

Delaware Tenants Get Their Own Miranda Rights

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On June 14, 2023, the Delaware General Assembly passed Senate Bill 1, an act to amend the Delaware Landlord–Tenant Code¹ giving many tenants a right to representation. The bill aims to provide low-income families, specifically those with a household income below the 200% poverty level², with legal aid during eviction proceedings. The bill will also provide a diversion program to facilitate dispute resolution between tenants and landlords without the need for court intervention. The bill will go into effect 120 days after the governor signs it.

The bill has the potential to significantly change the landscape of tenant-landlord relationships. Notably, the bill does the following:

- + Creates a right to legal representation for those with a household income below the 200% poverty level;
- + Allows the tenant's counsel to withdraw from the legal defense if there are no viable defenses;
- + Provides that the court or administrative body shall inform the covered individual of the right to and availability of legal representation if the covered individual appears at the first appearance without such representation;
- + Institutes a Right to Representation Coordinator and establishes the coordinator's duties, which include the management of contracts with the attorney general and outreach;
- + Requires additional disclosures by the landlord of the tenant's right to representation on the occurrence of specific events such as signing a lease or receiving notice of a lease's termination;
- + Establishes a residential eviction diversion program to facilitate post-filing eviction dispute resolution between landlords and tenants.

Under the bill, landlords face additional procedural and notice requirements in advance of evicting a tenant. The bill increases the complexity of the eviction process by creating additional notice requirements that need to be provided at specific times during the course of the eviction process, such as when the lease is signed and when the lease is terminated. With the increased procedural requirements and a larger number of tenants represented by counsel, landlords may be less likely to represent their own entities as Form 50 Agents³, and instead hire legal counsel. Form 50 Agents are usually employees of the landlord or the landlord's entity without legal training on how to conduct eviction hearings, which leads to mistakes but also fewer expenses if the litigation is successful.

Although this bill does not prevent evictions just as Miranda Rights do not prevent convictions, the bill should help bring more informed parties to the table. The residential eviction diversion program established by the bill is the most likely way for tenants to avoid eviction proceedings. The dynamics of mediation can be a challenge for non-lawyers. With representation, the parties may frequently facilitate case resolutions without the need for eviction proceedings and trials.

There are still open questions related to implementation because it is unknown if there are sufficient resources to support the influx of legal representation the bill might create. The organizations that will provide representation are nonprofits that rely on public sources of funding. It is unclear if the General Assembly will adequately fund these organizations for the expected influx of work and whether those organizations will have a sufficient number of lawyers to handle the work. From a funding standpoint, a successful mediation program may limit the need for other government assistance, and those resources could be reallocated in time to other government-assisted programs and funding needs such as shelters, education, healthcare, transportation and foster care. For now, all eyes are on the Delaware Grant in Aid Bill ⁴, which provides funding to non-profits to determine if financial assistance will be provided to these organizations in support of Senate Bill 1.

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¹ 25 Del. C. 5101-5907.

² For a household of one (1), the annual income cannot be greater than \$29,160 to remain at or below the 200% poverty level. The household income cannot increase more than \$10,280 for each additional household member.

³ A Form 50 Agent is the non-attorney with authority to represent a public or artificial entity in the Justice of the Peace court after they have been named on the Form 50 Certificate of Representation and the form has been approved by the court.

⁴ An appropriation made by the Delaware General Assembly to support the activities of nonprofit organizations which provide services to the citizens of Delaware.

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