

STATE OF NEW YORK

6678

2021-2022 Regular Sessions

IN SENATE

May 11, 2021

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law and the real property law, in relation to establishing the civil right to counsel in eviction proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. The legislature hereby finds that
2 there is a fundamental human right to adequate housing accommodations.
3 Safe, secure, and accessible housing is essential to achieving equal
4 access to all other fundamental needs. Without housing, individuals and
5 families too often cannot preserve family integrity, gain employment or
6 other income, or enjoy access to healthcare, proper nutrition, and
7 education.
8 Legal proceedings that can lead to eviction are generally complex and
9 are governed by a large body of procedural and substantive law that
10 makes these proceedings extremely difficult to navigate without the
11 assistance of counsel. The overwhelming majority of landlords who seek
12 to evict tenants are represented by legal counsel, while in the areas of
13 New York State where there is no right to counsel most tenants are not
14 represented by counsel. Eviction proceedings, displacement as a result
15 of eviction proceedings, and executed evictions all have a disparate
16 impact on people of color, who are respondents in eviction proceedings
17 in numbers that greatly exceed their proportion of the general New York
18 population. Representation of persons who face losing their homes in
19 legal proceedings makes a determinative difference in outcome by
20 preserving homes and ensuring compliance with laws that, among other
21 purposes, protect the right to safe and secure living conditions,
22 prohibit discrimination, regulate rents and provide rental subsidies.
23 Representation of persons who face losing their homes in legal

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD11311-02-1

proceedings is essential to the fair functioning of the justice system and protects the rights to due process and equal protection of the law.

Evictions disrupt lives and livelihoods, force tenants to seek alternative housing in a market with a severe shortage of affordable housing and significantly increase the risk of homelessness. The short- and long-term effects of evictions and homelessness are devastating to individuals and families and can affect physical and mental health, employment, education, and engagement with the criminal justice system. Providing legal assistance to tenants who face eviction not only protects individuals and families from the devastating effects of eviction and homelessness, it saves public funds that would otherwise be spent on shelters and services to people experiencing homelessness as well as public expenses for addressing the wide range of detrimental short- and long-term effects of eviction and homelessness.

New York is facing an eviction crisis of unfathomable proportions due to the COVID-19 pandemic. According to an analysis of July 15th Census Bureau data, almost half (46 percent) of all renting households in the state were not able to pay rent and are at risk of eviction. In 2017, New York City adopted legislation that guarantees a right to counsel for tenants facing eviction. Even though the right to counsel in eviction proceedings in New York City is still in the implementation phase, a study conducted by the New York City Office of Civil Justice that analyzed data pertaining to New York City Housing Court proceedings from 2013-2019 found that legal representation in eviction matters has an enormously beneficial effect as shown by the following data:

1. Evictions dropped 41 percent overall since 2013, including a 15 percent drop in 2019 alone;

2. Eviction filings dropped by 30 percent between 2013 and 2019, including a 20 percent drop in 2019 alone;

3. Default judgments dropped 34 percent between 2013 and 2019;

4. Requests by tenants to bring their cases back to the Housing Court calendar on an emergency basis dropped by 38 percent during that time period, because tenant representation is ensuring these issues are addressed at the start of the case; and

5. Overall, 84 percent of tenants who were represented by counsel remained in their homes.

§ 2. The real property actions and proceedings law is amended by adding a new article 7-C to read as follows:

ARTICLE 7-C
CIVIL RIGHT TO COUNSEL
IN EVICTION PROCEEDINGS ACT

Section 800. Short title.

800-a. Legislative purpose.

800-b. Construction; effect of other laws; severability.

800-c. Definitions.

800-d. Civil right to counsel in eviction proceedings created.

800-e. New York state office of civil justice established.

800-f. Provision of legal services.

800-g. Community engagement.

800-h. Public hearings.

800-i. Reporting.

§ 800. Short title. This article shall be known and may be cited as the "civil right to counsel in eviction proceedings act".

1 § 800-a. Legislative purpose. The purpose of this article is to create
2 a civil right to counsel in eviction proceedings in New York state that
3 guarantees all covered individuals are provided high quality legal
4 representation at government expense in all covered proceedings. The
5 civil right to counsel for people who face eviction is intended to
6 ensure fair and balanced proceedings that comport with the constitu-
7 tional rights to due process and equal protection and, given the devas-
8 tating consequences of eviction, outweigh all other considerations in
9 the administration of legal proceedings that could result in eviction.

10 § 800-b. Construction; effect of other laws; severability. 1. This
11 article shall be interpreted broadly to effectuate the purposes
12 described in section eight hundred-a of this article.

13 2. This article shall not be construed to negate, alter, or limit any
14 right to counsel in any civil or criminal action or proceeding otherwise
15 provided under the New York state constitution or any New York state
16 statute. In the event of any conflict between the provisions of this
17 article and any other provision of law, this article shall govern.

18 3. If any word, phrase, clause, sentence, paragraph, subdivision,
19 section or part of this article or the application thereof to any person
20 or circumstance shall be adjudged invalid by a court of competent juris-
21 isdiction, such order or judgment shall not affect or invalidate the
22 remainder of this article, and shall be confined in its operation to the
23 controversy in which it was rendered, and to the word, phrase, clause,
24 sentence, paragraph, subdivision, section or part thereof directly
25 involved in the controversy in which such judgment shall have been
26 rendered.

27 § 800-c. Definitions. For the purposes of this article, the following
28 terms shall have the following meanings:

29 1. "Coordinator" means the civil justice coordinator appointed pursu-
30 ant to section eight hundred-e of this article.

31 2. "Covered individual" means an individual who is a respondent in a
32 covered proceeding.

33 3. "Covered proceeding" means any proceeding to evict a tenant,
34 including a summary proceeding to seek possession for the non-payment of
35 rent or a holdover, or any other proceeding for termination of tenancy,
36 or any proceeding that could result in an individual losing such indi-
37 vidual's housing accommodation. "Covered proceeding" shall include, but
38 not be limited to proceedings:

39 (a) To evict a tenant;

40 (b) Initiated by a tenant to correct violations of law relating to
41 hazardous housing standards;

42 (c) To terminate an eligible individual from participation in any New
43 York state, locality, or federal housing subsidy program;

44 (d) Initiated by a tenant in response to unlawful landlord or owner
45 behavior; and

46 (e) Any other proceeding commenced against or by an individual that a
47 designated legal organization determines in its sole discretion can be
48 reasonably anticipated to lead to loss of such individual's home or
49 housing accommodation.

50 4. "Designated legal organization" means a not-for-profit organization
51 or association having non-profit status under section 501 (c) (3) of the
52 U.S. internal revenue code that has the capacity to provide comprehen-
53 sive and effective legal services and is designated by the coordinator
54 pursuant to this article.

55 5. "Designated community organization" means a not-for-profit organ-
56 ization or association having non-profit status under section 501 (c)

1 (3) of the U.S. internal revenue code that provide community education
2 and organization regarding rights of tenants.

3 6. "Designated statewide languages" means languages designated by the
4 coordinator pursuant to section eight hundred-e of this article.

5 7. "Full legal representation" means ongoing legal representation
6 provided by a designated legal organization to a covered individual and
7 includes all legal advice, advocacy, and assistance associated with such
8 representation. "Full legal representation" shall include, but not be
9 limited to: filing a notice of appearance, filing and preparation of
10 pleadings and motions on behalf of covered individuals, court appear-
11 ances on behalf of covered individuals, pre- and post-trial settlement
12 conferences, and any other activities needed to provide representation
13 in a covered proceeding.

14 8. "Housing accommodation" means that part of any building or struc-
15 ture or any part thereof, permanent or temporary, occupied or intended,
16 arranged or designed to be used or occupied, by one or more individuals
17 as a residence, home, dwelling unit or apartment, sleeping place, board-
18 ing house, lodging house or hotel, and all essential services, privi-
19 leges, furnishings, furniture and facilities supplied in connection with
20 the occupation thereof.

21 9. "Office" means the New York state office of civil justice estab-
22 lished pursuant to section eight hundred-e of this article.

23 § 800-d. Civil right to counsel in eviction proceedings created. 1.
24 The civil right to full representation by counsel in covered proceedings
25 for covered individuals is hereby created and shall apply to all pending
26 covered proceedings at the time of the effective date of this section,
27 and to all covered proceedings initiated on or after the effective date
28 of this section.

29 2. The civil right to counsel in covered proceedings shall apply to a
30 covered individual upon the service of a predicate notice upon such
31 individual, upon the commencement of a covered proceeding, or upon a
32 determination by a designated legal organization that a covered proceed-
33 ing is reasonably anticipated, whichever occurs earlier.

34 § 800-e. New York state office of civil justice established. 1. There
35 is hereby established the "New York state office of civil justice" to
36 conduct planning and implementation of the purposes of this article.

37 2. The office shall be headed by a civil justice coordinator who shall
38 be appointed by the governor. The civil justice coordinator shall have
39 the power and duty to:

40 (a) create and implement a program to provide access to legal services
41 pursuant to section eight hundred-f of this article;

42 (b) advise and assist the governor in planning and implementing coor-
43 dination and cooperation among state agencies necessary for the imple-
44 mentation of this article;

45 (c) prepare and submit to the governor, the temporary president of the
46 senate, and the speaker of the assembly an annual report of the need for
47 designated legal organizations and designated community organizations in
48 the state, and whether current designated legal organizations and desig-
49 nated community organizations are able to meet the needs of covered
50 individuals;

51 (d) propose an amount of funding for designated legal organizations
52 and designated community organizations that is sufficient to assist all
53 covered individuals, and to enable such organizations to provide high
54 quality assistance and have reasonable workloads, decent working condi-
55 tions, and adequate compensation for their staff;

1 (e) serve as liaison for the state with designated legal organizations
2 and designated community organizations;

3 (f) promulgate any rules and regulations necessary for the implementa-
4 tion of the provisions of this article;

5 (g) prepare a list of designated languages that shall consist of
6 languages spoken by a large enough population of New York residents that
7 preparation of materials and conduct of education and engagement by
8 designated community organizations in such languages is appropriate;

9 (h) support outreach and education by designated community organiza-
10 tions, to spread awareness of the availability of designated legal
11 organizations; and

12 (i) perform such other duties as the governor may assign.

13 § 800-f. Provision of legal services. 1. The coordinator shall estab-
14 lish a program to provide access to legal services for covered individ-
15 uals in covered proceedings and shall, no later than ninety days follow-
16 ing the effective date of this article:

17 (a) Ensure that a system is in place to provide all covered individ-
18 uals in the state with counsel for covered proceedings, and that any
19 notice of petition for summary eviction proceedings commenced under
20 article seven of this chapter provides notice to covered individuals of
21 their right to counsel and how they may secure such counsel;

22 (b) Ensure that all covered individuals receive access to full legal
23 representation as provided under subdivision two of section eight
24 hundred-d of this article; and

25 (c) Identify at least one designated legal organization or consortium
26 of designated legal organizations capable of providing legal services in
27 covered proceedings in each region of the state. In identifying design-
28 ated legal organizations, the coordinator shall only consider providers
29 that have the capacity to provide high quality legal assistance and, at
30 minimum, meet the following qualifications:

31 (i) have non-profit status under section 501 (c) (3) of the U.S.
32 internal revenue code;

33 (ii) maintain a practice of furnishing free legal services to individ-
34 uals who cannot afford the services of a licensed legal professional;

35 (iii) possess expertise in housing law, landlord-tenant law, or
36 related experience in representing covered individuals in covered
37 proceedings;

38 (iv) demonstrate expertise in recognizing and responding to the legal
39 issues facing low-income residents of the state of New York;

40 (v) possess adequate infrastructure and expertise to provide consist-
41 ent, high quality supervision, oversight, training, evaluation, and
42 strategic responses to emerging or changing needs in the client communi-
43 ties served; and

44 (vi) with sufficient funding, have the capacity to maintain reasonable
45 caseloads and working conditions for their attorneys, paralegals, and
46 other staff.

47 2. The coordinator shall require each designated legal organization to
48 identify the geographic areas for which such organization shall provide
49 legal services. For each such geographic area, the coordinator shall
50 maintain a list of designated legal service organizations.

51 3. In developing the program under subdivision one of this section,
52 the coordinator shall consult with:

53 (a) Tenants, representatives for tenants, and community groups;

54 (b) Representatives of designated legal organizations and unions
55 engaged in representing employees of designated legal organizations;

1 (c) Representatives of the New York state bar association, the New
2 York city bar association, the network of bar leaders, and other local
3 bar associations in New York state; and

4 (d) Representatives of the judiciary.

5 4. The coordinator shall estimate annually the expenditures required
6 for each year of implementation of the program described in this
7 section. The estimate of required expenditures shall be sufficient to
8 enable designated legal organizations to provide high quality assistance
9 and maintain the qualifications set forth in paragraph (c) of subdivi-
10 sion one of this section. Beginning January first, two thousand twenty-
11 three, and no later than January first of each year thereafter, the
12 coordinator shall publish a summary of any changes to such estimates for
13 expenditures.

14 5. The coordinator shall annually review the performance of designated
15 legal organizations.

16 § 800-g. Community engagement. 1. The coordinator shall identify one
17 or more designated community organizations capable of providing communi-
18 ty education and organization. In identifying designated community
19 organizations, the coordinator shall only consider organizations that
20 have the capacity to provide high quality assistance and shall, at mini-
21 mum, meet the following qualifications:

22 (a) have non-profit status under section 501 (c) (3) of the U.S.
23 internal revenue code;

24 (b) maintain a practice of furnishing free services;

25 (c) possess expertise and experience in community education and organ-
26 ization, and ties to the communities they serve;

27 (d) demonstrate expertise in recognizing and responding to the housing
28 issues facing low-income residents of the state of New York;

29 (e) possess adequate expertise to provide consistent, high quality
30 supervision, oversight, training, evaluation, and strategic response to
31 emerging or changing needs in the communities served; and

32 (f) maintain reasonable workloads and working conditions for their
33 staff.

34 2. With the support of the coordinator and adequate funding, desig-
35 nated community organizations shall be responsible for engaging and
36 educating tenants of their rights in eviction proceedings, including but
37 not limited to: hosting trainings and other workshops for tenants;
38 distributing written information to tenants; assisting tenants in form-
39 ing and maintaining tenant associations; referring tenants to designated
40 legal organizations; and other activities to engage, educate, or inform
41 tenants of their rights in eviction proceedings. Engagement and educa-
42 tion shall be provided in designated statewide languages.

43 § 800-h. Public hearings. 1. Following the establishment of the
44 program established pursuant to section eight hundred-f of this article,
45 once each year the coordinator shall hold a public hearing for each
46 judicial department to receive recommendations and feedback about such
47 program.

48 2. Such hearing shall be open to the public, and the coordinator shall
49 provide notice of such hearing, no less than thirty days before such
50 hearing, by:

51 (a) posting in the designated statewide languages in the housing
52 courts and other forums in which eviction proceedings are held;

53 (b) posting in the designated statewide languages in public offices of
54 county social services/human resources departments; and

55 (c) publicizing through local media and to each designated legal
56 organization, each designated community organization, local elected

1 officials, the supervising judges of the housing courts, other forums in
2 which eviction proceedings are held, and community-based organizations.

3 3. At such hearings, written and oral testimony may be provided.

4 4. The coordinator shall cause a transcript of such hearings to be
5 produced and shall post such transcript online no later than forty-five
6 days after a hearing.

7 § 800-i. Reporting. 1. The coordinator shall provide the governor, the
8 temporary president of the senate, and the speaker of the assembly with
9 an annual financial audit of the program's activities, prepared by a
10 certified public accountant licensed in the state of New York and
11 carried out in accordance with generally accepted auditing standards.

12 2. No later than January first, two thousand twenty-three and January
13 first of every other year thereafter, the coordinator shall submit to
14 the governor, the temporary president of the senate, and the speaker of
15 the assembly, and post online, a review of the program established
16 pursuant to section eight hundred-f of this article and information
17 regarding such program's implementation, to the extent such information
18 is available, including, but not limited to:

19 (a) The estimated number of covered individuals in the state;

20 (b) The number of covered individuals who have received legal
21 services, disaggregated by the following characteristics of such indi-
22 viduals:

23 (i) gender, race, ethnicity, and age;

24 (ii) county and postal code of residence;

25 (iii) household size;

26 (iv) estimated length of tenancy;

27 (v) approximate household income;

28 (vi) receipt of ongoing public assistance at the time such legal
29 services were initiated;

30 (vii) tenancy in rent-regulated housing; and

31 (viii) tenancy in housing operated by or subsidized through a federal,
32 state or local rental subsidy program;

33 (c) Legal services provided by type of legal issue;

34 (d) A list of designated legal organizations, the geographic region in
35 which such organizations provide services, and the amount of funding
36 provided to each;

37 (e) Outcomes immediately following the provision of full legal repre-
38 sentation, as applicable and available, including, but not limited to,
39 the number of:

40 (i) judgments allowing individuals to remain in their residence;

41 (ii) judgments requiring individuals to be displaced from their resi-
42 dence; and

43 (iii) instances where an attorney representing a covered individual
44 was discharged or withdrew;

45 (f) A list of landlords involved in eviction proceedings;

46 (g) Residential evictions conducted by sheriffs or city marshals,
47 disaggregated by county;

48 (h) A list of designated community organizations, the geographic
49 region in which such organizations provide services, and the amount of
50 funding provided to each;

51 (i) The number of buildings in which outreach was conducted, the
52 number of workshops offered, the number of attendees at such workshops,
53 the number of people referred to non-profits having status under section
54 501 (c) (3) of the U.S. internal revenue code, and the number of train-
55 ings offered; and

1 (j) An evaluation of implementation challenges and recommendations for
2 any future programmatic improvements.

3 § 3. Section 701 of the real property actions and proceedings law is
4 amended by adding a new subdivision 3 to read as follows:

5 3. Any court maintaining a covered proceeding, as defined by section
6 eight hundred-c of this chapter, shall notify all respondents by mail
7 upon filing of a petition, not less than fourteen days before trial, of
8 such respondent's civil right to counsel in an eviction proceeding under
9 article seven-C of this chapter.

10 § 4. Subdivisions 1 and 2 of section 711 of the real property actions
11 and proceedings law, subdivision 1 as amended by chapter 305 of the laws
12 of 1963 and subdivision 2 as amended by section 12 of part M of chapter
13 36 of the laws of 2019, are amended to read as follows:

14 1. The tenant continues in possession of any portion of the premises
15 after the expiration of his term, without the permission of the landlord
16 or, in a case where a new lessee is entitled to possession, without the
17 permission of the new lessee. Acceptance of rent after commencement of
18 the special proceeding upon this ground shall not terminate such
19 proceeding nor effect any award of possession to the landlord or to the
20 new lessee, as the case may be. A proceeding seeking to recover
21 possession of real property by reason of the termination of the term
22 fixed in the lease pursuant to a provision contained therein giving the
23 landlord the right to terminate the time fixed for occupancy under such
24 agreement if he deem the tenant objectionable, shall not be maintainable
25 unless the landlord shall by competent evidence establish to the satis-
26 faction of the court that the tenant is objectionable. No proceeding
27 shall be maintained, and no court shall accept for filing, any petition
28 to recover possession of real property unless the petitioner or an agent
29 of the petitioner has filed an affidavit attesting that the petitioner
30 or the petitioner's agent has provided the respondent with written
31 notice, in the notice of petition and any required predicate notice, of
32 such respondent's right to counsel in eviction proceedings under article
33 seven-C of this chapter.

34 2. The tenant has defaulted in the payment of rent, pursuant to the
35 agreement under which the premises are held, and a written demand of the
36 rent has been made with at least fourteen days' notice requiring, in the
37 alternative, the payment of the rent, or the possession of the premises,
38 has been served upon him as prescribed in section seven hundred thirty-
39 five of this article. No proceeding shall be maintained, and no court
40 shall accept filing for any petition for non-payment of rent unless the
41 written demand for rent required by this section contains a notice of
42 the respondent's civil right to counsel in eviction proceedings, as
43 required by subdivision six of section seven hundred forty-one of this
44 article. Any person succeeding to the landlord's interest in the prem-
45 ises may proceed under this subdivision for rent due his predecessor in
46 interest if he has a right thereto. Where a tenant dies during the term
47 of the lease and rent due has not been paid and the apartment is occu-
48 pied by a person with a claim to possession, a proceeding may be
49 commenced naming the occupants of the apartment seeking a possessory
50 judgment only as against the estate. Entry of such a judgment shall be
51 without prejudice to the possessory claims of the occupants, and any
52 warrant issued shall not be effective as against the occupants.

53 § 5. Section 713 of the real property actions and proceedings law is
54 amended by adding a new subdivision 12 to read as follows:

55 12. No proceeding shall be maintained, and no court shall accept for
56 filing, any petition to recover possession of real property unless the

petitioner or an agent of the petitioner has filed an affidavit attesting that the petitioner or the petitioner's agent has provided the respondent with written notice, in the notice of petition and any required predicate notice, of such respondent's right to counsel in eviction proceedings under article seven-C of this chapter.

§ 6. Section 741 of the real property actions and proceedings law is amended by adding three new subdivisions 6, 7 and 8 to read as follows:

6. Notify the respondent of the existence of the civil right to counsel in eviction proceedings under article seven-C of this chapter, and shall provide a phone number, website address and other information to assist the respondent in securing counsel.

7. State the right to an adjournment of the proceedings until a covered individual, as defined in section eight hundred-c of this chapter, is able to retain and consult with counsel.

8. State that any and all predicate notices served upon the respondent included notice of the civil right to counsel in eviction proceedings under article seven-C of this chapter, and provided a phone number, website address and other information to assist the respondent in securing counsel.

§ 7. Section 745 of the real property actions and proceedings law is amended by adding a new subdivision 3 to read as follows:

3. Where a respondent who is a covered individual under article seven-C of this chapter appears in court without counsel, the court shall notify such respondent orally of the civil right to counsel in eviction proceedings established by article seven-C of this chapter, and if such respondent would like counsel, the court shall adjourn the trial and provide sufficient time, not less than fourteen days, for such respondent to retain and consult counsel and shall grant such further adjournments as the court deems necessary for such covered individual to obtain counsel.

§ 8. Subdivisions 1 and 3 of section 749 of the real property actions and proceedings law, as amended by section 19 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, stating the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in the proceeding, provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time. However, no court shall issue a judgment authorizing the issuance of a warrant of eviction against a respondent who has defaulted, or authorize the execution of an eviction pursuant to a default judgment, unless the petitioner or an agent of the petitioner has filed an affidavit attesting that the petitioner or the petitioner's agent has provided the respondent with written notice of the respondent's civil right to counsel in eviction proceedings in the notice of petition and in any predicate notice as required by sections seven hundred eleven, seven hundred forty-one and seven hundred forty-five of this article.

3. Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. The failure of the court or the petitioner to comply with the civil right to counsel in eviction proceedings pursuant to

1 article seven-C of this chapter shall constitute good cause to vacate
2 such warrant. In a judgment for non-payment of rent, the court shall
3 vacate a warrant upon tender or deposit with the court of the full rent
4 due at any time prior to its execution, unless the petitioner estab-
5 lishes that the tenant withheld the rent due in bad faith. Petitioner
6 may recover by action any sum of money which was payable at the time
7 when the special proceeding was commenced and the reasonable value of
8 the use and occupation to the time when the warrant was issued, for any
9 period of time with respect to which the agreement does not make any
10 provision for payment of rent.

11 § 9. The real property law is amended by adding a new section 235-i to
12 read as follows:

13 § 235-i. Lease provisions waiving right to counsel void. Any
14 provision of a lease or contract waiving or limiting the right to coun-
15 sel in eviction proceedings under article seven-C of the real property
16 actions and proceedings law shall be void.

17 § 10. This act shall take effect immediately.