

## The State of Play: Eviction Policy During COVID-19

The COVID-19 pandemic brought with it the challenge of balancing public health with America's economic well-being. In the initial stages of the nation's virus response, federal, state and local policy-makers temporarily suspended evictions to prevent renter displacement and homelessness, with broader intentions of limiting community spread. Restrictions on courts or law enforcement overlaid additional barriers to the eviction process on top of these executive or legislative actions. The result is a patchwork of eviction restrictions that differ widely by jurisdiction. Eviction policy is ever evolving and, as some mandates begin to terminate, advocates are using the momentum of the current environment to extend these renter protections or make them permanent.



Despite efforts in all 50 states to loosen COVID-19 restrictions and allow phased reopening measures, many state and local governments are electing to extend eviction moratoria – even if these protections are not needed when Americans return to work. In California alone, over 172 jurisdictions temporarily suspended evictions. Nationwide, 22 states and at least 198 localities currently have special eviction restrictions in place. Some of these restrictions are contingent on active state or local state of emergency orders. Of those 22 states, 14 protect residents only in nonpayment of rent cases, five limit protections to cases of nonpayment for residents who can show economic hardship due to COVID-19 and 10 prohibit housing providers from filing notices to vacate.

At the onset of COVID-19, proponents of eviction restrictions leaned heavily on arguments such as “housing is health care” to keep these protections in place. More recently, two narratives have emerged that are driving the most adverse policy responses at the state and local level. The first narrative contends that an avalanche of evictions is on the horizon. While it is true that special COVID-19 renter protections continue to expire, we have yet to see a mass wave of evictions. Time, coupled with federal assistance dollars, reprieves from late fees and the use of payment plan agreements has allowed many residents to stay current on their payments. Some residents have even been able to pay off large outstanding balances. Even more encouraging is the growing proliferation of rental assistance programs at the state and local level. For example, on June 23, the Los Angeles City Council voted unanimously to use \$100 million of CARES Act funds to help rental housing residents affected financially by COVID-19.

The second narrative is the idea of a “triple pandemic,” a coronavirus-inspired metaphor used by renter advocates to describe the intersection of social justice, housing justice and the disproportionate effects of COVID-19 on minority communities. This narrative aligns with existing arguments about the disparate impact of evictions and resident screening laws on communities of color. As was the case with the Fair Housing Act during the Civil Rights Movement, we expect to see advocates drive forward sweeping changes to eviction policy and other housing laws in 2020.

## **The State of Play: Eviction Policy During COVID-19 (Cont'd)**

Two noteworthy examples of adverse policies driven by these narratives remain in play in the New Jersey and California state legislatures. The New Jersey Assembly's Housing Committee approved Assembly bill A-4226 during a hearing on June 16 that would have significant ramifications for rental housing providers in the state. The bill requires owners and operators to enter into repayment agreements that would significantly change existing lease terms and preclude providers from utilizing the eviction process in these cases. Under these repayment agreements, renters are given six months to repay every one month of outstanding rent owed. Housing providers are also prohibited from pursuing evictions of residents who enter into these agreements and reporting any nonpayment of rent to credit reporting agencies.

California is considering equally expansive COVID-19 eviction protections. Assembly Member David Chiu, author of California's statewide rent cap and just cause eviction bill passed last year, has introduced AB 1436. The bill, which passed the house and now sits with the Senate Judiciary Committee, would prevent housing providers from holding residents liable for nonpayment of rent resulting from COVID-19 financial impacts during the covered period. The covered period is defined as the date the state of emergency due to COVID-19 was enacted through April 1, 2021, or 90 days after the termination of the emergency order, whichever is earlier. Moreover, no eviction could be filed on a resident who suffered loss of income or increased expenses during the outlined timeframe for the subsequent 12 months after the restrictions expire. Historically, the State and local governments have waited years to lift state of emergency orders, meaning evictions would likely be barred for the next 10 months.

While many of these temporary renter protections are set to expire, the industry must remain vigilant to prevent any extensions or expansions of eviction moratoria as the viability of the rental housing industry is at risk. Policymakers also must consider the long-term implications on the availability of affordable housing in the current housing stock and effects on investment in new development. It is critical for lawmakers at all levels of government to focus on greater access to emergency rental assistance; this approach is key to fostering renters' financial stability and preventing displacement.

## **Assistance Animals and the HUD Notice *By: Fair Housing Institute***



Assistance  
Animals and the  
HUD Notice



### **What is the difference between service animals and emotional support animals?**

When we look at the Fair Housing Act and Section 504, we don't care whether an animal is a service animal or an emotional support animal. It doesn't matter, we don't need to ask different questions. We certainly can't ask for proof of training or some kind of certification.

All of that, when it comes to housing, is irrelevant, even though it's important under the ADA. But the ADA doesn't apply to housing. So HUD is causing some confusion in its new notice, by beginning the entire notice with questions pertaining to service animals.

## Assistance Animals and the HUD Notice (Cont'd)

### Service Animal Definition

The legal or technical definition of a service animal or assist animal is an animal that has been trained to work, perform task, provide assistance for a person with a disability. The ADA limits those types of animals to dogs. And as you know, as housing providers, you cannot limit the type of assistance animal to a dog. The ADA references are somewhat confusing in the new HUD notice.



Interestingly enough, this new notice comes up with a completely different type of animal that the notice refers to as a support animal. In the definition, HUD defines support animals that do work, perform tasks, provides assistance, or provide therapeutic emotional support for individuals with disabilities.

### **How do we differentiate whether it is a service animal or emotional support animal (ESA), based on the new guidance?**

That takes us back to this concept of the ADA. Under the ADA, operators of public accommodations are permitted to ask if someone brings in an animal into, let's say, a Target store. They are walking around the aisles with their dog in their arms or in the basket or wherever. And the manager of the store or an employee can walk up to that person and say,

“Is that a trained service animal?”

And if the person says, “Yes,” they are permitted to say, “And what work or task has this animal been trained to perform for you?”

And the customer is supposed to answer that question.

However, there's no written verification, there's no confirmation, there's no verification of any of that information. If the animal is not a dog, then it's clear, it's not a service animal, because only dogs and in rare cases, miniature horses, are recognized as service animals. So, in housing, if someone says, “I don't have to provide you verification of my service animal.” The answer is, that applies under the American Disabilities Act, but the ADA does not pertain to housing. The Fair Housing Act permits verification when the disability and the need for the animal are not observable.

If you can see that the animal is a guide dog, then you shouldn't be asking for verification. But if it's a dog that is a service animal for disabilities such as hearing problems or alert someone that they're about to have a seizure, you can't see that when you talk to the resident. In that case you can ask for verification. And if they say to you that's not permitted, then you have to clarify, ***“I'm asking you this not under the Americans with Disabilities Act, but under the Fair Housing Act.”***

## Assistance Animals and the HUD Notice (Cont'd)



### **What is proper certification for assist animals? Would certifying your pet online be acceptable?**

HUD has made it very clear in this notice that going online and getting your pet registered or certified on some website, by paying money is irrelevant to the question of whether this is an assistance animal that should be approved to live in housing as a reasonable accommodation. If someone

hands you one of those registrations or online certifications, you can hand it back to the resident and let them know that it is not adequate to verify their need for an assistance animal.

We only want to know if you're disabled, if you meet the definition of disability, and if that animal is necessary to assist you because of your disability. That's all you care about, when you're verifying a request for a reasonable accommodation. The HUD notice has made it very clear, it considers those websites as taking advantage of people, wasting their money, because those registrations are irrelevant to the question of whether you approve their reasonable accommodation or not.

### **Should property management companies have a procedure for accommodation requests?**

When your property is looking at a request for an assistance animal, I hope you have a pretty detailed procedure that you follow, that all staff at your property follow, when considering a request for an accommodation. And that involves verification when the disability status of the resident is not observable. If you're going to turn down someone because you don't think their verification is reliable you need to conduct an interactive meeting, which is a good-faith dialogue with that applicant or resident, explaining why you are not going to accept or grant their request and attempting to resolve their request.

### **What does the Fair Housing Act say about verification of the need for emotional support animals?**

First of all, the process should be done in writing. The law is clear that you shouldn't turn down a reasonable accommodation request for an assistance animal, without explaining the reasons to the resident. To be a reliable verifier, the verifier has to have personal knowledge about the resident, and should be providing the resident with medical or mental health services, and not merely providing a verification letter or filling out a form.

There are questions that you can ask, to determine if the resident just went online and purchased a verification letter, or if they have an ongoing medical or therapeutic relationship with the verifier. And you don't have to give much credence to a verification when it was provided by someone that clearly has little or no professional knowledge of the resident.

## Assistance Animals and the HUD Notice (Cont'd)

### HUD Assistance Animal Notice Key Takeaways

The notice also makes it clear the difference between domesticated animals kept in the home (traditional) and non-traditional unique animals such, goats, pigs, chickens, snakes, etc. The notice says the resident has a substantial burden to be able to show that they need a unique animal, as an assistance animal. Now, it is not impossible to justify a unique animal, but they're going to have to explain in more detail than with a usual animal, why they need their snake as an emotional support animal.

We haven't had this distinction in the past. This may mean that you need to revise your forms, to include questions about unique animals.. The other thing that the notice says is if you require the resident or verifier to notarize their information, you need to stop doing that.

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