

Coronavirus Eviction Moratoria: Considerations and Best Practices

As the COVID-19 pandemic spreads and social distancing measures become ever more urgent and disruptive, the need for states and local jurisdictions to protect the safety and stability of their citizens through eviction moratoria could not be any more pressing. The goals of an eviction moratorium should be as follows:

- Ensure that judicial eviction procedures do not themselves undermine social distancing requirements by increasing interpersonal interactions or by obligating persons to visit courts or attend in-person hearings;
- Prevent anyone from being actually displaced from that person's home throughout the complete duration of the COVID-19 pandemic; and
- Ensure that no persons against whom eviction cases have already been started or is initiated during the pandemic are not prejudiced in their ability to redeem the tenancy or defend against the claim by reason of social distancing measures.

With these objectives in mind, the following are key considerations and best practices to assist communities and advocates in formulating and imposing moratoria:

1) Origin of moratorium

Depending on state law and local eviction procedures, moratoria may arise through any branch of government. Ideally, a legislative body could enact a law establishing a moratorium. Where this is not possible or practical, courts could establish moratoria (either by order of the state's highest court, or on a court-by-court basis). Then some governors or local mayors may have the ability to impose moratoria by declaration, usually through invocation of emergency powers.

Where state and local governments are unwilling or unable to impose official moratoria, advocates and other officials should consider advocating for large rental housing providers to adopt voluntary eviction moratoria. This naturally includes public housing agencies and other subsidized housing operators, but should also extend to private landlords—especially those operating multifamily projects with significant numbers of dwelling units. As an example, numbers of large landlords in [Boston](#) and [New York](#) have recently announced 90-day moratoria on evictions for non-payment of rent arising from a tenant's loss of income.

2) Method of restraint

Another critical question is what the moratorium actually affects. While the details of unlawful detainer procedures vary from one jurisdiction to the next—generally the steps include:

- (i) Service of an eviction notice on the tenant;
- (ii) Service of legal process, i.e., summons and complaint, on the tenant;

- (iii) Filing of a civil eviction lawsuit with the court;
- (iv) A summary hearing in court on the complaint, which may or may not be followed by additional hearings;
- (v) Entry of an order directing the sheriff to remove the tenant; and
- (vi) Physical removal of the occupants and their belongings.

Halting any of these processes effectuates at least a partial moratorium on evictions. But a moratorium may look different and have different implications for the parties based on which of these processes are restrained and which are allowed to continue.

Prohibiting personal service of eviction notices.

Eviction notices are ordinarily served on tenants by landlords or management personnel. Stopping landlords from personally serving such eviction notices effectively prevents most new cases from being filed in jurisdictions where personal service is required. In many jurisdictions, eviction notices that are based on non-payment of rent (and certain other lease violations) may provide a limited time (after service of the notice) in which to cure the delinquency. Hence, stopping the service of such notices would similarly minimize the harm to a tenant's ability to catch up delinquent rent and thus preserve a tenancy. Restricting in-person service may also have some value in avoiding in-person contact and ensuring that landlords' management staff do not spread or acquire COVID-19.

Advocates should note, however, that most states provide for at least some types of eviction cases in which service of a prior eviction notice is not required. Common examples include the eviction of tenants who remain in possession of premises after the expiration of a lease for a specified time, or a foreclosed homeowner remaining in possession after a foreclosure sale and expiration of any redemption period. If no notice is required, a moratorium that operates by restricting service of the eviction notice would not affect such cases.

Housing providers may object to this form of moratorium on the basis that preventing them from even serving the eviction notice could delay the removal of genuinely non-performing tenants for a longer time after the end of the need for social distancing than would otherwise be possible. To the extent local policymakers are sympathetic to this argument, advocates should urge that any alternative service forms a jurisdiction may adopt be reliable, that landlords should bear the burden to prove actual receipt of the documents, and that the grounds and procedures for setting aside default judgments obtained pursuant to such service are liberalized.

Prohibiting service of legal process in unlawful detainer actions

Keeping sheriff's deputies, private process servers, or others from serving legal process would effectively prevent all, or almost all, new eviction cases from being started

(theoretically, it may be possible in some jurisdictions for a tenant to waive service). Such a measure would similarly reduce intrapersonal contacts. In a jurisdiction that also prohibits the service of eviction notices, this measure would reach the balance of cases where no eviction notice need be served.

Disallowing *only* the service of process and not service of eviction notices would not prevent tenants' deadlines for curing rent delinquencies or other cure periods triggered by such notices from expiring during the social distancing phase. Naturally, such a measure would also not benefit defendants in pending eviction cases that had already been served prior to the moratorium taking effect.

Prohibiting new unlawful detainer actions from being filed.

Prohibiting unlawful detainer actions from being filed during the pandemic would obviously be the most direct way to eliminate new eviction cases. Particularly for courts where electronic filing is not available and thus litigants must visit (often crowded) clerk's offices in person to file documents and pay fees, this method may be particularly beneficial in terms of limiting person-to-person contact.

Restricting new filings would generally function similar to a restriction on service of process. Underlying notice and cure periods would continue to run, and such a restriction on new filings would not alone prevent previously-filed cases from moving forward.

Halting unlawful detainer hearings

Once an eviction case is filed in court, the case will generally be heard within a few days or weeks after the tenant was served with process. These hearings are generally summary in nature—often lasting only a matter of minutes or even seconds. For this reason, many courts hear them in large dockets that may include dozens of cases. Even a hearing scheduled on a single eviction case requires the attendance of multiple parties, counsel, witnesses, and court staff—and the attendant interactions that may occur in transit to or from the courthouse. Accordingly, holding in-person court hearings appears simply incompatible with the social distancing requirements of the COVID-19 pandemic.

Canceling eviction dockets and ceasing with unlawful detainer hearings prevents most filed, but unadjudicated, eviction cases from moving forward. Indeed, in some states such a measure would prevent any filed case from proceeding. Not only does such a mechanism prevent defendants in such cases from being evicted, it also protects the tenant's ability to investigate allegations and present a defense (which may be impaired by COVID-19 related social distancing and the closure of offices and facilities, including access to legal services providers). No tenant should be put in the position of having to choose between appearing and defending against an eviction at the risk of exposure to coronavirus, or staying home to avoid infection at the cost of having a judgment entered against the tenant by default.

Note that in some states, a landlord can potentially obtain a default judgment or writ of restitution (to remove the tenant) without a hearing if the tenant fails to answer the complaint or make some other kind of response. For example, in Washington a tenant sued for non-payment of rent must either pay the claimed rent into the court registry or submit a sworn statement denying the claimed rent is owed. See RCW 59.18.375. Jurisdictions with rules that enable evictions without a hearing in some cases must be sure to account in their moratoria for evictions that might occur through these procedures as well.

Denying or staying writs of restitution

Even after a court has ruled, whether on the merits or by default, that the landlord is entitled to possession of premises, the tenant may remain in possession until physically removed—typically by or at the direction of the local sheriff. A “writ of restitution” is the name usually given for the order directing the sheriff to physically remove the tenant from the premises. Another way to effectuate a moratorium on evictions would be by refusing to issue any new writs of restitution and staying any such writs already issued. This is likely the only form of moratorium that would prevent the physical eviction of tenants against whom judgments have already been entered—or, to the extent a jurisdiction continues hearing and adjudicating unlawful detainer cases, tenants against whom judgments are entered during the pandemic.

Simply imposing a moratorium on the issuance or execution of writs, without any accompanying measures to halt the other components of eviction, would carry significant drawbacks. For one, a tenant against whom a judgment for possession has been entered, and who has been directed by a judge to vacate premises, will often do so without awaiting a physical eviction from the sheriff. Thus it is likely that many tenants would be actually evicted despite the moratorium. Second, a restriction on the ultimate physical removal of the tenant would not bar a landlord from serving an eviction notice, filing a case, scheduling a hearing, and obtaining a judgment for possession—all of which may occur under circumstances in which the tenant’s ability to appear or defend is seriously compromised by social distancing requirements. Then, once the pandemic subsides and the moratorium is lifted, tenants would likely face evictions in large numbers—putting more undue stress on the various judicial and law enforcement resources, emergency and homelessness services, legal aid programs, and other infrastructure that would need to cope with such displacements.

Ideally, then, an eviction moratorium would thoroughly encompass all of these components. It would prohibit landlords from serving eviction notices, bar service of eviction pleadings upon defendants, deny the acceptance of new unlawful detainer filings, freeze eviction court dockets, suspend the issuance of new writs of restitution and stay enforcement of any already granted.

3) Duration

The COVID-19 virus continues to expand and the duration of the pandemic in the U.S. is neither known nor reliably predictable. Accordingly, any hard and fast time limit for an eviction moratorium would be arbitrary at this point in time. Governments and housing providers should be prepared to delay evictions at least throughout the time period for mandated or recommended social distancing. To the extent new financial resources or assistance comes available as the period of the pandemic continues, moratoria should be extended as necessary to enable tenants to apply for and receive such resources.

4) Exceptions

The public health necessity of these eviction moratoria suggests there should be no general exceptions for particular types of tenants or lease violations. Criminal law enforcement should be sufficient to remove or restrain any truly violent or destructive actors, and courts should remain open to hear petitions for domestic violence protection orders and other emergency relief against dangerous co-tenants. If jurisdictions are inclined to allow some category of evictions to proceed, that category should be drawn as narrowly as possible and limited to circumstances in which the defendant's ongoing tenancy poses a serious and imminent health or safety threat that cannot be reduced or eliminated except by eviction.

5) Other considerations

- *Clarity.* An eviction moratorium should clearly state that it applies to unlawful detainer actions and any other covered eviction procedures. Already advocates in at least one state have reported conflicting results in local courts based on a broad emergency order from that state's supreme court which continued "non-essential, non-emergency functions" in all judicial proceedings—some courts have interpreted this to reach eviction cases, while others have not.
- *Self help.* Imposing an eviction moratorium could raise a heightened concern around landlords resorting to self-help measures and extra-judicially evicting tenants, whether by lock changes, utility disconnections, or threats of violence. Law enforcement and utility providers should be provided additional training and guidance in addressing these situations, being sure to preserve the tenant's right to remain in possession and with working utility services.
- *Utility service.* In addition to preventing physical evictions, jurisdictions should also protect their residents against being denied the beneficial use of their homes through utility shut-offs. A number of jurisdictions have already implemented moratoria on utility disconnections and others should follow suit. This includes both disconnections for nonpayment, as well as shut-offs in residential rental properties at the behest of a landlord.

- *Foreclosures.* Just as residential tenants may struggle to pay rent during the COVID-19 pandemic, homeowners may have difficulty in making payments on home mortgages and property taxes. Similarly, some small landlords may face difficulty in paying mortgages on rental properties, particularly if a tenant is behind in rent but remaining in possession due to an eviction moratorium. Jurisdictions should therefore also consider enacting protections against home foreclosures during the pandemic.
- *Late fees.* Written lease agreements commonly impose fees on tenants for late payment of rent. In many jurisdictions, these fees can be significant and are often unregulated altogether. For tenants who struggle or fail to pay rent during the pandemic, the accumulation of late fees and related charges poses an addition threat to the tenant's ultimate ability to pay off a rent arrearage and preserve a tenancy long-term. Housing providers should waive or suspend the accumulation of such fees for missed or late rental payments, at least for tenants whose incomes are affected by social distancing measures. Not only would allowing late fees to accumulate place a tenant at heightened risk of eviction after the pandemic comes to an end, but the prospect of liability for such fees could motivate some tenants to move out—potentially in conflict with social distancing priorities. Housing providers should offer payment plans for tenants who fall behind in rent during the pandemic.
- *Inspections/access to dwelling unit.* Landlords should avoid accessing or seeking to access tenant dwelling spaces during the period of social distancing. While entry for purposes such as making necessary repairs may be unavoidable, housing providers should do so in ways that minimize interpersonal conduct and transmission risks. Entry for purposes such as general inspections, displaying units to potential future tenants, and other non-critical activities should be avoided altogether. Tenants should be free to refuse entry for non-critical purposes or where adequate social distancing arrangements have not been made.
- *Residential motels/transient lodging.* In some communities, residential motels and other short-term lodging can serve as de facto residential housing for many people—especially those who may be unable to qualify for apartments or more traditional forms of housing due to damaged credit, criminal records, or other background check issues. Jurisdictions should consider extending eviction moratoria to cover persons residing in such facilities, such as by prohibiting sheriffs or law enforcement officers from physically ejecting individuals from such properties.