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NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
The National Law Center on Homelessness & Poverty is the only national organization dedicated to using the power of the law end and prevent homelessness. It works to expand access to affordable housing, meet the immediate and long-term needs of those who are homeless or at risk, and strengthen the social safety-net through policy advocacy, public education, impact litigation, and advocacy training and support.

Our vision is for an end to homelessness in America. A home for every family and individual will be the norm and not the exception; a right and not a privilege.

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While many communities across the country are working to end homelessness, too few have adopted legal protections to help renters find, and stay in, housing. This report explores the links between housing instability and homelessness as well as the laws that can reduce housing instability. While increasing the availability of affordable housing is a necessary component of ending homelessness, it may not be sufficient if low-income families and individuals are not able to access and keep stable housing. Legal protections can help increase housing stability and reduce homelessness.

The United States faces a crisis of homelessness in urban, suburban, and rural areas across the country. The leading cause is the unavailability of housing, particularly rental housing, that is affordable to low-income families and individuals. Federal funding to support affordable housing was sharply decreased in the early 1980s and has not recovered—helping to create the modern phenomenon of homelessness, with high numbers of people experiencing chronic or sporadic homelessness each year.

Currently, only 25 percent of those poor enough to be eligible for housing assistance receive it. Meanwhile, wages have stagnated or fallen, and other social safety nets have shrunk. As the overall number of low-income renters has increased over the years, the availability of affordable housing in the private market has also decreased. As recently documented in Princeton sociologist Matthew Desmond’s best-selling book *Evicted: Poverty and Profit in the American City*, this has led to high rates of housing instability, evictions, and difficulty finding housing—any of which can be a proximate cause of homelessness.

Can stronger legal protections for renters help address the crisis of homelessness? While more data and research are needed, existing studies indicate that stronger renters’ rights help prevent and end homelessness, and that such protections also can save money. This report recommends that local, state, and the federal government stabilize rental housing for low-income persons by strengthening renters’ rights laws.

In particular, this report looks at renters’ right protections that limit unnecessary evictions or rent increases, such as just-cause eviction laws, rent control laws, protections for tenants in foreclosed property, protections for tenants against nuisance ordinances, and access to counsel in eviction court. The report also examines laws that lower renters’ barriers to accessing housing, such as limiting the use of eviction history or criminal history, prohibiting discrimination on the basis of housing status, and prohibiting discrimination based on source of income.

International human rights law recognizes a fundamental human right to adequate housing, with adequacy defined by seven elements, including affordability and the legal security of tenure. The United States has signed or ratified several human rights instruments that recognize or reinforce the human right to housing. Adopting laws and policies that better protect renters can help reduce homelessness and also help our country meet international human rights standards.

**Key Findings**

**There is not enough affordable and available housing for America's millions of low-income renters.** Affordable housing is rapidly decreasing nationwide, and today there are only 35 units that are affordable and available for every 100 extremely poor renter households. This housing gap is even more severe in many of the nation's large and growing metropolitan areas.

Multiple factors contribute to the affordable housing gap, but perhaps none more so than the rapidly rising costs of rents as compared with household wages. Some of the rise in rents is attributable to increased demand in the wake of the foreclosure crisis, as millions of former homeowners moved toward the rental housing market. Indeed, rental vacancies are at historic lows across the country, and competition for vacant units is fierce. Increased gentrification in urban areas has also increased rental costs and decreased the quantity of market-rate, affordable housing.

**The lack of affordable housing causes housing instability for low-income renters and leads to increased risk of eviction.** Because there are too few affordable units for the people who need them, too many low-income renters are forced to spend far more than they can afford to keep roofs over their heads. Renter households that pay more than half of their total household income on housing are at a record high of over 21 million. While housing cost burdens affect renters of multiple income levels, our nation’s poorest renters—which comprise 26 percent of all U.S. renter households—feel the housing burdens most acutely. Indeed, approximately 1 in 4 of these renters pays nearly 70 percent of household income toward rent and basic utilities.
Low-income renters are not always able to pay rent. Housing cost burdens leave little income for other necessities like food, medicine, child care, and transportation. Moreover, they leave cost-burdened renters with no financial cushion against emergencies or sudden interruptions in income from job loss, divorce, or other destabilizing life events. In this environment, low-income renters with high cost-burdens are at serious risk of eviction for failure to pay timely rent—sometimes with only a few days’ notice.

Even when they are able to pay rent, low-income renters risk eviction. When competition for rental housing is high and supply is limited, landlords hold the balance of power in the landlord and tenant relationship. This imbalance lowers tenants’ ability to demand decent affordable housing. It may be cheaper to simply evict a tenant complaining of faulty plumbing, for example, than to remedy the problem, and landlords may be willing to do so when there is a line of prospective tenants willing to take the complaining renter’s place. In such an imbalanced environment, renters are also vulnerable to housing displacement for unfair reasons, such as when victims of domestic violence are evicted for “too many” 911 calls, the property is foreclosed upon, the neighborhood is gentrifying, or for no reason at all.

Evictions can cause homelessness. Evictions, whether through formal court proceedings or other methods of involuntary displacement from housing, are a direct cause of homelessness—either immediately or after social safety networks are exhausted. The causal relationship between evictions and homelessness is demonstrated in a number of regional reports and at least one national study, including:

- A 2017 survey by Applied Survey Research in Santa Cruz County, California, found that 14 percent of its homeless population cited eviction as a primary cause of their homelessness.
- A 2017 report by the Institute for Children, Poverty, and Homelessness found that eviction is the second leading cause of homelessness in New York City among families with children, with as many as 33 percent of families citing eviction as the reason for their homelessness in parts of the city.
- A 2016 report by Stout Risius Ross, LLC, showed that New York City would realize a benefit of $320 million annually from establishing a right to counsel in eviction proceedings, with a $251 million savings from homeless shelter costs.
- In 2012, the Boston Bar Association Task Force on the Civil Right to Counsel cited a 2011 report that 45 percent of households that enter the Massachusetts shelters gave eviction as the reason they were homeless or at risk of homelessness.
- A 2010 report by Seedco found that 47 percent of families in New York City’s homeless shelters experienced eviction five years before shelter entry.
- A 2001 national study found that nearly two out of five homeless people who use homeless assistance programs came to be homeless through involuntary displacement from their housing.

Once housing is lost, low-income renters face significant barriers to accessing replacement housing. In addition to a competitive rental market where affordable units are few and far between, low-income renters must also contend with multiple housing policies that discriminate against them. Landlords may have policies that automatically exclude prospective renters with eviction records, criminal records, or a lack of recent rental history due to homelessness. These policies may apply even when the underlying events are old, wholly unrelated to the prospective renter’s ability to pay rent or abide by reasonable lease terms, or even when the record at issue is inaccurate. In addition, landlords may refuse to rent to tenants based on their source of income, such as a Section 8 voucher, or based on other prejudices. These barriers all diminish the choices of low-income renters—forcing them into worse housing at higher costs. Once a renter is trapped in this cycle, homelessness becomes more and more likely.

People of color have been particularly harmed by housing instability, discriminatory rental policies, and homelessness. Today, approximately half of all renters in this country are people of color, and these renters are disproportionately affected by housing cost burdens. Around a quarter of Black and Hispanic households spend at least half of their income on housing costs, as compared with less than 20 percent of white households. People of color also face disproportionate rates of eviction.

These factors contribute to a heavy overrepresentation of people of color in the homeless population. Even controlling for poverty, Blacks are significantly more likely to experience homelessness than white people. Indeed, Black people represent a full 39 percent of all homeless people, despite
making up only 13 percent of the general population. Hispanic people comprise 22 percent of the homeless population, but less than 18 percent of the general population. Native American people make up nearly 3 percent of the homeless population but are only 1.5 percent of the general population.

**Strong renters’ rights can reduce housing instability, remove barriers to housing access, and prevent homelessness.** Laws that stabilize rents, prevent unjust evictions, and prohibit discriminatory rental admission policies directly address the underlying causes of housing instability and homelessness. While more research must be done to demonstrate the full impact of these laws, some evidence of the effectiveness of renters’ rights laws include:

- In 2016, a cost/benefit analysis of providing a right to counsel in eviction proceedings in New York City concluded that implementation of a right to counsel would not only reduce evictions by an estimated 77 percent when legal counsel is provided, but it would also produce a net cost savings to the city of $320 million. The majority of the savings would come from a reduction in the need for homeless services.
- A 2010 evaluation of the Housing Help Program, a joint effort by the United Way and New York City to provide services, including legal services, to housing litigants at risk of homelessness found that providing counsel in housing cases prevented loss of housing for 91 percent of clients and also reduced homelessness.
- A 2017 article in the *Journal of Planning Literature* found that source of income discrimination laws, which prohibit landlords from refusing to rent to people with housing subsidies, increased renters’ likelihood of locating housing by 12 percent.
- A 2012 report by the National Low Income Housing Coalition found that the now-expired federal Protecting Tenants at Foreclosure Act, which provided protection to renters subject to eviction due to foreclosure, was successfully used by 90 percent of surveyed legal services attorneys to halt or avoid eviction of their clients.

**Key Recommendations**

Governments must implement policies that directly address the underlying causes of housing instability and homelessness. Indeed, preventing and ending homelessness should be major factors in governments’ decision-making processes, laws, policies, and practices related to housing. The following recommended policies represent some renters’ rights laws that can help keep rental housing affordable, reduce housing instability and eviction, and prohibit discriminatory rental admission policies:

- Laws that **limit evictions without just cause** can help prevent unfair evictions.
- **Rent stabilization laws** can help to address the affordability crisis by reasonably limiting increases in rents.
- Laws that **guarantee a right to counsel** in housing cases translate directly into lower homelessness.
- Laws **preventing eviction based on foreclosure** can help to prevent unjust evictions and keep people stably housed.
- Laws **prohibiting discrimination based on a prospective renter’s source of income**, such as a federal housing subsidy, can help renters gain access to and more readily afford the cost of private market rental housing.
- Laws **prohibiting housing displacement due to nuisance ordinances** can help keep tenants and their children housed.
- Laws **prohibiting discrimination against renters with eviction histories and criminal records**, or that limit dissemination of such information to prospective landlords, can help to remove barriers to housing access.
- Laws **prohibiting discrimination against homeless people** in rental housing.
- Laws **preserving existing affordable housing**, such as laws that provide renters’ rights of first refusal to purchase to their homes when an owner seeks to convert property to market-rate use.

Advocates working on rental housing and those fighting homelessness should work collaboratively, along with civil rights advocates and anti-poverty advocates, to broaden and strengthen support for strong renters’ rights. Coordinated or joint organizing and communication efforts that center on the needs of people who are directly affected are key. The national Housing Not Handcuffs Campaign has model policies, talking points, and other materials, and provides a hub for networking that can help in this coordinated effort. See more at housingnothandcuffs.org.

Renters’ rights protections/laws appear to be critical to preventing and ending homelessness, and they can often be implemented quickly and cost-effectively. However, it is important to recognize that ending homelessness will also require a significant investment in affordable housing development from the federal, state, and local level, and an expanded social safety net.
INTRODUCTION

Homelessness is a national crisis. It is difficult to accurately measure the size of the homeless population, but the magnitude of the crisis is indicated by various data sources, including two national data sets collected by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Education (ED). HUD measures homelessness using a Point-in-Time count (PIT), which is an annual nationwide effort to count homeless people in some sheltered and unsheltered locations on a single night in January. In 2017, HUD reported that 553,742 people were counted as experiencing homelessness in the United States.1 These numbers are considered a significant undercount of the homeless population, even for a single night.2

Data from ED uses a broader definition of homelessness to find that there were over 1.37 million homeless children in our public schools in the 2015-2016 school year—a 70 percent increase since the inception of the housing foreclosure crisis in 2007. Some of these children live among the estimated 7 million U.S. households living doubled up with friends and family. The ED numbers are also likely a significant undercount, as accurate identification of homeless students remains a challenge. While both data sets from ED and HUD vary, they only provide a subset of an even higher number of individuals and families experiencing homelessness across the country.

While homelessness affects people of all ages, races, and backgrounds, people of color are heavily overrepresented. Black people represent a full 40 percent of all homeless people despite making up only 13 percent of the general population.3 Hispanic people, who comprise 18 percent of the general population, are similarly overrepresented at 22 percent of those experiencing homelessness.4 Native American people make up nearly 3 percent of the homeless population but are only 1.5 percent of the general population.5 This may not reflect the true disparity because Black Americans and other people of color are also over-represented in the criminal justice system, and HUD’s count excludes people who are in jail (but would otherwise be homeless).6 Data on disproportionality is incomplete because even jurisdictions that include incarcerated persons may not disaggregate data based on race and/or ethnicity. Houston, for example, reported to HUD that it had 3,605 homeless people in a single night in 2017.7 The number grew by 57 percent, to 5,651, when Houston added incarcerated homeless people for its own “expanded” count.8

A long, inglorious history of housing and zoning policies creating racial and socioeconomic segregation has helped to lay the groundwork for the disproportionate representation of people of color among the nation’s homeless population. Laws that are discriminatory or have discriminatory impact, as well as discrimination in real estate and lending—from denials of loans and exclusion from federal loan insurance programs to predatory lending practices—have resulted in neighborhood segregation along racial lines and concentrated poverty.9 Today, 25 percent of poor Blacks and 18 percent of poor Hispanics live in high-poverty communities as compared with only 6 percent of poor whites.10

While an accurate assessment of the complexity of the crisis of homelessness may not be available, there is proof that homelessness is worsened by a lack of protection afforded to low-income renters, many of whom are at near constant risk of housing displacement due to rapidly rising rents, declining incomes, increased competition for ever fewer affordable rental units, and a dwindling social safety net. Adding to this risk is a lack of legal protections from myriad barriers to securing new housing in the private market. This has left millions of low-income people—people of color in particular—unsteadily housed across the country.

This report describes how a lack of affordable rental housing and discriminatory rental admission policies create housing instability and risk of homelessness for low-income renters. The report concludes that strong renters’ rights can help address housing instability and serve a critical role in the preventing and ending homelessness in America, and makes several recommendations of laws that can be passed at the federal, state, and local levels.

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4 Id.
5 Id.
6 Don’t Count On It, supra note 2, at 13.
8 Id. at 10.

This report surveys current studies and research that examine the connection between legal protections for renters and homelessness. Some of the strongest evidence is from pilot studies that show a direct link between access to counsel in eviction court and reductions in homelessness, demonstrating that when renters have rights and are able to claim them through access to counsel, homelessness decreases. There is also evidence that links eviction rates to homelessness as well as evidence that discriminatory barriers to housing can make it difficult to exit homelessness. While more research is needed, this evidence, combined with research showing that eviction rates and discriminatory barriers can be reduced through legal protections, suggests that strengthening renters’ rights can help reduce homelessness.

In this section, we first review the current state of housing affordability, housing instability, and evictions. Second, we review evidence that links evictions and homelessness. Third, we review discriminatory barriers to housing faced by low-income renters and how those link to homelessness. In a later section, we discuss possible policy solutions that can work to prevent homelessness through renters’ rights.

The lack of affordable housing has led to increased housing instability and an eviction epidemic

A lack of adequate affordable rental housing is the primary cause of housing instability and homelessness. With fewer affordable housing units than people who need them, millions of individuals and families must pay far more than they can afford to keep roofs over their heads. This problem is particularly acute for our nation’s poorest renters. There are only 35 affordable and available housing units for every 100 extremely low-income households (ELI) who need them. This housing gap is even more severe in many of the nation’s large and growing metropolitan areas. In Los Angeles, California, for example, there are only 16 affordable and available units for every 100 ELI renter households. In Las Vegas, Nevada, that number drops to only 12 affordable and available homes. These numbers only count households that are currently renting and therefore do not account for persons experiencing homelessness.

A recent report, Dynamics of Homelessness in Urban America, examined the relationship between housing costs and homelessness in the 25 largest U.S. metropolitan areas drawing on data from the U.S. Census Bureau, HUD, and the housing website Zillow. The study found that the relationship between homelessness and rental costs is particularly strong in New York, Los Angeles, Washington D.C., and Seattle. For example, the study predicted over 6,000 more people would experience homelessness in New York City if rents increased by ten percent; in Los Angeles, the increase would be over 4,000 more people.

More low-income renters are competing for fewer market-rate affordable housing options.

The affordable housing gap worsened over the past decade. This can be attributed, in part, to a growing number of renter households following the housing market crash and foreclosure crisis that swept the nation beginning in 2007. Homeownership in the United States plummeted in the wake of the foreclosure crisis. Since 2007, over 9 million homes were lost to foreclosure, short sales, or deeds-in-lieu of foreclosure. While foreclosures have slowed in recent years, they remain two times the national average since before the housing crash.

This has led to a spike in renter households—up nearly a third since 2004. The growth is largely attributable to minority and foreign-born households. Today, approximately half of all renters are people of color, as compared with just a quarter of our nation’s homeowners. This trend is projected to continue.

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13 Id. at 3.

14 Id. at 3.


16 Id. at 1.

17 Id. at 21.

18 State of the Nation 2016, supra note 10, at 3.

19 Id. at 2.

20 Id. at 2.

21 Id. at 2.


23 State of the Nation 2016, supra note 10, at 25.


Moreover, the majority of renter households are low-income, with 53 percent of all renter households earning less than $35,000 annually, and 60 percent of those earning less than $15,000 each year.26

The rise of renter households has led to historically low rental vacancy rates. Nationally, the vacancy rate is around 7 percent—its lowest level in thirty years.27 In many cities, the vacancy rates are even lower. In Minnesota’s Twin Cities, the vacancy rate has sunk to 2.3 percent.28 In San Diego, California, the rate is similarly low at just 2 percent.29 While new construction adds to the availability of rental housing, it often does little to produce new housing affordable to low-income renters, as most new units are intended for renters at the higher end of the rental market.30

High demand for a limited supply of rental units has led to fierce competition in the rental market, and a consequent rise in the rents demanded by landlords. Nationally, median monthly rental costs have risen 15 percent since 2000, increasing to $980.31

In some popular metro areas, the increase is considerably higher: “Median rents have risen at twice the national pace in markets with rapid population growth, such as Austin, Denver, and Seattle. And within these fast-growing metros, rents in previously low-cost neighborhoods rose nearly a percentage point faster each year than in high-cost neighborhoods.”32

Indeed, a report by Freddie Mac documents a 60 percent drop in market-rate apartments affordable to very low-income families over just the past six years.33

A new report by Freddie Mac documents a 60 percent drop in market-rate apartments affordable to very low-income families in just the past six years.34

As rents have risen, wages of low-income American workers have declined. From 1979 to 2013, while the hourly wages of high-wage workers rose 41 percent and those of middle-wage workers grew 6 percent, the wages of low-wage workers fell 5 percent, according to the Economic Policy Institute.35 Today, over a third of renter households earn less than $25,000 per year and household income for the nation’s poorest households is lower than what it was before the foreclosure crisis.36 According to the National Low Income Housing Coalition, the hourly wage needed to afford a modest one-bedroom apartment in 2017 is $17.14—2.4 times the federal minimum wage of $7.25 per hour.37 This means that someone earning the minimum wage would need to work 94.5 hours per week—the equivalent of over two full-time jobs—every single week of the year to afford even a one-bedroom rental home.38 Indeed, there is not a single state where a full-time worker earning minimum wage can afford a one-bedroom apartment.39 This problem is not likely to correct in the next decade as only one of seven occupations predicted to add the largest number of jobs by 2024 pays an adequate housing wage.40

**Federal housing assistance is severely underfunded.**

Federal housing assistance is intended to assist renters who do not earn enough to pay for modest housing. But being income-eligible does not guarantee assistance. In fact, only 1 in 4 eligible renters receive rental assistance.41

In the early 1980s, federal funds for housing decreased, and funding has never recovered.42 Indeed, federal housing assistance has continued to shrink even as the number of renters who qualify for assistance has risen. 159,000 fewer renters receive federal housing assistance now than received it prior to the inception of the foreclosure crisis in 2007.43 All of the nation’s public housing authorities that offer Housing Choice Vouchers—commonly referred to as Section 8—have years-long waiting lists, or are simply closed.44 Nationally, around

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26 America’s Rental Housing 2017, supra note 22.
30 State of the Nation 2017, supra note 12, at 35.
31 America’s Rental Housing 2017, supra note 22.
32 Id.
35 The Gap, supra note 11, at 3.
37 Id.
38 Id.
39 Id.
40 State of the Nation 2016, supra note 10, at 5.
42 State of the Nation 2016, supra note 10, at 5.
10,000 units of public housing are lost each year as a result of chronic underfunding. This underfunding also threatens the housing stability of over one million US renter households residing in dilapidated public housing units.

Other funding streams are also lacking. Persons with disabilities, who are unable to work and are reliant on Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits, receive less than what is needed to live on—too often receiving less than it costs to rent an apartment. Indeed, in housing markets across 33 states, rents for modest one-bedroom rental units cost more than the entire monthly SSI payment. In this environment, it may be impossible for a person reliant on SSDI or SSI income to afford housing.

Most low-income renters pay more for housing than they can afford.

Low-income renters who are not lucky enough to secure an affordable rental unit or obtain a rental subsidy are forced to pay more than they can afford for housing. Renters are considered housing cost-burdened when they spend more than 30 percent of their income on housing, and severely cost-burdened if housing costs exceed 50 percent of household income.

The number of renters experiencing cost-burdens is at a record high. According to the Joint Center for Housing Studies at Harvard University, the total number of cost-burdened U.S. households was 20.8 million in 2016. The number with severe burdens now stands at 11 million.

Our nation’s poorest renters, unsurprisingly, have felt the cost burdens most acutely. Extremely low-income (ELI) households, defined as those earning 30 percent or less of area median income, which account for 26 percent of all U.S. renter households, have the most severe housing cost burdens of any group. In 2016, a whopping 83 percent of renter households with incomes below $15,000 had cost burdens. 72 percent of these household had severe burdens, and almost a quarter dedicate over 70 percent of their income to pay rent and keep the lights on.

“It’s the worst time in 36 years to be a renter in America.”

-Alan Pyke, economic editor at ThinkProgress

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47 State of the Nation 2016, supra note 10, at 31.
48 America's Rental Housing 2017, supra note 22.
49 Id.
50 Id.
People of color have been particularly harmed by cost burdens.

Today, approximately half of all renters in this country are people of color. In 2013, 23 percent of Black-renting families and 25 percent of Hispanic-renting families spent at least half of their income on housing.\(^\text{53}\) This compares with less than 20 percent of white households.\(^\text{54}\)

People of color pay too much for housing, in part because of housing discrimination. National studies reveal that people of color are told about fewer rental units and shown fewer rental units.\(^\text{55}\) In addition, Black and Hispanic renters are quoted higher rental prices than white renters and told less frequently that the negotiable nature of deposits and other move-in costs.\(^\text{56}\) “Taking into account fees, deposits, and rents, apartments were more likely to cost whites slightly less in the first year of rental than Blacks might pay.”\(^\text{57}\)

With fewer options, they also are more likely to have to pay more for worse housing.\(^\text{58}\) Data from the National Housing Survey revealed that Black people are 24 percent less likely to live in safe, adequate housing than white people.\(^\text{59}\) Hispanic people are 12 percent less likely.\(^\text{60}\)

America is experiencing an eviction epidemic

Given the housing instability caused by housing cost burdens, it is perhaps not surprising that the United States is facing an epidemic of evictions. The two primary causes are unaffordable rents and the lack of legal protections for tenants.

“Every year in this country, people are evicted from their homes not by the tens of thousands or even the hundreds of thousands but by the millions.”

-Matthew Desmond, \textit{Evicted: Poverty and Profit in the American City}\(^\text{61}\)

Unaffordable rents lead to eviction and displacement

Cost-burdened renters have little income left for other necessities like food, medicine, child care, and transportation. Studies have shown that severely cost-burdened renters may spend as much as 41 percent less on food and healthcare than similar households without housing cost-burdens.\(^\text{62}\) Indeed, housing instability has been linked to increased preventable hospitalizations.\(^\text{63}\) Housing cost burdens leave people at risk of homelessness if they experience an interruption in income from job loss, illness, injury, divorce, or any other destabilizing life event. Having no financial cushion against emergencies such as car repairs or a health crisis, leaves low-income, cost-burdened renters vulnerable to eviction for inability to pay their unaffordable rent.\(^\text{64}\)

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\(^\text{53}\) Id. at 1.
\(^\text{59}\) Id. at 13.
\(^\text{60}\) Id.
\(^\text{61}\) Matthew Desmond, \textit{Evicted: Poverty and Profit in the American City} (2016).
\(^\text{62}\) The Gap, supra note 11.
\(^\text{64}\) Desmond, \textit{Unaffordable America: Poverty, housing, and eviction}, supra note 51; Out of Reach 2017, supra note 36, at 1.
Case In Point

“I worked day and night for a non-profit organization…I was the administrator’s assistant. Did that through the day and then worked another job at night; some nights turned into mornings.

“I was a server at a hall helping with guests and serving food, trying to keep the bills paid. If it was not the electric/gas/water bill due, it was the rent, which I used to pay half of at the beginning of the month, the rest at the end. Always lock in half so you can make a payment plan. It’s like payment plan after payment plan until one day the nonprofit can’t pay me anymore. I tried working more hours on night job, but now bills are steady slipping, lights off, 12 days rent behind, water behind, now I’m evicted.”

--Lashonda Smith (Milwaukee, WI)

In 2013, 11 percent of Very Low-Income Renters, which are those earning 50 percent or less of area median income, had missed at least one rental payment within the previous three months, and millions more reported anticipating eviction for late or missing payments in the following two months. A 2017 report from Apartment List, based on data from its 8 million users and survey data from 41,000 respondents, showed similar results with one in five renters struggling to or unable to afford their rent in the past three months. Among low-income renters, the number was even higher at 27 percent. For single parents, the risk of missing rent rose to 30 percent.

When renters cannot pay timely rent, they may be subject to eviction—sometimes with only a few days’ notice.

Lack of legal protections for tenants leads to evictions and displacement

With few legal protections for renters in many jurisdictions, landlords hold most of the power in the tenant-landlord relationship, and they have little incentive to lease rental units to individuals at affordable rates when those with higher incomes are willing to pay more. Landlords for lower-cost apartments also may have no incentive to ensure that housing is maintained at an adequate standard. Indeed, a tenant who complains about legitimate habitability concerns, such as faulty plumbing, may be asked to leave simply because it is cheaper and more expedient to replace the tenant than to fix the underlying problem.

Gentrification may also result in eviction. As neighborhoods redevelop to include modern housing, trendy shopping areas, or tourist attractions, low-income renters in historically affordable housing may be displaced in favor of new, higher income renters.

Case In Point

After Luz helped her neighbor fight her eviction, the landlord evicted Luz and her family into homelessness. Her husband found an apartment, but because it was managed by the same owners, he had to sign a paper saying that he would be evicted if Luz and her son were seen on the property. Luz and her son had to sneak in very late at night to sleep in the apartment with him and her son couldn’t play outside in the daytime, which distressed him.

“When I asked the manager why they were doing this, they just said it was because they didn’t want me living there anymore. We tried to give them the money for rent for the upcoming month, and the manager wouldn’t take it. I felt like an unwanted dog being kicked out of its home. My son had to move and change schools in the middle of the year. We had to live in our car with our son for some time and had to put a lot of our stuff in storage. We couldn’t afford most of the other apartments.”

--Luz Fabio (Seattle, Washington)

Evictions have reached crisis levels.

While there is no comprehensive national data on evictions, and local data is largely incomplete, there are multiple data sources indicating that we are in the midst of an eviction epidemic. According to an/the Apartment List report, 3.7 million renters nationwide have experienced eviction in their lifetimes. The same study found that, of those earning less than $30,000 per year, over 3 percent were evicted from their previous residence and 11 percent faced an eviction threat in the past year.

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66 The State of the Nation 2016, supra note 10
68 Id.
69 Id.
Official data on evictions underreport the problem of housing instability and displacement because they do not include informal evictions outside of the court system. An informal eviction occurs, for example, when renters move out after being served with a notice to vacate. Even when people have meritorious defenses to eviction, the legal process may be intimidating, particularly for people who cannot afford an attorney or even take time off work to go to court. In addition, people may choose to move out before an eviction action is filed to prevent an eviction record. To understand the scope of the eviction problem, it is important to consider those situations where tenants are forced from their homes without the formal involvement of the courts, or before the court process is complete. In Matthew Desmond’s study of housing displacement in Milwaukee, Wisconsin, he found that at least 48 percent of all forced moves were informal evictions.

Poor women of color, particularly Black women, have particularly suffered as they are overwhelmingly the subjects of eviction actions as compared with other renters. Multiple studies from cities across the country reveal the disproportionate rates of eviction faced by women of color, and often by extension, poor children of color. In a study of those facing eviction in Chicago, 72 percent of those appearing in court were Black, and 62 percent were women. A study of those facing eviction in Philadelphia found that 70 percent were nonwhite women. In Milwaukee, a “deeply segregated city,” Black female renters are evicted at three times the rate of white women. In the words of Desmond, “If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out.”

Households with children may also be at greater risk of eviction. Even when controlling for poverty rate and other factors, one study found that “[i]f a tenant in eviction court lives with children, her or his odds of receiving an eviction judgment” almost triple.

Evictions and housing instability lead to homelessness

Some of the strongest evidence linking renters’ legal rights and homelessness look at the costs of evictions and the cost savings of preventing evictions. Evictions, and the homelessness and other harms it causes, carry significant costs to taxpayers. A growing number of studies, many conducted within the context of evaluating the cost-effectiveness of providing a right to legal counsel in housing cases, demonstrate that preventing evictions results in millions of dollars in tax dollar savings. The studies rely on data showing that spending on homelessness decreases significantly when renters’ rights are protected by counsel in eviction court.

In 2016, Stout Risius Ross, LLC (SRR), a financial advisory firm, conducted a cost/benefit analysis of New York City Council Intro 214A, a proposal to provide a right to counsel in eviction proceedings. In its independent analysis, SRR concluded that providing counsel would not only reduce evictions by an estimated 77 percent; it would also produce a net cost savings to the city of $320 million—saving $251 million each year in reduced homeless shelter use alone.

SRR also estimated that the city would realize around $9 million in annual savings from reduced medical and law enforcement costs related to the city’s unsheltered homeless population, 12 percent of whom are homeless due to eviction.

It is important to note that, while this study looked specifically at access to counsel in eviction cases, lawyers that successfully prevented evictions did so on the basis of New York City’s existing renters’ rights laws, demonstrating their efficacy in protecting security of tenure in rental housing.

72 Desmond, Unaffordable America: Poverty, housing, and eviction, supra note 51, at 3.
74 Lisa Parsons Chadha et al., Time to Move: The Denial of Tenants’ Rights in Chicago’s Eviction Court (1996).
77 Matthew Desmond, Evicted: Poverty and Profit in the American City (2016).
78 Desmond, Unaffordable America: Poverty, housing, and eviction, supra note 51.
80 Id.
81 Id.
In 2014, the John and Terry Levin Center for Public Service and Public Interest at Stanford Law School published a report, San Francisco Right to Counsel Pilot Program Documentation Report, analyzing the impact of an ordinance declaring San Francisco to be a right to civil counsel city.\textsuperscript{82} The ordinance authorized a one-year pilot program operating from October 2012 to September 2013 to increase access to free legal services for poor people in cases involving basic human needs, including in cases of eviction from housing.

The study found that tenants who were assisted by counsel in their eviction cases were more likely to avoid homelessness. Projected cost savings to the city associated with this homelessness prevention were estimated at $1,096,200 in emergency shelter savings alone.

In 2012, the Task Force on the Civil Right to Counsel convened by the Boston Bar Association issued a report on pilot programs providing counsel in cases involving, among other things, the risk of loss of housing. Preliminary research showed that implementing targeted, full legal representation to tenants faced with eviction will prevent homelessness and save the State of Massachusetts money.\textsuperscript{83} In fact, people so represented were two times more likely to retain possession of their housing.\textsuperscript{84} The study projected that cutting evictions by only 10 percent could save the state $8 million, with $3 million of the net savings in emergency assistance expenditures.\textsuperscript{85}

**Evictions are a direct cause of homelessness.**\textsuperscript{86}

Numerous studies establish evictions as a primary cause of homelessness. The causal relationship between evictions and homelessness is demonstrated by a number of regional studies and at least one national study, including:

- The Institute for Children, Poverty, and Homelessness, a New York-based policy research organization, issued an analysis of homelessness trends in its 2017 report, *On the Map: The Dynamics of Family Homelessness in New York City*.\textsuperscript{87} The report examined patterns related to shelter entry, including top reasons why families with children seek emergency shelter. Eviction was found to be a leading driver of homelessness with 25 percent of families eligible for shelter citing it as the reason for their homelessness. Indeed, across all communities in New York City, eviction was the second most common reason for family shelter entry behind domestic violence; in 18 communities, eviction was the leading cause. In Riverdale and Pelham Parkway in the Bronx, as examples, eviction was responsible for 33 percent or more of family shelter entry. It is also estimated that 12 percent of unsheltered homeless people in New York City are homeless due to eviction.\textsuperscript{88}

- A 2017 survey by Applied Survey Research in Santa Cruz County, California, found that 14 percent of its homeless population cited eviction as a primary cause of their homelessness.\textsuperscript{89} The survey was conducted as part of the local Point-in-Time count of homeless people as required by HUD. The count, along with collecting data on the prevalence of homelessness, collects information on individuals and families living in emergency shelters, on the streets, and in some other locations. To collect this information, Santa Cruz County worked with Applied Survey Research, a social research firm, to conduct an in-depth survey administered to hundreds of homeless people in the area. The survey included questions designed to identify the primary event that led to the respondents’ homelessness, and 14 percent reported eviction as the cause.\textsuperscript{90} In addition, 25 percent reported job loss as the reason, which presumably led to the inability to afford housing.\textsuperscript{91}

- A survey by Applied Survey Research for the 2017 San Francisco Point-in-Time Count produced similar results. The survey, administered to a randomized sample of 1,104 homeless individuals, found that eviction is a leading cause of homelessness.\textsuperscript{92} 12 percent of survey respondents cited...
eviction as the reason for their current homelessness—the third most common reason cited.93

- A 2017 survey done in partnership by the National Law Center on Homelessness & Poverty and St. Martin’s University of homeless individuals in Puyallup, Washington, also found eviction to be a leading cause of homelessness. In Puyallup, a small community with no year-round emergency shelter, 30 percent of surveyed homeless adults lost housing most recently due to a rent raise or eviction.94

- A 2011 report from the Massachusetts Interagency Council on Housing and Homelessness found that 45 percent of homeless or at-risk households cited eviction as the cause.95 Interviews of shelter residents in the North Shore of Massachusetts, an area north of Boston, found even higher percentages of homeless people rendered so by forcible displacement from their homes. The majority of residents interviewed—a full 66 percent—were either evicted or moved out when job loss or poor health rendered them unable to pay rent.96

- A 2010 evaluation of the Housing Help Program (HHP), a three-year pilot program by the United Way of New York City, the Civil Court of the City of New York, and the New York City Department of Homeless Services to provide targeted legal, financial, and social service interventions to housing court litigants at risk of homelessness found that HHP prevented a loss of housing for 91 percent of its clients and also reduced entry into emergency shelters.97

- In 2009, the Law Center joined with several other organizations to survey direct service providers around the country. The survey revealed a substantial number of clients who experienced homelessness as a direct result of eviction due to the foreclosure of their rental housing.98

- A 2001 national study, drawing on a representative national sample of people using homeless assistance programs, found that nearly 2 out of 5 homeless people who use homeless assistance programs came to be homeless through involuntary displacement from their housing.99

- 2001 data from emergency shelter providers in Columbus, Ohio, showed that 35.4 percent of families and 11.4 percent of individuals reported eviction as the primary or secondary reason for their homelessness.100

Foreclosures on rental units also contribute to eviction and can render renters’ homeless. Data from 2012 showed that approximately 40 percent of families facing eviction due to foreclosure were renters.101 This included three million children. 102 Indeed, foreclosure is cited as one of the most common reasons given for the increase in homeless children.103 A 2012 report by the National Low Income Housing Coalition found that the currently expired federal Protecting Tenants at Foreclosure Act, which provided protection to renters subject to eviction due to foreclosure, was successfully used by 90 percent of surveyed legal services attorneys to halt or avoid eviction of their clients.104

Evictions also lead to homelessness indirectly.

Eviction is not only a direct and immediate cause of homelessness but also triggers a flood of other obstacles that can increase the risk of homelessness in the future. The scramble to find replacement housing can force people to pay more than they can afford, for substandard housing in worse neighborhoods.105 An eviction on someone’s record may also serve to bar her from a number of housing options for extended periods. Even some public housing authorities deny admission and assistance to tenants with histories of eviction.106

Evictions may also result in job loss. In North Dakota, evicted renters are 15 percent more likely to lose their employment.107

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93 Final-6.21.17.pdf.
94 Id. at 27.
95 Coyle, E.F. (2017), Experiencing Homelessness in Puyallup, Saint Martin’s University, Lacey, WA.
96 The Importance of Representation in Eviction Cases and Homelessness Prevention, supra note 83.
97 Id.
98 NYC Housing Help Program, Homelessness Prevention Pilot Final Report (June 2010) (finding that 47% of the families in homeless shelter were there due to eviction).
100 Evictions: The Hidden Housing Problem, supra note 73.
102 Id. at 6.
103 Id. at 13.
105 Unaffordable America: Poverty, housing, and eviction, supra note 53.
106 D. James Greine et al., The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future, 126 Harv. L. Rev. 901 (2013).
In Milwaukee, displaced renters were 20 percent more likely to lose their jobs.\textsuperscript{108} This can result from a number of factors including forced relocation away from a renter’s job site or absenteeism while protecting belongings or looking for storage or housing.\textsuperscript{109}

Forced evictions can have a devastating impact on the lives of children and families. Research from Matthew Desmond shows that mothers who experienced a recent eviction are over twice as likely to report poor health in their children, as well as higher rates of depression.\textsuperscript{110} Housing instability has even been shown to lead to preventable hospitalizations.\textsuperscript{111} Moreover, eviction can affect children’s ability to succeed in school. Not only is school attendance vulnerable to interruption, “[i]t is difficult for children to concentrate at school when they have lost their clothes and toys and do not know where they will sleep that night.”\textsuperscript{112}

\textbf{Case In Point}

All six families in Dora’s apartment complex were given eviction notices and had 30 days to move out. When they fought back, the landlord let them stay but increased the rent from $1,000 per month to $2,500.

“All of us have lived in the building for five years or more. Many of us have kids. If we have to leave, I will be forced to move outside the city because we can’t afford rent anywhere else. My daughter would have to leave Boston Latin School.

“She worked so hard to get a place there, and it would break my heart to take her out. Moving would also make it difficult for my husband and me to get to work, and the time spent commuting would take us away from our children.”

-Dora Sandoval (Roxbury, MA)\textsuperscript{113}

Homelessness can also be a matter of life and death. Exposure to outdoor elements can threaten human survival, as tragically evidenced in the recent story of an Oregon woman who froze to death after she was evicted from senior housing over $338 in late rent.\textsuperscript{114}

\textbf{Discriminatory barriers to housing cause and prolong homelessness}

Once a low-income renter has been displaced from her housing, finding replacement housing can be exceedingly difficult. She is back in the competitive rental market where total rental vacancies may be few, and affordable rentals even fewer. Moreover, a low-income renter seeking housing may face a number of unjustifiably discriminatory rental admission policies that can bar housing access even if she finds an appropriate vacant unit.

\textbf{Tenant Screening for Eviction Records and Criminal Records}

Before landlords rent out their properties, they often engage in a process known as “tenant screening.” The cost of the screening process is normally charged to the prospective tenant, which can itself be a barrier to housing access for low-income renters. The screening report often includes credit information, criminal history, and any history of eviction. Landlords rely upon these reports to determine whether to rent to a prospective tenant. These sources, however, do not always produce accurate or complete information.\textsuperscript{115} For example, such a report may include an eviction case that the tenant won or that was dismissed by the court.

Housing court records are publicly accessible, and a prospective tenant’s housing court history can create serious barriers to finding housing—especially in competitive rental markets.\textsuperscript{116} Companies that collect housing court information and sell them to landlords often recommend turning down a tenant based on their housing court history.\textsuperscript{117} Even tenants who were faultless in the underlying case may be passed over for rentals, and sometimes these records contain inaccurate information. This can function effectively as a “blacklist” against tenants with evictions on their record.\textsuperscript{118}

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\footnote{108} Desmond, \textit{Unaffordable America: Poverty, housing, and eviction}, supra note 53.
\footnote{109} Id.
\footnote{110} Id.
\footnote{111} \textit{Investing in Housing for Health Improves Both Mission and Margin}, supra note 63.
\footnote{112} \textit{North Dakota Case Study}, supra note 107.
\footnote{114} bloomsmag.com/oregon-woman-evicted-from-senior-housing-for-328-in-late-rent-freezes-to-death-in-parking-garage/
\footnote{116} Id.
\footnote{117} Id.
\footnote{118} Id.
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Indeed, it is common for landlords to have a blanket policy denying applications of anyone with a recent history of eviction. These policies deny prospective tenant applications even where the tenant was faultless in the underlying eviction case. For example, responsible renters evicted from housing when their rental units are foreclosed upon—even when they had been paying timely rent and abiding by the terms of their lease agreements—had no ability to prevent the foreclosure that led to their eviction, yet the blemish on their rental history may serve as a bar to any future housing in the rental market. This is particularly concerning given that, according to national data from Apartment List, evictions are most common in areas hardest hit by the foreclosure crisis.119

Policies that deny rental applications solely on the basis of prior eviction often have a disproportionate impact on poor women of color. Tenants in Washington State filed a Fair Housing Act challenge to a landlord’s blanket policy of denying all tenants with any housing court history. The lawsuit alleged that Blacks were almost four times likelier than whites to have been sued in eviction cases, with Black women being over five times more likely than white men to have been sued.

Similarly, renters with criminal records often face discrimination in access to rental units. While there may be some crimes that create a legitimate risk for landlords, blanket policies that exclude people with any criminal conviction are unjustifiably overbroad. Particularly in the current era of mass criminalization and incarceration, millions of people are excluded from housing based on convictions that are wholly unrelated to their ability to be responsible renters. Convictions for misdemeanor traffic offenses, for example, may bar a renter’s access to housing despite a lack of connection between ability to drive a car and to responsibly rent a home.

Policies that discriminate against people with criminal convictions disproportionately affects poor men of color. Black and Hispanic men are incarcerated at much higher rates than their share of the general population, and are thus likelier to experience criminal records-based barriers to housing.120 Because of this disparate impact, blanket policies that bar renters with criminal histories likely violate the Fair Housing Act.121

Discrimination Based on Housing Status or Source of Income

A rental applicant who is currently experiencing homelessness or has done so in the past has a number of challenges in trying to find housing. According to a 2014 survey of 142 homeless individuals in the Washington, D.C., metropolitan area, over 90 percent of respondents reported that they had been discriminated against due to their housing status.122 It can be difficult to find decent housing without a current address or rental history, without landlord references, or credit history. People with experience of homelessness also face discrimination rooted in myths about their personal characteristics.

“If we want to put people on the path to stable housing, we must end discrimination that creates another barrier in the way of people seeking to improve their situation.”

–David Grosso, District of Columbia At-Large Councilmember123

For a number of people, the receipt of a Housing Choice Voucher (HCV) or Social Security Disability Insurance (SSDI) can signal a long-awaited escape from homelessness. But they can face additional discrimination when attempting to rent with these legal, and guaranteed, sources of income.

A 2017 article in the Journal of Planning Literature reported that source of income discrimination laws, which prohibit landlords from refusing to rent to people with housing subsidies, increased renters’ likelihood of locating housing by 12 percent.124

The federal Housing Choice Voucher program, commonly referred to as “Section 8” grants recipients a voucher that allows them to rent where they wish in the private market. With a housing voucher, renters are typically required to pay only 30 percent of their income toward rent, with most or all of the remaining amount subsidized through housing assistance payments made through local Public Housing Authorities.

119 Salviati, Rental Insecurity: The Threat of Evictions to America’s Renters, supra note 67.
121 Id.
124 Tighe, Source of Income Discrimination and Fair Housing Policy, supra note 43, at 8
Unfortunately, landlords are free to refuse to rent to voucher holders in the majority of the states, and many choose to refuse to rent to Section 8 voucher holders (or other recipients of government assistance) over administrative concerns or prejudice. Because HUD requires most voucher holders to locate a residence within 120 days or risk forfeiting the voucher, discrimination against using this form of income to pay rent can make it difficult for voucher holders to secure housing—especially in desirable neighborhoods. In Chattanooga, Tennessee, around 66 percent of new voucher recipients ultimately lose it due to failure to locate a unit willing to accept it.


POLICY PROPOSALS: RENTERS’ RIGHTS TO REDUCE HOMELESSNESS

In the current housing market, low-income households without subsidized housing face an impossible situation—one that appears to be increasing homelessness. These individuals and families earn too little money to afford market housing and are competing with too many others in the same situation. Their lack of power in the marketplace puts them at the mercy of landlords, and the result is housing instability, inadequate or unhealthy housing conditions, cycles of evictions, and difficulty finding new housing. Stronger legal protections for renters can help correct that imbalance and increase housing stability—in turn preventing homelessness and all of its societal costs.

This section discusses some of the policies that can be enacted at the federal, state, and/or local levels to directly address this imbalance and lead to greater housing stability and fewer experiences with homelessness.

As detailed above, evictions cause homelessness and create further economic and health problems for those who are subject to them. For all of these reasons, it is critical for communities to enact policies that prevent unnecessary evictions. Indeed, preventing and ending homelessness should be major factors in governments’ decision-making processes, laws, policies, and practices related to housing.

The recommended policies below represent some renters’ rights laws that can help to keep rental housing affordable, reduce housing instability and eviction, and prohibit discriminatory rental admission policies. The Law Center invited experts from around the country to submit articles on these recommended policies.

- Laws that limit evictions without just cause.
- Rent stabilization laws can help to address the affordability crisis by reasonably limiting increases in rents.
- Laws guaranteeing a right to counsel in housing cases can help ensure that the rights of tenants are enforced.
- Laws preventing eviction based on foreclosure, incidents related to domestic violence, or no cause at all can help to prevent unjust evictions and keep people stably housed.
- Laws prohibiting discrimination based on a prospective renter’s source of income, such as a federal housing subsidy, can help keep housing affordable for renters by allowing them to more readily afford the cost of private market rental housing.
- Laws prohibiting housing displacement due to nuisance ordinances.
- Laws prohibiting discrimination against renters with eviction histories and criminal records, or that limit dissemination of such information to prospective landlords, can help to remove barriers to housing access.
- Laws prohibiting discrimination against homeless people in rental housing.

There are additional state and local laws that provide additional protections for renters who are survivors of domestic violence not discussed in this report. See e.g., Nat’l Hous. Law Project, Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium (Dec. 2016), http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf.
Stabilize Housing by Preventing Unnecessary Evictions

Critical to preventing homelessness is preventing evictions in the first place. Adopting the law and policy recommendations discussed by experts below can help tenants keep their housing.

Just Cause Evictions and Rent Control

Aimee Inglis, Tenants Together (tenantstogether.org)

Background

Neighborhoods across the United States are being gentrified, displacing low-income tenants en masse and destabilizing housing markets by increasing rents. This process is expedited when landlords are able to evict low-income tenants without good cause. Without limitations on rent increases or no cause evictions, landlords are free to raise rents however much they want and evict good tenants for no reason at all.

In gentrifying neighborhoods, building additional housing tends to increase prices, even as it increases supply. Instead of making market-rate homes more affordable over time, gentrification leads developers to buy and turn available housing into higher-end units that do not benefit low-income tenants. A single new high-cost building (or other development) can increase demand amongst higher-income groups for housing in that neighborhood. These groups, over time, are able to outbid current residents on all types of housing, from older single-family homes to apartments.

While gentrification causes numerous problems including the dispersal of long-standing communities, it also increases costs for low-income residents who either have to pay more in order to stay in the same place or potentially experience the cost of moving to a distant neighborhood with higher daily transportation costs. Gentrification also reduces productivity, as competition for limited housing pushes tenants and job-seekers away from centers of economic activity.

Policy Proposal: Just Cause Eviction Laws and Rent Control

In order to stem the tide of rising rental costs and eviction of low-income tenants, states and localities should adopt just cause eviction and rent control policies. While these are two distinct protections, they often complement each other and provide critical protections to tenants who need stability when their communities are undergoing rapid gentrification. These protective provisions prevent sudden evictions, protect tenants in short-term leases, hinder rapid rent increases, and stabilize communities by decreasing turnover rates.

Rent control or stabilization establishes reasonable annual increases, meaning landlords cannot raise rents more than a small, reasonable percentage each year, typically based on a percentage of Consumer Price Index/inflation. Rent stabilization laws like those in California can prevent rent gouging and displacement while still allowing for a fair return on investments.

Studies show rent control provides tenants with housing stability. Modern rent control laws have no negative impacts on the quality and quantity of rental units. Rent control does not increase rent overall and does not distort the rental market. On the contrary, eliminating rent control can lead to a dramatic increase in the costs of all housing, including formerly rent controlled and uncontrolled units. A 2011 study found that more housing was built after rent control was enacted. Accordingly, the boom and bust cycles of local housing construction are driven by the overall health of the economy, not rent control.

Just cause eviction laws require landlords to give a reason for evicting tenants. Just cause eviction laws have been shown to motivate landlords to increase and improve maintenance of rental housing and to stabilize rental markets. Just cause eviction laws have been enacted in the form of state statutes or local ordinances. When the tenant is not at fault for being evicted, some just cause ordinances require landlords to cover the tenant’s relocation costs. In these jurisdictions, landlords

136 Jessica Floum, Portland Landlords Must Pay Relocation Costs To Evict Tenants Without Cause, The Oregonian, Feb. 2, 2017, http://www. oregonlive.com/politics/index.ssf/2017/02/portland_landlords_must_pay_re.html; see e.g., City and County of San Francisco Rent Board,
may be required to provide relocation assistance to each authorized occupant of the household being evicted. Just cause laws in most jurisdictions allow for landlords to evict tenants for numerous reasons including criminal activity, violation of house rules, refusal to allow landlord on the premises, excessive disruptions of others’ quiet enjoyment, damage of property, and failure to pay rent.137

The efficacy of each just cause eviction policy differs based on the types of housing units that are protected, the tenant’s rights when faced with eviction, and the legal process for eviction.138 These provisions are particularly helpful for tenants with month-to-month leases, low-income individuals and families, people of color, persons with disabilities, elderly persons, and those living in housing that have been foreclosed.

Just cause for eviction ordinances in 19 California cities, including Los Angeles, Oakland, San Francisco and East Palo Alto, protect countless low-income tenants from displacement.139 In East Palo Alto, for example, Community Legal Services of East Palo Alto (CLSEPA) tracked their caseload over an eight-month test period in 2014 and found that the just cause eviction ordinance has had the effect of increasing the number of tenants who were able to avoid eviction and stay in their homes.140

Advocacy Tips and Resources
Rent control and just cause eviction protections are generally met with a lot of hostility and false information, so dispelling myths may be necessary.

**Myth:** Rent control will inhibit new development.

**Fact:** Cities with rent control in California have some of the highest rates of development in the state.141

**Myth:** Rent control costs money.

**Fact:** Programs are funded through a small per unit fee on landlords.142

**Myth:** Just cause eviction laws make it harder for landlords to evict bad tenants.

**Fact:** Just cause eviction laws allow eviction for nonpayment of rent or tenant misconduct.

Before beginning advocacy, check first to make sure your state or local jurisdiction does not have laws that undermine tenant protections or prevent you from enacting laws that strengthen renters’ rights. In California, for example, the effectiveness of rent control laws are restricted by other state laws. In many states, rent control is banned at the state level.

Housing is a human right. Our laws need to start to treat it as such, instead of as a simple consumer good. Just cause eviction laws and rent control can help shift things in the right direction.

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138 Equitable Development Toolkit, supra note 130, at 2-3.
140 Management Partners, Rent Control and Just Cause Eviction: Review of Programs (June 2017), available at https://fremont.gov/RentResearchReport ("Over the test period CLSEPA obtained “pay and stay” settlements (where the tenant agrees to a rent increase and is not evicted) for 70% of cases in East Palo Alto. However, in all other San Mateo County [where there are no just-cause for eviction ordinances] cities pay and stay settlements were achieved in only 14% of cases.").

141 Haas Institute, Rent Control: The Key to Neighborhood Stabilization?, http://haasinstitute.berkeley.edu/rent-control-key-neighborhood-stabilization ("When we looked at housing production numbers from 2007 to 2013, the six cities that had rent control in the Bay Area actually produced more housing units per capita than cities without rent control."); Stephen Barton, Benefits of Rent Stabilization: A Brief Overview (Feb. 28, 2017), https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/101065, (“In the San Francisco Bay Area construction of multi-family housing is substantially higher in cities with rent stabilization than in cities without it.").

142 See e.g., Tenants Together, Communities Thrive with Rent Control at 2, 6, https://actionnetwork.org/user_files/user_files/000/004/357/original/Complete_Rent_Control_toolkit_final.pdf (the cost of administering the program can be funded through a small per unit fee paid by landlords or passed on to tenants).
Right to Legal Representation in Eviction Cases

John Pollock, National Coalition for a Civil Right to Counsel (civilrighttocounsel.org)

Background

In most housing courts around the country, very few renters appear with counsel, whereas landlords are virtually always represented. For instance, until recently only 1 percent of tenants in New York City had a lawyer, compared to 99 percent of landlords.\(^{143}\) As a result, many tenants with meritorious defenses to evictions lose their homes because they do not know how to assert such defenses. Additionally, when unrepresented tenants square off against the landlord’s attorney, the judge often finds the landlord’s attorney to be more credible. Vulnerable tenants, such as the elderly and those with disabilities, may not be provided the necessary time to relocate and ensure their belongings do not wind up on the street. Finally, the systemic and massive imbalance of representation, when combined with the sizable eviction dockets, has caused a culture shift in the courts: it is considered normal for tenants to be shunted en masse into the hallway with the landlords’ attorneys in order to be pressed into an inequitable settlement instead of having a full and fair hearing before the judge.

The line between eviction and homelessness is plain: substantial numbers of individuals and families live in homeless shelters as the direct consequence of an eviction.\(^{144}\)

Policy Proposal: Legal Representation for Tenants Facing Eviction

Providing tenants with legal representation to help avoid an eviction and the risk of subsequent homelessness makes a significant difference in a variety of ways. First and foremost, lawyers can ensure the eviction is lawful and that any defenses to the eviction are effectively asserted. Second, by having a lawyer as the landlords do, tenants can overcome the “credibility” gap described above. Third, even where a tenant lacks a defense to the eviction, there are many things a lawyer can do to secure relief for the client that may help prevent homelessness, such as: a) negotiate effectively for the extra time needed to secure alternative housing and avoid gap homelessness; b) negotiate a settlement whereby the eviction will not appear on the tenant’s record (which helps significantly in finding new housing); and c) help the tenant apply for public housing or rental subsidies.

Fourth, if landlords know that tenants will be routinely represented (as opposed to occasionally, as is the present case), they may not choose to file unlawful evictions in the first place.

Numerous studies have shown that the presence of counsel has a substantial impact on outcomes for eviction cases. For instance, a recent study in Massachusetts found that tenants with full representation were twice as likely to retain possession even when compared to those who received limited legal assistance.\(^{145}\)

The Pro Bono and Legal Services Committee of the New York City Bar Association commissioned a similar cost/benefit analysis related to a proposal to provide a right to counsel in eviction proceedings. The report concluded that implementation of a right to counsel would not only reduce evictions by an estimated 77 percent when legal counsel is provided, but would also produce a net cost savings to the city of $320 million. This evidence helped lead to the first law in the nation establishing a right to counsel in eviction cases. In August 2017, New York City Mayor Bill de Blasio signed Intro 214-b into law, which guarantees counsel for all eviction defendants at or below 200 percent of the federal poverty level.\(^{146}\) Additionally, 2017 saw the passage and/or introduction of other legislation to expand housing representation, such as D.C’s

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\(^{144}\) See e.g., NYC Housing Help Program, Homelessness Prevention Pilot Final Report (June 2010), available at https://www.nycourts.gov/ip/nya2010/housinghelp/HousingHelp.pdf (finding that 47% of the families in Homeless shelter were there due to eviction).


\(^{146}\) Nat’l Coalition for a Civil Right to Counsel, NYC is First Place in Country to Provide Right to Counsel to Tenants in Housing Court (Aug. 11, 2017), http://civilrighttocounsel.org/major_developments/894.

Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires that State Parties undertake “to guarantee . . . [t]he right to equal treatment before the tribunals and all other organs administering justice.” In paragraph 23 of its 2014 Concluding Observations on the United States, the CERD Committee:

> reiterate[d] its concern at the lack of a generally recognized right to counsel in civil proceedings (para.22), which disproportionately affects indigent persons belonging to racial and ethnic minorities, and hinders their seeking an effective remedy in matters such as evictions ...\footnote{San Francisco Right to Counsel Committee, http://www.sfrighttocounsel.org/.}

The Committee also recommended that the United States “allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions”\footnote{Report of the Rapporteur on Extreme Poverty and Human Rights, A/67/278 ¶¶ 61, 62 (Aug. 9, 2012).} Additionally, the interpretive body of the International Covenant on Civil and Political Rights (ICCPR) issued General Comment No. 32, which explains that Article 14 of the ICCPR focuses on the right to equality before courts and tribunals and to a fair trial. In discussing the right to counsel in this context, the Comment stated that “[s]tates are encouraged to provide free legal aid in [non-criminal cases], for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so.”\footnote{Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, P 1, Nov. 4, 1950, 213 U.N.T.S. 221.} Finally, the U.N. Special Rapporteur on Extreme Poverty and Human Rights has observed that “Lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example when they are unable to contest tenancy disputes [and] eviction decisions”, and that “free legal aidh should not only be provided in criminal matters, but also in civil matters when individuals do not have sufficient resources to pay for legal assistance and, without such assistance, they are prevented from asserting their rights.”\footnote{Airey v. Ireland, 2 Eur.H.R.Rep. 305 (1979-80) at P 24-26.}

The right to counsel in civil matters is firmly established in Europe. The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), ratified by forty-nine countries of Europe, provides that “everyone is entitled to a fair and public hearing” to determine civil rights and obligations.\footnote{Lua Kamal Yuille, No One’s Perfect (Not Even Close): Reevaluating Access to Justice in United States and Western Europe, 42 Colum. J. TransNat’l L. 863 (2004).} In 1979, the European Court of Human Rights ruled in Airey v. Ireland that to satisfy the requirements of fairness, governments may be required to provide free legal counsel to low income clients.\footnote{Report of the Rapporteur on Extreme Poverty and Human Rights, A/67/278 ¶¶ 61, 62 (Aug. 9, 2012).} Consistent with this mandate, many countries, including Italy, Spain, Portugal and the Netherlands have statutes that explicitly mandate the right to counsel for indigent litigants in civil proceedings.\footnote{Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, P 1, Nov. 4, 1950, 213 U.N.T.S. 221.} Two-thirds of the countries in the Council of Europe recognize a right to counsel in civil cases, including housing.

**Advocacy Tips & Resources**

There is no question that Intro 214-b in New York City benefited from a confluence of several things: 1) the appointment of a long-time legal services lawyer as Commissioner of the New York City Human Resources Administration; 2) the election of a progressive Mayor who ran on a platform of ending homelessness within the City (and who later may have seen the right to counsel as a way to stake out a progressive national leadership position in response to the Trump Administration); 3) a grassroots, tenant-led effort that collaborated effectively with the legal aid community;\footnote{Id.} 4) a report by an independent financial services company stating that Intro 214-b would save the City $320 million every year;\footnote{Report of the Rapporteur on Extreme Poverty and Human Rights, A/67/278 ¶¶ 61, 62 (Aug. 9, 2012).} 5) the release of a report by the NYC Office of Civil Justice showing that the City’s initial investment of $53 million in eviction defense resulted in a 24 percent decrease in evictions; and 6) the continued rise of homelessness after the Mayor took office (which was covered heavily by the media). Critical allies included the City Comptroller, the Chief Judge of the New York Court System, borough presidents, the City Bar Association, and constituency groups such as AARP.

\footnotesize{147} Nat’l Coalition for a Civil Right to Counsel, D.C. Enacts Expanding Access To Justice Act Of 2017 (July 12, 2017), http://civilrighttocounsel.org/major_developments/1031.\hfill
\footnotesize{148} Nat’l Coalition for a Civil Right to Counsel, Philly City Council funds expanded counsel for tenants (June 29, 2017), http://civilrighttocounsel.org/major_developments/1034.\hfill
\footnotesize{150} San Francisco Right to Counsel Committee, http://www.sfrighttocounsel.org/.\hfill
\footnotesize{151} Concluding Observations on the Combined Seventh to Ninth Periodic Reports of United States of America, CERD/C/USA/CO/7-9 CERD ¶ 23 (Aug. 2014).\hfill
\footnotesize{152} Id.\hfill
\footnotesize{155} Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 6, P 1, Nov. 4, 1950, 213 U.N.T.S. 221. \hfill
\footnotesize{156} Airey v. Ireland, 2 Eur.H.R.Rep. 305 (1979-80) at P 24-26. \hfill
\footnotesize{158} Right to Counsel Coalition of NYC, http://www.righttocounselnyc.org/. \hfill
\footnotesize{159} Ross, The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A, supra note 79.
**Protections for Tenants in Foreclosed Properties**

Elayne Weiss, National Low Income Housing Coalition (nlihc.org)

**Background**

Inappropriate lending, falling home prices, and high unemployment have led to a very high number of foreclosures across the U.S. in the past ten years. However, the impact of these foreclosures is not limited to homeowners; renters lose their homes every day when the owner of the home they are renting goes into foreclosure. In fact, one in five properties in the foreclosure process is likely to be a rental. Further, research from the National Low Income Housing Coalition (NLIHC) concludes that, since these properties often contain more than one unit, and many owner-occupied properties also house renters, roughly 40 percent of the families facing eviction as a result of the foreclosure crisis were renters. These families often have no idea that their landlord has fallen behind on mortgage payments, and they have usually continued to pay their rent even as their landlord has failed to pay the mortgage.

Unlike homeowners, who have some indication that a foreclosure is coming, renters are often caught entirely off guard. As might be expected, very low-income families and low-income and minority communities bear the brunt of rental foreclosures. Analysis from NLIHC shows that for four states in New England, the census tracts with the lowest percentage of white individuals and the highest percentage of households that are under the poverty line have the highest foreclosure rates. Multi-family foreclosures, which more often than not impact at least some renters, also occur in these high-poverty, high-minority census tracts.

**Policy Proposal: the federal Protecting Tenants at Foreclosure Act (PTFA) or state/local equivalents**

Prior to May 2009, protections for renters in foreclosed properties varied from state to state, and in most states, tenants had few protections. The National Law Center on Homelessness & Poverty (Law Center) and NLIHC issued a joint report on the foreclosure and eviction laws in each state and the District of Columbia. Recognizing the hardships experienced by tenants in foreclosed properties, Congress acted in early 2009 to provide a basic set of rights for such tenants. Before the enactment of Protecting Tenants at Foreclosure Act in May 2009, it was legal in most states for tenants to be required to vacate a foreclosed rental property with only a few days’ notice.

On May 20, 2009, President Obama signed PTFA into law. The PTFA was extended and clarified in the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, the law expired on December 31, 2014.

Under the PTFA, most tenants had the right to remain in their home for the remainder of their lease, or at least 90 days. Tenants with Section 8 Housing Choice Voucher assistance had additional protections, which allowed them to retain their Section 8 lease and required the successor in interest to assume the housing assistance payment contract associated with that lease. The PTFA applied to all foreclosures on all residential properties; traditional one-unit single-family homes were covered, as were multi-unit properties. The law applied in cases of both judicial and nonjudicial foreclosures. Tenants with lease rights of any kind, including month-to-month leases or leases terminable at will, were protected as long as the tenancy was in effect as of the date of transfer of title at foreclosure.

The PTFA applied in all states but did not override more protective state laws. The PTFA specifically provided that it did not affect “any [s]tate or local law that provides longer time periods or other additional protections for tenants.”

With the expiration of federal protections on December 31, 2014, however, state and local law now comprise the only protections available for renters living in foreclosed properties.

At the time of writing, during the 115th Congress, Representative Keith Ellison (D-MN) and Senator Richard Blumenthal (D-CT) introduced legislation (H.R. 915/S. 325) to renew the PTFA and make the law permanent. At the end of 2017, the Senate Banking Committee passed the “Economic Growth, Regulatory Relief and Consumer Protection Act” (S. 2155) that included provisions that would restore the PTFA permanently (which NLIHC does not support due to other provisions within the bill). It remains to be seen whether restoring the PTFA permanently will be approved by the full Senate and House of Representatives.

NLIHC urges Congress to support, resume, and extend the PTFA protections for renters facing foreclosure by passing H.R. 915 and S.325.

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161 Id.


164 Public Law 111-22, division A, title VII.

165 Public Law 111-203, section 1484.

166 Elayne Weiss, Protecting Tenants at Foreclosure (2017), supra note 160.
Advocacy Tips & Resources

Beginning in late 2014, in anticipation of the expiration of the federal PTFA, the Law Center joined with Florida-based renters’ and consumers’ advocates to lobby for new state-level protections of renters in foreclosed properties. The advocates, located throughout Florida, shared local data and stories demonstrating the need for a uniform state law response to the problem of rental home foreclosures in diverse housing markets. The Law Center helped connect these advocates with successful lobbying campaigns in other states, which provided assistance in crafting legislative advocacy and communications strategies. These tactics, along with strong local leadership, broad-based support from statewide and regional legal aid organizations, and a willingness to negotiate resulted in longer notice requirements before tenants in foreclosed properties may be required to move. The bill, HB 779, was signed into law on June 2, 2015.

Advocates are encouraged to work to pass local and state bills that protect renters in foreclosed properties, including legislation modeled after the PTFA.

Passing such protections in more states and localities will require working with a variety of housing stakeholders, including banks and real estate professionals. The National Housing Law Project has compiled California state laws and local ordinances protecting tenants in foreclosed properties, and the Law Center has a list of state laws enacted to protect the rights of tenants in foreclosure since the PTFA.  

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Stopping Evictions Caused by Nuisance Ordinances
Sandra S. Park, American Civil Liberties Union (aclu.org/notanuisance)

Background

Across the country, thousands of municipalities have adopted local nuisance ordinances that severely undermine the rights of renters. These ordinances, also known as crime-free or disorderly house laws, impose penalties based on calls for police service or criminal activity occurring at a property without regard to whether the resident or caller needed emergency assistance or was the victim of the alleged crime. They typically require the landlord to abate the nuisance or face steep fines, loss of rental permits, property closure, or criminal consequences.168 Eviction of the entire household is the most commonly deployed means of nuisance abatement.169

Because calling 911 can trigger the ordinance, these laws threaten the housing of victims of crime and people who need emergency aid and chill them from accessing police services. They are especially likely to harm survivors of domestic violence who may seek protection from repeated acts of abuse.170 Landlords end up removing victims of domestic violence and other crimes from their homes, even when the perpetrator did not live at the property.

Research conducted on Milwaukee, Wisconsin’s ordinance concluded that calls about domestic violence were the third most common reason for a nuisance citation.171 In 83 percent of cases where landlords received a citation, they evicted or threatened to evict victims if they called police again.172 A study of two upstate New York ordinances similarly concluded that domestic violence made up the largest category of incidents resulting in nuisance enforcement, frequently leading to eviction.173

In addition, nuisance ordinances jeopardize the housing of people of color and persons living with disabilities. The Milwaukee study showed that a tenant living in a majority-Black neighborhood was three times more likely to receive a nuisance citation compared to a tenant in a majority-White neighborhood who also had violated the ordinance.174 Advocates and researchers likewise have documented the disparate impact of these ordinances on people of color and people with disabilities in Illinois, Missouri, and Ohio.175

Story

Lakisha Briggs, a resident of Norristown, Pennsylvania, was assaulted by her boyfriend and told by a police officer that more 911 calls would lead to her eviction.176 At that time, the local ordinance penalized landlords and tenants when the police responded to three instances of disorderly behavior, including domestic violence, within four months. Lakisha stopped reaching out for protection, and the violence escalated. She did not even call 911 when she was stabbed, but her neighbor did. The city pressured the landlord to evict Lakisha and her young daughter for violating the ordinance.

In 2013, represented by the ACLU, Lakisha filed a federal lawsuit against the city. Her case garnered significant media attention on the dire consequences of nuisance ordinances.177 This led to an outpouring of public opposition to the ordinance from state and federal lawmakers.178 In September 2014, the parties settled the suit, with full repeal of the law by Norristown and $495,000 in damages and attorneys’ fees to Lakisha.179 A couple of months later, Pennsylvania enacted a state law following

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169 Werth, supra note 168, at 8, 19 n.72.
171 Desmond & Valdez, supra note 170, at 130.
172 Id. at 133.
173 Silenced, supra note 168, at 2.
174 Desmond & Valdez, supra note 170, at 125.
advocacy from the Pennsylvania Coalition Against Domestic Violence, ACLU, and others that preempts similar ordinances.\textsuperscript{180} This work in Norristown also fueled advocacy the ACLU led at the federal level, resulting in guidance from the U.S. Department of Housing and Urban Development on the serious Fair Housing Act problems with local nuisance and crime-free laws.\textsuperscript{181}

**Policy Proposal: Get Rid of Nuisance Laws**

The simplest policy solution is for municipalities to refrain from adopting local nuisance laws in the first place, or to repeal those on the books. Many municipalities have chosen to rescind these laws once they understood the impact on community trust, housing stability, and law enforcement effectiveness.

Some municipalities have taken a narrower approach by including an exception for domestic violence victims. In our experience, these exceptions are ineffective. Even in cities with a domestic violence exception, domestic violence victims still are punished. It may not be evident to officials assessing the situation that the calls or criminal activity involved domestic violence, as domestic violence often is characterized as other offenses, including noise, property damage, or disorderly conduct. In addition, in cases involving self-defense, victims of long-term abuse may be labeled as perpetrators. Moreover, it is vital for community safety that all people who need emergency assistance can access it.

For these reasons, advocates have supported state legislation that guarantees the right of all people to seek emergency aid without fear of penalty from nuisance ordinances. The ACLU and its partners successfully supported legislation in Iowa and Pennsylvania that preempt local laws that impose penalties on tenants and landlords because they sought emergency services.\textsuperscript{182} Similar protections exist in Minnesota and Indiana.\textsuperscript{183}

The United States has signed but not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 14(2) of CEDAW states that “Parties shall … ensure to such women the right: … To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

Local nuisance ordinances that lead to evictions disproportionately affect women of color who are victims of domestic violence and/or sexual assault. A 2015 report of the CEDAW working group noted concerns about how the United States addresses gender-based violence and women victims of multiple forms of discrimination.\textsuperscript{184} In particular, the report “pointed out that victims of domestic violence were often among the homeless, either because they had been evicted as a result of the violence or because they had fled from their violent partner.”\textsuperscript{185} The report urged the United States to ratify CEDAW to confirm the U.S. commitment to provide all women with rights and protections guaranteed under CEDAW.

**Advocacy Tips & Resources**

Effective advocacy to challenge local nuisance ordinances should combine coalition-building and public education, policy advocacy, and litigation.

Confronting local nuisance ordinances presents a unique opportunity to build coalitions. The issue often unites landlords and tenants, as both face unfair punishment under these laws. Law enforcement in many communities will support repeal of these laws, as they undermine the willingness of community members to report crime and divert police resources toward enforcing the nuisance law. Advocates for housing justice, domestic violence survivors, racial equity, disability rights, and civil liberties can build partnerships, given the myriad ways these ordinances damage communities.

A key first step that coalitions can take is educating stakeholders about these ordinances. In many communities, few people are aware that these ordinances exist until they are caught up in their enforcement. Identifying ordinances in a jurisdiction, learning about their implementation, and informing people of their effects are important measures that can fuel advocacy on the local and state levels to address nuisance laws.

Furthermore, litigation can be a strategic tool to fight these ordinances. The ACLU and others have brought lawsuits challenging these ordinances based on violations of the First Amendment right to petition the government, due process

\textsuperscript{182} Iowa Code §§ 562.27A & 562B.25A(3); 53 Pa. Cons. Stat. Ann. § 304 (provides protections for any resident, tenant, or landlord who faces penalty under a local ordinance because police or emergency services responded to abuse, crime, or an emergency at a property, as well as authorizing remedies in court against any municipality that violates these protections).
\textsuperscript{185} Id.

nlchn.org
and equal protection guarantees, the Fair Housing Act, and the Violence Against Women Act. Cases in Arizona and Pennsylvania resulted in repeal of the challenged ordinances, along with significant compensation and attorneys’ fees.\footnote{186} A New York appellate court struck down a local nuisance ordinance because it could punish people who reached out to the police, in violation of the First Amendment.\footnote{187}

The ACLU has worked to challenge nuisance ordinances in over a dozen states. We are happy to provide support and collaborate with others engaging in this work in their communities.


Removing Barriers to Rental Housing

Equally important to preventing homelessness is adopting laws and policies that remove barriers to obtaining rental housing, as discussed by experts below.

Eviction Record Expungement
Eric Dunn, Virginia Poverty Law Center (vplc.org)

Background

When a residential landlord files an eviction lawsuit to remove a tenant, the court information becomes public and will generally be available to “consumer reporting agencies,” such as tenant background check companies. This means when a tenant who has been sued for eviction later applies for rental housing somewhere else, and the new landlord orders a screening report about that person, the background check company will find the court record and produce a report showing that the tenant has been sued for eviction. About 90 percent of landlords use tenant-screening reports in deciding whether to accept applicants, and 85 percent of landlords review eviction records.188

Rental housing providers often disfavor applicants with eviction case records. Many deny any admission to any prospective tenant whose screening report reveals an eviction suit, regardless of the circumstances or even the outcome of the case. As the founder of On-Site Manager, Inc., one of the nation’s largest tenant-screening companies, once told the New York Times: “It is the policy of 99 percent of our customers in New York to flat out reject anybody with a landlord-tenant record, no matter what the reason is and no matter what the outcome is, because if their dispute has escalated to going to court, an owner will view them as a pain.”189 A more recent nationwide survey of landlords revealed that “eviction history [is] the second-most important factor in making a leasing decision, right after income and employment history.”190

Eviction itself, of course, is often a direct, proximate, and final cause of homelessness. But when housing providers deny admission to rental housing because an applicant was evicted from previous residence weeks or months or even years later, then the record of that eviction becomes a formidable barrier to leaving homelessness.

Even though most evictions relate to tenants’ financial circumstances, landlords do tend to treat eviction records differently than other financially related characteristics. For instance, an applicant who has more collection items or delinquent accounts than a landlord allows will typically be approved upon paying off those collection items. An applicant who earns enough wages to meet the landlord’s required income-to-rent ratio (typically 5:2 or 3:1) will almost certainly not be denied admission for having been unemployed months or years ago. Yet eviction records linger—an old case may still cause an applicant to be rejected up to seven years later—and potentially even longer if a judgment was entered.192

Case in Point

Beatrice left her job just before the 2008 financial crisis and was unable to find another job. She was evicted into homelessness. She now has a full-time job but has found her housing choices limited because of her eviction record.

“I work with homeless families trying to find housing, and because of my eviction, I am in the same situation that they are in. Even though I am single, 59, and make over $50,000, I am forced to live in an apartment where I don’t feel safe. I can only dream of getting into a nice gated community. Because of my eviction, I can’t even get into a senior apartment. I have two degrees, 30 years of work and rental history, but I am made to feel like a criminal. This is not how I thought I would end up in my late 50’s.”—Beatrice M. Hogg (Sacramento, California) 191


Case In Point

Cassie’s landlord attempted to evict her without cause. Cassie responded that she would move out and the eviction would not be necessary, and the landlord agreed not to file. However, the landlord continued to send threatening emails and filed the lawsuit behind her back. Although the judge saw the emails and vacated the eviction, the eviction still affects Cassie’s credit, and now she needs a letter from her lawyer explaining her low credit score to find an apartment.

“But unfortunately even if you get an eviction vacated, it is still on your credit report which is needed to rent most properties. Now to apply for an apartment, I will need a letter from my attorney about how this eviction was vacated in court.” --Cassie Bohannon (Seattle, Washington)193

Eviction records are an especially unreliable way to predict a tenant’s future performance.

1. Eviction lawsuits are usually filed against every adult member of a household—not just the specific person who may have done whatever it was that prompted the eviction suit. This means a person can acquire an eviction case record based entirely on another person’s conduct—including a person who would not be joining the new household where the applicant is seeking to rent.

2. Eviction records generally show just that a case was filed, not how it was resolved. A tenant could have an eviction record even after successfully winning against an illegal eviction. A record typically represents a landlord’s allegation that a person violated a prior rental agreement—not a judicial determination that such a violation actually occurred. And eviction cases are seldom decided on the merits; rather, most cases are resolved either by default or by settlement.194 Furthermore, there is evidence that landlords are more likely to file eviction against women of color, particularly in certain urban areas.195 Reliance on eviction filings is potentially discriminatory and may even be a violation of the Fair Housing Act.196

3. Perhaps most significantly, most eviction lawsuits are based on non-payment of rent. This should not be surprising, for all the reasons described earlier in this report. Non-payment evictions are most often a function of low wages and the lack of affordable housing—not on the tenant’s irresponsibility or bad intent. But if a person’s financial standing has improved—whether through the acquisition of stable employment, an award of public benefits, a housing choice voucher, or other new resources—then a person’s failure to meet the financial obligations of a past, cost-burdened tenancy is likely not predictive of that person’s ability to perform in a new (potentially non-, or at least less-, cost-burdened tenancy).

Policy Proposal

Reliance on eviction records without additional context means some lower-income individuals and families are denied housing because they are (or were) low-income, not because of irresponsibility, malfeasance, or a character flaw. This barrier means that once someone has experienced an eviction, she will likely have fewer choices and be forced to pay more for a worse unit—making her more likely to face eviction again. It can become a self-fulfilling prophecy.

Some states have begun to permit the expungement of eviction records in certain circumstances. In Washington, tenants who show good cause can obtain “order for limited dissemination” that prohibit screening companies from sharing their eviction case records with landlords.197 California denies public access to eviction case records within the first 60 days after filing, and permanently if the landlord does not prevail.198 Minnesota allows some eviction records to be expunged in certain circumstances.199 Oregon prohibits landlords from denying admission based on dismissed eviction suits or cases more than five years old.200

194 See, e.g., Matthew Desmond, Evicted: Poverty and Profit in the American City, 358 (2016).
196 For an analogous analysis, see Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, supra note 120, at 4.
198 See California Assembly Bill 2819 of 2016.
199 See Minn. Statutes, § 484.014.
200 See Oregon Rev. Statutes, § 90.303(1).
Advocacy Tips & Resources

These promising enactments provide good models for other states to follow but may be politically unrealistic in some states. Another avenue that advocates are beginning to pursue is litigation. Research is beginning to emerge that shows African-American women are disproportionately represented among eviction defendants, particularly in lower-income urban areas. The emergence of this critical demographic research could enable advocates to pursue effective litigation strategies against landlords who categorically exclude eviction defendants using the existing federal Fair Housing Act.

The first case of this kind was filed in 2017 in Seattle, Washington, where (the plaintiffs allege) Black women are more than five-times more likely than white men to be sued for unlawful detainer (i.e., eviction). For this reason, they contend that a landlord policy of automatically denying any applicant with an eviction record disproportionately excludes Black women—which makes the policy unlawful under the Fair Housing Act unless “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” of the landlord. While avoiding problem tenants is likely a substantial, legitimate interest, the plaintiffs contend that rejecting all applicants with past eviction suits is not necessary to achieve that interest because the landlord could evaluate such applicants on a case-by-case basis instead. If successful, this is a strategy advocates can potentially replicate across the country, especially as more demographic data becomes available for analysis.

Where possible, advocates should strive to ensure that eviction remains a one-time crisis—a setback that occurs, ends, and is moved on from. Until then, non-payment evictions can become a step on the path to homelessness.

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201 See Desmond, Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship, supra note 195.
203 24 C.F.R. § 100.500(b)(1)(i).
204 See 24 C.F.R. § 100.500(b)(1)(ii).
Limiting Use of Criminal Records
Marie Claire Tran-Leung, Sargent Shriver National Center on Poverty Law (povertylaw.org)

Background
In the United States, as many as one out of three people have a criminal record.205 In 2016 alone, more than 640,000 people left state and federal prisons, and millions more were processed by local jails.206 For many low-income renters, having a criminal record often poses a significant barrier to obtaining safe, decent, and affordable housing.207 In a 2015 survey of formerly incarcerated individuals, nearly four out of five reported being denied or determined ineligible for housing because of their criminal history.208 It comes as little surprise, then, that for men who have been incarcerated, their risk of homelessness is four times the risk for those who have never been incarcerated.209 These policies also make a return to the criminal justice system more likely because homelessness increases the risk of incarceration, and vice versa. A person in jail is seven to eleven times more likely to have recently experienced homelessness than someone in the general population.210 Similarly, a survey of women in the Cook County Jail in 2004 found that half of the women were either living in unstable housing or experiencing homelessness prior to their incarceration.211 In the absence of evidence that such policies improve public safety,212 policies that perpetuate this revolving cycle of incarceration and homelessness are difficult to justify.

The unfettered use of criminal records in housing is also problematic because it amplifies the racial disparities that run rampant in the criminal justice system. In 2014, for example, while African-Americans accounted for 12 percent of the general population in the United States, they represented 36 percent of the prison population. In contrast, non-Hispanic whites, who comprised more than 60 percent of the general population, represented only one-third of the prison population.213 Housing policies that rely on criminal records, therefore, continue those disparities from the justice system to the housing market.

Policy Proposal: Individualized Assessment
To counteract the overbroad practice of criminal records screening, housing providers must abandon blanket bans that categorically disqualify individuals based on their criminal records. These bans come in different forms (i.e., bans on all criminal history vs. bans on felonies only), but the result is the same: their exclusions rely on the four corners of a background check and little else.214 Instead, the central component of a sound screening policy should be individualized assessments of the applicants. These individualized assessments should consider the circumstances of any underlying criminal activity and whether those circumstances weaken the relevance of the criminal record, such as how long ago it took place and whether the conduct was serious in nature. Other factors to consider are whether the criminal activity arose from the applicant’s status as a person with a disability or a survivor of domestic violence, dating violence, sexual assault or stalking. The individualized assessment should also consider other factors that would outweigh the importance of the criminal record, such as the applicant’s history of education, employment, substance abuse treatment, or community involvement since leaving the criminal justice system. In general, certain types of records should be off-limits, including records of arrests that did not ultimately result in a conviction, juvenile records, and sealed or expunged records. Finally, housing providers should make their criminal records policies transparent to give applicants adequate notice and to prevent them from self-selecting themselves out of the application process.

This emphasis on an individualized assessment over blanket bans has been adopted by a variety of jurisdictions. Most prominently, HUD has stated that housing providers should incorporate individualized assessments into their screening policies to comply with the Fair Housing Act. Although some states have taken steps to create protections for people with criminal records, most of the more protective policies have originated at the local level. The last five years have seen just as many local ordinances passed to increase access to housing for people with criminal records: Newark, New Jersey (2012); San Francisco, California (2014); Richmond, California (2016); Washington, D.C (2016), and Seattle, Washington (2017). Most of these ordinances include provisions that:

1. Prohibit certain housing providers from considering arrest records, juvenile records, and sealed or expunged records;
2. Set time limits on inquiries into a person’s criminal history;
3. Require housing providers to conduct individualized assessments of applicants using multiple factors, such as the nature, severity, and recency of the criminal activity;
4. Install procedural safeguards to add transparency to the decision-making process, such as delaying consideration of criminal history information until after the applicant receives a conditional offer of housing (i.e., “ban the box”).

Of these cities, Seattle stands out as the most progressive because it prohibits landlords from relying on any criminal record, even if a person has been released recently. An exception is made for people who have been convicted of sex offenses, but even in these cases, the landlord must provide a legitimate business justification for denying the application.

Advocacy Tips & Resources

Recent legislative campaigns have benefited greatly from the inclusion and leadership of directly impacted individuals. This is especially true when the goal is increasing housing access for people with criminal records, since misguided fear and myths about criminality can overpower rational discussions about public safety and family reunification. Involving people with criminal records both ensures that the legislation responds directly to the challenges they are facing and compels opponents to respond to lived experiences rather than stereotypes. Examples of successful campaigns led by directly impacted individuals include Seattle, San Francisco, and Richmond.

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215 See HUD Fair Housing Guidance, supra note 213, at 7.
222 Id.
**Source of Income Discrimination**

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**Background**

Source of income discrimination occurs when a landlord denies housing to an applicant because of the type of lawful income the applicant plans to use to pay for the housing. Of particular concern is when landlords deny applicants who will pay for the housing with a Section 8 Housing Choice Voucher, Social Security Disability Insurance, or other income or housing benefits from the government.

Only about one in four eligible low-income families is able to obtain a Section 8 Housing Choice Voucher, and receiving one of these vouchers is an important step toward long-term housing stability. Families with a voucher generally pay 30-40 percent of their monthly income toward rent, and the administering local public housing agency (PHA) pays the remainder of the rent directly to the landlord. To be eligible for the program, housing units must pass inspection, and also have gross rents below the “payment standard” for the area. Once someone receives a Housing Choice Voucher, she is required to find an apartment within the time limit given by the PHA (at least 60 days) or risk forfeiting the subsidy.

But receiving a Housing Choice Voucher is only the first step; families have to overcome other barriers to using their voucher, especially in low poverty neighborhoods. The biggest barrier is the low “fair market rent” level used by many PHAs that tend to restrict vouchers to poor neighborhoods, but discrimination by landlords who refuse to take Section 8, regardless of the rent level, is also a serious barrier. This type of “source of income discrimination” can also affect families receiving other types of federal or state assistance.

Discrimination against families with a Housing Choice Voucher is systemic but can be a particular problem in “hot” rental markets, with rising rents and low vacancy rates. Landlords discriminate against voucher holders because they prefer to rent to higher-earning tenants. If a family is not able to use their voucher to find an apartment that will pass inspection before the voucher expires, they risk losing the voucher and going to the end of the waiting list—increasing their vulnerability to homelessness. Further compounding this problem is the unwillingness of some insurance companies to issue policies to landlords who accept voucher-holding tenants.

In many areas, source of income discrimination has a disproportionately severe effect on groups already likely to face discrimination on the basis of characteristics protected by the Fair Housing Act, such as race and disability. Because of this, patterns of source of income discrimination can also reinforce patterns of residential segregation.

**Policy Proposal: Prohibit Source of Income Discrimination and Provide Incentives**

In response to the problem of Section 8 discrimination (and discrimination against families with other types of government assistance), twelve states and dozens of cities and towns have adopted laws prohibiting housing discrimination against families because of their lawful source of income. In addition, three states provide incentives to promote the acceptance of housing choice vouchers. These laws protect households who rely on legal sources of income such as housing choice vouchers or public benefits to pay their rent—preventing landlords from denying, evicting, or treating them unfairly on these bases. These protections are promising and show an evolving recognition of the benefits of Source of Income (SOI) laws. The Poverty & Race Research Action Council keeps an annually updated list of all the states and localities that maintain these laws—this comprehensive summary is posted on our website as “Appendix B” and can be accessed at http://www.prrac.org/pdf/AppendixB.pdf. You can scan the table of contents to see if your state or city has adopted a source of income discrimination law—and get some ideas for pushing for a source of income discrimination law in your area. Furthermore, property owners participating in the federal Low-Income Housing Tax Credits program and other certain types of federally assisted housing that already prohibit discrimination against voucher holders provide additional protections to tenants in these properties.

**Success Story**

New York City has a source-of-income anti-discrimination law that protects recipients of housing assistance, including New York’s Living in Communities (LINC) Rental Assistance Program (the LINC Program) which is designed to move people from homeless shelters to stable housing. A participant in the LINC program named Sandra worked with a local fair housing group, the Fair Housing Justice Center, to successfully challenge a landlord who refused to rent to her because she was using housing assistance. This landlord owned over 350 rental units and had repeatedly stated that he would not rent to subsidized housing program participants. Sandra and her lawyers filed a complaint and obtained a favorable settlement agreement that required the landlord and property manager to take non-

discrimination measures and provide financial damages. This not only helped Sandra leave homelessness but also sent a clear message to landlords and renters about the rights of voucher holders.
Discrimination Based on Housing Status

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Background

Potential renters who are experiencing homelessness, or who have experienced it in the past, face multiple barriers to getting rehoused. But the most maddeningly ironic might be when someone is denied housing because they are currently, or formerly homeless. Yet such discrimination is a major problem, with homeless people experiencing discrimination in seeking housing, employment, or even public benefits.

In a 2014 survey of homeless individuals in the Washington, D.C., metropolitan area, over 90 percent of respondents reported that they had been discriminated against due to their housing status—even in accessing the very housing that they need to escape homelessness. This type of discrimination does not exist in a vacuum, and it frequently overlaps and intersects with other types of prohibited discrimination; homelessness disproportionately affects people of color, people with disabilities, victims of domestic violence, and people who identify as LGBTQ. People exiting homelessness are also more likely to pay rent with a housing choice voucher or disability benefits, the use of which—as described above—also may face discrimination.

Individuals who have experienced or are currently experiencing homelessness are at a higher risk of continued housing instability because landlords and property managers usually require housing applicants to list their current residence or address and provide references, which homeless individuals are often unable to meet.

Policy Proposal: Outlaw Discrimination on the Basis of Housing Status

The Fair Housing Act, at the federal level, and equivalent laws at the state and local levels, protect people from discrimination that is based on a protected characteristic. It may be legal to exclude all rental applicants wearing red shoes, but it is not legal to exclude all people of Filipino origin. To help address the discrimination based on housing status, legislators can add “housing status” to the list of protected classes in their fair housing legislation.

One legislative vehicle is a stand-alone piece of legislation that prohibits discrimination of homeless persons. For example, Washington, D.C., introduced a bill that would amend the D.C. Human Rights Act, include homelessness as a protected trait and prohibit discrimination because of someone’s housing status.

Another option is to build housing status nondiscrimination laws into a homeless bill of rights, a broader bill to protect homeless people from various forms of discrimination.

In the employment context, some have proposed “banning the address,” similar to “banning the box,” both of which are usually unrelated to someone’s job qualification. Several jurisdictions have passed “ban-the-box” policies in an effort to reduce barriers to employment for people with criminal records. Ban-the-address could prevent employers from discriminating against people experiencing homelessness. If such an approach proves useful in the employment context, it could also be explored for rental applications.

Advocacy Tips & Resources

Enacting a law protecting people from discrimination based on housing status can improve the lives of homeless people by removing barriers to obtaining rental housing. There are multiple approaches to passing such a bill, offering advocates some degree of flexibility to tailor it based on the needs of the community.

Developing a strategic plan with a strong coalition of local partners and including people who are currently experiencing homelessness and those that have experienced it in the past, is important. It is also important to ensure that homeless people are able to enforce the law through judicial and/or administrative enforcement mechanisms.


Saving Affordable Homes

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Background

Existing affordable housing is rapidly decreasing nationwide. For every new affordable home that is built, two affordable homes are lost due to poor physical conditions or conversion to more expensive housing. This can lead to homelessness for low-income renters and further limits the availability of affordable homes that low-income renters can move to. Public housing properties and other federally supported affordable housing properties are at risk in a variety of different ways.

First, the physical conditions of public housing properties, owned and operated by the government, put the housing stability of over 1 million households at risk.228 Because Congress has not adequately funded public housing for decades, public housing units nationwide need over $49 billion in repairs and approximately 10,000 units are lost each year because they are no longer habitable.229 Additionally, Congress has not provided federal funds to build any new public housing units since the mid-1990s.230 HUD’s Rental Assistance Demonstration (RAD) program seeks to preserve a limited number of these public housing units by converting them to other federal housing assistance (project-based rental assistance or project-based vouchers),231 but this process can often be tumultuous and disruptive of renters’ lives. In order to ensure that all current public housing renters have the right to remain in their homes after RAD conversions, significant protections are built into the RAD program (i.e. rents cannot exceed 30% of the renter’s income, renters have the right to remain at the property after the RAD conversion, and rent increases must be phased in over 3 or 5 years).232

Second, the structure of other federally supported affordable housing, privately owned by for-profit and nonprofit owners, creates certain long-term affordability risks.233 In fact, nearly 1-in-10 publicly supported affordable homes that are owned and managed by for-profit and non-profit owners are at risk of losing their affordability in the next 5 years.234 These include homes created with federally subsidized mortgages and project-based rental assistance contracts provided by HUD and USDA Rural Development (RD). These also include newer properties that received allocations under the federally funded but state-administered Low Income Housing Tax Credit (LIHTC) program. These developments are threatened by a variety of factors, including:

Prepayment of Government-Subsidized Mortgages

In the 1960s, the federal government began providing federally guaranteed loans to private owners through a mortgage and regulatory agreement with terms and conditions for specified lengths of time (i.e. 40 years).235 A mortgage prepayment occurs when an owner fully repays the loan before the mortgage’s originally scheduled end date.236 A mortgage prepayment can create significant challenges for renters because the prepayment terminates the restrictions contained in the regulatory agreement. This means that the property will lose its affordability restrictions and the owner can increase tenants’ rent to the market rate, which most low-income families and seniors cannot afford.

To protect residents, HUD is authorized to provide Enhanced Vouchers to renters who wish to remain in their home.237 The owner is also subject to certain federal notice requirements.238 Occasionally, there may be other

restrictions from additional federal, state, or local assistance provided to renters at the property.

Mortgage Maturity
When a government-subsidized mortgage reaches its originally scheduled end date, the mortgage “matures.” Most HUD and RD mortgages are for 40 or 50 years, although some are for 30 years. When a loan is fully repaid according to its original amortization schedule, the mortgage and accompanying regulatory agreement end. This means that the property loses its affordability restrictions and the owner can raise renters’ rents to the market rate. If there are no other contractual restrictions or applicable legislation, the owner is free to convert the property to market-rate use.

HUD is authorized to provide assistance, through Housing Choice Vouchers or Enhanced Vouchers, to renters residing in these properties in low-vacancy areas who would otherwise pay more than 30% of their income for rent. Unlike mortgage prepayments, federal law does not guarantee any prior written notice when the affordability restrictions expire. Some renters may have additional protections under state/local notice or rent control laws.

HUD Project-Based Section 8 Contract “Opt-Outs”
In addition to federally insured mortgages, HUD also provides rental assistance through “project-based Section 8” contracts with private owners. Each time the term of the contract ends (usually 15 or 20 years), the owner can choose whether to renew or to “opt-out” of the contract. An opt-out will cause renters to lose their current rental assistance.

If the owner refuses to renew the contract, federal law requires an owner to give a one-year written notice to current renters and HUD of its intention to opt-out of the contract. Owners who fail to give renters proper notice may either renew the contract for up to one year, or permit renters to remain while paying the same amount of rent until one year after proper notice is served. Where this rental assistance is not renewed, most renters can receive Enhanced Vouchers to enable them to remain in their homes.

HUD Project-Based Section 8 Contract Terminations or Foreclosure
If a property is in poor physical condition, the owner has seriously violated the project-based Section 8 contract, and/or the owner defaults on its mortgage, HUD may decide to terminate the contract or foreclose the property. These actions can result in the loss of the property, a new landlord, and/or higher rents for low-income renters.

Congress requires HUD to maintain any project-based Section 8 contract and minimize renter displacement, as long as the property is not physically obsolete. If the property is physically obsolete, HUD can transfer the project-based Section 8 contract and affordability restrictions to another property. HUD must notify and consult tenants during this process.

Policy Proposals:
While advocates should be sure that the above rights and responsibilities are enforced, the following state and local policies can also support preservation of existing affordable housing:

- Tenant Opportunity to Purchase Act. State and local governments can enact preservation purchase laws that

provide rights of first refusal or rights to purchase to tenants or tenant-supported organizations when an owner seeks to convert property to market-rate use. These laws support preservation by favoring purchasers who commit to preserving the property as affordable. State and local purchase opportunity laws can vary, depending on what kinds of affordable properties are covered, triggering events, and which entities can take advantage of the purchase opportunity. Existing state and local laws usually address at least prepayment of mortgages on HUD- or RD-subsidized properties, as well as properties with expiring project-based Section 8 contracts or contract terminations. In addition to covering these HUD and RD properties, other state and local laws also cover properties with expiring rent restrictions under the LIHTC program.

- **Preservation Compacts.** Another important part of saving existing affordable housing is collaboration and data-sharing. In places like Chicago, Los Angeles, Portland, Colorado, and Washington, D.C., there are multi-sector working groups (often called “preservation compacts”) who meet regularly with HUD officials, state and local government representatives, and local developers and nonprofit organizations. These groups collaborate to identify at-risk affordable housing properties, brainstorm and coordinate preservation strategies, and engage in other related policy advocacy.

- **Improved Local Data.** In addition to the National Housing Preservation Database, several states and localities have developed searchable databases of affordable housing properties in their communities and when their affordability restrictions will expire. These databases support the work of preservation working groups and others to target resources and preservation efforts at certain at-risk properties.

- **Improved State and Local Notice Laws.** Because the loss of affordable housing will displace low-income renters, adequate written notice to renters may help prevent homelessness, even when their homes cannot be preserved. Some states and localities have adopted additional notice requirements beyond what federal law provides. These laws can also require notice to entities like public housing authorities and local governments who may have the desire and means to purchase and preserve the property.

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248 See, e.g., MD. ANN. CODE, HOUS. & COMM. DEV. § 7-102; R.I. GEN. LAWS § 34-45-4(5) and 34-45-7; D.C. STAT. § 42-2851.03 and 42.2851.02(6); DENVER MUN. CODE § 27-46 (definitions of “federal” and “local” preservation projects); PORTLAND CITY CODE § 30.01.030 (definitions of “federal” and “local” preservation projects); SAN FRANCISCO ADMIN. CODE § 60.4(a) and (y). See also Notice and Purchase Opportunity Laws, PrezCat, http://www.prezcat.org/catalog-search?keys=&combine=&field_catalog_tags_tid%5B%5D=88&created=&changed=&between_date_field%5B%5D%5Bdate%5D%5Bdate%5D=&field_start_date_value%5B%5D%5Bdate%5D%5Bdate%5D=&field_end_date_value%5B%5D%5Bdate%5D%5Bdate%5D=&items_per_page=15.

249 See, e.g., MD. ANN. CODE, HOUS. & COMM. DEV. § 7-102; ME. REV. STAT., Title 30-A, §§ 4972 and 4973; R.I. GEN. LAWS § 34-45-4(5) and 34-45-7; D.C. STAT. § 42-2851.03 and 42.2851.02(6); DENVER MUN. CODE § 27-46 (definitions of “federal” and “local” preservation projects); PORTLAND CITY CODE § 30.01.030 (definitions of “federal” and “local” preservation projects); SAN FRANCISCO ADMIN. CODE § 60.4(a) and (y). See also Notice and Purchase Opportunity Laws, PrezCat, http://www.prezcat.org/catalog-search?keys=&combine=&field_catalog_tags_tid%5B%5D=88&created=&changed=&between_date_field%5B%5D%5Bdate%5D%5Bdate%5D=&field_start_date_value%5B%5D%5Bdate%5D%5Bdate%5D=&field_end_date_value%5B%5D%5Bdate%5D%5Bdate%5D=&items_per_page=15.

250 See, e.g., 310 ILL. COMP. STAT. § 60/4; CAL. GOVT. CODE § 65863.11(a) (incorporating definition of “assisted housing development” in § 65863.10(a)(3)); NYC ADMIN. CODE § 26-801. Compare TEX. GOVT. CODE ANN. §§ 2306.185(f) & 2306.853 (notice requirements for prepayments and opt-outs, but not LIHTC properties with expiring use restrictions); TEX. GOVT. CODE ANN. §§ 2306.702(a)(5) & 2306.803 (developments with expiring LIHTC restrictions considered “at risk” for purposes of allocating future credits and other resources).


254 See, e.g., COLO. REV. STAT. § 24-32-718 (state database for notices of termination); CONN. GEN. STAT. 58-68c (one-year notice for prepayments and terminations to tenants and state and local governments); WASH. REV. CODE § 59.28.040 (one-year notice for prepayments and expirations to tenants, PHA and state and local governments); MINN. STAT. § 504B.255 (one-year notice to tenants for prepayments or Section 8 terminations); MINN. STAT. § 471.9997 (requiring tenant impact statement to local government at least twelve months prior to intended prepayment or termination).
International human rights provide a helpful framework for understanding where the United States could, and perhaps should, go to protect the rights of renters. In 1948, the U.S. was an international leader in promoting the human right to housing. It led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that “everyone has the right to an adequate standard of living…including the right to housing.” The following year, the 1949 Federal Housing Act stated a goal of “a decent home and suitable living arrangement for every American family.”

The United States signed the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1979, recognizing the human right to housing, but the Senate has not yet ratified that treaty. Under international law, countries that sign a treaty are obligated to refrain from actions that would defeat the “object and purpose” of that treaty, even before ratification.

The U.N. Committee on Economic, Social, and Cultural Rights, made up of leading global experts mandated to implement the ICESCR, defines the human right to housing to include seven elements.

(1) **Security of Tenure**: Everyone needs legal protection against forced eviction and harassment—including renters, homeowners, and persons in emergency circumstances (experiencing homelessness)—as well as for access to legal counsel.

(2) **Availability of Services, Materials, and Infrastructure**: adequate housing includes access to sanitation and emergency services, plumbing and electricity, etc.

(3) **Affordability**: Housing costs should not force people to choose between paying rent and paying for other basic needs (food, health, etc.).

(4) **Habitability**: Housing must provide adequate space to protect against internal dangers (overcrowding) and external ones (weather, insects, hazards like lead, etc.).

(5) **Accessibility**: Accessibility of housing means physically accessible (for those facing disabilities, for example) and practically accessible (no discriminatory barriers for marginalized groups).

(6) **Location**: Housing is more than four walls and a roof, but must exist in an environment with access to jobs, medical care, schools, etc., as well as not be threatened by pollution.

(7) **Cultural Adequacy**: Housing and land use must respect the cultural traditions of inhabitants.
Human rights standards require that countries take progressive steps to respect, protect, and fulfill the right, to the maximum of the country’s available resources, in a non-discriminatory manner. The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would not require the government to immediately build a home for each person in America or to provide housing for all, free of charge. But it does require much more than the U.S. is doing now, and more than a mere provision of emergency shelter—it requires affirmative steps to be taken to ensure fully adequate housing, based on all the criteria outlined above.

Human rights law does not compel specific renters’ rights ordinances to be passed in any given community, but it does provide a rights-based framework to understand which ordinances or guarantees might be most helpful. This section will describe some of the standards to which governments are responsible for, and how the renters’ protections described elsewhere in this report could be used to meet those obligations.

**Human rights law gives governments the affirmative responsibility to ensure a right to housing.**

Under international law, governments must “not simply to ensure that they do not explicitly violate rights, but also to ensure that the rules under which they operate and their actions are consistent with the realization of the right to adequate housing.”

The right to adequate housing is further reinforced and recognized by other relevant human rights instruments. These include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified by the U.S.; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, all signed, but not yet ratified by the U.S.; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, not signed by the U.S. and other regional human rights instruments to which the U.S. is not a party, such as the 1996 Revised European Social Charter, and the European Convention on Human Rights.

In 2015, the U.S. also signed on to the U.N. Sustainable Development Goals, including goal 11 on Sustainable Cities and Communities pledging to make cities inclusive, resilient, safe and sustainable. And in October 2016, the U.S. signed on to the New Urban Agenda, the outcome report of the U.N. Habitat III conference. The signatories “commit to promote national, in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: … To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990. Article 27(3): “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”


Revised European Social Charter, Article 31: With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; to make the price of housing accessible to those without adequate resources.

European Convention on Human Rights (ECHR), Article 8: “Everyone has the right to respect for … his home … There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”


UN conference agrees new urban development agenda creating sustainable, equitable cities for all, UN Sustainable Development
sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders, in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.

In short, while these international treaties and declarations have varying degrees of legal effect in U.S. courts, these documents at a minimum demonstrate our professed values as Americans. We can use these commitments to guide domestic efforts to pass stronger housing protections in our communities.

**Human rights law requires that housing costs be affordable**

The Committee on Economic, Social, and Cultural Rights defines affordability in housing as follows:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.

Yet in the U.S., as discussed in depth earlier in this report, housing has become increasingly unaffordable as wages have failed to keep pace with the rents. The affordability prong of the right to adequate housing puts the ultimate responsibility for ensuring affordability on government, at all levels. While federal housing subsidies have been dramatically cut back (and should be reinstated), state and local governments have also failed in their duties to address rental costs in their jurisdictions. Rent regulation is explicitly set forth in the above prong as a means of meeting that responsibility.

**Human rights law requires security of tenure, including procedural protections, and the right to counsel to make effective use of those protections, before an eviction**

Legal security of tenure refers to a tenant's guarantee of legal protection against forced eviction, harassment, and other threats. According to the Committee on Economic, Social, and Cultural Rights:

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment, and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

Again, as described throughout this report, the U.S. is currently failing to guarantee the legal security of tenure for most renters. In a few cities and states, landlords are limited to evictions for just cause, but in many, renters can be evicted for no cause whatsoever, including the foreclosure of their landlord due to no fault of their own. Even where legal protections exist, often they can be circumvented by informal eviction measures or landlords bank on the lack of legal knowledge and legal

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See id. at ¶ 31.  


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278 See Eviction Without Notice, supra note 101, at 6; Renters in Foreclosure: A Fresh Look at an Ongoing Problem, supra note 104.

279 See Eviction Without Notice, supra note 101, at 6; Renters in Foreclosure: A Fresh Look at an Ongoing Problem, supra note 104.
assistance to tenants to make these protections moot.\textsuperscript{284}

Under the human rights framework, “forced evictions” are expressly forbidden. Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”\textsuperscript{285} Thus, evictions are not entirely forbidden, but they are only allowable where adequate procedural protections are in place, and adequate access to legal counsel to ensure them.

In this case, the right to access to counsel is a necessary requirement of human rights law. The Committee on Economic, Social, and Cultural Rights has noted that ensuring effective judicial remedies (including by providing access to counsel) for the right to adequate housing is an immediate obligation of States, since there cannot be a right without a remedy to protect it.\textsuperscript{286} This justice gap produced by lack of access to counsel is particularly stark when compared to other countries. The World Justice Project’s Rule of Law Index, which measures experience of the rule of law through 100,000 individual and 2,400 expert surveys in countries around the globe, routinely ranks the U.S. at or near the bottom of industrialized countries for accessibility and affordability of the civil justice system. The 2016 Rule of Law Index placed the United States 94\textsuperscript{th} overall out of 113 countries on accessibility and affordability of civil justice, dropping 30 places since the previous year, and below every country in Europe, and many in the rest of the world.\textsuperscript{287}

In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. The following procedural protections should be applied in relation to forced evictions:

(a) an opportunity for genuine consultation with those affected;
(b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
(c) information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in a reasonable time to all those affected;
(d) especially where groups of people are involved, that government officials or their representatives be present during an eviction;
(e) that all persons carrying out the eviction be properly identified;
(f) that evictions do not take place in particularly bad weather or at night unless the affected persons consent otherwise;
(g) provision of legal remedies;
(h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.\textsuperscript{288}

The African Commission of Human and Peoples’ Rights, which has a mandate to protect and promote human and peoples’ rights and to interpret the African Charter on Human and Peoples’ Rights, has interpreted the Charter to implicitly include the right to housing. In the case Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, where it decided on the violation of the right to housing in connection with exploitation of oil fields and the consequent displacement of the Ogoni people, the Commission has underlined that “forced evictions are extremely traumatic” and stated that they increase the levels of homelessness.\textsuperscript{289}

\textsuperscript{284} See Desmond, supra, note 61, at 4. (“These days, housing courts swell, forcing commissioners to settle cases in hallways or makeshift offices cramped with old desks and broken file cabinets—anmost tenants don’t even show up….But there are other ways, cheaper and quicker ways, for landlords to remove a family than through court order. Some landlords pay tenants a couple hundred dollars to leave by the end of the week. Some take off the front door. Nearly half of all forced moves experienced by renting families in Milwaukee are “informal evictions” that take place in the shadow of the law…."

\textsuperscript{285} General Comment No. 7: The right to adequate housing (Art.11.1), supra note 6.


\textsuperscript{287} See World Justice Project, WJP Rule of Law Index (2016), http://data.worldjusticeproject.org\textbackslash{}index\textbackslash{}USA; see also, Nat’l Coal. for a Civil Right to Counsel, U.S. rank on access to civil justice in Rule of Law Index drops to 94th out of 113 countries, (Oct. 27, 2016), http://civilrighttocounsel.org\textbackslash{}major\_developments/217.

\textsuperscript{288} U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 7: The right to adequate housing (Art.11.1); forced evictions, 20 May 1997, E/1998/22.

Human Rights Law Limits Evictions Leading to Homelessness

International law limits evictions that lead to homelessness, stating that evictions “should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

Human rights systems recognize that evictions leading to homelessness can have a devastating impact on the lives of children and families. This can violate not only one’s civil right to respect for one’s home and right to adequate housing, but also undermine a number of other fundamental human rights, including the rights to life, health, education, security of person, privacy, protection of the home and family, and the freedom from cruel and inhuman treatment.

There is no doubt that evictions are the proximate cause of hundreds of thousands of cases of homelessness each year. Renters’ rights such as adequate notice, just cause, and prohibition on “nuisance” evictions, particularly those due to domestic violence, and access to counsel to enforce them, are steps communities can take to prevent evictions from leading to homelessness.

In deciding on the violation of Article 8 of the European Convention on Human Rights, the European Court of Human Rights has taken into consideration the risk of homelessness following an eviction as one of the factor to balance in determining whether the eviction was proportionate. In Tuleshov and Others v. Russia, the Court discusses the threat of homelessness in the analysis of the proportionality of the eviction, concluding that the threat of expulsion and the uncertainty about receiving substitute housing made the forced eviction disproportionate to the aim it pursued. In Yordanova and Others v. Bulgaria, the court considered that the removal was not proportionate (and therefore violated Article 8) because of the lack of alternative housing, among other factors.

Human rights law prohibits racial and other forms of discrimination in housing

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), recognizes the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law in the enjoyment of the right to housing. In General Comment 14, the Committee on the Elimination of Racial Discrimination (CERD) clarified that to determine “whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”

The CERD, in its 2014 review of the U.S., urged the government “to intensify its efforts to eliminate discrimination in access to housing… based on race, color, ethnicity, or national origin” by ensuring “the availability of affordable and adequate housing for all,” implementing federal laws that help address and combat discrimination, and “[u]ndertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors.”

As noted elsewhere in this report, homelessness disproportionately affects people of color. Similarly, people of color constitute a disproportionate percentage of individuals who are rent-burdened, living in substandard housing, and have eviction or criminal records. Prohibitions on nuisance ordinances, on discrimination based on eviction or criminal records, and on discrimination based on housing status or source of income are all policies that would help to remedy these historical and structural problems.

Human rights law can inform federal, state, and local tenant advocacy efforts

These standards and human rights instruments provide a strong alternative framework to U.S. federal, state, and municipal law, and practitioners can use human rights theories and standards to help improve security of tenure and other tenant protections under domestic law. Governments must take all appropriate measures to ensure adequate alternative housing and consider all feasible alternatives to end and prevent forced evictions and homelessness, including considering the threat of homelessness.
as a major factor in its decision-making processes, laws, policies, and practices.\textsuperscript{298}

Federal and state courts, as well as executive agencies, have looked to international law to inform their interpretation of their own constitutions and statutes. At the federal level, Justice Kennedy dedicated a full quarter of the decision in \textit{Roper v. Simmons} to discussion of human rights law and how it confirms our own evolving standards of decency under the Eighth Amendment.\textsuperscript{299} The Department of Justice signaled their approval of a proposed Seattle ordinance regulating evictions from homeless encampments by noting it was consistent with both our constitutional and human rights obligations.\textsuperscript{300} HUD has recognized the relevance of human rights law in interpreting its obligations both with respect to the criminalization of homelessness and in interpreting the Violence Against Women Act.\textsuperscript{301} State courts have cited international human rights law in expansive interpretations of their own constitutional obligations as well.\textsuperscript{302}

Human rights advocacy is an important complement to traditional forms of civil rights organizing and advocacy that can help to improve the conditions of the most marginalized in our society.\textsuperscript{303} The Law Center issued a report card in late 2016 on the progress of the federal government in meeting the right to housing, holding our government accountable to the seven elements of adequate housing described above.\textsuperscript{304} State and local organizations can adopt similar formats to hold their own governments accountable and inject a rights-based framework into the local policy conversation.


\textsuperscript{299} Roper v. Simmons, 125 S.Ct. 1183 (2005).


CONCLUSION

As a lack of affordable rental housing fuels a nationwide homelessness crisis, communities working to end homelessness should adopt legal protections that make it easier for renters to find, and stay in, affordable and decent housing. Strong renters’ rights can help prevent and end homelessness by promoting housing affordability, limiting housing displacement through eviction, and prohibiting discriminatory barriers to new housing access.

Strong renters’ rights can also save communities millions of dollars in reduced use of high-cost systems, including emergency shelter, and also preserve the health and general welfare of millions of low-income individuals and families. Moreover, robust renter protections can help reduce the discriminatory impact of housing policies on communities of color.

Governments at the local, state, and federal levels should take concrete steps to prevent and end homelessness from a human rights-based framework by enacting laws and policies that protect low-income renters from housing loss and discrimination in housing access. It is critical for these entities to adopt policies that help tenants keep their housing, such as laws that limit evictions without just cause, laws that stabilize rents, laws that guarantee right to legal counsel in housing court, laws that protect tenants living in foreclosed properties, and laws that provide constructive alternatives to nuisance ordinances. Equally important is to enact laws and policies that remove barriers to rental housing, such as laws that prohibit discrimination against tenants based on their source of income, housing status, and criminal and eviction records. Advocates working on housing and homelessness issues should work collaboratively to broaden and strengthen support for strong renters’ rights.