The Art of the Seal: Recommendations for a Statewide Eviction Sealing Statute in Ohio

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Public eviction records can plague tenants for years—even when cases are dismissed or resolved in the tenant's favor. Tenant screening companies capture and report these records, often without context, creating an indelible "Scarlet E" that locks many renters out of future housing opportunities. In response, a growing number of states have adopted eviction sealing laws which limit public access to certain eviction records. This Note argues Ohio should join this trend and adopt a balanced sealing law of its own. Comparing recent sealing legislation in California, Nevada, and Utah, this Note analyzes how each state has balanced the competing interests of tenant protection, landlord interest, and open court records. Drawing on these examples, this Note proposes specific provisions for an Ohio law, including automatic sealing upon case dismissal; regulations upon tenant screening companies; and provisions specifically addressing landlord interests. This Note concludes that such a balanced approach, tailored to Ohio's legal and political landscape, can provide a fair and feasible path to greater housing stability for Ohio renters.

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I. INTRODUCTION

Ashlee Rousey and Kayla Swanson never thought a dismissed eviction case would follow them for years, denying them the basic human necessity of safe and stable housing.

Ashlee, a survivor of domestic violence, faced eviction after her landlord learned of a police trespass notice against her abusive ex-partner.[1] Kayla confronted eviction as retaliation for reporting unsafe conditions in her apartment.[2] In both cases, the courts recognized the unlawful bases for eviction and swiftly dismissed the complaints.[3]

While the courts ruled in Ashlee and Kayla's favor, the damage was already done. The mere filing of those cases created a lingering stain on their rental histories.[4] As they sought new housing, landlord after landlord turned them away, citing those very eviction records.[5] Ashlee found herself and her child living in a motel, locked out of stable housing by a case that never should have been filed.[6] Kayla, despite securing a court order sealing her record, still had her eviction record reported by a tenant screening company, leading yet another landlord to deny her a home.[7]

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[1] Sophie Beiers, Sandra Park, & Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color [https://perma.cc/Y7K7-CHU3]; Jenny Kutner, *Domestic Violence Victims Can be Evicted for Calling Police. Here's Why.*, MIC (July 14, 2016), https://www.mic.com/articles/148484/domestic-violence-victims-can-be-evicted-for-calling-police-here-s-why [https://perma.cc/J5MV-SN4R].

[2] Katelyn Polk, *Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions*, 15 NW. J. L. & SOC. POL'Y 338, 339 (2020).

[3] *Id.*; Beires, Park & Morris, *supra* note 1; and Kutner, *supra* note 1.

[4] *See* Beires, Park & Morris, *supra* note 1; Kuter, *supra* note 1; Polk, *supra* note 2.

[5] *See* Beires, Park & Morris, *supra* note 1; Kuter, *supra* note 1; Polk, *supra* note 2.

[6] *See* Beires, Park & Morris, *supra* note 1, and Kutner, *supra* note 1.

[7] Polk, *supra* note 2.

Ashlee and Kayla's stories lay bare a painful reality: In a system where eviction cases become public record upon filing, even wrongful and baseless cases can create nearly insurmountable barriers to housing access and stability.

Across the country, eviction records are made public the moment a landlord files for eviction.[8] Tenant screening companies collect the records as soon as they become public, which they compile, along with criminal records and credit information, to produce tenant screening reports.[9] Approximately 90% of landlords rely on tenant reports to assess rental applications, under the guise that the reports enable them to make safe and reliable rental decisions.[10]

In reality, tenant reports are nothing more than fuzzy snapshots of a tenant's background and rental history that often lack critical context.[11] No-fault evictions, like Ashlee's and Kayla's, will often appear simply as "eviction record found" on a tenant report, with no distinction based on the outcome or underlying circumstances.[12] In reviewing a prospective tenant's report, "most landlords consider any eviction history a nonstarter."[13] Regardless of the underlying facts—whether an eviction case was dismissed, settled, or resolved in favor of the tenant—an eviction record will "all but assure denial" of a prospective tenant.[14]

An eviction record has thus become known as the "Scarlet E," a badge of shame and stigma that effectively deems the tenant unworthy of housing.[15] That

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[8] *See generally* Tinuola Dada & Natasha Duarte, *How to Seal Eviction Records*, UPTURN (July 7, 2022), https://www.upturn.org/work/how-to-seal-eviction-records [https://perma.cc/LE26-X7PY].

[9] *Id.*

[10] *Limiting Public Access to Eviction Records*, THE NETWORK FOR PUB. HEALTH L. 2 (2021); *see* Dada & Duarte, *supra* note 8 ("Tenant screening reports mislead landlords about what eviction records represent and their predictive value.").

[11] *See generally Limiting Public Access*, *supra* note 10, at 2 ("Commercial screening services . . . provide prospective landlords an at-a-glance look at a tenant's eviction history. Screening agencies 'have little or no incentive to avoid accurate but misleading items,' and many do not differentiate between case outcomes, exacerbating the impact of filings that end favorably for the tenant.").

[12] New America, *The Scarlet E: Balancing Eviction Record Sealing and Data Access*, YOUTUBE (Nov. 14, 2022), https://www.youtube.com/watch?v=V0_qwkyZQHM [https://perma.cc/CW6P-L33R]. "No-fault evictions" are "eviction complaints filed erroneously, cases that never had merit, or punitive filings that were intended to dissuade tenants from exercising their legal rights." *Limiting Public Access*, *supra* note 10, at 1–2. Landlord foreclosures and evictions based on instances of domestic violence on the rental property, for example, often remain on a tenant's public record without specifying the tenant was not at fault in the matter. *Id.*

[13] *Limiting Public Access*, *supra* note 10, at 2.

[14] *See* Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 669, 688 (2018).

[15] *See generally* Kaelyn Forde, *'Scarlet E': An Eviction in the US can Become a Life Sentence*, AL JAZEERA (Aug. 21, 2020), https://www.aljazeera.com/economy/2020/8/21/scarlet-e-an-eviction-in-the-us-can-become-a-life-sentence [https://perma.cc/XH73-UZFR];

long-lasting stigma limits tenants' access to safe and affordable housing, forcing them to accept substandard conditions at higher costs.[16] This cycle makes eviction "the 'top driver of homelessness,' and a 'root cause' of poverty" in the United States.[17]

Sealing eviction records has emerged as the "ideal policy solution" to curbing this cycle.[18] In short, eviction record sealing means the removal of the eviction record from public access.[19] Depending on the policy, sealing may be automatic upon filing, petition-based, or mandatory upon a lapse of time or other occurrence.[20] While these policies are manifested differently across states and localities, the goal generally remains the same: to protect tenants by limiting or preventing public access to eviction records so renters are not burdened with long-term consequences that limit housing access.[21]

This goal can be difficult to realize in some states because of competing legislative priorities. Landlord interests, for example, are often prioritized by policymakers, potentially stonewalling efforts to pass broad tenant protections, particularly in states controlled by Republican legislatures. But compromises

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NADA HUSSEIN, TORI BOURRET, & SARAH GALLAGHER, EVICTION RECORD SEALING AND EXPUNGEMENT TOOLKIT, NAT'L LOW INCOME HOUS. COAL. 4 (2023).

[16] *Limiting Public Access*, *supra* note 10, at 2–3.

[17] *Id.* at 1; *see also* Adam Porton, Ashley Gromis & Matthew Desmond, *Inaccuracies in Eviction Records: Implications for Renters and Researchers*, 31 PRINCETON U. HOUS. POL'Y DEBATE 377, 377 (2021) ("[E]victed families often face downward residential mobility . . . and can become trapped in a cycle of poverty, as eviction has been linked to job loss, depression, and prolonged homelessness . . . .").

[18] *Limiting Public Access*, *supra* note 10, at 3. Sealing means "records are made 'unavailable to the public,' but may be reopened" if certain requirements are met. *Id.* Expungement is the process of eliminating filings from the record so they "can never be retrieved or reopened." *Id.* While each is an effective strategy for tenant protection, sealing is the preferred method because of concerns about public records access—expunged records prevent eviction data researchers and tenants and their attorneys from accessing eviction data, which makes expungement laws more difficult to justify in some states. *See generally* New America, *supra* note 12 (discussing public access concerns).

[19] New America, *supra* note 12.

[20] Colorado and California seal records immediately upon filing and only make records public under limited circumstances. COLO. REV. STAT. ANN. § 13-40-110.5 (West 2021); CAL. CIV. PROC. CODE § 1161.2 (West 2022). Illinois, on the other hand, will automatically seal evictions only when they resulted from a landlord foreclosure. 735 ILL. COMP. STAT. 5/9-121 (West 2021).

[21] *See, e.g.*, A.B. 2819, 2016 Leg. (Cal. 2016) ("This act strikes a just balance between ensuring open access to public records and protecting . . . innocent tenants . . . . This act is a response to the state's ongoing affordable housing crisis and is necessary to prevent tenants from being inadvertently denied an opportunity to secure housing simply as a result of being named in an unlawful detainer lawsuit.").

and creative bipartisan solutions have been struck in states of varying political compositions to provide tenant protections.[22]

Part II of this Note will discuss these competing interests in detail, focusing on two concerns related to statewide eviction sealing legislation. Part III will then lay out states' approaches to eviction sealing legislation, describing the policies that provide the best tenant protections, and examining compromises made in states with competing priorities. Part IV will focus specifically on legislation in California, Nevada, and Utah, to illustrate how states have enacted legislation in the context of their political landscapes. The discussion will be narrowed to Ohio in Part V, which will contain an analysis of current eviction policies throughout the state and prior efforts to pass eviction sealing legislation at the state level. Finally, a recommendation for a statewide eviction sealing policy in Ohio will be set forth in Part VI, considering barriers to passage and drawing on policies in comparable states.

II. COMPETING INTERESTS AND LEGISLATIVE PRIORITIES

Open records concerns and landlord interests are major sources of resistance to eviction sealing legislation.[23] Landlord interests in particular are likely to be prioritized by members of the Republican Party.[24] Driven by a pro-business and anti-regulation ideology, the Republican Party historically tends to align with and promote the interests of landlords and the real estate industry over tenants' rights.[25] In states where Republicans control the legislature, therefore, it is

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[22] *See generally infra* Part IV (discussing compromises made by the Republican-majority legislatures in Nevada and Utah when drafting their respective eviction sealing bills).

[23] *See infra* Parts II.A and II.B.

[24] *See infra* note 25 and accompanying text.

[25] *See generally* Peter Marcuse & W. Dennis Keating, *The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism*, *in* A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 139–140 (Rachel G. Bratt et. al. eds., 2006) ("One generally accepted set of conservative principles . . . state the following: Encourage free and deregulated housing markets[;] Minimize government intervention . . . [;] Rely on the private sector and its profit incentives as the primary provider of housing[;] Practice enlightened federalism, with maximum decentralization to local levels of government . . . ."). The National Association of Realtors (NAR) is a real estate "lobbying giant" that works closely with Republican policymakers to promote these ideals and affect pro-landlord legislation. *See* Donald Shaw & David Moore, *Realtors' Lobby Plows Political Cash into Efforts to Keep Rents Higher*, MORE PERFECT UNION (Nov. 3, 2022), https://perfectunion.us/realtors-lobby-plows-political-cash-into-efforts-to-keep-rents-higher [https://perma.cc/D83D-FFPK]; *National Assn of Realtors*, OPENSECRETS (2024), https://www.opensecrets.org/orgs/national-assn-of-realtors/recipients?id=d000000062 [https://perma.cc/PT84-8RUW] (showing that, as of March, 2024, 59.02% of the NAR's contributions to congressional candidates have gone to members of the Republican Party, with 40.57% going to Democrats). One of the NAR's 2020 "Success Stories," for example,

especially important to appreciate these competing interests when drafting eviction sealing legislation.

A. *First Amendment and Open Records Concerns*

Some opponents—particularly real estate industry groups and journalists—have tried to defeat eviction record sealing proposals by invoking First Amendment concerns about public access to court records.[26] While there is no actual legal issue related to eviction sealing, suppression of public records remains a significant concern for many opponents of eviction sealing legislation.[27] In response to a series of proposed Rules regarding public access to court records in the Maryland Court of Appeals, the Maryland Delaware District of Columbia Press Association ("MDDC") explained the value of public access to court records to journalism and reporting: "In sum, access to court records . . . enables the public to monitor specific cases and the operation of the court system as a whole[,]" which "enhances the integrity and accountability of the court, and ultimately builds public confidence in the judicial system."[28]

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celebrated the success of the Louisiana Realtor's chapter in defeating an eviction sealing bill proposed in the state senate. *Louisiana REALTORS Advocate for Keeping Eviction Records a Matter of Public Record*, NAT'L ASSOC. OF REALTORS: SUCCESS STORIES (Dec. 2020) [hereinafter *Success Stories*], https://realtorparty.realtor/homepage/success-story/louisiana-realtors-advocate-for-keeping-eviction-records-a-matter-of-public-record [https://perma.cc/5S4X-YZ3F]. That same year, the NAR worked with Ohio Republicans to draft and pass Substitute House Bill 430, which includes a provision preempting local governments in Ohio from capping rents. Shaw & Moore, *supra* note 25. The bill appeared to have been in response to an effort by the Columbus Coalition on Rent Control to put a citywide rent control measure on the ballot. *Id.*

[26] *See, e.g.*, *Eviction Sealing Talking Points: An In-Depth Essay*, MASSLANDLORDS, https://masslandlords.net/policy/eviction-sealing [https://perma.cc/GW79-VXUQ] ("If enacted, eviction sealing would . . . erode a bedrock constitutional principle by making secret what is and ought to be publicly available court information."); *Comments on Proposed Rules Regarding Public Access to Court Records*, THE MD.–DEL.–D.C. PRESS ASS'N, (Jan. 12, 2004) [hereinafter *MDDC Comments*], https://www.courts.state.md.us/sites/default/files/import/access/proposedrules_comments.pdf [https://perma.cc/6DAE-PBEJ] (advocating for sealing on a case-by-case basis to provide "closure where needed in individual cases, while still permitting access [to eviction records] in other cases where [sealing] is not justified"); *Success Stories*, *supra* note 25 and accompanying text.

[27] Courts consistently find that protecting access to housing is a valid reason to limit public access to court records. *See, e.g.*, U.D. Registry v. California, 34 Cal. App. 4th 107 (Ct. App. 1995) ("Concern about the availability of rental housing for those needing housing, and particularly those facing eviction, is a valid and significant state interest.").

[28] MDDC Comments, *supra* note 26, at 2–3; *see also* Rachel Dissell, *Cleveland Housing Court Sets New Rules to Make Requests to Seal Evictions Easier*, CLEV. METRO NEWS (Dec. 30, 2018), https://www.cleveland.com/metro/2018/12/cleveland-housing-court-sets-new-rules-to-make-requests-to-seal-evictions-easier.html [https://perma.cc/SP3F-FV25] ("First Amendment and open record advocates . . . cautioned the court to consider 'grave concerns' about sealing records that are vital to the public understanding of how eviction impact people and communities.").

MDDC asserts reporting is "more complete and more balanced" with access to court records, because reporters are not limited to statements from interested parties.[29] Instead, reporters can monitor the operation of the judicial system and uncover "what is going well" while revealing "lapses in the system."[30]

Many states' eviction sealing laws address public access concerns by making specific exceptions that allow researchers and reporters to access sealed records.[31] Beyond these open records concerns, states must also balance landlord interests with the tenant protections offered by eviction record sealing laws.

B. *Landlord Interests*

Landlords tend to oppose eviction sealing laws for fear they will not be able to sort out "bad" tenants without open access to eviction records.[32] Opponents of eviction sealing point out "landlords have an obligation to themselves and their existing renters to ensure each new resident is likely to contribute to the community financially and in terms of following the rules."[33] Therefore, they argue, landlords "must be able to screen out applicants based on past behavior. . . ."[34]

A Cleveland landlord succinctly summarized these concerns in response to efforts to establish an eviction sealing rule in the city's Housing Court: "Simply put, I am against expungement of evictions. . . . It's difficult enough weeding our good tenants from bad tenants. If you expunge these records, my hands will be further tied, and unwanted tenants will find their way back in."[35] This is a widespread sentiment among landlords and real estate interest groups; addressing their concerns is vital to passing practicable eviction sealing legislation.[36]

III. OVERVIEW OF SEALING POLICIES

Nearly half the states have either enacted or considered statewide sealing, expungement, or tenant screening policies since 2016.[37] Sealing policies can be

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[29] MDDC Comments, *supra* note 26.
[30] *Id.*
[31] *See e.g.*, Dada & Duarte, *supra* note 8.
[32] *Eviction Sealing Talking Points*, *supra* note 26.
[33] *Id.*
[34] *Id.*
[35] Dissell, *supra* note 28.
[36] *Id.*
[37] *Mapping the Growth of Eviction Record and Tenant Screening Protections*, POLICYLINK, https://www.policylink.org/mapping-the-growth-of-eviction-record [https://perma.cc/8923-ATQV].

arranged broadly into three categories: (1) petition-based, (2) automatic sealing post-filing, or (3) automatic sealing at the time of filing.[38]

A. *Petition-Based Sealing*

States with petition-based sealing laws, including Minnesota, typically require tenants to submit a request to the court, upon which the judge will decide whether the record can be sealed.[39] These laws often involve judicial discretion, "requiring the court to weigh factors such as the legitimacy of the original eviction filing and the public's interest in keeping the record accessible."[40] Judicial discretion gives way for a judge's biases to enter the balancing test, and often requires the tenant to overcome an "explicit policy favoring public access to court records."[41] In response to these concerns, D.C.'s petition-based sealing law attempts to remove judicial discretion by requiring the court to seal records where certain objective showings are made.[42]

Regardless of such attempts to minimize judicial discretion, petition-based sealing laws present a variety of challenges that make them relatively ineffective.[43] First, they are overly burdensome on tenants, imposing "significant barriers" to making a request to the court, with no guarantee the record will be sealed.[44] And because the majority of eviction cases concern failure to pay rent, many tenants are not even eligible for sealing under most petition-based sealing criteria, which typically grant sealing only in

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[38] *See generally* Dada & Duarte, *supra* note 8.

[39] MINN. STAT. § 484.014 (2023); Dada & Duarte, *supra* note 8 (discussing petition-based sealing generally).

[40] Dada & Duarte, *supra* note 8.

[41] *Id*; *see, e.g.*, IND. CODE § 5-14-3-5.5 (2022) ("A decision to seal all or part of a public record must be based on findings of fact and conclusions of law, showing that the remedial benefits to be gained by effectuating the public policy of the state . . . are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that: (1) a public interest will be secured by sealing the record; (2) dissemination of the information contained in the record will create a serious and imminent danger to the public interest; (3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record; (4) there is a substantial probability that sealing the record with be effective in protecting the public interest against the perceived danger; and (5) it is reasonably necessary for the record to remain sealed for a period of time."); OKLA. STAT. tit. 51 § 24A.30 (2016) (requiring movant to show "compelling privacy interest exists which outweighs the public's interest in the record").

[42] D.C. CODE § 42-3505.09(c)(1) (2024).

[43] *See generally* Dada & Duarte, *supra* note 8.

[44] *See id.*; s*ee also* HUSSEIN, BOURRET & GALLAGHER, supra note 15, at 7–8 ("Usually, this [petition-based sealing] process involves reams of paperwork for the individual. In addition to making sure the proper paperwork is filled out, individuals in some states, like Oregon, must convince a landlord to affix a signature to a document asserting that the individual has satisfied the terms of the eviction judgement. At times, landlords can refuse to sign the individual's paperwork, creating additional barriers.").

"extraordinary circumstances[.]"[45] Petition-based laws are thus relatively ineffective in terms of protecting tenants from the adverse effects of eviction records, making automatic sealing the overwhelmingly preferred method among advocates.[46]

B. *Automatic Sealing Post-Filing*

Automatic, or "mandatory," sealing removes the hurdles faced by tenants in petition-based sealing states.[47] Depending on the state, automatic sealing laws either require eviction records to be sealed post-filing or at the point of filing.[48] Post-filing sealing provides that records will be sealed if certain conditions are met at the conclusion of the case, such as a judgment against the landlord, a foreclosure, or a dismissal.[49] But because post-filing automatic sealing laws delay sealing until the conclusion of the case, they still allow eviction records to become public when the landlord files. Once public, it is "incredibly difficult if not impossible" to suppress eviction records.[50] Even if the record is automatically sealed after the conclusion of the case, it may remain in a data broker's database and be reflected in tenant screening reports.[51]

C. *Automatic Sealing Upon Filing*

To avoid the risk of an eviction record influencing the tenant screening process, automatic sealing at the point of filing is "the most effective sealing policy" to maximize tenant protections.[52] Sealing upon filing makes sealing mandatory as soon as a landlord files for eviction, so the record never becomes

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[45] IND. RULES FOR ACCESS TO CT. RECS. 6: EXCLUDING OTHER COURT RECORDS FROM PUBLIC ACCESS (2020); s*ee also* 735 ILL. COMP. STAT. 5/9-121(b) (2022) ("The court may order that a court file in an eviction action be placed under seal if the court finds that the *plaintiff's action is sufficiently without a basis in fact or law*. . . . " (emphasis added)); MINN. STAT. § 484.014 (2023); VA CODE ANN. § 8.01-130.01 (2020); and Dada & Duarte, *supra* note 8 ("The majority of landlord-tenant disputes, which concern failure to pay rent, would not be eligible for sealing under most petition-based screening criteria.").

[46] *See generally* Dada & Duarte, *supra* note 8.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *See generally* Dada & Duarte, *supra* note 8; s*ee also* HUSSEIN, BOURRET & GALLAGHER, supra note 15 (noting challenges related to petition-based sealing "can be mitigated by implementing policies that seal eviction records at the time of filing"); *ABA Ten Guidelines for Residential Eviction Laws*, AM. BAR ASSOC. (Mar. 14, 2022), https://www.americanbar.org/groups/legal_aid_indigent_defense/sclaid-task-force-on-eviction--housing-stability--and-equity/guidelines-eviction/ [https://perma.cc/4DJ9-5KE7] (noting the limited efficacy of sealing after records have become public).

public unless it is later unsealed.[53] These laws often provide that records will be unsealed if a judgment is entered against the tenant, and might also permit certain parties to access sealed records without making them available to the general public, accommodating open records concerns.[54]

Many states with competing legislative priorities are less willing to implement such broad tenant protections.[55] Thus, there are a variety of state-level policies that provide a combination of petition-based and automatic sealing mechanisms.[56] While many such compromises "offer incomplete protection," they move states toward the broader goal of helping tenants step out of the shadows of context-free eviction records.[57]

IV. COMPARISON OF STATE-LEVEL POLICIES IN CALIFORNIA, NEVADA, AND UTAH

A comparison of three statewide policies—in California, Nevada, and Utah—serves to illustrate the differing ways in which petition-based and automatic sealing, or a combination thereof, may be implemented at the state level depending on the relative priorities of a state legislature. Consideration of these three policies thus provides insight into the level of tenant protections achieved in states with different political compositions, and compromises that are struck to accommodate competing interests.

California's, Nevada's, and Utah's sealing bills all provide a combination of automatic and petition-based sealing.[58]

Otherwise, these policies differ significantly.[59] The California legislature, which has been controlled by Democrats since the late nineties, made few compromises for competing interests when passing its comprehensive eviction sealing bill in 2016.[60] California's policy illustrates the gold standard for tenant protections with automatic eviction record sealing at the time of filing.[61] Nevada passed its eviction sealing bill with a Republican-majority legislature, which

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[53] Dada & Duarte, *supra* note 8.

[54] *Id.* (stating parties permitted to access sealed records "usually include[] parties to the case, their attorneys, and third parties with 'good cause' to request access to records, such as for journalism or research"). In California, for example, third parties can access a sealed record if they provide the clerk with "the names of at least one plaintiff and one defendant and the address of the premises." CAL. CIV. PROC. CODE § 1161.2(a)(1)(B) (West 2023).

[55] *See supra* Part II.

[56] *See infra* Part IV.

[57] Dada & Duarte, *supra* note 8.

[58] *See infra* Part IV.

[59] *See infra* Part IV.

[60] *Party Control of California State Government*, BALLOTPEDIA, https://ballotpedia.org/Party_control_of_California_state_government [https://perma.cc/4DJ9-5KE7] (showing the history of party control in California from 1992 to 2024); *see infra* Part IV.A (discussing the ease with which the California legislature passed its eviction sealing bill).

[61] CAL. CIV. PROC. CODE § 1161.2 (West 2023).

accommodates the interests of landlords and the real estate lobby.[62] Nevada's sealing policy is therefore not as broad as California's, but it still provides certain beneficial tenant protections.[63] Finally, Utah's eviction sealing bill, though not nearly as comprehensive as tenant advocates call for, provides important insight into policy compromises that can be achieved even in a state with relatively conservative policy interests.[64]

A. *California: Automatic Sealing Upon Filing Combined with Petition-Based Sealing*

California's record sealing policy was the first to employ automatic sealing upon filing of all eviction cases.[65] The policy ensures records of eviction will only become public if the landlord wins a judgment within sixty days of filing a complaint.[66] The policy therefore ensures records are only public where a landlord has shown cause for the eviction, making the records better indicators of a tenant's behavior and suitability. For tenants whose records are ultimately made public, California also provides a petition-based sealing process.[67]

California's law represents an equal balance of landlord-tenant interests, wherein tenants are not burdened by erroneous or no-fault eviction filings and landlords are able to see when a prospective tenant has had a judgment entered against them in an eviction proceeding. This policy enables landlords to make informed decisions but ensures they cannot access information that may lead them to deny a prospective tenant based on inaccurate eviction history.

In response to public access and First Amendment concerns, California's law recognizes that some access to eviction records may be necessary to advance housing research.[68] The policy permits judges to grant access "on a showing of good cause," which includes, but is not limited to, parties "gathering

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[62] *See infra* Part IV(B).

[63] *See generally id.*, and NEV. REV. STAT. § 40.2545 (2022).

[64] *See* Utah CODE ANN. §§ 78B-6-850-78B-6-854 (West 2022); *see* Kit Keel, *Tenants' Rights*, SUMSION BUS. L. (Dec. 14, 2023), https://www.businesslawutah.com/post/tenants-rights [https://perma.cc/87HY-ANAT] ("Utah is not known for being a tenant-friendly state" and its laws "overwhelmingly favor landlords.").

[65] California codified its automatic eviction sealing law in 2016. CAL. CIV. PROC. CODE § 1161.2 (West 2022). Colorado is the only other state to implement an eviction sealing policy with such broad tenant protections. COLO. REV. STAT. § 13-40-110.5 (2021); A.B. 2819, 2016 Leg. (Cal. 2016).

[66] CAL. CIV. PROC. CODE § 1161.2 (West 2022).

[67] CAL. R. CT. 2.550 (2024) (stating a court may order record sealing when "(1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest").

[68] CAL. CIV PROC. CODE § 1161.2(b)(1)(A) (West 2023).

newsworthy facts."[69] Because members of California's legislature overwhelmingly favor pro-tenant policies, the bill made no concessions to account for concerns of landlords and real estate industry groups related to eviction record sealing.[70] Nevada's and Utah's policies, on the other hand, demonstrate more concern for those competing interests.[71]

B. *Nevada: Automatic Sealing Post-Filing Combined with Petition-Based Sealing*

Nevada's eviction sealing bill provides a combination of automatic sealing post-filing and petition-based sealing.[72] The bill sponsor, Shannon Bilbray-Axelrod, stated the purpose of the bill was to seal "protect tenants who have not actually been evicted from having action taken against them based on inaccurate information."[73]

The language of the original bill was broad—akin to the California approach—providing all eviction filings would automatically be sealed and "not open to inspection" except to the following people:

> (1) parties to the action and their attorneys; (2) certain persons who provide the court clerk with certain required information about the action; (3) any person by order of the court upon a showing of good cause; [and] (4) any person by order of the court if 60 days have elapsed after the affidavit of complaint has been filed and the plaintiff prevails in trial."[74]

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[69] *Id.* The law also provides sealed records will be made available "[t]o a party to the action, including a party's attorney," "[t]o a person who provides the clerk with the names of at least one plaintiff and one defendant and the address of the premises, including the apartment or unit number, if any," and "[t]o a resident of the premises who provides the clerk with the name of one of the parties or the case number and shows proof of residency." *Id.*

[70] In comparing the bill as introduced in the Assembly with the language of the final version of the law, there is no evidence that language was added to appease landlord interests. *See AB-2819 Unlawful Detainer Proceedings*, DIGIT. DEMOCRACY: CALMATTERS (2016), https://calmatters.digitaldemocracy.org/bills/ca_201520160ab2819 [https://perma.cc/Q4E4-789M]; *see also* Mike Nemeth, *CAA Webinar Spotlight: Why New Laws Keep Tilting in Favor of Tenants*, CAL. APARTMENT ASS'N (Dec. 14, 2023), https://caanet.org/caa-webinar-spotlight-why-new-laws-keep-tilting-in-favor-of-tenants [https://perma.cc/XE72-V7LG] (stating California's Democratic "supermajority . . . significantly affects the types of laws introduced and passed, often tilting in favor of tenants").

[71] *Infra* Parts IV.B–C.

[72] NEV. REV. STAT. § 40.2545 (2022).

[73] *Minutes of the Meeting on the Assembly Committee on the Judiciary, Hearing on A.B. 107 Before the Assemb. Comm. on Judiciary*, 2017 Leg., 79th Sess. 3 (Nev. 2017) [hereinafter *Nevada Hearings*].

[74] *See generally* A.B. 107, 2017 Leg., 79th Sess. (Nev. 2017) (as introduced).

The initial language of the bill was opposed by members of the Nevada State Apartment Association (NSAA) and Nevada Rural Housing Authority (NRHA) based on its potentially harmful impact on landlords.[75] This opposition led to revisions that significantly watered down the bill's tenant protections.[76]

The reprint of the bill, which was ultimately enacted into the Nevada Revised Statutes, provides automatic record sealing only (1) upon entry of a court order denying or dismissing the action for summary eviction; or (2) if a landlord fails to file an affidavit of complaint within thirty days after a tenant files an affidavit to consent to the matter.[77] It further provides a court with latitude to seal an eviction record "upon a written stipulation between the landlord and the tenant" or upon motion by the tenant, if the court finds the eviction should be set aside pursuant to the Justice Court Rules of Civil Procedure or that sealing the eviction file is in the interest of justice."[78] These revisions thus removed the sealing-upon-filing policy proposed in the first draft, and instead established limited circumstances under which records would be automatically sealed—where the case was dismissed or denied, or where the landlord failed to respond within thirty days to the tenant's response to the complaint.[79]

Nevada's sealing law might be best understood as a watered-down version of the California approach. To placate landlord interests, the sponsors compromised certain tenant protections by replacing automatic sealing *upon-filing* with limited instances of automatic sealing *post-filing*.[80] All eviction cases in Nevada are therefore made public immediately upon filing by the landlord, exposing them to the risk of collection by tenant screening companies.[81]

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[75] On behalf of NSAA, Eric R. Newman testified that eviction sealing raises concerns that landlords may have difficulty determin[ing] "who has sufficient creditworthiness and [their] ability to pay." *Nevada Hearings*, *supra* note 73, at 11.

[76] *See generally* A.B. 107, 2017 Leg., 79th Sess. (Nev. 2017) (first reprint) [hereinafter *First Reprint*].

[77] *Id.*; Nev. Rev. Stat. § 40.2545 (2022).

[78] Nev. Rev. Stat. § 40.2545 (2022). If an eviction is not set aside pursuant to Rule 60 of the Justice Court Rules of Civil Procedure, the court can seal an eviction record if it finds doing so "is in the interests of justice and those interests are not outweighed by the public's interest in knowing about the contents of the eviction case court file." *Id.* § 1(2)(b)(2).

[79] *Id.* § 2(a)-(c).

[80] *See First Reprint*, *supra* note 74, §1. On behalf of landlord interests, representatives from NSAA and NRHA opposed the original bill and worked with the sponsors to make the final language more landlord-friendly, resulting in these watered-down tenant protections.

[81] *Id.* at 4; *see* Dada & Duarte, *supra* note 8 ("[I]t's practically impossible to fully suppress the dissemination and use of eviction records once they become public.").

C. *Utah: Automatic Sealing Post-Filing Combined with Petition-Based Sealing and Tenant-Screening Regulations*

Utah's House Bill 359 "was the product of a hard-won battle between housing advocates and landlords. . . ."[82] Two Utah Republicans, Representative Marsha Judkins and Senator Kirk A. Cullimore, introduced the bill, which provides automatic expungement of eviction records three years following the conclusion of the case, if certain conditions are met.[83] The law further provides a process for petition-based sealing if "the eviction was for: (i) remaining after the end of the lease . . . ; or (ii) the nonpayment of rent . . . [and] any judgment for the eviction has been satisfied."[84]

There are many "layers that are built into the statute [that] are intended to protect landlords . . . ."[85] The requirement that the case be dismissed, or the judgment satisfied, before the record can be expunged, for example, is in place "to protect landlords against tenants that are not . . . able to pay their rent."[86] The statute further provides that nuisance evictions are exempt from automatic expungement, as an additional landlord protection.[87]

While the bill lacks the ideal automatic sealing-upon-filing mechanism, it mitigates some of the harm to tenants through a unique requirement that tenant screening companies remove eviction records from their databases as soon as they are expunged.[88] The law prohibits screening agencies from "(a) disclos[ing] the eviction in a tenant screening report pertaining to an individual for whom the eviction has been expunged; or (b) us[ing] the eviction as a factor in determining any score or recommendation in a tenant screening report pertaining to the individual for whom the eviction has been expunged."[89] This requirement fills in some gaps in the law's tenant protections by ensuring those tenants whose records are expunged will not continue to be burdened by the effects of their record.[90]

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[82] Eric Peterson, *Renters Facing Eviction Don't get Enough Help from New Expungement Law, Advocates Say*, SALT LAKE TRI. (Oct. 27, 2022), https://www.sltrib.com/news/2022/10/27/advocates-worry-eviction/ [https://perma.cc/P767-3BEL].

[83] UTAH CODE ANN. § 78B-6-852 (West 2022). A three-year-old eviction record will be expunged automatically if (1) the case was dismissed, and no appeal has been filed; or (2) the parties to the eviction stipulated to expungement and have filed a stipulation with the court. *Id.*

[84] UTAH CODE ANN. § 78B-6-852 (West 2022), and UTAH CODE ANN. § 78B-6-853 (West 2022).

[85] Emily Ashcraft, *Process for Utahns to Expunge Evictions Is Streamlined as New Law Goes into Effect*, KSL (Aug. 6, 2022), https://www.ksl.com/article/50452573/process-for-utahns-to-expunge-evictions-is-streamlined-as-new-law-goes-into-effect [https://perma.cc/ZM2L-TK8H].

[86] *Id.*

[87] *Id.*

[88] UTAH CODE ANN. § 78B-6-854 (West 2022).

[89] *Id.*

[90] *Id.*

Utah's policy is weaker than both California's and Nevada's policies in that it has the narrowest circumstances under which an eviction record can be removed from public access.[91] But it provides insight into the legislative compromises that can be struck in a state with relatively conservative political interests—its regulation on tenant screening companies is a strong tenant protection that balances the bill's pro-landlord tilt.[92] Nevada's bill, for example, could have been bolstered by a regulation on tenant screening companies to fill in the gaps created by the sponsors' concessions to landlord interests. Aspects of Utah's, Nevada's, and California's laws can be drawn upon and applied to Ohio, in pursuit of a practical and sustainable state-level eviction sealing policy.

V. EVICTION SEALING POLICIES IN OHIO

Ohio suffers from a series of disjointed eviction sealing policies across the state.[93] For a variety of reasons, many municipal court clerks and judges decline to seal eviction records altogether, while those who do allow sealing primarily do so on a case-by-case basis.[94] And even if sealing is permitted, few municipal courts have local rules addressing sealing procedures.[95] Thus, tenants are unlikely to know if they have a right to record sealing.[96]

Among those municipalities with local eviction sealing rules are the Hamilton County and Portage County Municipal Courts, which have rules

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[91] California's policy seals all eviction records by default, only making public those in which a judgment was entered against the tenant within sixty days of filing. CAL. CIV. PROC. CODE § 1161.2 (West 2022). Nevada's policy is slightly narrower, providing automatic record sealing only after an eviction case is denied or dismissed, or if the landlord-plaintiff fails to respond to a tenant's consent affidavit within thirty days. NEV. REV. STAT. § 40.2545 (2022). Finally, under Utah law, an eviction record will not be sealed automatically until three years after the origination of the case. UTAH CODE ANN. § 78B-6-852 (West 2022). Utah also limits which tenants may even file for petition-based sealing, unlike California's and Nevada's laws, which permit any tenant with an eviction record to apply for sealing. UTAH CODE ANN. § 78B-6-853(1) (West 2022); CAL. R. CT. 2.551; NEV. REV. STAT. § 40.2545(3) (2022).

[92] *See supra* Part IV.C.

[93] In Ohio, at least 158 county and municipal courts handle eviction cases. OHIO POVERTY L. CTR., INVENTORY OF LOCAL FORCIBLE ENTRY AND DETAINER SEALING POLICIES IN OHIO (2023) [hereinafter *Ohio FED Sealing Inventory*] (on file with author). But with no statewide standard for eviction sealing, each court handles sealing requests differently. *See How Can I Have My Eviction Record Sealed?*, LEGAL AID SOC'Y OF CLEV. (2019), https://lasclev.org/sealing-an-eviction-record/#:~:text=In%20Ohio%2C%20there%20is%20no,whether%20to%20seal%20the%20record.&text [https://perma.cc/93YM-D9PD] ("In Ohio, there is no state law that gives a tenant the right to have their eviction record sealed. The court in which the eviction case was filed decides whether to seal the record.").

[94] *FED Sealing Inventory*, *supra* note 93.

[95] *Id.*

[96] *See* Dada & Duarte, *supra* note 8 ("[M]ost tenants are self-represented and typically lack the legal knowledge to pursue sealing.").

related to sealing civil records generally, while seven other local courts have rules specific to petition-based eviction record sealing.[97] But the vast majority of local courts do not provide eviction sealing at all, or, if they do, have no local rule signifying that right.[98] The Franklin County Municipal Court, for example, has both automatic and petition-based sealing procedures, but lacks a local rule that might inform tenants of their rights.[99]

A. *Ohio's 2022 Eviction Expungement Bill*

There have been efforts to streamline Ohio's eviction sealing law at the state level.[100] In 2022, a bipartisan coalition of Ohio legislators introduced Senate Bill 158, seeking to codify a state-wide eviction record expungement process.[101] As introduced, the bill would have provided a state-wide process through which a court could order expungement of an eviction record.[102] Under the law, Ohio courts would have been permitted to expunge an eviction record "[u]pon the motion of a tenant, . . . or landlord, or upon the court's own motion . . . ."[103] The bill contained various considerations and qualifying factors depending on the lapse of time between the date of the eviction judgment and the date of the motion to expunge.[104] If the motion were made more than three years after the date of the judgment, for example, there would have been "a rebuttable presumption in favor of granting the expungement."[105] Further, if the motion to expunge came seven or more years following the date of the judgment, the court would be required to "order expungement of the . . . eviction unless the landlord provided information relating to why the court file should not be expunged."[106] The proposed law permitted expungement of eviction records based purely on

[97] HAMILTON CNTY. MUN. CT. R. 9.16(5) (Ohio); PORTAGE CNTY. MUN. CT. R. 36 (Ohio); GARFIIELD HEIGHTS MUN. CT. R. 33.1 (Ohio); ATHENS CNTY. MUN. CT. R. 8(G)(2); BEDFORD MUN. CT. R. 33.01 (Ohio); MARION MUN. CT. R. 209.1 (Ohio); TOLEDO HOUS. CT. R. 5(n) (Ohio); CLEV. HOUS. CT. R. 6.13 (Ohio).

[98] *Ohio FED Sealing Inventory*, *supra* note 93. Of the 158 Ohio municipal courts that handle eviction proceedings, only nine have a local rule laying out the option to petition the court for sealing. *Id.*

[99] *See* Rita Price, *Franklin County Set to Shield Some Online Eviction Records*, COLUMBUS DISPATCH (Jan. 14, 2020), https://www.dispatch.com/story/news/local/2020/01/14/franklin-county-set-to-shield/1897454007/ [https://perma.cc/23XL-U345]. Eviction records more than three years old are automatically removed from the Franklin County Municipal Court website, so they will no longer be accessible digitally. *Id.*

[100] *See generally* S.B. 158, 134th Gen. Assembly, Reg. Sess. (Oh. 2021–2022).

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] *Id.* § 1923.111(D)–(E).

[105] *Id.* § 1923.111(D)(1).

[106] S.B. 158, § 1923.111(D)(2), 134th Gen. Assembly, Reg. Sess. (Oh. 2021–2022).

discretion of the court, providing no circumstances under which an eviction record would be sealed automatically.[107]

Even these limited tenant protections were met with opposition from landlord advocates and real estate interests in Ohio, which stopped the bill in its tracks after just one hearing in Ohio's Senate Judiciary Committee.[108] The Executive Director of the Ohio Manufactured Homes Association (OMHA) opposed the bill—specifically, the provision creating a rebuttable presumption for expungement after three years—testifying "eviction records up to and after three years are important information used by landlords to determine whether to rent to the individual."[109] Despite this opposition, the OMHA representative stated the organization "see[s] value in creating a statewide standard practice relating to expungement."[110] He testified that sealing or expungement of eviction records after seven years "may be more reasonable" and that the OMHA's "opposition could be softened" if expungement was limited to cases that were dismissed, so long as "full restitution" was satisfied by the tenant.[111]

A representative of the Ohio Real Estate Investors Association (OREIA) also testified in opposition to the bill, expressing concerns that it would "limit the information available to housing providers that would allow them to make informed decisions on potential renters."[112] The representative laid out a series of changes that "must be made to the bill for . . . [OREIA] to remove its opposition." Like OMHA, OREIA advocated for the requirement that full restitution be made by the tenant in order to qualify for expungement.[113] It further advocated for "allowing the property owner to participate in the discretionary expungement process."[114]

These concerns and recommendations from stakeholders provide valuable guidance for Ohio's legislature in drafting a bill that balances tenant and landlord rights and protections.

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[107] *See* S.B. 158, 134th Gen. Assembly, Reg. Sess. (Oh. 2021).

[108] *See Regards Expungement of Eviction Case Court File, Hearing on S.B. 158 Before S. Comm. on the Judiciary*, 134th Gen. Assembly (Oh. 2021) (statement of Hearcel F. Craig & Stephanie Kunze, cosponsors of bill); *Senate Bill 158 Opponent Testimony, Hearing on S.B. 158 Before S. Comm. on the Judiciary*, 134th Gen. Assembly 3 (Oh. 2022) [hereinafter *OREIA Testimony*] (statement of Dan Acton, Government Affairs Director of the Ohio Real Estate Investors Association); and *Senate Bill 158 Opponent Testimony, Hearing on S.B. 158 Before S. Comm. On the Judiciary*, 134th Gen. Assemb. 2 (2022) [hereinafter *OMHA Testimony*] (statement of Tim Williams, Executive Director of the Ohio Manufactured Homes Association).

[109] *OMHA Testimony*, *supra* note 108, at 1.

[110] *Id.*

[111] *Id.* at 1–2.

[112] *OREIA Testimony*, *supra* note 108, at 1.

[113] *Id.* at 2.

[114] *Id.* at 2–3. In terms of property owners' involvement in the expungement process, the OREIA representative testified landlords could "speak to the character/trustworthiness of tenants," or lack thereof, to help the judges deciding whether or not to grant the expungement. *Id.*

VI. RECOMMENDATION FOR OHIO

By accounting for the concerns of Ohio landlord and real estate advocacy groups, Ohio can increase protections for tenants and streamline sealing processes at the local level, without undermining landlords' legitimate interests in screening prospective tenants and making informed rental decisions. Considering the political composition of Ohio's legislature, it should rely in large part upon the approaches taken by the relatively conservative Nevada and Utah legislatures when drafting eviction sealing language.[115]

Nevada and Utah both combine flavors of automatic sealing post-filing with petition-based sealing, and Utah's law further includes regulations upon tenant-screening companies as an added tenant protection.[116] Ohio should follow suit, providing circumstances under which automatic sealing will occur, and broadly allowing tenants to petition the court for record sealing where certain requirements are satisfied. It should further adopt a provision regulating tenant-screening practices to fill some gaps in tenant protections inherent in post-filing and petition-based procedures.[117] While it would be unrealistic to propose Ohio adopts California's automatic sealing-upon-filing approach, there are elements of California's policy that may lend themselves to Ohio's drafting process.

Each of the policy recommendations is addressed in turn, including model statutory language at the beginning of each section.

A. *Automatic Sealing Provision*

> **(a) Automatic sealing of eviction record.** (1) In any action for eviction pursuant to Ohio Revised Code Chapter 1923, the case record is sealed automatically: (A) Upon the entry of a court order which dismisses the action for eviction; and (B) Upon the passage of seven years, measured from the day on which the judgment of the case was finalized.

Ohio should provide two limited circumstances of automatic eviction record sealing post-filing. First, upon the dismissal of an eviction proceeding, the case should be sealed automatically. This policy does not provide the same level of protection for tenants as an automatic sealing-upon-filing provision, but it

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[115] Recall both Nevada and Utah combine petition-based sealing with automatic sealing post-filing. NEV. REV. STAT. § 40.2545 (2022); UTAH CODE ANN. §§ 78B-6-852, -853(West 2022).

[116] *See supra* Parts IV.B–C.

[117] *See supra* Part III (describing the drawbacks of post-filing and petition-based sealing). To address the shortcomings of petition-based and post-filing sealing policies, Utah prohibits screening agencies from "disclos[ing] the eviction in a tenant screening report pertaining to an individual for whom the eviction has been expunged" or "us[ing] the eviction as a factor in determining any score or recommendation in a tenant screening report pertaining to the individual for whom the eviction has been expunged." UTAH CODE ANN. § 78B-6-854 (West 2022).

removes the burden of petitioning the court for sealing where the case was ultimately dismissed.

While instances of automatic eviction sealing might give way to some push back by landlord advocates, OMHA indicated it might support a policy sealing *dismissed* eviction cases, suggesting this policy would balance landlord and tenant interests in Ohio.[118]

Secondly, automatic sealing should be provided seven years after the conclusion of the eviction case. This provision should not be limited based on the outcome of the case; instead, all eviction cases, regardless of the outcome, should be wiped from the public record after seven years.

Ohio Senate Bill 158 originally proposed that eviction records would be sealed upon a motion by the tenant seven years after the date of the final judgment, providing a "rebuttable presumption" in favor of sealing after three years.[119] The "rebuttable presumption" provision, in particular, was met with opposition by OMHA.[120] As a compromise, Ohio should remove the problematic rebuttable presumption, but propose seven-year-old records will be sealed *automatically*, rather than requiring tenants to petition the court for sealing.

B. *Petition-Based Sealing Provision*

> **(b) Sealing eviction record by petition.** Any party to an eviction may petition the court to seal all records of the eviction at any time following the final judgment of the case.

Beyond the limited instances of automatic sealing recommended in Subpart A above, Ohio should provide that any tenant may apply for record sealing within the seven-year period prior to the grant of automatic sealing.

This approach is practical for Ohio, so long as it requires that the tenant pay full restitution and that notice be given to the landlord upon filing the petition. These limitations, addressed in turn, should satisfy the landlord and real estate interests expressed by OMHA and OREIA.[121]

C. *Limitations on Eligibility for Sealing*

> **(c) Limitations on eligibility**. (1) A court shall not seal an eviction unless the judgment for the eviction has been satisfied in full, including, but not limited to, full restitution of rental payment owed, and any judgment amount assessed

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[118] *Supra* Part V.A (stating OMHA's "opposition could be softened" if the bill limited expungements to eviction cases that were dismissed).

[119] S.B. 158, 134th Gen. Assemb., Reg. Sess. (Oh. 2021).

[120] *Supra* Part V.A.

[121] *See supra* Part V.A.

> made by the tenant to the affected landlord. (2) Notice shall be served upon all other persons who were parties to the eviction proceeding.

This eligibility requirement should apply to both automatic and petition-based sealing, ensuring that tenants will not be eligible for eviction record sealing at all unless they have paid restitution to the landlord in full and notified the landlord of their intention to seal the eviction record.

While this requirement adds a hurdle for tenants seeking eviction record sealing, it is likely to be a necessary component of Ohio's bill to satisfy an explicit concern of real estate and landlord groups.[122] Both OMHA and OREIA suggested they would be more willing to support an eviction sealing bill imposing a requirement to pay full restitution to be eligible for eviction sealing. OREIA also advocated for a provision allowing landlords to be involved in discretionary sealing processes; the requirement that parties be notified about the tenant's sealing petition ensures landlords are given such an opportunity.

D. *Regulations on Tenant Screening Agencies*

> **(d) Tenant screening.** (1) If an eviction is sealed under this part, a tenant screening agency may not: (A) disclose the eviction in a tenant screening report pertaining to an individual for whom the eviction has been sealed; or (B) use the eviction as a factor in determining any score or recommendation in a tenant screening report pertaining to the individual for whom the eviction has been sealed.

The post-filing automatic sealing policies recommended in Subpart A and the petition-based sealing policy proffered in Subpart B should be complemented by a tenant screening regulation similar to that in Utah's eviction expungement law to increase tenant protections.[123] By prohibiting screening agencies from disclosing sealed eviction records to landlords, Utah ensures that tenants will not be burdened by their eviction record once it has been sealed.

Ohio law should incorporate a similar tenant protection. This represents a balance of landlord-tenant interests, providing landlords can see a tenant's eviction record unless it has been sealed upon dismissal, lapse of seven years, or a finding that it should be sealed based on a petition.

E. *Limited Access to Sealed Records*

> **(e) Access to sealed eviction record.** The court clerk shall allow access to sealed eviction records, only as follows: (1) to a party to the action, including a party's attorney; and (2) to a person by order of the court, which may be granted ex parte on a showing of good cause.

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[122] *Id.*

[123] *See supra* Part IV.C.

In consideration of the open records and First Amendment concerns related to record sealing laws, Ohio should provide two exceptions that would permit limited access to sealed eviction records. First, as is provided in California, parties to the original action, including their attorneys, should be permitted to access records of their sealed eviction case at any time.[124] This is routine practice in states with eviction record sealing policies.[125]

Ohio should also adopt California's "good cause" provision, which permits limited access to sealed records for a third party on a showing of good cause.[126] California defines "good cause" for these purposes to include *inter alia*, the "gathering of newsworthy facts" by a "publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed."[127] A similar definition should be included in Ohio's eviction sealing statute.

In making sealed eviction records available for scholarly, educational, journalistic, or governmental purposes, Ohio would balance tenant protections with the presumption of open access to public records, and promote accurate research and reporting related to housing access across the state of Ohio.

VII. CONCLUSION

The adoption of these legislative recommendations would provide critical protections for renters like Ashlee Rousey and Kayla Swanson, ensuring they are not unjustly burdened by the long shadow of dismissed or unlawful eviction filings. Under the proposed framework, Ashlee and Kayla could seek new housing opportunities with confidence that their sealed eviction records would not appear on tenant screening reports and be held against them by prospective landlords.

Renters whose records remain public for a longer period of time may still face challenges in finding stable housing, but these recommendations recognize Ohio cannot completely protect tenants without infringing on landlords' rights.

The proposed legislation thus balances its robust tenant protections with the legitimate interest of landlords. Under the framework, landlords would retain access to accurate and relevant information about prospective tenants' eviction history, enabling them to make informed rental decisions. Moreover, in cases where a tenant petitions a court for sealing, landlords would be notified and given the opportunity to participate in the court's decision-making process and recover any outstanding judgments. While legislation cannot eliminate every challenge faced by renters with a prior eviction, it reflects a critical recognition

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[124] CAL. CIV PROC. CODE § 1161.2(a)(1)(A) (West 2023).

[125] Dada & Duarte, *supra* note 8 ("Courts routinely allow parties and their attorneys to access sealed or confidential records.").

[126] CAL. CIV PROC. CODE § 1161.2(b)(1) (West 2023).

[127] *Id.*; CAL. EVID. CODE § 1070(a) (West 2024).

that a person's housing opportunities should be determined by their true rental history, not by the mere specter of a past case.

By striking a careful balance between tenant protections and landlord interests, Ohio can join the growing number of states taking steps to address the cycle of housing instability and homelessness perpetuated by public eviction records.