

A Right to Counsel in Eviction Cases

All Delawareans — regardless of their circumstances or background — should have safe and stable housing.

Overview of the Problem

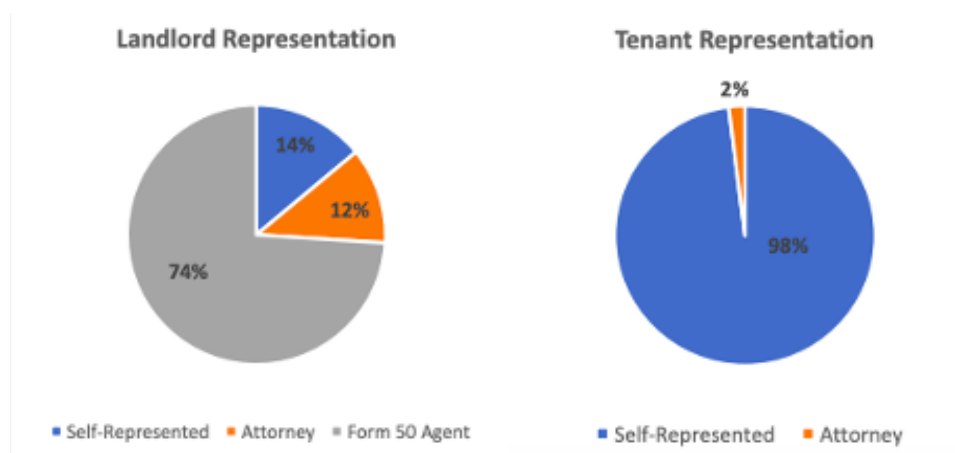
Eviction is very common in the U.S. and Delaware is no exception. The first state has one of the highest eviction rates in the country. People who are evicted can face major harms to their health and wellbeing, such as homelessness, job loss, physical and mental health issues, family instability, disruption of children's education, loss of personal assets, and community instability, as well as increased policing, prosecution, and court costs.

5.1%

The Princeton Eviction Lab estimates Delaware's eviction rate (evictions per renter household) to be 5.1%. This is the 3rd highest of all 50 U.S. states.

Court can be confusing and difficult to navigate for tenants facing eviction. While judges and landlords are generally comfortable and familiar with the court system, tenants are often in crisis, facing the stress of the loss of their home.

Most low-income people facing serious civil legal problems cannot afford legal representation. Legal aid programs are understaffed and can meet only a small percentage of the need. In one study, the University of Delaware Center for Community Research and Service found that 86% of landlords had some form of legal representation (attorneys or Form 50 agents); however, just 2.0% of tenants had legal representation, all of whom were legal aid attorneys.



University of Delaware Center for Community Research and Service

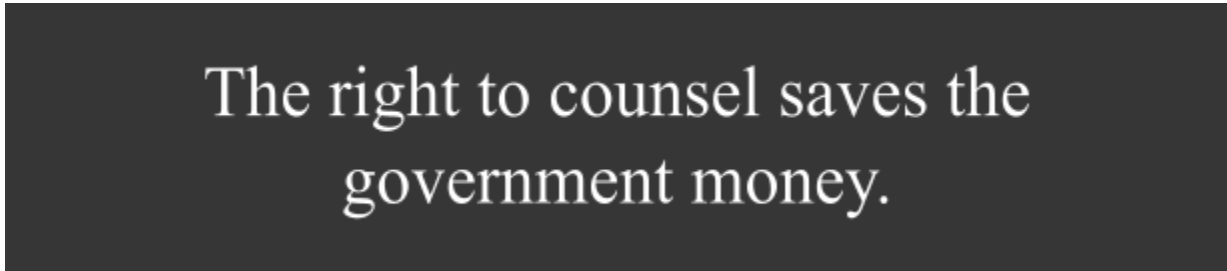
There is growing evidence which shows that full legal representation for tenants addresses several key issues related to eviction: power imbalances in the legal system, tenant empowerment, racial and gender equity, increasing judicial system buy-in, and avoiding collateral fiscal and moral consequences.

Policy Solutions

Why a Right?

Making something a “right” is transformative in that it modifies government behavior by protecting against error and unfairness. Additionally, making something a right promotes the right-holder’s sense of security and well-being and grants the right-holder greater dignity and respect. Finally, it conveys greater equality and transfers greater power to the right-holder.

The right of tenants to counsel would help people maintain their family stability, protect their credit, keep their homes, and stay in their communities. Moreover, this right would keep people out of homeless shelters and protect people from the trauma and long-term effects of eviction and homelessness. The right to counsel would also address growing economic and racial inequality. Importantly, the right to counsel would save the government money because the cost of legal assistance for tenants would be greatly offset by the savings in keeping families together, preserving communities, preventing homelessness, and reducing consequent physical and mental health expenditures. A study undertaken by the global financial advisory firm, Stout Risius Ross, concluded that NYC would have net savings of \$320 million from instituting legislation on the right to counsel in evictions cases. The firm also stated that a population which enjoys stable housing offers many benefits to society that are not easily quantifiable.



The right to counsel saves the
government money.

Many of these benefits could be achieved, in the short term and to a lesser degree, by increasing the availability of counsel and not establishing a right. While expanding the availability of counsel to those facing eviction awards an important benefit, it does not establish a right or an entitlement, and the benefit can be denied or terminated at will and with impunity. When access to counsel is dependent on funding, as it is for those who cannot afford to pay for counsel, the “gatekeeper” for access is the provider of funding for the service.

Therefore, expansion of funding is a short-term measure with unlikely sustainability, and it will not cause the fundamental shift in power, attitudes and culture that we so desperately need.

When legal assistance becomes a governmentally–recognized-and-provided “right,” a court of justice becomes the gatekeeper and the beneficiaries of the right can compel the government to provide the assistance or to fund the provision of the service. This ability to enforce signifies a fundamental shift of power to people who previously lacked it.

When legal assistance becomes a right there is a fundamental shift in power to people who previously lacked it.

A right to counsel in eviction cases means a right to defend one's home in the courts. A right to counsel fosters equality and, in protecting the ability to have a safe and secure place to live, protects the ability to exercise many other important civil rights, such as the right to vote and the right to equal opportunity in employment and education.

Call to Action

- o Establish access to legal representation as a RIGHT for tenants.
- o Ensure all tenants are covered (i.e. public housing, rent-stabilized, market-rate, supportive housing, and units leased by social service providers).
- o Coverage for all eviction and eviction-related cases (including administrative hearings in public housing programs).
- o Establish full legal representation, including appeals, for all tenants who meet eligibility requirements.
- o Eligibility criteria: individuals with household income below 200% of the poverty line.
- o Evaluation and Tracking: include standards for what tenant advocacy entails.

Resources for More Information

Additional resources

[The Princeton Eviction Lab](#)

[National Coalition for the Civil Right to Counsel](#)

[Housing Matters – High Cost of Evictions and Low Cost of Filings](#)

[Delaware Public Media Article](#)

[Eviction Defence Collaborative](#)

[NYC Office of Civil Justice Report](#)

[New York City Bar - SRR Economic Impact Study Findings](#)

Model legislation

[No Eviction without Representation Act San Francisco](#)

[Newark, New Jersey - Chapter 3: Provision of Legal Services in Eviction Proceedings](#)

[NYC Administrative Code – Title 26, Chapter 13](#)