

# Housing Justice in the Pandemic Age: Recommendations for Safe and Effective Courts During COVID-19

## Context

This brief outlines recommendations to inform the “reopening” of New York City housing courts, a term we will use to describe the incremental process of reopening court buildings, permitting new eviction filings, expanding the courts’ dockets, and other aspects of returning to full operations. The COVID-19 pandemic has affected both the day-to-day operations of housing courts and, through widespread job loss, sickness, and death, the economic forces that ultimately drive the court’s caseload.<sup>1</sup>

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<sup>1</sup> The Furman Center has analyzed the effects of COVID-19 on employment and housing extensively. See *What Are the Housing Costs of Households Most Vulnerable to Job Layoffs? An Initial Analysis*, FURMAN CENTER: THE STOOP (Mar. 30, 2020), <https://furmancenter.org/thestoop/entry/what-are-the-housing-costs-of-households-most-vulnerable-to-job-layoffs-an>; *Understanding the Potential Magnitude of Rent Shortfalls in New York Due to COVID*, FURMAN CENTER: THE STOOP (June 4, 2020), <https://furmancenter.org/thestoop/entry/understanding-the-potential-magnitude-of-rent-shortfalls-in-new-york-state>; Noah Kazis, *COVID-19 and the Rental Market*, FURMAN CENTER: THE STOOP (Apr. 30, 2020), <https://furmancenter.org/thestoop/entry/covid-19-and-the-rental-market>; *COVID-19 Cases in New York City, a Neighborhood-Level Analysis*, FURMAN CENTER: THE STOOP (Apr. 10, 2020), <https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-york-city-a-neighborhood-level-analysis>

Housing court buildings temporarily shuttered (and statutes of limitations were tolled) pursuant to Governor Cuomo’s “New York State on PAUSE” executive order, and a combination of executive orders and directives from within the court system have limited the courts’ activities since March. Additionally, the New York State Courts suspended all eviction and residential foreclosure proceedings on March 16<sup>2</sup> and have extended this suspension until at least July 6.<sup>3</sup> On June 18 the Courts announced that, subject to the Governor’s executive orders, new filings will be permitted by mail or through an electronic filing system;<sup>4</sup> because electronic filing is not yet functional for housing courts, landlords may file only by mail.

Over the next few months, many of these constraints are set to relax. Per Governor Cuomo’s executive orders, between June 20 and August 20, landlords will only be prohibited from filing non-payment eviction or foreclosure cases against tenants who are experiencing hardship as a result of COVID-19 or who qualify for unemployment, and will be permitted to file nonpayment eviction cases against other tenants as well as all other holdover cases.

As of June 24, 2020, housing courts are in “Phase Two” of their reopening.<sup>5</sup> During this phase, the courts are increasing their staffing and courthouse activity from the 25 percent of total staff limit in

place during Phase One.<sup>6</sup> Though the courts will be increasing staffing in the courthouse, most matters will continue to be heard virtually.<sup>7</sup> The courts will still conduct hearings only in certain emergency cases,<sup>8</sup> as well as virtual conferencing in eviction matters commenced on or before March 16 in which both parties are represented by counsel (known as “two-attorney” cases).<sup>9</sup>

The city’s housing courts already face substantial challenges. They lack sufficient interpreters and private spaces where attorneys can meet with clients. Judges’ dockets are chronically overloaded, even after [a 30 percent decline in filings over the past six years](#). The courts’ “hallway culture,” in which negotiations are brokered rapidly and outside of courtrooms, creates confusion and intimidation for tenants. And despite improvements, imbalances in landlord and tenant representation still impede the fair and efficient resolution of eviction cases.

As a result of COVID-19, housing courts face two new challenges: the safety risks of hearing cases in person, and a widespread rent shortfall that, absent preventive action, foreshadows a flood of nonpayment eviction filings. Landlords report reduced rent collections, and unemployed tenants will lose a significant portion of their benefits when the federal Pandemic Unemployment Assistance supplement expires at the end of July.<sup>10</sup>

2 Chief Administrative Judge of the Courts, Hon. Lawrence Marks, New York State Unified Court System Administrative Order 68/20, <https://www.nycourts.gov/whatsnew/pdf/AO-68-20.pdf>

3 Letter from Hon. Lawrence Marks, *Procedure for Addressing Residential and Commercial Eviction Proceedings*, New York State Unified Court System, [https://www.nycourts.gov/whatsnew/pdf/2020\\_06\\_18\\_15\\_16\\_44.pdf](https://www.nycourts.gov/whatsnew/pdf/2020_06_18_15_16_44.pdf).

4 Chief Administrative Judge of the Courts, Hon. Lawrence Marks, New York State Unified Court System Administrative Order 121/20, <https://www.nycourts.gov/whatsnew/pdf/AO-121-20.pdf>

5 Rob Abruzzese, *NYC Courts Will enter Phase Two on Wednesday*, BROOKLYN DAILY EAGLE (June 23, 2020), <https://brooklyneagle.com/articles/2020/06/23/nyc-courts-will-enter-phase-two-on-wednesday/>

6 *Id.*; Beth Fertig, *As Civil Courts Reopen, Tenant Advocates Fear Coronavirus Could Spread in a Busy Housing Court*, GOTHAMIST (June 10, 2020), <https://gothamist.com/news/civil-courts-reopen-tenant-advocates-fear-coronavirus-could-spread>

7 Abruzzese, *supra* note 6.

8 During Phase One, the courts are continuing to hear cases involving illegal lockouts, heat or water restoration, and emergency repairs. Letter from Hon. Anthony Cannataro, *NYC Civil Court Operating Plan for Phase I of Our Resumption to In-Person Operations*, New York State Unified Court System, [https://nycourts.gov/courts/nyc/civil/corona/operating\\_plan.shtml](https://nycourts.gov/courts/nyc/civil/corona/operating_plan.shtml)

9 Chief Administrative Judge of the Courts, Hon. Lawrence Marks, New York State Unified Court System Administrative Order 121/20,

10 *Understanding the Potential Magnitude of Rent Shortfalls Due to COVID*, *supra* note 2.

When enhanced benefits and restrictions on eviction filings expire simultaneously in August, evictions filings could surge.

Our analysis suggests that the best way forward is to prevent as many nonpayment eviction cases as possible through the creation of short-term rental assistance programs that preserve housing and financial stability for tenants and landlords. Alternative dispute resolution programs may, in certain cases and with adequate protections, also provide an alternative to formal eviction filings. Preventing a surge in eviction filings is urgent not only because of the economic and public health consequences of evictions but also because of the disproportionate rates of eviction among Black and Latinx tenants and their neighborhoods. This brief also outlines further considerations to guide housing courts in preserving due process and accessibility for litigants as housing court procedures adapt to the changes necessitated by COVID-19.

## Methods

This analysis builds on conversations with a wide range of stakeholders in New York City and State, including lawyers who represent tenants and landlords; tenants' advocates and organizers; private and non-profit affordable housing providers; officials from agencies including the Human Resources Administration (HRA) and the Department of Housing Preservation and Development (HPD); and scholars of law, sociology, public health, “

and economics who study housing, eviction, and housing court. It also draws from the Furman Center's research on the implementation and first phase of the rollout of New York City's Universal Access to Counsel program,<sup>11</sup> and on the State of Eviction Filings in New York City.<sup>12</sup> The Furman Center has also analyzed the likely magnitude of the rent shortfall and need for rental assistance<sup>13</sup> in New York City as a result of the economic crisis caused by COVID-19.

The recommendations that follow emerged as key themes from these conversations. In articulating them, we do not provide a silver bullet, a mandate, or a checklist. Rather, we present them as principles that our research efforts suggest will be cornerstones if housing court is to operate safely, fairly, and efficiently going forward, and if the city is to avoid the health, safety, and economic consequences of a surge in evictions.

### Recommendations for the reopening of New York City housing courts:

1. **Prioritize public health and safety.**
2. **Preserve stability for tenants and landlords.**
3. **Ensure racial equity and accessibility.**
4. **Build a foundation that ensures due process.**

11 Vicki Been, Deborah Rand, Nicole Summers & Jessica Yager, *Implementing New York City's Universal Access to Counsel Program: Lessons for Other Jurisdictions*, FURMAN CENTER (2018), [https://furmancenter.org/files/UAC\\_Policy\\_Brief\\_12\\_11-18.pdf](https://furmancenter.org/files/UAC_Policy_Brief_12_11-18.pdf)

12 FURMAN CENTER, STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2019, <https://furmancenter.org/stateofthecity/view/eviction-filings>

13 *Understanding the Potential Magnitude of Rent Shortfalls Due to COVID*, *supra* note 2.

## Implementation

### 1. Prioritize public health and safety.

There are no higher priorities than public health and safety as housing courts prepare to reopen, and these concerns are top of mind for tenants, landlords, advocates, and officials in all areas of government. Before March 2020, some three thousand people passed through the turnstiles of Bronx Housing Court on any given day. Even a fraction of that volume would create a substantial risk of a resurgence of COVID-19 cases, with disproportionate effects in boroughs and neighborhoods that have already been hit hardest by the pandemic. Our conversations affirmed that all stakeholders share these concerns.

Ensuring safety nevertheless presents operational challenges. The physical layouts of each housing court present unique difficulties, from how to ensure accessibility in buildings with small elevators and limited capacity to how to direct traffic in narrow hallways. In Brooklyn, for example, housing court operates from a converted office building; safely reopening that space likely counsels in favor of consulting guidelines for both courthouses and office spaces. If effective modifications are infeasible, safe reopening may even counsel physically reopening housing court in other large spaces, such as convention centers, not currently being used for their original purposes—a move other cities have adopted or considered.<sup>14</sup>

The eviction process also creates risks to public health outside the courthouse walls. Evicted tenants may have nowhere to go. For those who can relocate, moving presents its own safety risks. Some will end up in the city's shelter system,<sup>15</sup> which already operates at a high capacity and where congregate living exacerbates the risk of COVID-19 transmission. Research shows that evictions significantly increased emergency room visits even before the pandemic.<sup>16</sup> A surge in eviction filings will disproportionately harm Black and Latinx tenants and the neighborhoods where many of these tenants live.<sup>17</sup>

What this suggests is an urgent need to prevent a surge in eviction filings and keep as many non-payment cases as possible from reaching housing court. The ability to do this is largely beyond the capacity of the court system and instead in the hands of federal and state governments, who can fund and design upstream solutions that provide rental assistance to landlords and tenants. Implementing a system of short-term rental assistance (elaborated in the next section) would, however, free up housing court resources to focus on the kinds of cases most in need of the court's attention—emergencies involving genuine legal disputes, including illegal lockouts, emergency repairs, and serious misconduct.

<sup>14</sup> See Angela Morris, *Conference Center Courtrooms? Harris County Judges Searching for Space for Socially Distanced Voir Dire*, LAW.COM (May 28, 2020), <https://www.law.com/texaslawyer/2020/05/28/conference-center-courtrooms-harris-county-judges-searching-for-space-for-socially-distanced-voir-dire/>; John Fuddy, *Traffic and Eviction Hearings Moving to Greater Columbus Convention Center Amid Coronavirus Pandemic*, COLUMBUS DISPATCH (May 22, 2020), <https://www.dispatch.com/news/20200522/traffic-and-eviction-hearings-moving-to-greater-columbus-convention-center-amid-coronavirus-pandemic>

<sup>15</sup> Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households* (Feb. 2019), at 3, [https://robcollinson.github.io/RobWebsite/jmp\\_rcollinson.pdf](https://robcollinson.github.io/RobWebsite/jmp_rcollinson.pdf)

<sup>16</sup> *Id.*

<sup>17</sup> FURMAN CENTER, STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2019: FOCUS CHAPTER—EVICTION FILINGS, <https://furmancenter.org/stateofthecity/view/eviction-filings>

## 2. Preserve stability for tenants and landlords.

A second recommendation follows from the first: to prevent a surge in eviction filings and its attendant consequences for public health and safety, a core guiding principle should be to resolve as many cases outside of housing court as possible. The process of being evicted is financially and psychologically harmful to households. Eviction has public health consequences including, but not limited to,<sup>18</sup> the risk that tenants displaced to shelters will increase the transmission of COVID-19. Tenants sued for eviction are placed on “blacklists” that may make it harder for them to secure rental housing in the future.<sup>19</sup> Foreseeable delays in processing new filings as the courts make their way through backlogged cases will also exacerbate financial stress on landlords struggling to make payments for water, insurance, mortgages, property taxes, and other expenses over the next few months.

### **a. Provide rental assistance to reduce the number of eviction cases that end up in housing court.**

The potential for short-term rental assistance to foster stability for both tenants and landlords emerged consistently in our conversations. The inability of many tenants to pay rent jeopardizes the housing stability not only of tenants, who risk eviction, but of landlords who may be at risk of foreclosure or missing critical payments for insurance or property taxes. Stakeholders emphasized the need for short-term assistance that would relieve financial burdens on tenants and landlords alike. Even compensating landlords for a reasonable percentage of arrears rather than dollar-for-dollar would go a long way towards preserving stability during a time of fiscal constraints.

<sup>18</sup> Collinson & Reed, *supra* note 16, at 3.

<sup>19</sup> The Housing Stability and Tenant Protection Act of 2019 outlawed the use of tenant blacklists in New York State. However, landlords in other states can still legally reference blacklists compiled from New York eviction proceedings. Housing Stability and Tenant Protection Act of 2019 (adding N.Y. REAL PROP. LAW § 227-f (Consol. 2019), entitled “Denial on the basis of involvement in prior disputes prohibited.”)

Rental assistance measures have already received legislative attention. New legislation<sup>20</sup> providing \$100 million of rental assistance, funded by federal Community Development Block Grants made available through the CARES Act<sup>21</sup> and administered by New York State Homes and Community Renewal (HCR), was enacted on June 17. The program, which will target households with incomes below 80 percent of the area median income affected by COVID-19, should be administered with the goal of keeping as many households as possible out of housing court.

Developing a new system of rental assistance or expanding existing channels raises several challenges, beginning with funding. Going forward, given current budget constraints on state and city governments, federal funds will likely continue to be necessary to meet the need for rental assistance.<sup>22</sup> Our analysis suggests that after federal benefit enhancements expire, the monthly rental assistance in New York City required just to keep households’ rent burdens steady will increase

<sup>20</sup> Emergency Rent Relief Act of 2020, S.B. 8419, N.Y. 242nd Ann. Legis. Sess. available at <https://legislation.nysenate.gov/pdf/bills/2019/S8419>

<sup>21</sup> CARES Act, Pub. L. 116-136, 134 Stat. 281. See also CONG. RESEARCH SERV., COMMUNITY DEVELOPMENT BLOCK GRANTS AND THE CARES ACT (2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11315>; DEP’T OF HOUS. & URBAN DEV., *CPD Program Formula Allocations and CARES Act Supplemental Funding for FY 2020*, [https://www.hud.gov/program\\_offices/comm\\_planning/budget/fy20/](https://www.hud.gov/program_offices/comm_planning/budget/fy20/)

<sup>22</sup> For more on use of CDBG and other federal funds, see LOCAL HOUS. SOLS., FUNDING HOMELESSNESS RESPONSES, <http://www.localhousingsolutions.org/wp-content/uploads/2020/05/Funding-homelessness-responses.pdf>; Bruce Katz, Colin Higgins, Michael Saadine & Florian Schalliol, SAVING SMALL BUSINESS: EMERGING TYPOLOGIES OF LOCAL RELIEF FUNDS, DREXEL UNIV. METRO FINANCE LAB, <https://drexel.edu/nowak-lab/publications/reports/Covid-Emergency-Fund-Typologies/>; DEP’T OF HOUS. & URBAN DEV., USING CONTINUUM OF CARE PROGRAM FUNDS FOR INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE (Mar. 13, 2020), <https://files.hudexchange.info/resources/documents/Using-CoC-Program-Funds-for-Infectious-Disease-Preparedness-and-Response.pdf>; NAT’L LOW INCOME HOUS. COAL., COMMUNITY DEVELOPMENT BLOCK GRANTS—CORONAVIRUS (CDBD-CV) (June 5, 2020), <https://nlihc.org/sites/default/files/CDBG-CV.pdf>; NAT’L LOW INCOME HOUS. COAL., CORONAVIRUS RELIEF FUND (June 5, 2020), <https://nlihc.org/sites/default/files/Coronavirus-Relief-Fund.pdf>; NAT’L LOW INCOME HOUS. COAL., EMERGENCY RENTAL ASSISTANCE: ENSURING HOUSING STABILITY DURING THE COVID-19 PANDEMIC (May 1, 2020), <https://nlihc.org/sites/default/files/Emergency-Rental-Assistance.pdf>

from \$65 million to \$267 million per month.<sup>23</sup> Putting the \$330 million New York is set to receive in federal housing assistance—as well as future federal assistance, such as any HEROES Act funds—towards meeting this need and preventing eviction would have substantial benefits for landlords, tenants, and the city’s court and shelter systems.<sup>24</sup>

Rental assistance legislation should also take into account the mechanics by which tenants and landlords can access assistance. Several stakeholders recommended having landlords, rather than tenants, apply for assistance, capitalizing on landlords’ access to key documentation and the efficiency gains of administering assistance to entire buildings. Legislators should consider which entities have the expertise and capacity to administer different program models effectively. Public housing authorities are well-positioned to administer voucher programs (and are spread across the state); HCR and HPD deal primarily in providing low cost financing and tax credits to property owners, but also have staff that process Housing Choice Vouchers; and county Departments of Social Services (DSS) and HRA ordinarily provide direct assistance at the household level.

HRA’s emergency arrears loans, or “one-shot deals,” help to prevent eviction in many nonpayment cases. But the program has limitations: according to requirements set by the state, assistance is predicated on receiving a rent demand from a landlord and on demonstrating an ability to pay ongoing rent. Neither requirement meets the needs of the moment: many tenants face uncertain economic futures, and rental assistance should aim to prevent rather than respond to the commencement of formal eviction proceedings. Stakeholders also

point out that many tenants struggle to navigate the systems required to access one-shot deals without help from legal or social services. Many landlords also express frustration at having to take their tenants to court to access rental assistance because of the inefficiency or the adversarial nature of housing court (or both). The difficulty of filling vacancies during a pandemic may further increase the cost, and reduce the benefits, to landlords of evicting tenants; it may also prompt more landlords to negotiate repayment agreements with their tenants (the prevalence of which is difficult to document). In many cases, however, the objective of a nonpayment case is to collect arrears, rather than (necessarily) evict a tenant, underscoring the importance of creating channels outside of court through which landlords can receive rental assistance

Targeting rental assistance will also be challenging. Stakeholders emphasized the particular urgency of providing assistance to households affected by COVID-19, households at imminent risk of homelessness, low-income households ineligible for other forms of assistance (such as families without immigration status), and property owners (particularly small landlords) at risk of financial distress. Although providing rental assistance generally raises some concerns about moral hazard, these concerns are less salient when, as in the current labor market, high unemployment rates and poor labor prospects make it less feasible for recipients to shift their own earnings or employment to obtain assistance. Nevertheless, identifying the households in greatest need of assistance will create challenges, and defining eligibility criteria may involve difficult trade-offs. Limiting rental assistance to documentable COVID-related income losses may increase the political viability of assistance. However, such measures may also fail to reach the households in greatest need by missing those who faced pre-existing affordability challenges, or undocumented workers who may

<sup>23</sup> *Understanding the Potential Magnitude of Rent Shortfalls Due to COVID*, *supra* note 2.

<sup>24</sup> *More Than \$330M Will Soon Help NYers Facing Pandemic Housing Insecurity*, SPECTRUM NEWS NY1 (June 10, 2020), <https://www.ny1.com/nyc/all-boroughs/news/2020/06/10/city-to-receive-more-than-330-million-dollars-in-federal-housing-assistance>

have difficulty meeting strict burdens of proof of COVID-related income loss. Increasing the income eligibility for assistance means spending more dollars helping higher-income households.

**b. Where appropriate, consider diverting cases from housing court through mediation.**

Alternative dispute resolution (ADR) mechanisms can also be used to divert nonpayment cases from formal housing court proceedings.<sup>25</sup> Stakeholders raised a variety of perspectives on mediation (the form of ADR on which most policy proposals center): some opposed the idea altogether, citing power imbalances between landlords and tenants; some supported mediation only for two-attorney cases; and others supported mediation only for double pro se cases in which neither party is represented by counsel. (In 2019, approximately 38 percent of tenants were represented by counsel; the representation rate for landlords is upwards of 90 percent.)<sup>26</sup>

Mediation's primary advantage is the opportunity to resolve cases outside of housing court, avoiding the intimidation and frustration of the housing court environment and, ideally, the need for formal eviction proceedings. For tenants who are able to repay at least a portion of their arrears, mediation may provide an opportunity to bring landlords to the table to negotiate as well as oversight of negotiated agreements. Expanding the use of mediation could also benefit courts by taking pressure off of housing court dockets while serving as a point of connection to legal and social services. Stakeholders emphasized that mediation should be free and confidential.

In cases in which tenants simply cannot repay arrears, however, mediation will not be able to substitute for rental assistance. Preserving the advantages of out-of-court dispute resolution by identifying cases for mediation before an eviction is filed presents another challenge. Stakeholders expressed concern that mediators would need adequate training in the complexities of New York City housing law; otherwise, particularly without counsel, tenants may unknowingly give up rights and defenses. These considerations may make it difficult to develop a viable alternative dispute resolution program in the short term.

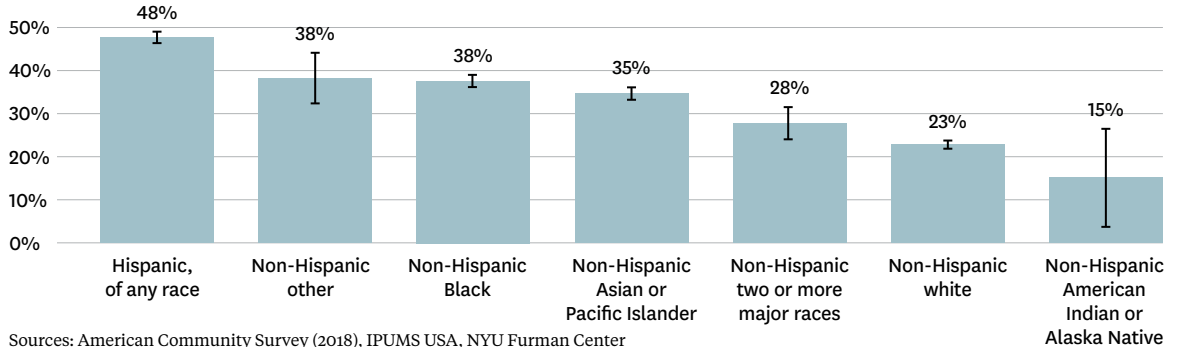
**c. Narrowing the issuance of possessory judgments.**

Several stakeholders recommended adopting legislative measures that would make nonpayment eviction cases non-possessory. Such a change would allow landlords to receive only monetary judgments (and not possession of a unit) for nonpayment of rent, and make judgments collectible in civil or small claims court like other debts. Some stakeholders emphasized that eliminating possessory judgments in nonpayment cases would likely reduce the incidence of executed evictions. Others raised concerns about the consequences of creating additional consumer debt, which could lead to bankruptcy or other hardships for tenants, and about the supply of lower-cost housing as landlords—particularly small landlords—may be more reticent to rent their units without the ability to evict nonpaying tenants. These stakeholders also expressed concern that the availability of formal eviction processes may make landlords more likely to resort to constructive or “soft” eviction tactics.

<sup>25</sup> See Brian Bieretz, Kimberly Burrowes & Emily Bramhall, *Getting Landlords and Tenants to Talk: The Use of Mediation in Eviction*, URBAN INST. (Apr. 9, 2020), <https://www.urban.org/research/publication/getting-landlords-and-tenants-talk>

<sup>26</sup> NYC HUMAN RES. ADMIN., NYC OFFICE OF CIVIL JUSTICE 2019 ANNUAL REPORT, [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_Annual\\_Report\\_2019.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_Annual_Report_2019.pdf)

Share of Wage Earners Employed in More Vulnerable Occupations by Race/Ethnicity, New York City 2018



Sources: American Community Survey (2018), IPUMS USA, NYU Furman Center

Note: Error bars represent 90% confidence intervals, and value labels reflect point estimates.

**d. Prioritize resources to landlords at risk of financial distress.**

Housing court operations will ultimately have implications for both the supply and the quality of lower-cost housing. Continued lost revenue will strain landlords’ abilities to make their mortgage payments; a foreclosure crisis would be disastrous for both landlords and tenants. Lost revenue, coupled with the logistical challenges of performing maintenance and repairs during a pandemic also hinders some landlords’ abilities to maintain building conditions. Identifying and targeting housing court and rental assistance resources to properties at risk of financial distress emerged as both a recommendation and key challenge from our discussions.

Housing courts’ current system for processing cases will move through the backlog of pending cases in chronological order. While older cases represent longer periods of lost rental income, this is still an imperfect proxy for landlords’ overall financial distress. Many stakeholders expressed that, with better information about landlords’ financial condition, priority in calendaring non-emergency cases should be given to landlords most at risk of losing their buildings.

**3. Ensure racial equity and accessibility.**

Communities of color are already bearing disproportionate burdens with respect to evictions, homelessness, and the effects of COVID-19.<sup>27</sup> Black and Latinx households are overrepresented both in eviction proceedings and in the City’s shelter system.<sup>28</sup> They have also been disproportionately harmed both by the direct harms of COVID-19,<sup>29</sup> suffering higher rates of infection and mortality, and by its devastating economic consequences. Although eviction filing rates declined across the city between 2013 and 2019, they remain highest in areas with greater shares of Black and Latinx residents.<sup>30</sup> As the Furman Center has previously observed in our analysis of eviction trends, “We should therefore be concerned about the potential disparate impact of any reversal of the downward trend in eviction filings caused by an economic recession.”<sup>31</sup> The chart below shows the distribution of households in incomes most vulnerable to income loss due to COVID-19.<sup>32</sup>

27 COVID-19 Cases in New York City, a Neighborhood-Level Analysis, *supra* note 2.

28 Basic Facts About Homelessness: New York City, COALITION FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/> (last visited June 17, 2020).

29 Michael Schwirtz & Lindsey Rogers Cook, *These N.Y.C. Neighborhoods Have the Highest Rates of Virus Deaths*, N.Y. TIMES (May 18, 2020), <https://www.nytimes.com/2020/05/18/nyregion/coronavirus-deaths-nyc.html>

30 FURMAN CENTER, STATE OF NEW YORK CITY’S HOUSING AND NEIGHBORHOODS IN 2019: FOCUS CHAPTER—EVICTION FILINGS, <https://furmancenter.org/stateofthecity/view/eviction-filings>

31 *Id.*

32 *What Are the Housing Costs of Households Most Vulnerable to Job Layoffs?*, *supra* note 2.



The most effective way to avoid exacerbating the disparate impact of evictions on Black and Latinx tenants is to keep as many cases as possible out of housing court, pursuant to the recommendations outlined above. This approach is compatible with the broader policy goals of preserving public health and ensuring stability to landlords and tenants by providing financial assistance.

Done right, the reopening of housing courts has the potential to avoid exacerbating disparate impacts in eviction filings and homelessness. Proactive measures—most importantly, robust rental assistance—can prevent the disproportionate eviction of low-income people of color. Our conversations also emphasized equity concerns related to language access and to broader accessibility for people with disabilities, elaborated below.

**a. Track and respond to geographic disparities.**

Our research shows that neighborhoods with higher proportions of Black and Latinx residents have seen higher rates of evictions. Policymakers should be attuned to the possibility that these disparities will be reproduced in post-moratorium eviction filings, and be prepared to respond as necessary with geographically-targeted resources including outreach and access to counsel.

**b. Center accessibility.**

People with disabilities are also overrepresented in eviction proceedings and in the City’s shelter system.<sup>33</sup> Many are at a higher risk of complications from COVID-19. Stakeholders reported that, even before the pandemic, many aspects of housing court—such as limited elevator facilities—limited the courts’ accessibility to people with disabilities. Remote hearings may present some benefits by removing the obligation to come to court, but virtual proceedings do not guarantee accessibility and indeed may pose particular challenges to parties whose disabilities cannot reasonably be accommodated via remote technology.

**c. Promote language access.**

Resources in languages other than English—including interpreter services and informational materials—have historically been underfunded,<sup>34</sup> but are an important tool for ensuring that non-English speaking tenants can meaningfully participate in housing court proceedings. In virtual proceedings, stakeholders emphasized that meaningful language access requires that interpreters be able to participate in cases in the same manner as other participants (for example, through video rather than solely by telephone, as one stakeholder reported).

<sup>33</sup> Roshan Abraham, *What’s It Like Growing Older in the NYC Homeless Shelter System?*, CITY LIMITS (June 5, 2020), <https://citylimits.org/2019/06/05/homeless-shelter-aging-senior-elderly-disabled/>

<sup>34</sup> Letter from Scott M. Stringer, New York City Comptroller, to New York City Mayor Bill de Blasio and New York City Council Speaker Corey Johnson (Feb. 11, 2020) available at <https://comptroller.nyc.gov/wp-content/uploads/2020/02/UPDATED-Letter-Legal-Interpreter-Band-and-Language-Services-Cooperatives-2-11-20.pdf>

#### 4. Build a foundation that ensures due process.

The “hallway culture” of housing courts, along with imbalances in representation rates, has long presented due process challenges. Changes in housing court proceedings due to COVID-19 highlight the need for due process protections, as more tenants and landlords face acute hardships and all parties must adapt to new rules and procedures, such as virtual hearings.<sup>35</sup> Challenges stakeholders identified specific to virtual proceedings include connecting tenants with attorneys; ensuring that parties receive notice of all filings and deadlines; gaining access to relevant documents and files; and filling gaps in access to and knowledge of technology. However, many also identified benefits to remote hearings when all parties are represented by counsel. These include the safety gains of not having to come to housing court; time saved traveling to and waiting in housing court; and the absence of hurried or intimidating hallway interactions.

##### a. Expand access to counsel.

Since 2014, the City has increased funding for tenant representation in housing court, in 2017 becoming the first city in the nation to establish a Universal Access to Counsel program (UAC). Through UAC, the City funds legal services that provide free representation in eviction proceedings to tenants with incomes below 200 percent of the federal poverty line. The program is being phased in by ZIP Code and will cover the entire city by 2022.<sup>36</sup> Additionally, in 2015, the judiciary established a task force (now a permanent commission) on access to justice which, since its creation, has made recommendations that led to expansions of social and legal services, outreach and education, and improvements

in courthouse technology, among other advancements. In 2019, the Housing Stability and Tenant Protection Act of 2019 expanded protections for tenants in housing court statewide by, among other reforms, extending the periods of notice for rent demands and eviction warrants from 3 days to 14 days, expanding notice provisions, requiring landlords to accept rent payment any time before the hearing of a petition, and creating new civil and criminal penalties for unlawful eviction.<sup>37</sup>

New York is halfway through its rollout of the UAC program. It is not clear whether the rollout of UAC will proceed as planned by ZIP Code or whether, instead, the Office of Civil Justice Coordinator will amend the timing or manner of the rollout. Many of the ZIP Codes hit hardest by COVID-19 are not currently covered by UAC, and alternative rollout plans could target ZIP Codes based on COVID hardship or eviction filings.<sup>38</sup> Other stakeholders suggested that UAC could instead proceed according to non-geographic criteria (based on metrics of need or for specific kinds of cases). Our research revealed a consensus that, at a minimum, all litigants in virtual proceedings should be represented by counsel, as well as broader support for expanding access to counsel to all tenants, subject to the availability of funding. Funding remains a core challenge to expanding access to counsel, as does staffing an adequate number of attorneys and supervisors: unless a significant number of cases are diverted from housing court, as described above, legal services providers expressed concern at their ability to represent all of the clients who will appear in housing court proceedings. Some stakeholders are working on possibilities to expand the availability of legal assistance through pro bono partnerships, but questions about training, expertise, and scale remain.

<sup>35</sup> See NAT'L HOUS. LAW PROJECT, PROCEDURAL DUE PROCESS CHALLENGES TO EVICTIONS DURING THE COVID-19 PANDEMIC (last updated May 22, 2020), <https://www.nhlp.org/wp-content/uploads/procedural-due-process-covid-evictions.pdf>

<sup>36</sup> NYC HUMAN RES. ADMIN., Legal Assistance, <https://www1.nyc.gov/site/hra/help/legal-services-for-tenants.page>; N.Y.C. Admin. Code §§ 26-1301–1305.

<sup>37</sup> See Housing Stability and Tenant Protection Act of 2019.

<sup>38</sup> STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2019, *supra* note 13.

**b. Communicate clearly, consistently, and universally.**

Designing new protocols for conducting legal proceedings remotely and clearly communicating these rules to stakeholders is foundational to protecting due process. Stakeholders emphasized that, in the absence of clear and consistent procedural guidance from the Office of Court Administration (OCA), the volume of new filings and confusion over virtual operations could easily overwhelm the system and increase risks to public health. An added challenge for court officials are the barriers to communicating with vulnerable populations that are most likely to face housing instability.

At minimum, OCA should provide prominent, plain-language guidance for tenants and landlords about electronic filing procedures, remote hearing protocols, dates of scheduled hearings, and process for obtaining representation through their existing website and COVID-19 hotline. This guidance should be available in multiple languages and for litigants who rely on assistive technology. The challenge of adapting court systems to operate according to the recommendations outlined in this paper will require procedures to be continually revisited and redesigned, making it even more vital to design transparent and accessible mechanisms for communicating changes to the court's many stakeholders.

**c. Provide access to technology.**

Not all litigants have access to smartphones, computers, email, video cameras, or other technology that enable remote hearings. These disparities highlight the need for additional due process protections in virtual proceedings—most critically, access to counsel—as well as direct assistance with technology to level the playing field for under-resourced litigants. Stakeholders also cited the need to adapt court procedures and evidentiary rules to enable participation by litigants without full remote technology.

## Conclusion

The next few months present a critical window of both risk and opportunity. Housing courts face challenges, but also opportunities—to address disparities, contribute to public health, and replace old and ineffective systems with better solutions. Swift action now can help many landlords and tenants avoid the use of housing court altogether, with benefits to both parties as well as the court system and public health. Cases that do proceed to court should be grounded in concerns for equity, due process, and the supply and quality of lower-cost housing.

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### About the NYU Furman Center

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