



# WIN-WIN

## Paying Landlords and Keeping Californians Housed

February 2025

Report Prepared for Public Advocates

By Stanford Law School Law & Policy Practicum and Stanford Community Law Clinic

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In addition to substantive expertise and guidance, attorney Suzanne Dershowitz of Public Advocates dedicated significant hours and wisdom to the final edit of this report, greatly enhancing its readability. Any errors belong to the Instructor.

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## EXECUTIVE SUMMARY

Nonpayment of rent is far and away the leading cause of eviction, in California and across the nation. Whether called a “housing crisis,” an “affordability crisis,” or something else, many tenants are “rent-burdened,” paying well more than the recommended 30% of their income to rent. In that scenario, a temporary set-back (lost hours at work, unavoidable auto or health-related expense, even funeral expenses for a loved one) can disrupt a family’s ability to make rent in any given month. Housing providers have a right to earn income from their units, but under current California law, eviction (a judgment for possession swiftly executed by the sheriff, with a questionably collectible money judgment also entered against the tenant) is an over-used, and questionably effective, remedy for landlords seeking to collect delinquent rent.

**Twenty-one states** -- rural and urban, Democrat- and Republican-controlled, large and small -- have codified an alternative: a statute that permits tenants facing eviction for nonpayment of rent to redeem their tenancies and remain in their homes if they are able to pay the rent owing, even well after an action for eviction has begun. California is not among these Redemption States.

Under current California law, tenants may avoid eviction for nonpayment of rent only if they are able to pay all of the rent demanded by the landlord *within three business days* of service of a notice to pay rent or quit. Once the sun has set on the third business day, the tenant’s right to cure – to rescue the tenancy and avoid eviction – is extinguished. To be sure, many landlords will agree to a rescue plan thereafter, but such agreements are elective, and are often bulked up beyond rescue with amounts not at issue in the case (e.g., utility payments, rent accrued more than a year before service of the notice, or other amounts not properly included in a nonpayment notice), or unreasonable attorney’s fees. Absent a right to redeem a tenancy deeper into the eviction process, tenants with fundamentally sustainable tenancies, whose eviction arises from a temporary set-back, are unnecessarily subjected to eviction. This is particularly unreasonable where third-party and other resources have been made available precisely for this situation, but cannot be leveraged on the 3-day timeline.

Third-party rental assistance – from government and private nonprofit agencies – has become an important part of the nonpayment landscape. Even before the federal government invested \$46 billion into rental assistance during the COVID-19 pandemic, cities, counties, philanthropic organizations and neighborhood agencies provided funds to tenants in need of stop-gap help to prevent eviction. The patchwork of these agencies remains in place in California communities since the pandemic. In this resource environment, it is crucial that the timeline for evictions for nonpayment of rent is aligned with the timelines required to leverage these resources. California law falls short in this regard, leaving

many tenants vulnerable to displacement, and landlords holding uncollectible money judgments. The current 3-day cure period is out of sync with any feasible rescue plan, frustrating the very purpose of these funds, and exposing a family whose tenancy might be redeemed to displacement and homelessness.

There is broad consensus in the legal aid community that California should become the 22<sup>nd</sup> Redemption State.<sup>1</sup> Indeed, a right to redeem is intuitive in cases of nonpayment of rent, and analogous to rights that delinquent mortgagees enjoy. It would preserve eviction as a remedy when the tenancy is truly financially unsustainable, and prevent the pretextual use of nonpayment of rent to evict tenants for other, potentially unlawful, reasons.

This report summarizes and analyzes the provisions of the 21 states that allow tenants to redeem their tenancies and proceeds in five sections.<sup>2</sup> Part I provides the social and legal context in which California's evictions for nonpayment of rent proceed. Part II describes briefly the definitions and methodology used by the research team. Parts III and IV, in turn, provide analysis of the twenty-one Redemption States, and a deeper exploration of two of them, with case studies regarding Oregon and New York. A brief conclusion follows as Part V.<sup>3</sup>

The report concludes that California should recognize that without a redemption statute it is out of step with other Western states and with states that seek to reasonably equalize the power imbalance between landlords and tenants in light of summary process eviction. A longer period in which to redeem a tenancy stabilizes households and communities while protecting landlords' interests in financial solvency and stability. Moreover, a redemption period leverages government and philanthropic efforts to address the affordability crisis with reasonable rental assistance.

Californians deserve the right to redeem a tenancy and California should become a Redemption State.

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<sup>1</sup> Assembly Bill 265 in the 2011-2012 session would have provided tenants a right of redemption on a staged basis, with different sums required if the tenant sought to redeem before or after judgment, and with certain limitations on the attorney's fees required to redeem. The bill passed out of committee on a 6-3 vote, but was not enacted, and was recorded "died" on February 1, 2012.

<sup>2</sup> Across the nation, eviction is a creature of state law, and one that involves the intersections of any given jurisdiction's substantive landlord-tenant law, civil procedure code, and background property and contract law. Accordingly, comparative analyses are imprecise, and head-to-head comparisons inevitably involves judgment calls based on a research team's best judgment. (See, Kyle Nelson, Philip Garboden, Brian J. McCabe & Eva Rosen (2021) *Evictions: The Comparative Analysis Problem*, *Housing Policy Debate*, 31:3-5, 696-716, DOI: 10.1080/10511482.2020.1867883, arguing that recent scholarly interest in eviction has "made manifest the vast heterogeneity in legal eviction processes. For decades, state and local courts lacked a set of best practices for handling eviction cases, leading them to shape processes and procedures in ways that aligned with their institutional needs and local political ideologies.") The present research team begs the reader's indulgence and hopes that this report, however flawed, is a valuable resource.

<sup>3</sup> Appendix A is a longer explanation of the researchers' methodology. Appendix B is a brief bibliography and list of external resources.

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## A STORY TO START

Anita Holmes<sup>4</sup> rents a one-bedroom apartment in a multi-unit building in Redwood City, California, one of a string of municipalities on the peninsula running between San Jose and San Francisco. She lives in the apartment with her two children, ages 11 and seven. Her rent is \$2,150.00/month, which is actually lower than the HUD-reported fair market rent for her area.<sup>5</sup> This rent was affordable for Anita on her full-time wages, but, with her car, after-school childcare and other expenses, she only had about \$1,100 in savings, and it wasn't building up. In October of 2024, Ms. Holmes was laid off from her job as a dispatcher for a small home repair company. She immediately started looking for a new job, but she wasn't able to pay rent on November 1st.

On November 12<sup>th</sup>, Anita was served with a three-day notice to pay rent or quit that demanded \$2,150. It said that if she didn't pay it within the three days, an eviction case might be started against her. Anita stepped up her job search efforts and, because of holiday hiring, was able to get temporary work in retail, making \$22/hour. Anita sent her property manager a text (which was how they always communicated), telling him about the new job and that she would be able to pay November rent as soon as she got paid, and December rent on time. He didn't reply.

On November 18<sup>th</sup>, Anita was served with a complaint for unlawful detainer in her county Superior Court. The lawsuit asked for an eviction order ("writ of possession"), and a money judgment for all the back rent owing, which would include every day until she was evicted, plus court costs and attorney's fees, which were provided for in the lease. With the help of Legal Aid, Anita was able to file a basic Answer with the court. Legal Aid also suggested that she go immediately to a local nonprofit that had some rental assistance funds that they sometimes can use to "rescue" a tenancy like this. Anita went to the agency, applied for the aid, and was told that the agency could contribute \$3,000 to save the tenancy (Anita's new employment, combined with the fact that she had never fallen behind before, convinced the agency that this tenancy was financially sustainable if they provided help). They issued a letter stating that once they received necessary tax info from the landlord, they could disburse the funds directly to the landlord in 5-10 business days.

Anita got a notice in the mail of a trial date of December 13<sup>th</sup>. With her new wages, her savings, and the promise of rental assistance money, Anita called her property manager, thinking that she would

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<sup>4</sup> "Anita Holmes" is a composite of tenants whose stories are familiar to Public Advocates and other California agencies that work with tenants at risk of eviction.

<sup>5</sup> *FY 2024 Fair Market Rent Documentation System*, HUD User, [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2024\\_code/2024summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2024_code/2024summary.odn) (last visited Dec. 29, 2024).

be able to get current on her rent and stay in her home. The property manager told her that he could not discuss her situation anymore, and that she would have to talk to the landlord's attorney. Anita called the attorney with the good news that she had the \$4,500 (November and December rent).

Anita was surprised by the attorney's response. First, he told her that she now owed at least \$4,935 because of the \$435 filing fee<sup>6</sup> that the landlord had incurred, and that that didn't even include any attorney's fees. Anita asked why she had to pay the filing fee when she had told the property manager that she could get current and that the landlord didn't have to file the case. The attorney just continued that he wasn't sure if the landlord would let her stay even if she could pay that back rent. Anita told him that she could pay the \$4,935 if she could have another week, until her next paycheck. The attorney said he would speak to his client and get back to her.

The next day, the attorney called Anita. He told her that his client would not accept the money. He wanted her evicted. He wanted her out, even if she had the money. When Anita asked why, the attorney just said, "He wants you out." This does not constitute a violation of the law in California.<sup>7</sup>

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<sup>6</sup> *Fee Schedule*, Superior Court of San Mateo County, <https://sanmateo.courts.ca.gov/forms-filing/fee-schedule> (last visited Dec. 29, 2024).

<sup>7</sup> There is no requirement that a landlord state the reasons for rejecting a tenant's offer to pay all the money owing in exchange for remaining in possession. Undesirable pretexts are not difficult to conjure, such as: impermissible discrimination based on a protected status (family status, ethnicity, immigration status, etc.) or the desire to circumvent rent increase limitations imposed by the Tenant Protection Act by creating a new tenancy at an elevated rental rate. As Professor Ryan of the University of Nebraska explains, "The only reasons ... for a landlord wanting to proceed with the eviction despite being presented with payment in full are reasons that should not be supported by policy... It is improper to use the expedited eviction process related to failure to pay rent as a pretext to dispossess a tenant for some other reason." *Ryan Sullivan, Bringing Order to Chaos: Reviving Uniformity and Balance Within Nebraska's Rental Housing Laws*, 101 *Neb. L. Rev.* 163, 172-173 (2022). A redemption statute would prevent these evasions of other important housing policies enacted by the Legislature.



# I. BACKGROUND

## A. The Unaffordability Crisis as a Driver of Eviction

Most evictions, in California and across the nation, arise from nonpayment of rent.<sup>8</sup> That is, while California law permits landlords to seek eviction of tenants on a wide range of bases,<sup>9</sup> failure to make rent vastly outpaces all other causes. This should be no surprise, given the widely recognized crisis in rental affordability.

According to the Public Policy Institute of California, California tenants are significantly rent burdened, with 56% of state renters spending 30% or more of their income on housing.<sup>10</sup> 68% of Californians believe that housing affordability is a major problem in the state, and 63% believe that homelessness is a major problem.<sup>11</sup> In 2020, UC Berkeley's Turner Center for Housing Innovation reported that one in five California households indicated that they had "no" or "slight" confidence in their ability to pay their mortgage or rent in the next month.<sup>12</sup> Compared with other states, moreover, California's tenants are the most rent-burdened in the nation. According to one metric from the National Low-Income Housing Coalition's most recent 2024 annual survey, "Out of Reach," California has the highest "housing wage" (the hourly wage a tenant would have to earn to spend only the recommended 30% of income on housing) in the nation, with a statewide rate for a two-bedroom apartment of \$47.38/hour.<sup>13</sup> The next highest statewide housing wages are in Massachusetts and New York, with two-bedroom housing wages of \$44.84/hour and \$44.77/hour respectively.<sup>14</sup>

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<sup>8</sup> Daniel Waldinger, Stanford Institute for Economic Policy Research *Regulating Evictions: The Role of Landlords* (2024), <https://siepr.stanford.edu/publications/policy-brief/regulating-evictions-role-landlords> (last visited Dec. 12, 2024) citing Ashley Groomis, et al., *Estimating eviction prevalence across the United States*, *Proceedings of the National Academy of Sciences*, 119, e2116169119.

<sup>9</sup> The Tenant Protection Act of 2019 codifies fifteen bases for eviction for covered tenancies: eleven that arise from alleged tenant conduct, such as nonpayment of rent or nuisance (Cal. Civ. Code 1946.2(b)(1)(A)-(K)), and four that give the landlord a cause of action for other reasons, such as the need to substantially renovate the premises (Cal. Civ. Code 1946.2(b)(2)(A)-(D)).

<sup>10</sup> *Californians and the Housing Crisis*, Public Policy Institute of California, <https://www.ppic.org/interactive/californians-and-the-housing-crisis/#:~:text=Californians%20spend%20disproportionate%20shares%20of,to%2028%25%20in%20the%20US> (last visited Dec. 29, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> Carol Reid & Meg Heisler, *The Ongoing Housing Crisis: California Renters Still Struggle to Pay Rent Even as Counties Re-Open*, Turner Center for Housing Innovation (Oct. 2, 2020), <https://turnercenter.berkeley.edu/research-and-policy/ongoing-housing-crisis/> (last visited Dec. 29, 2024).

<sup>13</sup> Out of Reach 2024, National Low Income Housing Coalition, <https://nlihc.org/oor/state/ca> (last visited Dec. 11, 2024). The statewide housing wage is an average based upon population-weighted HUD fair market rents. The Out of Reach reports data by Metropolitan Area and County as well. The range for housing wages in California metro areas is from Bakersfield (\$24.19/hour) to the Santa Cruz/Watsonville MSA (\$77.96/hour); for counties, Modoc County has the lowest housing wage (\$18.42/hour) and, again, Santa Cruz the highest (\$77.96/hour).

<sup>14</sup> Notably, three of the four states just behind California in housing wages – New York, Hawai'i and Washington – permit tenants to redeem their tenancies by making payment. However, Massachusetts, with the second highest

Falling behind in rent can swiftly lead to eviction. Under California law, before an unlawful detainer (eviction) action can be filed on the basis of alleged nonpayment of rent, a landlord/owner must first serve upon the tenant a three-day notice to pay rent or quit.<sup>15</sup> The notice must advise the tenant of the lawful right to prevent an unlawful detainer being filed by paying all of the rent demanded in the notice. If the tenant fails to pay the demanded amount within those three (business) days, only then may the owner-landlord file an action in Superior Court seeking judgment for a writ of possession (and money damages).<sup>16</sup> Under the Code's summary process, a tenant must file an answer (or face default) within 10 business days, and a trial must be held no more than 20 days after trial is requested thereafter.<sup>17</sup> Judgment and execution of a writ of possession by the county sheriff could come as soon as four weeks after filing.

How many evictions are filed each year in California? The Judicial Council's latest data indicates that over 136,000 unlawful detainer cases were filed in the fiscal year ("FY") that ended June 30, 2023.<sup>18</sup> Unsurprisingly, this is a vast (over 80%) increase from the year before, when some pandemic protections remained in place (just over 73,000 evictions were filed in FY 2022). **Eviction filings, however, have rebounded to exceed pre-pandemic numbers.** The number of evictions in FY 23 was the highest since FY 18, when the number was just over 137,000.<sup>19</sup> Fig. 1 below shows statewide unlawful detainer filings.

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housing wage, does not. New York and Washington allow tenants to save a tenancy by paying rent owed any time before the eviction writ is executed; Hawai'i allows redemption until the writ is issued.

<sup>15</sup> Cal.Civ. Proc. Code §1161(2).

<sup>16</sup> *Id.* The statute reads: A tenant is "guilty of unlawful detainer . . . when the tenant continues in possession . . . after default in the payment of rent . . . and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment . . . or possession of the property, shall have been served upon the tenant." Breaches of the warranty of habitability is an affirmative defense to an eviction for nonpayment of rent. However, even if the tenant prevails on this affirmative defense, their tenancy remains intact on the condition of paying the amount of rent that the court determines is lawfully owed to the landlord. Cal. Civ. Proc. Code § 1174.2(a).

<sup>17</sup> Cal. Civ. Proc. Code §§ 1167; 1170.5.

<sup>18</sup> Shelley Curran, et al., Judicial Council of California, *2024 Court Statistics Report Statewide Caseload Trends 2013-14 Through 2022-23* (2024), <https://courts.ca.gov/sites/default/files/courts/default/2024-12/2024-court-statistics-report.pdf> (last visited Dec. 29, 2024).

<sup>19</sup> The San Francisco Chronicle reported in June 2024 on the Judicial Council's findings Raheem Hosseini, *Eviction Lawsuits Surge Since Pandemic*, S.F. Chronicle, June 17, 2024, at A1, <https://www.sfchronicle.com/california/article/eviction-lawsuits-pandemic-19499717.php> (last visited Dec. 12, 2024). The article includes other graphics, and is reproduced within Appendix X in its entirety.

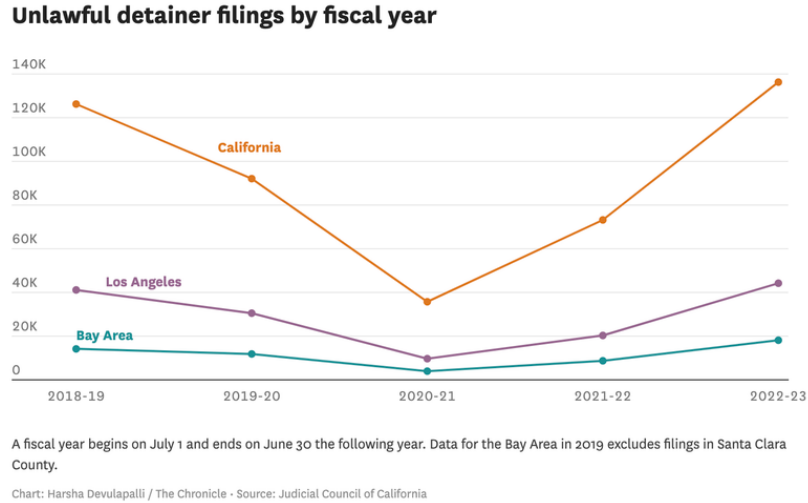


Figure 1: Unlawful detainer filings by fiscal year, California.

Data on the *bases* for these eviction cases, for instance on what proportion are based upon alleged nonpayment of rent, is harder to gather. Court coding does not include coding of the basis for the unlawful detainer. Because of the importance of understanding the nexus between affordability and eviction risk, as well as other crucial policy questions facing Californians, numerous efforts are underway to analyze eviction data in California.<sup>20</sup> For example, in February 2024 the Bay Area Housing Finance Authority announced its multi-year Bay Area Eviction & Legal Services Study to “understand the scale of evictions, the causes, the availability of services and the impacts on households who experience them.”<sup>21</sup> Their study is underway, and they anticipate results in 2025.

Data limitations notwithstanding, it is plain that most evictions, both in California and across the nation, arise from nonpayment of rent.<sup>22</sup> One modest study of a single Bay Area county was completed in 2024. Researchers at Stanford Law School analyzed eviction data from San Mateo County for two complete calendar years: 2019 and 2023.<sup>23</sup> The results bear out intuitions about affordability and eviction. In 2023, a total of 1,510 eviction cases were filed. Of those, 1,288 (85.3%) were based on alleged nonpayment of rent. In calendar year 2019, a total of 1,118 evictions were filed, of which 870 (77.8%) were for nonpayment of rent.

<sup>20</sup> The past decade has seen increased national research attention on eviction. Following on his Pulitzer Prize for his 2016 book *Evicted: Poverty and Profit in the American City*, sociologist Matthew Desmond launched the Eviction Lab at Princeton University in 2017. Other universities have also stepped up research into eviction as a phenomenon principally in low-income American life.

<sup>21</sup> *Kickoff: Bay Area Eviction & Legal Services Study*, Metropolitan Transportation Commission (Feb. 6, 2024), <https://mtc.ca.gov/news/kickoff-bay-area-eviction-legal-services-study> (last visited December 11, 2024).

<sup>22</sup> Waldinger, et al., *supra* note 9.

<sup>23</sup> Study of 2019 and 2023 San Mateo County Unlawful Detainers, publication forthcoming, on file with lead author, Juliet M. Brodie.

## SAN MATEO COUNTY EVICTIONS FOR PAYMENT OF RENT

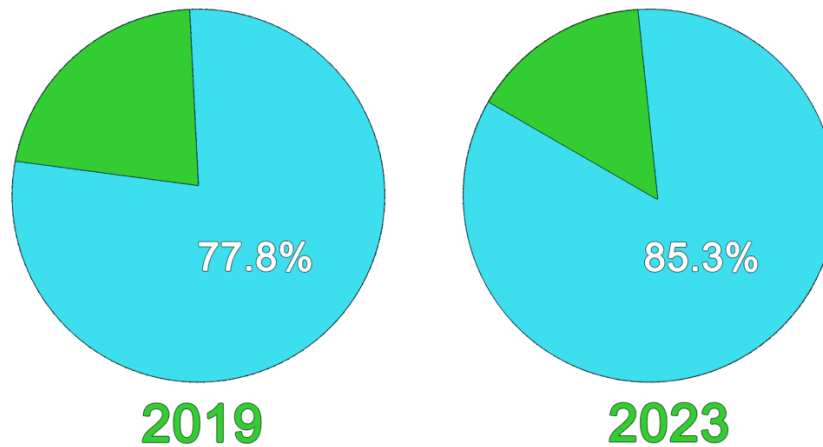


Figure 2: Nonpayment of rent eviction filings as a percentage of total eviction filings in 2019 and 2023, San Mateo County.

Similarly, a review of the eviction notices filed with the City of Los Angeles Housing Department (a filing that must be made within 3-days of service of the notice upon the tenant) from February 2023 through mid-November 2024 revealed that over 165,000 notices were filed, of which **94% were for nonpayment of rent.**<sup>24</sup>

Given the overwhelming proportion of evictions that arise from nonpayment of rent, policymakers concerned about displacement and housing instability are wise to focus on reforms specifically attached to evictions for nonpayment of rent. A lengthened period in which to redeem<sup>25</sup> a tenancy by paying rent is such a reform. As one scholar explains:

The right of redemption is not novel... Notably, an analogous right is made available to those with a mortgage who fall behind on their monthly payments. In fact, a landlord with a mortgage who fails to timely make their monthly payments would be given upwards of six

<sup>24</sup> *Eviction Notices (February 2023 – November 17, 2024)*, LA City Controller, <https://controller.lacity.gov/landings/evictions> (last visited Dec. 12, 2024).

<sup>25</sup> This report uses “redemption” and “redeem” to mean the right to remain in possession of the subject premises in exchange for payment of a statutorily determined amount at any point after filing of an eviction case in court (“the act or an instance of reclaiming or regaining possession by paying a specific price,”) Black’s Law Dictionary (12th ed. 2024). The authors acknowledge that state laws may differ in their terminology and may differentiate between “redeeming” a leasehold and “remaining in possession.” Indeed, in California, complaints for unlawful detainer typically demand both forfeiture of the leasehold and possession of the premises, remedies that are formally distinguished. For purposes of this report, “redemption” is used generically to mean a return to lawful possession of leased residential premises after the commencement of summary proceedings of eviction.

months to redeem the property after defaulting. In view of this, providing tenants a few additional days seems quite reasonable.<sup>26</sup>

## B. Innovations, COVID-19, and the Specific Role of Rental Assistance

Considering tenants' risk of eviction and the undeniable social costs of displacement in economic loss, learning disruption, physical and mental health impacts, increased homelessness, etc., policymakers and advocates have devoted considerable attention in the past decade to eviction prevention and remediation. (As discussed below, the COVID-19 pandemic's occurrence in the midst of this era sparked innovation on a national and unprecedented scale, with a nationwide eviction moratorium established by the Centers for Disease Control from March 2020 to August 2021.<sup>27</sup>) Proposed policy innovations to prevent and/or mitigate the harms of eviction are diverse and multi-faceted.<sup>28</sup> Some examples include: mandatory pre-eviction mediation, tenants' right to counsel in eviction cases,<sup>29</sup> rental registries,<sup>30</sup> technology-based reminders to tenants of court dates (to prevent default judgment), and increased court filing fees for landlord plaintiffs (to incentivize landlords to seek options other than eviction).

California has been a national leader in one of the principal areas of innovation, namely the codification of statewide just cause eviction with the Tenant Protection Act of 2019 (the "TPA").<sup>31</sup> A reasonable right of redemption for tenants facing eviction for nonpayment of rent is an intuitive addition to this list of innovations. **States across the country—large and small, Democrat and**

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<sup>26</sup> Ryan Sullivan, *Bringing Order to Chaos: Reviving Uniformity and Balance Within Nebraska's Rental Housing Laws*, 101 *Neb. L. Rev.* 163, 170 (2022). Professors Schindler and Zale agree, writing "Generally, mortgage lenders will not begin the foreclosure process until three to six months after a mortgage payment has been missed... After notice of default, there is often an additional thirty day period to cure... Further, the borrower can exercise their equitable right of redemption up until the moment of foreclosure, and in some cases, even after a foreclosure sale," *The Anti-Tenancy Doctrine*, 171 *Univ. of Penna. Law Review*, 267-292-293)

<sup>27</sup> Congress included an initial 120-day moratorium in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in March of 2020. With it set to expire, the Centers for Disease Control implemented its own nationwide eviction moratorium, originally set to expire December 2020. Congress and the CDC passed the baton again for extensions, until the U.S. Supreme Court ended the CDC moratorium in August 2021. As noted, many states and localities imposed their own moratoria. See *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758 (2021).

<sup>28</sup> The Legal Design Lab at Stanford Law School features an inventory of these types of innovations organizing them into three buckets: court-based, law and policy, and legal services innovations. *Eviction Innovation*, <https://evictioninnovation.org/> (last visited Dec. 31, 2024).

<sup>29</sup> *Implementing New York City's Universal Access to Counsel Program: Lessons for Other Jurisdictions*, NYU Furman Center (Dec. 2018), [https://furmancenter.org/files/UAC\\_Policy\\_Brief\\_12\\_11-18.pdf](https://furmancenter.org/files/UAC_Policy_Brief_12_11-18.pdf) (last visited Dec. 31 2024).

<sup>30</sup> *Rent Registration In Oakland – Information and FAQs*, City of Oakland (last updated: Dec. 30, 2024) <https://www.oaklandca.gov/resources/rent-registration-in-oakland-information-and-faqs> (last accessed Dec. 31, 2024).

<sup>31</sup> Tenant Protection Act of 2019, 2019 Cal. Legis. Serv. Ch. 597.

**Republican controlled, rural and urban—have recognized this intervention as a pivotal tool for tenants facing eviction.** Indeed, our neighbor Oregon did just that by passing a new statute, H.B. 2001, in 2023 permitting tenants to redeem a tenancy any time before trial (and, importantly, extending tenants’ answer period and trial setting period to lengthen the time before trial).<sup>32</sup>

## 1. COVID-19 and Rental Assistance<sup>33</sup>

The COVID-19 pandemic occasioned eviction innovation on a historic scale. Unsurprisingly given the catastrophic employment disruption that prevented tenants from making rent, the federal eviction moratorium focused on preventing evictions for nonpayment of rent.<sup>34</sup> More, the federal eviction moratorium was accompanied by the largest infusion of government money into rental housing in American history. While eviction-preventing rental assistance had been, and remains, available in non-pandemic eras, the investment in rental assistance was a key, and imperative, component of the federal response to eviction risk because of the public health emergency. Third-party investment in rental support remains a crucial leg of the housing stability stool.

Known as the Emergency Rental Assistance Program (“ERAP”), the 2021 Consolidated Appropriations Act provided tribal, state, territorial, and local governments \$25 billion to help low-income households affected by the COVID-19 pandemic pay rent and utilities. The American Rescue Plan Act in turn provided an additional \$21.55 billion to the Emergency Rental Assistance Program.<sup>35</sup> This \$46 billion investment paid off. The US Treasury reports that the funds paid nearly \$10.8 million in rental assistance payments to renters in need (really, to their landlords) by December 2022.<sup>36</sup> Researchers estimate that the ERAP program, in conjunction with federal, state, and local eviction moratoria,

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<sup>32</sup> H. B. 2001, 2023 Or. Laws Ch. 13 (hereinafter “HB 2001”).

<sup>33</sup> In this section, we use “rental assistance” to mean specifically the availability of funds to rescue a tenancy once a 3-day notice to pay rent or quit, and/or an unlawful detainer action has been served upon the tenant. Financial assistance that goes to rent in other situations, e.g., to help establish a new tenancy or to assist with rent in advance or in anticipation of a notice, is excluded from our definition.

<sup>34</sup> Evictions based on allegations that a tenant had caused a safety or health threat to the landlord or other tenants were expressly exempted from the moratorium. See Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 86 Fed. Reg. 16731-01 (Mar. 31, 2021).

<sup>35</sup> *Emergency Rental Assistance Program*, U.S. Department of the Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited Dec. 31, 2024).

<sup>36</sup> Jacob Leibenluft, *Emergency Rental Assistance: Supporting Renting Families, Driving Lasting Reform*, U.S. Department of the Treasury, [https://home.treasury.gov/news/featured-stories/emergency-rental-assistance-supporting-renting-families-driving-lasting-reform#\\_ftn2](https://home.treasury.gov/news/featured-stories/emergency-rental-assistance-supporting-renting-families-driving-lasting-reform#_ftn2) (last visited Dec. 31, 2024).

prevented 1.36 million eviction cases in 2021 alone.<sup>37</sup> The implications for redemption are clear. As one professor explains:

The need for the right to redemption was highlighted during the COVID-19 pandemic when an abundance of rental assistance funds were made available . . . When the process was slowed as the result of eviction moratoriums, not only were fewer evictions necessary, landlords received millions of dollars in rent that otherwise would have gone uncollected. In fact, the more time provided, the more likely the eviction could be avoided entirely.<sup>38</sup>

States and localities, including California and many of its counties and cities, followed the federal moratorium with their own analogs, adding locally appropriate features. California extended its eviction moratorium until June 2022, nearly a year after the federal eviction moratorium had ended.<sup>39</sup> Many jurisdictions extended local eviction moratoriums even longer, such as Los Angeles County, which extended its moratorium until March 2023<sup>40</sup> and the City and County of San Francisco until June 2023.<sup>41</sup> Additionally, counties and cities supplemented the CARES Act rental assistance monies with additional funds.

Rental assistance is a vital component of tenant protections in areas, including many in California, where rent increases outpace wages and other income, leaving tenants rent-burdened. **To maximize the effectiveness of rental assistance, however, it should be twinned with a reasonable window of time during which an infusion of rent can rescue a tenancy.** While some landlords may elect to delay eviction proceedings to await rental assistance, under current California law they are not required to do so. The only period during which a landlord is legally bound to accept the owing rent is during the three-day notice period preceding the filing of a civil eviction case.

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<sup>37</sup> Peter Hepburn et al., *Preliminary Analysis: Eviction Filing Patterns in 2021*, Eviction Lab (Mar. 8, 2022), <https://evictionlab.org/us-eviction-filing-patterns-2021/>.

<sup>38</sup> Ryan Sullivan, *Bringing Order to Chaos: Reviving Uniformity and Balance Within Nebraska's Rental Housing Laws*, 101 Neb. L. Rev. 163, 173-174 (2022).

<sup>39</sup> Nouran Salahieh, *California's Eviction Moratorium Ends*, KTLA5 (July 1, 2022), <https://ktla.com/news/california/californias-eviction-moratorium-ends/> (last visited Dec. 31, 2024).

<sup>40</sup> David Wagner, *Renters Across LA County Will Lose Covid-19 Eviction Safeguards on Friday*, Laist (Mar. 27, 2023), <https://laist.com/news/housing-homelessness/los-angeles-county-city-covid-19-pandemic-eviction-renter-tenant-protections-moratorium-housing-homelessness> (last visited Dec. 31, 2024).

<sup>41</sup> *Local Eviction Protections for Non-Payment of Rent During Covid-19 Extended Through August 29, 2023*, SF.gov (May 15, 2023) <https://www.sf.gov/news/local-eviction-protections-non-payment-rent-during-covid-19-extended-through-august-29-2023#:~:text=The%20Mayor%20announced%20on%20May,or%20after%20August%2030%2C%202023> (last visited Dec. 31, 2024).

Many different entities provide rental assistance. Across various communities, some unique blend of county and city governments, nonprofits, and religious organizations make funds available, each program with its own application, eligibility, and disbursement protocols. There are no uniform standards or mechanisms for tenant applications, agency approvals, or time for distribution to landlords. What is clear, however, is that three days is not long enough for any legitimate (e.g., with accountability protections in place) rental assistance provider to deliver funds to a landlord. Accordingly, as in “A Story to Start,” *supra*, rental assistance funds may go untapped, frustrating the policy aim of preventing homelessness by paying rent. This is one of the most compelling arguments to codify a right of redemption:

**extending the time frame during which a tender of rent rescues a tenancy would immediately make more effective the myriad investments in housing stability that rental assistance programs have already made, and presumably will continue to make.**

Extending the time frame during which a tender of rent rescues a tenancy would immediately make more effective the myriad investments in housing stability that rental assistance programs have already made, and presumably will continue to make.

Given the diversity of rental assistance programs throughout California, a comprehensive quantitative analysis of program features is out of reach. In twinning a right of redemption with rental assistance programs, several program elements are important to consider, including (a) dollar limits, including whether the program will cover any expenses other than rent, (b) average time of disbursement, (c) documentation required from the tenant and the landlord, (d) eligibility requirements, such as proof of financial sustainability of the tenancy once rescued, and (e) limitations on a tenant’s usage per year. Members of the research team undertook to interview rental assistance providers. While response rates were very low, when combined with Public Advocates’ and the lead author’s experience with rental assistance in the Bay Area, a few observations are uncontroversial:

- Some providers will provide assistance to cure a 3-day notice to pay rent or quit, but not once an unlawful detainer action has been filed.
- One provider estimates that the average time from a tenant’s application for assistance to disbursement is 28.5 days.<sup>42</sup>

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<sup>42</sup> Thanks to Catherine Guimond of Centro Legal de la Raza for providing this data in a recent interview.



- Agencies that disburse rental assistance are accountable to their funders, be they public or private, which impose their own eligibility requirements, dollar limits, and other limitations.
- The disbursement of rental assistance funds requires collaboration among the assisting agency, the tenant, and the landlord to (a) identify the full amount needed to rescue the tenancy, and (b) provide the agency with tax identifying or other information about the end-point of the funds.
- Rental assistance is typically contingent upon tenants providing documentation of the financial sustainability of the tenancy after the assistance is provided.
- Some landlords will agree to continuances of a pending unlawful detainer action to allow time for the funds to flow, based upon representations of pending applications; typically, these continuances are based upon repeat players and relationships of trust, facilitated by tenant attorneys or advocates.
- Many rental assistance funds are limited to a certain amount per application, and/or a certain number of instances per year.

Applying for and receiving third-party rental assistance is but one way that a tenant could use an extended right to redeem to get current on rent. The additional time could be used for seeking additional employment, borrowing funds from friends and family, or finally receiving the social safety net benefits that are anticipated but haven't arrived (e.g., Social Security or Supplemental Security Income benefits). However, a particular rationale for redemption is to effectuate and maximize the effectiveness of the good faith investments that public and private entities have made into rental stability. Lawmakers should appreciate that this investment serves not only tenants but landlords dependent on predictable income streams, and that a reasonable right of redemption can facilitate the positive outcomes of this investment. As shown, *infra*, some redemption statutes expressly tie the right of redemption to the tenant's application for rental assistance.

## II. DEFINITIONS & METHODOLOGY

The research team for this report consisted of seven Stanford Law School students and a Stanford undergraduate, under the supervision of a faculty advisor, Professor Juliet Brodie.<sup>43</sup> The team undertook a 50-state survey of states’ eviction laws to identify and analyze any state law that had included a right for tenants to redeem their tenancy at a point *after a legal action had been filed*. The team began by defining key terms and the scope of work, and then proceeded to catalog and analyze the features of state redemption statutes. (The methodology is described in more detail in Appendix A.)

### A. Defining Terms

Before undertaking an analysis of those states whose eviction schemes include a right for a tenant delinquent in rent to “redeem” the tenancy, a definition of “redemption” was required. Two crucial differentiations were made.

#### *Pre-filing “cure” versus post-filing “redemption.”*

This analysis differentiates between a pre-filing right to “cure” a default in rent (that is, a right to cure *before* a civil action in court may be filed) from a right to “redeem” a tenancy by paying rent at a point *after* court proceedings commence. Most states<sup>44</sup> require that a landlord who alleges a tenant has failed to make timely rent provide the tenant with written notice of the alleged delinquency and an opportunity to pay the rent within a certain number of days and thus avoid legal action. In other words, no legal cause of action for eviction is ripe unless and until this notice period has expired. In California, this notice and right to cure are found in Code of Civil Procedure section 1161(2), which gives tenants three business days to pay the demanded rent and avoid eviction. Because the landlord is legally barred from proceeding to court with an unlawful detainer action if the tenant makes the payment, this cure opportunity is understood as an absolute *right*. However, the right to cure is not the right to redeem. The present analysis is of those states – regardless of whether their statutes include a pre-filing right to cure – offer tenants a right to redeem a tenancy by paying rent (and other costs) even after an action has been commenced in court.

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<sup>43</sup> Public Advocates Senior Staff Attorney Suzanne Dershowitz also participated in many of the research team meetings to provide guidance and perspective on the project.

<sup>44</sup> Ann O’Connell, *State Laws on Termination for Nonpayment of Rent*, NOLO (Apr. 11, 2024), <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html#AL>

*Opportunity to redeem versus right to redeem.*

Secondly, the analysis here differentiates between a state with a **right** to redeem from a mere **opportunity** to redeem. It is intuitive, and reinforced by data,<sup>45</sup> that many landlords who begin an eviction action will dismiss it and permit the tenant to remain in the unit if the tenant pays all the rent owing, plus costs, and sometimes attorney's fees. Indeed, many nonpayment eviction cases are settled on precisely those terms, sometimes with a payment plan that grants the tenant a specific amount of time to pay off the back debt in installments. For purposes of the present analysis, however, states are included as "Redemption States" only if their statutory scheme includes an actual *right* for a tenant to redeem, without respect to the landlord's consent. This excludes, for example, Utah, which permits a tenant to redeem the tenancy only if the landlord has elected to proceed by posting a statutorily contemplated bond equal to the amount in controversy, plus costs.<sup>46</sup>

*Procedural Mechanism of Redemption (Stays versus Dismissals).*

Redemption States differ with respect to the procedural mechanism by which a tenancy is restored after redemption. For example, the Hawai'i and Missouri statutes require the eviction case be "stayed" upon redemption.<sup>47</sup> By contrast, for example, Virginia's code provides that an eviction case be "**dismissed**" upon redemption.<sup>48</sup> Many state statutes are silent as to the actual procedural effect of the tenant having redeemed the tenancy, speaking simply of the proceedings being "ceased" or "stopped."<sup>49</sup> Absent an informed reason to differentiate among these mechanisms of redemption, states with all of these mechanisms were included as Redemption States (provided, as above, redemption is a right and not merely an opportunity). Policymakers may wish to consider advantages and disadvantages of various mechanisms. For example, dismissal offers finality, for both the parties and the courts; a stay while rental assistance is pending is a more complicated process, but retains the court's jurisdiction until the financial issues are resolved.

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<sup>45</sup> See Leung, et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 *Social Forces* 316 (Sept. 2021), available at <https://doi.org/10.1093/sf/soaa089>.

<sup>46</sup> Utah Code § 78B-6-808(1)-(2). Many thanks to Utah attorney Nathanael Player, former director of the Utah State Court Self-Help Center, for confirming by telephone (Dec. 16, 2024) that a tenant's ability to redeem a tenancy ripens only if a landlord opts to file a possessory bond with the court. Attorney Player also noted that, once Utah law accelerated the time for an eviction hearing (to 10 days), the incentive for landlords to file such a bond was essentially eliminated. In Player's view, the possessory bond no longer plays a meaningful role in Utah eviction proceedings.

<sup>47</sup> Haw. Rev. Stat. § 666-14; Mo. Rev. Stat. § 535.160.

<sup>48</sup> Va. Code Ann. § 55.1-1250.

<sup>49</sup> For example, the West Virginia statute says that upon redemption the proceedings shall "cease" (W. Va. code Ann. § 37-6-23); the New Jersey statute speaks of the proceeding being "stopped" N.J. Stat. § 2A:18-55).

## B. Methodology

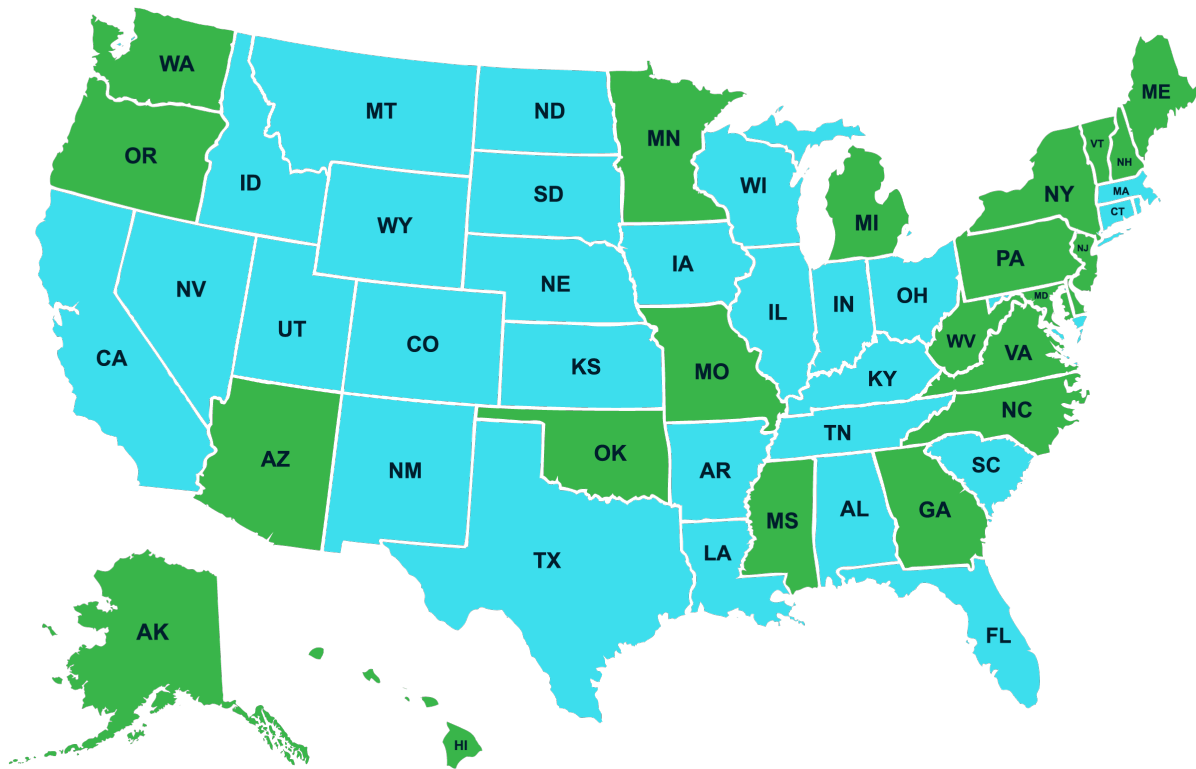
Once the parameters of the project were determined, the team reviewed the eviction statutes of all fifty states, and designed an instrument to capture uniformly features of a right to redeem.<sup>50</sup> These features included (a) the duration of the right to redeem, (b) what monies were required to redeem, and (c) any other notable features, such as any eligibility criteria. Every state’s statutory scheme was reviewed at least twice, and by the faculty advisor, to maximize accuracy and to resolve any ambiguities in interpretation. Once the twenty-one Redemption States were identified, their core features were analyzed, and graphics created to show their comparative features. Finally, sub-teams were assigned to produce case studies on the redemption statutes of two notable states: Oregon and New York. Oregon was of particular significance, given its regional salience to California, and that its redemption statute is quite new, having been passed in 2023. New York also recently (2019) reformed its eviction statutes, both substantive and procedural. In New York, the reforms provide that nonpayment eviction defendants can redeem their tenancies up to execution of the writ (called a “warrant” under New York law), by paying rent owing; notably, New York’s redemption regime excludes (by reference to an external statute defining “rent”) costs and attorney’s fees. As peer states with similar economic, social, and political profiles (and rent burdens),<sup>51</sup> Oregon, and New York provide useful comparisons for California to create its own right to redeem.

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<sup>50</sup> The team stood on the shoulders of colleagues and analysts across the nation, using several pre-existing resources as starting points. The team acknowledges specifically Professor Ryan Sullivan of the University of Nebraska, whose 2022 HUD Policy Brief “Survey of State Laws Governing Continuances and Stays in Eviction Proceedings” surveys all fifty states on a range of eviction issues, including redemption. *Social Forces*, Volume 100, Issue 1, September 2021, Pages 316–344. The team also relied on the Legal Services Corporation’s Eviction Laws Database (available at <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>) and the discussion of redemption in the ABA’s “Ten Guidelines for Residential Eviction Laws” ([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/), Rec. No. 7). Finally, California colleagues, and in particular the Legal Aid Foundation of Los Angeles, shared their analyses with Public Advocates, who passed them on to the research team.

<sup>51</sup> More than 50% of tenants in California and Oregon are “rent-burdened,” paying more than 30% of income to rent. See Tim Henderson, *Rent is eating up a greater share of tenants’ income in almost every state*, Stateline (Sept. 12, 2024, 5 AM) <https://stateline.org/2024/09/12/rent-is-eating-up-a-greater-share-of-tenants-income-in-almost-every-state/>.

### III. Analysis: Twenty-One Redemption States



Twenty-one states have explicit redemption statutes and thus are dubbed Redemption States.

They are:

- |          |                |               |
|----------|----------------|---------------|
| Alaska   | Minnesota      | Oklahoma      |
| Arizona  | Mississippi    | Oregon        |
| Georgia  | Missouri       | Pennsylvania  |
| Hawai'i  | New Hampshire  | Vermont       |
| Maine    | New Jersey     | Virginia      |
| Maryland | New York       | Washington    |
| Michigan | North Carolina | West Virginia |

The redemption statutes in these twenty-one states contain core differences across various features, differing in the timeline of redemption, what is required to be paid, limitations on the right to redeem, and the procedural mechanism for ceasing the proceedings. Below we offer a brief snapshot of the national picture, based on the methodology described in the prior section.

## A. How Long Does the Right to Redeem Endure?

Figure 3 categorizes the Redemption States (and for reference lists the non-Redemption States), providing a visual representation of redemption rights by state according to the duration of those rights. As seen in Figure 3, these rights range from the shortest duration (one state, Georgia, allowing tenants to redeem a tenancy only until the defendant-tenant’s responsive pleading date) to the longest (six states, as shown, allowing tenants to redeem a tenancy up until the day that a writ of possession is actually executed).

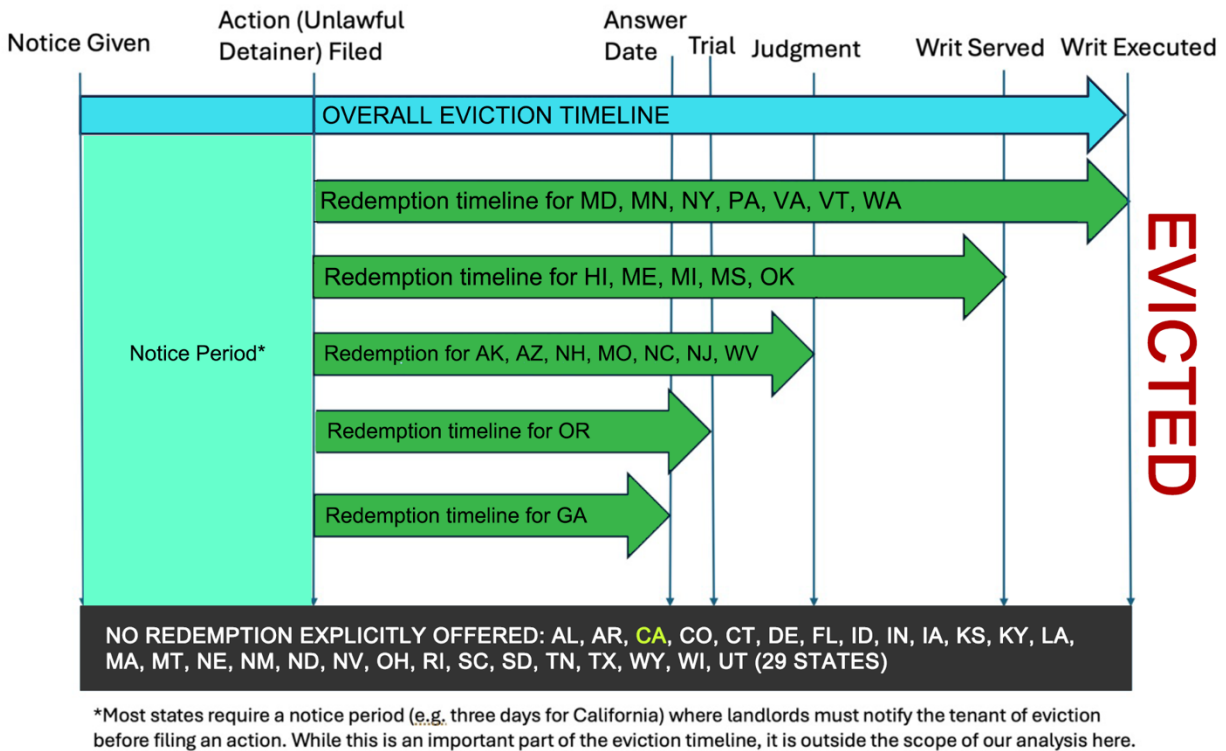


Figure 3. Redemption timelines by state.

Notably, in virtually all (19) of the Redemption States, the right to redeem extends through the date of judgment, and twelve extend even further, up until the service or even execution of the writ of possession.

## B. Payment Required to Redeem

It is *sui generis* that redemption statutes require that the tenant pay the rent legally demanded in the notice owed as necessary for redemption.<sup>52</sup> It is also typical to require that rent accrued up to the date of redemption be included as well. Some states also require tenants to pay some amount of court costs to redeem. About half of the Redemption States require tenants to pay some amount of attorney's fees to redeem — most of these states limit fee recovery to situations in which redemption is post-judgment, and some impose a cap or other limitations on attorney's fees in the redemption context. For example, Minnesota requires that a redeeming tenant pay attorney's fees in order to restore the tenancy, but those fees are statutorily capped at \$5.<sup>53</sup>

## IV. CASE STUDIES

The redemption schemes of two states — Oregon and New York — are examined in detail below.

### A. Oregon — HB 2001 (of 2023)

Because of its geographic proximity and social, political, and economic similarities with California, and because it reformed its eviction statutes in 2023, Oregon provides a model worthy of California's review. Methodologically, Oregon's redemption right is unique. Its duration is on its face somewhat short — tenants can redeem only up to the beginning of the trial. However, the Oregon legislature in 2023 extended the period before that trial date, effectively lengthening the redemption period.

In addition to extending the trial timeline, Oregon's reformed statute right also greatly lengthens the pre-filing cure period. Landmark 2023 House Bill 2001 lengthened the time frame for an eviction case in several ways. First, the length of the cure period was extended to, functionally, 18 days for most tenancies.<sup>54</sup> Second, HB 2001 extended the tenant's first appearance deadline from 7 to 15 days, with the option for a 7-day extension. Finally, the trial date for nonpayment cases was extended from no later than 15 days after the first appearance date to *no earlier* than 15 days (and no later than 30 days)

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<sup>52</sup> The deadline by which a tenant may redeem and the amount required to redeem are potentially intertwined. A post-judgment redemption incorporates the adjudication of the amount of rent lawfully owed, e.g., subject to any affirmative or factual defenses. By contrast the amount necessary to redeem a pre-judgment redemption would be based either upon the amount demanded in the 3-day notice or upon an amount privately negotiated between the parties.

<sup>53</sup> Minn. Stat. § 504B.291, subd. 1(a) (2023).

<sup>54</sup> Oregon's notice/cure period is expressed in terms of the number of days after the commencement of the rental period that a landlord must wait before serving notice; the details are somewhat complicated, but there is no question that HB 2001 lengthened the pre-filing cure period. (See, <https://consumerlaw.osbar.org/2023/05/03/2023-updates-in-tenant-law/#:~:text=Governor%20Kotek%2orecently%20signed%20into,due%20rent%20under%20ORS%2090.394> (last visited December 27, 2024).

after the first appearance date.<sup>55</sup> Talled together, these changes in timeline give tenants at least 32 days and up to 65 days before the start of a trial.<sup>56</sup> This period of time is roughly comparable with many of the states that provide a right of redemption up until a writ is executed.

As a potential model for California eviction reform, this HB 2001 has several advantages. Trials can be costly, consuming precious judicial resources and taxpayer money, and incurring additional attorney's fees. Extending the runway until a trial begins gives tenants a better chance to redeem their tenancies without the expensive procedures that may be rendered moot if a tenant redeems their tenancy post-trial. Moreover, states that provide redemption rights up until the issuance or execution of a writ may only be providing a few extra days for a tenant, whereas Oregon's approach roughly doubled the redemption period by slowing down the trial process. Judgments in favor of eviction preserve other causes of action for landlords, such as liquidated damages for broken leases and damages to the property by the tenant.<sup>57</sup>

In order to redeem their tenancies, Oregonians need only pay the amount of rent demanded in the original notice. Tenants may still be responsible for paying other costs as well, such as attorneys' fees, interest, and rent accrued over the course of the nonpayment period, but paying these costs is not *required* to redeem a tenancy.<sup>58</sup> In order to redeem, tenants must only meet the statutory requirements and amount demanded in the original notice.<sup>59</sup> This statutory design favors fundamental procedural values such as notice and fairness, as tenants will likely only be reasonably aware of what is owed from the original nonpayment notice—and they will be unlikely to know of accruing costs, interests, and other fees.

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<sup>55</sup> Jonathan Clay, *Oregon HB 2001 – Changes to Eviction Processes for Nonpayment Cases*, Multifamily NW (Mar. 29, 2023) <https://www.multifamilynw.org/news/oregon-hb-2001--changes-to-eviction-process-for-nonpayment-cases> (last visited Dec. 31, 2024).

<sup>56</sup> “Days” in Oregon eviction notices are counted by calendar days, not business days. ORS 90.160 (“[W]here there are references in this chapter to periods and notices based on a number of days, those days shall be calculated by consecutive calendar days, not including the initial day of service, but including the last day until 11:59 p.m.”).

<sup>57</sup> Or. Rev. Stat. § 90.430 (“If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.”).

<sup>58</sup> For filing fees, see HB 2001 Sec. 55(5) (“Notwithstanding 90.302, a landlord may charge a tenant for filing fees paid under ORS 105.130, if the complaint for possession is dismissed under subsection (3)(c) of this section. Payment of the fees is not a prerequisite for dismissal under subsection (3)(c) of this section.”); for attorneys' fees, see HB 2001 Sec. 59 (“If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3),” but if the case does not reach a judgement and is resolved before trial, or if the action is uncontested by the tenant, then the landlord cannot recover attorney fees, HB 2001 sec. 63(3)-(4)); for interest and accrued rent during the action, see *VP Real Est. Inv. Servs. v. Naftaniel*, 334 Or. App. 747, 750, 557 P.3d 196, 197 (2024) (finding that tenant redeemed their tenancy by paying the amount demanded in their nonpayment notice. Even if other rent had accrued and was owed to the landlord, this other amount owed was separate from the amount required to redeem the tenancy under state law). However, some costs such as utility and service fees and late charges part of the rental contract and included in the original notice may be part of the costs required to redeem a tenancy. HB 2001 Sec. 55(1)(a) (“‘Nonpayment’ means the nonpayment of a payment that is due to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.”). Late charges, however, are capped and statutorily regulated elsewhere. ORS 90.260.

<sup>59</sup> *VP Real Est. Inv. Servs. v. Naftaniel*, 334 Or. App. 747 (2024).



Oregon’s experience implementing its new redemption scheme provides some lessons with respect to education and information.<sup>60</sup> Given that most tenants do not have attorneys in eviction cases, public information about the right to redeem is crucial if the right is to be meaningful. Second, as with any new legal provision, judicial education is also crucial, again, particularly given the chronic lack of representation for tenants. Finally, Oregon’s early experience with HB 2001 teaches that it is important for the law to be express and clear, and avoid vague terms such as “reasonable,” which could be interpreted radically differently in different counties or even courtrooms across the state.<sup>61</sup>

House Bill 2001 has already worked to prevent evictions. According to one analysis, in the six months before its passage, from October 2022 to March 2023, over 2,000 evictions were filed each month, and more than 85% of them were for nonpayment of rent.<sup>62</sup> Since the new law has gone into effect, more eviction filings have ended with dismissals – landlords get paid and tenants stay in their homes. The Oregon Law Center told news outlets that about 50% of cases were dismissed in September after the new law went into effect, compared to 28% of cases in January.<sup>63</sup> Since Oregon’s redemption statute has gone into effect, more eviction filings have ended with dismissals – landlords get paid and tenants stay in their homes. Advocates report that about half of all eviction cases in September (after the new law went into effect) were dismissed, compared to a just over a quarter (28%) of cases were dismissed in January without the redemption law.

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<sup>60</sup> This paragraph is based upon a conversation with Jacob Sweet from the Oregon Law Center.

<sup>61</sup> See e.g., HB 2001 Sec. 55(3)(b) (“A court shall enter a judgment dismissing a complaint for possession that is based on a termination notice for nonpayment if the court determines that: . . . The landlord caused the tenant to not tender rent, including as a result of the landlord’s failure to reasonably participate with a rental assistance program.”)

<sup>62</sup> Julia Shumway, *Oregon Eviction Filings above pre-Pandemic Levels*, Oregon Public Broadcasting (Nov. 10, 2023), available at <https://www.opb.org/article/2023/11/10/oregon-eviction-filing-pandemic-aid/> (last visited December 17, 2024).

<sup>63</sup> *Id.*

Oregon’s approach may be especially appropriate for California. The Golden State provides no redemption right, and an especially short cure period—three days, compared to 18 for Oregonians—for tenants to address notices of nonpayment. Given these expedited procedural steps, slowing down the eviction process together with the creation of a redemption right may make sense for California rather than merely creating a redemption right that extends up until the writ of execution. As a final note, statutory language often differs from statutory practice. As Rose Levy, Executive Director of United Way of Santa Barbara, a rental aid assistance nonprofit, explained in an interview for this policy memo, landlords oftentimes are willing to grant longer cure periods if they are guaranteed a rental payment by welfare and aid assistance groups. But the *possibility* of longer cure periods is no substitute for a statutory *right* to redeem. Oregon offers one pathway for how California could create such a right.

## B. New York – The Housing Stability and Tenant Protection Act of 2019

As did California with its Tenant Protection Act of 2019 (“TPA”), New York significantly reformed its landlord-tenant law with the passage of the Housing Stability and Tenant Protection Act (HSTPA) in 2019. Unlike California’s TPA, which did not change any feature of eviction proceedings, the HSTPA included reforms to the summary process for eviction under state law. Those reforms included lengthening certain response times for tenants and the creation/clarification of the right for a nonpayment tenant to redeem the tenancy. For example, the pre-filing cure/notice period in a New York nonpayment case was extended from three to 14 days, and to require a written “reminder” of rent due even before service of that notice.<sup>64</sup> The legislature expressed the policy rationale for these modifications, which included the creation of the redemption right, with findings that “New York State ranks only 39th in the nation for tenant protections” and wanted to expand protections “[f]or tenants who rent market-rate units” by “allow[ing] more leniency throughout any eviction proceeding, including stays of eviction and executions of warrants; and ensure that any eviction that is executed is done so in the interest of justice.”<sup>65</sup> These are findings that the California legislature might seek to emulate.

The HSTPA created/clarified a tenant’s right of redemption at two points in nonpayment eviction proceedings: pre- and post-judgment.

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<sup>64</sup> Lebovits, et al., *NY’s Housing Stability and Tenant Protection Act of 2019 Part III – WHAT LAWYERS MUST KNOW* (Dec. 1 2019), citing HTPSA’s amendment to the Real Property Actions and Proceedings Law, section 711) <https://nysba.org/nys-housing-stability-and-tenant-protection-act-of-2019-part-iii-what-lawyers-must-know/>

<sup>65</sup> Housing Stability and Tenant Protection Act of 2019, 2019 Sess. Law News of N.Y. Ch. 36.

## Pre-Judgment Redemption

First, the Act added an entirely new subsection to section 731 of the Real Property Actions & Proceedings Law (RPAPL) regarding pre-judgment redemption. Subsection (4) now provides:

In an action premised on a tenant defaulting in the payment of rent, payment to the landlord of the *full amount of rent due*, when such payment is made at any time *prior to the hearing on the petition*, shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced.<sup>66</sup>

This amendment was viewed as codifying as a right the widespread practice of courts dismissing actions (or parties agreeing to their dismissal under pressure from the bench) once tenants paid rent due.<sup>67</sup> As discussed below, two phrases in the subsection are subject to interpretation: “the full amount of rent due” and “the hearing on the petition.”

### *The Full Amount of Rent Due*

In addition to new subsection 731(4), the HSTPA created a new subsection of the RPAPL to define “rent” for the purposes of a summary proceeding. The new section 702 of the Real Property Law defines “rent” as “the monthly or weekly amount charged in consideration for the use and occupation of a dwelling” and excludes “fees, charges or penalties” even if they are included in the lease.<sup>68</sup> Applying this definition in the redemption statute’s requirement to pay the “full amount of rent due,” this definition clearly excludes attorney’s fees and late charges from the amount a tenant needs to pay to redeem their tenancy.

The meaning of “due” is less clear—due as of when? An eviction lawsuit is predicated upon the expiration of notice that demands a certain amount of rent due as of the date that notice is served. However, rent by law continues to accrue each day that a tenant remains in possession. (In California, this rent accrual is expressed in paragraph 19(g) of the Judicial Council Form UD-100, which allows a plaintiff-landlord to pray for judgment in an amount that includes daily rent after expiration of the

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<sup>66</sup> N.Y. Real Prop. Acts. Law § 731 (4), emphases added; despite statutory language that this “hearing” is the date of the defendant’s first appearance, the language “hearing on the petition” has been held to extend until the time after an initial, and routine, adjournment, and thus is analogous to a trial date under California law. See, e.g., *Aviles v. Santana*, 56 Misc.3d 1206(A) (Civ. Ct. Bronx Cty. 2017) (holding that this language “has routinely been interpreted by the Courts to mean that the time for Respondent to file an answer is extended by adjournment of the proceeding unless ‘arrangements to the contrary’ have been made,” citations omitted.)

<sup>67</sup> Lebovits, et al., *NY’s Housing Stability and Tenant Protection Act of 2019 Part III – WHAT LAWYERS MUST KNOW* (Dec. 1 2019) <https://nysba.org/nys-housing-stability-and-tenant-protection-act-of-2019-part-iii-what-lawyers-must-know/>.

<sup>68</sup> N.Y. Real Prop. Acts. Law § 702 (1).

notice.) Most Redemption States are explicit that a tenant must pay rent accrued through the date of redemption in order to redeem, but New York's is not. According to advocates, the meaning of "due" in the redemption statute has not been litigated, and is unlikely to be. Many eviction petitions are "amended to date" when routinely adjourned, updating the amount at issue in the lawsuit to include rent accrued to at least that date. Most landlords, at least in New York City, accept the rent demanded in the petition as the redemption amount, without litigating the accrual.

From a policy perspective, the difference between "rent demanded" and "rent demanded plus rent accrued" should be considered in light of what is likely to follow a redemption. Plainly, "rent demanded" is a lesser amount and thus on its face more favorable to tenants. "Rent plus accrued," by contrast, would likely be favored by landlords, as it would make them whole (with respect to rent) immediately upon tender. Even for tenants, however, the less demanding redemption amount simply defers the need to pay accrued rent. Theoretically, in a state that required only rent demanded for redemption, the landlord could serve a new rent demand immediately after redemption for the amount that had accrued. Such a demand, however, would of course trigger the tenant's right to cure, and perhaps redeem, anew, and would provide a second opportunity for rental assistance to be brought to bear. An explicit requirement that the redemption amount include rent accrued would prevent this cycle.

#### *Prior to Hearing on the Petition*

The second clause in new § 731(4) that requires some analysis is its statement that a nonpayment eviction case shall be mooted if the tenant pays the full amount of rent due prior to the hearing on the petition. While simple enough on its face, application of this language becomes more complex when understood in the context of the "adjournments" that are routine in New York housing courts. That is, while one can find statutory language indicating that "the hearing on the petition" in an eviction case is the date of the defendant's first appearance, that language has been held to extend until the time after an initial, and routine, adjournment. (See, e.g., *Aviles v. Santana*, 56 Misc.3d 1206(A) (Civ. Ct. Bronx Cty. 2017) (holding that this language "has routinely been interpreted by the Courts to mean that the time for Respondent to file an answer is extended by adjournment of the proceeding unless 'arrangements to the contrary' have been made," citations omitted.) Accordingly, "prior to hearing on the petition" is best understood as analogous to a trial date under California law.

#### *Post-Judgment Redemption*

The HSTPA also addressed a tenant's right to redemption post-judgment. First, the Act removed statutory language that canceled the landlord-tenant relationship upon the *issuance* of an eviction

writ.<sup>69</sup> Second, and more substantively, the Act added language transforming a discretionary “stay” upon payment by the tenant into a true right of redemption (“shall”). The new language in its entirety provides:

Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. In a judgment for non-payment of rent, the court **shall** vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.<sup>70</sup>

Notably, this post-judgment language, too, allows a tenant to redeem a tenancy by paying only “full rent due” at any point prior to the execution of the eviction warrant. This raises the same questions, regarding accrued rent, raised by the pre-judgment amendment. It is only here, however, that the limitation regarding a tenant’s bad faith comes into play.

In sum, when codifying new tenant protections in 2019, the State of New York included in its reforms a significant right of redemption: a tenant, unless withholding rent in bad faith, can redeem a tenancy and remain in possession, by paying all rent owing, with an express exclusion of costs and attorney’s fees, at any time prior to execution of the eviction writ.

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<sup>69</sup> N.Y. Real Prop. Acts. Law § 749 (3) had read: “The issuing of a warrant for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relation of landlord and tenant.”

<sup>70</sup> N.Y. Real Prop. Acts. Law § 749 (3), emphasis added. The prior language had simply stated that nothing deprived the court of its power to stay or vacate an eviction warrant “upon good cause.” These changes can be viewed in the marked-up version of the HSPTA, available at

[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A08281&term=2019&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A08281&term=2019&Text=Y) (see page 52).

## V. CONCLUSION

California policymakers should codify a right of redemption for tenants in nonpayment eviction cases. In doing so, California would become the 22<sup>nd</sup> state to recognize that redemption offers a rare “win-win” between landlords and tenants. Tenants with temporary shortfalls in income are the most obvious and immediate beneficiaries of a redemption statute. The additional weeks permitted to redeem allow a tenant a reasonable opportunity to address that shortfall, whether through additional wage-earning, private borrowing, or by seeking third-party rental assistance designed expressly to fill the gaps inevitable in the current rental housing market. Preventing eviction, dislocation, and possible homelessness are the obvious benefits of this policy, and they redound not only to the individual tenant households impacted, but also to the neighbors, employers, classmates, and communities collaterally affected. Moreover, as valuable as this opportunity would be to tenants, so it would be for landlords. A right of redemption satisfies a landlord’s interest in income generated from a rental unit. As shown during the COVID-19 pandemic, delaying eviction to enable the gathering of funds in fact puts money in landlords’ pockets that they would likely not receive otherwise, as the costs often outweigh the benefits of pursuing money judgments against evicted former tenants. In addition, receiving redeeming funds to protect an existing tenancy spares a landlord from the costs (likely passed on to tenants) of turning over a unit.

In the absence of a right of redemption, cases for nonpayment of rent all too often lead to *unnecessary eviction*. Eviction for nonpayment of rent is often too blunt an instrument where the parties both want the same thing: a continued tenancy, with rent paid. A reasonable right of redemption effectuates the true policy goal of nonpayment evictions: to return possession to the landlord when a tenant truly cannot financially sustain a tenancy. Requiring a landlord to receive funds is not a burden, and the anti-dislocation effects of redemption are unquestionably a public policy gain. Indeed, it’s a Win-Win.

## APPENDIX A: METHODOLOGY

The research team for this report consisted of seven Stanford Law School students and a Stanford undergraduate, under the supervision of a faculty advisor, Professor Juliet Brodie.<sup>71</sup> On behalf of Public Advocates, the team undertook a 50-state survey of states' eviction laws to identify and analyze any state law that had included a right for tenants to redeem their tenancy at a point *after a legal action had been filed*. The methodology included five phases.

### Phase 1. Defining Terms & Parameters

As described *supra*, before undertaking an analysis of those states whose eviction schemes include a right for a tenant delinquent in rent to “redeem” the tenancy, a definition of “redemption” was required. The team differentiated between a pre-filing “cure” and a post-filing “redemption. The team also was careful not to confuse an opportunity to cure for a right to do so. The research team also made note of the procedural mechanism by which a redemption effectuated (e.g., dismissal versus stay).

### Phase 2. Initial Survey

The team designed an instrument for collecting and cataloging information uniformly about each state. The statutes of all fifty states were reviewed<sup>72</sup> to ensure that all Redemption States had been identified. For each Redemption State, the team recorded the following features, all with relevant statutory citations and any outstanding questions on which they sought others' collaboration:

- The timeframe during which the right to redeem persisted (e.g., up to trial date, up to judgment, or up to date of actual physical eviction);
- The amounts required to redeem (e.g., rent owed, rent accrued, costs, attorney's fees); and
- Special requirements or exemptions (e.g., limit on frequency a tenant may seek to redeem)

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<sup>71</sup> Public Advocates Senior Staff Attorney Suzanne Dershowitz also participated in many of the research team meetings to provide guidance and perspective on the project.

<sup>72</sup> The team stood on the shoulders of colleagues and analysts across the nation, using several pre-existing resources as starting points. The team acknowledges specifically Professor Ryan Sullivan of the University of Nebraska, whose 2022 HUD Policy Brief “Survey of State Laws Governing Continuances and Stays in Eviction Proceedings” surveys all fifty states on a range of eviction issues, including redemption. *Social Forces*, Volume 100, Issue 1, September 2021, Pages 316–344. The team also relied on the Legal Services Corporation's Eviction Laws Database (available at <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>) and the discussion of redemption in the ABA's “Ten Guidelines for Residential Eviction Laws” ([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/), Rec. No. 7). Finally, California colleagues, and in particular the Legal Aid Foundation of Los Angeles, shared their analyses with Public Advocates, who passed them on to the research team.

### **Phase 3. Quality Assurance Check**

A dedicated sub-team, as well as the faculty sponsor of the project, reviewed all of the information sheets. Questions of statutory reading were brought to the team for discussion/resolution to ensure consistency in analysis.

### **Phase 4. Analysis and Graphic Representation**

Once the information sheets were complete, a dedicated sub-team undertook analysis and graphic representation of the results. Figure 3, which arrays Redemption States according to the duration of the right to redeem was the result.

### **Phase 5. Case Studies: Oregon & New York**

An individual team member was assigned to two states of special interest, Oregon and New York. First, Oregon is of particular significance, given its regional salience and its passage of a new redemption statute in 2023, which uses the lengthening of certain features of the eviction summary process to effectuate the right of redemption. New York also recently (2019) reformed its eviction statutes, both substantive and procedural. In New York, the reforms provide that nonpayment eviction defendants can redeem their tenancies up to execution of the writ (called a “warrant” under New York law), by paying rent owing; notably, New York’s redemption regime excludes (by reference to an external statute defining “rent”) costs and attorney’s fees.



## VI. Appendix B: Bibliography & Resources

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