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Via Electronic Submission on FHFA.gov

The Honorable Sandra Thompson
Federal Housing Finance Agency
Constitution Center
400 7th St SW
Washington, D.C. 20219

RE: Federal Housing Finance Agency's Request for Input on Multifamily Tenant Protections

Dear Director Thompson:

Thank you for the opportunity to respond to the Federal Housing Finance Agency's Request for Input on Multifamily Tenant Protections. My name is Ryan Maxwell, and I am a Senior Attorney with Southeastern Ohio Legal Services ("SEOLS") located in New Philadelphia, OH. I also currently serve as the chair of the SEOLS Housing Team that serves thirty-four rural counties in Southeastern Ohio. SEOLS provides access to civil legal help for our low-income friends and neighbors. We assist individuals with access to justice issues as well as issues relating to benefits, school, housing, employment, utilities, family law, and consumer matters. Prior to joining SEOLS, I was a housing specialist attorney with Community Legal Aid Services, Inc. for nearly five years, during which time I served as Co-chair of the statewide Ohio Housing Taskforce from 2020 – 2022.

Because of my experiences with housing both before, during, and after the COVID-19 pandemic in rural Ohio counties, I and SEOLS understand the need for strong tenant protections. Through my housing law specialty practice since 2017, I have become familiar with the landlord-tenant law in Ohio, the challenges of enforcement, the lack of protections, and the need for a minimum federal floor on tenant protections. When a tenant's household is facing eviction, it is not simply a loss of a house—it can impact the family's education, job prospects, and family stability. Without sufficient protections as discussed herein, tenants are at the whim of landlords even when landlords lack sufficient cause to pursue an eviction. Where bad-actor landlords exist without sufficient tenant protections, it can result in meritless eviction records that can lead to less habitable and stable housing options for that household.

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FHFA has a significant opportunity to help establish a minimum federal floor of tenant protections. Recently, the Ohio legislature has amended portions of the long-standing Landlord-Tenant Act in an attempt to pre-empt local ordinances such as pay-to-stay ordinances and preventing any type of local rent control ordinances.¹ The already landlord-friendly statutes are further weakened by HB 430 that became law in September 2022. Absent any type of federal action to put in place tenant protections for FHFA properties, it is not unreasonable to anticipate further erosion of the remaining tenant protections in the Landlord-Tenant Act.

Further, existing protections like the ability to escrow rent in certain circumstances² are widely misinterpreted by landlords and courts alike resulting in a patchwork of understanding across our service area, and a conspicuous lack of forms available to tenants seeking to live in habitable homes. Landlords and tenants disagree as to the basic nature of the rent escrow process as to whether it is or is not a standard civil legal matter requiring compliance with the Ohio Civil Rules of Procedure or purely statutory creation that is outside of the Ohio Rules of Civil Procedure. See *Holman v. White Pond Villa Apartments*, 9th. Dist. No. 30439 (June 30, 2023)³.

Moreover, Ohio is apt to be flush with new residents following the influx of commercial capital to create Intel's plant in New Albany, OH anticipating 3,000 individuals and Honda's battery plant in Fayette County anticipating 2,200 individuals. As a result, there is expected to be an ever-increasing growth of out-of-state corporate ownership of rental properties. A federal minimum floor of tenant protections will ensure that those new renters seeking new employment opportunities will be afforded basic protections when dealing with corporate landlords with multi-state portfolios. Specifically, to avoid similar results that occurred following the oil and gas boom in Eastern and Southeastern Ohio where rent hikes were common as landlords tried to maximize their rental income, ensuring that rental amounts are stabilized and free from junk fees would result in greater housing stability and a decrease in the number of evictions. In addition to ensuring reasonable rental amounts, mirroring the NSPIRE program already administered by HUD for FHFA properties would assist in ensuring habitability and repairs are timely made to properties where FHFA programs have an invested interest.

Tenant protections align with FHFA's statutory mandate to ensure that the GSEs fulfill their mission by operating in a safe and sound manner and to serve as a reliable source of liquidity and funding for the housing finance market. FHFA's strategic goals are to (1) secure the regulated entities' safety and soundness, and (2) foster housing finance markets that promote equitable access to affordable and sustainable housing.

Ensuring that tenants in properties with federally backed mortgages have equitable access to affordable and sustainable housing fits squarely within FHFA's statutory mandate and strategic goals, and we applaud the FHFA for undertaking the RFI process to learn more about the challenges that these tenants face and to consider the role of FHFA and the GSEs in addressing these challenges.

¹ <https://uclawreview.org/2022/10/11/how-ohios-hb-430-may-preempt-local-pay-to-stay-ordinances/>

² <https://codes.ohio.gov/ohio-revised-code/section-5321.07>

³ Attached.

Minimum Tenant Protections

It is SEOLS' position that requesting basic tenant protections should not be seen as a significant burden on landlords. The US Census Bureau has estimated nearly 20 million rental properties with 48.2 million individual rental units.⁴ As housing prices and interest rates continue to climb, homeownership is all but priced out for many Americans⁵ making a lifetime of rentals to be the norm rather than the exception.⁶

Thus, it is SEOLS' position that FHA should consider the following *minimum* tenant protections:

- **Requiring Good Cause to Terminate.** In Ohio, where a tenant is in a month-to-month rental term with the landlord, a landlord is permitted to terminate that tenant's right to occupancy with a simple thirty-day notice.⁷ In theory, then, a tenant who has lived in a unit for decades and is able to afford the monthly rent could suddenly be forced into the rental market to try to find a new home. While locating new housing is stressful enough, being forced with the obligation to locate new housing, inspect new housing, save up sufficient capital to afford the next location all while trying to maintain a job that may or may not allow for paid time off, and maybe while also caring for other family members. Ideally this tenant would have his/her/their own reliable transportation because in rural areas there is unlikely to be any type of public transportation available. Ensuring that a landlord is required to have good cause can ensure that a tenant is not subject to the frivolity of a landlord's decision to terminate his/her/their occupancy. This would maintain a steady, reliable source of revenue for the landlord, as well as establish a set of guidelines/principals for the tenant to abide by while living in the property. FHFA should look to those "good cause" requirements already utilized and implemented by HUD in public housing properties.
- **Lease Terms.** In addition to good cause requirements to terminate tenancies, FHFA could require that any properties mortgaged with FHFA products are required to provide tenants with either autorenewal of year-long lease terms or set an initial longer period of time for the lease terms themselves subject to existing state laws that may require notarization of longer-termed documents⁸. Allowing tenants to have security in their housing for longer than a year or month-to-month can also encourage neighborhood stability and prevent further homelessness in the community.
- **Rent Stabilization.** In Ohio, with the exception of subsidized tenancies, there is no such thing as rent stabilization for tenants. Rents are set to correspond with what landlords think the market will allow. FHFA is in a unique position that it could incorporate additional requirements beyond the Voluntary Multifamily Tenant Protection Programs to make it mandatory for all rentals backed by FHFA products. This could limit the rental amount to all units with tenants with incomes at or below 80% of AMI and encourage landlords in these types of properties to encourage these low-income tenants to apply. Where tenants above the 80% AMI threshold reside, incorporation of rental amounts reflective of an established percentage of

4 [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=The%20Census%20Bureau%20counted%20nearly,19.9%20million%20units%20\(41.2%25\).](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=The%20Census%20Bureau%20counted%20nearly,19.9%20million%20units%20(41.2%25).)

5 <https://ohiohome.org/hna-20/executivesummary-hna.aspx>

6 https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf

7 <https://codes.ohio.gov/ohio-revised-code/section-5321.17>

8 <https://codes.ohio.gov/ohio-revised-code/chapter-5301>

the mortgage amount could be implemented. This could ensure that properties remain affordable and accessible to low- to moderate-income families. “[L]ower-income rents still accounted for 62 percent of at least moderately cost-burdened households [spending more than 30% of income for rent and utilities] and 86 percent of severely burdened households [spending more than half of income for housing].”⁹ Much like disclosing salaries in job postings, posting rental amounts for FHFA-backed properties allows tenants to budget appropriately to try to stabilize housing for longer than a year term. In Ohio, a recent study found that of Ohio’s lowest-income homeowners (not renters), 67% are severely cost burdened with the highest cost burden concentrated in Southeastern Ohio at 9.85%.¹⁰ It is not unrealistic to think that the logical result of homeowners being overburdened in Southeastern Ohio attempting to pass along those costs to renters in order to recoup as much money into their own pockets as possible. And, whenever a renter misses a payment, they could be evicted from their home in less than a month.

- **Source of Income Protections.** “The housing choice voucher program is the federal government’s major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.” However, the owner must agree to accept a Section 8 Housing Choice Voucher (“HCV”) in our jurisdiction and there are no “Source of Income” protections available. Thus, while a tenant may have been issued an HCV, if there are no private landlords willing to accept the HCV, then it is useless, and those families may be subject to the market-rate rent they are already unable to afford. FHFA is in the position to further incentivize those properties backed by FHFA products to accept HCVs in those properties beyond its Expanded Housing Choice Program. With public housing complexes, and project-based section 8 properties often lacking sufficient funding for maintenance and repairs, HCVs could assist those very low- and low-income tenants locate suitable housing in desirable neighborhoods.¹¹ (“Voucher holders are more likely to find housing quickly¹² and move to well-resourced neighborhoods where source-of-income discrimination is banned.”). Source of income protections would allow very low- and low-income tenants to obtain equal footing when searching for housing and not facing a time crunch of trying to locate housing where landlords are willing to accept the HCV using the limited resources those families may have available to them (time off from work, transportation, childcare to allow for a search, etc.).
- **Warranty of Habitability.** It should be uncontroversial to say that rental housing must be habitable. Being a renter of any type of housing should not subject you to a lower grade of housing simply because you are not the property owner. Ensuring that inspections, including testing for lead hazards, at the time of purchase, at any time when a tenancy changes, and at any time when ownership changes would ensure that the property the federal government has invested in remains a good investment. This also ensures accountability by the landlord if the landlord knows it would be subject to inspection when certain triggering events occur. While single-family homes make up most of the rentals in Southeastern Ohio, the largest concentration of mobile homes (15%) in Ohio also exists in Southeastern Ohio.¹³ Over 60% of the housing stock in Southeastern Ohio is built prior to 1979, making

⁹ https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf

¹⁰ <https://ohiohome.org/hna-20/executivesummary-hna.aspx>

¹¹ <https://nlihc.org/resource/14-1-advancing-tenant-protections-source-income-protections>

¹² <https://www.nhlp.org/wp-content/uploads/Source-of-Income-Discrimination-and-Fair-Housing-Policy-by-Tighe-and.pdf>

¹³ <https://ohiohome.org/research/housingstock-hna.aspx>

it a possibility that the majority of housing in Southeastern Ohio presents a lead hazard to renters.¹⁴ Renters should also be able to locate safe, affordable housing for themselves and their families without facing retaliation by a landlord when identifying potential health and safety matters. Incorporating language preventing landlords from issuing any type of termination notice following identification of potential health and safety issues by a tenant would prevent the landlord from doing or at least create a system of accountability to discourage landlords from doing so.

- **Regulation of Junk Rental Fees.** Too often landlords try to sustain themselves and their livelihoods with the implementation of unconscionable fees that renters do not feel empowered to dispute on their own. While Ohio prohibits the use of unconscionable lease terms¹⁵, it is not unthinkable within our service area for landlords to assert that a tenant owes a \$25 fee for a landlord to provide basic maintenance, e.g., plunging (not using an auger or calling a licensed plumber) a clogged toilet. This fee, if unpaid, continues to exist on the ledger of a tenant. Depending on the terms of the lease itself, payments received by the landlord could be required to be applied to these types of fees first. Thus, if the \$500 rent is paid timely the following month, but it must first be applied to this \$25 toilet plunging fee, the tenant has only actually paid \$475 rent, and is subject to eviction for non-payment of rent for failure to pay the full amount of monthly rent. Similar situations could occur where unreasonable late fees are said to accrue that have no bearing on the actual amount of rent charged by a landlord. A landlord may, for example, state in the lease that rent is due on the first of the month and for every day it is not received thereafter, a \$5 late fee shall apply. If a tenant is unable to pay until the end of a thirty-day month, he/she/they could be subject to \$725 of late fees. Following the same scenario as set forth above relating to a toilet plunging fee, this could result in a never-ending cycle of payment of rent, but the payment applied to unconscionable late fees, resulting in an ever-accumulating balance that is otherwise unaffordable. Unless such tenants have the ability to obtain legal representation to fight such practices, local courts in our service areas generally defer to landlord requests for fees and money damages, even if they are supposed to be considered unconscionable.
- **Notice Requirements.** Notice requirements for non-subsidized tenants exist in the Ohio Revised Code. Specifically, within the landlord tenant act, R.C. 5321.11 identifies when a landlord is required to provide a thirty-day notice where a tenant has failed to satisfy his/her/their obligations; R.C. 5321.17 permits termination of tenancies with applicable termination notices subject to the rental period; R.C. 4781.37 discusses notice requirements in mobile home park evictions, and R.C. 1923.04 sets forth the requirement of a three-day notice required to commence an action in forcible entry and detainer in Ohio. These could be supplemented with additional notice protections to renters in multifamily properties as well as mobile home parks.
 - **Section 8 HCV.** Where a renter utilizing a Section 8 HCV is facing termination by a landlord, and eligible for a moving voucher to be issued, the term of that voucher is initially sixty days. Requiring termination notices to coincide with the timeframe provided by HUD for a tenant to obtain an HCV to move could assist households in their search for new homes given the already difficult process of finding a landlord willing to accept the HCV in Southeastern Ohio.

¹⁴ <https://ohiohome.org/research/housingstock-hna.aspx>

¹⁵ <https://codes.ohio.gov/ohio-revised-code/section-5321.14>

- **No rent due where termination notice is issued.** Where a termination notice is issued to a tenant for something other than non-payment of rent, requiring a landlord to forfeit the next month's rent without repercussion resulting in an eviction action for nonpayment would allow tenants moving from their current homes to attempt to locate new housing adding to housing costs. Further, if a landlord has entered into an agreement knowing that it will forfeit the next month's rent when issuing a termination notice of the lease agreement, a landlord may be less inclined to issue termination notices so freely. It would not be illogical to see this result in fewer lease terminations and, subsequently, fewer evictions following lease terminations.
- **Mobile Home Parks.** In every situation where there is a change in ownership of a Mobile Home Park, a requested change in zoning, or a request to liquidate the assets of a Park and close it, notice must be issued to the residents within the park. This is already partially implemented by FHFA.¹⁶ In Ohio, "resident" within the context of a mobile home park means both tenants and owners of mobile homes.¹⁷ This should be combined with a right of first refusal for the residents to purchase the park from the existing owner and a funded program within FHFA's parameters to allow for residents to purchase the parks where triggering events like those mentioned above occur. We are seeing a growing problem within our service area where outside investors purchase mobile home parks and then immediately increase the lot rent for the homes in the parks. For many of our clients, this results in not only loss of housing, but loss of a home they own due to inability to afford the increased lot rents since there is no rent control in Ohio. Further, it usually results in abandoned mobile homes since either they are not in movable condition or they cannot afford the steep price tag to find a licensed mover that can move the mobile home off the park lot or the mobile home itself is not worth enough to justify spending the thousands of dollars to try to move it to a new location assuming the mobile home owner has identified a new location for the home.
- **Right to Counsel in Landlord Tenant Disputes.** Where landlords pursue eviction proceedings against tenants in FHFA-backed properties, FHFA should take all steps within its purview to ensure that those tenants have access to legal counsel. This is not an unprecedented request within federally backed programs. Continuum of Care Programs ("COC") are authorized to provide for supportive services pursuant to 24 CFR 578.53.¹⁸ One type of supportive service authorized for COC to provide are legal services "for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing." This also includes "landlord tenant disputes". Ensuring that tenants have access to legal services similar to those authorized for COC recipients would ensure funding for tenants to obtain legal counsel in landlord tenant disputes including eviction proceedings. Further, if a landlord knows that a tenant will be entitled to legal representation should the landlord pursue an eviction, it is not illogical to think that bad-actor landlords may be less inclined to bombard our local courts with meritless eviction filings.

¹⁶ 12 CFR 1282.33(c)(4)(viii).

¹⁷ <https://codes.ohio.gov/ohio-revised-code/section-4781.01>

¹⁸ <https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol3/xml/CFR-2017-title24-vol3-part578.xml#seqnum578.53>

- **Creation of Realistic Pathway to Homeownership for Tenants.** Given that the crux of housing stock in Southeastern Ohio are single-family homes, and the already-established program for Credit Building Through Rent Reporting offered by Fannie Mae and Freddie Mac, creation of a realistic pathway to homeownership for tenants who have successfully demonstrated consistent credit through rent reporting should be created. FHFA already has the programs in place to offer financing on homes for credit-eligible individuals, and the creation of a program to allow those in the rental market a way to homeownership would go a long way to assist stabilizing finances, stabilizing homes, stabilizing neighborhoods, and create generational wealth for tenants and their families. Moreover, this could be amplified by cooperation between various agencies like FHFA, HUD, various agencies administering the Community Reinvestment Act, and existing community land banks or land trusts. Where no land bank or land trust exists, FHFA-backed creation of one could assist with identifying homes eligible for tenants involved in this realistic pathway to homeownership to identify and work toward. Our clients often need small loans and are unable to afford high interest rates—utilization of existing, and creation of new, local CRA boards throughout Southeastern Ohio similar to the one in Akron, OH (the “Akron Summit Community Reinvestment Coalition, Inc.”) could be instrumental in ensuring housing stability in our area. This is consistent with the Enterprises’ requirement to “provide leadership in developing loan products and underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for the manufactured housing, affordable housing preservation, and rural housing markets.”¹⁹ The offering of additional products to Southeastern Ohio residents who have completed this homeownership tract to use for necessary home repairs would be critical in preserving affordable housing in Southeastern Ohio. Practically speaking, without sufficient support from an agency like FHFA, private banks providing mortgages or HELOC products to very low- and low-income applicants with less than desirable credit scores seems unlikely to occur.

In SEOLS’ jurisdiction, most locations lack tenant protections beyond what is set forth in the Ohio Landlord-Tenant Act. Some locales have taken steps to try to implement additional protections. For example, within Athens, OH, the United Athens County Tenants (“UACT”) has been successful in advocating for additional protections as well as highlighting defective housing conditions in Athens County.²⁰ UACT successfully advocated for a Source of Income protection.²¹ UACT was also instrumental in getting Pay to Stay legislation passed by the Athens City Council.²² Additionally, SEOLS has implemented TAP Clinics in several courts throughout our service area with successes in assisting those who are eligible.²³ These advocacy projects by our office have, where possible, represented eligible tenants but have otherwise sought to educate both tenants and the Courts in matters relating to the tenants within our service area. However, if SEOLS’ entire jurisdiction had the additional protections set forth above, it would serve to ensure housing stability for tenants and neighborhood stability within our rural counties. While landlords and landlord attorneys often resort to identifying the costs associated with tenant-related programs, with respect to right to counsel programs, studies have shown that the cost of providing an attorney

¹⁹ <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Multifamily-Tenant-Protections-RFI.pdf>

²⁰ <https://www.athenstenants.com/>

²¹ https://www.athensmessenger.com/news/athens-council-votes-to-ban-source-of-income-discrimination-against-tenants/article_50d933f3-1445-594d-9fd3-04509c6f83d9.html

²² <https://woub.org/2022/10/05/athens-city-council-again-passes-pay-to-stay-ordinance/>

²³ [https://www.athensmessenger.com/news/southeastern-ohio-legal-services-receives-funds-from-sisters-health-foundation/article_f921f468-088f-11ee-b090-fba54839c8f0.html]; [<https://www.co.fairfield.oh.us/pdf/Eviction-Clinic-2020.pdf>]

is far overshadowed by the savings by municipalities. The Right to Counsel Program in Cleveland, OH saved the City of Cleveland an estimated \$4.3 to \$4.7 million in annual costs healthcare, avoiding fostercare placements, safety net expenses, and preserved neighborhood residency within the City.²⁴ Thus, while it is unrealistic to think that programs such as a right to counsel will not cost anything, it is also unrealistic to dismiss them outright without attempting to determine the cost/benefit of exploring these programs as options for tenants within our service area.

Leases and Lease Terms

Virtually all federally backed housing programs have model lease agreements for landlords/property managers to use. Having model lease terms would assist housing providers as well as tenants by eliminating junk fees, incorporating tenant protections identified above, and set forth expectations of both tenants and landlords. Providing a model lease could also be able to exclude unreasonable terms that housing providers may have otherwise included in their standardized lease terms. When drafting model lease agreements, it would be beneficial for FHFA to have legal services attorneys at the table providing input based on their hands-on experience and expertise in this area of law. Often landlords will try to shield their bad behavior by pointing to specific lease terms that they have historically relied on. Terms such as allocation of rental payments designed to keep tenants in debt or endure never-ending late fee cycles or denying a tenant the right to a trial by jury where a landlord has otherwise forced tenants and families to live in substandard rental housing. Eliminating junk fees, incorporating tenant protections, and preventing a landlord from contracting away a tenant's rights would empower tenants and level the playing field between tenants and housing providers.

Evictions

In addition to what has been set forth above that could prevent or reduce the need for evictions in FHFA-backed properties, instituting two additional policies could assist with eviction prevention or reduction: (1) Right to Cure a Nonpayment Notice to Vacate and (2) Additional Time to Vacate Following an Eviction Decision.

For the Right to Cure a Nonpayment Notice to Vacate, we recommend retaining and reinforcing the requirement of at least thirty-days being provided to tenants in nonpayment situations allowing a tenant in FHFA property who has fallen behind in rent to pay past-due rent and avoid an eviction action being filed with the local court. Further, payment of this past-due amount must be accepted by the landlord from any source—whether from the tenant directly, local charities, or an agency administering an emergency rental assistance program. Incorporated into these leases already should be language to curb any junk fees that may be attempted to assessed by the landlord so that the amount of rent payment need to cure the past-due deficient is reasonable and consistent with the terms of the lease—not compounded exponentially by additional junk fees imposed by the landlord to either intentionally or unintentionally prevent the tenant from availing him/her/itself of this right to cure to avoid the eviction proceedings. Landlords should not be permitted to refuse full payment regardless of the source of that payment. Adding additional language to be incorporated into notices is not an extraordinary suggestion as other subsidized providers already do this in their notices.²⁵ Although the CARES Act notice is applicable within our jurisdiction, there is disagreement between landlords and tenants whether or not this notice requirement continues to exist following the lessening of the COVID-19 Pandemic. SEOLS' Senior Attorney

²⁴ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction-prevention-reform/>

²⁵ <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2021-29.pdf>

Peggy Lee was involved in an appeal currently pending before the Ohio Tenth District Court of Appeals. See *Olentangy Commons Owner LLC v. Fawley*, Tenth Dist. No. 22-AP-293.

It seems like an approach allowing tenants to pay to avoid an eviction filing would be beneficial to both landlords and tenants as tenants are afforded an opportunity to forego an eviction and be uprooted from their home, and landlords are made whole through monetary payment. Further, making it official FHFA policy would allow for more consistency in tenant protections regardless of where one lives.

Additionally, some Ohio municipalities have also implemented pay to stay ordinances which allow for affirmative defenses to be raised once an eviction has been filed. In this context, the tenant can avoid an eviction action if he/she/they are able to pay the past-due balance and possibly other fees, like late fees, court costs, etc. Only a few municipalities have pay to stay ordinances in place in SEOLS' service area.²⁶

Further, for providing Additional Time to Vacate Following an Eviction Decision, we recommend providing tenants with thirty days' time to vacate, or until the end of the calendar month in which the eviction decision was rendered, following an eviction judgment against a tenant. In Ohio, for most landlord-tenant cases, once a decision is rendered in favor of the landlord, the tenant can be forcibly removed from the property within ten days, although some courts force people to be set-out with as little time as same day or within 24 hours.²⁷ Given the already stressed housing market, and the impact that an eviction record can have on your ability to locate new housing, ten days is hardly sufficient to locate, apply for, obtain keys to, and move into new housing.²⁸ While allowing additional time to vacate will not remove the eviction record itself, it will provide some breathing room for the tenant when searching for new housing and uprooting his/her/their family. No local municipality in our service area has implemented allowing additional time for a tenant to vacate following an eviction decision in favor of the landlord as Ohio law dictates that this must occur within ten days. However, because Ohio law states that this must occur within 10 days, we have courts within our jurisdiction who have been known to order a set out to occur the very same or next day after a decision has been rendered in favor of the landlord.

Programs and policies

In addition to the foregoing identified tenant protections, through the hard work of SEOLS attorneys like Caitlyn McDaniel, we have been able to establish three Tenant Advocacy Project locations within our jurisdiction—Fairfield County, Athens, OH, and Marietta, OH. While we do not yet have data from the Athens TAP or the Marietta TAP, in the Fairfield County TAP, as of August 2022, we handled 402 cases during the height of the COVID-19 pandemic. During these TAP clinics, our attorneys provide general legal information, brief counsel and advice, or, where appropriate, full representation in court proceedings.

²⁶

<https://static1.squarespace.com/static/55dcbb61e4b04de53492b533/t/62ba505d1012732b0e581b4a/1656377448026/COHHIO+-+P2S+Tech+Guide+2.0+%281%29.pdf>

²⁷ <https://codes.ohio.gov/ohio-revised-code/section-1923.14>

²⁸ E.g. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am.J.Soc. 88, 118 (2012) (stating, "I have even met a landlord who goes so far as to reject applicants with dismissed evictions on their record, saying, simply, 'You know something happened, and I just don't want the headache.' Not surprisingly, then, many evicted tenants look for months without securing a place to stay, their homelessness manifest in nights spent in shelters and on friends', relatives', or strangers' floors or, sometimes, the street.") (available online at <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>).

In Fairfield County, the local community action agency administered emergency financial assistance totaling over \$6 million to assist our friends and neighbors who had fallen behind in rent, utilities, and mortgages. In the first round of emergency rental assistance funding (called “ERA1”), over 3500 individuals were served. There is a continuing need for emergency rental assistance in Fairfield County and throughout our service area. Difficulties that tenants in Fairfield County often encountered were: (1) landlords refusing to accept rental assistance; (2) lack of reliable, highspeed internet access; (3) lack of reliable transportation to court; (4) lack of reliable cell phone service; and (5) lack of availability of affordable housing and emergency shelters.

Actions that owners and managers can take to reduce evictions

Owners and managers of multifamily properties can reduce evictions and improve housing stability of tenants by, first and foremost, recognizing the trauma that evictions inflict onto families and treating evictions as a last resort rather than a tool for tenant compliance.

Specifically, owners and managers should take the following actions:

- Offer reasonable payment plans
- Allow for hardship designations to postpone payments
- Assist tenants to the best of their ability to obtain emergency rental assistance

In addition to the foregoing eviction prevention solutions, where an event has occurred in the tenant’s life causing him/her/them to fall behind in payments, engaging in meaningful conversations rather than avoiding contact or simply deflecting to some scripted answer could go a long way in assisting tenants to stay in their homes. One significant improvement could be to allow reasonable payment plans consistent with what the tenant is able to afford. If a tenant has fallen behind in \$500 per month rent due to loss of employment, obtaining unemployment or new employment is not likely to occur within a few days. It will take some time. Allowing payments to be structured over certain timeframes based on the amount (e.g. \$500 or less over 6 months, \$501 to \$1000 over 12 months, etc.) provides for those amounts to be considered additional rent, allows for everyone to be on the same page, and creates some stability so the individual would know they can be housed for at least that duration while they try to better their situation.

During this same time, the housing provider could implement hardship provisions into the lease and use them for eligible tenants. In my experience with certain Public Housing Authorities, although hardship provisions may be in their policy manual for tenants in those properties, PHA employees are reluctant to use them or even inform tenants that these policies exist unless confronted by legal services attorneys. Where a tenant has fallen behind because of some life event—loss of employment, medical issues, etc.—implementing a hardship policy whereby that individual could enter into a repayment plan, but defer payments on those past-due amounts as well as amounts that accumulate during the hardship period, could go a long way in enabling tenants to stabilize housing while everything else is being rebuilt.

For example, a tenant has lost her job and cannot afford the \$500 per month rental. Tenant has applied for a hardship designation for three months. During these three months, the \$500 per month accrues without late fees, but does not become due until the fourth month. In month four, the tenant enters into a repayment plan for \$1500 to be spread over 18 months and resumes her \$500 per month payment in month four. The tenant knows that her housing is secure for at least the next 18 months so long as she makes her \$584 payment each month (\$500 + \$84 for past due balances). Should a tenant move out prior to this 18-month period, she must pay the past-due balance or be referred to collections. Should the tenant miss a payment, she would be subject to an eviction action.

Finally, owners, managers, and tenants all equally benefit from receiving emergency rental assistance when and where it is available. Ohio has been allocated over \$700 million in emergency rental assistance.²⁹ While some state agencies were more successful than others in distributing these funds resulting in some funds being reallocated across the state, the impact of emergency rental assistance during the pandemic cannot be understated. Nationwide, approximately 7 million payments were made to make landlords whole.³⁰ “The Emergency Rental Assistance Program along with the federal eviction moratorium formed the most important federal housing policy in the last decade. These combined initiatives were the deepest investment in low-income renters the federal government has made since the nation launched its public housing system. This was a real win, the most important eviction prevention policy in American history.”³¹

FHFA has an important opportunity to help establish the foundation for a minimum federal floor of tenant protections, and we urge FHFA to act boldly. Within rural Southeastern Ohio, affordable housing stock is limited with developers seeking to construct high-dollar developments³² while Southeastern Ohio has the most mobile homes in the entire state. Establishing minimum tenant protections for existing and new FHFA-backed products will also establish minimum requirements of equity, fairness, and justice within these landlord-tenant relationships for generations to come.

Sincerely,


Ryan W. Maxwell
Senior Attorney
SEOLS Housing Team Chair

²⁹https://docs.google.com/spreadsheets/d/1RnHX7Ld7KJ_jgj8Sk52xjCygYRETWU-OthOGE3uduHM/edit#gid=2111462596

³⁰ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction-prevention-reform/>

³¹ Matthew Desmond. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction-prevention-reform/>

³² <https://www.timesreporter.com/story/news/local/2023/06/06/new-housing-development-planned-for-north-end-of-dover/70292230007/>

<https://www.cleveland.com/nation/2022/06/ohio-families-mourn-loss-of-homes-to-make-way-for-new-intel-plant.html>