



# **Eviction Protections for Renters: Does Indiana Make the Grade?**

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## Introduction

At its 2022 Midyear Meeting, the American Bar Association's House of Delegates adopted a resolution establishing [\*Ten Guidelines for Residential Eviction Laws\*](#).<sup>1</sup> The resolution urges state, local, and other governing bodies to implement the guidelines. They recommend steps to limit the toll that eviction judgments take on families by encouraging negotiated settlements, by ensuring fairness in eviction hearings, by limiting evictions in cases where renters are in compliance with their lease obligations or are able to quickly resolve any non-compliance, and by sealing court records in appropriate cases so that families are not prevented from renting new homes. This report, prepared by students and faculty members in Notre Dame Law School's Eviction Clinic, examines how well Indiana's eviction laws measure up to the ABA guidelines. This report was commissioned by the [Indiana Justice Project](#) as a part of the [Housing Equity for Infant Health Initiative](#). The lead partner in this initiative is the [Grassroots Maternal Child Health Initiative](#), located at Indiana University, Indianapolis.

Indiana has taken some constructive steps over the past few years to assist renters facing eviction. For example, Indiana funded emergency rental assistance programs during the pandemic. The Indiana Supreme Court developed a voluntary pre-eviction diversion program and directed eviction courts to make parties aware of its existence. And the Indiana Bar Foundation is placing self-help kiosks in courthouses across the state to assist unrepresented litigants in filing cases and claims.

Those laudable steps do not significantly change the harsh reality of Indiana eviction laws. While Indiana meets a few of the ABA guidelines, it falls short on most. Indiana renters may be evicted from their homes with little notice and without having violated their leases. Renters are rarely represented by attorneys. They are required to defend themselves in unfamiliar courtrooms, often against attorneys representing landlords, without a knowledge of the law or an opportunity to know in advance what the landlord may argue. Eviction hearings are quick affairs with limited opportunities for renters to present a defense. Even when renters are able to avoid an eviction judgment, court records are not automatically sealed; the mere fact of having faced an eviction complaint may prevent the renter from passing screening for future apartments.

This report sets forth the ABA guidelines along with excerpts from the ABA's explanatory comments, and then briefly discusses how Indiana law measures up to each guideline. This report is intended to assist legislators, policy makers, and judges consider how Indiana statutes and court rules might be refined to provide greater fairness and housing stability to Indiana renters.

# Guideline

## 1

**Tenants should receive reasonable notice and an opportunity to cure before facing eviction for a lease violation.**

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ABA COMMENTARY (Excerpts): Under the residential landlord-tenant laws of most U.S. states, a landlord may not terminate a tenancy for a failure to pay rent or other ordinary lease violation without first giving notice of the breach and providing an opportunity to correct the problem before terminating the tenancy. Ensuring that tenants have a chance to cure minor lease violations rather than lose their housing over them promotes security of tenure, a key component of the right to housing as the ABA has long recognized and supported.

### How Indiana Measures Up

Indiana does not assure renters the opportunity to be notified of alleged lease violations or an opportunity to cure them before being evicted. Indiana law provides no right to notice or an opportunity to cure for alleged non-financial lease violations. In the case of alleged failures to pay rent, landlords may in some cases provide a notice with an opportunity to bring rent current within ten days.<sup>2</sup> The law contains many exceptions to that ten-day notice requirement, however.<sup>3</sup> Most significantly, if a lease provides that rent is “payable in advance”-- a common provision in Indiana -- then a landlord may file an eviction case without any advance notice to the renter.<sup>4</sup>



# Guideline

## 2

### **An eviction court should have emergency procedures for tenants who are locked out or otherwise extrajudicially evicted from their homes.**

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ABA COMMENTARY (Excerpts): Substantially all states prohibit extrajudicial “self-help” eviction (often referred to as “lockouts”), which includes various methods of excluding or driving a tenant out of possession such as changing the door locks, terminating essential utility services, threatening physical violence, and other such tactics. Most states provide significant statutory remedies that impose liability and damages on landlords who resort to self-help evictions, as well attorney fees to incentivize lawyers to take lockout cases. Some states even impose criminal liability for extrajudicial lockouts. All states should have strong substantive remedies such as these to deter lockouts and enable tenants who experience lockouts to recover just compensation. But equally important are fast and reliable procedures tenants can use to regain possession when an illegal lockout occurs. [ ]

#### **How Indiana Measures Up**

Indiana does have an emergency procedure available to renters who are victims of self-help lockouts by landlords. Renters may file a petition for an emergency possessory order and receive a court hearing within three business days.<sup>5</sup> At the conclusion of that hearing, the court may order the landlord to immediately restore possession of the property to the renter.<sup>6</sup> The statute does not authorize a court to award attorneys fees to the renter or to otherwise impose a financial penalty on the landlord.



# Guideline

## 3

**No tenant should be evicted without a meaningful opportunity to present proofs and arguments in a hearing and before a trained judicial officer that has the authority to consider any legal or equitable defense.**

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ABA COMMENTARY: The right to be heard is fundamental to our system of justice. Some states, however, continue to “treat[] the undertakings of the tenant and those of the landlord as independent rather than dependent covenants,” an archaic practice of treating a landlord’s violation of the lease, landlord-tenant law, or other tenant protection such as an anti-discrimination law as not necessarily supplying a defense to eviction. In such jurisdictions, a tenant evicted for an unlawful reason such as discrimination, or in violation of a building code or common law rule, may only bring a separate lawsuit for damages. This practice occurs in considerable tension with the core constitutional premise that “[d]ue process requires that there be an opportunity to present every available defense.” [ ]

### How Indiana Measures Up

Indiana does not meet this guideline in practice. While Indiana eviction cases are heard by trained judicial officers -- typically in a small claims court -- the hearings are normally abbreviated, occur on short notice, and may limit the defenses that a renter can present. Indiana law authorizes courts to issue eviction orders in “preliminary” hearings commonly known as “immediate possession” hearings.<sup>7</sup> Those hearings are held within a few weeks of the filing of an eviction complaint. They are quick affairs that commonly last 15 minutes or less. Renters are rarely represented by counsel. They often do not have advance notice of the arguments that the landlord will make or the evidence the landlord will present, as discussed below under Guideline 4. The issues are typically limited to matters bearing directly on the right of possession, such as whether a renter is behind on rent or whether the landlord is engaging in a retaliatory eviction. Issues relating to the habitability of apartments and other statutory or lease violations by the landlord are often not considered as defenses at these hearings.<sup>8</sup> Courts set a later date for a full evidentiary hearing, commonly referred to as a “damages” hearing, at which an immediate possession order may be reconsidered, all other issues can be explored, and a final judgment can be entered.<sup>9</sup>

Despite the preliminary nature of immediate possession hearings, courts regularly issue binding eviction orders at those hearings. Courts can reconsider those orders and reverse them after the later, full evidentiary hearing, but renters are required to post a bond in order to retain the right to stay in their homes pending the full evidentiary hearing.<sup>10</sup> Moreover, renters who have received an eviction order at an immediate possession hearing are often required to move out before the full evidentiary hearing. The full evidentiary hearing is therefore not a practical remedy to the shortcomings of the immediate possession hearing.

# Guideline

## 4

### **A tenant should have an adequate opportunity to prepare for an eviction hearing, including by conducting civil discovery.**

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ABA COMMENTARY (Excerpts): Eviction hearings are high stakes legal proceedings and tenants should have access to the basic facts and evidence that underlie a landlord’s claims, as well as the opportunity to gather evidence and present affirmative defenses. . . . Even simply verifying the amount of a landlord’s charges and a tenant’s payments is an important aspect of tenant representation in the eviction context. Effectively verifying the facts in an eviction case and preparing defenses often requires judicial discovery procedures, which are insufficient or nonexistent in many jurisdictions.

#### **How Indiana Measures Up**

Indiana law does not assure renters an adequate opportunity to prepare for eviction hearings. Landlords are not required to provide renters with any documentation or evidence in advance of immediate possession hearings. Renters often see landlords’ evidence for the first time during the hearing and must respond to it on the spot, without an opportunity to recess and consider it carefully, or to have it reviewed by an attorney or other knowledgeable person. Renters are rarely represented by attorneys, which further limits their ability to respond effectively to landlords’ evidence. Moreover, immediate possession hearings occur soon after the filing of an eviction complaint. The prospect of an imminent eviction order requires renters to focus on finding another home before the hearing, which further limits their ability to prepare.

Indiana law allows renters to request discovery, but only under very limited circumstances. Renters without attorneys are unlikely to know of this opportunity or to have the wherewithal to take advantage of it. Rule 6 of the Indiana Small Claims Rules states that discovery may be conducted “only upon the approval of the court” and “only upon notice and good cause shown.”<sup>11</sup> Local court rules in some counties may add additional procedural requirements. St. Joseph County’s local rules, for example, require renters to file a written motion for discovery and attach a copy of the discovery that they are seeking.<sup>12</sup>



# Guideline

## 5

### **Courts should require landlords and tenants to participate in pre-litigation diversion programs focused on maintaining housing stability.**

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ABA COMMENTARY: Eviction diversion programs are a form of alternative dispute resolution specific to residential eviction cases that typically connect landlords and tenants with rental assistance providers and sometimes other social services. Eviction diversion aims to enable the parties to negotiate a resolution that resolves the rent arrearage and allows the tenancy to continue, or at least enables the tenant to transition into suitable new housing rather than face judicial eviction. The best programs divert cases to negotiations before court filings, which enables the tenant to avoid an electronic eviction record (which makes finding new housing difficult and thereby complicates settlement options), connect tenants with additional social services as needed, and measure outcomes based on success at keeping tenants stably housed.

#### **How Indiana Measures Up**

Indiana has an eviction diversion program, but it is not mandatory and it is not a pre-litigation program. The Indiana Supreme Court established a pre-eviction diversion program effective November 1, 2021.<sup>13</sup> The Supreme Court's order requires courts hearing eviction cases to inform parties of the availability of a pre-eviction diversion process. Under that process, an eviction case may be stayed for up to ninety days while the parties seek a resolution of the case by taking advantage of resources such as mediation and emergency rental assistance funds. The General Assembly passed a law in 2022 to provide that the program must be strictly voluntary, however.<sup>14</sup> Courts are prohibited from requiring landlords to participate in the program, which greatly diminishes its effectiveness. Moreover, the program begins only after an eviction case is filed in court, meaning that even while a landlord and renter are seeking a settlement, other prospective landlords will be able to see that the renter has an eviction filing on their record, limiting the renter's ability to find a new home.



# Guideline

## 6

**No tenant should face eviction without access to full, quality representation by an attorney.**

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ABA COMMENTARY (Excerpts): Right to counsel in eviction proceedings for tenants who cannot afford an attorney is well-established American Bar Association policy to protect the basic human need for shelter. Eviction defense is a complicated and increasingly high stakes area of legal practice. Many of the most effective defenses are highly-technical and require detailed knowledge of state and local landlord-tenant laws and court procedures. Fair housing arguments are likewise a key component of any eviction defense advocate’s arsenal, along with various consumer laws, habitability codes, equitable doctrines, and local caselaw. For tenants participating in subsidized housing programs or invoking protections related to COVID-19 or other emergencies, the complexity level is even greater—as are the stakes. Expecting tenants to effectively defend themselves in such a judicial proceeding is not realistic, and even limited-service legal clinics where tenants may receive advice or brief services on a case or representation on the day of the hearing tends to be inadequate, as many tenant defenses require advance investigation and preparation.

### How Indiana Measures Up

Several other states and local governments now guarantee the right to counsel in eviction cases. Indiana does not do so. Neither the state nor any local government has established a program requiring representation for renters. A recent legislative proposal to provide appointed counsel for renters facing eviction in Marion County did not make it out of committee.<sup>15</sup> Low income legal aid organizations and law school clinics that provide legal assistance to renters are able to serve only a small fraction of those facing eviction.



# Guideline

## 7

**A tenant facing eviction for nonpayment of rent should have the right to redeem the tenancy by paying off a judgment at any time before an eviction judgment.**

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ABA COMMENTARY: State laws differ widely on the timelines and circumstances under which a tenant who has been sued for eviction based on nonpayment of rent can pay off the full amount owed to the landlord and thereby preserve the housing. Some states allow tenants to make such payments up until the eviction lawsuit is filed, or until a particular trial phase, until a judgment or within so many days after a judgment is entered, others until a physical eviction occurs—while others do not provide such a right of redemption at all. A right of redemption also serves public policy more generally by increasing housing stability. Allowing tenants to redeem a tenancy imposes no hardship on a landlord, who is made whole by the tenant’s payment of all amounts owed.

### How Indiana Measures Up

Indiana does not meet this standard. In Indiana law, there is no general right to redeem a tenancy. As noted above under Guideline 1, Indiana law allows renters to cure a rent deficiency only before an eviction action is filed and then only if they are provided with a ten-day notice from their landlord inviting them to cure the deficiency, which does not occur in many cases.



# Guideline 8

## **A tenant should have the right to appeal an eviction judgment and without unreasonable bond requirements.**

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ABA COMMENTARY: Tenants should have the opportunity to appeal legal errors that occur in their cases the same as any other litigant. While substantially all states provide a right of appeal from eviction judgments, often tenants cannot practically exercise that right because of poorly-conceived bond requirements. If a tenant will continue living at rental premises during the appeal, a bond equal to the monthly rent, and due at the usual time, protects the landlord's interests during the appeal. Some states require tenants to post amounts incurred prior to the entry of the judgment, which does not protect the landlord against further harm but effectively makes the bond into a collection instrument for the landlord and forces the tenant to pay an amount to the court that is often in dispute in the underlying case. Some states make posting a bond a condition of maintaining the appeal even if the tenant is no longer living in the premises. A tenant who does not occupy the property during the appeal should have the right to have the appeal heard and decided without posting a bond. This right is especially important for subsidized housing tenants or others with a special interest in appealing eviction from specific premises.

### **How Indiana Measures Up**

While Indiana does allow renters to appeal eviction judgments without some of the unreasonable bond requirements described in the ABA comment, such appeals are rare. Renters who have an eviction order entered against them may stay in their units pending appeal only if they post a bond in an amount set by the trial court.<sup>16</sup> Many renters cannot afford to post a bond in addition to paying their ongoing rent, even if they were somehow able to navigate the appeals process. Renters who have already moved out of their units may appeal their eviction judgment without posting a bond.<sup>17</sup> Such renters have little incentive to go through the lengthy and difficult appeal process, however, because they have already been forced to find a new home. Moreover, since the vast majority of renters are not represented by attorneys, they are poorly equipped to undertake such a complex and lengthy process on their own.



# Guideline 9

## **Lease termination, including non-renewal, should be limited to circumstances where good cause exists.**

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ABA COMMENTARY: A tenant who occupies a rental home under a term lease may not lawfully be evicted absent good cause—which usually means a serious or repeated violation of material terms of the lease. But for periodic (e.g., month-to-month) tenancies or expiring term leases, only a minority of jurisdictions require any valid reason be given for terminating or for declining to renew the tenancy. When such good cause requirements are absent, tenants and their families lack basic security of tenure. Forcing a household to relocate imposes significant disruption and potential hardship on the tenant, and should not be allowed without a legitimate reason. Allowing eviction without cause invites abuse, enabling a discriminatory, retaliatory, or otherwise illegitimate motive for ending a tenancy to be easily concealed behind a “no cause” eviction. Jurisdictions which do require good cause for ending a tenancy recognize and allow non-renewal or termination for a range of permissible reasons other than tenant lease violations, such as a landlord’s intent to sell, substantially rehabilitate, or change the use of the property or to move in a family member. Good cause does not prevent a landlord from increasing the rent or otherwise changing the terms of the lease.

### **How Indiana Measures Up**

Indiana law does not provide “good cause” protection to renters on month-to-month or expiring term leases. Such renters may be evicted without cause on as little notice as 30 days.



# Guideline 10

**A court that hears eviction cases should automatically seal the names of defendants before a final judgment and in dismissed cases, and courts should have practical procedures for sealing or otherwise protecting the privacy of defendants where other good cause exists.**

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ABA COMMENTARY: Several jurisdictions have enabled the sealing of eviction records, in recognition that being associated with an existing eviction court record can devastate a person’s ability to obtain rental housing in the future. Even when an eviction case is dismissed, the mere record of the case filing – whether in public record or on a credit report – often results in denial of a rental housing application. Many landlords automatically decline rental housing to applicants with records of being sued for eviction— even if the cases were dismissed or otherwise resolved in favor of the tenant—and substantially all landlords treat such applicants less favorably. This practice incentivizes tenants to move out before an eviction case is filed, even when tenants have meritorious defenses—a dynamic that undermines the fundamental legitimacy of the judicial forum. A tenant’s inability to secure new rental housing with an eviction case record can also complicate settlement efforts. Because a disproportionate number of eviction filings are levied against Black tenants, the barrier created by an eviction case filing has a disproportionate effect on Black women. Courts have begun to mitigate these problems by establishing procedures for eviction defendants to seal their names, so as to avoid being denied housing or other long-term consequences because of a filed case. The efficacy of this approach is limited where the records are not sealed until after they are released to the public, hence where permissible under state open court rules eviction cases should be filed under seal and remain sealed unless and until the landlord prevails in a final judgment. Post-judgement sealing should be available when tenants can demonstrate good cause such as when the petitioner is a survivor of domestic or sexual violence and the eviction stems from that violence.

## **How Indiana Measures Up**

Indiana recently took a significant step toward meeting this guideline by adopting a law allowing records of eviction cases to be sealed if a case is dismissed, if the renter prevails, or if a court of appeals overturns an eviction judgment against the renter.<sup>18</sup> The law falls short of the ABA guideline in three respects, however. First, records are not sealed until after a judgment is entered disposing of the case. The filing of an eviction case is visible to the public until a judgment is entered. Thus, even if a case is ultimately decided in favor of a renter, a landlord or an apartment screening service will have been able to see the existence of the eviction case at precisely the time when the renter most needs this protection -- when the renter may have been seeking a new home. Second, records are not sealed automatically. The statute provides for sealing records “upon motion by the tenant.”<sup>19</sup> A self-represented renter who may not know that their record can be sealed, or how to accomplish that, may have the eviction case on their electronic record in perpetuity, even though they were entitled to have it sealed. Finally, Indiana’s new law does not allow a renter who has received an adverse eviction judgment to request that the judgment be

sealed for “good cause.” Rather, such a renter must file a request under Indiana’s Rules on Access to Court Records, which requires a litigant to show “extraordinary circumstances” and provide “compelling evidence” in a hearing to overcome the presumption that the court records should be public.<sup>20</sup>

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<sup>1</sup> [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/sclaid-task-force-on-eviction--housing-stability--and-equity/guidelines-eviction/](https://www.americanbar.org/groups/legal_aid_indigent_defense/sclaid-task-force-on-eviction--housing-stability--and-equity/guidelines-eviction/)

<sup>2</sup> Indiana Code § 32-31-1-7

<sup>3</sup> Indiana Code § 32-31-1-8

<sup>4</sup> Indiana Code § 32-31-1-8(5)

<sup>5</sup> Indiana Code § 32-31-6-3, 32-31-6-5

<sup>6</sup> Indiana Code § 32-31-6-6

<sup>7</sup> Indiana Code § 32-30-3-5

<sup>8</sup> See Florence Wagman Roisman, *Indiana Landlord-Tenant Law: An Important Step Forward in Theory Needs To Be Made Real In Practice* 53 INDIANA L. REV. 317, 325-326 (2020).

<sup>9</sup> Indiana Code § 32-30-3-12. See, for example, Marion County Local Rule LR49-SC00-406.

<https://www.in.gov/courts/files/marion-local-rules.pdf>

<sup>10</sup> Indiana Code § 32-30-3-8

<sup>11</sup> Indiana Rules of Court Small Claims, Rule 6,

[https://www.in.gov/courts/rules/small\\_claims/small\\_claims.pdf](https://www.in.gov/courts/rules/small_claims/small_claims.pdf)

<sup>12</sup> Local Rules for St. Joseph County (2022), Rule LR71-SC6-505.

<https://www.in.gov/courts/files/st.joseph-local-rules.pdf>

<sup>13</sup> *Order Establishing Pre-Eviction Diversion Program*, <https://www.in.gov/courts/files/order-other-2021-21S-MS-422a.pdf>; *Order Amending Pre-Eviction Diversion Program*,

<https://www.in.gov/courts/files/order-other-2022-22S-MS-308.pdf>

<sup>14</sup> Indiana Code § 32-31-10-5

<sup>15</sup> <https://legiscan.com/IN/bill/SB0350/2021>

<sup>16</sup> Indiana Rules of Appellate Procedure, Rule 18

<sup>17</sup> *Id.*

<sup>18</sup> Indiana Code § 32-31-11-3

<sup>19</sup> Indiana Code § 32-31-11-3(a)

<sup>20</sup> Indiana Rules of Court, Rules on Access to Court Records, Rule 6,

[https://www.in.gov/courts/rules/records/index.html#\\_Toc81319920](https://www.in.gov/courts/rules/records/index.html#_Toc81319920)