



April 30, 2020

SENT VIA E-MAIL

Governor John Carney
Carvel State Office Building
820 N. French Street
12th Floor
Wilmington, DE 19801
(302) 577-3210

Dear Governor Carney:

The American Civil Liberties Union (ACLU), the ACLU of Delaware and all of the community partners listed below urge you to immediately expand the existing moratorium on evictions and extend the moratorium on utility shut-offs in Delaware and further commit to prevention of mass evictions after the moratorium ends.

We commend your tremendous leadership and efforts thus far in swiftly providing relief to Delaware residents through issuing a moratorium on evictions and utility disconnections,¹ as well as establishing a program to provide emergency assistance to renters affected by the pandemic.² The Eviction Lab at Princeton University notes Delaware as a national leader on response to COVID-19 and evictions, yet more action is needed. It is critical that the State of Delaware expand the existing moratorium to include key protections in advance of May 1. Specifically, we urge you to expand the existing moratorium to prohibit landlords from issuing notices of eviction to tenants, including the 5 day pay or stay notice, and to prevent future consideration of eviction cases filed during this crisis period. We further urge you to require utility companies to reconnect previously suspended service without a fee.

Across the nation, the COVID-19 pandemic has already resulted in widespread and devastating economic consequences, as the number of unemployment claims filed has reached over 26 million. In the face of staggering unemployment numbers and climbing medical costs, millions of people living in the United States—and over 255,000 renters living in Delaware—face the imminent threat of losing their homes

¹ State of Delaware, *Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat* (Mar. 24, 2020), <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/Sixth-Modification-to-State-of-Emergency-03242020.pdf>.

² Delaware News, *Governor Carney and DSHA Announce Housing Assistance Program* (Mar. 26, 2020), <https://news.delaware.gov/2020/03/26/governor-carney-and-dsha-announce-housing-assistance-program/>.



or access to utility service. These consequences risk further spread of COVID-19 throughout Delaware and undermine efforts to protect public health and well-being. Moreover, the nearly guaranteed wave of evictions and utility shut-offs would inflict far-reaching and significant economic and social harm on Delaware residents—particularly on women, people of color, low-income residents, and other vulnerable communities. The need is so great that the emergency Housing Assistance Program administered by DSHA has already stopped taking applications and will only be able to help a fraction of those who have applied.³

Evictions and Utility Shut-Offs Will Disproportionately Harm Communities of Color—And Particularly Women of Color.

The ACLU's Data Analytics team analyzed national eviction data from 2012 to 2016, provided by the Eviction Lab at Princeton University, and found that on average, Black renters had evictions filed against them by landlords at nearly twice the rate of white renters.⁴ Women of color, and particularly Black women, bear the burden of eviction.⁵ The harmful impact of eviction is further compounded by other racial, gender, and socioeconomic barriers—such as wealth gaps, pay disparities, and inequities in our healthcare system.

Critically, the aftermath of an eviction persists for decades, as tenants with prior eviction records face major obstacles to accessing future housing opportunities. Landlords routinely employ screening policies that deny housing to any renter previously named in an eviction case, regardless of whether the case was dismissed, occurred many years ago, or was filed on unlawful grounds.⁶ As a result, eviction often exacerbates and reproduces conditions of economic insecurity for low-income women and communities of color.

Utility shut-offs also disproportionately harm communities of color. A 2017 report by the NAACP found that Black households experience utility disconnections at a higher rate than financially similar white households. For

³ Jeanne Kuang, *State Housing Authority swamped with rental help requests, stops taking applications*, <https://www.delawareonline.com/story/news/2020/04/24/delaware-swamped-rental-help-requests-stops-taking-applications/3018968001/>

⁴ Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color* (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

⁵ Matthew Desmond, *Poor Black Women Evicted at Alarming Rates, Setting Off a Chain of Hardship* (Mar. 2014), <https://www.macfound.org/media/files/HHM - Poor Black Women Are Evicted at Alarming Rates.pdf>.

⁶ Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women* (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.



households at or below 150% of the federal poverty level, only 5.5% of white-headed households experienced shutoffs as compared to 11.3% of Black-headed households.⁷ Similarly, another study revealed that residents in predominantly minority neighborhoods faced 27% higher energy cost burdens than those in predominantly white neighborhoods.⁸ Research further shows that Black communities disproportionately experience higher water costs, water service terminations, and water liens, resulting in negative health and economic outcomes.⁹

Delaware Must Expand its Moratorium on Evictions and Utility Shut-Offs and Act to Prevent Mass Evictions After the Moratorium ends.

In light of the widespread and devastating impact of eviction during the pandemic, we urge you to immediately expand the existing moratorium on evictions and utility shut-offs. In doing so, Delaware state officials must implement a moratorium that prohibits every stage of the eviction process and without exceptions for types of tenants or lease violations. Delaware state officials must also plan for when the moratorium ends to prevent mass evictions and other enduring housing consequences for tenants hurt by the pandemic.

The Moratorium Must Halt Every Stage of the Eviction Process.

An [effective eviction moratorium](#) must prohibit landlords and housing providers from proceeding with any stage of the Delaware eviction process, including, but not limited to: (1) formal or informal issuance of eviction notices; (2) service of legal process in eviction actions; (3) filing of new eviction cases; (4) eviction hearings; and (5) enforcing orders of eviction, including orders that were issued prior to the date that the moratorium went into effect.¹⁰ Because the already existing moratorium does not include actions that the landlord can take before filing in court, it is especially critical that landlords be precluded from issuing formal or informal eviction notices. Moreover, the moratorium should extend or toll all court deadlines for pending eviction proceedings for at least 30 days after the moratorium is lifted. Absent a clear and comprehensive moratorium, tenants still face a heightened risk

⁷ NAACP, *Lights Out in the Cold: Reforming Utility Shut-Off Policies as if Human Rights Matter* (Mar. 2017), https://www.naacp.org/wp-content/uploads/2017/12/Lights-Out-in-the-Cold_NAACP.pdf.

⁸ Kyle Miller, *The Hidden Cost in Housing Affordability* (Feb. 20, 2020), <https://www.planning.org/blog/9195636/hidden-cost-in-housing-affordability/>.

⁹ The Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities* (May 2019), https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf.

¹⁰ National Housing Law Project, *Protecting Renter and Homeowner Rights During Our National Health Crisis*, <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>.



of losing their homes or sustaining an eviction filing record that may unjustly act as a barrier to housing in the future.

Although the existing moratorium prohibits most stages of eviction, there are currently no protections against landlords issuing notices of eviction to tenants, such as 5 day pay or stay notices—which often result in the informal eviction of tenants. Informal evictions occur when a landlord instructs, forces, or otherwise pressures a tenant to move out without filing a formal eviction case.¹¹ Landlords may deliver 5 day pay or stay notices to tenants, who may not realize that they are protected under the existing moratorium. Indeed, researchers estimate that informal evictions are twice as common as formal evictions.¹² Accordingly, it is critical that Delaware state officials expand the existing moratorium to prohibit landlords from issuing any notice of eviction to tenants.

Delaware's Moratorium Must Continue to Prevent Evictions and Utility Shut-Offs During and Shortly After the Pandemic, with Extensions.

Given the ongoing and unpredictable nature of the COVID-19 pandemic, the Delaware moratorium must, at a minimum, continue until at least 45 days or longer¹³ after the following conditions are met: (1) the period for mandated or recommended social distancing has ended; (2) Delaware state officials have determined the moratorium is no longer needed to control or limit the spread of COVID-19; and (3) Delaware state officials have determined there are no further public health, economic, or other circumstances supporting the continued need for the moratorium. Moreover, an effective eviction moratorium should allow for extensions as necessary to allow tenants reasonable time to apply for and receive financial resources and assistance following the conclusion of the pandemic. The moratorium should also guarantee that landlords and housing providers give at least 30 days' notice to evict a tenant upon expiration of the moratorium period.¹⁴

The existing moratorium is set to expire upon the termination of the state of emergency. We urge you to continue the moratorium for at least 45 days or longer following the pandemic in order to allow Delaware residents adequate time to apply and receive financial resources and assistance to pay rent and utility bills. The moratorium should also prohibit landlords from retaliating against tenants who seek protections under the moratorium. Finally, tenants should not be penalized for

¹¹ Andrew Flowers, *How We Undercounted Evictions By Asking the Wrong Questions*, FiveThirtyEight (Sept. 15, 2016), <https://fivethirtyeight.com/features/how-we-undercounted-evictions-by-asking-the-wrong-questions/>.

¹² *Id.*; see also Sarah Holder, *Where Evictions Hurt the Most*, CityLab (Oct. 30, 2017), <https://www.citylab.com/equity/2017/10/where-evictions-hurt-the-most/544238/>.

¹³ See, e.g., Mass. H. 4647, *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency*, <https://malegislature.gov/Bills/191/H4647>.

¹⁴ See, e.g., Coronavirus Aid, Relief, and Economic Security Act (CARES Act), § 4024.



inability to immediately pay past rent owed. Tenants should be allowed to enter into reasonable payment plans, and landlords should be encouraged to forgive past rent and given subsidies for doing so.

Delaware Must Require Companies to Reconnect Already-Suspended Service Without Fees or Exceptions.

Delaware should protect its residents' access to critical utility services by requiring utility companies to restore previously disconnected utility services for residents without water or other services, without fees or exceptions.

Delaware Must Also Prevent Mass Evictions After the Moratorium Ends.

The issuance of a moratorium will play an important role in mitigating the public health and economic impact of the pandemic. In addition to containing further spread of COVID-19 by ensuring residents can comply with stay-at-home orders, a moratorium will prevent the harmful aftermath of eviction, such as medical and mental health issues, financial hardship, and homelessness.¹⁵ However, permitting mass evictions to take place the moment the moratorium lifts will similarly cause huge upheavals in local communities, harm public health, and threaten families. For that reason, Delaware should commit to adopting policies that would prevent mass evictions once the moratorium ends. Key policies should include requiring landlords to negotiate payment plans prior to the filing of eviction cases, creating renters' relief funds to cover back rent, providing renters with a grace period of at least 30 days to pay rent, establishing right to free legal counsel to tenants facing eviction, and exploring other creative strategies for addressing this unprecedented threat to community stability. Such policies should provide meaningful mechanisms to ensure compliance by landlords and housing providers. For example, Delaware officials should issue guidance for housing courts to require landlords and housing providers to show that they have engaged in good faith negotiation of payment plans prior to filing for eviction.

While we commend Delaware for implementing a rental assistance program, the demand for these services do not match the funds available. We urge you to significantly increase the funds available for the Delaware Housing Assistance Program so that the Delaware State Housing Authority may lift its pause on application submissions.

¹⁵ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Oxford: Social Problems Advance Access 1–12 (Jan. 11, 2016), <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; see also Allison Bovell-Ammo & Megan Sandel, *The Hidden Health Crisis of Eviction*, Boston Univ. School of Public Health (Oct. 5, 2018), <https://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>.



Delaware Should Also Protect Tenants from Blacklisting Because They Face Eviction After the Moratorium Ends.

The mere filing of an eviction—even where an eviction judgment is not entered—deprives tenants of housing opportunities, because landlords often will not rent to anyone who has been subject to an eviction case. This type of blacklisting is devastating, locking out families from better housing, schools, and employment for decades. Delaware state officials must ensure that any evictions filed during this period do not impede tenants’ opportunities for the rest of their lives by preventing consideration of evictions filed during this crisis period. Moreover, Delaware state officials should prohibit landlords and housing providers from reporting missing or late rental payments to credit agencies or debt collection agencies to avoid future economic hardship following the pandemic.

With the first of the month rapidly approaching, it is critical that you act quickly to protect its residents against all forms of eviction and to require restoration of previously disconnected utility services. Swift action will provide the certainty and stability that residents need to ensure that no one is at immediate risk of losing their homes while we work to find longer-term solutions to handling unpaid rent, providing economic and financial support, and ensuring access to stable housing in the aftermath of the COVID-19 pandemic.

We encourage you to act quickly in addressing the critical issues facing Delaware residents. If you have any questions or concerns, please contact Karen Lantz, Legal and Policy Director, ACLU-DE, at klantz@aclu-de.org and John Whitelaw, Advocacy Director, CLASI, at jwhitelaw@declasi.org. Thank you in advance for your time.

Sincerely,

ACLU
ACLU of Delaware
Building People Power Campaign
Coalition to Dismantle the New Jim Crow
Community Legal Aid Society
Congregation Beth Emeth
Delaware Campaign to End Debtors’ Prison
Delaware Center for Justice
Delaware Civil Right Coalition
Delaware Coalition Against Domestic Violence
Delaware United
H.O.M.E.S. Campaign
Housing Alliance Delaware



Latino Initiative on Restorative Justice

NAACP Delaware

Network Delaware

Safe Communities Coalition

Southern Delaware Alliance for Racial Justice

The Partnership for Healthy Communities at the University of Delaware

Unitarian Universalist Delaware Advocacy Network

Westminster Presbyterian Church Peace and Justice Work Group

Wilmington Community Advisory Council

Wilmington HOPE Commission

YWCA Delaware