

## Appendix I: Due Process Checklist

### CDC Directive

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](#) and was extended until January 31, 2021, in Section 502 of the federal Consolidated Appropriations Act, 2021 - [HR 133](#), Page 897. The CDC further [extended and modified the order](#) through June 30, 2021.

Forms are available to assist tenants:

- [CDC has made available a declaration form](#)
- [version for filing within a pending court case is also available](#)

The Landlord Tenant Task Force has [frequently asked questions](#) and a [checklist for courts to use](#) during court hearings, if necessary.

### Federally Subsidized Housing Programs

*(Please review both HUD directives and CARES Act provisions carefully and be aware of subsequent updates.)*

- Is the tenant living or participating in a federally-subsidized rental program covered under the CARES Act or properties covered by HUD directives?
  - Landlord/owner affidavit?
- If NO, continue with review of due process requirements under I.C. § 32-31, *et seq.* and contained in the lease agreement (if applicable)
- If YES, proceed with the following inquiries:
  - Which federally-subsidized program?
    - Most common: Public Housing Program, Section 8 Housing Choice Voucher Program, Low-Income Housing Tax Credit program (“LIHTC”) / Section 42
  - Was the notice of claim for possession filed on or before June 30, 2021 for HUD directive properties, or on or before August 24, 2020 for CARES Act properties?
    - If yes, is the cause of action based on nonpayment of rent (either on the notice of claim form itself, or may require evidence from the parties)?
      - If yes, case must be dismissed
      - If no, continue with inquiry below
    - If no, did Landlord/Owner provide thirty (30) day notice to tenant *before* filing the notice of claim?
      - If yes, was the notice provided *on or after* June 30, 2021 for HUD properties, or after July 24, 2020 for CARES Act properties?

- If no, violates CARES Act protections and must be dismissed
  - If yes, case may continue
- If claim is not based on nonpayment of rent, determine the following:
  - Are there any notice requirements for the federally-subsidized program at issue?
  - Was the notice sufficient in content and was it properly served upon the tenant?
    - *Public Housing*
      - Notice requirement
      - Notice must contain:
        - Grounds for termination
        - Tenant's right to respond
        - Tenant's right to examine PHA documents
        - Right to request a grievance hearing
      - Timing of Notice:
        - 14 days for nonpayment of rent
        - "Reasonable time" for eviction based on criminal activity
        - 30-day notice for all other cause
      - Service of Notice:
        - Personal service on adult member of tenant's household; OR
        - By first-class mail
    - *Section 8 HCVP*
      - Notice Requirement
      - Notice must contain:
        - Good cause
        - Notice must list specific grounds for termination
        - Statement that tenant has the right to discuss the termination with the landlord within 10 days
      - Timing and service governed by Indiana law
      - Note: Landlord/Owner **must** also provide a copy of the termination notice to the PHA at the same time that it is provided to the tenant
    - *LIHTC / Section 42*
      - No written notice requirement
      - Good cause required to evict or to not renew the lease
  - Note: for most federally subsidized programs **good cause** is required to terminate a tenancy
  - If good cause is not found and/or if Landlord/Owner fails to abide by a program's notice requirement, then dismissal of the eviction action is appropriate

## Indiana (private landlord-tenant)

- Did the landlord take any steps to **initiate** the eviction action during the moratorium period (March 16, 2020 through August 14, 2020)?
  - Examples of “initiating” eviction action: providing notice to quit during the moratorium period as provided by applicable law, taking self-help measures to take possession of rental property, filing a notice of claim for possession during the moratorium period.