



Is a Housing Crisis Lurking?

The state of the state's plans to prevent a tsunami of evictions and avoid a homelessness crisis

BY COLIN RIGLEY

For the past few weeks I've been obsessing over numbers. Obsessing because, frankly, they scare the hell out of me.

These numbers portend a crisis so unprecedentedly massive it's unfathomable. When you listen to people who are most closely involved with this crisis, there's an undercurrent of anxiety—bafflement at the task ahead and the consequences of failure. In conversations among legal aid officials, service providers, and courts, there's a phrase repeated so often it's become cliché—shorthand for the disaster so many want so desperately to prevent: a *tsunami* of evictions.

Once COVID-19 began evaporating large segments of the job market, it was easy to predict what would flow from there: lockdowns would lead to lost income would lead to unpaid rent would lead to evictions en masse.

This eviction/homelessness crisis would

be upon us if not for the key stopgap measure that has kept the tsunami from making landfall in Washington so far: Last March, Gov. Jay Inslee issued a moratorium on evictions for nonpayment of rent. The order was set to last for a month but has since been extended five times, most recently from Dec. 31, 2020, to the end of March. Similar moratoriums have been enacted at the local level and federally. Generally speaking, March 31 remains the looming expiration date plaguing the thoughts of many indebted tenants and cash-strapped landlords.

Eviction moratoriums, of course, haven't solved the underlying societal problem, but they do buy some time. Meanwhile, tenant debt keeps growing and landlord expenses are pushing many to the brink. Tenants who fall behind in rent typically have already cut back on every other expense; barring a miraculous new income source they will continue to struggle to make monthly payments, let alone repay the thousands of dollars of back rent accrued.

In Washington, there are a few plans in motion and arterial spurts of funding to help both tenants and landlords, but the sheer volume of the need is already stressing the limits of our systems—and there is so much more to come.

THE SIZE OF THE WAVE AND WHO IS IN ITS PATH

There are two crucial things to understand about this crisis: the near-impossible size of it and who is most at risk—people of color and tenants without legal representation.

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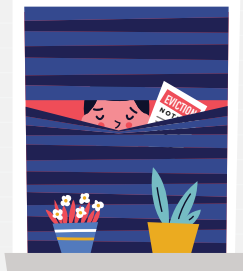
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“Hands down, eviction is a civil rights issue, and you can quote me on that,” said Tim Thomas, a postdoctoral scholar at the University of California, Berkley Urban Displacement Project and a co-author on the 2019 study “The State of Evictions: Results from the University of Washington Evictions Project.”

That study uncovered a “huge racial disparity of Black adults who faced eviction filings.” For example, Black adults were evicted 5.5 times more than white adults in King County and 6.8 times more in Pierce County. Latinx adults were 1.9 and 1.4 times more likely to be evicted in King and Pierce Counties, respectively.

Tenants who had legal representation were twice as likely to stay housed as compared with pro se defendants, but less than 10 percent of tenants had a lawyer.



It further revealed that about half of unlawful detainer cases ended in default judgments. Tenants who had legal representation were twice as likely to stay housed as compared with pro se defendants, but less than 10 percent of tenants had a lawyer. Comparatively, about 90 percent of landlords had legal representation, according to other facts presented to the Washington State Minority and Justice Commission earlier this year.¹

Without drastic intervention, we can predict that at-risk tenants will be broke, too frightened or overwhelmed to defend themselves in court, and disproportionately people of color. Only a fraction will have a lawyer and about half the cases will result in default judgments for landlords, who are much more likely to be better prepared and represented.

“Unfortunately I feel alone,” a Latinx woman facing eviction told the state Senate Committee on Housing & Local Government in January, repeating a similar story of lost work and fears of homelessness as about a half-dozen others who testified. “I feel like I can’t go on anymore. I need you to listen to my voice and show compassion for me.”

And there are likely tens of thousands of similar stories just in Washington.

The U.S. Census Bureau’s Household Pulse Survey—a weekly

nationwide survey that last April began collecting information on COVID-19-related needs—estimates that about one-quarter of Washingtonians are at risk of eviction or foreclosure, based on a six-month average.² The number of Washingtonians behind on rent has ranged widely, from a low of about 100,000 in late May 2020 to a high of nearly 263,000 in mid-July 2020, while trending upward over the past year.

The National Council of State Housing Agencies’ “Analysis of Current and Expected Rental Shortfall and Potential Evictions in the U.S.”³ estimated that total unpaid rent nationwide was \$34.3 billion as of January. Had the eviction moratorium not been extended, the report predicted 170,000 eviction filings in Washington in January.

It’s possible to gloss over that number without realizing its truly cataclysmic implications: 170,000 evictions is nearly the total of all evictions filed in the state over a 10-year period. One hundred seventy thousand evictions could result in nearly eight times the number of Washingtonians experiencing homelessness than were counted in 2019.⁴ It would be as if every resident of Edmonds, Olympia, Walla Walla, and Wenatchee suddenly needed new shelter—plus about 4,000 other people.⁵

Requests for rental assistance to Washington 2-1-1—a statewide hotline connecting people to local assistance—nearly tripled in 2020 compared to 2019.⁶ The Washington State Department of Commerce estimates that the combined unpaid rent across the state is \$151 million per month,⁷ which is only slightly less than the total rental assistance funding the state received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act last year: \$166 million for about 37,000 households.

More CARES Act rental assistance is set to become available this month, a total of \$510 million, of which \$185 million will go directly to the cities of Seattle and Spokane, as well as to Benton, Clark, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima Counties, according to a department spokesperson. Inslee’s 2021-23 biennial budget includes \$164 million from the state coffers to help with rent-

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al assistance, and on Feb. 11 he announced another \$43.5 million to serve as a bridge until federal funds can be spent.

Still, the Commerce Department has concluded that the “need continues to outweigh available resources for rental assistance.” And when rental assistance has become available, it has disappeared quickly.

Last year, King County had to implement a lottery system to dole out its \$41 million for distressed households. The county processed applications for about one-third of 25,000 requests and stopped accepting new applications on Dec. 4. Approximately 40 percent of the eligible tenants who applied were Black and roughly 20 percent were Latinx.⁸

So what’s the plan for when the eviction moratorium ends?

TRIAGE

COVID-19 began wreaking havoc on Washington courts even before a tsunami of unlawful detainer filings began building. With a series of orders beginning in March 2020, the Washington Supreme Court suspended most civil and criminal cases throughout the state, revamped its own operations, and organized a number of work groups to plan for the mounting backlog of cases.

Last summer, then-Washington Supreme Court Chief Justice Debra Stephens, in a letter to the Superior Court Judges Association, requested a plan for a “court-house based unlawful detainer early resolution process.”⁹ Soon after, an Unlawful Detainer Work Group comprised of landlord and tenant representatives, judges, legal aid advocates, and nonprofit dispute resolution providers developed a proposal for an Evic-

tion Resolution Program, which would launch in six pilot counties—Clark, King, Pierce, Snohomish, Spokane, and Thurston—that account for about 80 percent of evictions in the state. The Supreme Court authorized the program on Sept. 9, 2020.

The Eviction Resolution Program is intended to divert eviction cases from courts and utilize a network of Dispute Resolution Centers (DRCs) and civil legal aid housing justice projects to address the needs of tenants and landlords.

First established by the state Legislature in the 1984 Court Improvement Act, DRCs are private, nonprofit organizations that mediate nonviolent civil disputes and offer the option of free and low-cost services. The Eviction Resolution Program leverages those DRCs to funnel potential unlawful detainer actions into a nonjudicial, negotiated resolution between landlords and tenants.

Before they can evict, the program requires landlords to send at least two notices advising tenants of the available resources for rental assistance and mediation. Only with a certification from the DRCs that a landlord has complied with the program can they file an unlawful detainer action. It doesn’t require they reach an agreement, but the hope is that the landlord’s desire to recover owed rent and the tenant’s desire to retain housing and maintain a good record will bring both together through the DRC. The DRC will then refer tenants to housing justice projects for legal advice, get them qualified for rental assistance if any is available, and facilitate a payment plan for the tenant to backfill what they owe. Under the eviction moratorium, it has been in a quasi-active state where landlords have been encouraged to voluntarily refer tenants.

Pilot county DRCs were allocated \$1.5 million to hire staff and purchase equipment (DRCs are requesting \$4.3 million in post-pilot funding), but there were hiccups. Funding wasn’t available in September as planned, which delayed DRCs in beefing up their resources. By the time the money was available, in November, the DRCs had little time to use it before a Dec. 31 deadline, essentially condensing four months of prep work into about six weeks. The funding deadline has since been extended through June 30, but bureaucratic delays are far from the only challenge, and the way the Eviction Resolution Program was built is not without its critics.

Mediators and other dispute resolution specialists have raised red flags about the absence of mediators and dispute resolution specialists in the work group. Commercial mediator Roger Moss, vice-chair of the WSBA Alternative Dispute Resolution (ADR) Section executive committee, told me that “key stakeholders were excluded from ERP [Eviction Resolution Program] planning, impairing its neutrality and creating a program devoid of tech innovation and current mediation techniques.”

At a recent meeting of the ADR and Real Property, Probate & Trust Sections, members met with representatives of DRCs and

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others in the work group who helped create the Eviction Resolution Program. Darcia Tudor, a licensed lawyer and mediator who is also co-owner of Tudor Properties LLC, a 40-year-old property management company whose tenants have included low-income renters, asked a question that no one seemed able to answer: “Were there any people of color in the [work] group?”

For Tudor, the program is setting the framework for a redundant bureaucracy based on key false assumptions. For example, money: Landlords in fear of bankruptcy need it, tenants don’t have enough to enter a payment plan, and there are already organizations in place well suited to help.

“To me it shows the total ... arrogance of the people at the table; you’re assuming that they’re [tenants] going to have some money at some point in time to catch up,” Tudor told me.

Tudor pointed to a network of charitable organizations to which landlords can refer their tenants to find rental assistance. Meanwhile, she believes the DRCs have been given an impossible task with limited staff and insufficient time to get them trained for the onslaught of cases. And driving it all remains a misguided notion that tenants will be able to pay back-owed rent.

“When we have a tenant problem, the first thing we do is give our tenants this information so they can reach out and get someone to work with,” Tudor said, referring to the Washington Multi-Family Housing Association’s “Rental Assistance for Tenants” webpage that lists organizations across the state and the assistance each can provide and to whom.

“So the tenant walks away with zero past due so they can start again—because they are bankrupt, most of these people—and the charities are good at [providing assistance],” Tudor said.

When I asked what message Tudor most wants readers to take away, she responded: “We need to stop forgetting to have all the real stakeholders at the table. We wouldn’t be here if you had at least one tenant, or two tenants. ... They would say, ‘I’m broke. How’s a payment plan going to help me?’”

“You don’t grow wealth through legal fees, first of all,” she went on. “And you’re thinking it’s going to benefit these people by paying for mediators; that’s not going to help them.”

‘THEY’RE GOING TO DROWN’

Edmund Witter has managed the King County Bar Association Housing Justice Project since 2017. He was also one of the architects of the Eviction Resolution Program, as a member of the original Unlawful Detainer Work Group, and has been a frequent speaker on the topic with various stakeholders.

SIDEBAR

How You Can Help

The following list will help you learn more about the Eviction Resolution Program, volunteer for organizations in need of assistance, and find educational resources if you’re interested in volunteering.

- **Eviction Resolution Program:** www.courts.wa.gov/newsinfo/EvictionResolutionProgram
- **Clark County Volunteer Lawyers Program:** <https://ccvlp.org>
- **King County Bar Association:** www.kcoba.org/For-Lawyers/Pro-Bono-Services
- **Eastside Legal Assistance Program:** <https://elap.org>
- **Tacomaprobono Community Lawyers:** <https://tacomaprobono.org>
- **Snohomish County Legal Services:** <https://snocolegal.org>
- **Spokane Volunteer Lawyer Program:** www.SpokaneVLP.org
- **Thurston County Volunteer Legal Services:** <https://tcvls.org>
- **WSBA Sections Hosting Regular Forums on the Eviction Moratorium**
 - **Real Property, Probate and Trust:** www.wsba.org/legal-community/sections/real-property-probate-and-trust-section
 - **Alternative Dispute Resolution:** www.wsba.org/legal-community/sections/alternative-dispute-resolution-section
- **WSBA COVID-19 Pro Bono Opportunities:** www.wsba.org/covid-19/legal-aid-opportunities

So his response when I asked him how the initial rollout was going was nothing short of alarming.

“The program’s not going to work,” Witter said.

Just a few weeks after the state began to dip its toe in the eviction waters, the caseload quickly overwhelmed available resources.

While it was intended to prevent evictions and reduce the burden on already stressed courts, in practice the program is more of a communication strategy that tweaks how evictions are handled but doesn't address the root societal problems leading to them, Witter said. A few months in, it mostly created another box for landlords to check ahead of an eviction and shifted the caseload bottleneck from courts to DRCs.

"The entity that's going to get blamed ... is dispute resolution centers," Witter said. "People will blame mediation because they were basically given an impossible task. ... They're going to drown."

In December alone Witter's office handled 438 rental assistance cases. The flood of requests, hundreds per day, forced the office to create an automated message informing that it couldn't handle any new requests. About half the tenants seeking help are Black, Witter said, stressing the racial disparity endemic to these types of cases. One of his biggest fears is that people will lose their housing while they're stuck waiting for help.

"People are going to lose their home not because the resources weren't there, not because we couldn't prevent it, but because we were so log jammed," he said. "... The problem is—it's a good idea, and I helped design this program—we can't keep up with this number. We simply don't have the capacity to do it."

A number of people I spoke to lamented that a few landlords—particularly those with larger properties—have inundated DRCs with blanket referrals for all of their tenants, regardless of whether they were actually behind in payments. And DRCs and other advocates already have to pour significant time into making contact with a household.

"These cases are very labor intensive and providers are continuing to work through questions/confusion about how it works, how to access resources, and trust in the process," Superior Court Judges Association President and King County Superior Court Judge Judith Ramseyer said via email. "Work to overcome any confusion or reluctance will continue. Initial results unquestionably show there is a need for this program and it has a positive result to offer."

Approximately three months after the program began, the six pilot DRCs had received referrals for 2,392 households, opened 1,627 cases, and completed 860, according to LaDessa Croucher, senior director of Dispute Resolution Centers for Volunteers of America Western Washington.

"The Unlawful Detainer Workgroup is reviewing forms, notices, and procedures based on the pilot experience to date," Croucher said via email. "We expect to have revised guidance soon. Overall, tenants are mostly scared, confused, and incredibly grateful that assistance is available. Landlords are grateful we will help them connect to the tenant with rent assistance, information[,] and legal resources."

As much as a bottleneck at a DRC can delay or prevent a client from connecting with a lawyer, the reverse is also an issue.

When rental assistance has become available, it has disappeared quickly.



"Suddenly our ERP [Eviction Resolution Program] program can't do anything because our job as a DRC is to get that tenant connected to a lawyer," said Leslie Ann Grove, executive director of Northwest Mediation Center in Spokane. "And if we can't get them connected to a lawyer then everything stops."

Then there are the changing rules to navigate as program officials attempt to patch problems as they emerge.

"There are just so many moving pieces and it is frustrating for all of us, and the rules keep changing for our programs because of the discoveries made along the way," Grove said.

The Dispute Resolution Center of King County has also received more than its usual caseload and, according to Implementation Project Manager Sue McCarthy, the first wave of its referrals reflected racial disparities, it being clear that "this is not representative of the demographics of the county."

After becoming aware of the disparity, that DRC began intentionally partnering with grassroots organizers and targeting distressed ZIP codes.

"If this is truly an equity issue, we need to be reaching out into the community, connecting with BIPOC [Black, Indigenous and people of color] organizations that are in touch with the tenants," McCarthy said. "We can't possibly work with every single tenant who's out there, so we want to make sure that we prioritize tenants who are most in need of our services."

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Even when resources have been available in the past they have not always been utilized. Kim Thornton, judge pro tempore and a volunteer attorney with the Thurston County Volunteer Legal Services Housing Justice Project, said defendants in unlawful detainers occasionally seek legal help from the Housing Justice Project ahead of their hearing, but much of the legal representation takes place in the hallways with hurried attempts to gather the basic facts and confer with opposing counsel—something that is exceedingly difficult when hearings take place virtually. A positive outcome, Thornton said, is anything that will stop the immediate eviction so the tenant can

In Olympia, several bills making the rounds seek to change Washington’s eviction laws and address the coming tsunami.



move out voluntarily and avoid the stain of “eviction” on their record—something that makes it exceedingly difficult to secure new housing.

“Most of them are terrified,” Thornton said. “They don’t know what to do ... and they think if they just block it out it will go away.”

THE NEAR HORIZON

In a joint interview, Benton-Franklin Superior Court Judge and Unlawful Detainer Work Group Chair Jackie Shea-Brown, Crissy Anderson from the Administrative Office of the Courts, and Jim Bamberger from the Office of Civil Legal Aid said the Eviction Resolution Program is a work in progress.

“It’s happening, it’s working, and it needs tweaking to be effective,” Judge Shea-Brown said. Program stakeholders coordinate frequently to figure out what is and

is not working and where people are getting confused. “We realized that each county has specific needs.”

Said Anderson: “One really encouraging part of this process was the way in which courts and stakeholders were able to collaborate.” One clear concern is funding. Bamberger’s office helped support the Administrative Office of the Courts’ effort to secure funding for the DRCs, and a fast-tracked supplemental budget bill will continue funding through June 30, while efforts to continue and expand the program are ongoing.

“This is a program that was created by the judiciary to manage

court resources and to protect the ability of courts to operate effectively when the moratorium [expires] and that’s the principal object here,” Bamberger said. “It’s not a social policy program. The thought is that if you can bring the three components together—legal aid, dispute resolution, ... and rent assistance, that we can divert the cases away. The Legislature is going to do a lot of other things in this space and we defer to them to do that.”

LEGISLATIVE RESPONSE

Some tenant and landlord advocates have noted that Washington falls short compared to other areas in how it manages housing issues like evictions. For example, New York City’s tenant right to counsel law has been credited for a 30 percent decrease in eviction filings since 2013, according to the National Coalition for a Civil Right to Counsel. To more holistically address its housing issues, Cleveland developed a special Housing Court 50 years ago. Likewise, British Columbia’s Residential Tenancy Branch and online tools have reportedly prevented 200,000 evictions.¹⁰

In Olympia, several bills making the rounds seek to change Washington’s eviction laws and address the coming tsunami. Senate Bill 5160 shares a lot of the same DNA with the Eviction Resolution Program and would effectively codify it, plus some additional components. Notably, the bill would create a legal right to counsel for indigent tenants (recall that only about 8 percent typically have any legal representation).

SB 5160 has arguably gained the most support—even if tepid at times—among tenants and tenant representatives. On Jan. 20, speaking before the Senate Committee on Housing & Local Government, Sakara Remmu of the Washington State Black Lives Matter Alliance said the organization had originally opposed the bill, but changed its position to “other” after meeting with legislators. Remmu said the bill did not do enough to limit the influence of institutional racism in courts or housing issues affecting communities that are marginalized.

“Black and indigenous communities of color need a non-legal entity process first that does not involve lawyers and having that

option if needed,” Remmu said.

One sticking point drawing criticism was SB 5160’s provision to impose an eviction moratorium for two years following a public health emergency, which was later removed in a second substitute bill. For housing providers, the moratorium has mostly halted their regular income and many are going broke without more help.

“I think what it comes down to is the eviction moratorium is a blanket approach to a problem that has many different facets and not everyone’s situation is the same,” said Brett Waller, director of government affairs for the Washington Multi-Family Housing Association. “And we believe that we should be directing the resources to those that need it the most and using other initiatives or concepts and ideas to assist folks who may need the assistance less.”

When rental assistance has come through, it has been far from a panacea. One Washington real estate company told the Senate Housing & Local Government Committee that it received \$3.3 million in rental assistance for 833 residents, but by late-January 59 percent of them were behind again.

“The longer that a tenant goes without being able to pay their rent the more difficult it becomes for that tenant to ultimately pay their rent,” Waller said. “We believe that the state needs to continue to step up and step into the rental-assistance issue.”

House Bill 1228 has garnered wider landlord support. It would continue the Eviction Resolution Program and immediately suspend the eviction moratoriums while appropriating up to \$600 million in rental assistance this budget cycle. However, other advocates have criticized such elements as a COVID-19 hardship affidavit requirement for tenants.

As of press time, an SB 5160 substitute bill was awaiting a Senate floor vote. HB 1228, however, remained stuck in the House Committee on Housing, Human Services & Veterans.

THE FARTHER-OUT HORIZON

If you’ve seen footage of a tsunami, it doesn’t break like a normal wave—it surges. The waters push forward with surreal

force, eliminating the landscape in a few chaotic moments, and it just keeps coming.

Thomas, the evictions researcher who co-authored the UW evictions study, said he expects significant increases in evictions to the “vulnerable population,” those whose rents are 50 percent or more of their monthly income.

“The problem with evictions is that’s the tail end of a very precarious situation that a household went through,” he said. “By the time they’ve had an eviction it’s almost like they had a heart attack and it’s been five hours since they got to the hospital.”

He seemed sure there will be a “lag effect” from the pandemic that could continue to cause spikes in housing security issues into 2022 and even 2023.

You can think of COVID-19 as the earthquake that triggered the early ripples of disaster to come. And somewhere beyond the horizon, the accumulating debt by renters and financial hardship for their landlords have been feeding the tsunami for a year. For now, we’re still standing on the beach, staring across a barren shore wondering what will happen when the full force of it all finally comes surging back in. **BN**

NOTES

1. “The Minority and Justice Commission seeks to foster and support a fair and bias-free system of justice in the Washington State courts and judicial systems,” according to the Administrative Office of the Courts. “End of the Eviction Moratorium: Issues Facing the Judiciary and the Use of Discretion,” Jan. 8, 2021.
2. U.S. Census Bureau, Household Pulse Survey Interactive Tool. The average percent likelihood of eviction or foreclosure from weeks 13-23, accessed Feb. 12, 2021, www.census.gov/data-tools/demo/hhp/#/?measures=EVR&state=00053.
3. National Council of State Housing Agencies, “Analysis of Current and Expected Rental Shortfall and Potential Eviction Filings in the U.S.,” www.ncsha.org/resource/current-and-expected-rental-shortfall-and-potential-eviction-filings/.
4. United States Interagency Council on Homelessness, www.usich.gov/homelessness-statistics/wa/.
5. Washington Office of Financial Management, April 1, 2020, Population of Cities, Towns and Counties, www.ofm.wa.gov/sites/default/files/public/datarsearch/pop/april/ofm_april_population_final.pdf.
6. Based on 2-1-1 counts WA. There were 15,413 requests between Jan. 7, 2019, and Jan. 7, 2020, and 42,620 requests between Jan. 7, 2020, and Jan. 7, 2021. <https://wa.211counts.org/>.
7. Washington State Department of Commerce, “CARES Act Funding,” Jan. 26, 2021, <https://app.leg.wa.gov/committeeschedules/Home/Document/225749#toolbar=0&navpanes=0>.
8. King County Eviction Prevention and Rental Assistance, Program Data, accessed Feb. 8, 2021, <https://kingcounty.gov/depts/community-human-services/COVID/eviction-prevention-rent-assistance/program-data.aspx>.
9. Letter re: SCJA Unlawful Detainer Work Group, Aug. 31, 2020, <http://nwfairhouse.org/media/documents/LTSlidesHandout6.1.pdf>.
10. Roger Moss, “COVID-19 and Rental Conflict: An Urgent Call for Online Dispute Resolution” *CURRENT*, Rental Housing Association of WA, August 2020, <http://epaper.rhawa.org/Olive/ODN/RHAWA/default.aspx>.