

MEMORANDUM OF SUPPORT

NYSBA #9

February 23, 2023

A. 1493
S. 2721

By: M. of A. Joyner
By: Senator May

Assembly Committee: Judiciary

Senate Committee: Housing

Effective Date: 180th day after it shall have
become law

AN ACT to establish a civil Right to Counsel in eviction proceeding in New York State.

LAW AND SECTION REFERRED TO: Article 7-C to Real Property Actions and Proceedings Law

This bill establishes the civil Right to Counsel in eviction proceedings in New York State; creates the New York State Office of Civil Representation; requires that covered individuals be given notice of such Right to Counsel.

One of the New York State Bar Association's ("NYSBA") state legislative priorities for 2023 is establishing a Right to Counsel in housing proceedings. The priority states, "New York State should establish a Right to Counsel for low-income tenants involved in housing defense proceedings. Housing law is widely acknowledged to be complex and almost impossible to successfully navigate without a lawyer. Unfortunately, most tenants cannot afford to hire an attorney and the free legal services available do not match the scale of need."

This legislation will create, for the first time on a state-wide level, a Right to Counsel for tenants involved in eviction proceedings, which aligns with NYSBA's stated legislative priority. The statewide Right to Counsel legislation, introduced by Senator Rachel May and Assembly Member Latoya Joyner, would ensure that every tenant in New York State has the right to a lawyer when facing an eviction. The legislation:

- covers every tenant across the state in any legal proceeding that could result in a tenant losing their home, as well as in matters relating to the warranty of habitability, and appeals;
- contains several provisions to ensure that tenants are aware of their Right to Counsel and ensure, upon full implementation, that tenants have the right to adjourn cases to obtain counsel;

- requires the State to contract with non-profit legal services organizations to provide Right to Counsel and with non-profit community based organizations to provide tenants' rights education and tenant organizing; and
- has a five year implementation plan to allow services to increase gradually over time.

Right to Counsel is proven to stop evictions – [84 percent of tenants in New York City who had a Right to Counsel lawyer](#) were able to stay in their homes and the seven cities that now have Right to Counsel have seen up to a 77 percent reduction in evictions. Evictions across New York City also declined more than five times faster in neighborhoods where tenants had the Right to Counsel than in areas that did not. As a result of Right to Counsel, evictions have also decreased by nearly 40% and landlords are suing tenants less overall, with eviction filings dropping by 30%. Defaults also dropped by more than 30%, which means more tenants (by way of their counsel) are showing up in Housing Court to fight their cases. Last year, [Washington State, Maryland, and Connecticut also passed Right to Counsel statewide. Analysis](#) from Stout also shows that a statewide Right to Counsel would have a marked positive impact on tenants outside New York City: Approximately 97% of tenants who appear in Landlord Tenant court would benefit from Right to Counsel, with 46,600 tenant households receiving legal representation. Eviction filings could decrease by at least 19% and we could see a 32% decline in default rates.

The Legislature has passed important and meaningful tenant protections in recent years. Before the pandemic, the Housing Stability and Tenant Protection Act of 2019 extended notice periods for no-cause evictions, limited security deposits, imposed financial penalties for illegal evictions, terminated vacancy increases and locked in preferential rents in regulated apartments, and excluded non-rent charges from eviction proceedings, among other things. After the pandemic, in addition to the Emergency Rental Assistance Program, the State passed the Tenant Safe Harbor Act. This law prevents landlords from evicting tenants who were unable to pay rent during the pandemic months (March of 2020 through January of 2022), restricting landlords' remedies to money judgments. In 2022, the Tenant Dignity and Safe Housing Act was signed into law which allows special proceedings by tenants for judgments directing repairs of conditions and other relief in residential real property, which will for the first time give a right of action for tenants throughout the state to enforce the warranty of habitability.

Unfortunately, many of these defenses will not protect tenants without attorneys. Landlord-tenant law is widely acknowledged to be complex and almost impossible to successfully navigate without a lawyer. These recent tenant protections offer affirmative defenses which tenants must identify and raise at the appropriate time, in the appropriate manner. Some courts are more lenient with unrepresented litigants, but the court's role is ultimately neutral, and even sympathetic judges cannot help tenants gather the evidence they need to assert these defenses. Additionally, all new laws inevitably contain some ambiguity. Many of the finer subtleties of these new tenant protections must be clarified

through case law. Tenants need access to attorneys in order to ensure that these new defenses actually protect them. *Tenant defenses that can only be identified and asserted by attorneys will not protect tenants who don't have access to attorneys.*

Here in New York, the majority of cases are initiated by landlords and most landlords have lawyers in eviction cases, while most tenants cannot afford to hire an attorney, and the free legal services available do not match the scale of need.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation.