

Fall 2021

SURVEY OF LEGAL AID ATTORNEYS AFTER THE EVICTION MORATORIUM

This fall, the **National Housing Law Project** surveyed **119 legal aid and civil rights attorneys in 41 states, DC, and Puerto Rico** to see how tenants were faring after the federal eviction moratorium ended. These attorneys are part of the Housing Justice Network, hosted by NHP. This is a follow up to our [July 2020 survey](#).

On August 26, 2021, the Supreme Court struck down the eviction order imposed by the Centers for Disease Control and Prevention (CDC). Throughout the pandemic, a patchwork of laws has protected some tenants in some areas; other areas provide no tenant protections.

The numbers in this survey are the tip of the iceberg because they only take into account families who were represented by legal aid attorneys during COVID. [Nationally, only 3% of tenants have legal representation, while 81% of landlords do.](#)

This survey captures an important moment in time and offers a look at what is happening on the ground. We also offer ideas to improve our current housing and court systems to prioritize housing stability for tenants.

TOP FINDINGS

Courts and landlords continue to evict families, in spite of legal protections and billions of dollars in aid to landlords.

Legal aid attorneys reported seeing the following problems since the end of the federal moratorium:

- Rising eviction cases, even for federally subsidized tenants
- More landlords lying in court to evict tenants
- More illegal evictions, lockouts, and other harassment
- Landlords collecting rental assistance funds only to evict tenants
- Federal tenants being unfairly evicted
- Judges ignoring or inconsistently applying federal and state law
- Limited and incomplete eviction diversion programs to protect tenants



RECOMMENDATIONS

- **Reform landlord-tenant law** to provide basic due process to tenants
- **Expand tenant access to justice** by enacting right to counsel laws
- **Fix rental assistance programs** by requiring lease renewals, non-eviction pledges, and stays on cases until funds are disbursed
- **Create eviction diversion programs** focused on housing stability for tenants
- **Invest in federal and other affordable housing** through the Build Back Better Act

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LANDLORDS CONTINUE TO
EVICT AT A HIGH RATE

66%

of respondents reported
rising eviction cases
since the CDC moratorium ended

40% report an increase in
landlords lying
in court to evict tenants

35% report an increase in
illegal evictions or
lockouts

13% report an increase in
landlords deferring
unit maintenance

 LANDLORD TACTICS

To evade local tenant protections, landlords are:

- Falsely alleging lease violations or changing lease terms without notifying tenants
- Falsely denying receipt of ERA funds to keep cases moving through court
- Intimidating and harassing tenants into leaving, or withholding maintenance to render units uninhabitable

EVICTIONS IN
SUBSIDIZED HOUSING

Voucher holders are afraid they'll lose their homes. Their landlords threatened evictions with 3-day notices. We've had to inform these landlords of their duties under federal law to provide 30-days' notice.
— California

A housing authority in my area is evicting HUD tenants strictly for nonpayment, even when rental assistance is pending. They refuse to fill out their portion of the applications.
— Kentucky

67%

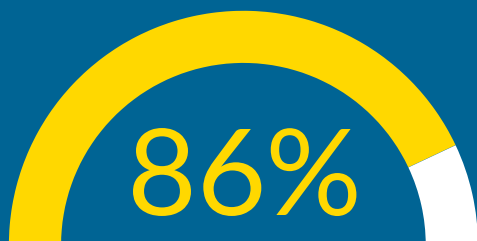
of respondents reported
evictions of subsidized housing
tenants for nonpayment of rent

 RECOMMENDATIONS

The federal government should:

- Impose an eviction moratorium for all federally-subsidized tenants
- Require these landlords to participate in rental assistance and repayment programs
- Mandate retroactive interim recertification, and provide other reasonable accommodations and program exemptions

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ABUSE OF RENTAL
ASSISTANCE PROGRAMS

of respondents have seen
**landlords collect rental
assistance and still proceed with
evictions, or simply refuse to
apply for funds**

 PROGRAM CONCERNS

Emergency rental assistance (ERA) is a crucial tool for keeping families housed. Some programs have loopholes that allow for abuse including:

- Landlords purposely delaying ERA applications to accumulate late fees
- Landlords using ERA money to pay their own legal fees while continuing to pursue evictions in court
- Programs illegally restricting eligibility based on immigration status

28% report **landlord refusal of ERA funds** as a common occurrence

22% report instances of **landlords' defrauding ERA programs**

IMPROVING RENTAL
ASSISTANCE PROGRAMS

We are seeing some landlords refuse to participate or respond to ERA invites as a delay tactic to collect late and other fees since they know some programs will cover them.
— Florida

I am seeing landlords accept ERA funds and then come back and tell the tenants that they are still behind on rent after applying the funds to attorney fees or legal fees.
— Texas

 RECOMMENDATIONS

To improve rental assistance programs, jurisdictions should:

- Require landlords receiving assistance to renew leases or sign non-eviction pledges
- Require landlords to agree that ERA satisfies all past debts of the tenant
- Eliminate any barriers to accessing funds based on immigration status
- Require courts to stay cases until ERA applications are processed
- Enforce source-of-income protections to stop discrimination against using ERA to pay rent

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OBSTACLES IN COURT

78%

of respondents reported
**inconsistent or no court
enforcement of federal eviction
notice requirements***



COURT CONCERNS

Respondents shared these other concerns:

- Due process concerns including language access, confusion over virtual and/or in-person hearing processes, and risking health to appear in court
- Rental assistance programs have evolving or unknown timelines, so uneven application of the law is a major problem

Our courts are unsympathetic when a tenant has done everything they can and a landlord still refuses rental assistance. While our local agencies have a process for sending money directly to tenants, it is often far too slow to stop an eviction.
— Ohio

Because of the high volume of filings, backlog judges who are not familiar with landlord-tenant law, ERA, and moratoria are more likely to be assigned eviction cases, resulting in inconsistent outcomes.
— New York

** This number includes 20% with no enforcement at all. The Coronavirus Aid, Relief, and Economic Security (CARES) Act requires landlords to provide a 30-day eviction notice for any covered property. This 30-day notice overrides all state and local landlord-tenant law for those properties.*

IMPROVING COURT PROGRAMS

37%

of respondents reported
**courts in their areas using
diversion or mediation programs**

only
26%

of these programs base
their success on **keeping
tenants from being
evicted**

only
13%

of these programs
**require landlord
participation before
cases can be filed**



RECOMMENDATIONS

To improve these programs, courts should:

- Measure program success by avoiding evictions rather than reducing court dockets
- Require landlords to participate in programs before cases can be filed
- Provide representation to tenants in diversion and mediation programs