Webinar

PREVENTING EVICTION: WHAT EDUCATORS NEED TO KNOW

FRIDAY, SEPTEMBER 25, 2020 | 1:00 – 2:15PM ET
About Us

SchoolHouse Connection
works to overcome homelessness through education. We provide strategic advocacy and practical assistance in partnership with schools, early childhood programs, institutions of higher education, service providers, families, and youth.

First Focus Campaign for Children
is a 501(c)(4) nonprofit organization affiliated with First Focus on Children, a bipartisan children's advocacy organization. The Campaign for Children advocates directly for legislative change in Congress to ensure children and families are a priority in federal policy and budget decisions.

Lawyers' Committee for Better Housing
Lawyers' Committee for Better Housing provides free legal and supportive services to improve housing stability for lower income renters while advocating for the rights of all renters until everyone in Chicago has a safe, decent, and affordable place to call home.

National Housing Law Project
Our mission is to advance housing justice for poor people and communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes.
Housekeeping

HAVE A QUESTION?

This webinar is for you. Enter your questions in the questions pane and click ‘Send’.

RECORDING & HANDOUTS

An archive of this webinar and all materials will be posted here.

This PowerPoint is available in your “Handouts” panel.

If you’ve signed up for this webinar, you will receive a link to the recording in an email after the webinar is over.
Today’s Agenda:

● Evictions and Families: Context
● Summary of Centers for Disease Control (CDC) Eviction Moratorium
● Assisting Families:
  ○ Understanding state and local moratoria
  ○ When and how to contact legal aid
● Lessons from a School-Based Legal Clinic
● Federal Policy Advocacy Opportunities
Eviction and Families: Pre-Pandemic

- Children are a risk factor for eviction, and neighborhoods with a high percentage of children see increased rates of evictions. (Source)
- Families who have been evicted are more likely to move to higher poverty neighborhoods and experience homelessness. (Source)
- Mothers who have been evicted in the previous year have higher rates of depression, affecting their children’s healthy development. (Source)
Eviction and Families Post-Pandemic

- Nearly 1 in 4 adults in households with children (22 percent) were behind on rent in August 2020, and 23 percent had little or no confidence in their ability to pay next month’s rent. (Source)

- 27.2 percent of single parent households and 19.5 percent of households with children skipped rent, mortgage, credit card, auto, or student loan payment compared to 12.5 percent of households without children in May/June 2020. (Survey from NY Federal Reserve.)

- More than half of adults in households with children (51 percent) report that they or another member of the household have lost employment income since the start of the pandemic. (Census Household Pulse Survey data)
CDC Eviction Moratorium
Eric Dunn, NHLP Director of Litigation
Sept. 14, 2020
A Tsunami of Evictions
Evictions: estimates

**Amherst:**
28 million households at risk of eviction (May 2020)

**U.S. Census Bureau:**
8.5 million households “no confidence” in ability to make next rent payment
31 million households “some” or “moderate” confidence
Household pulse survey, July 2-7, 2020

**Aspen Institute:**
19-23 million renters evicted by Sept. 30, 2020
Covid-19 Defense Project, June 2020
CDC Eviction Moratorium: Summary
What does the CDC order actually do?

Temporary Halt in Residential Evictions to Prevent the Spread of Covid-19

• Prohibits a landlord …
• from evicting any covered person …
• from any residential property …
• where the order applies…
• through December 31, 2020.

“a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.”
Who qualifies for the protection?

• Tenant, lessee, or resident of residential property …
• Who provides sworn declaration to landlord …
• Declaration contains five key averments:
  • Used best efforts to obtain all available government assistance for rent or housing
  • Meets income limit
    • $99,000 in 2020 income ($198,000 if married & filing jointly); or
    • Stimulus check; or
    • Not required to report income in 2019
  • Unable to pay full rent due to:
    • Substantial loss of household income; or
    • Extraordinary medical expenses
  • Using best efforts to pay partial rent (as close to full rent as circumstances permit)
  • Would likely become homeless or forced to live in “close quarters” in shared housing if evicted

Translations:
• Arabic
• Burmese
• Mandarin
• Creole
• English
• Hmong
• Spanish
• Tagalog
• Vietnamese

FORM DECLARATION UNDER PENALTY OF PERJURY FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19

This declaration is for tenants, lessees, or owners of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order, you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person with a right to have you evicted or removed from where you live. Each adult living on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S. C. § 1746, that the foregoing is true and correct:

1. I have used best efforts to obtain all available government assistance for rent or housing;

2. I either expect to earn no more than $99,000 in annual income for Calendar Year 2020 for no more than $198,000 if filling a joint tax return, was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2301 of the CARES Act;

3. I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;

4. I am using best efforts to make timely partial payments that are as close to the full payment as the individual circumstances permit, taking into account other nondiscretionary expenses;

5. "Available government assistance" means any government rental or housing payment benefit available to the individual or any household member.

6. "An extraordinary medical expense" means any unanticipated medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

Public reporting burden of this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Signature of Declaration Date

5"Available government assistance" means any available, unexpired residential property, or other space for occupancy in any amount or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing costs to you.

Public reporting burden of this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Written comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, should be addressed to the Office of Management and Budget, Department of Health and Human Services, Washington, DC 20501. Two copies of this form may be downloaded at https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf.
Process

- Tenant prepares declaration
- Declaration given to the landlord
- Landlord must cease any eviction activity
- Order extends through Dec. 31, 2020
Where does the CDC moratorium apply?

- CDC moratorium “does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order.”
  - American Samoa: not applicable unless and until Covid-19 case is reported

- How do I know if my jurisdiction has an eviction moratorium that provides a greater level of public health protection than the CDC order?

- “Threshold determination” theory vs. “CDC floor” theory
Timing & Deadlines

Five basic stages of judicial eviction

1. LL gives notice to vacate
2. Eviction lawsuit filed in court
3. Hearing(s) held
4. Entry of judgment, writ of restitution
5. Physical eviction (writ executed)
Timing & Deadlines

• Is there a deadline to give declaration to landlord?
  • *No, but the CDC moratorium only works if there remains an “action” the landlord must take to complete the eviction.*

• Can I still give the declaration if my landlord has already taken me to court?
  • *Yes. The CDC order applies to pending cases.*

• Can I still give the declaration if a court has already entered an eviction judgment against me?
  • *Probably. The landlord likely still needs to take action to cause a physical eviction.*

• If I have already been evicted, can I use the CDC order to recover my housing?
  • *No. The CDC order does not apply to evictions that have already taken place.*
Form of Declaration

• Do I need to use the CDC form?
  • No, a “similar declaration” is allowed. But changing the text risks losing the protection.

• Do I need to provide the landlord a paper copy signed with a pen?
  • The CDC order does not specify. Electronic signature is probably sufficient if authorized by state law. However, tenants able to provide a paper declaration may wish to do so.

• Should I provide additional details or corroborating documents with my declaration?
  • This is not recommended.

• How should I deliver my declaration to the landlord?
  • It is best to deliver the declaration in a manner that enables the tenant to prove delivery, such as hand-delivery with a receipt, or email or fax.
What types of evictions are covered?

• “Nothing in this Order precludes evictions based on a tenant, lessee, or resident:
  (1) engaging in criminal activity while on the premises;
  (2) threatening the health or safety of other residents;
  (3) damaging or posing an immediate and significant risk of damage to property;
  (4) violating any applicable building code, health ordinance, or similar regulation
     relating to health and safety; or
  (5) violating any other contractual obligation, other than the timely payment of rent or
     similar housing-related payment (including non-payment or late payment of fees, penalties,
     or interest).”

• *In most jurisdictions, tenants have right to cure most ordinary lease violations*
Lease expiration/"no cause" eviction

- CDC order clearly prohibits evictions for nonpayment of rent or charges
  - Should apply to any eviction where nonpayment is a motivating factor
  - No cause notice/lease nonrenewal for tenant delinquent in rent should raise presumption

- CDC order likely prohibits any eviction not based on a lease violation:
  - Five enumerated grounds for eviction do not include lease expiration
  - Enumerated grounds constitute exhaustive list
    - Prohibition on eviction is subject to limitation in applicability section, where list appears
    - CDC order is remedial in nature and should be liberally construed to achieve public purpose
    - Equitable doctrines against forfeiture, strict construction of eviction laws favor tenant
  - Even if not exhaustive, additional grounds must be similar to enumerated examples
    - All enumerated grounds are lease violations by tenants
    - Lease expiration not a lease violation
    - Failing to move out at end of lease term should not be construed as a lease violation for this purpose, as it would be absurd to require a tenant to move out in order to avoid eviction for failing to move out
May landlords still...

• Serve eviction notices? Short answer: probably not
  • CDC order prohibits LL from serving an eviction notice (other than for a lease violation besides nonpayment) that requires tenant to vacate before Jan. 1, 2020
  • Not clear whether notice (given before Dec. 31) to vacate after Dec. 31 would be lawful
• File eviction lawsuits? Short answer: not against covered tenants
  • Best practice for courts: require LL to certify that tenant not a covered person when filing
  • Some courts: CDC order only prevents entry of judgment & writ of restitution, not filing
• Hear eviction trials? Short answer: no
  • Landlord’s prosecution of case violates duty to take any action to cause removal of tenant
  • Media stories have reported some courts doing so anyway—we consider this improper
Multiple adults in household

• CDC order states each adult in a tenant household “should” sign their own declaration
  • What if one or more adults can sign, but other(s) cannot?

• Considerations:
  • Single adult providing declaration likely protects entire household
    • Order’s use of term “should” is significant; “must” is mandatory, “should” is not
    • Allowing eviction of non-signing adults only serves no purpose, undermines intent of order
  • Prevents individual tenants from having to swear to facts known by other household members
Self-help/extrajudicial eviction

• Does order prohibit self-help/extrajudicial eviction: yes, and criminal penalties apply

• “Self-help” or “extrajudicial eviction” means actions a landlord might take to remove a tenant other than through the judicial process, such as changing locks, interrupting utility service, denying repairs or maintenance, harassing or threatening a tenant, etc.
CDC Eviction Moratorium: Legal challenges
I heard some courts are still holding eviction hearings?

• Courts have differed on how to comply with the CDC order
  • Eviction cases not against covered tenants remain permissible
  • Eviction cases based on lease violations remain permissible
  • Some court practices appear simply inconsistent with CDC requirements

• Principal issues:
  • Whether (or under what circumstances) landlord may challenge the veracity of tenant declaration
  • Whether pending cases must be dismissed or simply continued until after moratorium period
Federal court challenges to CDC moratorium

• Cases filed in U.S. District Courts in Atlanta, Memphis, and Columbus seeking orders declaring the CDC moratorium unconstitutional
  • As cases are against federal agency, U.S. Dept. of Justice will defend
  • Atlanta case: gov’t brief due Oct 2, timelines not yet available in other suits

• Basic claims:
  • Old: CDC moratorium is a taking, violates rights of access to court, due process:
  • New: Congress did not/could not give CDC the power to impose an eviction moratorium

• Judicial relief requested:
  • “judgment against CDC invalidating CDC’s eviction-moratorium order”
  • “restraining order or preliminary injunction against the CDC order”
Federal court challenges (2)

• Claims on the merits:
  • CDC order entered under 42 C.F.R. § 70.2:

§ 70.2 Measures in the event of inadequate local control.
Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.

• Congressionally authorized by 42 U.S.C. § 264
• Numerous cases brought challenging state eviction moratoria as restriction on court access, takings; every single case was dismissed (delay of eviction not a taking, no fundamental right to evict tenants)
Cases will likely turn on whether preliminary injunction(s) are granted:

- General standard: court weighs four factors
  - (i) likelihood of success on the merits
  - (ii) irreparable harm
  - (iii) balance of equities
  - (iv) public interest
- Here:
  - Landlords’ claimed injuries would be purely economic, not irreparable harm
  - Massive public health, public interest considerations vs. landlords’ claimed injuries
CDC Eviction Moratorium: Coda
Survive & Advance

• CDC eviction moratorium is necessary short-term measure
  • Prevents 20+ million evictions that would displace up to 40 million people
  • Evictions would impact communities of color most heavily
• Substantial rent relief package still needed
  • Otherwise, will face eviction tsunami again come December
  • Sooner (and more suddenly) if legal challenge were to succeed
• Significant role for state and local governments
  • Establish local moratoria that fill gaps in CDC, insure against uncertainties of litigation
  • Prohibit evictions based on rent arrearages for tenants able to pay new rent
  • Prohibit landlords from denying admission based on Covid-related debts & eviction records
  • Ensure tenants facing eviction have access to legal representation
The View from one program with boots in the Zoom

Michelle Gilbert
Legal Director
Director, Chicago Covid-19 Eviction Prevention Project
Eviction law comes from state or local governments.
https://evictionlab.org/covid-policy-scorecard/
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Measures in place until **September 19, 2020**.

State score: **2.85/5.00**

The Governor of Illinois has prohibited law enforcement from enforcing orders of eviction during the state of emergency. The Governor has also prohibited any person or entity in Illinois from commencing an eviction. Without further action on tenancy preservation and supportive measures, Illinois could see a surge of evictions immediately following the pandemic.
Across America there are hundreds of organizations working hard to preserve affordable housing, prevent eviction, and reduce family homelessness. Click on the map to search over 600 organizations and find out how to make a difference in your community.

Or select your state here:

Illinois

Add your organization

Illinois

Housing Assistance
Legal Aid
Tenant Rights
Education & Advocacy
https://www.lsc.gov/
5 Covid-related changes to evictions

1) Governor Pritzker’s moratorium
2) CARES Act
3) Court orders
4) Chicago (and Evanston) ordinance
5) CDC Moratorium
COVID 19 Changes to Eviction Process: Executive Order 2020-30

On April 23, 2020, the Governor issued Executive Order 2020-30, which prohibits landlords from commencing any residential eviction action, unless the tenant:

- poses a direct threat to the health and safety of other tenants;
- poses an immediate and severe risk to the property; or
- Violates the building code, health code, or similar ordinance.

• The order prohibits enforcement of eviction orders for residential premises.

• The Governor’s moratorium is in place now through **October 19, 2020**.
BECAUSE THE GOVERNOR’S ORDER PROVIDES MORE PROTECTION…

… the CDC Moratorium currently does not apply in Illinois.
COVID 19 Changes to Eviction Process:
General Administrative Order

❖ The Cook County courts closed on March 13.

❖ Pending cases did not restart until July 6.

❖ The Sheriff has not served summons in evictions, generally, since March 13.
What does that mean?
Chicago Covid-19 Ordinance

The focus of the new Ordinance is to prevent evictions and encourage landlords and tenants to enter into agreements.
These new laws do not:

- Prevent evictions for serious lease violations other than non-payment of rent
- Mean that the tenant does not need to pay rent
- *Generally*, do not prevent the landlord from charging late fees or penalties
Many landlords do not want to file evictions...

...they just want to be paid.

- They have to pay filing fees.
- They may have to pay attorneys fees.
- They have to go to court or to an attorney’s office.
- Then, they have an empty apartment they have to rent to someone else.
Our job is to use this information to negotiate an agreement with the landlord for the tenant to pay the past due rent.
THE AGREEMENT MUST BE IN WRITING.

Illinois law allows a landlord to take a partial payment of rent and still file an eviction UNLESS the landlord has agreed in writing to delay an eviction.
THE WRITTEN AGREEMENT CAN BE SIMPLE.
HUD Directive: repayment agreements should be:

- Entered into for the purpose of preserving housing
- Affordable
- Not Require lump sum, initial payments
- Be based on 10% of income -- 30% for rent and 10% for repayment
- Not include late fees or other charges
to make the effective date of an interim reexamination effective the month immediately following the family request. However, extenuating circumstances could be considered in the PHA’s interim reexamination policy, such as the month following the date of the actual decrease in income if the decrease was not reporting timely due to COVID-19.
EMERGENCY ASSISTANCE FUNDS CAN BE USED AS PAYMENTS IN THE REPAYMENT AGREEMENT – THE CHICAGO ORDINANCE PREVENTS LANDLORDS FROM REFUSING TO ACCEPT THIRD PARTY FUNDS.
What is a Lockout?

- Changing Locks
- Plugging Locks
- Removing Doors
- Removing Windows
- Shutting Off Utilities
- Removing Property
- Making Apartment Uninhabitable
Renter Remedies

• Right to file an Emergency Petition with Court:
  – Not ideal at this time, requires appearance in court. Reduced court staff may slow process

• Contact Police Department: Chicago Special Police Order

• Contact local legal aid for help with notifying landlord about unlawful actions and demanding access and/or restoration of services.
EPP Approach

• Negotiate agreements
  – Using rental assistance
• Prosecute lock-outs
• Defend (mis-filed) evictions
• Engage in policy advocacy
Lessons from a School-based Legal Clinic

- **What:** Free housing legal aid
- **Why:** Stabilize housing for parents to prevent disruption to their students’ education
- **Where:** George Leland Elementary School (CPS), Austin neighborhood, Chicago, IL
- **Who:** Parents and Austin community members who are tenants
- **How:** (Pre-COVID) Monthly, after-school, and in-person; (Post-COVID) refer to virtual clinic or by phone
- **When:** Est. February 2020

Sponsored by Latham & Watkins, LLP
Challenges of Providing Legal Aid Amidst Remote Learning

Education & Awareness
- Informational fliers
- Social Media - “Tenant Thursdays”

Identifying Tenants in Need
- School counselors and social workers
- Outreach to community organizations
- Social Media - Tenant Union Groups
- Principal Robo Calls

Technology
- Designated phone line, extended hours
- Referral to LCBH’s virtual clinic
Federal Legislation to Support Children and Families At-Risk of Eviction

- Emergency Family Stabilization Act (S. 3923/H.R. 7590)
- Eviction Crisis Act (S. 3030) and the Legal Assistance to Prevent Evictions Act (S. 3305/H.R. 5884)
- Emergency Rental Assistance and Rental Market Stabilization Act (H.R. S. 3685/6820)
- American Family Act (S. 690/H.R. 1560)
- Pandemic TANF Assistance Act (S. 3672)
- Pushing for Congress to pass an additional COVID-19 relief package with these bills and an expanded and extended eviction moratorium

- Frequently Asked Questions
- Checklists, Guides, and Strategies
- Upcoming and Archived Webinars
- Guest Perspectives
- Policy Updates on COVID-19
- Homeless Education in the News: COVID-19 and Homelessness
- Resources from Federal Agencies and Partner Organizations
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About SchoolHouse Connection

SchoolHouse Connection works to overcome homelessness through education. We provide strategic advocacy and practical assistance in partnership with schools, early childhood programs, institutions of higher education, service providers, families, and youth.

- Website: http://www.schoolhouseconnection.org
- Newsletter: https://www.schoolhouseconnection.org/sign-up/
- Federal and state policy advocacy
- Q&A from our inbox
- Webinars and implementation tools
- Youth leadership and scholarships
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