

Governor Beshear  
700 Capitol Avenue  
Frankfort, KY 40601  
December 14, 2020



Kentucky Equal Justice Center  
201 W. Short Street, Suite 310  
Lexington, KY 40507  
T: 859-233-3057  
F: 859-233-0007

Dear Governor Beshear,

I am writing to encourage you to use your emergency powers to protect thousands of people who rent their homes from eviction during our escalating (again) pandemic. Your action is necessary because—as you know—the CDC’s Order and your Executive Order protecting renters from eviction *expires on December 31, 2020*. Without action from you, thousands of Kentuckians who cannot afford to pay rent will be evicted in the dead of winter in the middle of a pandemic. In your September 4, 2020 Executive Order, you said,

This Order is effective September 4, 2020 through December 31, 2020, and until it is rescinded by further order or by operation of law, and shall be subject to renewal if necessary to protect the lives, property, or welfare of the citizens of the Commonwealth.

Governor Beshear, the lives, property or welfare of the citizens of the Commonwealth are on the line. **You must protect Kentuckians from eviction by renewing your September 4, 2020 Executive Order through March 31, 2020.**

### **Eviction Moratoria Save Lives and are a Necessary Response to a Global Pandemic**

When it issued its nationwide moratorium on evictions for nonpayment of rent, the CDC explained [the various ways eviction moratoria support everyone’s efforts to prevent the spread of SARS-CoV-2](#):

Eviction moratoria **facilitate self-isolation** by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also **allow State and local authorities to more easily implement stay-at-home and social distancing directives** to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because **homelessness increases the likelihood of individuals moving into congregate settings**, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

The CDC issued its nationwide eviction moratorium because we know that when landlords evict people, those people often have no choice but to seek shelter in congregate settings (homeless shelters) or “double-up” with friends and family. This isn’t safe.

Epidemiologists know that evictions accelerate the spread of SARS-CoV-2 in three ways. First, when more people are living under one roof, the chances that someone will

introduce SARS-CoV-2 into the home increase. Next, with people living in more close quarters, the chances that infections will spread within households increase. And, third, because of increased spread within households, more people infected with SARS-CoV-2 emerge from their homes to spread infection within their community.<sup>1</sup>

Because the United States has been unable/unwilling to control the virus as effectively as other nations, researchers have had an opportunity now over the course of eight months to study the effects of eviction moratoriums on preventing the spread of SARS-CoV-2 and saving lives. The data are clear: extending the CDC's Eviction Moratorium in Kentucky through March 31 would save lives. A recent article in the *JOURNAL OF URBAN HEALTH*, "Pandemic Housing Policy: Examining the Relationship Among Eviction, Housing Instability, Health Inequity, and COVID-19 Transmission," summarized the research:

[R]esearchers used varying expiration dates of state eviction moratoria to evaluate whether lifting moratoria was associated with increased COVID-19 spread and mortality. After controlling for mask orders, stay at home orders, school closures, and testing rates, as well as characteristics of states and underlying time trends, this natural experiment showed that lifting moratoria was associated with 1.6 times higher COVID-19 mortality after seven weeks and 5.4 times higher mortality after sixteen weeks. Similarly, lifting moratoria was associated with 1.6 times higher incidence of COVID-19 after ten weeks, and 2.1 times higher incidence after sixteen weeks compared to maintaining eviction moratoria. **Lifting moratoriums translated to a total of 433,700 excess cases and 10,700 excess deaths between March 1 and September 3, 2020.** Thus, eviction moratoria could be effective mechanisms for suppressing COVID-19 infection and mortality.

Because of our nation's racist history (Jim Crow, redlining, and the predatory lending that led up to the foreclosure crisis), the gap in homeownership between White and Black Americans is 30% (72% v. 42%, respectively).<sup>2</sup> This means that Black and Brown Kentuckians are disproportionately impacted by our state's antiquated, unfair, and cruel eviction processes. It is **morally, economically, and epidemiologically imperative** that

---

<sup>1</sup> For visual learners, epidemiologists have helpfully illustrated these transmission vectors in the paper, "The Effect of Eviction Moratoriums on the Transmission of SARS-CoV-2."

<sup>2</sup> Kentucky, of course, is not immune to this national disparity. The homeownership gap in Louisville is 35% (71% vs. 36%). See, Metropolitan Housing Coalition's 2019 Report, "22,000 Equities: Addressing the Racial Gaps in Homeownership and Wealth", p. 9.

you *act now* to protect people in Kentucky from the personal and systemic catastrophes caused by a wave of evictions that you have the power to prevent.

### **Courts Across the Country Find Eviction Protections Necessary to Prevent the Spread of SARS-CoV-2**

Thank you for your previous Orders protecting Kentuckians from eviction. As we said in our [July 28th letter to you](#) and in our [Motion](#) and [Amicus Brief](#) we filed in the case pending in northern Kentucky in which landlords are challenging the legality of your eviction protections, local and state eviction moratoria fare extremely well in court, regardless of the various legal theories landlords bring. To date, judges considering challenges to state and local eviction moratoria have denied landlords' requests for injunctive relief or ruled outright in favor of government officials in: Arizona, California, Connecticut, Illinois, Massachusetts, Los Angeles, New York, Philadelphia and San Francisco. Meanwhile, federal courts in Georgia, Ohio, and Tennessee have denied landlords injunctive relief in suits challenging the legality of the CDC's Order itself. **Bottom line: courts across the nation recognize these eviction protections as reasonable, necessary actions to curb a clear and present threat to public safety.**

Kentucky cannot wait for the CDC, Congress, or President Biden to act. The eviction protections provided by the CDC's Order and your September 4, 2020 Order expire in just a few weeks. People who rent their homes are making decisions *now* about whether to go to work even though they might not feel great because they know they need to make rent. People who rent their homes are making decisions *now* about whether and where to move.

### **Your Order Must Close a Loophole Landlords are Using to Evict Kentuckians**

The CDC's Order still allows landlords to pursue evictions in five special circumstances:

1. Engaging in criminal activity while on the premises;
2. Threatening the health or safety of other residents;
3. Damaging or posing an immediate and significant risk of damage to property;
4. Violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
5. Violating any other contractual obligation, other than the timely payment or rent or similar housing-related payment (including non-payment or late payment of fees, penalties or interest.

Unfortunately, landlords have used that last provision to evict people by claiming that the "contractual obligation" that a renter is violating is overstaying the term of a lease. As you

know, many people in Kentucky are on month-to-month leases. Landlords have used this provision to evict people during a pandemic by 1) terminating the month-to-month lease term and then, 2) claiming the “reason” for eviction is overstaying the lease term in violation of the contract.

Your next Executive Order protecting people from eviction *must* protect Kentuckians from this kind of abuse. Your eviction moratorium can extend your existing Order in its entirety, but you must include language that makes it clear that overstaying the term of a lease is not a violation of a “contractual obligation” that would support an eviction during a pandemic under your Order. The risk to public health is too great to allow these kinds of cruel and tragic shenanigans.

### **Landlords Need Assistance You Cannot Provide; People Need Eviction Protections You Can**

I know landlords need rental assistance. I am not unsympathetic to the economic pressures eviction moratoria place on landlords. However, you do not have the same power to enact generous rental assistance programs that the federal government has. For many (or for me, at least), this pandemic has provided many opportunities to return to “The Serenity Prayer” and focus on mustering “the courage to change the things I can” instead of all the things that are beyond our control.

Governor Beshear, you—like the rest of us—can call on the federal government and Kentucky’s federal delegation to provide additional rental assistance to landlords during our shared pandemic. Generous, enduring payments to landlords is an obvious and necessary response to our shared epidemic (as I have been saying since late April). But, you cannot change the U.S. Senate’s failure to provide any additional coronavirus aid since the CARES Act in March.

However, the thing you—and only you—can change is whether people are protected from eviction in Kentucky during our deepening pandemic and deepening winter. You can protect Kentuckians from eviction for nonpayment of rent by extending the CDC’s eviction moratorium statewide until March 31, 2021 (and closing the loophole described above). Protecting Kentuckians from eviction doesn’t just protect Kentuckians facing eviction: it protects *all* Kentuckians by reducing the spread of SARS-CoV-2. We know that more than 10,000 people died nationwide because of our collective failure to fully protect Americans from eviction during a pandemic. Of course you know that not all of those people who passed away were facing eviction: they were the grocery store clerks serving the person who gave refuge to a neighbor after an eviction, the prisoners infected because a guard’s daughter moved back home after an eviction.

I urge you to exercise the power you have to protect people in Kentucky—people who are disproportionately Black and Brown because of our community’s racist systems of oppression—from eviction. Today. Extending the moratorium through March will provide federal policymakers more time to enact a comprehensive relief package that includes rental assistance to landlords and robust housing and homelessness resources for state and local governments.

Thank you for the work you and your administration have done to protect Kentucky and Kentuckians—whether they like it or not. Your actions have helped us fare better than our neighboring states. Extending the CDC’s eviction protections through March 31 is the next step your administration can take to protect our Commonwealth from unnecessary evictions and the additional sickness and death flowing from the completely preventable spread of SARS-CoV-2.

Sincerely,



Ben Carter

Senior Litigation and Advocacy Counsel  
Kentucky Equal Justice Center