

STATE OF NEW YORK

2721

2023-2024 Regular Sessions

IN SENATE

January 24, 2023

Introduced by Sens. MAY, BAILEY, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GIANARIS, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KENNEDY, LIU, MANNION, MAYER, MYRIE, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, THOMAS -- 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 executive law, the real property actions and proceedings law and the real property law, in relation to establishing the New York state office of civil representation to provide a 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. Eviction proceedings have a
2 profoundly disparate impact on low-income individuals and given this
3 disparate impact, it is imperative that these individuals be provided
4 legal representation in legal proceedings that put their housing at
5 risk.
6 There is a fundamental human right to adequate housing accommodations.
7 Safe, secure, and accessible housing is essential to achieving equal
8 access to all other fundamental needs. Without housing, individuals and
9 families too often cannot preserve family integrity, gain employment or
10 other income, or enjoy access to healthcare, proper nutrition, and
11 education.
12 Eviction proceedings and displacement as a result of evictions have a
13 disparate impact on low-income individuals and particularly on low-in-
14 come people of color, who are disproportionately the respondents in
15 eviction proceedings.
16 Representation of people who are at risk of losing their homes in
17 legal proceedings preserves access to housing and ensures compliance
18 with laws protecting people's rights in such proceedings. Abrupt, unwar-
19 ranted, or unlawful evictions disrupt lives and livelihoods, force

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

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1 people to find housing in a market with a severe shortage of affordable
2 housing and often significantly increases the risk of homelessness. The
3 short- and long-term effects of housing instability are devastating to
4 individuals and families and can affect physical and mental health,
5 employment and education. Providing a right to counsel to individuals
6 who are most at risk of housing instability not only protects individ-
7 uals and families from these devastating effects, it saves public funds
8 that would otherwise be spent on shelters and services to people experi-
9 encing homelessness as well as the wide range of detrimental short- and
10 long-term collateral consequences of housing instability.

11 § 2. The executive law is amended by adding a new article 29 to read
12 as follows:

13 ARTICLE 29

14 NEW YORK STATE OFFICE OF CIVIL REPRESENTATION

15 Section 827. Right to counsel in eviction proceedings.

16 828. Office of civil representation.

17 829. Powers and duties of the office of civil representation.

18 830. Definitions.

19 831. Provision of legal representation and community education.

20 § 827. Right to counsel in eviction proceedings. The civil right to
21 full representation by counsel in covered proceedings for eligible indi-
22 viduals is hereby created.

23 § 828. Office of civil representation. 1. There is hereby established
24 in the executive department an office of civil representation to create
25 and implement a program to provide a right to counsel pursuant to
26 section eight hundred twenty-nine of this article.

27 2. The office shall be headed by an executive director who shall be
28 appointed by the governor with the advice and consent of the senate.

29 § 829. Powers and duties of the office of civil representation. The
30 executive director shall have the power and duty to:

31 1. establish a program to provide legal representation including
32 entering into contracts and agreements as may be necessary, in accord-
33 ance with section eight hundred thirty-one of this article;

34 2. prepare and submit to the governor, the temporary president of the
35 senate, and the speaker of the assembly an annual financial audit of the
36 program's activities, prepared by a certified public accountant licensed
37 in the state of New York and carried out in accordance with generally
38 accepted auditing standards; and an annual report regarding the program
39 created under section eight hundred thirty-one of this article. Such
40 report shall include but not be limited to the following information,
41 disaggregated by county, provided, however, that the information shall
42 not be required for every case where the individual refuses to provide
43 the information or the information is not reasonably ascertainable:

44 (a) the total number of people provided legal representation and the
45 total number of people not provided legal representation and the reasons
46 why representation was not provided;

47 (b) the outcomes of the cases provided legal representation;

48 (c) gender, race, ethnicity, and age;

49 (d) postal code of residence;

50 (e) household size;

51 (f) estimated length of tenancy;

52 (g) approximate household income;

53 (h) receipt of ongoing public assistance at the time such legal
54 services were initiated;

55 (i) tenancy in rent-regulated housing;

1 (j) tenancy in housing operated by or subsidized through a federal,
2 state or local rental subsidy program;

3 (k) legal services provided by type of legal issue;

4 (l) a list of designated legal organizations, the geographic region in
5 which such organizations provide services, and the amount of funding
6 provided to each;

7 (m) outcomes immediately following the provision of full legal repre-
8 sentation, as applicable and available, including, but not limited to,
9 the number of:

10 (i) judgments and stipulated agreements allowing individuals to remain
11 in their residence;

12 (ii) judgments and stipulated agreements requiring individuals to be
13 displaced from their residence; and

14 (iii) instances where an attorney representing an income-eligible
15 individual was discharged or withdrew;

16 (n) a list of landlords involved in eviction proceedings;

17 (o) residential evictions conducted by sheriffs or city marshals,
18 disaggregated by county;

19 (p) a list of designated community organizations, the geographic
20 region in which such organizations provide services, and the amount of
21 funding provided to each;

22 (q) the number of buildings in which outreach was conducted, the
23 number of workshops offered, the number of attendees at such workshops,
24 the number of people referred to non-profits having status under section
25 501 (C) (3) of the United States internal revenue code, and the number
26 of trainings offered; and

27 (r) an evaluation of implementation challenges and recommendations for
28 any future programmatic improvements.

29 3. provide an annual estimate for the funding necessary for the opera-
30 tion of the program under section eight hundred thirty-one of this arti-
31 cle;

32 4. coordinate with other programs providing legal representation in
33 covered proceedings to ensure efficiency of functions and to prevent
34 duplication of work;

35 5. create a program providing outreach and education through desig-
36 nated community organizations, to spread awareness of the availability
37 of legal representation by designated legal organizations. With the
38 support of the executive director and adequate funding, designated
39 community organizations shall be responsible for engaging and educating
40 tenants of their rights in eviction proceedings, including but not
41 limited to: hosting trainings and other workshops for tenants; distrib-
42 uting written information to tenants; assisting tenants in forming and
43 maintaining tenant associations; referring tenants to designated legal
44 organizations; and other activities to engage, educate, or inform
45 tenants of their rights in eviction proceedings. Engagement and educa-
46 tion shall be provided in designated statewide languages;

47 6. create and make available resources for individuals with regard to
48 their rights in civil legal matters regarding housing accommodations in
49 the languages required by law and such additional languages as may be
50 necessary; and

51 7. promulgates any rules, regulations, and guidance necessary for the
52 implementation of the provisions of this article.

53 § 830. Definitions. For the purposes of this article, the following
54 terms shall have the following meanings:

55 1. "executive director" means the executive director of the New York
56 state office of civil representation.

1 2. "office" means the New York state office of civil representation.

2 3. "eligible individual" means an individual who is at risk of losing
3 their housing accommodation in a covered proceeding. An individual
4 becomes eligible when that individual (a) becomes the subject of a pred-
5 icate notice in a covered proceeding; or (b) is a party, or has standing
6 to be a party, in a covered proceeding; or (c) has been determined by a
7 designated legal organization to be a person reasonably anticipated to
8 become a party in a covered proceeding, whichever occurs earlier.

9 4. "covered proceeding" means any proceeding to evict an individual or
10 otherwise terminate a tenancy, any other proceeding that is likely to
11 result in an individual losing such individual's housing accommodation,
12 including an administrative proceeding to terminate a housing subsidy
13 and any additional proceeding as determined by the office, or a proceed-
14 ing brought by an eligible individual to enforce the warranty of habita-
15 bility, or in response to an unlawful eviction, or in response to the
16 unlawful actions of a landlord, as well as any appeals from any such
17 proceedings.

18 5. "designated legal organization" means a not-for-profit organization
19 or association having non-profit status under section 501(C)(3) of the
20 United States internal revenue code that has the capacity to provide
21 comprehensive and effective legal services for the program established
22 under section eight hundred thirty of this article. To the extent prac-
23 ticable, such designated legal organizations shall be organizations that
24 maintain a practice of furnishing free or reduced cost legal services to
25 individuals; possess expertise in the areas of law for covered
26 proceedings; have a demonstrated history or practice with regard to the
27 legal issues facing low-income residents of the state of New York;
28 provide consistent, high quality supervision, oversight, training, eval-
29 uation, and strategic response to emerging or changing needs in the
30 communities served; and maintain reasonable workloads and working condi-
31 tions for their staff.

32 6. "designated community organization" means a not-for-profit organ-
33 ization or association having non-profit status under section 501(C)(3)
34 of the United States internal revenue code that has the capacity to
35 provide education in a program established under section eight hundred
36 thirty-one of this article. To the extent practicable, such designated
37 community organization shall maintain a practice of furnishing free
38 services; possess expertise and experience in community education and
39 organizing, and ties to the communities they serve; demonstrate exper-
40 tise in recognizing and responding to the housing issues facing low-in-
41 come residents of the state of New York; possess adequate expertise to
42 provide consistent, high quality supervision, oversight, training, eval-
43 uation, and strategic response to emerging or changing needs in the
44 communities served; and maintain reasonable workloads and working condi-
45 tions for their staff.

46 7. "legal representation" means ongoing legal representation provided
47 by a designated legal organization to eligible individuals and the
48 provision of legal advice, advocacy, and assistance, including but not
49 be limited to: filing a notice of appearance, filing and preparation of
50 pleadings and motions on behalf of eligible individuals, court appear-
51 ances on behalf of eligible individuals, pre- and post-trial settlement
52 conferences, and any other activities needed to provide legal represen-
53 tation in a covered proceeding.

54 8. "housing accommodation" means that part of any building or struc-
55 ture or any part thereof, permanent or temporary, occupied or intended,
56 arranged or designed to be used or occupied, by one or more individuals

1 as a residence, home, dwelling unit or apartment, sleeping place, board-
2 ing house, lodging house or hotel, and all essential services, privi-
3 leges, furnishings, furniture and facilities supplied in connection with
4 the occupation thereof.

5 § 831. Provision of legal representation and community education. 1.
6 In accordance with this article, the office shall develop programs to
7 guarantee and deliver:

8 (a) legal representation through one or more designated legal organ-
9 izations to eligible individuals in covered proceedings throughout the
10 state; and

11 (b) community outreach and education through one or more designated
12 community organizations regarding the programs created herein.

13 2. In creating the programs under subdivision one of this section, the
14 executive director shall consult with the following:

15 (a) tenants and/or representatives of tenants, and community groups
16 representing low-income or other at-risk members of the community;

17 (b) legal and community-based organizations;

18 (c) representatives of the judiciary;

19 (d) representatives of a municipality operating or funding a program
20 providing legal representation, legal consultation, or community educa-
21 tion and outreach and/or representatives of the organizations involved
22 in such programs; and

23 (e) any other organizations or individuals as may be necessary as
24 determined by the executive director.

25 3. The office shall post on its website information regarding the
26 programs created under this section including how individuals may find
27 services available in their geographic area.

28 4. The office shall hold one or more hearings or listening sessions in
29 each region of the state on an annual basis to evaluate the programs
30 created pursuant to this section and to incorporate any necessary chang-
31 es to such programs.

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

34 3. Any court maintaining a covered proceeding, as defined by section
35 eight hundred thirty of the executive law, shall notify all respondents
36 by mail upon filing of a petition, not less than fourteen days before
37 trial, of the right to obtain legal representation pursuant to section
38 eight hundred thirty-one of the executive law.

39 § 4. The opening paragraph of section 711 of the real property actions
40 and proceedings law, as amended by section 12 of part M of chapter 36 of
41 the laws of 2019, is amended to read as follows:

42 A tenant shall include an occupant of one or more rooms in a rooming
43 house or a resident, not including a transient occupant, of one or more
44 rooms in a hotel who has been in possession for thirty consecutive days
45 or longer. No tenant or lawful occupant of a dwelling or housing accom-
46 modation shall be removed from possession except in a special proceed-
47 ing. No special proceeding shall be maintained under any provision of

48 this section unless the court has notified an individual of the right to
49 obtain legal representation pursuant to section eight hundred thirty-one
50 of the executive law. A special proceeding may be maintained under this
51 article upon the following grounds:

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

54 12. No proceeding shall be maintained under this section, unless the
55 court has provided the respondent with written notice of the right of
56 the respondent to obtain legal representation pursuant to section eight

1 hundred thirty-one of the executive law, in the manner prescribed in
2 section seven hundred forty-five of this article. Any ten-day notice to
3 quit served pursuant to this section shall provide notice of the
4 respondent's right to obtain legal representation under section eight
5 hundred thirty-one of the executive law.

6 § 6. Section 713-a of the real property actions and proceedings law,
7 as amended by chapter 628 of the laws of 1982, is amended to read as
8 follows:

9 § 713-a. Special proceeding for termination of adult home and resi-
10 dence for adults admission agreements. A special proceeding to terminate
11 the admission agreement of a resident of an adult home or residence for
12 adults and discharge a resident therefrom may be maintained in a court
13 of competent jurisdiction pursuant to the provisions of section four
14 hundred sixty-one-h of the social services law and nothing contained in
15 such section shall be construed to create a relationship of landlord and
16 tenant between the operator of an adult home or residence for adults and
17 a resident thereof. No proceeding shall be maintained under this
18 section, unless the court has provided the respondent with written
19 notice of the right of the respondent to obtain legal representation
20 pursuant to section eight hundred thirty-one of the executive law.

21 § 7. Section 715 of the real property actions and proceedings law is
22 amended by adding a new subdivision 6 to read as follows:

23 6. No proceeding shall be maintained under any provision of this
24 section, unless the court has provided the respondent with written
25 notice of the right of the respondent to obtain legal representation
26 pursuant to section eight hundred thirty-one of the executive law.

27 § 8. Section 731 of the real property actions and proceedings law is
28 amended by adding a new subdivision 5 to read as follows:

29 5. No special proceeding prescribed by this article shall be main-
30 tained unless the notice of petition has provided the respondent with
31 written notice of the right of the respondent to obtain legal represen-
32 tation pursuant to section eight hundred thirty-one of the executive
33 law.

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

36 3. Where a respondent who is an eligible individual, as defined in
37 subdivision three of section eight hundred thirty of the executive law,
38 appears in court without counsel, the court shall notify such respondent
39 orally of their right to obtain legal representation pursuant to section
40 eight hundred thirty-one of the executive law, and if such respondent
41 would like counsel, the court shall adjourn the trial and provide suffi-
42 cient time, not less than thirty days, for such respondent to retain and
43 consult counsel and shall grant such further adjournments for not less
44 than thirty days each as are necessary for such respondent to retain and
45 consult counsel.

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

49 1. Upon rendering a final judgment for petitioner, the court shall
50 issue a warrant directed to the sheriff of the county or to any constable
51 or marshal of the city in which the property, or a portion thereof,
52 is situated, or, if it is not situated in a city, to any constable of
53 any town in the county, describing the property, stating the earliest
54 date upon which execution may occur pursuant to the order of the court,
55 and commanding the officer to remove all persons named in the proceed-
56 ing, provided upon a showing of good cause, the court may issue a stay

1 of re-letting or renovation of the premises for a reasonable period of
2 time. However, no court shall issue a judgment authorizing the issuance
3 of a warrant of eviction against a respondent who has defaulted, or
4 authorize the execution of an eviction pursuant to a default judgment,
5 unless the court has provided the respondent with written notice of the
6 respondent's right to obtain legal representation pursuant to section
7 eight hundred thirty-one of the executive law in eviction proceedings in
8 the notice required by sections seven hundred eleven, seven hundred
9 forty-one and seven hundred forty-five of this article.

10 3. Nothing contained herein shall deprive the court of the power to
11 stay or vacate such warrant for good cause shown prior to the execution
12 thereof, or to restore the tenant to possession subsequent to execution
13 of the warrant. The failure of the court to advise tenants of their
14 right to obtain legal representation pursuant to section eight hundred
15 thirty-one of the executive law in an eviction proceeding shall consti-
16 tute good cause to stay or vacate such warrant. In a judgment for non-
17 payment of rent, the court shall vacate a warrant upon tender or deposit
18 with the court of the full rent due at any time prior to its execution,
19 unless the petitioner establishes that the tenant withheld the rent due
20 in bad faith. [~~Petitioner may recover by action~~] The court may not
21 order recovery by the petitioner of any sum of money which was payable
22 at the time when the special proceeding was commenced and the reasonable
23 value of the use and occupation to the time when the warrant was issued,
24 for any period of time with respect to which the agreement does not make
25 any provision for payment of rent, in any proceeding pending appointment
26 of legal representation pursuant to section eight hundred thirty-one of
27 the executive law.

28 § 11. Subdivision 1 of section 746 of the real property actions and
29 proceedings law, as amended by chapter 725 of the laws of 2021, is
30 amended to read as follows:

31 1. In any proceeding under this article, if a stipulation is made, on
32 the occasion of a court appearance in the proceeding, setting forth an
33 agreement between the parties, other than a stipulation solely to
34 adjourn or stay the proceeding, and either the petitioner or the
35 respondent is not represented by counsel, the court shall fully describe
36 the terms of the stipulation to that party on the record. If the
37 respondent is not represented by counsel and the respondent is an eligi-
38 ble individual, as defined in subdivision three of section eight hundred
39 thirty of the executive law, the court shall notify such respondent
40 orally of their right to obtain legal representation pursuant to section
41 eight hundred thirty-one of the executive law, and if such respondent
42 would like counsel, the court shall cease the allocution and adjourn the
43 trial and provide sufficient time, not less than thirty days, for such
44 respondent to retain and consult counsel and shall grant such further
45 adjournments for not less than thirty days each as are necessary for
46 such respondent to retain and consult counsel.

47 § 12. The real property law is amended by adding a new section 235-j
48 to read as follows:

49 § 235-j. Lease provisions waiving right to counsel void. Any
50 provision of a lease or contract waiving or otherwise limiting the
51 tenant's right to obtain legal representation under section eight
52 hundred thirty-one of the executive law shall be void and unenforceable.

53 § 13. The real property law is amended by adding a new section 235-k
54 to read as follows:

55 § 235-k. Lease provisions shall provide notice of the right to coun-
56 sel. Any lease or contract for rental of residential property shall

1 provide notice of the tenant's right to legal representation under
2 section eight hundred thirty-one of the executive law.

3 § 14. Severability clause. If any provision of this act, or any appli-
4 cation of any provision of this act, is held to be invalid, or to
5 violate or be inconsistent with any federal law or regulation, that
6 shall not affect the validity or effectiveness of any other provision of
7 this act, which can be given effect without that provision or applica-
8 tion; and to that end, the provisions and applications of this act are
9 severable.

10 § 15. This act shall take effect on the one hundred eightieth day
11 after it shall have become a law; provided, however, that sections three
12 through thirteen of this act shall take effect five years after such
13 date.