing costs rise and wages remain stagnant,⁸ with nearly half of all renters in the United States reporting being moderately or severely cost burdened, meaning that they pay more than 30 percent to 50 percent of their income on rent.⁹ Additionally, there is a massive shortage of affordable housing stock, with about 7 million additional low-income housing units needed in the United States,¹⁰ according to an annual report by the National Low Income Housing Coalition. This lack of affordable housing increases the risk of eviction, especially for low-income renters.¹¹

Evictions disproportionately affect some households more than others. During the COVID-19 pandemic, disabled renters expect to face eviction in the coming months at disproportionate rates,¹² and renters of color are less likely to be caught up on rent.¹³ For example, 7 million¹⁴ renters with disabilities are moderately or severely cost burdened and are therefore more likely to face eviction. And according to data from the U.S. Census Bureau, 22 percent of Black households were not caught up on rent, with 18 percent of Latino households and 19 percent of Asian households similarly behind, compared with just 10 percent of white households.¹⁵ Even before the COVID-19 pandemic, Black and Latinx communities and renters faced higher rates of evictions,¹⁶ with Black women facing the highest rates.¹⁷ Throughout their lifetime, 1 in 5 Black women are evicted, compared with just 1 in 15 white women.¹⁸ Mothers, and especially women of color, earn lower wages than men overall and are increasingly the sole or primary wage earners within a household.¹⁹ In addition to the shortage of affordable housing stock, even fewer housing units—less than 5 percent²⁰—are accessible, making both accessible and affordable housing exceedingly difficult to attain.

Evictions occur under a variety of circumstances. Landlords sometimes use the threat of eviction as a way to redefine renters who owe rent arrears as debtors and subsequently use court resources as a method of rent collection.²¹ This can lead to the misuse of court systems as landlords engage in multiple so-called serial evictions, or evictions regularly and repeatedly filed at the same address, that target low-income renters.²² These types of evictions accounted for nearly one-third of households facing eviction in 2014. Serial eviction patterns occur often in large low-income housing complexes as a uniform threat by landlords, often corporate landlords and investors, across hundreds to thousands of units each month.²³ For some landlords, it can be less expensive to evict low-income tenants than to address property management needs, such as plumbing, pest control, repairs to air conditioning or heat, or other issues with the housing unit.²⁴ Accordingly, landlords often file retaliatory evictions that target tenants who request repairs; these can have the same devastating effect on a tenant's rental opportunities as any other evictions. Furthermore, during eviction hearings, 90 percent of landlords have legal representation, compared with less than 10 percent of tenants, further privileging landlords over tenants in these proceedings.²⁵

Rent burden, the affordable housing shortage, landlord wealth-building strategies, and systemic inequalities that disproportionately make communities of color, women, and disabled people more vulnerable are some of the many contributors to the more than 2 million renter households who, before the COVID-19 pandemic, had an eviction case filed against them each year.²⁶

The consequences of an eviction

The threat of eviction, even if not carried out, leads to negative physical and mental health outcomes.²⁷ If a person is pregnant while experiencing an eviction, they are more likely to experience birth complications such as an increase in the risk of preterm birth and low birth weight, which can in turn result in long-term health problems, including diabetes and heart disease.²⁸ Recent research by the Eviction Lab has shown how evictions increase the spread of COVID-19 and how lifting eviction moratoriums can increase rates of infection and death.²⁹

An eviction record can trap families in poverty and homelessness

“I couldn’t afford rent, but I still paid. I was never even served papers, so I missed the court date. I was evicted, and [the landlord] kept my rent for the next month and deposit, so I couldn’t even afford to go to a hotel.” Jaycee is a Black mother of four who experienced an illegal eviction in California in 2019.

For the past 2 1/2 years, Jaycee has lived one hour away from her children, who are staying with their grandparents. She lived with her now-husband, in friends’ cars, and unsheltered in parks for almost one year before being able to move into a temporary congregate shelter. Since her eviction, Jaycee has completed a medical certificate program and secured stable employment. But, because of her eviction record, she has not been able to find an apartment and landlord who will rent to her. “It literally is impossible. I lost track of how many rental applications I filled out, at \$80 each. [Having an eviction on my record] left me homeless, and I can’t get my kids if I’m homeless.”³⁰

Experiencing an eviction is an expensive process for a tenant. During proceedings, tenants may need to take time off work, find child care, and pay for transportation expenses to attend court hearings. Additionally, after facing an eviction, a tenant now experiencing marginal homelessness³¹ may be forced to pay prices two to

four times higher than their previous rent to stay in short-term rentals,³² such as extended-stay hotels and motels, as they try to avoid living in shelters or becoming fully unhoused. Evictions can separate families, force households to move from neighborhoods or communities, and push households deeper into poverty.

When housing is lost, the overall cost of living goes up for the household,³³ while future earning potential goes down.³⁴ These barriers then make it more difficult to both obtain and maintain future housing.³⁵ Additionally, even though evictions are not reflected on credit reports, a record of an eviction can negatively affect credit access and consumption, and it increases debt in collections,³⁶ adding even more financial strain.

Another barrier to finding housing is the fact that the vast majority of landlords engage in background screenings during the rental application process. Court records and databases used for tenant screening can be outdated and include misleading or inaccurate information about an applicant.³⁷ Often, these checks and records do not specify the outcome of an eviction case, leaving ambiguity around whether a prospective tenant has had an eviction filed against them or how and eviction action was resolved.

Looking at both the impetus for and the consequences of eviction, it becomes clear that eviction is both a cause and consequence of poverty. The destabilizing effects of losing housing does not just affect an individual household; rather, evictions can contribute to multigenerational cycles of poverty and hardship, creating stress and anxiety for the entire family and negatively affecting their finances, health, and ability to weather future emergencies.

Eviction record expungement, clearing, and sealing

Expunging an eviction means that the record is erased from the court system's public view, treating the eviction as if it never happened. Once an eviction has been expunged, prospective landlords should not be able to see the eviction on the tenant's rental history. Additionally, an expunged eviction allows an applicant to answer "no" when a landlord or property manager asks if an applicant has ever been evicted.

Expunging an eviction record brings hope for the future

Adrienne, a domestic violence survivor and single mother, knows the trauma of eviction. In 2004, she was struggling to pay rent and often relied on her mother and grandmother to help. However, when Adrienne's grandmother died suddenly, she ended up short on rent by about \$50. Despite pleas for leniency, Adrienne's landlord served an eviction notice.

After Adrienne and her son were evicted, she had difficulty securing safe and stable housing and suffered additional evictions that marred her record. Adrienne and her son lived with her mother and were eventually pushed into homelessness.

"[The eviction] made it much more difficult to obtain permanent housing, even with the help of experienced housing advocates," Adrienne said. "We often were in a group of last people to be housed, while in shelter. Being evicted affects every area of your life and causes despair and desperation. ... The evictions caused missed housing opportunities, I was denied for decent apartments, especially in the good areas of Portland. The [background] checks would come back with evictions, and I was denied."

Adrienne's housing arrangements remained tenuous until Oregon passed legislation in 2020, allowing her evictions to be expunged. "The eviction expungement process went much smoother than I had hoped for. ... I felt like I have hope again for a good life, which allows freedom and the ability to have a choice where I live[.] I gained back self-esteem with the expungements," Adrienne said. "I have new hopes for my future for the first time! I have a clean record, which means everything to me. I have been looking at wonderful places to live, that before I could never even consider ... and I, for the first time, meet the qualifications with no evictions!"³⁸

To expunge an eviction, a tenant typically files a form with the court in person, through mail, or e-filing online. The tenant is also required to serve the landlord involved in the action with notice of the filing. From there, the landlord has a set amount of time—generally, 30 days—to object to the sealing of the record. This ability to object, which would lead to an additional court hearing, favors the past landlord and creates a barrier to the tenant’s ability to clear their record. Like many court hearings between tenants and landlords, tenants are disproportionately underrepresented by counsel in these settings. Depending on the local processes, a judge may consider multiple factors when deciding whether to grant or deny an eviction expungement, including whether the tenant owes any rent arrears or debt to the landlord; whether a settlement was agreed upon; proof that the tenant did not violate the lease; and the outcome of the original eviction case.

The process of sealing an eviction record differs by state. Some states may require a court hearing, while others do not. In some states, such as Oregon,³⁹ there are no court filing fees for the tenant to initiate this process, while others, such as Minnesota,⁴⁰ require a fee or waiver of these fees. In Nevada, if a landlord does not file a complaint within 30 days, the tenant’s eviction record will be sealed.⁴¹ In Minnesota, an eviction record can be expunged if the tenant vacated the property in question before the eviction was carried out.⁴²

To protect prospective renters, some states, such as Oregon⁴³ and Connecticut,⁴⁴ have introduced laws and bills that are meant to prevent landlords from considering evictions in rental application screenings after a certain amount of time has passed since the eviction occurred. Though these laws can be helpful in recognizing and addressing the disparate impact that public eviction records have on communities of color in particular, enforcing these laws is difficult, as many eviction records are still available to view. This is especially important when a landlord does not provide a reason for refusing to rent to a particular prospective tenant.

State legislative movement to expunge and seal eviction records

Oregon: SB 873⁴⁵ took effect in Oregon in January 2020, allowing expungement of some eviction records, including cases older than five years with no outstanding money owed; cases where the tenant has completed agreements made between the landlord and tenant in court; and cases that were ruled in the tenant's favor and where the eviction was dismissed. In 2021, Oregon expanded this list to include cases carried out during the COVID-19 pandemic and cases where the tenant has satisfied all monetary obligations included in the judgment.

California: In 2016, California passed AB 2819,⁴⁶ which limits access to court case records and automatically and permanently seals some evictions, unless the landlord follows through with a trial within 60 days of when the complaint was filed. This action also creates a pathway for tenants to seal records that resulted in a settlement.⁴⁷

Florida: The Florida House of Representatives passed HB 1195 and HB 1193 in 2021 to make some eviction records confidential by removing tenants' names from eviction lawsuits.⁴⁸ This action preserves prospective tenants' ability to evaluate a landlord's past practices of eviction filings against tenants—a protective measure that may be crucial for many tenants.

Massachusetts: In the 2021 economic development bill H 5250,⁴⁹ Massachusetts lawmakers included a provision that would allow tenants to petition to seal no-fault eviction records.⁵⁰ However, Gov. Charlie Baker (R) later vetoed this provision.⁵¹

Connecticut: In 2021, the Connecticut General Assembly Housing Committee has been considering HB 6528⁵² to address discriminatory housing by landlords by prohibiting refusal to rent to a tenant based on a tenant's eviction record.⁵³ The bill is still awaiting passage.

Ohio: In 2021, Ohio introduced SB 158,⁵⁴ which would allow tenants to request that an eviction on their record be expunged, with opportunity for landlord dissent, with further tenant consideration three years from the last eviction filed on their record.⁵⁵ The bill is still working its way through the legislature.

Washington, D.C.: In 2019, Washington, D.C., introduced—but never voted on—B 338,⁵⁶ which would have allowed D.C. courts to seal or expunge all eviction records after three years and would have provided tenants a pathway to seal eviction records under other circumstances.⁵⁷ In 2021, as part of temporary COVID-19 pandemic relief efforts, Washington, D.C., put into place protections set to expire in October to seal all eviction court record proceedings after 30 days if the ruling was in the tenant's favor or three years after the proceeding if the ruling was in the landlord's favor.⁵⁸

Recommendations

Overall, broad and robust federal investments⁵⁹ that lead with racial, LGBTQ, and disability justice frameworks that address eviction prevention—and ultimately that get and keep people housed—are needed. Across states, automated record clearing such as clean slate⁶⁰ has gained bipartisan support, as it recognizes the need for states to take action to remove barriers to prosperity. States can lead the way by taking actions that are critical to providing a path forward for renters who have experienced an eviction, including the following steps:

- Automate eviction record sealing to streamline the clearing and expungement process and to reduce the burden on tenants and court administrators alike, including providing the resources necessary to update and enable e-filing systems to facilitate automated clearing.
- Exclude current eviction filings from public view until the conclusion of proceedings, and then immediately and automatically seal any case records resolved in favor of the tenant.
- Guarantee tenants a right to counsel in eviction proceedings to avoid unnecessary and unjust eviction records. In the absence of accessible and affordable attorney availability, allow tenants to be represented in court by licensed paraprofessionals or housing court navigators.
- Enact and enforce laws that prevent landlords from considering evictions in rental application screenings. Furthermore, require landlords to rent to the first qualified applicant and, when they refuse to rent to a prospective tenant, affirmatively state in writing their reasoning, in order to avoid discriminatory and unfair refusals.
- Enact and enforce sanctions against private background screening companies for providing false, misleading, or outdated eviction information to prospective landlords.
- Enact and enforce sanctions against landlords who file discriminatory or retaliatory evictions.

Conclusion

Having an eviction record can create barriers to obtaining and maintaining stable housing;⁶¹ to preserving mental⁶² and physical⁶³ health; and to gaining access to jobs and reliable income. It also increases food insecurity⁶⁴ and can perpetuate intergenerational cycles of poverty and hardship. State governments should take actions to increase affordable housing, increase wages, invest in safety net and social programs, and protect tenants from the threat of eviction. For those who have experienced the extreme hardship of an eviction, lawmakers must push for comprehensive and multifaceted solutions to expunge eviction records and create pathways to stable, accessible, and affordable housing for all.

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