

Advocacy Strategies for Combating Evictions Following Hurricane Helene

NHLP has assembled the following resources and advice for advocates operating in areas impacted by Hurricane Helene.

Eviction moratoriums

Instituting an eviction moratorium for 30 days or longer after a natural disaster ensures that tenants will be protected in the immediate aftermath of a disaster, when many tenants may be evacuated or otherwise incapacitated. Depending on your state laws, an eviction moratorium may be instituted through legislation, executive action, or Supreme Court order. In addition, federal agencies may institute their own moratoria for federally-involved properties.

- Legislative Action: NHLP developed the following model state eviction moratorium language during the pandemic. This language could be modified for local government and for the storm:
 - NHLP, [Model Eviction Moratorium Act](#) (updated Mar. 2020)
 - Short Title
 - Definitions: eviction, landlord, tenant, eviction notice, eviction case, eviction order, moratorium period
 - Moratorium on evictions
 - Enforcement
 - Procedure for termination of moratorium
 - Limitations on residential property practices (governing entry into premises, fees, eviction or lease nonrenewal due to rent delinquency, anti-retaliation)
 - Lease termination by tenant or by mutual agreement
 - Appendix: criminal activity
 - NHLP, [Model State Legislation, Safe at Home Act](#) (updated July 2020)
 - Short Title
 - Definitions: covered period, covid-19 rent arrearage, evict, model payment plan, reasonable payment plan, rental application fee
 - Residential tenancies during Covid-19 emergency – no termination without cause – changes in household membership
 - Treatment for rental arrearages accumulated during Covid-19 emergency
 - Termination of rental agreement by tenant affected by Covid-19
 - Payment plans
 - Rental admissions screening
 - Reprisals or retaliation prohibited
 - Civil penalties
 - Enforcement
- Executive Action: For an example of executive action that has the impact of suspending evictions post-storm, see former Louisiana Governor John Bel Edwards' [Proclamation suspending all legal deadlines applicable to legal proceedings in all courts for 30 days after Hurricane Ida](#) (See

Section 2). The act of suspending or extending legal deadlines will function as a moratorium on evictions in many jurisdictions because an eviction hearing cannot go forward unless statutory notice and response periods have run.

- **Supreme Court Action:** For an example of a Supreme Court order that suspended legal proceedings and/or legal deadlines, see [March 2020 order of the Chief Justice of the Supreme Court of North Carolina related to COVID-19](#).
- **Potential Action in Federally-Backed Properties:** In addition to state and local moratoriums, it might be possible to advocate for an eviction moratorium for multifamily properties with federally-backed mortgages. During the pandemic, Freddie Mac and Fannie Mae (collectively, the GSEs) offered mortgage forbearance to owners of federally-backed properties; and in exchange, the owners agreed not to evict tenants for the duration of the mortgage forbearance. The following tools can be used to look up whether multifamily properties have federally-backed mortgages. In addition, a land records search may reveal whether a property has a federally-backed mortgage. The GSEs have not yet initiated similar eviction protections in the aftermath of Helene. If, however, advocates have concerns about evictions taking place in federally-backed properties, they should reach out to NHLP to discuss the possibility of advocating for similar eviction protections.
 - [Fannie Mae multifamily property lookup tool](#)
 - [Freddie Mac multifamily property lookup tool](#)

If local courts refuse to comply with a state or local moratoria, litigation may be an option to enjoin evictions. NHLP has assembled research and resources on how to overcome jurisdictional barriers to suing a state court in federal court in the context of the CARES Act eviction moratorium; please reach out to Hannah Adams at hadams@nhlp.org for technical assistance if you need to go this route.

Strategies to prevent illegal evictions

The following are potential strategies to prevent illegal, “self-help” evictions from landlords:

- ***Guidance from the state attorney general reminding landlords that self-help evictions are illegal*** – Several state attorneys general issued such guidance during the pandemic, including Hawaii,¹ California,² and New York.³
- ***Directives from police departments to train their officers on how to handle self-help evictions*** – [Philadelphia Police Department Directive 3.17](#) provides a good example.
- ***Know-your-rights campaigns to educate tenants about the right to be free from an illegal eviction*** – Check your state law on tenant remedies on self-help eviction and prepare informational materials for tenants, and/or sample pleadings to assist tenants in filing *pro se*.

¹ Hawaii: <https://www.oha.org/news/tenant-advocates-warn-landlords-of-consequences-for-illegal-evictions/>

² California Attorney Rob Bonta Information Bulletin to all police chiefs and California Sheriffs: [Protecting Tenants Against Unlawful Lockouts and Other “Self-Help Evictions”](#) (July 13, 2022).

³ New York Attorney General Letitia James Memo to NYS Law Enforcement Depts: [Unlawful Evictions Under RPAPL Sect. 768](#) (May 4, 2020); see also [New York article](#).

- **Protective legislation that says landlords cannot treat evacuated tenants as having “abandoned” their rentals** - In states where landlords can take possession without a court order if a tenant has abandoned the premises, tenants who are evacuated are at risk after a disaster. See [example of legislation passed in Louisiana](#) post Hurricane Id that protects tenants from extrajudicial eviction based on abandonment for thirty days after a federally declared disaster.

Strategies to defend judicial evictions

Multiple states were affected by Hurricane Helene, and state landlord-tenant law varies. Here are some questions to research as you prepare to defend evictions related to the storm:

- **If the eviction is due to “force majeure” or storm damage:**
 - What is your state law governing “force majeure” evictions? What does the lease say about “force majeure”? For example, a landlord may be trying to evict all tenants from an apartment complex where only some units were damaged. This might violate state law that requires a certain level of damage to the leased premises in order to terminate the lease.
- **If the eviction is due to nonpayment of rent:**
 - What does your state law say about a tenant’s obligation to pay rent for a unit that is uninhabitable? Can rent be withheld or escrowed? Does the argument require an assignment of fault to the landlord? If so, were certain necessary repairs unreasonably delayed?
 - For example, repairing a roof after a disaster can take months due to insurance disputes and contractor shortages. But tarping a roof should happen immediately if there was damage that affects the livability of the unit.
 - If your client was unable to pay rent because of barriers attributable to the disaster, does your state law allow for judicial discretion or equitable defenses?
 - Examples include the closure of banking institutions or places to obtain a money order, downed internet or cell service, or a lack of functional transportation post-storm.
 - Did the landlord raise the rent post-disaster in violation of state price-gouging statutes? A number of states have laws that prohibit price gouging during an emergency, including Florida,⁴ Georgia,⁵ North Carolina,⁶ South Carolina,⁷ and Tennessee.⁸ For a full list of state price gouging statutes, see this [chart](#) from the National Council of State Legislatures. Consider reaching out to your Attorney General’s office if you see this practice. After Hurricane Sandy, the New Jersey Attorney General’s office [sued a number of hotels](#) under its price gouging statute winning large monetary settlements.

⁴ Fla. Stat. Ann. § 501.160.

⁵ Ga. Code Ann. § 10-1-393.4.

⁶ N.C. Gen. Stat. Ann. § 75-37; N.C. Gen. Stat. Ann. § 166A-19.23.

⁷ S.C. Code Ann. § 16-7-10; S.C. Code Ann. § 39-5-145(B)(1).

⁸ Tenn. Code Ann. § 47-18-5101 et seq.

- ***If the eviction is from federally subsidized housing:***
 - Procedural requirements for eviction still apply after a disaster. This includes informal and formal grievances for public housing tenants, and former public housing tenants living in properties converted under the Rental Assistance Demonstration (RAD). This also includes the 30-day notice requirement for nonpayment evictions under the CARES Act for all covered housing. To determine whether your client lives in federally subsidized housing, check the [National Housing Preservation Database](#), and look up program-specific procedural protections in the [NHLP Green Book](#).
 - Does your client live in public housing or former public housing converted under RAD? Public housing and former public housing “RAD tenants” may be entitled to a rent abatement “in proportion to the seriousness of the damage and loss of value as a dwelling” if repairs are not timely made to address conditions that threaten life, health or safety which are not created by the tenant household or their guests, and alternative accommodations are not provided. 24 C.F.R. § 966.4(h). Even if the damage is allegedly tenant-caused, the PHA or owner must repair the unit within a reasonable time, or if the repairs cannot be made in a reasonable time or with the residents in place, provide temporary alternative accommodations. This protection is required by regulation to be included in all public housing leases, and all existing public housing rights and protections must also be carried over to and continue for RAD-converted public housing.⁹
 - Tenants who are paying minimum rent when disaster or other financial hardship hits are eligible for a hardship exemption from the minimum rent, and should be informed by the PHA or owner of the hardship exemption. Under 24 C.F.R. § 5.630, the PHA or owner must suspend the minimum rent requirement because of financial hardship, which could include “when the family would be evicted because it is unable to pay the minimum rent.” This applies in public housing and across all Section 8 programs, including RAD conversions. A presidentially declared disaster is one type of circumstance that should qualify a family for a hardship exemption. If a family was forced to pay costs for evacuation, water, fuel for a generator, or other storm necessities, they may well not be able to pay minimum rent after the disaster. If the PHA or owner determines that the hardship was temporary, the suspension lasts for 90 days, after which the PHA or owner must offer a reasonable repayment agreement. If the PHA or owner determines that the hardship is long-term, the exemption can last until the end of the financial hardship, and the minimum rent need not be repaid for that period. Currently there is litigation in [Hartford](#) and [Omaha](#) arguing that PHAs violate federal law if they do not notify tenants of the hardship exemption option if they are unable to pay minimum rent. Similar litigation settled favorably in [Chicago](#). HUD has created a [useful toolkit](#) on the minimum rent requirement in public housing, which may be applied retroactively.

- ***If your client has a disability:***
 - If an eviction is for cause, can the alleged violation be linked to the client’s disability or disability-related needs post-disaster? Housing providers are required to grant reasonable accommodations to tenants with disabilities under federal antidiscrimination laws, such as the Fair Housing Act, and in many states, this can be raised as a defense to eviction.¹⁰

⁹ See [RAD-authorizing statute](#). Note that RAD owners and their management are often not in full compliance with all RAD statutory requirements, and HUD’s own subregulatory guidance materials may not be helpful as the demonstration program is continually evolving. For further assistance reach out to Lauren D. Song, lsong@nhlp.org and see Section 12.2.4 of the [NHLP Green Book](#), [NHLP’s resource page on RAD](#), and the [RAD Beginner’s Guide](#). The required abatement protection language of public housing leases may still be in the “new” leases for the RAD project. Many leases for RAD projects are not in compliance with RAD legal requirements.

¹⁰ See 42 U.S.C. 3604(f)(3)(B); *Anast v. Commonwealth Apts.*, 956 F. Supp. 792 (N.D. Ill. 1997) (holding that tenant

- For example, did the disaster aggravate the client’s mental health disability, or make it physically impossible for the client to comply with the lease? Does your client need additional time to vacate because of a disability, and the delay will not cause an undue burden to the landlord?
- ***If your client cannot be served at the leased premises:***
 - Is your client displaced from the home due to evacuation or damage? Has the landlord been made aware of the tenant’s temporary location or residence? Depending on your state’s requirements regarding service of the eviction notices and court summons, service by posting may not satisfy statutory or due process requirements.

Additional eviction-related strategies

Other states have considered or taken action in the following areas to prevent eviction post-disaster:

- ***Evictions related to FEMA Direct Lease program:*** After the 2023 fire in Maui, some landlords evicted tenants because they could make more money by leasing [through FEMA’s Direct Lease program](#). [FEMA issued a statement](#) against this practice and the Hawai‘i Attorney General’s office conducted an investigation and fielded complaints. Advocacy may be necessary with FEMA and your state Attorney General if you see a similar practice.
- ***Short-term rentals:*** In July, 2024 the Maui County Council voted to [phase out 7,000 short-term rentals](#) in apartment districts over two years. The bill was a response to the housing emergency in the wake of the August 2023 wildfires. [Short-term rentals are closely linked to evictions](#) because property owners can often make substantially more income from short-term rentals than long-term tenants. The successful bill is [here](#).

Questions? Please reach out to Hannah Adams, Senior Staff Attorney, hadams@nhlp.org, and Marie Claire Tran-Leung, Evictions Initiative Project Director, mctranleung@nhlp.org.

sufficiently pled that landlord should have postponed eviction hearing as reasonable accommodation); *Cobble Hill Apts. Co. v. McLaughlin*, 1999 Mass. App. Div. 166 (Mass. App. Div. 1999) (holding that stay of eviction proceedings can be reasonable accommodation); *City Wide Assoc. v. Penfield*, 409 Mass. 140, 564 N.E.2d 1003 (Mass. 1991) (ordering landlord to accommodate tenant's handicap by discontinuing eviction action).