RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to prevent an eviction crisis, housing insecurity among renters, and destabilization of the housing market, especially the depletion of affordable housing, during and in the recovery from the state of emergency attributable to the COVID-19 pandemic by immediately authorizing, allocating, and distributing public funds specifically for rent and rent arrears to allow rental property owners to pay their mortgage, property taxes, operational costs, and other expenses necessary to maintain the housing units and avoid foreclosure and bankruptcy, without increasing rent; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to mitigate the long-term consequences of eviction on renters and housing markets at a time of high unemployment by precluding the use of nonpayment of rent or eviction records in tenant screening practices, where non-payment is due solely to economic loss resulting from the pandemic, and which nonpayment or record was filed or accrued during, or in the 90 days immediately following, the COVID-19 pandemic state of emergency in a particular jurisdiction.
I. PURPOSE OF THE RESOLUTION

The pandemic created an unprecedented housing crisis in the United States. Without public financial intervention, the United States faces extreme risk of widespread residential evictions, staggering levels of homelessness, economic hardship among small property owners, and negative repercussions for the housing market and communities nationwide.

Research overwhelmingly demonstrates that, in addition to housing instability, widespread eviction will result in negative collateral consequences and costs for individuals, communities, and society. For renters, eviction results in long-term poor health outcomes, unemployment, and academic decline, among other harms. It almost always leads to a downward move to substandard, overcrowded housing in neighborhoods with higher crime and poor performing schools. This results in high health care expenditures and societal costs that shift to taxpayers.

Without public financial support to pay the rent and rent arrears to landlords, property owners will also face significant hardship. Small rental property owners in particular are at heightened risk of foreclosure (including owner-occupied properties) and bankruptcy because they lack the financial cushion or credit to cover emergencies, such as prolonged nonpayment of rent. COVID-19 nonpayment of rent will also have a direct impact on property owners’ ability to pay property taxes, which are crucial to sustaining community resources, especially schools and state and local governments.

Without rental assistance to pay the rent to property owners, the limited affordable housing stock is likely to decrease. Foreclosure and bankruptcy of small property owners could force lenders (including credit unions and community banks) to bid the mortgage balance at foreclosure sales, which often results in lenders owning real estate, instead of holding viable mortgage loans as assets. It is likely that investors will purchase many of these small rental properties to redevelop for commercial uses or high rental housing, further depleting the limited affordable housing stock.

In the pandemic environment, when social distancing is paramount in controlling the spread of the coronavirus, eviction could increase COVID-19 infection rates. Eviction will force families to double up, stay with extended family, and shelter in overcrowded settings where it is impossible to social distance.

The ABA can prevent these deleterious outcomes caused by COVID-19-related rental hardship by urging the use of public funds to directly pay property owners rent and rent arrears where tenants are experiencing hardship due to the extraordinary circumstances of the pandemic. To protect the families who are facing eviction for nonpayment of rent during the pandemic before rental assistance is available, the ABA can help prevent the devastating consequences of eviction by urging governments to preclude the use of
eviction records or other related bad-debt history in tenant screening practices for a discrete timeframe during and immediately following the pandemic.

II. THE COVID-19 PANDEMIC CREATED AN UNPARALLELED HOUSING CRISIS IN THE UNITED STATES

A. The COVID-19 Pandemic Resulted in Extreme Job and Wage Loss

The economic recession, along with job and wage loss, caused by the pandemic created an unprecedented housing crisis.1 As of June 2020, 44.2 million Americans filed for unemployment insurance.2 Between March and July, unemployment rates have fluctuated between 11.1% and 14.4%.3 By comparison, unemployment peaked at 10.7% during the Great Recession.4 Fifty million renters live in households that suffered COVID-19-related job or income loss,5 with almost 40% of job or income loss occurring in low-income households.6 Researchers estimate that between 27% and 34% of families have a household member employed in a job most vulnerable to COVID-19-related unemployment.7 Low-income renter households are at heightened risk, as 37% of extremely low-income renter households rely on 20 to 40 hours of employment to pay the rent and worked in industries most impacted by the pandemic.8 People with disabilities also face higher unemployment rates than the general population.9

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1 See also Letter from Judy Perry Martinez, President, ABA, to Nancy Pelosi, Speaker of the House, Mitch McConnell, Senate Majority Leader, Kevin McCarthy, House Minority Leader, & Charles Schumer, Senate Minority Leader (July 21, 2020) (on file with author).
Job loss is affecting people of color at much higher rates than white counterparts. In April, 61% of Hispanic Americans and 44% of Black Americans said that they or someone in their household had experienced a job or wage loss due to the coronavirus outbreak, compared with 38% of white adults.\(^\text{10}\) As of July 7, 2020, the U.S. Census reported that half of U.S. adults live in households that suffered COVID-19 related job loss, but among Black and Latinx groups that rate is 53% and 62% respectively.\(^\text{11}\)

**B. Extreme Job and Wage Loss Has Resulted in Unprecedented Levels of Rent Hardship**

As unemployment reaches extreme heights, renters have struggled to pay the rent throughout the pandemic.\(^\text{12}\) In July 2020, 1 in 5 renters used unemployment benefits to pay their bills (including rent), 1 in 4 used the one-time stimulus payment, and 1 in 3 renters relied on money other than regular income, such as savings, credit cards, family loans, or federal aid.\(^\text{13}\) As the CARES Act unemployment insurance and federal eviction moratorium expire at the end of July, along with state-level moratoriums, renting families will be increasingly vulnerable to eviction until the pandemic is controlled and jobs and child care become available.

The National Apartment Association and the National Multifamily Housing Council informed Congress in April that “more than 25 percent of the households that rent in the U.S. may need help making payments” due to the pandemic.\(^\text{14}\) The percentage of renters reporting an inability to pay next month’s rent has consistently increased since April and every week between June 17 and July 22, 2020. Based on analysis of the July 15, 2020 U.S. Census Household Pulse Survey, 17.5 million rental households, including over 40 million people, are unable to pay rent and at risk of eviction due to the economic recession.\(^\text{15}\) Between July 2 to July 7, 2020, 25.3% of the adult American population...
reported that they either missed last month’s rent or mortgage payment or have little to no confidence in their ability to pay next month’s rent or mortgage payment on time.\textsuperscript{16} Financial analysts estimate that landlords will be forced to file over 11.8 million evictions between August and November due to nonpayment of rent.\textsuperscript{17} With no state-level eviction moratorium in thirty states, Legal Services Corporation reports a sharp increase in requests for legal assistance for eviction that can be expected to continue to rise without public funding for rental assistance paid to the property owner.\textsuperscript{18}

Black and Latinx populations have experienced COVID-19 job loss, infection, and death at higher rates than any other demographic and consistently report low confidence in the ability to pay rent during the pandemic.\textsuperscript{19} As the Urban Institute reported in June, approximately 25% of Black and Latinx renters surveyed by the U.S. Census Bureau did not pay, or deferred, May rent, compared with 14% of white renters.\textsuperscript{20} A Pew Research Center survey found that over 70% of Black and Hispanic adults said they did not have emergency funds to cover three months of expenses; around half of white adults (47%) said the same.\textsuperscript{21} Without public financial support, racial and socioeconomic disparities can be expected to increase due to the negative long-term effects of eviction.

III. COVID-19 EVICTION WILL RESULT IN SIGNIFICANT HARM TO FAMILIES

A. 43% of Renting Families Have Slight or No Confidence in Their Ability to Pay Rent

The single greatest predictor of eviction is the presence of a child, placing families at the highest risk.\textsuperscript{22} According to the U.S. Census Household Pulse Survey, during week 11 of the pandemic, 43% of renters with children had slight or no confidence in their ability to
pay the rent. At a time when housing is preventive healthcare, millions of families are threatened with COVID-19-related eviction and its negative repercussions. Ms. Gonzalez recently described to the New York Times her despair after she and her family members lost their jobs, “I was crying morning, afternoon and night thinking about how we were going to pay the rent, what we were going to do?” Countless families who share Ms. Gonzalez’s experience are confronting the severe personal, physical, and financial costs of eviction.

B. Eviction Results in Severe Negative Repercussions, Especially for Children, and Extreme Societal Costs

Housing instability, eviction, and foreclosure are all well-documented pathways to poor health with high health care expenditures and steep societal costs. Eviction, in particular, disrupts employment, education, social networks, access to services, and negatively impacts long-term health outcomes for adults and children. Eviction leads to unemployment, diminished mental and physical health, depression, suicidal ideation, suicide, drug overdose, increased mortality, homelessness, and other negative outcomes. In addition, eviction causes respiratory disease, which is a risk

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23 28% of renters with children had moderate confidence and 27% had high confidence. Week 11 Household Pulse Survey: July 8 – July 15, U.S. CENSUS BUREAU (July 23, 2020).
28 Desmond et al., supra note 21, at 320.
29 Id.
30 Taylor, supra note 25.
32 Matthew Desmond & Carl Gershenson, Housing and Employment Insecurity Among the Working Poor, 63 SOC. PROB. 46, 46 (2016).
33 Desmond & Tolbert Kimbro, supra note 26, at 316-19.
35 Taylor, supra note 25.
37 Id; see also Desmond & Tolbert Kimbro, supra note 26, at 316-19; Thomas Kottke et al., Access to Affordable Housing Promotes Health and Well-Being and Reduces Hospital Visits, 22 PERMANENT J. 1, 2-3 (2017).
factor for COVID-19 complications and mortality. The mere threat of eviction can increase stress levels, anxiety, and depression, and weaken the immune system, which could place renters at greater risk of contracting COVID-19.\textsuperscript{40}

Eviction is particularly devastating for children.\textsuperscript{41} For children, eviction can result in emotional trauma and academic decline,\textsuperscript{42} and is strongly associated with adverse childhood experiences, which have long-term negative health impacts, including increased risk of cardiovascular disease and pulmonary disease in adulthood, and decreased life expectancy.\textsuperscript{43} Eviction results in instability, which is particularly damaging to children and impacts their educational development and well-being for years.\textsuperscript{44} All of these consequences result in significant, and entirely preventable, societal costs.\textsuperscript{45}

According to the Innovation for Justice Program at the University of Arizona College of Law, the societal costs of these evictions, which will be absorbed by tax payers and relate to shelter, medical, child welfare, and juvenile delinquency, amount to $199,664,440,539.\textsuperscript{46} New research conducted by the Aspen Institute similarly projects that COVID-19 eviction-related displacement could create public and private costs of $256 billion per year.\textsuperscript{47}

C. Eviction Jeopardizes Future Housing Prospects and Opportunity

In addition to the devastating effects of eviction—from homelessness and poor health outcomes to life-long detrimental impacts on children—eviction haunts families as they attempt to piece their life back together, which in the pandemic environment could include seeking employment, securing child care, identifying new schools, and coping with financial and personal loss. Renters who attempt to move forward with their lives after eviction are met with barriers when they search for a new home. An eviction makes it more difficult and more expensive to rent a new home, borrow money, or purchase a home.\textsuperscript{49}

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\textsuperscript{40} Vásquez Vera et al., supra note 33, at 201-06.
\textsuperscript{41} Maxia Dong et al., \textit{Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences}, 159 \textsc{Archives of Pediatrics & Adolescent Med.} 1104, 1107 (2005).
\textsuperscript{42} See Desmond et al., supra note 21, at 320; Kottke et al, supra note 36, at 1; see generally Stephen Gaetz et al., \textit{Youth Homelessness and Housing Stability: What Outcomes Should We Be Looking For?}, 32 \textsc{Healthcare Mgmt. F.} 73 (2019).
\textsuperscript{43} Dong et al., supra note 40, at 1107.
\textsuperscript{44} HEATHER SANDSTROM & SANDRA HUERTA, \textsc{Urban Inst.}, \textit{The Negative Effects of Instability on Child Development: A Research Synthesis} 6 (2013).
\textsuperscript{45} See infra Part V. A.
\textsuperscript{47} Estimation of Households Experiencing Rental Shortfall \& Potentially Facing Eviction, supra note 16.
\textsuperscript{48} See supra Part III.
\end{flushright}
Eviction is a legal record that permanently scars a tenant’s rental history, plummets credit scores, and prevents families from relocating to safe and healthy housing. Public Housing Authorities count eviction against families, which results in exclusion from federally assisted housing. Many property owners screen families for prior evictions and reject applicants with evictions on their record. Even when an eviction case is dismissed, the fact of filing can result in denial of rental housing applications. The practice of denying renters based on their eviction and rental history has become commercialized, with companies selling compiled lists of renters with prior evictions filings. In 2019, the practice was so widespread and egregious that New York passed legislation to ban it.

Consequently, eviction almost always leads to a downward move, to substandard housing, and to communities with higher rates of crime and poverty and underperforming schools. The long-term effects of eviction on housing opportunities is one of the reasons eviction increases a person’s likelihood of experiencing homelessness. According to the U.S. Department of Housing and Urban Development, a single family experiencing homelessness for the first time may cost taxpayers up to $20,000.

IV. COVID-19 NONPAYMENT OF RENT INCREASES RENTAL PROPERTY OWNER HARDSHIP AND RISK OF FORECLOSURE AND BANKRUPTCY

A. Nonpayment of Rent Results in Serious Hardship for Property Owners

Any decline in rent payments has a negative impact on the housing market, especially for small property owners who often lack a financial cushion necessary to sustain a shortfall in rental income. Individual investors own approximately 22.7 million out of 48.5 million rental units in the housing market. These “mom and pop” landlords primarily own single-family rentals and small apartment properties and own 74% of rental properties. Most small landlords (58%) do not have access to credit to cover emergency costs, such as

54 N.Y. Real Property Law § 227-f (Consol. 2019).
56 Collins & Reed, supra note 30, at 3.
59 Id.
lost rent payments.\(^{61}\) The lack of credit could be devastating for small rental property owners with mortgages. Forty-four percent of single-family rentals have a mortgage, or some similar debt.\(^{62}\) Sixty-five percent of properties with 2-to-4 units and 61% of properties with 5-to-19 units have a mortgage.\(^{63}\) The National Consumer Law Center predicts that 3 million homeowners, or roughly 5%, will have significantly delinquent mortgages by early 2021.\(^{64}\) In April of 2020, 6.1% of mortgages were in some stage of delinquency.\(^{65}\)

Evictions are expensive for property owners. Victor Pinckney Sr., Vice President at Homeowners Association of Philadelphia described the plight of the small landlord: “Everybody thinks landlords are rich but that’s not the case for everyone, especially smaller landlords who rely on rent payments to survive. For such landlords, the limited number of units magnifies the impact of tenant rent nonpayment. When you’re talking one, two, three, four, five units, and you don’t get money from one or two tenants, you now have an issue.”\(^{66}\) Echoing the concern, Tom Bannon, CEO of the California Apartment Association, stated, “A number of your smaller independent rental owners, a lot of folks basically put their life savings into their property, and it is their retirement.”\(^{67}\) In addition to loss of income due to nonpayment of rent, landlords who initiate the eviction process face court costs, short- or long-term vacancy, reletting costs, and the loss of 90-95% of rental arrears via sale to a debt collector or other third party.\(^{68}\)

Exemplifying the pressure landlords are under to secure rent, many property owners have begun to file lawsuits challenging state- and city-level eviction moratoriums on a variety of grounds, including violation of the Takings Clause,\(^{69}\) deprivation of civil rights,\(^{70}\) violation of the Contracts Clause,\(^{71}\) among other constitutional issues.\(^{72}\)


\(^{62}\) Id.

\(^{63}\) Id.


\(^{69}\) Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles et al., No. 5193 (D. Cal. filed June 11, 2020).

\(^{70}\) Auracle Homes, LLC v. Lamont, No. 829 (D. Conn. filed June 16, 2020).


\(^{72}\) *Bibliography: COVID-19 Eviction*, https://docs.google.com/document/d/1uiYi4WL2BzOZBsU2NV1gGPyo7XqMKbTZ15uNfdUryo/edit (last update July 2020).
B. Extended Rental Debt Will Reduce the Affordable Housing Market

Nonpayment of rent will force property owners to leave the housing market or raise rents to cover deficits. The Harvard University Joint Center for Housing Studies estimates that 20% of renters in these small multifamily apartments may have difficulty paying rent due to COVID-19 wage loss. This places landlords in financial peril. Without rent payments and mortgage assistance, many property owners will be forced to raise rents to recover from financial hardship or leave the housing market. Small property owners provide more than half of the housing stock that rents for $750 or less. When rents are raised or these properties are removed from the nation’s housing stock it will further deplete the United States’ affordable housing supply.

C. Nonpayment of Rent Increases Rates of Foreclosure and Bankruptcy Among Property Owners

Without public funding to cover the rent and accrued rental debt, foreclosure proceedings are likely to increase during and in the recovery from the pandemic. Foreclosure can happen very quickly, in a matter of weeks, depending on the state’s adoption of judicial or non-judicial foreclosure proceedings. The process varies widely by state, but typically court involvement only occurs if a complicated issue arises (e.g. title defect). Non-judicial foreclosures became routine when many mortgages were foreclosed during the Great Recession, causing firms handling many foreclosures to be called foreclosure

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73 Airgood-Obrycki & Hermann, supra note 7.
74 Olick, supra note 55.
76 For example, N.Y. Unconsol. Law tit. 23, Ch. 5, § 8626(d)(4), allows landlords to apply to the State Division of Housing and Community Renewal to increase the rent on a rent controlled property if hardship is established and if the state division finds that the current rate is not sufficient to enable the owner to maintain approximately the same ratio between operating expenses and gross rents which prevailed on the average over the immediate preceding five-year period, or for the entire life of the building if less than five years. Hardship occurs when a property’s allowable expenses are equal to or more than 95% of its income. N.Y. UNCONSOL. LAW tit. 23, Ch. 5
77 Airgood-Obrycki & Hermann, supra note 7.
80 The Difference Between a Judicial and Non-judicial Foreclosure, supra note 74.
mills. Foreclosure mills may resurface without public funds to pay landlords for rental debt. Ultimately, foreclosure can result in housing instability, debt, reduced credit scores, and other negative outcomes for the property owner.

Bankruptcy is also a risk. A study presented to the International Monetary Fund found that homeowners with prime and subprime mortgages are 28 times and 22 times, respectively, as likely to file for bankruptcy, respectively, if lenders began foreclosure within the previous three months.

D. Rent Hardship Negatively Effects Communities and Results in Extreme Societal Costs

COVID-19 nonpayment of rent will also have a direct impact on property owners’ ability to pay property taxes, which are crucial to sustaining community resources, especially schools and state and local governments. On average, local governments supply 45% of school budgets, and 80% comes from property tax. Without rental income, property tax payments could decline and reduce community resources. Nonpayment of rent can also harm communities where it affects a property owner’s ability to pay the mortgage and results in foreclosure. Foreclosed properties have high risk of becoming abandoned. Abandoned and vacant properties have been linked to increased crime, increased risk to public health and welfare, and increased costs for municipal governments. Foreclosed properties also tend to lower surrounding property values and decrease investment in the community.

V. APPROACHES TO PREVENTING THE COVID-19 EVICTION AND HOUSING MARKET CRISIS

During COVID-19, millions of Americans have suffered severe financial hardship due to extraordinary circumstances outside of their control. In order to prevent the negative impact of the COVID-19 eviction and housing market crisis on families, property owners, communities, and society, it is critical to distribute public funds to landlords to cover the costs of unpaid rent, associated fees and fines, and future deficits incurred during the
COVID-19 pandemic. In addition, to prevent the long-term negative consequences of evictions that occur where rental assistance is not distributed, it is critical that nonpayment of rent, eviction records, and related debt that occurred during or immediately following the state of emergency not be relied upon to screen tenants for future tenancy. These combined measures of rental assistance and preventing use of eviction records in tenant screening practices will prevent eviction and mitigate its long-term consequences on renters and housing markets during the extraordinary COVID-19 state of emergency.

A. Provide Rental Assistance to Landlords to Cover Rent and Accrued Rental Debt

The COVID-19 eviction and housing market crisis is entirely preventable through the distribution of public funds to landlords to cover rent. Early estimates calculating the need for rental assistance predict that approximately $100 billion in public funds is needed to prevent housing instability. The Urban Institute estimates that the cost of rental housing assistance for six months ranges from $48 to $96 billion and would assist between 8.8 and 17.6 million households respectively. This estimate assumes that renters should only be paying 30% of their income towards the rent. These calculations do not include utilities, renter’s or homeowner’s insurance, real estate property taxes, and homeowner association or condominium fees that may be required to ensure a property owner avoids arrearages. After excluding households already receiving federal financial housing assistance, the National Low-Income Housing Coalition (NLIHC) estimates that rental assistance to ensure housing stability for 11.5 million severely cost-burdened, extremely low-income, and very low-income renter households over the next twelve months would require $76.1 billion in new funding. In light of substantial COVID-19-related job and wage loss, NLIHC recommends including cost-burden projections in any public appropriations in the amount of $99.5-100 billion.

Public funds for rental assistance are necessary to supplement the limited rent relief programs that some states, counties, and cities have distributed on an emergency basis by diverting Community Development Block Grant, CARES Act, Coronavirus Relief Fund, and other funding sources. These programs have offered one-time rental assistance, often paid directly to the landlord, ranging from $300 to $9000 per household. To ensure the funds reach property owners providing housing to families experiencing cost-burden and to maintain affordable housing, eligibility requirements have included 30% to 200% of area median income (AMI) or less, with the most common requirement being 80% of AMI. However, according to NLIHC, “the need for assistance has greatly outpaced the available funding, as evidenced by the closure of three out of ten of emergency rental assistance programs and the necessity of lottery or first-come first-served disbursement

88 Kaul & Goodman, supra note 7.
89 ANDREW AURAND ET AL., NLIHC RESEARCH NOTE: THE NEED FOR EMERGENCY RENTAL ASSISTANCE DURING THE COVID-19 & ECONOMIC CRISIS 2 (2020); see also HEROES Act, H.R. 6800, 116th Cong. (2020) (the HEROES Act includes $100 billion in rental assistance).
90 NLIHC COVID-19 Rental Assistance Database https://docs.google.com/spreadsheets/d/1hLybfo9Nyd1ptQu5wghUpKXecimh3gaoqT7LU1JGc8/edit#gid=79194074; AURAND ET AL., supra note 86, at 2.
systems.\textsuperscript{91} In some states, emergency rental assistance funds have been depleted in as little time as 90 minutes to a business day in many cases.\textsuperscript{92}

Numerous industry groups, state and local government officials, cross-sector leaders, and national advocacy organizations support federal legislation that includes $100 billion in rental assistance to ensure housing stability among cost-burdened households. Supporters include 32 national housing advocacy organizations, 40 local mayors and government officials, as well as the National Council of State Housing Agencies, CCIM Institute, Council for Affordable and Rural Housing, Institute of Real Estate Management, Institute for Responsible Housing Preservation, Manufactured Housing Institute, National Affordable Housing Management Association, National Apartment Association, National Association of Affordable Housing Lenders, National Association of Home Builders, National Association of Housing Cooperatives, National Association of REALTORS, National Leased Housing Association, and the National Multifamily Housing Council, among others.\textsuperscript{93}

B. Evictions Filed During and Immediately Following the Pandemic Should Be Exempted from Tenant Screening Processes

In states without eviction moratoriums, evictions for nonpayment of rent due to COVID-19 hardship have continued throughout the pandemic. To ensure long-term well-being among American families, the devastating effects of evictions, which have occurred during and will continue immediately following the COVID-19 state of emergency, must be mitigated.

This means that many families have and continue to face eviction for nonpayment of rent that occurred under the extraordinary circumstances of the pandemic and before public funds were accessible. Numerous states never instituted a state-level moratorium on eviction and continue to process evictions, even those that occurred because of nonpayment of rent due to COVID-19 hardship, throughout the pandemic. On July 25, the federal moratorium on evictions in federally assisted housing and rental units with federally backed mortgages expired. As of July 25, 30 states have no state-level moratorium in place and the vast majority of remaining moratoriums expire by November. Without federal and state financial intervention, these households will struggle to obtain safe and decent housing in the future.

One successful method for preventing the deleterious effects of eviction is to preclude the use of nonpayment of rent or eviction records to screen applicants for tenancy. Multiple

AURAND ET AL., supra note 86. According to NLIHC records, over 100 of the rental assistance program available around the country administers funds directly to landlords while only about 13 providing the funds to the tenants. See NLIHC COVID-19 Rental Assistance Database, supra note 87.


states have already enacted\textsuperscript{94} or introduced laws\textsuperscript{95} that seal eviction records universally\textsuperscript{96} or under certain circumstances\textsuperscript{97} in order to prevent a landlord from considering the tenant’s prior rental history. In other jurisdictions, legislation has been enacted that bars landlords from considering a tenant’s rental or credit history after a certain period of time.\textsuperscript{98} Ultimately, public funds to ensure landlords receive rent payments and precluding the use of eviction records in tenant screening practices will prevent severe and long-term harm to renters and small property owners affected by the COVID-19 pandemic and economic recession.\textsuperscript{99} 

\textsuperscript{94} California courts seal eviction case records if the action is denied, the case dismissed, or parties stipulate to sealing. See \textsc{Cal. Civ. Proc. Code} § 1161.2. Minnesota courts remove eviction case records from publicly accessible databases and have the discretion to expunge eviction records upon motion by the tenant. Foreclosure eviction records are sealed. See \textsc{Minn. Stat.} § 484.014. Nevada courts seal eviction case records if the action is denied or the case dismissed and have discretion in other cases. See \textsc{Nev. Rev. Stat.} § 40.2545 (2019). In Cleveland, Ohio, courts may order sealing if interests of justice outweigh the interests of the government and public in maintaining a public record of the case. See \textsc{Ohio Ct. R.} § 6.13. Oregon courts will grant a motion to seal the eviction record if the tenant complies with stipulation agreement or if judgment was given in the tenant’s favor, among other reasons. See \textsc{Or. Rev. Stat.} § 105.163. Wisconsin does not technically have a policy to seal records but if the eviction case was denied or dismissed, it is removed from the Court Access website in 2 years. Once removed, the record is not available to the public. See Joe Forward, \textit{Dismissed Criminal, Eviction, Other Cases No Longer Displayed On Court Website After Two Years}, \textsc{St. Bar of Wis.} (Feb. 21, 2018), https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=10&Issue=3&ArticleID=26182. \textsuperscript{95} Illinois pending legislation would seal records unless a final order of eviction was entered for the plaintiff. Unsealed records will only remain so for 7 years. See S.B. 0077, 101st Gen. Assemb., Reg. Sess. (Ill. 2019). Massachusetts’ pending HOMES Act requires automatic sealing unless and until a final eviction judgement, and mandatory sealing after 3 years regardless of outcome. See S.B. 824 191st Gen. Assemb., Reg. Sess. (Mass. 2019); see also \textit{Support an act Promoting Housing Opportunity and Mobility through Eviction Sealing}, \textsc{Pass the Homes Act}, https://www.passthomesact.org/bills.html (last visited July 23, 2020). A Pennsylvania bill, introduced post-COVID (Apr 2020), requires mandatory expungement of eviction records found in a tenant’s favor, settled, or satisfied, and creates similar sealing protocol going forward. See H.B. 2382 Gen. Assemb., Reg. Sess. (Penn. 2020). D.C. has the Eviction Record Sealing Authority Amendment Act introduced in 2018 and 2019, which would require all eviction records sealed after 3 years and give courts discretionarily power to seal. See B. 338, Council (D.C. 2020). \textsuperscript{96} Colorado bars landlords from considering any rental history or credit history beyond 7 years immediately preceding the date of the application. H.B. 1106, 72nd Gen. Assemb., Reg. Sess. (Colo. 2019). But see, Hundtofte v. Encarnacion, 181 Wash. 2d 1, 6, 330 P.3d 168, 172 (2014) (holding that despite tenants winning their case, the record of the filing could not be sealed because openness of the courts and the public interest outweighs any interest of the tenants). \textsuperscript{97} The definition of affordable housing should be defined for each locality to prevent available funds being expended to relatively few luxury housing units instead of the intended beneficiary (i.e., small property owners and the many low-income and essential workers who experienced job and wage loss).
V. CONCLUSION

This resolution, if adopted, will help prevent eviction and its collateral negative outcomes during the COVID-19 state of emergency and preserve affordable housing at a time of extraordinary risk to tenants and small property owners. In addition to stabilizing renters and rental property owners, public funds for rent will support credit unions, community banks, and local governments, who rely on property tax for revenue and school budgets. Precluding the use of nonpayment of rent and eviction records to screen tenants for housing will mitigate long-term hardship for renters who suffered instability due to pandemic circumstances outside their control. These interventions will also help to address increased racial disparity in eviction during the COVID-19 pandemic.

Adopting this resolution will help to prevent what promises to be the greatest eviction and housing crisis in American history. It will help protect families from the devastating and long-term consequences of eviction on health, employment, and future opportunities. The ABA supports protecting the well-being of American families during the COVID-19 pandemic, including renters and property owners alike.

Respectfully submitted,

John McKay  
President, King County Bar Association

Jim Sandman  
Chair, Task Force on Legal Needs Arising Out of the COVID-19 Pandemic

Jo-Ann M. Marzullo  
Chair, Section of Real Property, Trust and Estate Law

August 2020
GENERAL INFORMATION FORM

Submitting Entities: King County Bar Association
Task Force on Legal Needs Arising Out of the COVID-19 Pandemic
Section on Real Property, Trust and Estate Law

Submitted By: John McKay, President of the King County Bar Association; James Sandman, Chair of the Task Force; Jo-Ann Marzullo, Chair of the Section of Real Property, Trust & Estate Law.

1. **Summary of the Resolutions.**

The Resolution urges federal, state, local, territorial, and tribal governments to address the COVID-19 eviction and housing crisis and its collateral harm by (1) providing rental assistance to rental property owners where tenants are facing COVID-19 economic hardship, and (2) precluding in tenant screening practices the use of nonpayment of rent or eviction records that occur during a particular jurisdiction’s COVID-19 pandemic state of emergency or in the 90 days immediately following the lifting of such emergency.

2. **Approval by the Submitting Entities**


3. **Has this or a similar resolution been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

Resolution 13A117 urged governments to promote the human right to adequate housing for all through increased funding, development and implementation of affordable housing strategies and to prevent infringement of that right.

The proposed resolution has no effect on Resolution 117.
5. If this is a late report, what urgency exists which requires action at this meeting of the House?
N/A.

6. **Status of Legislation.**
N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

Adoption of this Resolution would empower the ABA to lobby for legislation consistent with the Resolution.

8. **Cost to the Association.** (Both direct and indirect costs)
No direct costs, and no marginal addition to indirect costs.

9. **Disclosure of Interest.** (If applicable)
N/A

10. **Referrals.**
No formal referrals at time of submission due to timing, but copies of this resolution were sent to:

11. **Name and Contact Information** (Prior to the Meeting. Please include name, telephone number and e-mail address). Be aware that this information will be available to anyone who views the House of Delegates agenda online.)

For the Task Force; Chair, James Sandman, james.sandman@gmail.com 202-295-1515

For King County Bar: Delegate, Kathleen Hopkins, khopkins@rp-lawgroup.com 425-844-2749

For Section of RPTE: Delegate, Orlando Lucero, orlando.lucero@fnf.com 505-219-5822

12. **Name and Contact Information.** (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.
John McKay, President
King County Bar Association
johnmckay@dwt.com  206-919-5003

James Sandman, Chair
Task Force on Legal Needs Arising Out of the COVID-19 Pandemic
james.sandman@gmail.com  202-295-1515
EXECUTIVE SUMMARY

1. **Summary of the Resolutions.**

The Resolution urges federal, state, local, territorial, and tribal governments to address the COVID-19 eviction and housing crisis and its collateral harm by (1) providing rental assistance, and (2) precluding in tenant screening practices the use of nonpayment of rent or eviction records that occur during a particular jurisdiction’s COVID-19 pandemic state of emergency or in the 90 days immediately following the lifting of such emergency.

2. **Summary of the issue that the Resolution addresses.**

The pandemic created an unprecedented housing crisis in the United States. Without public financial intervention, the United States faces extreme risk of widespread residential evictions, staggering levels of homelessness, economic hardship among small property owners, and negative repercussions for the housing market and communities nationwide.

Research overwhelmingly demonstrates that, in addition to housing instability, widespread eviction will result in negative collateral consequences and costs for individuals, communities, and society. For renters, eviction results in long-term poor health outcomes, unemployment, and academic decline, among other harms. It almost always leads to a downward move to substandard, overcrowded housing in neighborhoods with higher crime and poor performing schools. This results in high health care expenditures and societal costs that shift to taxpayers.

Without public financial support to pay the rent and rent arrears to landlords, property owners will also face significant hardship. Small rental property owners in particular are at heightened risk of foreclosure (including owner-occupied properties) and bankruptcy because they lack the financial cushion or credit to cover emergencies, such as prolonged nonpayment of rent. COVID-19 nonpayment of rent will also have a direct impact on property owners’ ability to pay property taxes, which are crucial to sustaining community resources, especially schools and state and local governments.

3. **Please explain how the proposed policy position will address the issue.**

The ABA can prevent these deleterious outcomes caused by COVID-19-related rental hardship by urging the use of public funds to directly pay property owners rent and rent arrears where tenants are experiencing hardship due to the extraordinary circumstances of the pandemic. To protect the families who are facing eviction for nonpayment of rent during the pandemic before rental assistance is available, the ABA can help prevent the devastating consequences of eviction by urging governments to preclude the use of eviction records or other related bad-debt history in tenant screening practices for a discrete timeframe during and immediately following the pandemic.
4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

None identified.