

TO: Senate Committee on Economic Development, Housing and General Affairs

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SUBJECT: Request for an eviction moratorium during the COVID-19 public health crisis.

DATE: March 19, 2020

Thank you for the opportunity to offer testimony today regarding the need for immediate housing relief in the form of an eviction moratorium during the COVID-19 public health crisis.

I want to start by thanking the Supreme Court for quickly modifying the court's procedures through Administrative Order No. 49 (A.O. 49) to address the COVID-19 outbreak. But at Vermont Legal Aid, we believe that additional actions via the executive and legislative branches regarding eviction and homelessness prevention are necessary during this unprecedented public health crisis. I am here to beg you to go further than A.O. 49. I will start with a brief story of a family that needs help – for all of our sakes – beyond what A.O. 49 provides.

My client Anne¹ has a serious permanent disability, two kids, and no rental subsidy. Her income is so limited that in the long run, she will not be able to stay in her current apartment. In the short run, her family, and all of us, are better off if she stays put in her home. I represent Anne through Vermont Legal Aid's eviction prevention clinic in Franklin County. Absent a moratorium on evictions, her case will move forward, and she will probably lose, and Anne and her children will be evicted into homelessness. During the COVID-19 public health crisis, the consequences of this case will be even more devastating than normal. Under current emergency guidelines from the State of Vermont, as a medically vulnerable person, Anne is likely to be placed in a motel room with her children after they become homeless. That will cost well over \$2,000 per month, far more than the monthly rent for the family's apartment. My client and her kids will have a harder time engaging in social distancing in their little motel room, because they won't be able to store a lot of food and supplies there. They are likely to be out and about on a daily basis. What if, due to her outings, Anne gets sick? Will she end up at the emergency department? In the intensive care unit? Where will her kids go if that happens? Will her kids be taken into foster care system? Anne's housing instability isn't directly related to COVID-19. It is the result of "normal" poverty, and a lack of sufficient affordable housing, and a lack of appropriate income supports for people with disabilities. But allowing Anne to lose her housing now, during a public health crisis, will have a terrible spiraling effect on our healthcare and

¹ Names and identifying characteristics have been changed to protect client confidentiality.

social safety net systems that is hard to stomach on a human level, and it doesn't make fiscal sense either.

At Legal Aid, these are the worries we have for our clients facing eviction. We seek an eviction moratorium, through executive or legislative action, and appropriations for emergency rental assistance so that tenants, landlords, the health care system, the shelter system, and public health are not adversely affected. Several other jurisdictions have taken or are pursuing such measures, and we encourage you to do the same.

COVID-19 is a public health crisis. We're being told to stay home, stock up on food in case we have to shelter in place, and wash our hands frequently. That is not advice that a person who is experiencing homelessness can follow. If you are in a tent, or living in your car, you'll be out and about all the time for food and supplies, or looking for a bathroom. You can't bathe and wash your hands regularly. If you are in a congregate shelter, you might have someone six feet away from you, and a shared bathroom that is constantly in use. If a homeless person is medically vulnerable, they'll be placed in a motel room, in isolation, through General Assistance. There, they are likely to receive few services, if any, because our shelter systems are already overly taxed, especially at this time, with staff calling out due to lack of childcare and illness. And if one person is infected with COVID-19 in a tent encampment, or in a shelter, or in a motel serving people experiencing homelessness, a full outbreak at that location could result. We need to keep the number of people entering homelessness down. The risks to public health are too great.

A full moratorium on evictions and immediate stay on all writs of possession is needed today. Vermonters need to remain housed to adequately protect themselves from this virus. A moratorium on evictions and stay on writs through legislative action or an executive order from the Governor is an appropriate response to this public health emergency.

The Supreme Court has cancelled non-emergency hearings through A.O. 49, but that does not limit evictions, and in fact, may make loss of housing more likely for some tenants. I'll present three examples where the current Administrative Order fails to adequately protect against evictions and homelessness that will exacerbate our public health crisis.

New eviction cases can still be filed and could lead to dispossession without a court hearing. Deadlines for tenants to respond to pleadings remain the same. Typically, Legal Aid and Legal Services Vermont attorneys meet their clients for the first time at our in-court rent escrow clinics, offered in several counties across the State. Many tenants do not know we can represent them prior to meeting us for their initial hearing at the courthouse. Now, with no hearing and no clinics, tenants facing eviction are less likely to find their way to legal assistance, and may miss deadlines to file responsive pleadings. If a tenant defendant fails to timely file an answer to a complaint, they may be subject to default judgment. It may be the case that all thirty-two judges in the State will decline to grant motions for default, which are typically granted with no hearing. That is within their individual discretion. Or judges may be willing to reverse judgment orders following default, should a tenant file a last minute motion. But for the sake of consistency statewide, and to prevent the public health hazard of homelessness when tenants lose their housing due to default, the Legislature or Governor Scott should put a moratorium on filing new eviction cases.

Second, for cases that were active prior to postponement of hearings under A.O. 49, many tenants are locked into orders to pay rent into court. If a tenant fails to pay rent into court, the clerk “shall” issue a writ of possession pursuant to the language of any standard rent escrow order. There is no hearing prior to issuance of the writ, and the request for a writ is made to the clerk, not the presiding judge. It may be the case, that if all tenant defendants were savvy enough to reach out for help from Vermont Legal Aid or Legal Services Vermont, we could help them file motions to amend their rent escrow orders due to job loss or illness. Perhaps, if a writ were already issued, tenants would be able to figure out how to file for a stay of a writ on their own, or would be able to reach our agencies in time for help with an emergency filing. Some of these motions may be based on income loss due to COVID-19, while others could be based solely on the potential health hazard presented by homelessness. It may be the case that any judge reviewing such a motion would schedule an emergency hearing on the matter, and grant the request. But for the sake of consistency statewide, and to prevent the public health hazard that would result from cases in which tenants lose possession of their rental units, the legislature or Governor Scott should put a moratorium on issuance of new writs.

Third, some cases may have already reached judgment as to possession for failure to make a timely rent escrow payment, or because the tenant was confused by the legal process and defaulted, or some other reason. Writs may be in the hands of sheriffs for service or execution right now. The tenants subject to these writs are only days – or even hours – away from homelessness. The legislature, or the Governor, through an executive order, should order a stay of all writs not yet executed to prevent the public health hazard of more households entering homelessness.

Vermont Legal Aid’s 2019 report, *Eviction in Vermont: A Closer Look*, found that 75% of tenants who did not have an attorney lost their eviction cases. Vermont Legal Aid and Legal Services Vermont offer in-court, limited representation clinics for tenants facing eviction in some counties to help tenants remain housed. But our capacity is limited. We do not know if we will be able to provide the kind of extensive emergency assistance of the sort I’ve described. Further, our capacity is likely to be reduced due to staff reductions resulting from school closures and illness. The solution to this crisis should not be to have attorneys filing emergency motions to stay proceedings for every active eviction in the State of Vermont. And if different judges issue different orders to similar emergency requests to stay proceedings, the solution should not be for our attorneys to file for stays of those Superior Court orders pending appeals to the Supreme Court in each case. This is likely to stretch our capacity beyond what is manageable, and is also likely to be burdensome to the Courts. A legislative solution, or an executive order by the Governor, is needed.

We recognize that landlords are also facing financial constraints during this difficult time, but we believe that appropriate legislative action can protect their interests. Attorneys who represent landlords have expressed their intent to proceed with cases, including execution of writs, in cases where nonpayment or other breach is unrelated to COVID-19, if their client so desires. Their clients want and need to get paid. Vermont Legal Aid’s research and our experience in our eviction defense clinics statewide have revealed that the vast majority of eviction cases are based solely on nonpayment. If tenants are provided with short-term rental assistance to make rent payments for the duration of this crisis, either through federal or state legislative action, landlords’ financial interests can be protected while tenants remain housed. Provision of such rental assistance is less costly than General Assistance motel stays, and less costly than trips to the emergency room or into the intensive care unit when people experiencing homelessness

become infected with COVID-19. Legislation providing for short term rental assistance during an eviction moratorium can adequately protect landlord interests in cases involving nonpayment. But in the meantime, until such legislation is debated and passed, immediate relief in the form of an eviction moratorium is needed.

Some eviction cases are filed pursuant to Vermont's "no cause" provision. Landlords are unlikely to suffer significant harm if such cases are delayed, where the current tenant has been paying rent. Further, it is unlikely that the landlord would be able to lease up with a new tenant for the duration of the pandemic. We believe that landlords are unlikely to suffer significant harm from a moratorium on no cause evictions.

Cases based on breach of the rental agreement, other than nonpayment, often take many months to resolve, so we believe that a delay for the duration of the public health crisis is unlikely to cause significant harm, especially if the landlord receives rent for that time period. If a serious health or safety risk is present, other means to protect landlord interests and the public health already exist. For instance, were a tenant found to have a methamphetamine lab or child trafficking operation in their apartment, law enforcement would offer a much more rapid resolution to the health and safety problem – by immediately removing the perpetrator to alternative "lodging" – than an eviction action.

Vermont Legal Aid does not see our request for an eviction moratorium as a battle of interests between tenants and landlords. We believe this is a public health issue. Vermonters need to engage in social distancing, enhance their personal hygiene, and stay at home as much as possible. That means they need a home. We need an immediate eviction moratorium, through executive action or legislation, to protect public health by preventing homelessness as we fight this pandemic. We believe that with resources like short-term rental assistance, short-term case management, and limited legal assistance, we can also protect the interests of landlords. Vermont Legal Aid would be happy to work with the Vermont Landlord Association and other property owner and management representatives, to explore legislative solutions. But in the meantime, we need an eviction moratorium, now, to protect public health by preventing homelessness.

Thank you for your consideration.