

Eviction Right to Counsel – Overview & Funding Opportunity

Information Source: National Coalition for a Civil Right to Counsel (<http://civilrighttocounsel.org/>)

What is an Eviction Right to Counsel & Why is it Important?

For many types of civil cases, the potential consequences of losing are dramatic: loss of one's home, children, livelihood, education, health, safety, liberty, or even life. The right to an attorney for people who can't afford one in such cases protects these basic rights, ensures the court reaches the correct result, levels the playing field, saves more money than it costs, and serves as a best practice in our communities.

Having a lawyer in critical civil cases can make the difference between keeping a home or losing it, obtaining protection from domestic violence or suffering injury, having sufficient food or going hungry, keeping a family together versus having it split apart, or remaining free versus being incarcerated.

But the ultimate consequences of losing these types of civil cases extend beyond these immediate effects. When people lose their homes or children, or experience domestic violence that they cannot stop, they often have problems with school and employment, experience psychological problems, and are forced to use publicly-financed medical care, shelter and benefits systems.

Thus, not only does losing the case affect them in multiple ways, but all of society bears the cost in a way that is significantly more expensive than paying for counsel in the first place. Moreover, families of color, families headed by women, children and the elderly suffer these consequences disproportionately. There is growing evidence that providing counsel not only makes outcomes more accurate and just, but may actually help save money.

An Eviction Right to Counsel is Particularly Important Now Due to the Impending Lapse in the Federal Eviction Moratorium

Due to the economic hardship experienced by many individuals due to the pandemic, many residents find themselves behind on rental payments. As the federal eviction moratorium is lifted at the end of June, countless individuals and families will be at risk of eviction. The Census has reported that nearly 40% of Texans in the lowest income brackets have said they have little to no confidence in paying next month's rent, and nearly 13% report that they already have unpaid rent. Without legal counsel, these individuals will not know or be able to effectively assert their rights, nor will they be able to negotiate on an equal level with the landlord's attorney. An **eviction right to counsel** will ensure that all tenants who cannot afford counsel will receive representation in order to protect their rights and ensure better short and long-term housing stability.

Additionally, legal services is particularly critical to ensure that the rental assistance appropriated by Congress is effective. Due to lengthy delays in the processing of rental assistance applications (as well as delays in making all tenants aware of rental assistance programs), many eligible tenants will not have received assistance by the expiration of the eviction moratorium. Counsel for tenants can

help tenants apply quickly and effectively, work to ensure courts do not evict tenants whose applications are being processed, and negotiate with landlords reluctant to accept such assistance.

Prior to and during COVID-19, many national housing policy organizations have included a right to counsel for tenants facing eviction as part of their recommended housing platforms. These include:

- Center for American Progress - [A Right to Counsel is a Right to a Fighting Chance](#)
- Data for Progress - [Homes for All](#) and [The Case for a Right to Counsel in Housing Court](#)
- National Homelessness Law Center - [Housing Not Handcuffs](#)
- National Housing Justice Grassroots Table (which includes Center for Popular Democracy, Partnership for Working Families, People’s Action, and the Right to the City Alliance) - [Our Homes, Our Health](#)
- Peoples Action - [National Homes Guarantee](#)
- PolicyLink - [All-In Cities](#) and [Strategies to Advance Racial Equity in Housing Response and Recovery](#)

Additionally, many such organizations have started to make specific asks of the Biden Administration that include right to counsel for tenants facing eviction:

- [National Housing Law Project](#)
- [National Legal Aid & Defender Association](#)
- [National Low Income Housing Coalition](#)
- [Opportunity Starts at Home](#)

What Jurisdictions are Using This Tool?

The following cities have enacted Eviction Right to Counsel ordinances or ballot initiatives:

New York City (2017)	Philadelphia (2019)
San Francisco (2018)	Boulder (2020),
Newark NJ (2018)	Baltimore (2020)
Cleveland (2019)	Seattle (2021)
Louisville (2021)	(Denver (2021) (pending Mayor’s signature)

The following states have enacted Eviction Right to Counsel laws:

Washington State (2021)
Maryland (2021)
Connecticut (2021)

Many other municipalities are considering ordinances requiring a right to counsel: Chattanooga, Chicago, Cincinnati, Detroit, Fresno, Houston, Nashville, Omaha, Pittsburgh, Santa Monica, Toledo, and Tulsa.

What are the Benefits?

The New York Experience with Eviction Right to Counsel

- 86% of tenants receiving representation are able to stay in their homes, and the eviction rate has dropped by 41% since the City started investing in tenant representation in 2013;
- Eviction filing rate has decreased by 30%;
- Default judgments have dropped by 34.

The San Francisco Experience with Eviction Right to Counsel

- Filing rate decreased by 10% from 2018 to 2019;
- For 2/3 of tenants receiving full-scope representation, 67% are able to stay in their homes;
- Despite lack of an income limit, 85% of those receiving counsel are extremely low or low income, 9% are moderate income, and 6% are just above moderate income.

The Cleveland Experience with Eviction Right to Counsel

- 93% of those represented avoided eviction or involuntary move
- 83% who were seeking additional time to move were able to get it
- 89% of those seeking to mitigate damages were able to do so

The Washington D.C. Experience with a Tenant Representation Pilot Project

- Tenants without counsel were 2 times more likely to be found in breach of lease and 3 times more likely to be subjected to writ of possession.

The Hennepin County (MN) Experience with a Tenant Representation Pilot Project

- Tenants with counsel 2 times as likely to stay in their homes, get 2 times as long to move if necessary, and are 4 times less likely to use homeless shelter

The following is an estimate of potential cost savings in Baltimore for instituting an Eviction Right to Counsel.



How can CARES Act, American Rescue Plan and Fiscal Recovery Funds be Used to Implement an Eviction Right to Counsel?

CARES Act Funding

- Coronavirus Relief Fund (CRF): can be used until Dec 2021. Covers necessary expenditures incurred due to Covid between 3/1/20 and 12/31/21. Non-exclusive list of eligible expenditures includes “Any other COVID–19-related expenses reasonably necessary to the function of government.”
- Community Development Block Grant (CDBG-CV): used for communities to address short/medium-term housing needs of people experiencing housing instability/homelessness. Complex deadlines, and legal services is allowable use (see chart for both).
- Emergency Solutions Grants (ESG-CV): used by communities to meet needs of people experiencing homelessness and very low-income households. Can be used until Sept. 30, 2022

Note: Over 25 jurisdictions (some state, some county, some city) have used CRF, ESG, and/or CDBG-CV for legal services.

American Rescue Plan Funding – Emergency Rental Assistance Program (ARS-ERAP)

ARS-ERAP 1:

- Created in Consolidated Appropriations Act of 2021.
- \$25 billion in rental assistance to cities/states, of which 10% can be used for “housing stability services” for “eligible households.”
- “housing stability services” defined to include “legal services or attorney’s fees related to eviction proceedings and maintaining housing stability”, for ERAP-eligible households.
- No state received less than \$200 million
- Money can be used until Sept. 30, 2022. However, Treasury is required to begin recapturing “excess” ERAP-1 funds that are unobligated by September 30, 2021.

ARS-ERAP 2:

- Created in American Rescue Plan Act of 2021 (ARP)
- \$21.55 billion in rent rental assistance to cities/states, of which 10% can be used for “housing stability services”. Treasury has said that “Under ERA2, these services do not have to be related to the COVID-19 outbreak.”
- Jurisdictions only received 40% of their ERAP 2 allocation and have to spend 75% of that 40% to be eligible for additional amounts.
- If 75% of ERAP 2 funds used by Oct 1, 2022, remaining 25% can be spent on “affordable rental housing and eviction prevention purposes”.
- No state received less than \$152 million
- Money can be spent until Sept 2025

Fiscal Recovery Fund:

- \$350 billion, including \$195 billion for states and \$130 billion for units of local government
- Super broad usage allowed: “respond to COVID-19 or its negative economic impacts through assistance to households, small businesses, and nonprofits, or aid to impacted industries.” One specifically allowed use is “legal aid to prevent eviction or homelessness.”
- Money can be used until Dec. 31, 2024.