

Eviction Sealing: A Lifeline in the Fight for Housing Justice

ALLISON M. FREEDMAN[†]

In January 2023, the White House released a Blueprint for a Renters Bill of Rights. The Blueprint called for immediate sealing of eviction case filings to reduce the likelihood that tenants would be locked out of future housing opportunities without the chance to defend themselves. Shortly thereafter, the Federal Trade Commission and the Consumer Financial Protection Bureau issued a request for public comment on how the use of eviction records and screening algorithms may affect tenant housing opportunities and drive discriminatory outcomes. The eviction crisis, its discriminatory effects, and the idea that sealing eviction records may provide a solution to these issues have thus risen to the top of the national agenda. Yet why eviction sealing is an optimal solution to disrupt the eviction system and the forces currently driving it, and how eviction sealing can best function in practice have not been sufficiently explored.

To respond to this absence of scholarship, this Article looks at evictions from three unique perspectives, which I call the Eviction Institution, the Eviction Market, and the Eviction Caste System. Through these perspectives, the Article traces the origins of the eviction crisis and the systems perpetuating it, the resulting stratified housing market and involuntary sorting of human beings, as well as the ways evictions strip individuals of basic human rights while acting as a policing and surveillance system.

With this context in mind, this Article outlines a framework for a Model Eviction Sealing Act. This framework is based on a first-of-its-kind survey of all current state eviction sealing legislation, as well as discussions with legislators, advocates, and practitioners about the successes and challenges relating to current statutes. The Model Eviction Sealing Act can be enlisted to help solve the problems stemming from what this Article calls the Eviction Institution and its discriminatory housing outcomes. It is only through a deep understanding of the history and present context in which evictions occur that states are likely to enact the Model Eviction Sealing Act. The Article therefore provides this background in connection with a framework for eviction

[†] Allison Freedman is an Assistant Professor of Law at The University of New Mexico School of Law. I am grateful to Serge Martinez, Esme Caramello, Juliet Brodie, John Kang, Mira Edmonds, and Elizabeth Elia for their helpful feedback. This piece benefitted from presentations at the NYU Clinical Law Review Writers' Workshop and the University of New Mexico School of Law Faculty Colloquium. I am also thankful for the outstanding research assistance of Ernesto Longa, Xaveria Mayerhofer, and the students in my fall 2022 clinic project section, as well as the unwavering support of David and Marsha Freedman. This Article would not be possible without the keen insights from numerous advocates, lawmakers, and attorneys who have worked tirelessly to pass eviction sealing legislation in their states.

sealing legislation to encourage real progress on a longstanding issue that impacts millions of Americans and is currently in the national spotlight.

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INTRODUCTION

Eviction in the United States is unlike any other legal process in America. It perpetuates the “financialization of housing” as a system that benefits wealthy property owners at the expense of safe, affordable housing for all.¹ It is a means to police humans by involuntarily removing families from their homes and forcing them into a cycle of entrenched poverty.² And it creates lifelong health, education, and income disparities, solidifying the racial and socioeconomic inequities that are at the heart of why housing inequality exists in the most prosperous country in the world.³

This all happens in a matter of days or weeks. A single “notice to quit” taped to a tenant’s door can result, mere days later, in eviction proceedings—the shortest court proceedings in the country, often lasting only minutes.⁴ Tenants are afforded few legal protections, since discovery, motion practice, and jury trials are either prohibited or severely curtailed.⁵ The power dynamic between landlords and tenants is further exacerbated when legal representation is taken into account.⁶ Only 3 percent of renters are represented nationwide as compared to over 80 percent of landlords.⁷ Hundreds of eviction cases are usually heard during a single docket call, with little due process taking place before tenants are removed from their homes and sent into a perpetual cycle of eviction and frequent homelessness.⁸

Once tenants are saddled with an eviction judgment, it follows them for life.⁹ In most states, there is no process to expunge or seal such a judgment or an eviction case more generally.¹⁰ Instead, tenant screening companies scour court records for eviction cases—regardless of whether a tenant won or lost the case—and sell the data to landlords who rely on it when deciding whom to rent to.¹¹ In other words, even tenants who win their cases and do not have an eviction judgment on their record are branded with a “Scarlet E” and are often unable to

1. See *infra* Part.II; see also Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, ¶ 1, U.N. Doc. A/HRC/34/51 (Jan. 18, 2017) [hereinafter U.N. Human Rights Council Report] (“[F]inancialization of housing [is defined as] structural changes in housing and financial markets and global investment whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets. It refers to the way capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity and hence undermines the realization of housing as a human right. It refers to the way housing and financial markets are oblivious to people and communities, and the role housing plays in their well-being.”).

2. See *infra* Part.III.

3. See *infra* Part.III.

4. LIEL STERLING, CYRUS O’BRIEN & MARIA ROUMIANTSEVA, ACLU, NO EVICTION WITHOUT REPRESENTATION 2 (2022).

5. *Id.*

6. *Id.*

7. *Id.* at 3.

8. See *id.* at 3.

9. See *infra* Part.I.

10. See *infra* Part.IV.

11. See *infra* Part.I.

find future rentals or are relegated to dilapidated and unsafe housing.¹² This pervasive eviction system is ingrained in American society and a part of doing business for many landlords. It is, what this Article calls, the Eviction Institution.¹³

The Eviction Institution did not arise in a vacuum. Instead, macroeconomic factors such as an inadequate affordable housing supply, skyrocketing rents, and stagnating incomes have created what this Article calls the Eviction Market—a stratified housing market and involuntary sorting of human beings.¹⁴ Preferred properties at the top of this market are inaccessible to Scarlet E tenants, who are instead permanently relegated to a bottom tier of properties that are generally of poor quality, not well maintained, and located in under-resourced areas.¹⁵

Through this involuntary sorting, low-income renters (disproportionately women of color) become part of a caste system.¹⁶ This caste system is cemented by denying Scarlet E tenants basic civil and human rights, including the right to vote as well as the right to be free from discrimination in employment, access to education and healthcare, and of course, housing.¹⁷

Some states have begun to address the eviction crisis through expungement and sealing legislation, which prohibits access to eviction records under certain circumstances.¹⁸ This is an underutilized resource and one that has the potential to change our relationship to the Eviction Institution in addition to the resulting Eviction Market and tenant Eviction Caste System. Although states have experimented with various forms of this legislation, they generally fall short of insulating tenants from the Scarlet E and its lifelong consequences.¹⁹ This Article proposes model legislation for eviction record sealing after analyzing the shortcomings of current state legislation and balancing First Amendment and privacy concerns raised by various stakeholders.²⁰

12. See Kathryn A. Sabbeth, *Erasing the “Scarlet E” of Eviction Records*, APPEAL (Apr. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records>; Matthew Goldstein, *The Stigma of a Scarlet E*, N.Y. TIMES (Aug. 9, 2021), <https://www.nytimes.com/2021/08/09/business/eviction-stigma-scarlet-e.html> [<https://perma.cc/HL6R-M4E6>]; Kaelyn Forde, ‘Scarlet E’: An Eviction in the US Can Become a Life Sentence, AL JAZEERA (Aug. 21, 2020), <https://www.aljazeera.com/economy/2020/8/21/scarlet-e-an-eviction-in-the-us-can-become-a-life-sentence> [<https://perma.cc/QEG9-PP8V>].

13. Other scholars have suggested that eviction is a routine part of landlords’ business practices. See, e.g., David A. Dana, *An Invisible Crisis in Plain Sight: The Emergence of the “Eviction Economy,” Its Causes, and the Possibilities for Reform in Legal Regulation and Education*, 115 MICH. L. REV. 935, 935 (2017) (“[E]viction of the poor is not exceptional, but rather the norm, part of landlords’ business model and poor people’s way of life.”). This Article uses the term eviction institution to highlight not only this routine business practice, but also the forces that allow for and perpetuate this practice (e.g. tenant screening agencies, see *infra* Part I.C). Together these forces act as an institution, or established custom.

14. See *infra* Part.II.

15. See *infra* Part.II.

16. See *infra* Part.III.

17. See *infra* Part.III.

18. See *infra* Part.IV.

19. See *infra* Part.IV.

20. See *infra* Part.IV.

The Article proceeds in four parts. Part I describes eviction as an institution, detailing the eviction process, its origins, and the lack of due process afforded to defendants in these proceedings as well as the history of tenant screening processes and how they contribute to the immediate and long-term effects of eviction. Part II defines and discusses the Eviction Market, highlighting how the financialization of housing led to the market and continues to perpetuate it. Part III looks at eviction as a caste system, relegating extremely low-income individuals, particularly Black and Latinx women, to permanent second-class status and denying them basic civil and human rights. Finally, Part IV offers a framework for a Model Eviction Sealing Act aimed at disrupting the Eviction Institution and resulting Eviction Market and caste system. Such legislation is a crucial step toward solving the pressing housing and homelessness crisis in the United States and reimagining a country where safe and affordable housing is a human right accessible to all.

I. THE EVICTION INSTITUTION

To appreciate the current state of the eviction crisis²¹ in the United States and to demonstrate how eviction sealing can serve as a meaningful solution, it is important to understand the origins of eviction, how the process works today, and the long-term impacts and collateral consequences that flow from a single interaction with an eviction court. Together, these forces demonstrate that eviction is an institution, or established custom, rather than a temporary or easily changed business practice.²²

A. THE ORIGINS OF EVICTION

Eviction is the act of forcing a tenant from their home and permitting a landlord to “recover possession” of the subject premises.²³ It derives from the word “evict,” which comes from the Latin word *evincere*, meaning to “overcome

21. This Article refers to “the eviction crisis” as an ongoing and pervasive state. This terminology is not meant to suggest that the crisis is new or temporary, but rather that it has continued to worsen over time. For statistics demonstrating the pervasive nature of the eviction crisis see EVICTION LAB, <https://evictionlab.org/eviction-tracking> (last visited Apr. 15, 2025) (logging over one million evictions throughout the United States over the last 12 months).

22. See *supra* note 13.

23. See *Evict*, OXFORD ENGLISH DICTIONARY, <https://www.oed.com/search/dictionary/?scope=Entries&q=evict> [<https://perma.cc/GXV9-533J>] (last visited Apr. 15, 2025); see also Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53 SETON HALL L. REV. 1, 7 (2022) (“[S]tatutory jargon speaks of the landlord ‘recovering possession,’ but in the contemporary urban world, landlords mostly never had, nor did they seek, possession in the literal sense In seeking eviction, landlords seek to assert control over a housing unit where the tenant and the tenant’s family make their home”); Alexander Baker, *From Eviction to Evicting: Rethinking the Technologies, Lives and Power Sustaining Development*, 45 PROGRESS IN HUM. GEOGRAPHY 796, 797–98 (2021) (recognizing difficulties with defining all permutations of eviction and noting that eviction has been framed in many ways, such as “involuntary moves” and “unwilling movement from land and homes”).

and expel” or “conquer.”²⁴ This power dynamic between landlord and tenant is solidified through the eviction process. Although eviction procedures vary by state,²⁵ evictions are generally accomplished through “summary proceedings”²⁶—an accelerated timeline with little due process as compared to all other civil cases in the United States.²⁷ The process often leads to tenants going from housed to homeless in a matter of days.²⁸

Summary proceedings are a vestige of feudal land tenure norms, developed by white male property owners to serve their interests in expelling tenants when the landlord-tenant relationship no longer benefitted them.²⁹ Today, tenancies are rarely land-based, but rather involve mostly urban areas where tenants make their homes.³⁰ Further, landlords are increasingly private equity firms and out-of-state, absentee landlords motivated chiefly by profit maximization.³¹ Yet many present-day landlords still treat housing and tenants as they did land in common law England—a commodity that serves as a profit source and villeins who live on the land.³² This dynamic sets up a system that devalues housing as

24. Paula A. Franzese & Cecil J. Thomas, *Disrupting Dispossession: How the Right to Counsel in Landlord-Tenant Proceedings is Reshaping Outcomes*, 52 SETON HALL L. REV. 1255, 1267–68 (2022) (“From the Latin *evincere*, to evict means to ‘overcome and expel, conquer, subdue, vanquish; prevail over; supplant.’” (quoting *Evict*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/evict> [<https://perma.cc/ZUJ7-XQ6Y>] (last visited Apr. 15, 2025))).

25. For a database detailing variations in eviction laws by state, see *LSC Eviction Laws Database*, LEGAL SERVS. CORP., <https://lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database> [<https://perma.cc/UQ7T-Y63L>] (last visited Apr. 15, 2025).

26. Some states call these proceedings “unlawful detainer,” “dispossession,” or “rule to vacate” actions. See DANIEL BERNSTEIN & MADELINE YOUNGREN, LEGAL SERVS. CORP., *THE EFFECT OF STATE & LOCAL LAWS ON EVICTIONS 3* (2021), <https://lsc-live.app.box.com/v/EvictionCourtDataAnalysis> [<https://perma.cc/F7VW-HVUT?type=image>].

27. See, e.g., Scherer, *supra* note 23, at 4 (explaining that evictions have been handled through a “truncated, expedited process,” for over 200 years in order to give landlords a “quick remedy”).

28. See SARAH ABDELHADI & RANYA AHMED, LEGAL SERVS. CORP., *FAST & CHEAP: THE SPEED AND COST OF EVICTING TENANTS FOR NONPAYMENT OF RENT 10* (2021), <https://lsc-live.app.box.com/s/mwq50tpyqipkm2sbawilghr99fydrb> [<https://perma.cc/RA7D-5VXJ?type=image>].

29. Scherer, *supra* note 23, at 6–7. For a detailed discussion of the history of summary proceedings, see Luis Jorge DeGraffe, *The Historical Evolution of American Forcible Entry and Detainer Statutes*, 13 SETON HALL LEGIS. J. 129, 131 (1990); Mary B. Spector, *Tenants’ Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 137–39 (2000); Kathryn Ramsey Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 391, 397–99 (2022).

30. Scherer, *supra* note 23, at 6–7; see also Shannon Price, *Stay at Home: Rethinking Rental Housing Law in the Era of Pandemic*, 28 GEO. J. ON POVERTY L. & POL’Y 1, 5 (“The stark mismatch between housing laws premised on sharecropping and the realities of urban life in twentieth century America prompted cries for reform.”).

31. See, e.g., Heather Vogell, *When Private Equity Becomes Your Landlord*, PROPUBLICA (Feb. 7, 2022), <https://www.propublica.org/article/when-private-equity-becomes-your-landlord> (reporting that “[a]mid a national housing crisis, giant private equity firms have been buying up apartment buildings en masse to squeeze them for profit,” while tenants are “paying the price”).

32. See *infra* Parts II, III. Villein is defined as “a person attached to a manor, who was substantially in the condition of a slave, who performed the base and servile work upon the manor for the lord, and was, in most respects, a subject of property belonging to him.” *Villein*, BLACK’S LAW DICTIONARY (2d ed. 1910); see also DeGraffe, *supra* note 29, at 132 (“The early landlord-tenant relationship was characterized by a tenant

a social good and instead creates a revolving door of tenants who are routinely forced from their homes, often ending up homeless or in dangerous and unsanitary housing.

B. THE EVICTION PROCESS

An eviction can occur in a matter of mere weeks.³³ Most states require landlords to notify tenants they will be evicted before filing suit.³⁴ These notices give tenants mere days to either pay any rent owed or move out of the property.³⁵ If neither happens, the landlord can file an eviction lawsuit in court.³⁶ Landlords frequently violate notice requirements, and judges rarely dismiss lawsuits for lack of proper notice despite being legally required to do so.³⁷ Given the minimal cost of filing an eviction action for nonpayment of rent, landlords generally consider filing costs to be part of their operating expenses.³⁸ This means that landlords often use eviction as a rent collection tool by starting the eviction

performing a service for a lord in return for use of the land and eventually matured into situations where the lord would lease his estate. . . . Tenants then held parcels of real property in villein tenure.” (footnotes omitted)).

33. This subpart lays out the process for lawful evictions, but illegal evictions are exceedingly common. See, e.g., NAT’L HOUS. L. PROJECT, STOPPING COVID-19 EVICTIONS SURVEY RESULTS 1 (2020), www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf (reporting that of the 100 tenant lawyers surveyed across 38 states during the summer of 2020, 91% reported illegal evictions in their area); *Eviction Survey: What’s Happening on the Ground*, NAT’L HOUS. L. PROJECT 2 (2021), www.nhlp.org/wp-content/uploads/NHLP-evictions-survey-2021.pdf (reporting that of the 119 tenant lawyers surveyed across 41 states during the fall of 2021, 35% reported an increase in illegal evictions or lockouts and 40% reported an increase in landlords lying in court to evict tenants).

34. See ABDELHADI & AHMED, *supra* note 28, at 3 (“In 51 of the 56 locations studied, state/territory statute requires landlords to notify tenants in advance that they plan to file for eviction for nonpayment of rent . . .”). The states and territories that do not require notice are Maryland, Minnesota, New Jersey, West Virginia, and Puerto Rico. See *id.*

35. *Id.* at 4 (“The amount of notice required prior to filing an eviction action in court for nonpayment of rent varies . . . from as little as three days to as many as 30 days.”). Renters often misunderstand the jargon-filled notices, their rights, and their chances of prevailing in court, and will vacate the property before a lawsuit is filed to avoid court proceedings. See SABIHA ZAINULBHAI & NORA DALY, NEW AM., INFORMAL EVICTIONS: MEASURING DISPLACEMENT OUTSIDE THE COURTROOM 6–7 (2022), <https://www.newamerica.org/future-land-housing/reports/informal-evictions-measuring-housing-displacement-outside-the-courtroom/#:~:text=Informal%20eviction%20commonly%20occurs%20when,challenging%20to%20measure%20and%20track> (recognizing that “[i]nformal eviction occurs when tenants move out of their homes after receiving warnings or threats from their landlord, without a claim ever being filed in court” and noting that informal evictions “happen in the shadows,” are “incredibly challenging to track,” and that “[w]ithout knowing the scale of informal eviction, our understanding of displacement and housing insecurity in the United States is incomplete”).

36. ABDELHADI & AHMED, *supra* note 28, at 5.

37. See STERLING ET AL., *supra* note 4. The authors practice in landlord-tenant courts in several states reveals that judges frequently fail to dismiss lawsuits for improper notice. Further, most *pro se* tenants are unaware that improper notice may be a defense to an eviction lawsuit and therefore do not raise it in court.

38. ABDELHADI & AHMED, *supra* note 28, at 5. As of January 2021, 22 states/territories set minimum eviction filing fees below \$100, 12 of which are below \$50; 24 states/territories do not have laws establishing a base filing fee, leaving local jurisdictions to set their own fees with no minimum. *Id.*

process to pressure tenants to pay overdue rent, sometimes in the order of a few hundred dollars.³⁹

Once a lawsuit is filed, the summons and complaint must be delivered to the property; personal service is generally not required for nonpayment of rent cases.⁴⁰ Tenants then have only a few days before they must appear in court to defend their case.⁴¹ If a tenant does not appear for the scheduled hearing, the court issues a default judgment thereby ruling for the landlord and evicting the tenant.⁴² This occurs in at least half of all eviction cases.⁴³ In some states, the time between a notice to vacate and an eviction hearing is so short that a tenant may receive a default judgment before they become aware that an eviction case has been filed against them.⁴⁴

39. See STERLING ET AL., *supra* note 4. Although landlords receive eviction judgments in the majority of cases, they do not always pursue the removal of a tenant given that judgments may contain terms that permit a tenant to stay in their home under certain, often unfavorable, conditions. See Rudy Kleysteuber, Note, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1355 (2007) (“Even though landlords received a judgment in their favor in more than 75% of all cases, they pursued that judgment to execution (actual remove of the tenant) less than one-third of the time.”).

40. See STERLING ET AL., *supra* note 4, at 14; see, e.g., Mich. Court Rule 4.201(D) (requiring that a copy of the summons and complaint be served on the tenant by mail and one additional method, including by first-class mail).

41. ABDELHADI & AHMED, *supra* note 28, at 6 (“Among the 39 states/territories that specify a minimum summons period, the range between service of the summons and the date of first court appearance is two to [thirteen] days.”).

42. *Id.* at 8. There are many reasons tenants may not be able to attend an eviction hearing—lack of childcare, high transportation costs, and inability to take time off from work are just a few. See, e.g., Lizzie Kane, *Absent from Court: Where Are Tenants Who Miss Eviction Hearings?*, CHARLOTTE JOURNALISM COLLABORATIVE (Dec. 2, 2021), <https://carolinapublicpress.org/50019/absent-from-court-where-are-tenants-who-miss-eviction-hearings>. Although some courts now allow for remote proceedings, which began during COVID-19, this introduces new challenges for many tenants. See, e.g., ALICIA BANNON & JANNA ADELSTEIN, BRENNAN CTR. FOR JUST., PROCEEDINGS ON FAIRNESS AND ACCESS TO JUSTICE IN COURT 10, 16 n.64 (2020), https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court#footnote14_mbzgrp0 (citing Pew Research Center study discussing disparities in access to computers and internet—“29 percent of adults with household incomes below \$30,000 did not own a smartphone, 44% did not have home broadband services, and 46% did not own a traditional computer,”—and cataloguing other difficulties with remote hearings such as difficulty with credibility determinations and strained attorney-client communications while in court). It should also be noted that the author has observed that in practice if a landlord does not appear for a scheduled hearing, the court generally resets the hearing until the landlord can appear.

43. See ABDELHADI & AHMED, *supra* note 28, at 8 (“[D]efault judgments comprise a large percentage of resolved eviction cases—as much as 30–50% of all eviction cases resolved in a given year”); STOUT, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN DELAWARE 71 (2021), https://www.aclu-de.org/sites/default/files/field_documents/stout_report_on_cost_benefit_of_delaware_right_to_counsel_for_evictions_defense_5-5-2021_1.pdf (“[u]nrepresented tenants lost by default in approximately 58 percent of cases in Philadelphia,” and that “similar default rates have been observed throughout the country,” with approximately 70% of tenants losing by default in Kansas City, Missouri; 50% of tenants losing by default in Hawaii; 48% of tenants losing by default in Seattle; and 75% of tenants losing by default in Greensboro, North Carolina).

44. See ABDELHADI & AHMED, *supra* note 28, at 9.

Even when tenants do appear in court, eviction hearings generally last only minutes, with hundreds of cases being scheduled on any given day.⁴⁵ Unlike most other civil lawsuits, if a trial is to take place, it often happens at the first appearance.⁴⁶ This means that discovery is generally prohibited or curtailed, written answers are rare, available defenses frequently go unraised, motions practice is nonexistent, and trials last mere minutes with little to no evidence presented before a judge makes a determination about whether a tenant should be forced from their home.⁴⁷

The power imbalance is furthered when factoring in legal representation—over 80 percent of landlords are represented compared to 3 percent of tenants.⁴⁸ Unrepresented tenants often agree to settle their cases on unfavorable terms for fear of losing their housing, and many enter into consent judgments, which can act like an eviction judgment for purposes of future landlords determining whether to rent to a tenant.⁴⁹

The eviction process, from notice to expulsion, often lasts only a few weeks after a rent payment is missed.⁵⁰ Where a tenant is ordered to leave their home, the court issues a writ of eviction.⁵¹ The tenant must then pack up their life and move or law enforcement will forcibly remove the tenant from their home, often strewing their possessions onto the curbside.⁵² If law enforcement executes an eviction, a tenant who comes to the door often gets only a matter of minutes to gather their belongings and leave their home.⁵³ Many tenants lose the majority of their personal property and will become homeless given the extreme shortage

45. See, e.g., *id.* at 8 (referencing an observational study of eviction hearings in Cleveland, Ohio, which found that “when [a] tenant was present, hearings lasted an average of just six minutes”); STERLING ET AL., *supra* note 4, at 2 n.26 (compiling data from various states reporting eviction proceedings lasting less than a minute); Serge Martinez, *Revitalizing the Implied Warranty of Habitability*, 34 NOTRE DAME J.L., ETHICS & PUB. POL’Y 239, 261 (2020) (noting a 2003 study by Chicago-Kent College of Law found that “eviction cases in Cook County averaged one-minute and forty-four seconds,” and providing a representative script for such an eviction hearing).

46. See STERLING ET AL., *supra* note 4.

47. *Id.*

48. *Id.*

49. Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847, 847 (2023) (discussing eviction courts as courts of mass settlement and conceptualizing the phenomenon of civil probation in the eviction legal system); see also *infra* Subpart.I.C.

50. ABDELHADI & AHMED, *supra* note 28 (“Per the laws of 11 states, tenants can be evicted from their homes in as little as two weeks after missing a rent payment.”). Although some states provide for an opportunity to appeal an eviction judgment, “[a]ppeals are often limited, discretionary, or impeded by the requirement of paying an ‘appeal bond.’” STERLING ET AL., *supra* note 4; see also ABDELHADI & AHMED, *supra* note 28, at 8–9 (noting that a number of states “give tenants only seven or fewer days to understand the appeal process, pay the bond, and file the appeal”).

51. ABDELHADI & AHMED, *supra* note 28.

52. See, e.g., Jonmaesha Beltran, *What Happens to a Tenant’s Property After an Eviction in Milwaukee?*, WIS. WATCH (May 1, 2023), <https://pbswisconsin.org/news-item/what-happens-to-a-tenants-property-after-an-eviction-in-milwaukee> (recognizing that a sheriff can declare any item in the home “junk” (including items such as a dresser with a missing drawer or a stained bed) and the landlord can then ask that those items be left “on the curb for garbage collection”).

53. See, e.g., *id.* (noting that if a sheriff executes an eviction in Milwaukee, a tenant “gets about 15 minutes to gather their belongings and leave”).

of affordable housing options, the short timeframes tenants have to look for new housing, and the everlasting hurdles presented by the court-entered judgment.⁵⁴

Whether by default judgment, consent judgment, or eviction judgment, once a judgment is entered, a perpetual cycle of eviction and homelessness often ensues.⁵⁵ Further, even if a tenant prevails in court, the mere filing of an eviction case without a judgment allows tenant-screening agencies to scour electronic dockets for eviction cases and sell that data to landlords.⁵⁶ Landlords rely on this data to turn away tenants who appear on these dockets regardless of the outcome of their case.⁵⁷ This is true despite the majority of nonpayment cases being dismissed. Indeed, one study from the District of Columbia found that 69 percent of evictions filed for nonpayment of rent in 2018 were dismissed.⁵⁸ In other words, an eviction case does not necessarily indicate any wrongdoing on the part of a tenant or reflect a tenant's future ability to pay rent.⁵⁹ Yet this too sends tenants into an everlasting spiral of housing insecurity with severe collateral consequences.⁶⁰

54. See, e.g., *id.*; *infra* Part.III.B.

55. STERLING ET AL., *supra* note 4, at 4 (“Evictions are one of the direct causes of homelessness.”). “Homeless” in this context can also include individuals who are part of the population of “hidden homeless,” or individuals whose accommodation is temporary or lacks security or tenure, such as individuals who are “couch surfing, staying with friends or family, or sleeping in cars.” *Hidden Homeless*, HOMELESS HUB, <https://www.homelesshub.ca/about-homelessness/population-specific/hidden-homelessness> (last visited Apr. 15, 2025).

56. See *infra* Subpart.I.C.

57. See *infra* Subpart.I.C.

58. BRIAN J. MCCABE & EVA ROSEN, MEYER FOUND., EVICTION IN WASHINGTON, DC: RACIAL AND GEOGRAPHIC DISPARITIES IN HOUSING INSTABILITY 9 (2020), <https://www.streetsensemedia.org/wp-content/uploads/2020/10/Georgetown-University-DC-Eviction-Report-2014-2018.pdf>.

59. See, e.g., TINUOLA DADA & NATASHA DUARTE, UPTURN, HOW TO SEAL EVICTION RECORDS: GUIDANCE FOR LEGISLATIVE DRAFTING 22–23 (2022), www.upturn.org/static/files/how-to-seal-eviction-records-071322.pdf. This is sometimes referred to as “dirty” data or information in a tenant screening report that is “contaminated by data points that do not in fact indicate whether a tenant is likely to pay or to create problems.” Kleysteuber, *supra* note 39, at 1375; see also Price, *supra* note 30, at 30 (listing “dirty” data points as including “evictions filed without proper notice to the tenant, evictions filed in retaliation for conditions reporting, or evictions settled by a tenant’s full repayment of her arrearage”).

60. See *infra* Subpart.III.B. During the height of the COVID-19 pandemic, federal and state eviction moratoriums were put in place and rental assistance from federal and state sources was made available. These emergency programs varied by state, but almost uniformly helped decrease evictions. See, e.g., *Reforming the Eviction System During and After the Pandemic*, HUD (Sept. 20, 2022), <https://www.huduser.gov/PORTAL/pdredge/pdr-edge-featd-article-092022.html> [<https://perma.cc/5KRE-Q7ZZ>] (“Under Philadelphia’s new eviction diversion law, . . . 85 percent of cases succeed in avoiding eviction court . . . and the number of evictions in the city dropped from 20,000 annually before the pandemic to 7,000 in 2021.”); see also Anne Kat Alexander, *Residential Eviction and Public Housing: COVID-19 and Beyond*, 18 IND. HEALTH L. REV. 243, 255 (2021) (detailing eviction policy responses to the COVID-19 pandemic, such as financial assistance and eviction moratoriums). But see *id.* at 264–67 (discussing problems with eviction policy responses); Olivia Seksinsky & Madelyn Bellew, *Eviction Crisis Not Averted: Challenging Disparate Impact in the Search for Housing Stability During the Virginia Rent Relief Program’s Epilogue*, 26 RICH. PUB. INT. L. REV. 1, 12 (2023) (“[I]n Virginia . . . landlords are declining to renew leases of tenants who received rental assistance.”). Today, eviction moratoriums have been lifted and most rental assistance has dried up, returning tenants to the Eviction Institution and perpetual cycle of housing instability.

C. TENANT SCREENING PROCEDURES

Although an eviction judgment serves as a Scarlet E, even those tenants who are taken to court but win their cases or otherwise have them dismissed still face the consequences of the Scarlet E. This is because of the rise of tenant screening companies and the procedures they employ to collect and sell (often inaccurate) data to landlords.⁶¹ Given the acute shortage of affordable rental units in the United States, landlords have nearly unfettered discretion in deciding who to rent to, and generally use this data to disqualify tenants who have been taken to eviction court, regardless of the outcome of the case.⁶²

1. *The History of Tenant Screening*

The rise of tenant screening agencies and data-driven rental decisions is a recent phenomenon. Prior to the 1970s, eviction data⁶³ was maintained by housing courts in the form of paper records, and access to such records required a trip to the courthouse and a physical look-up of any relevant data.⁶⁴ This changed in 1975 with the launch of the Unlawful Detainers Registry (“U.D. Registry”)—the first large-scale tenant screening company, based in Southern California.⁶⁵ The data provided to landlords by tenant screening services at the time was explicitly intended to bar tenants from finding future rental housing.⁶⁶ As one 1978 letter from Preferred Property Management to a client of the Legal Aid Foundation of Los Angeles stated:

This is to advise that we now subscribe to a service that records all filings on Unlawful Detainer actions. As this service is used by landlords, it will be impossible, in the future, to rent an apartment if you have been served a legal action. We are advising you of this, as the failure to pay your rent on time, will result in your name being placed in the file, and you will be unable to secure any apartment in the future.⁶⁷

By 1985, U.D. Registry had collected over two million eviction records, making them available to landlords and bringing eviction data into the

61. See, e.g., Yvette N.A. Pappoe, *The Scarlet Letter “E”: How Tenancy Screening Policies Exacerbate Housing Inequity for Evicted Black Women*, 103 B.U. L. REV. 269, 282–87 (2023); Matthew Harold Leiwant, Note, *Locked Out: How Algorithmic Tenant Screening Exacerbates the Eviction Crisis in the United States*, 6 GEO. L. TECH. REV. 76, 282–86 (2022).

62. Pursuant to the Fair Housing Act, landlords cannot discriminate on the basis of “race, color, religion, sex, family status, or national origin,” nor handicap status. 42 U.S.C. §§ 3604(a)–(b), 3604(f). But see 42 U.S.C. § 3603(b)(2) (exempting certain owner-occupied units from the FHA pursuant to the “Mrs. Murphy Exception”).

63. The term “eviction data” as used in this Article refers to all court records filed or maintained by a court which pertain to an eviction, whether or not an eviction in a particular case ensues.

64. See Erin McElroy, *Dis/Possessory Data Politics: From Tenant Screening to Anti-Eviction Organizing*, 47 INT’L J. URB. & REG’L RSCH. 54, 60 (2022) (recognizing that large-scale tenant screening companies did not exist prior to 1975).

65. *Id.*

66. See Robert W. Benson & Raymond A. Biering, *Tenant Reports as an Invasion of Privacy: A Legislative Proposal*, 12 LOY. L.A. L. REV. 301, 301 (1979).

67. *Id.*

proprietary mainstream.⁶⁸ Other tenant screening companies began to proliferate during this time period, collecting not only eviction data but other personal data such as income, bank account information, bill-paying histories, and monetary assets.⁶⁹ Access to such information became increasingly facile with the rise of online technologies in the late 1980s and early 1990s.⁷⁰ Additionally, the industry around selling eviction and other personal and financial data to landlords became commonplace—landlords could now purchase large amounts of tenant data that previously would have been too expensive or impractical to obtain.⁷¹

The proliferation of tenant screening companies soared during the late 1990s and early 2000s.⁷² This proliferation was facilitated by the technological advances of the dot-com boom as well as the war on terror, which influenced the digitization of criminal records and in turn housing records.⁷³ By 2003, 94 percent of state criminal history records had been digitized.⁷⁴ Moreover, one screening agency reported an increase from approximately three thousand screens to twenty-five thousand screens following the September 11, 2001, terrorist attacks.⁷⁵ The number of tenant screening companies climbed further in the aftermath of the foreclosure crisis and with the rise of property technology (often called “PropTech”).⁷⁶ As of 2020, the tenant screening industry was valued at over one billion dollars, with an estimated two thousand known tenant screening companies operating in the United States.⁷⁷

68. See Robert R. Stauffer, Note, *Tenant Blacklisting: Tenant Screening Services and the Right to Privacy*, 24 HARV. J. ON LEGIS. 239, 241 (1987).

69. McElroy, *supra* note 64.

70. See *id.*

71. Benson & Biering, *supra* note 66, at 304; see also Peter A. Winn, *Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information*, 79 WASH. L. REV. 307, 319 (2004) (“Plainly there is a vast difference between the public records that might be found after a diligent search of a courthouse files, country archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.” (quoting U.S. Dep’t of Just. v. Reps. Comm. for Freedom of the Press, 489 U.S. 749 (1989))).

72. McElroy, *supra* note 64.

73. *Id.* (“Anxieties about [tenant screening practices] skyrocketed during the 1990s dot-com boom with its technological advances, and again after the 2001 war on terror. By 2003, 94% of criminal history records (71 million records) maintained by states had become digitized.”).

74. Rebecca Oyama, Note, *Do Not (Re)enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act*, 15 MICH. J. RACE & L. 181, 187 (2009).

75. Ann Davis, *Firms Dig Deep into Workers’ Past Amid Post-Sept. 11 Security Anxiety*, WALL ST. J. (Mar. 12, 2002, 12:01 AM ET), <https://www.wsj.com/articles/SB1015886922323674160>.

76. McElroy, *supra* note 64; see also Alina Snisarenko, *What Is PropTech and How It Changed the Real Estate Industry*, ASCENDIX (Dec. 27, 2024), <https://ascendixtech.com/prop-tech-real-estate-definition> [<https://perma.cc/9BQ8-DM3E>] (defining “PropTech” as combining real estate and cutting-edge technologies like AI, VR, and blockchain to create solutions that enhance how people buy, sell, research, market, and manage a property).

77. Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html> [<https://perma.cc/DD5A-HAA4>].

2. Current Tenant Screening Procedures

The use of tenant screening processes is now ubiquitous. Around 90 percent of landlords report the use of factors such as prior evictions, income, job history, rental history, credit scores, and criminal background when making rental decisions.⁷⁸ Many landlords have also recently reported tightening screening criteria.⁷⁹ In one national survey from 2022, 18 percent of landlords reported rejecting more than 75 percent of applicants, while 56 percent rejected at least 25 percent of applicants.⁸⁰ These same landlords cited prior eviction history as the screening factor they were most concerned about.⁸¹ Indeed, one tenant screening company reported that the policy of 99 percent of the New York landlords subscribed to its services is to “flat out reject anybody with a landlord-tenant record, no matter what the reason is and no matter what the outcome is”⁸²

Instead of collecting these metrics on their own, landlords now rely heavily on tenant screening companies. These companies purchase datasets from credit reporting agencies and contracting data brokers such as LexisNexis, Westlaw, Casetext, Premonition AI, Unicourt, and the American Information Research Services (“AIRS”), which also profit from the data’s use.⁸³ The brokers collect data by web scraping online court dockets, issuing mass records requests, and, in some cases, going to courthouses in person to photograph computer terminal screens displaying court dockets and records.⁸⁴

Not only do tenant screening companies collect these metrics, but they also recently began employing algorithms that give landlords a thumbs-up or thumbs-down recommendation for potential renters.⁸⁵ The algorithms purport to combine eviction data with other data, such as credit scores and criminal records,

78. Abby Boshart, *How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing*, URB. INST. (Dec. 21, 2022), <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing> (citing study from January 2022, which included over 1,100 responses from landlords nationwide); Kirchner & Goldstein, *supra* note 77 (citing TransUnion survey).

79. Jung Hyun Choi, Laurie Goodman & Daniel Pang, *The Real Rental Housing Crisis Is on the Horizon*, URB. INST. (Mar. 11, 2022), <https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon> (conducting national study in January 2022 and concluding that “39% of landlords said they are now using more stringent screening criteria”).

80. *Id.*

81. *Id.*

82. Terri Karush Rogers, *Only the Strongest Survive*, N.Y. TIMES, Nov. 26, 2006, at 1.

83. McElroy, *supra* note 64, at 61.

84. *Id.*; see also Katelyn Polk, Note, *Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions*, 15 NW. J.L. & SOC. POL’Y 338, 349 (2020) (“In Chicago, any person—including a landlord or a representative from a tenant screening company—need only go to the [courthouse] to access the public record through any number of computers provided for this very reason.”).

85. See, e.g., McElroy, *supra* note 64; Gary Rhoades, *Ghosts in the Machine: How Past and Present Biases Haunt Algorithmic Tenant Screening Systems*, AM. BAR ASS’N (June 3, 2024), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/technology-and-the-law/algorithmic-tenant-screening-systems.

to produce a numerical score or a red or green light rental recommendation.⁸⁶ Landlords rarely review the underlying data contained in a screening report, relying only on the PropTech green or red light to determine a tenant's lifelong rental fate.⁸⁷ They often argue that the use of data creates impartial rental decisions, which are simply related to past tenant behavior.⁸⁸ Yet this logic is erroneous. It ignores the incomplete and inaccurate data underlying the reports disseminated by tenant screening companies.

3. *The Flawed Tenant Screening Process*

Although tenant screening companies purport to employ sophisticated, tech-based and algorithmic systems, the data captured by these systems is often incomplete, inaccurate, and biased. The incomplete data capture begins with tenant screening companies failing to determine whether a tenant won or lost their case.⁸⁹ Instead, these agencies treat any touchpoint with an eviction court as the same, thereby branding tenants with a Scarlet E “without context or nuance.”⁹⁰ For example, algorithms do not distinguish between proceedings that end in a judgment for the landlord and those that are dropped, dismissed, or otherwise won by the tenant.⁹¹ Similarly, they fail to take into account outcomes where a landlord and tenant reach a consent judgment under which a tenant pays any outstanding rent and remains in their home.⁹² Further, these algorithms do not account for proceedings that end in a default judgment that is ultimately set aside.⁹³ Nor do the algorithms account for cases in which a tenant withholds rent because a landlord has violated the lease or state law but nonetheless takes the tenant to court for nonpayment of rent.⁹⁴

86. McElroy, *supra* note 64; *see also* Leiwant, *supra* note 61, at 281–82 (citing to big data broker CoreLogic, which employs a “SafeRent Score,” marketed as a “statistically validated scoring model,” that presents an “indicator of lease performance for future residents”); Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, CONSUMER REPS. (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426> (looking at sample documents from eight prominent tenant screening companies and finding that “they all offered reports that included an algorithmically generated score or a recommendation to accept or reject an application”).

87. *See* Polk, *supra* note 84.

88. Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANN. REV. L. & SOC. SCI. 15, 19 (2015).

89. *See* Price, *supra* note 30, at 30.

90. Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 688 (2018); Price, *supra* note 30, at 30; Leiwant, *supra* note 61, at 282.

91. *See* Franzese, *supra* note 90, at 688–89.

92. *Id.*

93. *Id.*

94. *Id.*; *see also* Adam Porton, Ashley Gromis & Matthew Desmond, *Inaccuracies in Eviction Records: Implications for Renters and Researchers*, 31 HOUS. POL'Y DEBATE 377, 378 (2021) (examining more than 3.6 million eviction records from twelve states and finding that “on average, 22% of eviction records contain ambiguous information on how the case was resolved or falsely represent a tenant’s eviction history”).

Worse still, many data brokers scrape eviction data from court dockets without ever consulting the documents underlying the case.⁹⁵ In other words, a mere court appearance can result in a Scarlet E that follows the tenant for life.⁹⁶ And this is frequently the result even when a landlord uses the court system as a collections mechanism without any intention of evicting a tenant.⁹⁷ Compounding the problem is the fact that screening systems do not consider how long ago such a judgment was entered, sometimes relying on decades-old data.⁹⁸ At bottom, any brush with an eviction court is fed into screening algorithms as a negative indicator of rental performance, despite the outcome of an eviction case, how long ago the case took place, or the landlord's intention in filing it.

In addition to eviction data being incomplete and used by screening agencies in a misleading fashion, the data itself is often riddled with errors.⁹⁹ For example, algorithms are generally unable to discern between tenants with the same name, resulting in negative metrics being erroneously ascribed to the wrong tenant.¹⁰⁰ Other metrics have similar problems, such as dismissed criminal cases being reported to landlords as convictions.¹⁰¹ In other words, it is not only a touchpoint with the eviction system, but any touchpoint with the legal system that can brand a tenant with a Scarlet E and severely restrict their housing options for life.

The use of algorithmic screening also perpetuates the racial biases and discriminatory effects of the eviction system.¹⁰² Landlords' reliance on

95. Franzese, *supra* note 90, at 688–89.

96. *See id.*

97. *Id.*

98. *Id.* at 668.

99. Kirchner & Goldstein, *supra* note 77 (describing an automated background check that included information from criminal databases in states where the tenant had never lived and pulled in records for women whose middle names, races, and birthdates did not match the tenant's); Leiwant, *supra* note 61, at 285 (describing various ways tenant screening algorithms hide data errors); *see also* CFPB Reports Highlight Problems with Tenant Background Checks, CFPB (Nov. 15, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-reports-highlight-problems-with-tenant-background-checks> (producing reports which reveal that “people are denied rental housing because negative information is reported that belongs to someone else; outdated information remains on reports; and inaccurate or misleading details about arrests, criminal records, and eviction records are not corrected nor removed from reports,” and noting a consumer snapshot revealed that “renters submitted more than 16,000 complaints about incorrect information on their reports and another 4,500 complaints about obstacles faced trying to get companies to fix their errors”).

100. Boshart, *supra* note 78 (“Thus, screening companies may be pulling reports of maliciously filed evictions that are linked to people with common names.”); *see also* Waddell, *supra* note 86 (noting that screening reports are often “littered with errors,” and that “they can include criminal or eviction records from people with similar names, a problem that can arise more often with Black or Latino applications”).

101. *See, e.g.*, Kirchner & Goldstein, *supra* note 77.

102. *See infra* Part.III.A; *see also, e.g.*, Pappoe, *supra* note 61, at 278; Leiwant, *supra* note 61, at 282. The FTC has recently recognized that artificial intelligence can lead to inaccuracy, bias and discrimination, and commercial surveillance incentives. Press Release, Fed. Trade Comm’n, FTC Report Warns About Using A.I. to Combat Online Problems (June 16, 2022) [hereinafter FTC Press Release], <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-report-warns-about-using-artificial-intelligence-combat-online-problems>.

numerical scores and thumbs-up or thumbs-down ratings is a reliance on inaccurate and incomplete data, which disproportionately impacts Black and Latinx renters.¹⁰³ By failing to understand the nuances of an eviction case and turning a blind eye to screening agencies' use of unreliable data, landlords make misguided rental decisions, disproportionately excluding minority renters and thereby perpetuating entrenched poverty and the racial wealth gap.¹⁰⁴

The final blow to tenants is the requirement that they bear the cost of their own screening.¹⁰⁵ Landlords almost always collect fees as part of a tenant's rental application to cover the cost of the screening process, which will, in many cases, wrongly disqualify a tenant from a rental home.¹⁰⁶ This process repeats, and screening costs mount as tenants are perpetually rejected from rental housing and forced to continue searching.¹⁰⁷

It is also nearly impossible to correct inaccurate tenant data or challenge a rental rejection.¹⁰⁸ The multibillion dollar tenant screening industry is largely unregulated. Screening agencies are not required to register with the government, and regulators have failed to place guardrails on tenant screening as they have done with other types of background checks.¹⁰⁹ This means landlords are generally under no obligation to provide tenants with the data

103. Pappoe, *supra* note 61, at 284–85.

104. *Id.*

105. *Id.* at 282; McElroy, *supra* note 64.

106. Pappoe, *supra* note 61, at 282.

107. *Id.*

108. See Kirchner & Goldstein, *supra* note 77. Even when screening companies are held accountable, tenants often continue to “complain about the same careless practices by companies that regulators had called out” *Id.*; see also Pappoe, *supra* note 61, at 285 (stating that “[a]lthough the use of eviction records in making rental decisions has not been widely challenged, the use of criminal records has,” and highlighting cases in which the use of criminal records in rental decisions has been challenged). Further, challenges to tenant screening company practices under the Fair Housing Act and the Fair Credit Reporting Act have largely been unsuccessful. See, e.g., Pappoe, *supra* note 61, at 300–10 (describing current shortcomings in Fair Housing Act and Fair Credit Reporting Act litigation). But see, e.g., Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief at 4, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020); Stipulated Order for Permanent Injunction and Civil Penalty Judgment at 1, *United States v. AppFolio, Inc.*, No. 1:20-cv-03563 (D.D.C. Dec. 8, 2020) (background check service AppFolio, Inc. settling with the FTC and agreeing to pay \$4.25 million and cease providing non-conviction criminal records and eviction records older than seven years). Some have suggested that a theory of disparate impact under the Fair Housing Act may be one avenue to hold screening companies accountable. See, e.g., Pappoe, *supra* note 61, at 294–99.

109. Kirchner & Goldstein, *supra* note 77; Eric Sirota, *Smokescreen: Unfair Tenant Screening Practices Perpetuate Housing Discrimination*, SCHRIVER CTR. ON POVERTY L. (May 10, 2023), <https://www.povertylaw.org/article/unfair-tenant-screening-practices>. But see Press Release, Fed. Trade Comm’n, FTC and CFPB Seek Public Comment on How Background Screening May Shut Renters Out of Housing (Feb. 28, 2023) [hereinafter FTC and CFPB Seek Public Comment], <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-cfpb-seek-public-comment-how-background-screening-may-shut-renters-out-housing> (urging the public to provide input on “such issues as the use of criminal and eviction records, algorithms in tenant screening process, and adverse impact on underserved communities”); Madeline Hughes, *US FTC Aims to Utilize Section 5 Authority in Pursuing ‘Unfair’ Practices in Tenant Screening*, MLEX (Feb. 28, 2023), <https://mlexmarketinsight.com/news/insight/us-ftc-aims-to-utilize-section-5-authority-in-pursuing-unfair-practices-in-tenant-screening> [<https://perma.cc/Y785-4JJN>].

underlying a rental rejection or the reason for such rejection.¹¹⁰ Thus, tenants have no way to discern why they were rejected by a particular landlord.¹¹¹ Further, even where tenants are able to discern that inaccurate data is contained in one or more reports, correcting the data with the numerous screening agencies that may have copies of the erroneous data is arduous, time-consuming, and an uphill battle.¹¹²

II. THE EVICTION MARKET

Eviction is not only a powerful displacement tool, but also a process that results in the creation of a stratified housing market and involuntary sorting of human beings. Tenants who are thrust into the Eviction Institution are relegated to the bottom tier of an Eviction Market consisting of undesirable properties that only those branded with the Scarlet E are forced to live in. This Eviction Market stems primarily from two factors: (1) the financialization of housing—valuing housing as a commodity or financial asset rather than a place to live, and (2) perpetually stagnating incomes. These factors have not only led to the creation of an Eviction Market, but the Eviction Market in turn perpetuates housing financialization as rents rise and more tenants are moved into the market.

A. THE FINANCIALIZATION OF HOUSING

In the United States, housing has become largely an asset and an investment vehicle, rather than a social good.¹¹³ This financialization of

110. See Leiwant, *supra* note 61, at 284; see also CFPB Reports Highlight Problems with Tenant Background Checks, CFPB (Nov. 15, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-reports-highlight-problems-with-tenant-background-checks> (“While renters bear the costs of errors and false information in these reports, they have few avenues to make tenant screening companies fix their sloppy procedures.”). Prior to the use of algorithms, applicants could request a copy of the information used in making a rental decision and petition a screening company to correct any misinformation. Today, however, algorithms that amalgamate information to produce a red or green light rental recommendation remove this option as applicants are unable to discern what factors were considered when rejecting their application. *Id.*

111. *Id.*

112. See Leiwant, *supra* note 61, at 285 (“[J]ust because the issue was cleared up with one company [does] not mean [the tenant’s] files with other companies [do] not have similar mistakes, waiting to disqualify them from future units.”).

113. SAMANTHA FU & GABI VELASCO, URB. INST., DECOMMODIFICATION AND ITS ROLE IN ADVANCING HOUSING JUSTICE 2 (2023), <https://www.urban.org/sites/default/files/2023-02/Decommodification%20and%20Its%20Role%20in%20Advancing%20Housing%20Justice.pdf>; see also “Housing is a Human Right, Not Just a Commodity,” UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R. (Mar. 22, 2019), <https://www.ohchr.org/en/stories/2019/03/housing-human-right-not-just-commodity> (statement of UN Special Rapporteur on adequate housing) (“Under the new financialized model, housing isn’t viewed as a home or a place where families grow, a place where you generate memories. Housing is an asset. It’s a place to park capital.”). To challenge the financialization of housing, the UN Special Rapporteur on adequate housing together with the UN Human Rights Office and United Cities and Local Governments (a worldwide network of cities) has embarked on The Shift Initiative—“a worldwide movement to reclaim and realize the fundamental human right to housing.” *Id.*

housing¹¹⁴ is driven by the promotion of individual homeownership, the disinvestment in public and subsidized housing, and the rise in financial speculation.¹¹⁵

The rise in homeownership sprung from 1940s postwar policies that touted homeownership as the pinnacle of the “American Dream.”¹¹⁶ While fewer than half of Americans were homeowners in 1900, by 1950, over 60 percent of Americans owned their homes, and, by 2004, an all-time high of nearly 70 percent of Americans owned their own homes.¹¹⁷ This resulted in homeowners continually relying on appreciation of their homes to build wealth.¹¹⁸ In turn, this wealth building mechanism increased the racial wealth gap as Black and Latinx homeowners were excluded from mortgage markets or included on predatory terms.¹¹⁹

As homeownership skyrocketed during the latter half of the twentieth century, investment in public and subsidized housing simultaneously declined.¹²⁰ Little public housing has been built since the 1970s, and the existing inventory has declined since the mid-1990s with the demolition and conversion of public housing units as well as the sale of such units to private owners.¹²¹ Privately owned subsidized housing stock has also declined as federal spending for such subsidies has plummeted since the 1980s.¹²² Currently, no state in the country has an adequate supply of affordable rental housing for the lowest income renters, with a national shortage of approximately 7.3 million affordable

114. See, e.g., U.N. Human Rights Council, *supra* note 1 (defining “financialization of housing”); Special Rapporteur on the Right to Adequate Housing, *Financialization of Housing*, UNITED NATIONS, <https://www.ohchr.org/en/special-procedures/sr-housing/financialization-housing#:~:text=Known%20as%20the%20financialization%20of,rather%20than%20a%20social%20good> (last visited Feb. 4, 2024). The financialization of housing is intertwined with the “commodification of housing.” See FU & VELASCO, *supra* note 113, at 2 (“Commodification is the process by which the economic value of an object comes to dominate its other uses, such as material and ethical.” (citation omitted)).

115. FU & VELASCO, *supra* note 113; see also Nisha N. Vyas & Matthew Warren, *From Commodities to Communities: Reimagining Housing After the Pandemic*, 68 UCLA L. REV. DISCOURSE (LAW MEETS WORLD) 190, 199 (2020) (describing the commodification of housing and how it came about).

116. FU & VELASCO, *supra* note 113, at 3.

117. *Id.*

118. *Id.*

119. *Id.*; see also Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 BROOK. L. REV. 1225, 1227, 1231 (2023) (“[A] unique feature of American zoning law, a strict residential use taxonomy that privileges ‘single family’ homes over ‘multifamily’ homes, has had the effect of economically and racially segregating US cities. . . . American zoning law is one of the most enduring white supremacist legal devices of the Jim Crow era.” (footnotes omitted)).

120. FU & VELASCO, *supra* note 113, at 4; STERLING ET AL., *supra* note 4, at 1; Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POL’Y 59, 68 (2016) (discussing the affordable housing shortage in the U.S. and recognizing that little has been done to meet growing rental demand over the past ten years).

121. FU & VELASCO, *supra* note 113, at 4; see also Faircloth Amendment to the United States Housing Act of 1937, Pub. L. 117-328, § 9(g)(3)(A), 50 Stat. 888 (2022) (codified at 42 U.S.C. § 1437) (limiting the construction of new public housing units).

122. FU & VELASCO, *supra* note 113, at 4.

rental homes for renters with extremely low incomes.¹²³ This shortage is compounded because the percentage of households that rent homes is near an all-time high.¹²⁴ The demand for rentals has been increasing in the years following the 2007–2008 financial crisis and accompanying housing bust, with approximately 36 percent of households renting homes today.¹²⁵

Tying wealth to homeownership and simultaneously divesting in affordable housing has also contributed to an increase in speculative activity.¹²⁶ As supply fails to keep pace with demand, investors reap the profits resulting from this market imbalance.¹²⁷ As Leilani Farha, former UN Special Rapporteur on the right to adequate housing, has recognized, “a worldwide housing crisis is being fueled by financial speculation that is pushing affordable rents or homeownership out of the hands of many”¹²⁸ Indeed, residential real estate is the biggest business in the world, with a valuation of more than \$163 trillion dollars, or three times the entire world’s gross domestic product.¹²⁹ Today, buying a home with a mortgage is a speculative investment dependent on volatile financial markets, which can either generate considerable wealth or deprive households of substantial savings.¹³⁰ In a recent survey, more than half of ultra-high-net-worth individuals indicated that they have increased the proportion of their investments in residential properties in order to later sell the property and provide a safe haven for wealth.¹³¹

Further, real estate is increasingly owned by large corporations, many of which are institutional investors. Such investors own nearly half of all rental units and 77 percent of units in properties with more than fifty units.¹³² Moreover, the pace at which institutional investors are buying property is only

123. *The Gap: A Shortage of Affordable Homes*, NAT’L LOW INCOME HOUS. COAL. 1 (Mar. 2024), <https://nlihc.org/gap>. “Extremely low income,” means income at or below either the federal poverty guideline or 30% of a renter’s area median income. *See id.*

124. Anthony Cilluffo, A.W. Geiger & Richard Fry, *More U.S. Households Are Renting than at Any Point in 50 Years*, PEW RSCH. CTR. (July 19, 2017), <https://www.pewresearch.org/short-reads/2017/07/19/more-u-s-households-are-renting-than-at-any-point-in-50-years> [<https://perma.cc/25P8-BBDS>].

125. *Id.*; Drew Desilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR. (Aug. 2, 2021), <https://www.pewresearch.org/short-reads/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/#:~:text=One%20big%20disparity%20among%20renters,or%20adoption%20who%20live%20together> [<https://perma.cc/VTB5-E9R4>] (based on data from the 2020 Census).

126. FU & VELASCO, *supra* note 113, at 5.

127. *Id.*

128. “*Housing is a Human Right, Not Just a Commodity.*,” *supra* note 113.

129. *Id.* (recognizing residential real estate was valued at \$163 trillion as of 2019). It should be noted that capital investment into housing markets is different than the production of housing—“[w]hen rented homes or mortgages are owned by remote investors, money mostly flows out of communities and simply creates greater global concentration of wealth.” U.N. Human Rights Council Report, *supra* note 1, ¶ 28.

130. U.N. Human Rights Council Report, *supra* note 1, ¶ 31.

131. *Id.* ¶ 34.

132. *Quick Facts: Ownership and Management*, NAT’L MULTIFAMILY HOUS. COUNCIL, <https://www.nmhc.org/research-insight/quick-facts-figures/quick-facts-ownership-and-management> (last visited Apr. 15, 2025).

increasing—in the first quarter of 2022, for example, 28 percent of all single-family homes sold were purchased by institutional investors.¹³³

This results in large private equity and investment firms becoming landlords, buying up affordable housing and substantially raising rents, thereby pricing tenants out of their homes and communities.¹³⁴ Additionally, rather than being responsive to community needs, housing decisions are largely made from remote board rooms devoid of any connection to the environment in which the assets are located.¹³⁵ Money is also flowing out of these communities, becoming further concentrated in the hands of the wealthy and solidifying the financialization of housing.¹³⁶

When considering this context, it becomes clear that blaming tenants who are forced from their homes as responsible for their own condition is misplaced. Instead, macroeconomic factors, policy decisions, and our conception and treatment of housing as a vehicle for wealth building have led to the Eviction Institution and resulting Eviction Market.¹³⁷ As former UN Rapporteur Farha points out, “[t]here’s a huge difference between housing as a commodity and gold as a commodity. Gold is not a human right, housing is.”¹³⁸ The UN Deputy High Commissioner for Human Rights agrees: “‘a major shift needs to occur . . . from housing as an instrument of urban planning to an understanding that housing is a fundamental right because it is the infrastructure for humanizing and signifying the lives of people around the world’”¹³⁹

B. STAGNATING INCOMES

Although the financialization of housing has resulted in an inadequate supply of affordable housing and skyrocketing rents, that is only half the picture. The other half stems from stagnating incomes.¹⁴⁰ Over the past forty years,

133. FU & VELASCO, *supra* note 113, at 5.

134. See Leilani Farha, *States and Real Estate Private Equity Firms Questioned for Compliance with Human Rights*, UNITED NATIONS (Mar. 26, 2019), <https://www.ohchr.org/en/news/2019/03/states-and-real-estate-private-equity-firms-questioned-compliance-human-rights?LangID=E&NewsID=24404> (“Almost overnight multinational private equity and asset management firms like Blackstone have become the biggest landlords in the world, They have changed the global housing landscape. Pouring unprecedented amounts of capital into housing, they have converted homes into financial instruments and investments.”); see also ACCE INST., AMERICANS FOR FIN. REFORM & PUB. ADVOCS., WALL STREET LANDLORDS TURN AMERICAN DREAM INTO A NIGHTMARE 4 (Jan. 2018), <https://d3n8a8pro7vnm.cloudfront.net/acceinstitute/pages/1153/attachments/original/1570049936/WallstreetLandlordsFinalReport.pdf?1570049936> (“National and global private equity firms like Blackstone Group and Colony Capital have been behind the purchase of tens of thousands of single-family homes, which they have then turned into rental properties.”); FU & VELASCO, *supra* note 113, at 5 (“Blackstone is the largest landlord in the United States, [and] its actions are not unique among private equity firms.”).

135. See FU & VELASCO, *supra* note 113, at 5.

136. U.N. Human Rights Council Report, *supra* note 1, ¶ 31.

137. See Baker, *supra* note 23, at 800.

138. Special Rapporteur on the Right to Adequate Housing, *supra* note 114.

139. “*Housing is a Human Right, Not Just a Commodity.*,” *supra* note 113.

140. See Baker, *supra* note 23, at 799 (“[E]victions are central to the process of housing commodification.”); See Peyton Whitney, *Number of Renters Burdened by Housing Costs Reached a Record High in 2021*, JOINT

median rents have risen more than six times faster than median wages.¹⁴¹ For low-wage workers, the rise in median rents has outpaced wage growth by twenty-three times.¹⁴² This has resulted in approximately half of all renters being rent-burdened (spending at least 30% of their income on rent) and a quarter being severely rent burdened (spending at least 50% of their income on rent).¹⁴³ This means that workers earning the federal, state, or local minimum wage cannot afford a modest two-bedroom rental at fair market rent by working a forty-hour work week.¹⁴⁴

Tenants who become cost burdened as a result of such macroeconomic factors often fall behind on rent. As of 2022, 20 percent of renters were behind on rental payments.¹⁴⁵ This leads to landlords forcing renters from their homes through informal, illegal, or court-sanctioned evictions.¹⁴⁶ In fact, of the approximately 3.6 million eviction cases filed per year, 80 percent are for nonpayment of rent.¹⁴⁷ Nationwide, evictions are filed at a rate of nearly seven filings per minute, with approximately one in twenty-five renters being threatened with eviction annually, and one in forty being evicted.¹⁴⁸ Once current tenants are evicted, landlords are free to raise the rent and collect

CTR. FOR HOUS. STUD. OF HARV. UNIV. (Feb. 1, 2023), [https://www.jchs.harvard.edu/blog/number-renters-burdened-housing-costs-reached-record-high-2021#:~:text=In%202021%2C%20more%20renters%20were,49.0%20percent%20of%20all%20renters](https://www.jchs.harvard.edu/blog/number-renters-burdened-housing-costs-reached-record-high-2021#:~:text=In%202021%2C%20more%20renters%20were,49.0%20percent%20of%20all%20renters;);

Gap: A Shortage of Affordable Homes, *supra* note 123.

141. ANDREW AURAND, DAN EMMANUEL, DAN THREET, IKRA RAFI & DIANE YENTEL, NAT'L LOW INCOME HOUSING COAL. 4 (2020), https://www.ncsha.org/wp-content/uploads/OOR_BOOK_2020.pdf.

142. *Id.*

143. *American Community Survey*, U.S. CENSUS BUREAU (2021), <https://data.census.gov/table/ACSDP1Y2021.DP04>; STERLING ET AL., *supra* note 4, at 1; *see also* Whitney, *supra* note 140 (“In 2021 . . . a record number of renters were cost burdened . . .”).

144. AURAND ET AL., *supra* note 141; *see also* Anna Kodé, *The Typical American Renter Is Now Rent-Burdened, a Report Says*, N.Y. TIMES (Jan. 25, 2023), <https://www.nytimes.com/2023/01/25/realestate/rent-burdened-american-households.html> [<https://perma.cc/S2BS-A5CE>] (The typical American renter [those who earn the median income and pay the average rent] is now rent-burdened . . .”).

145. U.S. CENSUS BUREAU, WEEK 42 HOUSEHOLD PULSE SURVEY: JANUARY 26—FEBRUARY 7: HOUSING TABLE 1B. LAST MONTH'S PAYMENT STATUS FOR RENTER-OCCUPIED HOUSING UNITS, BY SELECT CHARACTERISTICS (2022), <https://www.census.gov/data/tables/2022/demo/hhp/hhp42.html#tables>.

146. STERLING ET AL., *supra* note 4, at 1.

147. Juan Pablo Garnham, Carl Gershenson & Matthew Desmond, *New Data Release Shows that 3.6 Million Eviction Cases Were Filed in the United States in 2018*, EVICTION LAB (July 11, 2022), <https://evictionlab.org/new-eviction-data-2022>. While most evictions are for nonpayment of rent, a landlord may also seek to evict a tenant for other reasons such as substantial breach of lease provisions, a holdover tenancy, a material health or safety violation, or non-renewal of the lease for any reason after the rental period has expired (often called “no fault” or “no cause” eviction). *See, e.g.*, Kleysteuber, *supra* note 39, at 1354 (describing reasons for evictions other than nonpayment of rent); David Bitton, *2024 Eviction Process in New Mexico: Laws for Landlords & Property Managers*, DOORLOOP (Dec. 19, 2024), <https://www.doorloop.com/laws/new-mexico-eviction-process> [<https://perma.cc/8PF7-PUCG>].

148. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 653 (2020) (conducting first national study of evictions and drawing on data from 39 states, including millions of eviction court records).

increased profits from new tenants, or sell the now vacant property for a profit.¹⁴⁹ Meanwhile, the evicted tenants are branded with the Scarlet E and relegated to inferior housing.

C. THE CREATION OF AN EVICTION MARKET AND HOW IT PERPETUATES HOUSING FINANCIALIZATION

It is thus the financialization of housing combined with stagnating incomes that has created the Eviction Market—a stratified housing market and involuntary sorting of human beings. At the top of the market are preferred properties—properties accessible only to individuals who have never had a touchpoint with the eviction system.¹⁵⁰ The Scarlet E forbids evicted tenants from accessing preferred properties. The bottom of the market consists of relegated rentals—properties that are generally of poor quality, not well maintained, and located in under-resourced areas.¹⁵¹ Almost all tenants who end up in a relegated rental have been branded with the Scarlet E. Renters without this stigma do not opt for such housing because they generally have access to preferred properties.¹⁵² In other words, the Eviction Market contains a bottom tier of undesirable properties that are generally reserved for Scarlet E renters. Moreover, the branding of these tenants condemns them to permanent residence in relegated rentals.

The financialization of housing has not only contributed to the creation of the Eviction Market, but this market in turn perpetuates housing financialization. Landlords continually raise rents (thereby pricing tenants out of their homes), evict current tenants (thereby branding them with the Scarlet E), sell the properties at a profit or raise rents to increase profits (thereby keeping the supply

149. Landlords also collect attorneys' fees and court costs if they prevail in an eviction case. *See, e.g.,* Stephanie Mantell, *Contract and Property Law—Fee-Shifting Statutes and Landlord-Tenant Law—A Call for the Repeal of the English Rule “Loser Pays” System Regarding Contract Disputes and Its Effect on Low-Income Arkansas Tenants*, 39 U. ARK. LITTLE ROCK L. REV. 105, 105 (2016). They also frequently keep security deposits, claiming damage to property. *See, e.g.,* Brian Canfield, *Security Deposits: Potential Fixes to an Unfair System*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (Jan. 28, 2022), <https://nyujlpp.org/quorum/canfield-security-deposits> (discussing why landlords are able to “wrongly withhold deposits”). And when searching for new tenants, landlords charge application fees for each tenant who applies (sometimes hundreds of individuals and families), often without returning the fees to tenants who are not ultimately selected to rent the property. *See, e.g.,* Pappoe, *supra* note 61, at 282.

150. *See, e.g.,* Abby Boshart, *How Eviction Affects Neighborhoods*, URB. INST. (June 7, 2023), <https://housingmatters.urban.org/articles/how-eviction-affects-neighborhoods> (“Eviction affects families’ current and future prospects for residential stability. After an eviction, renters are more likely to relocate to less advantaged neighborhoods and lower quality housing and are more likely to move again, continuing the cycle of instability.”).

151. *Id.*

152. KRITI RAMAKRISHNAN, ELIZABETH CHAMPION, MEGAN GALLAGHER & KEITH FUDGE, URB. INST., *WHY HOUSING MATTERS FOR UPWARD MOBILITY* 11 (2021), <https://www.urban.org/sites/default/files/publication/103472/why-housing-matters-for-upward-mobility-evidence-and-indicators-for-practitioners-and-policymakers.pdf> (“An eviction is a destabilizing event for households and can hinder upward mobility by affecting economic, social, and housing outcomes for evicted households.”).

of affordable housing low), and use these profits to purchase more residential real estate (thereby perpetuating the consolidation of purchasing power and residential real estate in the hands of the few).¹⁵³

This cycle is amplified by tenant screening companies, which have privatized tenant data and profit from its sale.¹⁵⁴ Landlords pass the costs of such screenings onto tenants, thereby forcing unknowing tenants to pay for entry to the very Eviction Market that frequently results in their forced displacement and Scarlet E branding.¹⁵⁵

III. THE EVICTION CASTE SYSTEM

Tenants who have been branded with the Scarlet E and forced into the eviction market are not only relegated to undesirable housing (if any), but they are also banished to the lowest tier of a resulting caste system and treated as second-class citizens.¹⁵⁶ This sorting of human beings is concretized by denying Scarlet E tenants basic civil and human rights and perpetually policing these individuals and families.

A. THE CREATION OF THE EVICTION CASTE SYSTEM

The current Eviction Institution harkens back to feudal land tenure norms. During feudal times, landlords treated land as a commodity and tenants as villeins—subjects of property belonging to the “lord” and “substantially in the condition of a slave.”¹⁵⁷ Michelle Alexander’s *The New Jim Crow* unearthed a reckoning with the United States’ mass incarceration system by revealing that

153. See generally *supra* Part.I.

154. See *supra* Subpart.I.C; see also McElroy, *supra* note 64, at 56 (“[T]enant screening industry updates historical contexts and techniques of racial capitalism, landlordism and racial banishment through data grabbing [The] built-in exclusionary logic can be traced to the formation of private property—a concept exported from Europe to the Americas and made endemic to the US empire.”).

155. McElroy, *supra* note 64, at 56.

156. This Article uses the term “caste system” rather than class system, to emphasize that the eviction caste system not only relegates Scarlet E tenants to inferior housing, but also often permanently banishes their children and future generations to unsafe, unsanitary housing, in neighborhoods that are not well resourced as compared to those of their wealthier counterparts. In other words, the eviction caste system is characterized by a near hereditary transmission of the Scarlet E and its collateral consequences. See, e.g., Guha Krishnamurthi, *The Constitutionally of Prohibiting Caste Discrimination*, U. CHI. L. REV. ONLINE 1, 3 (July 13, 2023), <https://lawreview.uchicago.edu/sites/default/files/2023-07/v12%20FINAL%20Krishnamurthi%20ESSAY.pdf> (“Caste is a structure of social stratification that is characterized by hereditary transmission of a set of practices”); Scott Grinsell, “*The Prejudice of Caste*”: *The Misreading of Justice Harlan and the Ascendancy of Anticlassification*, 15 MICH. J. RACE & L. 317, 366 (2010) (discussing “caste” in the context of the Fourteenth Amendment and Justice Harlan’s dissent in *Plessy v. Ferguson*, and stating that, “The importance of caste as an image of social subordination in these early debates suggests that Harlan’s opinion should be understood as articulating a concern about the social hierarchies that had been created under slavery and that persisted with state sanction under Jim Crow”); ISABEL WILKERSON, CASTE 17–18 (2020) (“The hierarchy of caste . . . is about power—which groups have it and which do not.”). Given the racialized and genderized nature of evictions, this framing also helps highlight the inequities perpetuated by evictions along race, gender, and income lines. See *infra* Subpart.III.A.

157. See *supra* note 32.

“we have not ended racial caste in America; we have merely redesigned it.”¹⁵⁸ The book highlights how the war on drugs and the justice system have been used as a “system of [] social control,” particularly for Black and Latinx men.¹⁵⁹ As Alexander puts it: “I came to see that mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.”¹⁶⁰

Similarly, the Eviction Institution and resulting Eviction Market stemming from the financialization of housing has created yet another caste-like system that relegates extremely low-income individuals to permanent second-class status. This is especially true for Black and Latinx people, particularly women and children.¹⁶¹

As sociologist Matthew Desmond has reported, “eviction is to women what incarceration is to men: incarceration locks up men, while evictions lock women out.”¹⁶² Additionally, a recent national study found that approximately 16 percent more women were evicted annually than men.¹⁶³ The study also found that these disparities are compounded when taking race into account. For example, 36 percent more Black women were evicted than Black men, 9.6 percent more Latinx women were evicted than Latinx men, and 7.7 percent more white women were evicted than white men.¹⁶⁴ When compared to the entire population, the data provided an even starker picture. Black individuals made up 19.9 percent of all adult renters, but 32.7 percent of all eviction defendants, while white individuals made up 51.5 percent of all adult renters, but only 42.7 percent of all eviction defendants.¹⁶⁵ Put differently, Black women are subject to eviction filings at nearly twice the rate of white women and are more likely to have an eviction case filed against them that is later dismissed.¹⁶⁶

158. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 2 (2010).

159. *Id.* at 4.

160. *Id.*

161. Hepburn et al., *supra* note 148, at 649; *see also* Abraham Gutman, Katie Moran-McCabe & Scott Burris, *Health, Housing, and the Law*, 11 NE. U. L. REV. 251, 261 (2019); Peter Hepburn, Renee Louis, Joe Fish, Emily Lemmerman, Anne Kat Alexander, Timothy A. Thomas, Robert Koehler, Emily Benfer & Matthew Desmond, *U.S. Eviction Filing Patterns in 2020*, 7 SOCIUS: SOCIO. RSCH. DYNAMIC WORLD 1, 9–10 (2021); Pappoe, *supra* note 61, at 277–82 (2023) (collecting sources to conclude that “Black women bear the brunt of the eviction crisis”); Polk, *supra* note 84, at 345–47 (discussing women’s lower earning potential as compared to men, the greater likelihood that women live with children than men, and the gender dynamics between predominantly male landlords and women tenants as some of the reasons that women face more evictions than men); MATTHEW DESMOND, MACARTHUR FOUND., *POOR BLACK WOMEN ARE EVICTED AT ALARMING RATES, SETTING OFF A CHAIN OF HARDSHIP* 1 (2014), www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf.

162. Desmond, *supra* note 161.

163. Hepburn et al., *supra* note 148, at 655.

164. *Id.* at 655–56.

165. *Id.*

166. STERLING ET AL., *supra* note 4, at 7.

Families with children also face greater rates of eviction.¹⁶⁷ One study from Milwaukee found that families with children are 17 percent more likely to be evicted than those without.¹⁶⁸ This reality is particularly evident for children of color and those living in poverty. Recent data suggests that among children born into deep poverty (50% below the poverty line), approximately one in four were evicted by age fifteen.¹⁶⁹ Additionally, among Black and Latinx children, nearly 20 percent experienced eviction by age fifteen, as compared to just over 10 percent of white children.¹⁷⁰

B. EFFECTS OF THE EVICTION CASTE SYSTEM

1. *Denial of Civil and Human Rights*

The Eviction Institution and market that follows effectively deny low-income individuals basic civil and human rights, including the right to be free from discrimination in employment, access to healthcare, access to education, the right to vote, and of course, housing.¹⁷¹ These factors also frequently lead to entrenched poverty and homelessness, cementing Scarlet E tenants as second-class citizens.

a. Employment

Tenants who have been displaced from their homes are forced to relocate, making maintaining a stable job highly difficult.¹⁷² In other words, housing loss frequently leads to job loss.¹⁷³ Transportation costs skyrocket as home and work become further apart, performance can suffer amidst the trauma of eviction, and

167. Matthew Desmond, Weihua An, Richelle Winkler & Thomas Ferriss, *Evicting Children*, 92 SOC. FORCES 303, 312 (2013).

168. *Id.* at 317.

169. Ian Lundberg & Louis Donnelly, *A Research Note on the Prevalence of Housing Eviction Among Children Born in U.S. Cities*, 56 DEMOGRAPHY 391, 401 (2019).

170. *Id.* at 399–401 (“Eviction was most common among children whose mothers were [B]lack (19.2%, . . .) and Hispanic (16.7%, . . .), compared with children born to mothers of white and other racial and ethnic backgrounds (11.3%, . . .).”).

171. See ALEXANDER, *supra* note 158, at 4 (recognizing that although Jim Crow laws were wiped off the books decades ago, African Americans who are warehoused in prisons or trapped in a similar social situation are denied basic civil and human rights, such as the right to vote, the right to serve on juries, and the right to be free of legal discrimination in employment, housing, access to education and public benefits); see also Anne Bonds, *Race and Ethnicity I: Property, Race, and the Carceral State*, 43 PROGRESS HUM. GEOGRAPHY 574, 579 (2019) (arguing that racism, contemporary housing policies, and carceral expansion build upon and reinforce each other).

172. Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 299, 317 (2015), (recognizing that “[a] mother who does not know where she and her children will sleep the next night likely will be unable to maintain steady employment” and that high rates of depression among evicted mothers could “prevent[] them from seeking or keeping gainful employment”).

173. Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46, 55 (2016); see also Polk, *supra* note 84, at 345 (2020) (“For example, Tanya Bailey’s eviction resulted in her losing her job because she could no longer walk to work, could not afford a car, and had to move in with a friend who lived too far from public transportation. With the eviction on her record and her loss of income, Ms. Bailey could not find a new apartment to rent, let alone afford to pay rent.”).

missing work often ensues given the daily challenges of attempting to find new housing in the face of potential homelessness.¹⁷⁴ In one Wisconsin-based study, 42 percent of individuals who had been laid off in the two years prior to the study had also experienced a forced move.¹⁷⁵ Job loss also results in earnings losses—"[d]isplaced workers who find new jobs earn on average roughly 17 percent less than they would have had they been continuously employed," and such earnings losses persist for as long as twenty years after displacement.¹⁷⁶

Thus, employment instability and job loss further exacerbate the eviction cycle; renters who are unable to maintain stable employment because of an eviction face financial hardship and difficulty affording and finding stable housing.¹⁷⁷ Even if a tenant successfully lands in stable housing after an eviction and attempts to find gainful employment, employers often check credit reports when deciding whether to make an employment offer, something an eviction record negatively impacts.

b. Access to Healthcare

Families who have been evicted tend to have less access to medical care and medications, as well as higher odds of losing healthcare coverage.¹⁷⁸ This lack of access compounds the effects of other health determinants caused by eviction. For example, people facing eviction have worse physical and mental health outcomes, including severe depression, anxiety, stress, and cardiovascular issues such as high blood pressure.¹⁷⁹ Such outcomes have frequently been characterized as trauma.¹⁸⁰ For pregnant women, eviction can have adverse consequences for newborn health, such as low infant birth weight and premature birth.¹⁸¹ Moreover, suicide is more common for individuals facing eviction.¹⁸²

174. Desmond & Gershenson, *supra* note 173, at 47–50.

175. *Id.* at 55.

176. *Id.* at 47.

177. *Id.* at 47–50.

178. See Megan E. Hatch & Jinhee Yun, *Losing Your Home is Bad for Your Health: Short- and Medium-Term Health Effects of Eviction on Young Adults*, 31 HOUS. POL'Y DEBATE 469, 469–70 (2021); Gabriel L. Schwartz, Justin M. Feldman, Scarlett S. Wang & Sherry A. Glied, *Eviction, Healthcare Utilization, and Disenrollment Among New York City Medicaid Patients*, 62 AM. J. PREVENTIVE MED. 157, 157 (2022) ("Eviction was associated with 63% higher odds of losing Medicaid coverage . . .").

179. See Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira & Carme Borrell, *The Threat of Home Eviction and Its Effects on Health through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MED. 199, 202–06 (2017), Desmond & Kimbro, *supra* note 172, at 296; Gold, *supra* note 120, at 73 (discussing behavioral and emotional health outcomes resulting from eviction).

180. Alexander, *supra* note 60, at 252.

181. See, e.g., Gracie Himmelstein & Matthew Desmond, *Association of Eviction and Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, 175 JAMA PEDIATRICS 494, 498 (2021) ("[There is] strong evidence that maternal eviction is associated with clinically meaningful decrements in virtually all available indicators of newborn health.").

182. See, e.g., Jack Tsai, Natalie Jones, Dorota Szymkowiak & Robert A. Rosenheck, *Longitudinal Study of the Housing and Mental Health Outcomes of Tenants Appearing in Eviction Court*, 56 SOC. PSYCHIATRY &

Individuals who are evicted often find themselves in housing with substandard conditions. Such conditions have been linked to health issues such as asthma, lead poisoning, respiratory complications, developmental delays, heart disease, and neurological disorders.¹⁸³ Further, structural design defects, such as furnaces emitting carbon monoxide, unstable stairwells, and electrical effects, often lead to physical injuries.¹⁸⁴

This reality is particularly dire for children. Children who have been forced to move are more likely to be in poor health, have increased odds of developmental risks, and face more acute health concerns that result in admission to the hospital from an emergency room visit.¹⁸⁵ Health issues such as developmental delays and neurological disorders have also been linked to poor housing.¹⁸⁶ In fact, “poor housing quality [is] the most consistent and strongest predictor of emotional and behavioral problems in low-income children and youth.”¹⁸⁷ Further, evicted children are twice as likely to face food insecurity at a young age as compared to housed children.¹⁸⁸ For children who experience homelessness, the associated stress during early childhood “can lead to potentially permanent harmful changes in brain and body functioning, in turn causing higher levels of stress-related chronic diseases later in life.”¹⁸⁹

PSYCHIATRIC EPIDEMIOLOGY 1679, 1680 (2020); Yerko Rojas & Sten-Åke Stenberg, *Evictions and Suicide: A Follow-Up Study of Almost 22,000 Swedish Households in the Wake of the Global Financial Crisis*, 70 J. EPIDEMIOLOGY & CMTY. HEALTH 409, 411 (2016); Katherine A. Fowler, R. Matthew Gladden, Kevin J. Vagi, Jamar Barnes & Leroy Frazier, *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings from 16 National Violent Death Reporting System States, 2005–2010*, 105 AM. J. PUB. HEALTH 311, 313 (2015).

183. Desmond & Bell, *supra* note 88; *see also* Alexander, *supra* note 60, at 252–54 (noting that “abundant research has established that poor-quality housing can make you sick,” such that “when evicted tenants are locked out of safe and decent housing, they can also be thought of as locked into the health risks associated with subpar housing,” and that “[e]viction both directly causes health challenges for tenants and indirectly places tenants in situations where they will be exposed to further environmental harms . . . [which] haunt[] tenants for years following their eviction”); Gold, *supra* note 120, at 70–73 (cataloguing physical health outcomes resulting from eviction).

184. *See, e.g.*, Dayna Bowen Matthew, *Health and Housing: Altruistic Medicalization of America’s Affordability Crisis*, 81 LAW & CONTEMP. PROBS. 161, 167 (2018); *see also* Alexander, *supra* note 60, at 253–54 (noting that evicted individuals are exposed to health risks from poor-quality housing).

185. Diana B. Cutts et al., *Eviction and Household Health and Hardships in Families with Very Young Children*, 150 AM. ACAD. PEDIATRICS 1, 6 (2022).

186. Desmond & Bell, *supra* note 88, at 20.

187. REBEKAH LEVINE COLEY, TAMA LEVENTHAL, ALICE DOYLE LYNCH & MELISSA KULL, MACARTHUR FOUND., POOR QUALITY HOUSING IS TIED TO CHILDREN’S EMOTIONAL AND BEHAVIORAL PROBLEMS 1 (2013) https://www.macfound.org/media/files/hhm_research_brief_-_september_2013.pdf.

188. Kathryn M. Leifheit, Gabriel L. Schwartz, Craig E. Pollack, Maureen M. Black, Kathryn J. Edin, Keri N. Althoff & Jacky M. Jennings, *Eviction in Early Childhood and Neighborhood Poverty, Food Security, Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 SSM - POPULATION HEALTH 1, 6 (2020).

189. Megan Sandel, Richard Sheward & Lisa Sturtevant, *Compounding Stress: The Timing and Duration Effects of Homelessness on Children’s Health*, CTR. FOR HOUS. POL’Y 1 (June 2015), http://media.wix.com/ugd/19cfbe_07b13c8e56a14337a316e2e991aa0bf7.pdf [<https://perma.cc/E5B3-SCEW>].

c. Access to Education

The effects of eviction are particularly stark for children, often altering the course of their lives.¹⁹⁰ Families with children are at higher risk of eviction, increasing with each additional child.¹⁹¹ Evictions force families to change locations, which results in disruptions to education and social interactions as children rotate through schools.¹⁹² In fact, any move during childhood (voluntary or involuntary) has been associated with the loss of nearly half a year of educational attainment.¹⁹³ Frequent moves during childhood are “associated with lower earnings, fewer work hours, and less educational attainment later in life.”¹⁹⁴ Further, children who have experienced eviction are more likely to end up in communities with lower performing schools and to eventually drop out of school.¹⁹⁵

In terms of long-term housing outcomes, in some states, children are named in eviction cases, placing their names permanently in eviction records.¹⁹⁶ This can result in the inability to secure safe, affordable housing once they are able to become renters in their own right.¹⁹⁷

d. Voting

Continual housing displacement also impacts the right to vote. Frequent housing displacement leads to decreased civic engagement, such that evictions are correlated to lower voter turnout.¹⁹⁸ A home not only provides shelter, but is also a “locus for maintaining personal identity and family life,” which quickly disappears with displacement.¹⁹⁹

190. See, e.g., Alexander, *supra* note 60, at 254 (“[R]esearch links housing instability generally to the types of harm to children’s health that can alter the course of the children’s lives.”); STERLING ET AL., *supra* note 4, at 5 (discussing education outcomes after eviction and stating that “childhood eviction can significantly alter the course of a child’s life”).

191. Cutts et al., *supra* note 185, at 2; see also Desmond et al., *supra* note 167, at 304 (recognizing that the presence of children is a risk factor for eviction).

192. See, e.g., Gutman et al., *supra* note 161, at 261–62.

193. KATHLEEN ZIOL-GUEST & ARIEL KALIL, MACARTHUR FOUND., FREQUENT MOVES IN CHILDHOOD CAN AFFECT LATER EARNINGS, WORK, AND EDUCATION 1 (Mar. 2014), <https://housingmatters.urban.org/sites/default/files/wp-content/uploads/2014/09/How-Housing-Matters-Policy-Research-Brief-Frequent-Moves-in-Childhood-Can-Affect-Later-Earnings-Work-and-Education.pdf>.

194. *Id.*

195. Gutman et al., *supra* note 161, at 261–62.

196. See STERLING ET AL., *supra* note 4, at 5.

197. *Id.* at 4.

198. See Gillian Slee & Matthew Desmond, *Eviction and Voter Turnout: The Political Consequences of Housing Instability*, 51 POL. & SOC’Y 1, 1 (2023) (“[R]esidential eviction rates negatively impacted voter turnout during the 2016 presidential election.”); see also David Jonathan Knight & Baobao Zhang, *Residential Mobility and Persistently Depressed Voting Among Disadvantaged Adults in a Large Housing Experiment*, 121 PROC. NAT’L ACAD. SCI., 1, 1 (2024) (conducting empirical study involving Black and Hispanic families who lived in high-poverty public housing developments and were given a housing voucher to move to a low-poverty neighborhood, and finding that such a move decreased adult participants’ voter participation for nearly two decades).

199. Gutman et al., *supra* note 161, at 256.

e. Homelessness²⁰⁰

The right to be free from discrimination in housing, employment, and access to healthcare and education are compounded when eviction results in homelessness.²⁰¹ For example, homeless individuals generally have worse health outcomes and more unmet medical needs than those who are housed.²⁰² Additionally, children facing homelessness have worse educational outcomes—in New York City, homeless students scored proficient on the statewide math and English assessments at nearly half the rate of their housed classmates.²⁰³

Tenants who have faced eviction often continue to face housing insecurity. The Eviction Market frequently forces these renters into distressed neighborhoods, poor-quality housing, or homelessness.²⁰⁴ This is due, in large part, to the lifelong eviction records appended to tenants, creating a cycle of entrenched poverty.²⁰⁵ Not only do landlords generally refuse to rent to tenants who have been taken to eviction court, but eviction filings also frequently disqualify tenants from subsidies or public housing.²⁰⁶ Additionally, eviction judgments damage tenants' credit, which further restricts rental and employment options since landlords and employers generally request credit scores as part of housing and job applications.²⁰⁷

200. This Article uses the term “homelessness” in conformity with current statutory language as well as legal and social science studies and literature surrounding this topic. It recognizes, however, the term “unhoused” as a more appropriate way of highlighting that individuals who do not have permanent housing may still have communities or physical spaces they consider home. “Unhoused” also helps emphasize that a lack of housing is a structural problem linked to the lack of affordable housing, rather than something caused by an individual. See, e.g., Amanda Abrams, *Is it Ok to Use the Word ‘Homeless’—or Should You Say ‘Unhoused’?*, GUARDIAN (July 20, 2023, 6:00 AM EDT), [https://www.theguardian.com/us-news/2023/jul/20/homeless-unhoused-houseless-term-history#:~:text=Around%20the%20mid%2D80s%2C%20homeless,big%20cities%20around%20the%20country%20\[https://perma.cc/T9BM-NFWC\]](https://www.theguardian.com/us-news/2023/jul/20/homeless-unhoused-houseless-term-history#:~:text=Around%20the%20mid%2D80s%2C%20homeless,big%20cities%20around%20the%20country%20[https://perma.cc/T9BM-NFWC]).

201. See, e.g., Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 66–67 (2018) (discussing harms of displacement when housing loss results in homelessness, including “psychological trauma, physical injuries, infection, illness, . . . death[,] . . . obstacles to employment and academic achievement[,] . . . [and] a criminalization loop, as evicted tenants may be prosecuted for trespassing . . . or . . . loitering”); see also Gold, *supra* note 120, at 69 (“An estimated 47% of all families in New York City homeless shelters are homeless as a result of eviction.”).

202. See Matthew, *supra* note 184, at 179; Robert Collinson & David Reed, *The Effects of Evictions on Low-Income Households* 25–26 (Oct. 2018) (unpublished manuscript), https://economics.nd.edu/assets/303258/jmp_rcollinson_1_.pdf.

203. See INST. FOR CHILD., POVERTY & HOMELESSNESS, *DISPARITIES IN ACADEMIC ACHIEVEMENT* 2 (2019), <https://www.icph.org/reports/disparities-in-academic-achievement> (citing a rate of 20% vs. 40% proficiency on statewide math exam and 23% vs. 43% proficiency for statewide English Language Arts Exam for homeless vs. housed students).

204. Gutman, et al., *supra* note 161, at 262; see also Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUS. POL’Y DEBATE 461, 468 (2003) (“[T]he economic, social, and psychological impact of forced displacement can be severe. . . . [And] forced displacement frequently results in outright homelessness.”).

205. See *supra* Part.I. For a detailed discussion of the causes and implications of poverty in the United States see MATTHEW DESMOND, *POVERTY, BY AMERICA* 15–16 (2023).

206. Sabbeth, *supra* note 201, at 67.

207. *Id.* at 67–68.

Finally, the effects of eviction are felt not only by tenants forced from their homes, but also by the larger local community “through various mechanisms, including declining local property values, degradation of the neighborhood environment, changes in safety levels, [and] changes in retail and built environments.”²⁰⁸ This perpetuates the cycle of poverty—to which eviction is a large contributor—and the everlasting denial of basic civil and human rights.

2. *Policing and Surveillance*

The Eviction Institution’s forced displacement is also a form of policing human bodies, perpetuating the caste-like system of “lords” and “villeins.” It is policing in the literal sense of exercising control by physically moving and displacing bodies through court order and/or sheriffs’ execution of a writ of eviction.²⁰⁹ Further, it is policing through tenant screening, which is inherently a form of surveillance.²¹⁰ Tenants’ lives are reduced to metrics (which are often erroneous) such as income, credit history, and touchpoints with the court system, which are fed into algorithms that use exclusionary logic to bar tenants from future housing.²¹¹

This surveillance system is designed to reinforce racial and gender hierarchies, “catch[ing] those who violate property’s authority” and “reify[ing] the authority of the property-owning landlord through tenant data capture.”²¹² Landlords generally require tenants to pay for screening reports, thus forcing tenants to bear the cost of their own surveillance.²¹³ Tenants are in essence obligated to pay for perpetuation of the Eviction Institution and in turn solidify their place as “villeins,” subject to the demands of the “lords.” In other words, like mass incarceration in the criminal context, the Eviction Institution in the civil context is a “comprehensive and well-disguised system of racialized social control” that reinforces and perpetuates a racialized and genderized caste system.²¹⁴ It is a “savage sorting” of the human population, which displaces millions of people within their own country.²¹⁵

208. Vázquez-Vera et al., *supra* note 179, at 205; *see also* Sabbeth, *supra* note 201, at 68–69 (describing the community impact of evictions, including strain on shelter systems, increased costs of law enforcement, increased use of medical services and emergency rooms, and increased public assistance or unemployment insurance due to job loss).

209. *See supra* Subpart.I.A (describing the eviction process); *see also* Bonds, *supra* note 171, at 577 (“[W]omen’s bodies and socially reproductive labor were (and are) essential to property making, even as their bodies continue to be understood as property to be regulated by the state.”).

210. *See* McElroy, *supra* note 64, at 56; *see also* FTC Press Release, *supra* note 102 (“AI tools can be inaccurate, biased, and discriminatory by design and incentivize relying on invasive forms of commercial surveillance.”).

211. *See supra* Subpart.I.C.

212. *See* RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE 5–6 (2019) (presenting the concept of the “New Jim Code” and demonstrating how new technologies can perpetuate and exacerbate racial hierarchies); *see also supra* Subpart.I.C.

213. *See* McElroy, *supra* note 64.

214. *See* ALEXANDER, *supra* note 158, at 4.

215. Baker, *supra* note 23, at 796 (quoting sociologist Saskia Sassen).

IV. EVICTION SEALING AS A LEGISLATIVE LIFELINE

One solution to disrupt the Eviction Institution and its resulting Eviction Market and Caste System is eviction sealing (sometimes called eviction expungement).²¹⁶ This idea has recently gained national attention. In January 2023, the White House released the Blueprint for a Renters Bill of Rights, which called for immediate sealing of eviction case filings to help reduce the likelihood that tenants would be locked out of future housing opportunities without the chance to defend themselves.²¹⁷ Shortly thereafter, the Federal Trade Commission and the Consumer Financial Protection Bureau issued a request for public comment on how the use of eviction records and screening algorithms may affect tenant housing opportunities and drive discriminatory outcomes.²¹⁸

Despite this call to action, there has been little exploration around how eviction sealing can best function in practice. Only sixteen states (including the District of Columbia) have passed eviction sealing or expungement legislation, many in the last two to three years.²¹⁹ Moreover, each states' legislation looks markedly different, and lawyers and housing advocates have encountered various hurdles when attempting to seal eviction records pursuant to these new statutes.²²⁰

This Part thus begins by proposing a framework for a Model Eviction Sealing Act as well as model legislation for states to consider implementing.²²¹ It then explains the framework and component parts of the Act. In doing so, it relies on a first-of-its-kind survey of all current eviction sealing legislation, analyzing both the successes and challenges of such legislation.²²² This survey

216. Although states use different terms for prohibiting access to eviction records under certain circumstances, for purposes of this Article, the term "sealing" refers to all efforts to seal, expunge, mask, or otherwise prohibit access to certain eviction records. See *infra* note 220.

217. DOMESTIC POL'Y COUNCIL & NAT'L ECON. COUNCIL, THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS 16 (2023), www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf [<https://perma.cc/FMJ8-GHLR>].

218. See FTC and CFPB Seek Public Comment, *supra* note 109.

219. NADA HUSSEIN, TORI BOURRET & SARAH GALLAGHER, NAT'L LOW INCOME HOUSING COAL., EVICTION RECORD SEALING AND EXPUNGEMENT TOOLKIT 3 (2023), <https://nlihc.org/sites/default/files/2023-04/eviction-record-sealing-and-expungement-toolkit.pdf>.

220. Despite the variances in eviction sealing and expungement legislation by state, advocates across states often encountered similar hurdles when attempting to seal eviction records. For example, advocates in states with only back-end sealing all noted that tenant screening companies could still access court data at the time of filing and therefore concluded that front-end sealing would be a better alternative. For further discussion of back-end versus front-end sealing see Subpart.IV.B.iii.

221. To view this model legislation, see *infra* Appendix I.

222. Prior to the recent uptick in eviction sealing legislation around the country, various helpful writings discussed eviction sealing efforts in select states. See, e.g., Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, CLEARINGHOUSE REV. (Sept. 2017), <https://perma.cc/PZX2-9HJE>. Other efforts to catalogue eviction sealing legislation include some, but not all, jurisdictions with eviction records sealing legislation. See, e.g., HUSSEIN ET AL., *supra* note 219 (including 10 jurisdictions); NADA HUSSEIN, NAT'L LOW INCOME HOUS. COAL., EVICTION RECORD SEALING AND EXPUNGEMENT 9 (2024), https://nlihc.org/sites/default/files/AG-2024/7-2_Eviction-Record-Sealing-and-Expungement.pdf (including 12 jurisdictions, some of which are limited in scope and therefore not included in

draws not only on current eviction sealing legislation, but also on conversations with drafters of these statutes and housing advocates using the statutes to seal eviction records.

This Part also addresses concerns raised by groups such as legal aid lawyers and grassroots organizers, including balancing First Amendment and privacy concerns. Moreover, it looks to criminal records expungements to help address such concerns as well as potential hurdles with court implementation of sealing legislation.

A. THE MODEL EVICTION SEALING ACT

Eviction sealing legislation should ideally contain the following attributes and components: (i) an explicit recognition that records will be sealed rather than expunged; (ii) a broad definition of what records are sealed; (iii) automatic sealing of records the moment an eviction case is filed (front-end sealing); (iv) parameters defining when a case will be unsealed; (v) automatic sealing of records that become unsealed where a reasonable amount of time has passed since the unsealing or a judgment is set aside and the tenant prevails in the case (back-end sealing); (vi) discretionary sealing where records have been unsealed but the parties stipulate to sealing records or where a tenant files a petition, sealing is in the interests of justice, and those interests are not outweighed by the public's interest in access to the records; (vii) limited dissemination exceptions for parties, attorneys, judges and court staff, as well as those who demonstrate a compelling need, such as researchers, journalists, government officials and their staff, and tenant unions and organizers; (viii) a prohibition on access to sealed records by credit reporting agencies; and (ix) specifications about how a tenant with a sealed record may reply to housing application questions relating to whether they have been evicted.²²³

With these parameters in mind, Appendix I offers a Model Eviction Sealing Act for states to consider implementing.²²⁴ Although housing laws vary greatly by state, the exemplar legislation proposed in this Part takes these differences into account such that the model statute can function (perhaps with minor

this Article's analysis of eviction sealing legislation). For discussion on limited scope eviction sealing legislation, see *supra* note 219 and accompanying text.

223. The Model Eviction Sealing Act framework lays out the ideal components of eviction sealing legislation. Although compromises must often be made to pass legislation, starting with a comprehensive framework allows advocates to consider best practices when making compromises, if necessary.

224. Beginning in 2021, the Uniform Law Commission convened the Study Committee on Use of Tenant Information in Rental Decisions. The committee debated the efficacy of both a uniform act and a model act. With respect to a uniform act, the committee concluded that the existing diversity of state approaches to regulating the use of tenant information in rental decisions could suggest that attempting to promote uniformity is inappropriate or infeasible, or it could provide a benefit to states that are currently reinventing the wheel in a complicated legal landscape. As it pertains to a model act, the committee concluded that such an act could prove useful given that it would provide states with the option to adopt an approach which fits with its local and legal context. This Article recommends a model act, rather than a uniform act, to provide states with the flexibility to work within the differences in their local and legal housing landscapes. Thank you to Esme Caramello, Reporter for the committee, for her helpful insights about the work of the committee.

modifications) nationwide.²²⁵ The following survey further explores each component part of the Model Eviction Sealing Act, providing examples from states that have passed eviction sealing legislation to demonstrate the importance of the framework as proposed.

B. SURVEY OF CURRENT STATE LEGISLATION & MODEL EVICTION SEALING ACT COMPONENT PARTS

The sixteen jurisdictions that have passed eviction sealing legislation include: Arizona, California, Colorado, Connecticut, the District of Columbia, Idaho, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Nevada, Oregon, Rhode Island, Utah, and Virginia.²²⁶ Although no two states' eviction sealing legislation are the same, there are various features of the relevant statutes that some states have in common. The Subparts below draw on current state

225. Given that the eviction crisis is a nationwide issue, a model act that still allows for modification based on state housing law differences would best address the root causes necessitating eviction sealing. *See* McElroy, *supra* note 64, at 63 (“[There is a] vastly uneven nature of protecting eviction data throughout the United States, given that only a handful of states have protection policies in place.”); Deanna Pantin Parrish, *Just Diversion: Designing Eviction Mediation to Address Incentives and Inequities*, 68 WASH. U. J.L. & POL’Y 63, 92 (2022) (recognizing that in the eviction mediation context, a coordinated response is required to address common issues among states). Further, although states with eviction sealing legislation provide some protection to tenants, without a national response, tenant screening companies can still produce data to out-of-state landlords, which may be used to ban tenants from future housing. *See* McElroy, *supra* note 64, at 64 (“While landlords cannot legally use housing court data against tenant applications in New York state, LexisNexis can still record data and produce tenant reports that out-of-state landlords can use to blacklist former New York tenants.”). Finally, a national and coordinated effort would help prevent continual amendments to eviction sealing legislation as states determine best practices. Advocates in states like California have noted that repeated amendments to sealing legislation have made it difficult to implement sealing in practice, particularly for pro se litigants who may have difficulty navigating an ever-changing body of law and for court administrative staff who must continually adopt new protocols to keep up with changing sealing procedures.

226. Nationwide survey on file with author. This Article does not include data about localities that have passed eviction sealing measures. Further, although not the focus of this Article, states have also passed limited eviction sealing laws that target evictions resulting from foreclosures or during the COVID-19 pandemic. *See, e.g.*, 735 ILL. COMP. STAT. ANN. 5/9-121(c) (West 2025) (sealing evictions resulting from foreclosures); 735 ILL. COMP. STAT. ANN. 5/9-122 (West 2025) (sealing certain records where evictions resulted from COVID-19); MINN. STAT. ANN. § 484.014(3) (West 2025) (providing for mandatory record expungement where eviction was the result of foreclosure); NEV. REV. STAT. ANN. § 40.2545(1) (West 2025) (sealing certain records where eviction resulted from COVID-19); N.J. STAT. ANN. § 2A:42-144 (West 2025) (sealing “emergency period” nonpayment records from the COVID-19 pandemic). Other states limit accessibility to eviction records, but fall short of providing for sealing. *See, e.g.*, OKLA. STAT. ANN. tit. 51 § 51-24A.30 (West 2025) (applying general confidentiality rules for all cases to eviction cases); WASH. REV. CODE ANN. § 59.18.367 (West 2025) (providing for orders of limited dissemination to tenant screening companies where a court finds that the eviction action lacked basis in fact or law). Finally, some states have unsuccessfully attempted to introduce eviction sealing legislation in recent legislative sessions. *See, e.g.*, H.R. 1149, 155th Gen. Assemb., Reg. Sess. (Ga. 2020); H.R. 6528, 2021 Gen. Assemb., Jan. Sess. (Conn. 2021); H.R. 1195, 123d Gen. Assemb., Reg. Sess. (Fla. 2021); H.R. 1193, 123d Gen. Assemb., Reg. Sess. (Fla. 2021); S. 936, 123d Gen. Assemb., Reg. Sess. (Fla. 2021); S. 158, 134th Gen. Assemb., Reg. Sess. (Ohio 2021); H.R. 3074, 124th Gen. Assemb., Reg. Sess. (S.C. 2021); H.R. 1131, 124th Gen. Assemb., Reg. Sess. (Fla. 2022); H.R. 1862, 31st Leg., Reg. Sess. (Haw. 2022); S. 949, 101st Leg., Reg. Sess. (Mich. 2022); H.R. 636, 134th Gen. Assemb., Reg. Sess. (Ohio 2022); H.R. 1407, 125th Gen. Assemb., Reg. Sess. (Fla. 2023); H.R. 789, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023); S. 0912, 2023 Gen. Assemb., Jan. Sess. (R.I. 2023); S. 0627, 2023 Gen. Assemb., Jan. Sess. (R.I. 2023); H.R. 1450, 88th Leg., Reg. Sess. (Tex. 2023).

legislation as well as conversations with housing advocates and legislative drafters from all sixteen jurisdictions that have passed relevant legislation to outline the characteristics that model eviction sealing legislation should include. This Article recommends a model act to leave room for states to tailor the legislation to local housing laws and court procedures.

1. *Records Sealing (Rather Than Expungement)*

Model legislation should aim to seal rather than expunge eviction records. Although the terms “sealing” and “expungement” are often used interchangeably in current state legislation, the treatment of records pursuant to each of these methods often varies.²²⁷ Traditionally, sealing is defined as “officially preventing access to particular . . . records,” and is generally done by court administrators.²²⁸ In contrast, expungement removes records from the court system altogether.²²⁹ In other words, sealing allows the court to restrict access to an eviction record under certain circumstances, while expungement permanently removes an eviction record from public view.²³⁰

Expunging records prohibits lawyers, researchers, journalists, government officials, and others who are working to improve the state of housing in the United States from gathering data and gaining valuable insights into current eviction processes. It may also inhibit lawyers representing tenants at various stages of the eviction process from gaining access to records necessary to defend a case. For this reason, sealing records from public view while allowing access to such records under certain circumstances is the more prudent approach. As discussed in further detail below, sealing also helps assuage First Amendment concerns.

2. *Definition of What is Sealed*

Model legislation should explicitly define what is sealed and should do so as broadly as possible. It should also make clear that sealing provisions apply to

227. Compare ARIZ. REV. STAT. ANN. § 33-1379 (2025) (providing for sealing of eviction records in Arizona), 735 ILL. COMP. STAT. ANN. 5/9-121 (West 2025) (providing for sealing of eviction records in Illinois), IND. CODE ANN. § 32-31-11-3 (West 2025) (providing for sealing of eviction records in Indiana), NEV. REV. STAT. ANN. § 40.2545 (West 2025) (providing for sealing of eviction records in Nevada), OR. REV. STAT. ANN. § 105.163 (West 2025) (providing for sealing of eviction records in Oregon), and D.C. CODE ANN. § 42-3505.09 (West 2025) (providing for sealing of eviction records in the District of Columbia), with MINN. STAT. ANN. § 484.014 (West 2025) (providing for expungement of eviction records in Minnesota), UTAH CODE ANN. § 78B-6-850 (West 2025) (providing for expungement of eviction records in Utah), and VA. CODE ANN. § 8.01-130.01 (West 2025) (providing for expungement of eviction records in Virginia). Other states use terms other than “sealing” and “expungement,” as well. See, e.g., CAL. CIV. PROC. CODE § 1161.2 (West 2025) (providing for sealing—sometimes referred to as “masking”—of eviction records in California); COLO. REV. STAT. ANN. § 13-40-110.5 (West 2025) (providing for “suppress[ion]” of eviction records in Colorado).

228. *Sealing of Records*, BLACK’S LAW DICTIONARY (12th ed. 2024).

229. See *Expungement of Record*, BLACK’S LAW DICTIONARY (12th ed. 2024).

230. See HUSSEIN ET AL., *supra* note 219, at 9–10; James J. Scherer, Note, *Changing the Rule that Changes Nothing: Protecting Evicted Tenants by Amending Cleveland Housing Court Rule 6.13*, 69 CLEV. ST. L. REV. 719, 728 (2021).

all types of eviction cases. While some jurisdictions simply seal all court records pertaining to a particular case, others more explicitly define what constitutes a “court record.” For example, Arizona specifies that all records pertaining to the eviction case will be sealed, including pleadings, proof of service, exhibits, transcripts of testimony, orders of the court, and “all other paper, records, proceedings and evidence.”²³¹ California specifies that court records include the “court file, index, and register of actions.”²³² Nevada defines “eviction case court file” as “all records relating to an action for summary eviction which are maintained by the court, including, without limitation, the affidavit of complaint and any other pleadings, proof of service, findings of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, Justice Court Rules of Civil Procedure and local rules of practice and all other papers, records, proceedings and evidence, including exhibits and transcript of the testimony.”²³³ And the District of Columbia defines “records” as “any information contained in the docket, including the court docket, pleadings, and orders.”²³⁴

Housing advocates and legislative drafters from states where “records” is not defined often noted that tenant screening companies were continually inventing new ways to gather data and skirt the sealing process.²³⁵ For example, some screening companies now gather data from summons or online dockets because these items are not always considered part of the court’s record and are therefore left unsealed even where other records in a case are sealed.²³⁶ To ensure sealing of all relevant court records, legislation should include a definition of “court records” that is all encompassing but also non-exhaustive (i.e. “including but not limited to”) to provide the court with flexibility to seal any “records” that tenant screening companies may attempt to scrape data from next.

3. *Automatic Front-End Sealing*

Sealing should be automatic upon the filing of an eviction case. Automatic front-end sealing prohibits eviction records from ever coming into public view unless certain conditions are met. This means that tenant screening companies cannot gain access to such records unless they are unsealed by the court. California and Colorado are the only two states that currently employ this method, yet advocates from almost every state with sealing legislation noted that automatic front-end sealing is the ideal form of legislation.²³⁷

231. ARIZ. REV. STAT. ANN. § 33-1379(D) (West 2025).

232. CAL. CIV. PROC. CODE § 1161.2(a)(1) (West 2025).

233. NEV. REV. STAT. ANN. § 40.2545(6)(b) (West 2025).

234. D.C. CODE ANN. § 42-3505.09(e)(2)(C) (West 2025).

235. Interviews on file with author.

236. Interviews on file with author.

237. Interviews on file with author. *See also* Polk, *supra* note 84, at 353 (“Once a record is on the internet, it is very difficult to completely erase it. The concept of automatic expungement in certain cases . . . might

In California, all eviction records are sealed²³⁸ upon filing of a case and remain so unless the plaintiff prevails within sixty days of the filing of the complaint²³⁹ or the court grants access to the records if the plaintiff prevails but more than sixty days have passed since the complaint was filed.²⁴⁰ Similarly, Colorado automatically seals²⁴¹ “any court record of the action” when a case is filed.²⁴² Records are only unsealed if the plaintiff is granted possession of the premises, unless the parties agree that the record should remain sealed.²⁴³

Without automatic sealing, tenants are generally forced to carry the burden of filing a petition to request that records be sealed.²⁴⁴ This forces largely unrepresented tenants to navigate a complex legal process and minimizes the chances that records will be sealed.²⁴⁵ Automatic sealing also removes court discretion, which often involves a complicated balancing of interests and outcomes that may largely depend on the judge assigned to a sealing hearing.²⁴⁶ By contrast, automatic sealing is an administrative process applied equally to all cases.²⁴⁷

Further, in the absence of front-end sealing, post-filing sealing leaves court records available to the public unless there is a qualifying event that either triggers automatic sealing or permits a tenant to file a sealing petition. For example, Washington D.C. provides for automatic sealing thirty days after the final resolution of an eviction case if the proceeding does not result in a judgment for possession in favor of the housing provider.²⁴⁸ In contrast, Indiana law

mitigate this issue. The earlier the record disappears, the better the outcome for the individual as private screening companies have less of a chance to discover the information.”). Automatic records expungement has been accomplished in other contexts such as with juvenile criminal records. *See id.* (recognizing that Illinois provides for automatic expungement of juvenile records, which “is designed to protect people with juvenile criminal histories from many of the collateral consequences that such histories would otherwise cause”).

238. California sometimes uses the term “masking,” for the concealing of records from public view. *See supra* note 227 for further discussion of such terminology.

239. CAL. CIV. PROC. CODE § 1161.2(a)(1)(F) (West 2025).

240. *Id.* § 1161.2(a)(1)(E).

241. Colorado uses the term “suppression,” for the concealing of records from public view. *See supra* note 227 and accompanying text for further discussion of differing terminology and treatment of record sealing legislation across states.

242. COLO. REV. STAT. ANN. § 13-40-110.5(1)–(2) (West 2025).

243. *Id.* § 13-40-110.5(3).

244. *See, e.g.*, 735 ILL. COMP. STAT. ANN. 5/9-121 (West 2025) (providing for discretionary sealing where the court finds that: (1) the case is sufficiently without a basis in fact or law, (2) placing the court file under seal is clearly in the interests of justice, and (3) those interests are not outweighed by the public’s interest in knowing about the record); MINN. STAT. ANN. § 484.014 (West 2025) (“The court may order expungement of an eviction case court file if the court finds the expungement is clearly in the interests of justice and those interests are not outweighed by the public’s interest in knowing about the record.”).

245. *See, e.g.*, 735 ILL. COMP. STAT. ANN. 5/9-121 (West 2025); MINN. STAT. ANN. § 484.014 (West 2025).

246. *See, e.g.*, 735 ILL. COMP. STAT. ANN. 5/9-121 (West 2025); MINN. STAT. ANN. § 484.014 (West 2025).

247. *See, e.g.*, CAL. CIV. PROC. CODE § 1161.2 (West 2025); COLO. REV. STAT. ANN. § 13-40-110.5 (West 2025).

248. D.C. CODE ANN. § 42-3505.09(a) (West 2025); *see also* ARIZ. REV. STAT. ANN. § 33-1379(A) (2025) (providing for automatic sealing of eviction records where the court dismisses the action or enters a judgment in favor of the tenant); VA. CODE ANN. § 8.01-130.01 (West 2025) (requiring the court, without a hearing, to

requires the tenant to petition the court for sealing.²⁴⁹ Where a case is dismissed, either the tenant or the landlord can petition for sealing, and the court may seal upon its own motion where a landlord failed to prosecute the case.²⁵⁰ Where a tenant wins their case, either outright or on appeal, the tenant must motion the court to have the case records sealed.²⁵¹

Regardless of whether back-end sealing is automatic or by petition, the eviction records remain in public view for some period of time, allowing tenant screening companies to gather tenant data, regardless of the outcome of their case, and sell it to landlords who frequently use the data to disqualify tenants from renting.²⁵² Even if an eviction record is later sealed, the stale data remains in screening company databases and continues to disqualify tenants from prospective rentals.²⁵³ This approach is therefore disfavored.²⁵⁴

4. *Limited Unsealing*

Once records are automatically sealed at the point of filing, they should remain sealed for as long as possible. Most states unseal records (where records were sealed on the front end) or do not permit sealing (where records are only sealed on the back end) where the landlord prevails.²⁵⁵ This is problematic, however, because many cases result in a judgment in favor of the landlord despite no fault of or wrongdoing by the tenant.²⁵⁶ Moreover, most nonpayment

expunge eviction court records where the case was dismissed by the court or voluntarily withdrawn or dismissed by the plaintiff, the time to recommence the action has expired, and no order of possession has been entered); UTAH CODE ANN. § 78B-6-852 (West 2025) (requiring automatic sealing where the case was dismissed, there is no appeal, and at least three years have passed from the filing of the eviction case).

249. IND. CODE ANN. § 32-31-11-3(a) (West 2025).

250. *Id.*

251. *Id.*; see also OR. REV. STAT. ANN. § 105.163 (West 2025) (providing for sealing by petition and requiring applicant to serve a copy of the petition on the plaintiff who brought the eviction action, and if there is no objection or after objection and a hearing the court determines the application is eligible for relief, the court will set aside the judgment and seal all official records).

252. See *supra* Subpart.I.C.

253. See *supra* Subpart.I.C.; see also DOMESTIC POL'Y COUNCIL & NAT'L ECON. COUNCIL, *supra* note 217, at 17 ("Although many states have passed laws to seal eviction records, when eviction records are not sealed immediately, they can still haunt families. This is because background check companies may fail to remove records from their databases after they are sealed.").

254. The White House recently recognized that "[e]viction case filings should immediately be sealed, including in cases of nonpayment of rent, thereby reducing the chance for people to be locked out of future housing opportunities without a chance to defend themselves." DOMESTIC POL'Y COUNCIL & NAT'L ECON. COUNCIL, *supra* note 217. The American Bar Association has also recognized that courts "should automatically seal the names of defendants before a final judgment and in dismissed cases." *ABA Resolution 612, Ten Guidelines for Residential Eviction Laws*, ABA 10 (Feb. 2022), www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-ten-guidelines-eviction.pdf.

255. See, e.g., CAL. CIV. PROC. CODE § 1161.2(a)(1)(E), (F) (West 2023) (sealing records unless the plaintiff prevails within 60 days of the filing of the complaint, or the court grants access to the records if the plaintiff prevails but more than 60 days have passed since the complaint was filed); COLO. REV. STAT. ANN. § 13-40-110.5 (West 2025) (unsealing records if the plaintiff is granted possession of the premises, unless the parties agree that the record should remain suppressed).

256. See *supra* Part.I.

of rent cases will not qualify for permanent sealing because landlords often win judgments where tenants fall behind on rent due to macroeconomic factors and systemic inequities.²⁵⁷ Given these realities, records should only be unsealed where a judgment of possession is granted to the landlord, the tenant does not reinstate their tenancy after the entry of judgment (by, for example, paying outstanding rent or resolving a lease violation), and the parties do not agree to keep the records sealed.²⁵⁸

5. Automatic Back-End Sealing

Automatic front-end sealing should be coupled with automatic back-end sealing under two circumstances. First, where records become unsealed, they should be automatically resealed after at least three years have passed since the unsealing.²⁵⁹ This practice helps account for macroeconomic factors affecting tenants nationwide. For example, although a tenant may be unable to pay rent at a particular moment in time, a judgment under these circumstances does not necessarily reflect future ability to pay.²⁶⁰ Even lease violations often reflect a difficult time in a tenant's life rather than an issue that is likely to continue into a future rental.²⁶¹ In other words, an eviction record is not a clear or accurate predictor of a tenant's future behavior and therefore should not be used as such.²⁶²

Although in some instances landlords may argue that access to eviction records would help them avoid damage to property or injury to other tenants on the property, landlords generally are not looking at underlying factual data.²⁶³ Rather, they are relying on tenant screening scores, which do little to differentiate between a mere eviction filing and a severe lease violation.²⁶⁴ Thus, unsealing records in the years immediately following a judgment of possession allows landlords to evaluate such data if they choose, while resealing after a substantial period of time removes a lifetime stigma for tenants who often incur hardships that precipitate one-time events leading to a judgment of possession. Automatic back-end sealing should also be retroactive such that all eviction records older than three years are sealed.²⁶⁵

257. See *supra* Part.I.

258. See, e.g., COLO. REV. STAT. ANN. § 13-40-110.5 (West 2025) (unsealing records where the plaintiff is granted possession of the premises, unless the parties agree that the record should remain suppressed).

259. See, e.g., D.C. CODE ANN. § 42-3505.09(a) (West 2025) (providing for automatic sealing three years after final resolution of a case if the proceeding results in a judgment of possession in favor of the landlord).

260. See, e.g., DADA & DUARTE, *supra* note 59, at 31.

261. *Id.*

262. See Polk, *supra* note 84, at 354. This rationale is similar to the policy behind sealing criminal and juvenile records. *Id.* (recognizing that expungement of juvenile records has been accepted as good practice because “juvenile records are not a clear predictor of adult behavior,” and that, similarly, evictions under certain circumstances “do not predict a tenant’s future behavior”).

263. See *supra* Subpart.I.C.

264. See *supra* Subpart.I.C.

265. See, e.g., D.C. CODE ANN. § 42-3505.09(a) (West 2025) (providing for retroactive sealing in D.C.).

Second, where records have been unsealed but a judgment is set aside and a tenant prevails in the underlying case, all records should also be automatically resealed. Housing advocates in several states noted that requiring tenants to petition for resealing where they have ultimately prevailed in a case is burdensome for the tenant and time-consuming for the court.²⁶⁶ An automatic sealing process in this case is more judicially efficient and provides better access to justice for tenants who win their cases.

6. *Discretionary Back-End Sealing*

Although discretionary sealing is generally disfavored, courts should permit sealing by petition in two instances.²⁶⁷ First, where the parties stipulate to seal records, courts should readily grant such stipulations. In Arizona and Nevada, for example, sealing is permitted where the parties file a joint stipulation to set aside an order of eviction and seal the case file.²⁶⁸

Second, courts should grant tenant petitions for sealing before the three-year automatic sealing provision is triggered where sealing is in the interests of justice and those interests are not outweighed by the public's interest in access to the records. Nevada, Illinois, and Minnesota all provide for sealing under similar circumstances.²⁶⁹ When determining whether sealing is in the interests of justice, it may be helpful to provide courts with a non-exhaustive list of factors to consider. In Nevada, for example, courts are directed to consider, among other things: (1) circumstances beyond the control of the tenant that led to the eviction; (2) other extenuating circumstances under which the order of eviction was granted; and (3) the amount of time that has elapsed between the granting of the order of eviction and the filing of the motion to seal.²⁷⁰ Tenants should not be

266. Interviews on file with author.

267. Sealing by petition will only occur where records have been unsealed and less than three years have passed such that the records have not yet been automatically sealed on the back end.

268. ARIZ. REV. STAT. ANN. § 33-1379(B) (2025); NEV. REV. STAT. ANN. § 40.2545(3)(a), (b)(1) (West 2025); *see also* CAL. CIV. PROC. CODE § 1161.2(a)(2) (West 2025) (permitting parties to stipulate to sealing records in California).

269. *See* NEV. REV. STAT. ANN. § 40.2545(3)(a), (b)(1) (West 2025) (providing for sealing where the court finds that sealing the file is in the interests of justice and those interests are not outweighed by the public's interest in access to the case file); 735 ILL. COMP. STAT. ANN. 5/9-121 (West 2025) (providing for sealing where the court finds that: (1) the case is sufficiently without a basis in fact or law, (2) placing the court file under seal is clearly in the interests of justice, and (3) those interests are not outweighed by the public's interest in knowing about the record); MINN. STAT. ANN. § 484.014 (West 2025) (same). Advocates in Minnesota and Illinois noted that the first prong of this test is a high hurdle that frequently poses challenges and provides judges with unnecessary discretion that is often applied differently across various courts. For this reason, Nevada's approach provides for a more equitable approach that balances landlord and tenant interests.

270. NEV. REV. STAT. ANN. § 40.2545(3)(b)(2) (West 2025); *see also* D.C. CODE ANN. § 42-3505.09(c) (West 2025) (permitting tenants to petition for sealing under various circumstances, including where: (i) the eviction action was for nonpayment of rent in an amount of \$600 or less; (ii) the tenant was evicted from a unit under any federal or District site-based or tenant-based housing subsidy program; (iii) the eviction proceedings involved retaliation or coercion; (iv) the housing provider failed to timely abate certain violations; (v) the eviction proceedings were a result of an incident that would constitute a defense to an action for possession such

charged a filing fee for these petitions,²⁷¹ and courts should work to develop a form petition that pro se tenants can easily complete and file.²⁷²

7. *Limited Dissemination Exceptions*

Although sealing is critical to promoting housing stability, there are instances when access to eviction records is also crucial to promoting housing justice. Housing advocates and legislative drafters from many states noted that where robust exceptions did not exist, the ability to adequately represent tenants in court as well as housing research and journalism stalled.²⁷³ For this reason, limited dissemination of sealed records should be permitted for: (1) parties to an eviction case; (2) attorneys who have entered an appearance in a case; (3) attorneys who certify they are considering representation of a tenant; (4) judges, court staff, and other authorized judicial personnel; and (5) other individuals who demonstrate “a compelling need.” Those with a compelling need might include occupants of a unit who were not named in an eviction case, tenant unions and organizers, researchers, journalists, and government officials or their staff.

Where eviction records are unsealed pursuant to an exception, personally identifiable information (“PII”) should not be disclosed without explicit court approval, and extra care should be taken with information relating to minors. Further, eviction records should be provided electronically where possible to reduce the burden on tenants of having to travel to a courthouse to request records.

Washington D.C. has the most robust legislation for dissemination exceptions and can serve as a model for best practices given the thoughtful nature by which these exceptions were crafted. For example, Washington D.C. maintains that records can be unsealed “upon a showing of compelling need,” without a showing of need to an attorney who certifies to the court they are “considering commencing representation of the tenant,” and for scholarly, educational, journalistic, or governmental purposes “upon a balancing of the interests of the tenant for nondisclosure against the interests of the requesting party.”²⁷⁴ In the latter category, limitations are placed on release of PII (such as tenant names and addresses), and where PII is released, strict protocols are

as domestic violence, dating violence, sexual assault, or stalking; (vi) the parties entered into a settlement agreement that did not result in the housing provider recovering possession of the unit; or (vii) the court determines that there are other grounds justifying sealing the court records). Some advocates noted that providing courts with factors sometimes results in judges considering nothing beyond the listed factors. As long as the list is non-exhaustive, however, providing factors for consideration can help ensure a more systematized approach to discretionary petitions and increase consistency in granting sealing petitions across courts.

271. *See, e.g.*, OR. REV. STAT. ANN. § 105.163(3) (West 2025) (prohibiting courts from charging a filing fee for a petition to seal in Oregon).

272. *See, e.g.*, VA. CODE ANN. § 8.01-130.01 (West 2025) (providing that a defendant may file a petition “on a form created by the Supreme Court”).

273. Interviews on file with author.

274. D.C. CODE ANN. § 42-3505.09(d)–(e) (West 2025).

imposed, such as a prohibition on re-release of the PII without explicit court permission.²⁷⁵ Further, D.C. specifies that court records can be made available “by an electronic means determined by [the court].”²⁷⁶

8. *Prohibition on Credit Reporting Agency Access*

Although automatic front-end sealing prohibits credit reporting agencies from accessing eviction records unless they are unsealed, additional precautions should be taken to ensure that data is not inadvertently released to these agencies. The exact method of prohibiting credit reporting agencies from gaining access to sealed data may vary by state depending on local housing laws and court procedures, yet several states have implemented measures that can be used as examples for these protections.

Colorado, for example, specifies that the court “shall not, for any reason, publish the names of the parties online.”²⁷⁷ This helps ensure that screening agencies cannot cull court dockets for tenant names. Similarly, Arizona makes clear that “the tenant’s sealed eviction case may not be sold or released as a part of a bulk or individual records transfer to a third party.”²⁷⁸ Utah provides direct instruction to tenant screening companies: within thirty days of an eviction expungement—which is listed on the Utah Courts’ website—any state, county, or local government must expunge any eviction in its custody, and tenant screening companies must remove the expunged eviction from their database.²⁷⁹ Further, tenant screening companies are prohibited from disclosing the sealed eviction in a tenant screening report or using the eviction as a factor in determining a score or recommendation in a tenant screening report.²⁸⁰ Additionally, Washington D.C. law permits a prospective tenant to bring a civil action where “a housing provider intentionally bases an adverse action taken against a prospective tenant on an eviction court record that the housing provider knows to be sealed”²⁸¹

275. *Id.* § 42-3505.09(e)–(f).

276. *Id.* § 42-3505.09(e)(2)(B); *see also* COLO. REV. STAT. ANN. § 13-40-110.5 (West 2025) (making suppressed records available to judges, court staff, authorized judicial department staff, parties and their lawyers, and lawyers evaluating whether to enter an appearance on behalf of a party who gives permission for release); CAL. CIV. PROC. CODE § 1161.2(a)(1)(A)–(D), (b)(1)(A)–(B) (West 2025) (allowing for release of masked records to a party and their attorney, residents of the premises in question under certain circumstances, any individual who provides the name of a plaintiff and defendant in addition to the address and apartment number of the premises, as well as those who can make a showing of good cause, which includes but is not limited to “newsworthy facts” and the need to gather evidence to make a request for judicial notice).

277. COLO. REV. STAT. ANN. § 13-40-110.5 (West 2025).

278. ARIZ. REV. STAT. ANN. § 33-1379(C)(3) (2025).

279. UTAH CODE ANN. § 78B-6-854(1)(a)–(b) (West 2025).

280. *Id.* § 78B-6-854(2).

281. D.C. CODE ANN. § 42-3505.09(h) (West 2025).

9. *Use of Sealed Records*

Lastly, legislation should specify that, where records are sealed, a judgment is deemed not to exist, and a tenant may answer any questions on a housing application as such. In other words, tenants should be able to answer “no” to any questions relating to whether they have ever been evicted once a record is sealed. Without this protection, landlords can skirt sealing legislation by simply questioning a tenant about past evictions even if they are unable to access court records. Oregon and Utah both provide such language in their sealing statutes.²⁸²

C. ADDRESSING CHALLENGES TO EVICTION SEALING

Advocates in states with eviction sealing legislation also noted a number of challenges that arose when attempting to pass such legislation. This Subpart discusses those challenges and provides guidance for how to address them.

1. *First Amendment vs. Privacy Concerns*

Opponents of eviction sealing legislation have cited First Amendment concerns when trying to defeat proposed legislation.²⁸³ Tenant organizers have also raised First Amendment concerns, as their work often relies on eviction data to raise awareness about the pervasiveness of the problems they face.²⁸⁴ Although the public has a limited right to access court records, the Supreme Court has recognized that “the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.”²⁸⁵ Moreover, there is a well-established practice of “placing cases under seal and expunging court records when other values (e.g. privacy, . . .) justify it.”²⁸⁶

282. UTAH CODE ANN. § 78B-6-854(3) (West 2025) (dictating that an expunged eviction is considered to have never occurred and a tenant “may reply to an inquiry on the matter as though there was never an eviction”); OR. REV. STAT. ANN. § 105.163(3)–(4) (West 2025) (specifying that if a tenant prevails, “the judgment that is the subject of the motion shall be deemed not to have been entered, and the applicant may answer accordingly any questions relating to its occurrence”).

283. Memos on file with author. *See also, e.g., Eviction Sealing Talking Points: An In-Depth Essay*, MASSLANDLORDS, <https://masslandlords.net/policy/eviction-sealing/#:~:text=Eviction%20Sealing%20Talking%20Points%3A%20An%20In%2DDepth%20Essay,-Eviction%20sealing%20is&text=The%20idea%20is%20that%20redacting,to%20strongly%20oppose%20eviction%20sealing> (last visited Apr. 15, 2025) (stating that if enacted, an eviction sealing bill would “erode a bedrock constitutional principle by making secret what is and ought to be publicly available court information”).

284. *See* McElroy, *supra* note 64, at 65 (“Protections against screening predation results in it not only being harder for companies but also for housing justice organizers to access eviction data.”).

285. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

286. Kleysteuber, *supra* note 39, at 1352 n.36; *see also* *Nixon*, 435 U.S. at 608 (discussing First Amendment considerations with respect to records sealing); Gold, *supra* note 120, at 74–76 (discussing judicial openness and compelling privacy interests in the eviction records context); *The Scarlet E: Balancing Eviction Record Sealing and Data Access*, NEW AM. (Nov. 14, 2022), <https://www.newamerica.org/future-land-housing/events/the-scarlet-e-balancing-eviction-record-sealing-and-data-access>.

The aforementioned guidelines for model legislation help eliminate tenant screening companies' improper uses of eviction records while providing exceptions under which certain groups and individuals can still gain access to records for research and data gathering purposes. These guidelines thus balance tenant interests in keeping eviction records sealed with landlord interests in maintaining access to the records. They also do so by allowing for records access where a landlord prevails in an eviction case, but resealing such records after three years to eliminate the Scarlet E stigma and incorrect assumption that past tenant behavior is always indicative of future behavior. The guidelines also address tenant organizers' concerns by providing an exception whereby such organizers can access eviction court records by showing "a compelling need." Gathering data to bolster their organizing efforts would generally qualify as such a need.

2. *Other Laws Targeting Eviction Records*

Although laws other than eviction sealing have attempted to tackle the challenges posed by unfettered access to eviction records, these laws provide piecemeal relief to tenants without holistically addressing the systemic inequities presented by the Scarlet E. For example, "fair chance housing laws" attempt to prohibit landlords from using certain records when making rental decisions, but these laws fail to guarantee that landlords do not see such records.²⁸⁷ In turn, landlords rely on the records either purposefully or inadvertently.²⁸⁸ Similarly, consumer protection laws attempt to limit what can be included in tenant screening reports and generally focus on ensuring the accuracy of consumer reports.²⁸⁹ However, these laws also fail to limit access

287. See, e.g., D.C. CODE ANN. § 24-115 (West 2025) (prohibiting landlords from inquiring about certain eviction filings); OR. REV. STAT. ANN. § 90.303(1) (West 2025) (limiting what information a landlord can rely on when evaluating a prospective tenant); NAT'L HOUS. L. PROJECT, FAIR CHANCE ORDINANCE: AN ADVOCATE'S TOOLKIT I (2020), www.nhlp.org/wp-content/uploads/021320_NHLP_FairChance_Final.pdf. There is also some evidence that these laws may perpetuate rather than eliminate housing discrimination. See Pappoe, *supra* note 61, at 307 n.275 (collecting studies suggesting that "ban the box" legislation may encourage discrimination).

288. See Pappoe, *supra* note 61, at 307 n.275.

289. See, e.g., Consumer Fin. Prot. Bureau Bulletin No. 2021-03, Consumer Reporting of Rental Information, 12 C.F.R. pt. 1022 (2024), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf ("As pandemic-related government interventions aimed at protecting renters begin to expire over the coming months, the Bureau will be paying particular attention to consumer reporting agencies' (CRAs) and furnishers' compliance with their accuracy and dispute obligations under the Fair Credit Reporting Act (FCRA) and Regulation V with respect to rental information. Specifically, the Bureau intends to look carefully at the accuracy and dispute-handling practices of CRAs that report rental information, including whether their procedures to match information to consumers are reasonable; whether they report eviction information that is inaccurate, incomplete, or misleading (such as may result from a failure to have reasonable procedures to report information about the disposition of an eviction filing, to prevent the inclusion of multiple entries for the same eviction action in the same consumer report, or to prevent the inclusion of eviction information that has been sealed or expunged); and whether they conduct timely and reasonable investigations of consumer disputes.").

to such reports in the first instance.²⁹⁰ These laws also frequently contain arduous requirements for tenants who wish to challenge inaccurate information contained in a report.²⁹¹ In combination with sealing legislation, these laws may provide robust protections for tenants, but in a vacuum they fail to provide an avenue toward true housing justice.²⁹²

3. *Administrative Hurdles*

Finally, many advocates noted that challenges have arisen where legislation failed to consider the functionality of sealing from a court administrative perspective.²⁹³ For this reason, working with local courts to minimize any potential administrative burden and ensure ease of implementation is key. Model legislation should be adapted on a state-by-state basis after conversations with court personnel. In the forty-two states that have implemented procedures for criminal records expungements, it may be helpful to draw on these processes and avoid potential pitfalls to implementation by discussing with court administrators any hurdles that have arisen in the criminal context.²⁹⁴

D. QUANTIFYING EVICTION SEALING OUTCOMES: CALIFORNIA AS A CASE STUDY

The majority of eviction sealing legislation is relatively new, making it difficult to quantify the impact of such statutes. Yet California's law, passed in 2016, provides a unique window into the effects of sealing eviction records.²⁹⁵ A 2023 Urban Institute study of California's eviction sealing law found that it

290. *See id.*

291. *See, e.g.,* Polk, *supra* note 84, at 351 (detailing onerous requirements on tenants who wish to contest their credit reports and noting that "the system for correcting reports only occasionally works for tenants, and only after the damage has already been done").

292. Several participants in the Uniform Law Commission Study Committee on Use of Tenant Information in Rental Decisions agreed that when looking at (a) restrictions on landlords' use of tenants' publicly available information, (b) regulating the content of tenant screening reports, and (c) the sealing of eviction records, records sealing, particularly early or automatic sealing, is likely to be the most effective approach at promoting tenants' access to housing and preventing inaccurate or improper denials of housing. For more information about the Committee's work, see *supra* note 224.

293. Memos on file with author. *See also* Caramello & Mahlberg, *supra* note 222, at 1 ("[In California,] [m]inimizing administrative changes secured support from the courts as well as avoided fiscal costs for the bill."); DADA & DUARTE, *supra* note 59, at 38–40 (discussing the importance of working with courts to ensure records sealing can be easily implemented).

294. The expungement of criminal records has gained traction in many jurisdictions throughout the United States and court processes have been implemented in numerous states to accomplish expungements. Lessons learned from court implementation in the criminal context can therefore act as a helpful guide for sealing eviction court records in the civil context. *See, e.g.,* J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460, 2461 (2020); Mira Edmonds, J.J. Prescott, Sonja Starr & German Marquez Alcana, *The Expungement Process: Survey Evidence on Applicants' Experience*, 22 OHIO ST. J. CRIM. L. (forthcoming 2025) (manuscript at 3) (on file with authors).

295. CAL. CIV. PROC. CODE § 1161.2 (West 2025).

“has had a positive impact on renter stability.”²⁹⁶ One attorney interviewed as part of the study stated that the law was “the most impactful state law for tenants in the past 10 years.”²⁹⁷ The study also made three other important findings. First, front-end sealing (at the point of filing) reduces the number of eviction records that can be collected by tenant screening companies.²⁹⁸ This in turn helps alleviate housing insecurity and decrease barriers to finding housing, while providing landlords with accurate information about who they are renting to.²⁹⁹ Of particular importance, the study noted that sealing eviction records has had a positive effect on housing stability for tenants of color, who were most likely to be affected by tenant screening reports.³⁰⁰ This finding is also consistent with statements from the American Bar Association and the D.C. Council Office on Racial Equity, which have both indicated that “automatic sealing can have the largest impact on inequities.”³⁰¹ Second, front-end sealing creates more balanced negotiations between landlords and tenants, with both sides having ample time to attempt to resolve a case.³⁰² Third, the automatic nature of front-end sealing alleviates administrative burdens on the court.³⁰³ Prior procedures in California required clerks to manually seal records if a case was ruled in a tenant’s favor, creating unnecessary administrative hurdles.³⁰⁴

CONCLUSION

The Eviction Market in the United States is pervasive and continues to be perpetuated by the mounting financialization of housing. This market not only relegates tenants—particularly Black and Latinx women—to undesirable housing, but also strips these individuals of basic human rights while acting as a

296. LAUREN FUNG, ISABELLA REMOR, KATIE FALLON & NYLA HOLLAND, URB. INST., MASKING THE SCARLET “E” 9 (2023), <https://www.urban.org/sites/default/files/2023-08/Masking%20the%20Scarlet%20%E2%80%9CE%E2%80%9D.pdf>.

297. *Id.* Although California’s eviction sealing law has had a positive impact on renter stability, the intervention alone cannot solve the housing crisis in the state. For example, the 2023 point-in-time count estimated more than 180,000 people in California were experiencing homelessness. See Marisol Cuellar Mejia & Cesar Alesi Perez, *An Update on Homelessness in California*, PUB. POL’Y INST. OF CAL. (Mar. 21, 2024), <https://www.pplic.org/blog/an-update-on-homelessness-in-california>. This is nearly a third of the nation’s homeless population. Sam Levin, *California’s Homelessness Crisis Is the Worst in the U.S. But Who Is Struggling the Most?*, GUARDIAN (Dec. 19, 2023, 10:00 AM EST), <https://www.theguardian.com/us-news/2023/dec/19/california-us-street-homelessness-youth-unsheltered-annual-report> [<https://perma.cc/RV6V-UQGQ>]. Thus, eviction sealing could be paired with other reforms such as: additional federal guidance or requirements on data quality and accuracy, more extensive due process for tenants facing eviction, rental assistance programs, right to counsel in eviction cases, source of income discrimination laws to prevent discrimination against voucher holders, good cause eviction laws, and subsidies for the construction of more rental housing units.

298. Fung, Remor, Fallon & Holland, *supra* note 296, at 9–11.

299. *Id.*

300. *Id.* at 10 (“[I]nterviewees noted that . . . outcomes appear to have shifted especially for tenants of color . . .”).

301. *Id.* at 6.

302. *Id.* at 9, 11.

303. *Id.* at 10–11.

304. *Id.*

policing and surveillance system. The Model Eviction Sealing Act will help disrupt the Eviction Market and remove a caste marker from tenants who have been involuntarily branded with the Scarlet E. The Model Act also provides a roadmap of the most important aspects that should ideally be included in eviction sealing legislation, including: front-end sealing with parameters for when an eviction case will be unsealed; back-end sealing after a reasonable amount of time for cases that do become unsealed; discretionary sealing under particular circumstances; as well as limited dissemination exceptions, a broad definition for what records are sealed, and a prohibition on credit reporting agencies' access to sealed records. Given the current national attention on the housing crisis, now is the time to take such legislation seriously and reimagine a country where safe and affordable housing is a human right accessible to all.

APPENDIX:
MODEL EVICTION SEALING ACT

SECTION 1. DEFINITIONS.

A. “Authorized attorney” means an attorney who certifies to the court’s satisfaction that they are authorized to practice law in the state and are considering commencing representation of a resident.

B. “Court record” means any information contained in the docket, including but not limited to the court docket, pleadings, and orders.

C. “Sealed court record” means a court record that is accessible only to judges; court staff; authorized judicial department staff; a party to the case and, if represented, the party’s attorneys; authorized attorneys; and a person with a valid court order authorizing access to the court record.

SECTION 2. AUTOMATIC SEALING OF COURT RECORDS.

(1) Upon the commencement of an action pursuant to this Article,³⁰⁵ any court record of the action is a sealed court record.

(2) When an order granting owner possession of the premises is entered in an action to which this Section applies, the court record is no longer a sealed court record, and the court shall make the court record available to the public unless the parties to the action agree that the court record should remain sealed or the resident appeals the order. If the parties agree that the court record should remain sealed, the court record remains a sealed court record. If the resident files an appeal, the court record remains a sealed court record through the pendency of the appeal.

(3) If an order granting owner possession is later set aside by the court, the court record of the action shall again immediately be a sealed court record.

(4) If a sealed court record is made available to the public pursuant to this Section, the court record shall again be a sealed court record three years after the date on which the court record was made available to the public.

(5) The names of the parties included in a sealed court record pursuant to this Section may be used by the court for administrative purposes, but the court shall not, for any reason, publish the names of the parties online or sell or release a sealed court record as part of a bulk or individual records transfer to a third party.

(6) Residents with a sealed court record pursuant to this Section may reply to any relevant inquiry as though there were never an eviction.

305. “[T]his Article” refers to the statute or statutory sub-section which contains the procedures for eviction (sometimes called unlawful detainer) actions in a given state.

SECTION 3. DISCRETIONARY SEALING OF COURT RECORDS.

(1) If a sealed court record is made available to the public pursuant to Section 2, the court record shall again be a sealed court record upon a petition by a resident at any time, if:

(A) sealing the court record would be in the interests of justice; and

(B) those interests are not outweighed by the public's interest in access to the records.

(2) Residents shall not be charged a filing fee for a petition under this Section.

(3) Residents with a sealed court record pursuant to this Section may reply to any relevant inquiry as though there were never an eviction.

SECTION 4. LIMITED DISSEMINATION EXCEPTIONS.

(1) Sealed court records shall be unsealed on order of the court upon a showing of compelling need. A compelling need may include, but is not limited to, scholarly, educational, journalistic, or governmental purposes. In determining whether there is a compelling need, the court shall balance the interests of the resident for nondisclosure against the interests of the requesting party.

(2) Sealed court records shall be released to an authorized attorney, without the public unsealing of the records and without a showing of compelling need.