

APPENDIX H: GUIDELINES FOR JUDGES HANDLING EVICTIONS AFTER MORATORIA EXPIRE

The following are guidelines and suggestions for handling eviction cases once the state and federal moratoria are lifted. This document is presented mindful that every court is different and there is not one right way to handle the eviction process once the moratoria are lifted. This document is presented with the hope it will make navigating through the backlog you will face as judges easier and more manageable in light of the restrictions placed the courts due to the current pandemic.

A. MANAGING THE EVICTION CALENDAR

1. First Determine If the Leased Property Is Governed By The State Or Federal Moratorium
 - (a) The state moratorium on evictions ended August 14, 2020 and the federal HUD FHA Single Family mortgage property moratorium expires on June 30, 2021. There may be additional notice requirements prior to filing a claim after expiration of the moratorium on federally-backed mortgages. The Centers for Disease Control and Prevention has [issued an Order](#) to temporarily halt certain residential evictions to prevent the spread of COVID-19, under Section 361 of the Public Health Service Act ([42 U.S.C. 264](#)) and [42 CFR 70.2](#). This order was extended until January 31, 2021, by Section 502 of the federal Consolidated Appropriations Act, 2021 - [HR 133](#), Page 897. The CDC further [extended and modified the order](#) until June 30, 2021
 - (b) Whether a property is subsidized or insured by the federal government will affect when the case can set be on the court calendar as there are specific notice requirements for federally-backed housing.
 - (c) Properties with federally subsidized and insured mortgages are stayed by a federally mandated moratorium on evictions. This includes CARES Act covered properties, VAWA covered housing programs, including HUD properties, in addition to several other federal programs. [Appendix E](#) is a complete list of federal programs covered under the moratorium.
 - (d) It is important to determine if the leased property is covered under CARES ACT or another federally-backed program. This is crucial as the moratorium for housing under the federally issued mandate at times has and still may have a different expiration date than the existing state

moratorium on evictions. Further, an additional thirty (30) day notice is required, prior to filing the claim, after the expiration of the moratorium on some federally-backed mortgages. A Due Process Checklist that can be used by the court to make the determination if the property is covered under the federal moratorium, as available in [Appendix I](#).

- (e) It may be prudent to require the landlord, on pending eviction cases or upon filing a new eviction, to fill out an affidavit stating if the property is or is not covered under the CARES Act or other federal program. A sample affidavit is as available in [Appendix D](#). It is important to request this information on filings that are already scheduled for hearings as many landlords and attorneys are unaware that the federal moratorium may apply to the leased property. If the property is covered under the federal moratorium the proceedings cannot continue until the federal moratorium expires and the required notices are given.

2. Scheduling and Managing the Eviction Calendar

- (a) Courts should begin, if they have not already done so, to set aside court sessions exclusively for eviction hearings. Factors in determining how many sessions a month should be set aside will depend on many factors. These factors include, but are not limited to, the number of evictions that were pending but not heard because of the moratoria, the past number of evictions cases generally filed in your particular court, the new cases filed but not yet scheduled, and also by asking the attorneys who routinely file evictions in your court how many new evictions they anticipate filing.
- (b) To help better manage the eviction docket, courts may want to send out a questionnaire form to the parties asking the status of a pending case. Questions may include:
 - (1) Whether the property is covered by the CARES Act, or is federally subsidized housing, or has a federally-backed mortgage?
 - (2) If a hearing on possession is still required? Is a damage hearing needed?
 - (3) How many days is the rent past due?
 - (4) Whether there have been any payments or rental assistance received?

This information can be used to determine which cases should be scheduled first on the court calendar and which cases can be or must be set at a future date. An example of a Request for Case Status Updates form is provided in [Appendix K](#).

- (c) Be mindful of the cases affected by the CARES Act and other federally-backed programs and set those eviction hearings in accordance with the appropriate time guidelines.
- (d) Determine how you will prioritize cases. For example, schedule the oldest eviction cases first, i.e. the cases that were already scheduled when the moratorium was issued. Also consider situations where a party may have already resorted to impermissible self-help measures since tensions may be heightened.
- (e) If you do not do so already, consider scheduling evictions/possession hearings in separate court sessions from back rent and damage hearings. Also, consider separating contested claims from other matters. It will make the session flow better.
- (f) Schedule hearings dates thirty (30) days after filing to allow the parties time to negotiate. This also allows the tenant time to explore resources and other housing available should the eviction occur.
- (g) Emphasize the importance and benefit, to both the landlord and tenant, of stability in having long-term tenants. Encourage parties to develop solutions for payment of past due rent and other issues, and reach settlements, if possible. [Appendix G](#) is an example of a Settlement Agreement and Repayment Plan form that can be utilized by the parties if they work out an agreement. [Appendix F](#) is a Repayment Plan that can be used prior to filing a formal action.
- (h) Have discussions and keep the local bar and landlord/tenant attorneys apprised of any new procedures that are being implemented. Some attorneys may delay filing evictions on some tenants who have not had any past issues but for the pandemic.

For a sample comprehensive plan for scheduling hearings, see [Appendix L](#).

B. EVICTION HEARING PROCEDURES

1. In-Person Hearing Procedures

- (a) Some courts prefer in-person hearings. If this is the case then the court must make sure that social distancing and other safety protocols, including the use of face masks, are implemented.
- (b) The number of cases set may be dictated by the size of your courtroom and the waiting area outside of your courtroom. If your courthouse has an auditorium, cafeteria, or courtrooms that are not in use, these areas can be used to check in and distance litigants while they are waiting for the hearing.
- (c) If a court has a huge backlog of evictions and it is a large call consider a different venue, a larger space such as a local auditorium or convention center, to allow for social distancing and the safety of all involved. Hearing times may be staggered throughout the day as opposed to setting a large “cattle call”.
- (d) Consider the use of text messaging to check in litigants and summon them into the courthouse when it is time for their hearing.
- (e) Create a space to allow negotiations between the parties if they wish to speak prior to court. As previously stated, negotiation and settlement between the parties is to be encouraged.

2. Remote Hearings

- (a) If you have not already done so, determine which web-based video platform you will use to conduct hearings. Some examples of different types of platforms include Zoom, WebEx, and Microsoft Teams. Zoom is available, at no cost to the state courts, through the Indiana Office of Court Technology. Email teleconference@courts.in.gov to request your account. Ask your colleagues what platform they are using and what they like or do not like about the program.
- (b) Research the virtual platform you choose. Do your homework. Watch the tutorials and observe a colleague or colleagues who are conducting virtual hearings to see how it works.
- (c) Make sure that the court proceedings are live streamed if your court is not open to the public. Livestreaming can be accomplished through public.courts.in.gov or You Tube. Instruction for livestreaming is available with the Remote Hearing Guidance in the INCite Benchbook Application.

- (d) It is important that the court communicates with all parties on how court will be conducted and provides information regarding the hearings. [Appendix J](#) is a sample notice, advising the parties how to connect to a virtual hearing or telephonic hearing. Information is also listed to advise a person what to do if they are unable to utilize technology. Prepare a form that is particular to your court procedures.
- (e) Communicate expectations for providing exhibits to the court and other parties in advance of the hearing. Be prepared to address instances where additional information needs to be provided during or after the hearing and before entering final disposition. The court should take into consideration any challenges faced by litigants with their capability to submit exhibits to the court, and draft scheduling orders that meet the individual needs of the litigants.
- (f) Courts should consider sending a group email to the attorneys that practice in the court or to the local bar association to distribute information regarding any new procedures implemented by the court. The court should also post the information on the court website and update the information as procedures change based on what works or does not work in conducting virtual hearings.
- (g) Break out rooms in Zoom can be used to allow negotiations between the parties if they wish to speak prior to court.
- (h) Some courts are using a combination of in-person and remote hearings. Other courts, especially those with high volume, are making it mandatory that all post-judgment and initial hearings be held remotely. However, the case may be set for trial or other evidentiary hearing in person at a future date.
- (i) Any notices regarding hearings should include the language from Rule 2.17 of the Indiana Code of Judicial Conduct, entitled, "Prohibiting Broadcasting of Proceedings," which provides judges must prohibit the recording of court proceedings. Accordingly, everyone who in any way participates in, sees, or hears the court proceeding is now ordered that they shall not record the proceedings in any way. Violations of this rule and Order shall be punished by Contempt of Court. Parties should also be given that admonition at the beginning of the virtual proceedings.

- (j) There are numerous resources available, including sample forms, on the Indiana Supreme Court [website](#).

C. RESOURCES AND INFORMATION

1. Considerations

- (a) The courts should be conscious that there will be a financial and emotional impact on all the parties involved in these eviction proceedings. Realize there will be an impact on the mental health of everyone involved including attorneys and judges. There will be some very sad stories and court officers need to be prepared. Exercise, read, or participate in activities you enjoy keeping your stress level down. Remember [JLAP](#) is always available to assist on many levels.
- (b) Communicating known local and state resources available to assist with any financial and emotional issues the parties may be experiencing can be helpful. These resources could be in the county clerk's office, with self-help resources or posted on the county or court's website. [Appendix A](#) has more information on potential resources.
- (c) Legal assistance and advice may be in greater need. Provide parties information for the Coalition for Court Access's on-line resources through [Indiana Legal Help](#) to find legal representation, forms, and information. Pro bono legal service options may be available to assist the tenant. The local bar association may be able to assist in providing resources or volunteers for legal representation.
- (d) Inform parties of resources that may be available to help the tenants pay past rent through local funding, grants, or from the CARES Act.

2. State and Local Resources

- (a) The State of Indiana has implemented a statewide rental assistance program (outside of Marion County), which requires the participation of both the landlord and the tenant. The application can be found at <http://www.indianahousingnow.org/>. Marion County has its own rental assistance program that can be found at <https://indyrent.org/>.
- (b) Local resources include but are not limited to township offices, county economic opportunity offices, local civic funds, churches, and other local charitable organizations.

(c) A partial list of resources is as available in [Appendix A](#).

The guidelines set forth in this document are just that, guidelines. They have been set forth to assist judicial officers as they deal with the limitations placed on the courts by the effects of the COVID-19 pandemic. Court procedure and proceedings are ever-evolving and the information and recommendations in these guidelines must be adaptable as circumstances require. Each court is unique and faces different issues and challenges. Use what works for your court, disregard what does not, or modify the guidelines so they work for your particular situation. Reach out to colleagues who are dealing with the same issues. We have a lot of great ideas, information, and forms out there and it is always enjoyable to connect with our fellow judges.