



SPONSOR: Sen. Townsend & Sen. Pinkney & Rep. Minor-Brown &
Rep. K. Johnson & Rep. Lambert
Sens. Gay, Lockman, S. McBride, Poore; Reps.
Baumbach, Bentz, Longhurst, Morrison, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 101

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE RESIDENTIAL LANDLORD-
TENANT CODE.

1 WHEREAS, approximately 18,000 eviction cases are filed each year in this State with only 101,000 rental
2 households; and

3 WHEREAS, evictions create significant costs for state and local government related to shelter funding, education
4 funding, health care provided in hospitals instead of community-based providers, transportation costs for homeless youth,
5 and foster care; and

6 WHEREAS, a University of Delaware Biden School of Public Policy study of eviction actions in Delaware found
7 that while only 2% of tenants are represented in eviction proceedings, approximately 86% of landlords are represented by
8 an attorney, property manager, or agent in eviction proceedings; and

9 WHEREAS, the Delaware Access to Justice Commission has found that “Legal aid organizations have the
10 resources to serve the civil legal needs of only one-eighth of Delaware’s low-income population, leaving a large justice
11 gap”; and

12 WHEREAS, numerous studies from around the country have shown that many tenants have defenses to the
13 eviction that they are not able to assert, either at all or successfully, without the assistance of counsel; and

14 WHEREAS, evictions have a disparate impact on Black and Latinx households in this State; and

15 WHEREAS, Black and Latinx tenants have been disproportionately impacted by COVID-19 itself, which has
16 caused a cascade effect on incomes and the subsequent ability to pay rent, as shown in the Census Household Pulse Survey
17 data; and

18 WHEREAS, the General Assembly seeks to end the disparate impact of evictions based on race and gender; and

19 WHEREAS, evictions have significant, well-documented, and long-lasting effects on the lives of individuals and
20 families, including poorer physical and mental health, increased risk of homelessness, increased risk of employment loss,
21 loss of personal property, damage to credit standing, and relocation into substandard housing; and

WHEREAS, evictions, and the subsequent housing instability and displacement, damage the lives of children by negatively impacting their mental and physical health, decreasing school attendance rates, impeding academic performance, increasing instances of school discipline, and increasing the likelihood of out of home placement; and

WHEREAS, evictions exacerbate the public health crisis posed by COVID-19, as recognized by the Centers for Disease Control and Prevention in issuing the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 Order, by forcing many into close quarters with others in a “doubling up” scenario or in crowded homeless shelters; and

WHEREAS, evictions have been proven to increase COVID-19 infection and mortality rates; and

WHEREAS, providing a right to counsel to tenants in eviction cases is a proven means of significantly reducing the disruptive displacement of families and the resulting social, economic, and public health costs of such displacement; and

WHEREAS, tenants must be able to invoke and enforce the right to legal representation in any eviction-related proceeding to provide for equal access to justice and the courts; and

WHEREAS, the General Assembly declares that tenants facing an eviction from their home have a right to legal representation in eviction proceedings and related matters, and that the State should provide this legal representation to tenants to assist in the fair administration of justice.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part III, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 56. Right to Legal Representation in Evictions and Other Landlord-Tenant Actions.

§ 5601. Definitions.

For purposes of this chapter:

(1) “Coordinator” means the Right to Counsel Coordinator.

(2) “Covered individual” means a tenant whose household income is not greater than 200% of the federal poverty guidelines, as established and updated periodically by the United States Department of Health and Human Services.

(3) “Covered proceeding” means any of the following:

a. A judicial or administrative proceeding to evict, terminate the tenancy of, or terminate or reduce the housing subsidy of a covered individual.

b. A proceeding deemed by a designated organization as the functional equivalent of a proceeding described in paragraph (3)a. of this section.

c. A judicial or administrative proceeding to remedy a violation of law related to landlord-tenant matters, such as rent escrow, retaliatory actions, security deposits, habitability, illegal eviction, or violation of quiet use and enjoyment.

(4) “Designated community group” means a nonprofit community organization or association designated by the Coordinator that has the capacity to conduct tenant outreach, engagement, and education regarding this chapter.

(5) “Designated organization” means a nonprofit entity designated by the Coordinator that has the ability to provide legal representation to covered individuals.

(6)a. “Legal representation” means ongoing high-quality representation provided by a designated organization to a covered individual, and all legal advice, advocacy, and assistance associated with that representation.

b. “Legal representation” includes the filing of a notice of appearance on behalf of the covered individual in a covered proceeding.

§ 5602. Right to counsel.

(a) A covered individual has the right to legal representation as provided under this chapter.

(b) A covered individual is entitled to receive legal representation from a designated organization in a covered proceeding and as soon as practicable after any of the following:

(1) A landlord provides notice to terminate or not renew a tenancy.

(2) A landlord provides a notice to the tenant under §§ 5502 or 5513 of this title that rent is due or that the tenant has violated a provision of the lease.

(3) The initiation of an eviction proceeding.

(4) The covered individual has been notified that the covered individual’s housing subsidy has been reduced or terminated.

(5) The determination by a designated organization that a proceeding on behalf of a covered individual should be initiated.

(c) Legal representation must be provided by the time of a covered individual’s first scheduled appearance in a covered proceeding. If a covered individual appears in a judicial or administrative proceeding for the first scheduled appearance without legal representation, the court or administrative body shall inform the covered individual of the right to and availability of legal representation and may continue the hearing in the interest of justice to allow the covered individual to seek legal representation.

(d) A covered individual shall receive legal representation unless the individual is ineligible, there is a conflict of interest, or other circumstances make full legal representation infeasible to render.

§ 5603. Right to Counsel Coordinator.

(a) The Attorney General shall appoint a Coordinator to manage the contract for all covered individuals to receive legal representation under this chapter.

(b) The Coordinator may adopt rules and regulations necessary to implement this chapter.

§ 5604. Outreach, engagement, and education.

The Coordinator shall conduct outreach, engagement, and education events and activities regarding the rights in this chapter and may enter contracts or issue grants to fulfill the Coordinator's duty under this section. The education events and activities must include all of the following:

(1) Hosting, including virtually, know-your-rights trainings and other workshops for tenants.

(2) Distributing written information to tenants.

(3) Outreach to tenants regarding how to form and maintain tenant associations.

(4) Referring tenants to designated organizations as appropriate.

§ 5605. Designated organizations.

(a) The Coordinator shall contract with one or more designated organizations to provide the services required under this chapter and shall provide each designated organization contracted with under this chapter with fair and just compensation to allow each designated organization to provide an organizational structure with appropriate supervision, caseloads, and oversight of staff and service delivery to promote high quality legal representation and legal work.

(b) Not later than August 31 of each year, each designated organization shall report to the Coordinator information on services provided in conformity with requirements developed by the Coordinator.

§ 5606. Annual report.

(a) Not later than November 30 of each year, the Coordinator shall prepare a report, which must include information from the prior fiscal year regarding all of the following:

(1) The number of covered individuals served.

(2) The extent of legal representation performed.

(3) Metrics on evaluating outcomes.

(4) The engagement and education of tenants.

(b) The annual report must be posted on the Attorney General's website.

§ 5607. Additional required disclosures.

112 A landlord or housing authority, as defined under § 4301 of Title 31, shall provide a tenant with an informational
113 brochure developed and approved by the Coordinator that explains legal representation available to tenants, including a
114 right to representation under this chapter, and identifies available resources. The brochure must be provided by the landlord
115 or housing authority at all of the following events:

116 (1) On signing a written rental agreement or entering into a rental agreement that is oral.

117 (2) When a tenant is notified of the termination of a rental agreement.

118 (3) When an administrative or judicial action is commenced by the landlord against a tenant.

119 (4) When, and in the same manner as, a summons and complaint is served on a tenant.

120 (5) When the housing authority sends a notice to a tenant regarding the termination or reduction of a housing
121 subsidy.

122 § 5608. Implementation.

123 (a) The Coordinator shall phase in, over a period of time not to exceed 3 years from [the effective date of this Act],
124 in a manner that the Coordinator determines appropriate, the legal representation required to be provided to all covered
125 individuals in all covered proceedings.

126 (b) The Coordinator shall consider all of the following in determining how services are prioritized during the
127 implementation period:

128 (1) Prioritizing households that include a child or pregnant woman.

129 (2) Prioritizing households with household income below 100% of federal poverty guidelines.

130 (3) Prioritizing targeted zip codes with high eviction rates.

131 (4) The availability of funding.

132 (5) The availability of trained and qualified attorneys to provide legal representation.

133 (6) Any other appropriate consideration.

134 Section 2. Amend § 5502, Title 25 of the Delaware Code by making deletions as shown by strike through and
135 insertions as shown by underline as follows:

136 § 5502. Landlord remedies for failure to pay rent.

137 (a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date
138 the rent is due and the date under this Code when late fees may be imposed, demand payment thereof of rent and notify the
139 tenant in writing that unless payment is made within a time mentioned in such the notice, to be not less than 5 days after the
140 date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may,
141 after completing an eviction diversion program under § 5702A of this title, where required, thereafter bring an action for

summary possession of the dwelling unit or any other proper proceeding, ~~action~~ action, or suit for possession. An action for possession may not be brought if the amount of rent owed is 1-month's rent or less than \$500, whichever is greater.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring ~~such an~~ the action. This action may include late charges, which have accrued as additional rent.

(c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts ~~such payment without a written reservation of rights,~~ the payment, the landlord may not then initiate an action for summary possession or for failure to pay rent.

(d) If a tenant pays all rent due after the landlord has initiated an action for nonpayment or late payment of rent against the tenant and the landlord accepts ~~such payment without a written reservation of rights,~~ the payment, then the landlord may not maintain that action for past due rent.

(e)(1) Subject to paragraph (e)(2) of this section, in an action for summary possession of the dwelling unit for failure to pay rent where the landlord is awarded a judgment of possession, the tenant has the right to redemption of the premises by tendering all past due amounts as determined by the court, plus all court awarded costs and fees, by cash, certified check, or money order to the landlord or the landlord's agent. The tenant's right of redemption applies at any time before the actual execution of the eviction order. After the landlord or landlord's agent has received the payment, the landlord or landlord's agent shall immediately notify the court and constable or sheriff to which the writ of possession was directed and make all reasonable efforts to prevent execution of the judgement.

(2) This subsection does not apply to any tenant against whom 3 judgments of possession have been entered for rent due and unpaid in the 24 months before the initiation of the action to which this subsection otherwise would apply.

Section 3. Amend Chapter 57, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5702A. Residential eviction diversion program.

(a) Not later than 180 days after [the effective date of this Act], or as soon as possible after the Centers for Disease Control and Prevention lifts the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 issued under Section 361 of the Public Health Service Act, 42 U.S.C. § 264 and 42 C.F.R § 70.2 on March 28, 2021, the Right to Counsel Coordinator shall establish a residential eviction diversion program to facilitate a pre-eviction dispute resolution between landlords and tenants, which must include the following:

171 (1) A conciliation conference between a landlord and tenant to facilitate an agreement for asserted rental
172 agreement violations or non-payment of rent.

173 (2) A designated housing counselor or representative for the tenant that participates in the conciliation
174 conference.

175 (3) A designated housing counselor that engages with the tenant before the conciliation conference to educate
176 and discuss available resources.

177 (4) Any other dispute resolution methods established under the residential eviction diversion program.

178 (b) In designing and implementing the residential eviction diversion program, the Coordinator may be guided by
179 the Residential Mortgage Foreclosure Mediation Program established by the Superior Court under Superior Court
180 Administrative Directive 2013-2 and any subsequent changes made by Superior Court.

181 (c) Beginning not later than when the Coordinator has established a residential eviction diversion program, a
182 landlord may not file an action under this chapter in furtherance of recovering possession of a rental unit occupied by a
183 tenant without first completing the residential eviction diversion program, unless one of the following requirements is met:

184 (1) In a proceeding under § 5115 of this title, the landlord alleges and by substantial evidence demonstrates to
185 the Court that a tenant has caused substantial or irreparable harm to landlord's person or property.

186 (2) The landlord meets both of the following:

187 a. The landlord has provided the affected tenant notice of the tenant's rights under this chapter and
188 Chapter 56 of this title, and how to exercise these rights.

189 b. The landlord has registered with the residential eviction diversion program, 45 days have passed both
190 from the date the landlord provided the required notice of tenants' rights and the landlord properly registered with
191 the residential eviction diversion program, and the tenant has not engaged in the residential eviction diversion
192 program.

193 Section 4. On expiration or nonrenewal of Paragraph E.1. of the Twenty-Seventh Modification of the Declaration
194 of a State of Emergency for the State of Delaware Due to a Public Health Threat, in any case where a final judgement was
195 reached but subsequently stayed pursuant to the Declaration, a landlord must commence a new action if the landlord
196 continues to seek summary possession as a remedy.

197 Section 5. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,
198 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given
199 effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

200 Section 6. This Act takes effect 90 days after its enactment into law.

SYNOPSIS

This Act creates a right to counsel for tenants in evictions and other landlord-tenant actions. Approximately 18,000 eviction cases are filed each year in the State of Delaware, and while 86% of landlords are represented by an attorney, agent, or business manager, only 2% of tenants have representation.

The disruptive displacement that accompanies eviction proceedings create significant costs for state and local government related to shelter funding, education funding, health care provided in hospitals instead of community-based providers, transportation costs for homeless youth, and foster care. Evictions and disruptive displacement also have significant, well-documented, and long-lasting effects on the lives of individuals and families, including poorer physical and mental health, increased risk of homelessness, increased risk of employment loss, loss of personal property, damage to credit standing, and relocation into substandard housing. Further, evictions fall disproportionately on Black and Latinx families, who have also been the hardest hit by the COVID-19 crisis.

Section 1 of this Act establishes a right to counsel for covered individuals with household income below 200% of the federal poverty guideline for evictions and other landlord-tenant actions. A Coordinator for the program will be appointed by the Attorney General. The Coordinator will contract with legal services providers for the provision of representation in proceedings covered by this Act. Section 1 also requires the Coordinator to work with community organizations to do outreach and education regarding the right to counsel. And, landlords must provide notice of the right to counsel at periodic designated intervals in the tenancy and in eviction proceedings.

Section 2 of this Act creates a monetary floor for initiation of eviction proceedings for nonpayment of rent – no action may be filed where the amount of rent owed is 1-month's rent or less than \$500, whichever is greater. It also provides that a landlord may not initiate or continue eviction proceedings for nonpayment of rent if the tenant pays and the tenant accepts all rent due. Finally, it creates a right of redemption for a tenant who pays all back rent, costs, and fees before eviction.

Section 3 of this Act authorizes the creation of a residential eviction diversion program modeled after the Residential Mortgage Foreclosure Mediation Program.

Section 4 of this Act provides COVID-19-specific release, whereby in any action where execution was stayed based on a finding that the stay was required in the interests of justice, that a new action must be commenced if the landlord continues to seek summary possession after the Emergency Declaration is lifted.

Section 5 of this Act is a severability clause.

Section 6 of this Act delays the effect of this Act until 90 days after its enactment.

Author: Senator Townsend