

Why eviction moratoriums are bad for affordable housing

What other industry is being forced by the government to continue providing a product or service (housing) without being compensated? Housing providers are being asked to carry a heavy burden as part of the CARES Act. Extending the eviction moratorium is a band aid that solves one immediate problem by risking the health of an entire industry – affordable housing. Instead of forcing housing providers into an untenable position by enacting another eviction moratorium, rental assistance funds should be made widely available with direct payments to housing providers. This solves both problems.

Only between 5-10% of rental payments make it to the landlord's bottom line. The remainder is used for the additional numerous costs associated with providing rental housing. These include paying staff, paying insurance, and keeping properties safe. Delinquency rates have skyrocketed (some reaching 25% or greater) and rental property owners are in a cash flow crisis that will have a devastating impact on the supply of affordable housing going forward.

After only being two months behind, 40% of renters walk away and never pay. Housing providers are not just being asked to wait for rental payments, they are being asked to forgo a portion of their revenue that is far greater than their profit. This adds significant instability to the housing industry.

Any government mandated eviction moratorium effectively nullifies lease contracts. The lease is a private two-party contract and a moratorium fundamentally changes it. This puts the housing provider at a significant disadvantage and offers no relief or compensation in return.

The affordable housing crisis pre-dated COVID-19. Reasons why an eviction moratorium will make it far worse:

Long term ramifications for affordable housing:

- 1) Landlords will be forced to take dramatic steps. Property costs never stop. When tenants are allowed to stay in place without sharing in these costs, they must be shifted to the tenants that do pay (in the form of higher rents). Additionally, multifamily owners will be forced to increase tenant deposit and credit qualification requirements. Rental deposits could grow to two or three times the monthly rent. Higher credit scores will also be required. Ultimately, these factors would reduce the options available to low income tenants looking for a safe place to live.
- 2) Safety. When a property does not have the funds needed to operate and pay its bills, bad things happen. Industry insiders understand this very well.
- 3) LIHTC investors (a.k.a. limited partners - LPs) are a very risk averse group. These investors have now been exposed to a brand-new risk; one they had never contemplated. Non-paying tenants cannot be evicted and replaced with paying ones that can support the ongoing costs of the properties. This will drain operating reserve accounts and weaken the asset's financial health. Investors will require a higher yield on future deals. This will lower credit pricing and make affordable housing harder to develop. We have a good example in recent history that will prove the point. *The Historic Boardwalk Hall, LLC, et al. v. Commissioner*, 694 F.3d 425 (2012) ruling exposed investors to a new (but very narrow) recapture risk. This small event added complexity to all LPAs and credit pricing. Imagine what LPs will do to mitigate this new risk in the future?
- 4) General Partners (GPs) must take on even more risk. General Partners are the driving force behind development of affordable LIHTC properties. They are asked to personally guarantee these deals for up to 50 years. Many GPs will not want to take on this new risk and simply step out of affordable housing development.
- 5) Banks. With the understanding rental payments (used to pay back bank loans) can be cut off by at the first sign of a new health crisis, lenders will move to protect themselves. This will include increasing rates and requiring affordable housing borrowers to have higher DCRs (and other requirements) or simply cut them off from lending. If new projects cannot get financed, they never get built. If existing multifamily projects cannot get refinanced, they

fail. Debt structure is one of the primary drivers of costs and cash flow in affordable housing. Banks mitigate risks by raising rates. Any increase in lending rates would weaken existing projects and limit future supply of affordable housing stock.

- 6) Section 8 acceptance. The Section 8 program provides housing assistance to renters of lower income. Some property owners, however, choose not to rent to Section 8 tenants due to preconceived bias and/or due to additional requirements placed on landlords. If a property owner now knows that by taking Section 8 tenants, a government entity can impose a halt on evictions for these tenants, this will be used as yet another reason not to rent to “those people”. Affordable housing advocates have seen this time and time again.

It remains to be seen if these moratoriums are legal and governments that enact them should expect legal challenges. These moratoriums target housing providers that serve low income tenants (Section 8, LIHTC, HUD, federally backed mortgages). Many of these providers operate under very thin margins and specific requirements (like rental caps) that make them financially vulnerable. Ironically, this ends up hurting these very same families the moratoriums are meant to help and will make it harder to find housing in the future. No housing provider agreed to take on this burden as part of any program or federal loan. We never considered this as even a possibility.

Without the threat of eviction for non-payers, tenants have no incentive to pay rent and delinquency rates will jump. It is a necessary part of providing rental housing. Housing providers have already made enormous efforts to stem the flow of evictions. Many are offering discounts, extensions and payment plans for back rent, and making sure tenants that need rental assistance know where to get it. The CARES Act and the state of Iowa already enacted these moratoriums to give time for tenants to get back on their feet, however housing providers cannot shoulder this burden with no relief any longer.

Tenants do not want to be evicted. At the same time, housing providers do not want to evict them; give housing providers the resources so they do not have to.

Housing providers need relief now – pay past due rents directly to landlords

The available programs for housing assistance funds are underfunded, but they do exist, and funds are available. These programs must be simple for tenants to apply and qualify for. If complexity needs to be added, it should be for a very good reason and the burden should be put on the housing provider rather than the tenant. Providers are motivated to complete the process as long as they receive the funds directly to be applied to tenant past due balances.

Programs are available for rental assistance. Iowa Examples:

- 1) The IMPACT Community Action Partnership in Des Moines. Limited funds remaining.
- 2) The Iowa Finance Authority (IFA) has the Eviction and Foreclosure Prevention Program with over \$10MM still available for rental assistance. The funds are there, but tenants must take affirmative steps to seek them out and apply for this assistance.

If there are questions regarding these or any related affordable housing issues, please contact:

JB Conlin

Conlin Properties, Inc.

3721 SW. 61st St., Suite A

Des Moines, IA 50321

JBConlin@ConlinProperties.com

515-246-2936