

LANDLORD TENANT TASK FORCE REPORT

JULY 29, 2020

(Revised July 31, 2020 updating for state eviction timeline)

(Revised September 2, 2020 updating for HUD Single Family FHA mortgaged property timeline)

(Revised January 12, 2021 updating for HUD Single Family FHA mortgaged property timeline and CDC temporary halt on evictions as extended by Section 502 of the federal Consolidated Appropriations Act, 2021)

(Revised February 3, 2021 updating for HUD Single Family FHA mortgaged property timeline and CDC temporary halt on evictions as extended by CDC on Feb. 3, 2021)

(Revised March 3, 2021 updating for HUD Single Family FHA mortgaged property timeline)

(Revised March 31, 2021 updating for the CDC temporary halt on evictions as extended by CDC effective April 1, 2021)

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Introduction:

The COVID-19 pandemic has wide-sweeping impacts, which are particularly complex when individuals and families are facing potential eviction. In balancing public health and safety during this crisis, state and federal government officials implemented moratoria on evictions, especially during times subject to stay at home orders. This, along with other impacts on court operations, poses a situation where larger than normal backlogs exist to resolve cases and both landlords and tenants need financial relief while maintaining housing stability and occupancy. Considering the complexity already involved with eviction cases, the pandemic further highlights the challenges experienced by parties involved in such matters.

To prepare for the expiration of these restrictions, this task force was created and charged with providing guidance on: (1) how to prioritize eviction cases once the Governor's moratorium lifts, (2) how to balance the rights of the landlords and the needs of the evicted persons, and (3) how to connect those persons with resources in order to maximize their ability to stay in their homes and provide the landlords financial relief.

The task force members and staff include:

Hon. Jennifer DeGroote, Allen Superior Court
Hon. Kimberly Bacon, Marion County Small Claims Court – Lawrence Township
Mag. Kathleen Belzeski, Lake Superior Court – County Division Two
Brandon Beeler, Director of Housing Law Center, Indiana Legal Services, Inc.
Christine Hayes Hickey, Rubin Levin, Creditor Bar member
Michelle Goodman, Staff Attorney, Indiana Office of Court Services

The task force met eight times between June 19, 2020 and July 21, 2020 to develop these recommendations and review available resources from other jurisdictions facing the same challenges.

Consideration was given to the following factors:

- Tenants' goals are to have affordable, habitable housing
- Landlords' goals are to have tenants who can fulfill their financial obligations while keeping the property occupied and in habitable condition
- Eviction cases may be filed in either a small claims or a civil case type
- Landlords and tenants may be, but are not always, represented by an attorney during the eviction case

- Eviction cases have been subject to tolling provisions (unless an emergency exists) and moratoria at the state and federal levels due to the health crisis have varying expiration dates
- Impacts of the health crisis have affected:
 - Tenants who experience loss of employment or underemployment impacting their financial resources, and
 - Landlords who experience financial impacts because of tenants' inability to pay
- Information to navigate the current legal circumstances and available resources should be made available to all individuals at the case level to better inform parties about options to maintain housing and occupancy, and
- Availability for housing financial assistance for tenants and landlords vary based on funding sources and applicable eligibility criteria.

Knowledge of the parameters of the various moratoria is key to navigating when eviction cases can proceed. Each moratorium has unique directives and expiration dates. Over the course of the pandemic, some of these moratoria have been amended and extended. Anyone reading these materials should verify if the provisions summarized below have been further amended or extended after the publication of this resource.

Here is a summary of the moratoria issued during this pandemic:

- Effective April 1, 2021, the Centers for Disease Control, [extended and modified its order](#) temporarily halting certain evictions through June 30, 2021. The original CDC [Order](#) was previously extended through January 31, 2021, when Congress passed the "[Consolidated Appropriations Act, 2021](#)," (Section 502), which was signed on December 27, 2020.
 - The CDC order is a temporary eviction moratorium **under certain conditions** and each renter/homeowner must complete a [declaration form](#), under penalty of perjury.
 - The CDC order **does not**:
 - relieve any individual of the obligation to pay rent, make housing payments, or from complying with other tenancy/lease obligations;
 - include mortgage foreclosures;
 - prevent charging or collecting fees, penalties, or interest because of failure to pay; or

- preclude evictions based on tenant engaging in criminal activity while on property; threatening the health and safety of other residents, damaging or posing an immediate and significant risk of damage to property; violating applicable building code, health ordinance, or similar health and safety regulations; or violating other contractual obligations other than timely payment of rent and fees.
- On February 16, 2021, the [U.S. Department of Housing and Urban Development](#) extended the directives issued March 18, 2020, as follows:
 - A moratorium on foreclosures and evictions for all FHA-insured Single-Family mortgages through June 30, 2021. This applies to the initiation of foreclosure actions and to the completion of foreclosures in process.
 - Evictions from properties secured by FHA-insured Single-Family mortgages are also suspended through June 30, 2021.
 - The deadline of first legal action and reasonable diligence timeliness are extended by 180 days from the date of expiration of the moratorium.
 - Foreclosure and eviction suspensions applies to homeowners with a Fannie Mae or Freddie Mac backed single family mortgage.
- On March 27, 2020, Congress passed the [Coronavirus Aid, Relief, and Economic Security \(“CARES”\) Act](#). Section 4024 of the Act placed a 120-day eviction moratorium for certain “covered properties”. This moratorium is limited to claims based on nonpayment of rent and requires landlords and owners to comply with heightened notice provisions prior to filing an eviction action.
- On March 19, 2020 Governor Holcomb initiated a statewide eviction moratorium, extended on July 30, 2020 by [Executive Order 20-39](#), which:
 - Prohibits filing of evictions and foreclosures on residential real estate or property as provided for in other orders until August 14, 2020.
 - Prohibits evictions or foreclosures for nonpayment until on or after August 15, 2020.
 - Carves out the following exceptions:
 - Landlord may file an emergency eviction or possessory claim under IC 32-31-6 permitting evictions for specific immediate and serious injury, loss or damage to the property.

- Lending Institution may file a foreclosure action for property that is vacant, abandoned, or for specific immediate and serious injury, loss or damage to the property.
- Encourages landlords and tenants to establish reasonable payment plans for past-due amounts.

Recommendations:

The task force recommendations focus on providing information and resources to parties and attorneys while assisting courts in effectively hearing eviction cases once applicable moratoria expire. Below is a summary for each impacted group. Where appropriate, the task force created detailed guidance for litigants and courts, which includes forms and samples, which may be modified as needed. These materials are provided in the [appendices](#) to this report.

Litigants

Landlords

Here are some steps landlords can take to identify opportunities for addressing issues related to non-payment of rent and, if feasible, reach a resolution that maximizes the ability of the tenant to remain in the residence while meeting the financial needs of both parties:

- Communicate with tenants
- Explore options to avoid eviction
- Adopt a practical approach to problem solving in light of court backlogs precipitated by COVID-19 and challenges associated with securing new tenants in light of the public health emergency
- Encourage partial payments and put all agreements in writing
- Use simple and clear written agreements to document agreements or concessions
- Provide a copy of the agreement to the tenant
- Help tenants find resources to aid in their ability to pay rent
- Familiarize yourself with the Indiana rent relief programs that pay landlords who participate directly
- Know whether your property is subject to eviction moratoria or CARES Act restrictions

Tenants

Here are some steps tenants can take to identify opportunities for addressing issues related to non-payment of rent and, if feasible, reach a resolution that maximizes the ability to remain in the residence while meeting the financial needs of both parties:

- Communicate with the landlord
- Explore options to avoid eviction
- Discuss ability to make partial payments and put all agreements in writing
- Use simple and clear written agreements to document agreements or concessions
- Be sure to keep a copy of the agreement with the landlord
- Find resources for rental assistance; some programs require registration by landlords so payments can be made directly to landlords on your behalf, which may help the landlord work with you
- If a court case for eviction is filed, be sure to keep your contact information up to date with the court so you can receive notices and information from the court, this includes address, phone number, and email address. Courts can now send email notices to you if they have your current email address.

Resources:

- [Resources for Rental Assistance programs, General Information, Legal Assistance, and other services](#)
- [Chart – Can I Be Evicted during the COVID-19 crisis in Indiana?](#)
- [Notice of property subject to restrictions under CARES Act](#)
- [Property Status Certification Affidavit](#)
- [Definition of CARES Act covered properties](#)
- [Sample Repayment Plan \(before a court case is filed\)](#)
- [Sample Repayment Plan \(after a court case is filed\)](#)
- CDC forms and checklist available on the [Landlord Tenant Task Force](#) page

Attorneys

Especially in navigating the current COVID-19 crisis, the role of attorneys in representing clients is increasingly important. Here are key steps for attorneys involved in eviction cases or willing to provide much-needed pro bono services:

- Explore opportunities with clients for settlement and payment plans, pre-suit if possible
- Understand and communicate to clients the impact of the pandemic on court operations and realistic timelines for processing of an eviction case once filed
- Emphasize problem-solving through exploration of alternative methods of relief and resources available to the landlord and the tenant
- Educate clients on available financial resources that may assist the client
- Stay informed on the parameters for existing moratoria to inform clients as to legal options and limitations, verify whether the property is covered by an existing moratorium, ensure compliance with applicable notice provisions and other due process requirements
- Engage in offering pro bono services, legal help lines, or legal clinic opportunities to assist tenants unable to hire counsel, the opportunity to be aware of their options, and available resources if they are or may be facing an eviction

Courts

Balancing the rights for both landlords and tenants is even more challenging for courts due to the anticipated increase in eviction filings impacted by the COVID-19 crisis, the potential for larger numbers of self-represented litigants appearing in these cases, and ensuring an eviction case is not subject to an active moratorium. In preparing for these conditions, courts should take the following steps:

- Develop a method to prioritize cases and securing an updated status of the case from the parties (i.e. possession hearing needed, damages only hearing, etc.)
- Implement remote hearing practices (telephonic, video, or combination) in addition to in-person options, considering litigants' barriers to access and use of technology
- Communicate via notices or orders the hearing information and procedures for submitting evidence to the court, including the method for contacting the court with procedural questions or issues impacting attendance at the hearing, and post general information on court or county web page
- Schedule hearings with fewer cases per session, establish a timeframe for the first hearing after the filing is initiated, consider adding time for possible negotiations and settlements

- Ensure court has sufficient information identifying cases still covered by active moratoria
- Consider any adjustments needed to current procedures for requests for default judgments and failures to appear at hearings
- Encourage acceptance of partial payments by use of the forms included with this report
- Continue to be mindful of compassion fatigue and the impact it can have on decision making
- Engage attorneys and bar associations in providing pro bono services, legal help lines, or legal clinic opportunities to assist tenants unable to hire counsel the opportunity to be aware of their options and available resources if they are or may be facing an eviction
- Examples to consider:
 - Tenant Assistance Legal Clinic in Fort Wayne.
 - Delaware County’s updated [local ADR plan](#) allowing for voluntary mediation for eviction cases and secure grant funding for the program.

[Appendix H](#) contains more detailed guidance for these considerations with practical tips and suggestions.

Resources:

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Long term considerations for eviction cases:

The task force discussions also identified opportunities to study and implement other procedures or programs that are beyond the scope and timeframe of the current charge. The task force would urge that the following topics be assigned to another standing entity whose scope can developed more in-depth proposals to improve the processing of eviction cases in the future:

- Opportunities for mediation/on-line dispute resolution
- Diversion programs
- Evaluation of the impact of landlord registries on tenants' future ability to access affordable housing and associated financial implications, and
- Evaluation of the impact on credit for individuals who have experienced eviction, including how long the event stays on credit reports, and what options exist or can be implemented to lessen long-term barriers to securing affordable housing.

Conclusion:

The task force is grateful for the opportunity to provide guidance on resuming the processing of eviction cases upon expiration of existing moratoria. The effects of the pandemic are far-reaching, touching landlords, tenants, and courts in a variety of ways and resulting in a significant impact on the welfare and stability of our local communities. We hope this guidance can aid in balancing the rights of all parties while maximizing opportunities to maintain stable housing in this time of crisis.

Appendix:

The documents listed in this appendix are accessible online by clicking on the document title below.

[Appendix A – Resources: Rental Assistance programs, General Information, Legal Assistance, and other services](#)

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