SPONSOR: Sen. Townsend & Sen. Hoffner & Sen. Pinkney & Rep. Minor-Brown & Rep. K. Johnson & Rep. Lambert & Rep. Bush
Sens. Buckson, Gay, Hansen, Huxtable, Lockman, S. McBride, Poore, Sokola, Sturgeon, Walsh; Reps. Baumbach, Bolden, Chukwuocha, Dorsey Walker, Griffith, Harris, Heffernan, Longhurst, S. Moore, Morrison, Neal, Parker Selby, Phillips, Romer, K. Williams, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 1
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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

WHEREAS, before the COVID-19 pandemic, approximately 18,000 eviction cases were filed each year in this State which has only 101,000 rental households; and

WHEREAS, evictions 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; and

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

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

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

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

WHEREAS, evictions 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; 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

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WHEREAS, providing a right to representation 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 Representation Coordinator within Delaware Volunteer Legal Services.

(2) "Covered individual" means a tenant who is eligible for legal representation under this chapter.

(3) "Covered proceeding" means any of the following:

a. A judicial or administrative proceeding to evict, terminate the tenancy of, or terminate 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 retaliatory actions, habitability, illegal eviction, or violation of quiet use and enjoyment.

(4) "Designated organization" means a nonprofit entity designated by the Attorney General that has the ability to provide legal representation to covered individuals.

(5)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 all of the following:

1. The filing of a notice of appearance on behalf of the covered individual in a covered proceeding.

2. Representation of covered individuals by non-attorneys, if the Rules of the Delaware Supreme Court permit the representation.

§ 5602. Right to legal representation.

(a)(1)a. Except as provided under paragraph (a)(2) of this section, a tenant has the right to legal representation as provided under this chapter if the tenant's household income over the immediately preceding 12 months 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.

b. For the purpose of determining household income, a co-signor of a rental agreement and all members of the co-signor's family who reside with the co-signor are included in the household income calculation if the tenant is a full-time student, as designated by the institution in which the tenant is enrolled.

(2) A tenant is not eligible to receive legal representation from a designated organization if any of the following apply:

a. The tenant's landlord has an ownership interest in 3 or fewer rental units and is not represented by an attorney or an agent authorized by a rule of the Delaware Supreme Court.

b. A designated organization determines that there is a conflict of interest.

c. A designated organization declines representation for one or more of the following reasons:

1. A tenant does not comply with the application or representation process.

2. Rules of professional conduct warrant withdrawal.

3. An attorney deems the tenant's defense or appeal to lack merit.

d. Other circumstances exist which make legal representation infeasible to render.

(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 a notice to the tenant as follows:

a. Under § 5502 of this title that rent is past due.

b. Under § 5513 of this title that the tenant has violated a material provision of the rental agreement.

c. Under § 5106 of this title that the rental agreement is terminated, if the rental agreement is one that may only be terminated for good cause or a material violation by the tenant.

(2) The initiation of a covered proceeding.

(3) The covered individual has been notified that the covered individual's housing subsidy has been terminated.

(4) The determination by a designated organization that a proceeding arising from the landlord-tenant relationship on behalf of a covered individual should be initiated.

(c) A covered individual's opportunity to receive legal representation must be provided by the time of a covered individual's first scheduled appearance in a covered proceeding.

(d) In a case involving rental arrears, a covered individual shall immediately be referred by the covered individual's legal representative to the Delaware Housing Assistance Program, or any successor rental assistance program, and shall receive assistance in applying for and obtaining housing assistance as part of the individual's legal representation.

(e) The rights in this section are subject to, and qualified by, the availability of legal representation under § 5604 of this title and the implementation period under § 5607 of this title. An individual does not have a cause of action against the Coordinator or designated organization based on the unavailability of legal representation.

§ 5603. Right to Representation Coordinator duties.

(a) The Coordinator shall manage the contracts awarded by the Attorney General under § 5604 of this title.

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

(1) Hosting in-person and virtual know-your-rights trainings and other workshops for tenants, rental property owners, and property managers.

(2) Distributing written information to tenants and providing landlords with the written information that must be distributed to tenants.

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

(4) Referring tenants to designated organizations as appropriate.

§ 5604. Attorney General powers and duties.

(a) The Attorney General, within the limits of an appropriation from the General Assembly, shall designate and 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) The Attorney General may adopt rules and regulations to implement this chapter.

§ 5605. Annual report.

(a) 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.

(b) Not later than November 30 of each year, the Coordinator shall prepare a report, which must be approved by the Attorney General and 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.

(5) The number of covered individuals who have previously been represented in covered proceedings.

(6) Metrics on the level of experience of Form 50 agents, as authorized by Delaware Supreme Court Rule 57, who litigate against represented tenants, including the number of previous entries of appearance by each agent in a 12-month period, and the number of units owned by the entity being represented by the agent as documented on Form 50, if available. Form 50 is to be updated to include an optional field that requests the number of units owned or managed by the entity.

(7) The Justice of the Peace Court's experience with the process.

(8) A full accounting of expenditures by the Attorney General and Right to Representation Coordinator under this chapter.

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

§ 5606. Additional required disclosures.

A landlord, or housing authority as defined under § 4301 of Title 31, shall provide a tenant with informational materials approved by the Coordinator that explain legal representation available to tenants, including a right to representation under this chapter, and identifies available resources. The Coordinator shall prepare the informational materials in English, Spanish, and Haitian Creole. The informational materials must be provided by the landlord or housing authority at all of the following events:

(1) After [the effective date of Section 1 of this Act], on signing a written rental agreement or entering into a rental agreement that is oral.

(2) On the first renewal or modification of a rental agreement occurring after [the effective date of Section 1 of this Act].

(3) When the landlord provides any of the notices under § 5602(b)(1) of this title.

(4) When a tenant receives notice of the termination of a housing subsidy.

§ 5607. Implementation.

(a) The Coordinator shall phase in, over a period of time not to exceed 3 years from [the effective date of Section 1 of this Act], in a manner that the Coordinator determines appropriate, the legal representation required to be provided under § 5602 of this title.

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

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

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

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

(4) Prioritizing veterans or active duty members of the United States Armed Forces, including the National Guard or the reserves.

(5) The availability of funding.

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

(7) Any other appropriate consideration.

(c) The provision of legal representation to a covered individual is not intended to be the sole basis for a continuance of a covered proceeding scheduled before [the effective date of Section 1 of this Act] for a hearing on or after [the effective date of Section 1 of this Act].

Section 2. 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)(1) Not later than 270 days after [the effective date of Section 2 of this Act], the Justice of the Peace Court or the Court's designee shall establish a residential eviction diversion program to facilitate post-filing eviction dispute resolution between landlords and tenants, which must include all of the following:

a. An initial mediation conference between a landlord and tenant to facilitate an agreement for asserted rental agreement violations or non-payment of rent.

b. A designated United States Housing and Urban Development certified housing counselor or other representative approved by the Justice of the Peace Court or the Court's designee for the tenant that does all of the following:

1. Participates in the initial mediation conference.

2. Engages with the tenant before the initial mediation conference to educate and discuss available resources.

c. Any other dispute resolution methods established under the residential eviction diversion program.

(2) The Justice of the Peace Court or the Court's designee may limit or otherwise modify the scope of services provided by the residential eviction diversion program to ensure that the cost of the program does not exceed the funding allocated to the program and to ensure that the number of staff required to run the program does not exceed the number of staff available.

(b) In designing and implementing the residential eviction diversion program, the Justice of the Peace Court or the Court's designee may be guided by the Residential Mortgage Foreclosure Mediation Program established by the Superior Court under Superior Court Administrative Directive 2013-2 and any subsequent changes made by Superior Court.

(c)(1) Except as provided under paragraph (c)(2) of this section, after a landlord has filed an action for possession under this chapter, the case is to be scheduled for mediation. Mediation is to be scheduled during the period between filing and trial. A trial may not commence until the landlord has engaged in mediation, except in cases where a tenant fails to engage in mediation within 15 calendar days after service of process. Mediation must be scheduled and completed at least 48 hours before the trial date. A tenant's failure to engage in or complete mediation may not delay the scheduling or commencement of trial.

(2) A landlord may not be required to participate in the residential eviction diversion program in a proceeding under §§ 5115, 5513(b), or 5513(c) of this title, or where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused or threatens to cause substantial or irreparable harm to landlord's or other tenant's person or property.

Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

Section 4. Sections 1 and 6 of this Act take effect 120 days after its enactment into law.

Section 5. Section 2 of this Act takes effect on the date of publication in the Register of Regulations of a notice by the Controller General that funds are appropriated to implement Section 2 of this Act. The Controller General shall provide notice to the Registrar of Regulations that the funds were appropriated. Until Section 2 of this Act takes effect, the Justice of the Peace Court shall adapt its Online Dispute Resolution program to function as a mandatory mediation process to facilitate post-filing eviction dispute resolution between landlords and tenants.

Section 6. The Right to Representation Coordinator shall provide the General Assembly with a copy of the first annual report due under § 5605 of Title 25 of the Delaware Code to determine if additional funding is needed to address the fiscal impact of this Act on the Justice of the Peace Court.