



## **Model Legislation: Right to Counsel for Tenants Facing Eviction**

*Last modified October 2024*

### **About the NCCRC**

The [National Coalition for a Civil Right to Counsel](#) (NCCRC) works to ensure individuals have a right to effective counsel when facing the loss of their basic human needs in the civil legal system. We work nationally to accomplish this by:

- Envisioning, supporting, and advocating for the right to counsel:
  - Supporting, connecting, and coordinating federal, state, and local efforts to a) enact, litigate, implement, and evaluate right to counsel programs; and b) engage in social science research projects that demonstrate the impact of counsel;
  - Establishing guidelines and best practices;
  - Identifying and supporting a variety of funding sources for the right to counsel;
  - Growing and diversifying our participant and partner base so as to help grow the larger national movement;
  - Responding to dangers to the movement while facilitating work to plan its future.
  
- Educating about the right to counsel:
  - Tracking and reporting on right to counsel litigation, legislation, education, and social science research efforts around the country;
  - Maintaining a comprehensive right to counsel research repository and status map;
  - Planning and/or presenting at convenings, educational sessions, and public events, and speaking with the media, in order to raise awareness / understanding of, and enthusiasm for, the right to counsel.

At present, the NCCRC has over 600 participants and partners in 47 states who are exploring how the right to counsel in civil cases can best be advanced in their particular jurisdiction.

The NCCRC has supported tenant right to counsel campaigns in dozens of jurisdictions around the country, including most of the successful campaigns in the 17 cities, 2 counties, and 5 states that have enacted legislation. This work has included providing input on the language for city/state legislation as well as ballot initiatives. Because of this, we have frequently been asked to provide model language to assist new campaigns.

Please see our [tenant right to counsel webpage](#) for a collection of resources developed by the NCCRC and others.

### **About This Model Legislation**

This model legislation is based on right to counsel language contained within enacted ballot initiatives, city ordinances, and state statutes. **This model is intended to provide a comprehensive gold standard for right to counsel laws, but each jurisdiction should consider it a starting point that should be adjusted to the jurisdiction's needs.**

You can also check out a [summary of prior RTC enactments](#) to see examples of the language in enacted ordinances/statutes.

## **Section I. Title**

Right to Counsel for Tenants in Covered Proceedings

## **Section II. Purpose**

The intent of this legislation is to:

- A. Establish a right to counsel for all tenants facing eviction or equivalent proceedings;
- B. Ensure that the right is to full representation by an attorney;
- C. Require owners, agents of owners, and landlords to disclose to tenants certain information regarding such right;
- D. Ensure that the right to counsel is enforceable such that violations of the right can be addressed;
- E. Establish a mechanism to provide counsel for all tenants in covered proceedings;
- F. Establish [*agency/ committee/ the office/ officer of*] to oversee the provision of counsel for individuals in covered proceedings;
- G. Ensure that [*agency/ committee/ the office/ officer of*] works with community-based organizing groups in the implementation of the law, including the establishment of an oversight committee that requires tenant participation;
- H. Require an annual report to the [*executive / legislative office / committee*] regarding certain metrics, and require such report to be publicly available;
- I. Provide for the severability of certain provisions;

## **Section III. Facts, Findings, and Declarations.**

Whereas, housing is a human right and the access to safe, secure, and accessible housing is essential to achieving equal access to all other fundamental needs;

Whereas, the housing instability caused by eviction proceedings has potentially severe impacts on physical and mental health, employment, education, child custody, safety, credit, and the retention of personal belongings, even for those not ultimately made homeless by an eviction;

Whereas, access to safe, stable, and affordable housing is a strongly correlated-social determinant of health, and the failure to address the loss of such access can cause a public health crisis in [*jurisdiction*];

Whereas, so many families with children face eviction that the average age of a person affected by eviction is nine years old, and the housing instability and displacement caused by evictions damage the lives of children by negatively impacting their mental and physical health, decreasing school attendance rates, impeding academic performance, increasing instances of school discipline, and increasing the likelihood of out of home placement;

Whereas, those subjected to homelessness may face additional severe health risks (including death), as well as arrest and incarceration;

Whereas, housing stability caused by evictions disrupts the fabrics of communities;

Whereas, evictions occur in the context of a significant shortage in [jurisdiction] of affordable housing that is faced by renters who are often severely cost burdened;

Whereas, evictions in [jurisdiction] disproportionately affect households and communities of color;

Whereas, [jurisdiction] seeks to end the disparate impact of evictions based on race and gender;

Whereas, the number of Black and Latinx households evicted is \_\_\_\_\_% greater than the number of white households evicted in [jurisdiction];

Whereas, the number of Black female-headed household evictions is \_\_\_\_\_ times higher than the number of white male-headed household evictions in [jurisdiction];

Whereas, evictions create significant costs for state and local government related to shelter funding, education funding, health care provided in hospitals instead of community-based providers, transportation costs for homeless youth, and foster care;

Whereas, approximately \_\_\_\_\_ eviction cases are filed each year in [jurisdiction], which has \_\_\_\_\_ renter households, resulting in an eviction filing rate of \_\_\_\_\_%;

Whereas, \_\_\_\_\_% of tenants in eviction proceedings are unrepresented and \_\_\_\_\_% of landlords are represented in [jurisdiction] eviction proceedings, creating a systemic imbalance that distorts the ability of courts to provide equal access to justice;

Whereas, the vast majority of tenants lack knowledge as to their legal rights and/or how to successfully advocate for such rights;

Whereas, studies have shown that many tenants have defenses to the eviction that they are not able to assert (either at all or successfully) without the assistance of counsel;

Whereas, studies have also shown that for all tenants there are legal issues to resolve (such as breach of warranty of habitability, retaliatory eviction, rights related to federal, state and local housing subsidy programs, application and validity of lease terms, the length of time to move, the amount of rent debt, or whether the eviction will appear on the tenant's record, etc.) that tenants cannot address successfully on their own without counsel, and where unsuccessfully addressing these issues greatly increases tenants' chances of being evicted or forced to relocate to substandard housing or becoming homeless;

Whereas, providing a right to counsel to tenants in eviction cases is a proven means of preventing the disruptive displacement of families and the resulting social, economic, and public health costs of such displacement;

Whereas, evaluations of the effectiveness of the right to counsel for tenants have shown that fully represented tenants fare significantly better in terms of unit retention and financial impact compared to unrepresented tenants, such as:

- In New York City, which enacted the right to counsel for tenants in 2017, 84% of represented tenants facing eviction remain in their homes;
- In San Francisco, which enacted the right to counsel in 2018, eviction filings declined 10% in just one year, and nearly 60% have been able to remain in their homes;
- In Kansas City, 86% of represented tenants remained housed and with no eviction record;
- In Cleveland, 81% of tenants avoided eviction and/or an involuntary move;

Whereas, evaluations of the effectiveness of tenant representation programs short of RTC have shown that fully represented tenants fare significantly better in terms of unit retention and financial impact compared to unrepresented tenants, such as:

- In Hennepin County, Minnesota, a study found that fully represented tenants were twice as likely to stay in their homes, received twice as long to move if necessary, and were four times less likely to use a homeless shelter;
- In California, a study of the six representation pilot projects initiated pursuant to the Sergeant Shriver Civil Counsel Act found that one year post-eviction, 71% of represented tenants who relocated had obtained a new unit compared to 43% of self-represented tenants;
- In Massachusetts, a study found that for tenants receiving full, two-thirds retained possession compared to one third of those who received limited legal assistance, and fully represented tenants fared almost five times as well in terms of rent waived and monetary damages;

Whereas, studies have also repeatedly estimated that providing a right to counsel confers a significant cost benefit for governments, such as a report by independent analyst Stout Risius Ross that found a \$5.7 million investment in a Baltimore right to counsel would yield a net savings of \$36 million to the city and state;

Whereas, a right to legal counsel benefits both tenant and landlord by ensuring housing

stability and payment of rent, as well as inserting fairness and professionalism into the eviction proceeding;

THEREFORE, it is the policy of [*jurisdiction*] that tenants facing an eviction from their homes shall have a right to full legal representation in eviction and related proceedings, and [*jurisdiction*] shall provide sufficient funding for nonprofit organizations to provide representation to tenants to assist in the fair administration of justice.

#### **Section IV. Right To Counsel for Covered Individuals In Covered Proceedings**

**A. Definitions.** In this subtitle, the following terms have the meanings specified.

1. **Covered Individual.** The term “Covered Individual” means an individual who is at risk of losing their housing accommodation in a Covered Proceeding or a tenant seeking to enforce their rights in a Covered Proceeding.
2. **Covered Proceeding.** A “Covered Proceeding” includes:
  - a. any judicial or administrative proceeding to evict or terminate the tenancy or housing subsidy of a Covered Individual;
  - b. any proceeding deemed by a Designated Organization to be the functional equivalent of a proceeding described in subparagraph (a);
  - c. the investigation, initial filing, and subsequent representation of any claims or proceedings that arise from an extrajudicial attempt by a landlord to remove a Covered Individual, including but not limited to utility shutoffs, lockouts, and threats of violence;
  - d. any first appeal of such a proceeding where the landlord seeks appeal, as well as an appeal of such a proceeding where the tenant seeks appeal and the Designated Organization determines in its sole discretion that there are good grounds for such appeal; and
  - e. any judicial or administrative proceedings to remedy a violation of [*laws related to landlord-tenant matters; rent escrow; retaliatory actions; security deposits; habitability; illegal/constructive eviction; violation of quiet use and enjoyment, etc.*]. where the failure to remedy the violation could lead to the loss of a Covered Individual’s home.

*[Comment: The scope of “Covered Proceedings” is intentionally broad, covering not only evictions and proceedings akin to evictions (such as subsidy terminations) but also affirmative litigation by tenants. Jurisdictions considering this model legislation will choose the breadth that makes sense for their jurisdiction.]*

3. **Designated Organization.**

- a. A “Designated Organization” is:
    - i. Any not-for-profit organization or association that is designated by [state] under this [chapter, subtitle, etc.] or;
    - ii. Where a not-for-profit organization or association is unable to provide representation, an attorney who
      - a. is not an employee of a designated organization but who contracts with [administering entity] to provide full legal representation to Covered Individuals in Covered Proceedings;
      - b. is authorized to practice law in the state; and
      - c. has completed adequate training and experience requirements as set forth below.
  - b. A Designated Organization must have the capacity to provide full legal representation to Covered Individuals involved in a Covered Proceeding, and agree to adhere to the standards of practice established in rules and regulations adopted under this [chapter, subtitle, etc.].
  - c. The Right to Counsel Office will conduct an annual review of the Designated Organizations and may decline to renew the designation of any such organization.
  - d. The Right to Counsel Office shall create and maintain a list of Designated Organizations by geographic area and to make that list publicly available.
4. **Designated Community Group.** “Designated Community Group” means a not-for-profit community organization or association designated by the [\_\_\_\_] that has the capacity to conduct tenant outreach, engagement, education, and information regarding this [chapter, subtitle, etc.]. To the extent practicable, such designated community organizations shall maintain a practice of furnishing free services; possess expertise and experience in community education and organizing; possess ties to the communities they serve; and demonstrate expertise in recognizing and responding to the housing issues facing low-income residents.
5. **Full Legal Representation.**
- a. “Full Legal Representation” means ongoing legal representation provided by an attorney who is employed by a Designated Organization to a Covered Individual, and all legal advice, advocacy, and assistance associated with that representation, that is required to provide the best possible outcome for a particular case. Where representation is provided subsequent to the filing of an eviction, Full Legal Representation includes but is not limited to the filing of a notice of appearance on behalf of the Covered Individual in a Covered Proceeding.

- b. Full Legal Representation shall be provided by a lawyer licensed to practice in [state].
- 6. **Includes; including.** The terms “includes” or “including” mean by way of illustration and not by way of limitation.
- 7. **Right to Counsel Office.** The agency, committee, or other structure created or dedicated to overseeing and implementing the right to counsel created herein.

**B. Right to Counsel.**

- 1. **Creation of Right to Counsel Office.** There is established within [jurisdiction] the Right to Counsel Office to implement and oversee the provision of Full Legal Representation for Covered Individuals in Covered Proceedings;
- 2. **Scope and timing of right.**
  - a. A Covered Individual has a right to Full Legal Representation as provided in this [section / subtitle]:
    - i. as soon as a landlord provides notice to terminate or not renew a tenancy;
    - ii. upon the initiation of extrajudicial attempts to remove a Covered Individual;
    - iii. upon a landlord’s violation of law that could, if not remedied, result in a Covered Individual losing their home; and
    - iv. upon the initiation of administrative proceedings to terminate a housing subsidy.
  - b. Subject to provisions of this [chapter, subtitle, etc.], including any rules and regulations, The Right to Counsel Office shall ensure that all Covered Individuals receive Full Legal Representation from a Designated Organization in a Covered Proceeding as soon as practicable after the Covered Individual’s request for such services or the initiation of that proceeding, but no later than at the time of the Covered Individual’s first scheduled appearance in a covered proceeding. Where Covered Individuals request counsel upon receipt of a notice to quit or other preliminary notice indicating the intent to evict, the Right to Counsel Office shall ensure that counsel is provided at that stage.
  - c. If Full Legal Representation is not provided until the Covered Individual’s first scheduled appearance, the court (or public housing authority, in the case of termination of a housing subsidy) shall continue/adjourn the case until such time that the tenant is able to access counsel.



- d. Should a conflict with the [State] attorneys' rules of professional conduct, a conflict of interest, a limitation set by the federal Legal Services Corporation, or other limitations make Full Legal Representation infeasible to render as determined by a designated organization, the case shall be referred to another designated organization. Where there is only one Designated Organization, a procedure shall be created to ensure such cases are handled by an attorney.
- e. Representation shall continue throughout the duration of the case, including appeals as specified in A(2)(d) as well as postjudgment processes.

[Comments:

*It is understood that extending the RTC to the moment when the landlord first indicates their intent to terminate or not renew a tenancy expands the scope of coverage significantly, and that this may be beyond the capacity of some legal aid providers. This model legislation intends to provide a north star, not a mandate that every provision is adopted as written.*

*The mandatory continuance if a tenant appears in court without counsel is critical: without it, tenant lawyers who connect with those tenants at that moment will not be able to properly prepare for the case or do any research.*

*Relatedly, this section does not contemplate that counsel is appointed. While an appointed counsel system has proven to be advantageous in many ways, local jurisdictions (which is where RTC often is enacted) typically lack the power to compel their courts to make such appointments. An appointment system would also require a number of changes to this model legislation.*

*The language specifying the creation of a procedure to handle situations where the sole legal services provider is unable to take a case will likely require more specificity in the enacted law.]*

### **3. Notice of the right.**

- a. The Right to Counsel Office shall design a notice that informs tenants of the right to counsel. A copy of this form shall be provided contemporaneously to the [court].
- b. Regardless whether a lease between an owner or landlord and a tenant is written or oral, the landlord must provide this notice to all tenants:
  - i. Upon the establishment of the lease; and
  - ii. Upon the landlord's service of a notice to quit or other predicate notice indicating the intent to evict.
- c. This notice form must also be provided alongside service of the summons and complaint upon the tenant.
- d. The notice must be in the language used during conversations between

the landlord and tenant prior to signing of the lease.

- e. A public housing authority must serve this notice at the time it sends a notice to a tenant regarding the termination of a housing subsidy.
- f. No action may be maintained, nor any judgment entered, against a Covered Individual who did not receive the notice specified in this section, and the failure of such notice shall also constitute good cause to vacate or set aside an eviction judgment.

#### **4. Enforceability of the right.**

- a. Failure to provide the notice to a Covered Individual at the required stages shall constitute an affirmative defense to the eviction.
- b. The failure of the court or the petitioner to comply with the requirements established herein shall constitute good cause to vacate a warrant for possession.
- c. Any Covered Individual, or any other person or entity acting on behalf of the Covered Individual who will fairly and adequately represent the Covered Individual's interest, including the *[jurisdiction]*, is authorized to bring a civil action in a court of competent jurisdiction for a Landlord's failure to give notice to a Covered Individual that results in a Covered Individual's inability to access their right to counsel, and may be awarded civil penalties, injunctive, declaratory and other equitable relief, restitution and reasonable attorneys' fees and costs.

*[Comments: Enforceability is critical to the effectiveness of the legislation. However, a jurisdiction may lack the authority to create new affirmative defenses.]*

#### **5. Designated Organizations; Compensation.**

- a. The Right to Counsel Office shall provide each Designated Organization assigned pursuant to this *[chapter, subtitle, etc.]* with fair and just compensation that provides parity across organizations and that will allow each Designated Organization to provide an organizational structure with appropriate supervision, caseloads, and oversight of staff and service delivery to provide high quality representation and legal work.
- b. Services performed by a Designated Organization pursuant to this *[chapter, subtitle, etc.]* or any contract or other agreement entered into pursuant to this *[chapter, subtitle, etc.]* shall not be used to provide representation that is wholly funded through another program.

#### **6. Engagement and education.**

- a. The Right to Counsel Office shall provide adequate funding for Designated Community Groups to engage and educate tenants about their rights, including:
  - i. hosting know-your-rights trainings and other workshops for tenants;
  - ii. distributing written information to tenants;
  - iii. assisting tenants to form and maintain tenant associations;
  - iv. referring tenants to designated community groups; and
  - v. engaging in any other activity designed to engage, educate or inform tenants about their rights.
- b. [jurisdiction] shall provide each Designated Community Group assigned pursuant to this [chapter, subtitle, etc.] with fair and just compensation that will allow each Designated Community Group to provide the services outlined herein.

### C. Reporting.

1. **Reporting of data:** No later than [ ] of each year, each Designated Organization shall report to the Right to Counsel Office the following information:
  - a. Number of Covered Individuals served and the number of notices of appearances filed;
  - b. Household makeup, including age, race, gender, number of household members, income, estimated length of tenancy, type of lease, and receipt of public assistance at the time of service;
  - c. Whether the property was subject to rent regulation or a federal, state or local housing subsidy program;
  - d. Petitioner's stated reason(s) for covered proceeding;
  - e. The Covered Individuals' stated goals in the proceedings, including whether they desired to remain in their units;
  - f. The length of the case in days;
  - g. The nature of legal services provided;
  - h. Metrics on evaluating outcomes, including:
    - i. the number of cases:
      - a. dismissed;
      - b. settled, and the terms of settlement;
      - c. ending in default;
      - d. where the Covered Individual was able to remain in their home;
      - e. where Covered Individuals who were required to move

- received time to move in excess of any law-based minimum;
- f. where Covered Individuals obtained rental cash assistance;
- g. where the amount of arrears alleged by the landlord was reduced, and by what amount;
- h. where the landlord received an eviction judgment, and the number of such cases where the eviction was not entered on the Covered Individual's record or was sealed;
- i. where the Covered Individual asserted a breach of the warranty of habitability;
- j. where there was an execution of the eviction;
- ii. the outcomes of administrative hearings;
- iii. the outcomes of any affirmative cases brought by Covered Individuals with representation pursuant to this law, including but not limited to any related to extrajudicial evictions;
- i. Instances where the attorney was discharged or withdrew;
- j. Instances of serial filings on the same individual or household at the same property;
- k. An evaluation of implementation challenges and recommendations for programmatic improvements to address those challenges.
- l. An annual estimate of the funding necessary to operate the program.

*[Comment: This section goes into great detail and some jurisdictions may prefer to have the reporting requirements worked out by the implementing authority in consultation with a tenant advisory group.]*

## **2. Annual report and hearing.**

- a. No later than [\_\_\_] of each year, the Right to Counsel Office shall submit a report to [\_\_\_], which shall include information from the prior fiscal year regarding the data specified in subsection (a) above, as well as efforts around the engagement and education of tenants. The Right to Counsel Office shall also prominently post the report required by this section on the Right to Counsel Office's website and will ensure it is available to the general public.
- b. No later than [*month /day*] of each year, the Right to Counsel Office shall conduct a public hearing on the report required by this section. The Right to Counsel Office shall provide notice of the hearing by [*method*] at least [*number of days*] before the hearing. Written and oral testimony may be submitted at the hearing.

## **D. Phase In.**

1. Full Legal Representation to all Covered Individuals in all Covered Proceedings shall be phased in during a period of time not to exceed [\_\_\_] years, in a manner that the Right to Counsel Office determines appropriate, based on all relevant factors, including:
  - a. the prioritization of certain groups of individuals, zip codes, or other criteria developed by the Right to Counsel Office;
  - b. the availability of funding from the city, state, and other sources as the case may be;
  - c. the availability of trained and qualified attorneys to provide Full Legal Representation; and
  - d. any other appropriate logistical consideration.
2. The Right to Counsel Office, with the advice and consultation of Designated Community Groups, shall adopt rules and regulations to carry out this [subtitle]. The rules and regulations adopted shall be publicly available on the Right to Counsel Office's website.

#### **E. Advisory Committee.**

1. There is hereby established a tenants' right to counsel advisory committee ("the committee") to ensure that the legislative intent of the program is fulfilled and to provide advice and recommendations to the tenant legal services and assistance director and department in fulfillment of their duties in administering the program.
2. The duties of the committee are to:
  - a. Provide advice to the Right to Counsel Office on matters related to the program;
  - b. Provide oversight and support of the program, with recommendations on improving the program's outcomes for tenants needing legal assistance in covered actions;
  - c. Assist with any reports on program outcomes;
  - d. Assist the Right to Counsel Office with training development, facilitated by a contracted non-profit organization, that shall be mandatory for all legal representatives that participate in the program;
  - e. Provide advice on other potential funding streams to enhance the program's ability to assist more tenants;
  - f. Provide advice on any possible changes to the legal language or regulations related to the program;
  - g. Make recommendations on selection of entities providing legal or other services; and
  - h. Select a chairperson from among voting members to set meeting agendas, preside over meetings, and serve on selection committees for

contracts related to the program.

3. Committee membership:

- a. The committee shall consist of seven members appointed by the [Mayor / Governor]:
  - i. Who are tenants in [jurisdiction];
  - ii. Who do not own residential real property;
  - iii. Who include representation from tenants living in zip codes with high eviction rates;
  - iv. Who are reflective of [jurisdiction's] diverse tenant population whether it involves race, religion, national origin, sex, mental or physical disability, marital status, familial status, yearly income, age, sexual orientation, gender identity, gender expression, or ethnic background;
  - v. Who support the right to high quality counsel for tenants who face eviction; and
  - vi. Who express a commitment to deter and reduce eviction filings.
- b. The committee shall also include non-voting, advisory positions, with one representative appointed from each of the Designated Organizations and Designated Community Groups.
- c. All members of the advisory committee shall be appointed for terms of four years, and no person shall be eligible for appointment to the advisory committee for more than two consecutive terms. However, to stagger committee membership. when the committee is first established, one-half of the committee members shall have initial terms of two years and the other half shall have four year terms, and members with two-year initial terms will be eligible for three consecutive terms.
- d. If a member of the advisory committee fails to attend three consecutive meetings, the committee may vote to recommend to the mayor that the member be removed.
- e. Members of the committee shall serve without compensation (other than for necessary committee-related travel expenses, which shall be reimbursed) and shall be subject to removal for cause by the [Mayor / Governor].

4. Meetings:

- a. The committee shall meet at least once every quarter;
- b. Committee meetings shall be open to the public and allow for public comment on all decisions to be made;
- c. All decisions from the committee shall require a majority vote from all voting members present.
- d. The Right to Counsel Office shall provide supporting staff services for the committee, such as maintenance of committee records and meeting notices.

- e. All meetings and records of the committee shall be held and conducted in accordance with the [state] Sunshine Law.

[Comment: this section draws heavily from the RTC ordinance enacted in Kansas City.]

- F. Effective Date.** This [law, ordinance, etc.] takes effect on the date it is enacted, subject to the phase-in plan specified in subsection (D).
- G. Severability.** All provisions of this [law, ordinance, etc.] are severable. If any provision of this [law, ordinance, etc.] is for any reason found to be invalid, in whole or in part, by any court of competent jurisdiction, such finding shall not affect the validity of the remaining provisions of this local law, which shall continue in full force and effect.
- H. [IF STATE LAW] Preemption.** This law does not preempt any local law that provides equal or greater protection with respect to the right to counsel for tenants in eviction proceedings.