

NATIONAL CONFERENCE OF BAR PRESIDENTS

The organization of the nation's present, past and future bar leaders

c/o ABA Division for Bar Services • 321 North Clark Street, 17th Floor • Chicago, IL 60654-7598
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National Conference of Bar Presidents Call to Action to Members ***Engaging Bar Associations, Lawyers and the Legal System to Address the Eviction Crisis***

The National Conference of Bar Presidents (“NCBP”) is calling on all of its organizational and individual members, and on the legal community generally, to take immediate action to assist with the current onslaught of eviction proceedings.

As courts across the country resume eviction hearings, the eviction crisis falls to the legal system and profession. Given the \$46 billion in rental assistance funds available, there is an unparalleled opportunity to both prevent housing loss among struggling families and stabilize small property owners. The NCBP is partnering with other organizations and cities across the country to intervene in the eviction crisis to ensure that *both landlords and tenants* can recover from devastating pandemic-related hardship.

We are calling upon bar association leaders, law firms, lawyers, and legal systems to mobilize pro bono attorneys to avert evictions and ensure that rental assistance gets distributed to the landlords and tenants it was intended to protect.

The Urgency of the Eviction Crisis

Across the United States, the COVID-19 pandemic precipitated catastrophic job and wage loss that threatens the housing stability and health of renter households, as well as the livelihood of property owners who rent out their properties. Rental collection rates are down for small scale landlords, with property owners of color suffering the greatest deficit in rental income and at risk of foreclosure and long-term financial loss. An estimated 10.4 million (14%) renters who suffered severe pandemic hardship are currently behind on rent, with renters of color (22% of Black and 19% of Latino households) disproportionately struggling. Families are particularly vulnerable to eviction: At the end of May 2021, 1 in 5 renters with children were behind on rental payments.

Now that the federal eviction moratorium has been set aside by the US Supreme Court, eviction filing rates are expected to spike far above historic averages and overwhelm courts across the country. As a result, millions of adults and children are likely to suffer housing loss and, due to low vaccination rates in high eviction risk communities, COVID-19 infection and mortality. For these families, eviction

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will result in decreased mental and physical health, barriers to employment, and a downward move to substandard housing or homelessness, underperforming schools, and higher crime neighborhoods. For the 4 in 10 children facing food insecurity and/or housing loss, eviction will permanently alter their life course for the worse, decreasing their life expectancy, and exposing them to lead poisoning, academic decline, food insecurity, and emotional and psychological trauma, among other harms.

This crisis can and should be mitigated by the \$46.5 billion in rental and utility assistance appropriated by Congress. However, municipalities are struggling to disburse the funds to landlords and tenants who remain largely disconnected from this unprecedented financial resource. Landlords who proceed with eviction before accessing rental assistance will no longer be eligible to recover thousands of dollars in rental debt for each rental household.

The Legal Profession's Crucial Role in Protecting Landlords and Tenants from Hardship

We implore state and metropolitan bar associations and law firms to: 1) work with the courts to adopt eviction diversion programs, 2) spearhead a pro bono corps to respond to the heightened need for legal representation, and 3) collaborate with legal service and community-based organizations to ensure that marginalized communities have access to critical supports.

1. Outreach to the Judiciary

State and local court leadership should consider issuing a temporary general administrative order to increase the pre-filing resolution of disputes, including:

- a. Requiring landlords to apply for rental assistance and submit an affidavit of compliance *prior* to filing an eviction proceeding for nonpayment of rent; and
- b. Postponing any pending eviction cases for 60 to 90 days to allow parties to apply for rental assistance. Where the rental assistance is obtained, the court should seal or expunge the record to prevent the deleterious and long-term effects of an eviction record on a family.

In addition, courts should consider initiating formal diversion programs that combine legal assistance, mediation, rental assistance, supportive services, and

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other interventions to secure lasting housing stability for high risk tenants. The National Center for State Courts has created a diversion diagnostic tool and is available to assist courts in designing diversion programs and drafting a general administrative order that will allow landlords to recoup rental debt and prevent a backlog of cases. Please contact Danielle Hirsch dhirsch@ncsc.org for assistance.

2. Engagement of Law Firms & Pro Bono Champions to Collaborate with Legal Services Organizations

The state and metropolitan bar associations should collaborate with county, municipal, and affinity bars to identify firms and/or corporations to champion the pro bono response to the eviction crisis. Law firms should collaborate with local legal services organizations to provide a housing law training and to identify clients for pro bono representation. Due to the overwhelming demand for legal services, law firm support will also be necessary to coordinate and host trainings and provide or sponsor case management and pro bono supervision.

Pro bono attorneys are critical to ensuring housing stability. Even without the availability of rental assistance, tenant legal representation dramatically reduces eviction rates. In a study of New York City's right to counsel program, 84% of represented tenants remained housed, compared to few unrepresented tenants.

Attorneys can make an enormous difference in a family's ability to preserve housing:

- a. Pre-filing representation: attorneys can represent tenants in mediation or negotiate directly with the landlord in order to secure rental assistance and avoid the costly eviction process and the harmful effects of an eviction record.
- b. Post-filing: attorneys can represent tenants in an eviction hearing, request a stay in order to apply for rental assistance, raise defenses to eviction (such as, breach of the warranty of habitability, retaliation, fair housing violations, etc.), and petition the court to seal the eviction record, among other interventions.

3. Collaboration with State and Local Government, Legal Services, and Community Based Organizations

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Bar leaders should identify and work closely with state and local leaders, legal services and community-based organizations (CBOs) in order to 1) design effective eviction prevention and diversion programs and 2) facilitate awareness among tenants and landlords about rental assistance, and the opportunity to obtain legal assistance and participate in diversion programs. CBOs can also serve as tenant advocates and navigators who assist with applications and accompany tenants in any diversion programs that involve mediation without tenant legal representation.

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It is incumbent on our profession, which is uniquely positioned, to answer this call to action by contributing the time and talent necessary and available within our ranks to avert the devastating impacts of the eviction crisis.

For more information on how bar leaders can respond, listen to this [recording of an NCBP August 2021 Annual Meeting session on access to justice](#). During the session, moderated by NCBP Executive Council members Sharon Gerstman and Tina Cruz, Justice Shannon Bacon of the New Mexico Supreme Court and Gretchen Gonzalez, Executive Director of the Volunteer Lawyers' Project of the Erie County Bar Association focused on court and pro bono tactics to address coming eviction challenges.

Contact:

Michael Freed
President, NCBP
904-434-1111, MFreed@gunster.com