



## Memorandum in Support

NYSBA #10

March 6, 2025

A. 4669

By: M. of A. Solages  
Assembly Committee: Judiciary  
Effective Date: 180 days after passage

**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.

**LAW AND SECTION REFERRED TO:** The executive law is amended by adding a new Article 29.

### THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

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 2025 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 complex and difficult to successfully navigate without a lawyer. Unfortunately, most tenants cannot afford to hire counsel and currently 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 Assembly Member Solages, would ensure that every tenant in New York State has the right to a lawyer when facing an eviction.

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.

As noted in [NYSBA's 2008 report from the President's Committee on Access to Justice entitled "Toward a Right to Counsel in Civil Cases in New York State"](#), The reasons for providing counsel are similar in eviction cases and in foreclosure cases, and include: 1) the importance of decent housing to a family's life (as recognized by the New York State Constitution) and the difficulty of replacing it once it is lost, 2) the adversarial nature of the proceedings, 3) the complicated nature of the substantive law and procedures, 4) the imbalance in power between landlords and lenders on the one hand, who usually have representation, and tenants and homeowner/borrowers on the other, who usually do not, and 5) the many studies showing that representation in eviction cases makes a huge difference in whether tenants are able to stay in their homes. In mortgage foreclosure cases there are the added factors that illegal practices are increasingly common in the subprime mortgage market, and that it can be extremely difficult to prove the fraudulent practices without the involvement of a lawyer.<sup>1</sup>

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, many cases are initiated by landlords. 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.

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<sup>1</sup> TOWARD A RIGHT TO COUNSEL IN CIVIL CASES IN NEW YORK STATE A report of the President's Committee on Access to Justice of The New York State Bar Association, September 29, 2008. Page 7