



AN ACT PROMOTING THE PREVENTION OF HOMELESSNESS AND ESTABLISHING A RIGHT TO COUNSEL IN CERTAIN EVICTION CASES

S.831/H.968

Sponsors: Senator Sal DiDomenico and Representative Chynah Tyler

A right to counsel for low-income tenants in certain eviction cases is essential to prevent housing insecurity. Research has shown that housing instability leads to homelessness, unemployment, and decreased access to consistent education. While low-income tenants are afforded several rights, defenses, and their day in court to defend against evictions, many do not assert their rights under existing state law because they cannot afford an attorney or do not understand their rights.

FREQUENTLY ASKED QUESTIONS

Why is this Act necessary?

In Massachusetts, only six (6) percent of tenants are represented in eviction proceedings compared to the majority of landlords who are able to afford legal representation. The Act is necessary to equal the playing field for Massachusetts' low-income tenants and to prevent the consequences of homelessness to tenants and Massachusetts taxpayers who pay the cost of expensive shelter programs.

Who is eligible for the right to counsel?

Under the Act, low income tenants have a right to counsel in eviction and nuisance proceedings under Mass. Gen. Laws c. 239 and c. 139, § 19. The right to counsel does not extend to former homeowners in foreclosed properties. If an individual or household facing eviction is unable to afford an attorney, then he or she may qualify to have an attorney paid for by the Commonwealth appointed to him or her. The Act establishes eligibility standards in order to receive a state-appointed attorney, taking into account the individual's participation in public assistance programs, income level, and hardship.

Can a landlord with a low-income qualify for legal assistance under this Act?

No, but there are other resources available to small landlords and the City is committed to expanding its services and partnership with small landlords. Qualifying landlords can seek free legal advice from the Volunteer Lawyer's Project, legal information and assistance from the Court Services Center and telephone, email and walk-in support from the Office of Housing Stability.

When will the Right to Counsel Act take effect?

The right to counsel will be phased in two stages. First, the Act must be enacted by the State Legislature. If passed, then stake holders in a task force will work on designing an implementation framework so that within two years of its passing all low-income tenants have the right and access to legal representation.

How will a tenant facing eviction be informed of their right to counsel?

The Act requires that upon full implementation of the Right to Counsel Program, a document must be attached with every notice to quit informing the tenant of his or her right to counsel. In nuisance cases, the right to counsel notice must be attached to a properly served summons and complaint.

How does an eligible tenant exercise his or her right to be appointed an attorney by the Commonwealth?

The Act creates a public task force to develop an implementation plan, which will go into effect two years from the date of passage of the Act. The task force will promulgate procedures and protocols to implement the right to counsel. The task force will submit a plan to the State Legislature's Joint Committee on Housing within one year of the Act's passage, which will include suggested rules and regulations to administer a right to counsel in eviction proceedings, plans to recruit private counsel, legal aid organizations, and law firms to be assigned as counsel, expected costs and suggested changes to state laws and regulations.

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Who will administer the Right to Counsel Program?

By operation of law, if a right to counsel in any context is recognized, the administration of the right to counsel is housed and conducted by the Committee for Public Counsel Services (CPCS). CPCS currently provides legal representation to those who cannot afford an attorney. One third of the CPCS cases are civil. The Act establishes within CPCS a homelessness prevention and evictions unit, which will be charged with supervising and maintaining a system for the appointment of counsel in eviction cases. The task force plan and report shall also include suggestions and plans related to the administration of the Right to Counsel Program.

Does this Act alter, limit, or enlarge the rights and obligations under existing eviction laws regarding claims, defenses, procedures, or time limitations?

No. The only changes this Act makes to existing laws regarding evictions is that it recognizes a low income tenant's right to be represented by an attorney in court during certain eviction proceedings.

How will a Right to Counsel be funded?

The State Legislature allocates funding from the state budget to CPCS for the administration and maintenance of all right to counsel programs in the Commonwealth. An additional right to counsel in eviction proceedings will require a greater allocation from the State Legislature to the Committee for Public Counsel Services.

Do any other cities or states recognize a right to counsel in eviction proceedings?

While several cities and towns across the United States have piloted programs, until a few years ago, no city, town, or state has recognized under law a right to counsel in eviction cases. In 2012, San Francisco passed an ordinance providing a right to counsel to all low income tenants provided by pro bono attorneys. On February 12, 2017, New York City announced that it will provide a right to counsel for all low-income families who are at 200% or below of the federal poverty threshold. New York City will become the first jurisdiction in the United States to recognize and fund a right to counsel in eviction cases.