CENTER FOR JUSTICE
One Empire Plaza, Suite 410, Providence RI 02903 | 401-491-1101 | CenterForJustice.org

TO: The Honorable Justice Christopher K. Smith, Chair, Special Legislative Commission
FROM: Jennifer Wood, Director, Rhode Island Center for Justice
DATE: January 22, 2025
RE: Submission of Memorandum for Official Record

Dear Justice Smith:

On behalf of the Rhode Island Center for Justice, I submit the enclosed memorandum highlighting reforms to the Residential Landlord-Tenant Act we believe merit consideration as the Special Legislative Commission finalizes its recommendations. We respectfully request that this memorandum be included in the official record of the Commission's proceedings.

The memorandum draws on our extensive experience representing low-income tenants facing eviction and housing-related disputes. It offers recommendations informed by our legal advocacy and research to support improvements to the Act.

Key areas addressed in the memorandum include:

1. Termination of Tenancy Procedures: Proposing a "for cause" eviction standard and adjustments to notice periods for month-to-month rental agreements, referencing legislative models from other states.
2. Non-Payment of Rent Procedures: Advocating for the codification of a defense of justification, restrictions on tack-on service without prior court approval, and a statutory requirement for landlords to provide rent receipts.
3. Comparison to the Model Residential Landlord Tenant Act of 2015: Identifying provisions from the Uniform Law Commission's Model Act that could enhance Rhode Island's RLTA.
4. Right to Counsel: Highlighting right to counsel initiatives in other states that ensure tenants have legal representation in possession proceedings.

We appreciate the Commission's diligent work in reviewing and improving this legislation. We hope our submission provides valuable insight as you finalize the Commission's recommendations.

Respectfully,

Jennifer Wood, Director
Rhode Island Center for Justice

Enclosure: Rhode Island Center for Justice Memorandum on the Residential Landlord Tenant Act

MEMORANDUM

SUBMITTED TO THE SPECIAL LEGISLATIVE COMMISSION TO STUDY AND PROVIDE RECOMMENDATIONS TO UPDATE AND CLARIFY THE "RESIDENTIAL LANDLORD AND TENANT ACT"

Introduction

This memorandum is submitted to the Special Legislative Commission to Study the Residential Landlord Tenant Act by the Rhode Island Center for Justice. The Rhode Island Center for Justice is one of two law firms in the state, along with the Rhode Island Legal Services, that represents a substantial number of tenants in disputes with their landlords, providing advice and counsel to tenants about the provisions of the Residential Landlord Tenant Act and representing tenants who find themselves defendants to an action for possession brought by their landlords. In this role, the attorneys at the RI Center for Justice have developed expertise in the workings of the Residential Landlord Tenant Act and its interpretation by the courts of this state. This memorandum draws upon that experience to highlight areas of the Rhode Island Residential Landlord Tenant Act (RLTA) that would be improved by greater clarity or internal consistency and suggestions for new provisions of the act that would bring Rhode Island law into accord with various states around the country that have updated their landlord tenant laws to account for tightening rental markets and aim to prevent sudden and arbitrary displacement of community members from their homes.

This memorandum is divided into four sections. This memorandum is not exhaustive and the Center for Justice expects to provide an analysis of some additional key issues in subsequent memoranda. In this memorandum, the first section discusses changes to termination of tenancy procedures, specifically establishing a for cause eviction standard with a focus on legislation that

has been enacted in other states and recommending changes to the notice period required to terminate month-to-month rental agreements.

The second section discusses changes to the procedures attending an action for non-payment of rent, specifically codifying a defense of justification as described in the Model Residential Landlord Tenant Act of 2015, eliminating tack on service except as ordered after hearing on a motion for alternative service, and creating a statutory obligation for landlords to provide receipts to tenants when they pay rent.

The third section provides a comparison of the RLTA to the Uniform Law Commission Model Residential Landlord Tenant Act of 2015, highlighting provisions in the Model Act that may improve the RLTA by their incorporation. The RI Center for Justice intends to provide a comparison with other landlord tenant acts in neighboring states in a subsequent memorandum.

The fourth and final section discusses right to counsel laws in other states to provide examples of what is currently being implemented across the country to provide tenants with an attorney when they find themselves defending actions for possession.

I. Changes to Termination of Tenancy Procedures

a. For Cause Standard for Termination of Tenancy

Rhode Island's current Landlord-Tenant Act allows tenant evictions without a clear reason. While eviction for non-payment of rent and eviction for lease violations are covered under existing statutes, the absence of a unified framework for termination of tenancies not related to non-payment or lease violations can lead to confusion and litigation. For tenants, this uncertainty can mean sudden and unjust displacement, especially for vulnerable groups like low-income households, seniors, and people with disabilities. The absence of clear, codified eviction

standards in this category of eviction leaves tenants at risk of arbitrary eviction, making housing stability unpredictable and worsening the already challenging rental market for those most in need of protection.

A for-cause eviction standard in termination of tenancy matters also offers much-needed clarity for landlords by establishing clear, objective grounds for removing tenants, significantly reducing the risk of drawn-out legal disputes. Transparent guidelines, such as personal use of the property, including family move-ins, enable landlords to manage their properties with consistency and confidence. This approach not only safeguards property rights but also helps avoid legal ambiguity, fostering a more predictable and stable rental market.

For tenants, a for-cause eviction standard provides essential protection by ensuring that evictions are based on legitimate, codified reasons, preventing unjust displacement and preventing terminations that may be a pretext masking discrimination or other impermissible bases. This is especially important for vulnerable groups who are most at risk of housing instability. By clearly defining the grounds for eviction, tenants gain a better understanding of their responsibilities, promoting accountability. The reform creates a fair, transparent process, allowing tenants to maintain stable housing while adhering to their obligations, and making the rental market more equitable for all parties.

Oregon's for-cause eviction law, established in 2019 through S.B. 608, requires landlords to provide a valid reason for terminating a tenancy after the first year of occupancy. Valid for-cause reasons in the Oregon statute include lease violations or landlord-based reasons, such as plans to demolish, renovate, or move into the property. Smaller landlords are exempt if they reside in a building with two or fewer units.

Washington's for-cause eviction law, created by H.B. 1236 in 2021, mandates that landlords provide a valid reason to terminate month-to-month leases. These reasons include non-payment of rent, substantial lease breaches, or the landlord's intent to move in, sell, remodel, or change the property's use. By clearly defining acceptable reasons, the law has reduced legal disputes, improved housing stability, and clarified landlords' legal standing, leading to better outcomes for both parties.

Enacted in 2024, Colorado's H.B. 24-1098 mandates that landlords provide a valid reason before terminating leases, including non-payment, lease violations, major renovations, or the landlord's intent to move in or sell the property. Landlords must also provide at least 90 days' notice for non-renewal of leases. Unlike Oregon's law, Colorado's law applies more broadly, requiring detailed notice for longer-term leases.

New Hampshire's RSA 540:2 requires landlords to provide just cause for evictions, such as non-payment of rent, lease violations, or significant changes in the landlord's use of the property. The law exempts smaller landlords who live in the same building, offering flexibility for owner-occupied properties. This approach balances tenant protections with the needs of small-scale landlords, differing from Washington's law, which applies more strictly to all month-to-month tenancies.

Rhode Island can support housing stability by adopting a for-cause eviction standard that mirrors those in Oregon, Washington, Colorado, and New Hampshire. Such policies deliver positive outcomes for landlords, tenants, and the broader system. In Oregon, implementation of these reforms has brought greater stability to the rental market. Colorado has seen similar benefits, where a clearer eviction framework has decreased legal disputes and lessened the load on the courts. *See* NLIHC, Just Cause Eviction Laws Case Study. Rhode Island, by adopting a

tailored approach, can ensure positive outcomes for landlords, tenants, and the housing market as a whole.

b. <u>Changing notice period to 60 days to match the rent increase notice requirement</u>

Last year, the RI General Assembly passed H 7304 Sub A, signed into law by Governor McKee on June 24, 2024. The law increased the required notice period for a landlord to raise the rent in a rental agreement covered by the Residential Landlord Tenant Act from 30 days to 60 days in the case of a tenant aged 62 years or younger and from 60 days to 120 days in the case of a tenant aged 63 years or older. The bill passed with a large majority in both houses and provided an important measure of stability and predictability to tenants across the state while maintaining a landlord's ability to increase rent to account for changes in the market and increased costs of ownership and maintenance.

The passing of this law, however, created a dissonance with the notice period required for the termination of a periodic month-to-month tenancy pursuant to R.I.G.L. 34-18-37, which allows a landlord or a tenant to terminate a month-to-month tenancy by delivering valid notice to the other at least 30 days prior to the termination date specified in the notice. It is common practice for landlords, when delivering a notice of rent increase, to also send a termination of tenancy notice informing the tenant that their tenancy at the old rent is ending on the date the rent increase becomes effective. The tenant can then accept the landlord's offer of a new tenancy at the increased rate or surrender possession of the apartment to the landlord. A landlord whose tenant neither surrenders possession nor accepts the rent increase has perfected their right to begin the 20-day eviction process pursuant to the termination of tenancy notice.

The course of action that will provide the most stability and predictability to both landlords and tenants, while safeguarding limited judicial resources, is to harmonize the notice period for rent increases with the notice period for termination of a month-to-month tenancy. By making each notice period 60 days, the law will reflect best practices of landlords and provide clarity to all parties to a rental agreement. This avoids legally ambiguous scenarios where a landlord has not delivered a termination of tenancy notice and the tenant refuses to pay the rent increase. The Rhode Island Supreme Court addressed this ambiguity in *Riley v. Stafford*, 896 A.2d 701 (R.I. 2006), a case where a landlord attempted to evict a tenant for non-payment of rent when the tenant refused to accept a rent increase but continued to pay the prior contract rent to the landlord. The Supreme Court upheld the judgment of the Superior Court that there was no meeting of the minds with respect to the amount of rent owed for the apartment and went on to determine that in such a situation, R.I.G.L. 34-18-15(b) controlled and that the tenant was only liable to pay the fair rental value of the unit, taking the previous contract rent and current condition of the apartment into consideration. It is fair to assume that the parties to a rental agreement and the judiciary would prefer not to wander into such a factually dense and legally ambiguous thicket if it can instead be cleared by a reasonable modification of the statute to align the notice dates for rental increase and termination of tenancy.

An added benefit of increased notice to a tenant of the termination of their tenancy is a predicted decrease in the number of eviction filings, as tenants will have more time to prepare to move in a historically tight rental market. Widening the timeframe between delivery of the notice to quit and the day the tenant is required to surrender possession will allow many tenants to move before an eviction filing becomes necessary. Fewer filings saves limited judicial resources, saves landlords the expense and hassle of filing suit, and saves tenants the costs incurred by

attending court instead of work and the stigma of having been a defendant to an action for possession. To the extent a landlord has an urgent reason to demand possession of a tenant's apartment, the law already allows for a truncated notice period for a 20-day filing premised on the tenant's non-compliance with the rental agreement (20-days to cure pursuant to R.I.G.L. 34-18-36), or no notice at all where a tenant violated R.I.G.L. 34-18-24(8)(9) or (10). It is reasonable for the law to be premised on the assumption that in other instances of a landlord's need to reclaim possession of an apartment, for example the sale or renovation of a property or putting the property to personal or family use, the landlord will be aware of those circumstances before the 60 notice period suggested here.

II. Changes to Non-payment of Rent Procedures

a. Right to withhold based on 2015 Model Act

The RLTA does not specifically provide a statutory basis providing that tenants may withhold rent payments in escrow during periods of a landlord's noncompliance with the lease or R.I.G.L. 34-18-28. The Uniform Law Commission Residential Landlord and Tenant Act of 2015 (2015 Model Act) provides that when a landlord fails to comply with the lease or maintain the premises in habitable condition and the tenant gives the landlord notice of the noncompliance, the landlord has 14 days to remedy the noncompliance. Model Act Sec. 401(2)(A). However, if the landlord's noncompliance is to a degree that involves failure to provide an essential service or materially interferes with the health or safety of the tenant or immediate family member, the landlord shall remedy the noncompliance as soon as practicable but *not later than five days* after the tenant provides the notice. Model Act Sec. 401(2)(B). In such instances, when the landlord's

noncompliance is not remedied during the applicable period, Section 402(a)(2)(A) allows the tenant to withhold rent for the period of noncompliance beginning on the date the tenant gave notice. If the landlord files an eviction based on nonpayment of rent, the tenant may defend against that action on the ground that no rent was due because of the noncompliance. Model Act Sec. 408 (a).

b. Statutory obligation to provide receipts

The RLTA does not currently include a duty for a landlord to provide rent receipts. This creates confusion between landlords and tenants and can lead to difficult problems of proof when the parties to the rental agreement find themselves embroiled in an action for possession due to non-payment of rent. With the recent proliferation of traceable methods to pay rent online, including Paypal, CashApp, and Zelle, it has become easier to track even those payments that are not made in certified funds. Despite these advances in technology, many of the tenants we work with at the Rhode Island Center for Justice are economically marginalized and unbanked, which leads to them making payments in cash to their landlords. Often, the exact timing and quantity of those payments comes into dispute in the context of an action for possession, leaving the parties and the court with nothing more than the testimony of the parties to determine what has been paid pursuant to the rental agreement.

In response to this problem, many states have passed laws requiring landlords to provide receipts to tenants. Examples include:

> Connecticut Sec. 47a-3a: "Upon receipt of a payment in cash from or on behalf of an occupant, a landlord shall provide the person making the payment with a receipt

stating the date of the payment, the amount received and the purpose for which the payment was made."

Massachusetts Chapter 186, Section 15(b): A landlord must provide a receipt for last month's rent when paid in advance at or prior to the commencement of the tenancy which includes the amount of rent paid, the the date of receipt, its intended application as last month's rent, the name of the person receiving the payment and the name of the lessor, a description of the premises, and a statement indicating the tenant is entitled to earned interest on the prepaid rent pursuant to massachusetts law.

Colorado Section 38-12-802: A landlord must provide a receipt when a tenant pays with cash or a money order in person, and must provide a receipt within 7 days upon request when the tenant pays with cash or money order but not in person.

New Jersey Statute 46:8-49.2: A landlord must provide a receipt for cash payments including the amount of payment, the purpose of payment, date of receipt, and the names of the tenant and landlord, and who accepted the payment. Provides a defense in an action for possession due to non-payment of rent where the landlord breaches this duty with respect to the months of alleged non-payment.

New York Chapter 50, Article 7, Section 235-E: A landlord must provide a receipt when a tenant pays in any form other than a personal check, and must provide a receipt upon request when a tenant pays by personal check. The receipt must include the date, the amount, the identity of the premises and period paid for, and the signature of the person receiving the rent. A landlord must maintain records of all cash receipts for rent for a period of at least three years.

The other states that have passed similar laws include: Delaware Title 55, Sec. 5501; Hawaii Sec. 521-43; Maine Title 14, Sec. 6022; Maryland Real. Prop. Sec. 8-205; Minnesota Sec. 504B.116; Nevada Sec. 118A.250; Oregon Sec. 90.140; Texas Sec. 92.011; Virginia Sec. 55.1-1204(J); Washington Sec. 59-20.134; and Wisconsin ATCP 134.03.

c. Define rent to the exclusion of late fees as in the 2015 Model Act

The RLTA already suggests that late fees should not be considered rent, but would be improved by clear language defining rent to the express exclusion of late fees. Tenants and landlords alike are often unclear about how much rent may actually be due and owing because of the inclusion of various fees, most notably late fees, to the tenant's account in the landlord's ledger of amounts owed. This can lead to unnecessary court filings, multiple dismissals and refiling of evictions, wasted time and money for each of the parties, and useless expenditure of limited judicial resources. The RLTA defines "rent" as the "payment or consideration that a tenant pays to a landlord for the use of the premises, whether money, services, property, or produce of the land." It is entirely possible for a tenant to pay adequate consideration for the use and occupancy of a premises without ever paying a late fee. Therefore, a late fee cannot be a necessary component of rent as defined by the statute.

Many leases however provide that late fees are to be considered rent, which means that many people are currently contracting around the law and against public policy. This practice can leads to intractable disputes in actions for possession which can only be decided by a judge based upon an evidentiary hearing. The 2015 Model Act provides a definition or "rent" that would alleviate this problem. It provides that "'Rent,' used as a noun, means a payment for the

right to possession of a dwelling unit. The term does not include a security deposit or fees." Model Act Sec. 102(27).

III. Comparison to the 2015 Model Act

a. Landlord required disclosures before accepting funds to be applied to a security deposit, prepaid rent, or fees other than an application fee, or before entering into a lease

Unlike the RLTA, the 2015 Model Act includes a number of disclosures to be made by the landlord that act as prerequisites to accepting funds, such as a security deposit, before entering a lease. These prerequisite disclosures include: (1) any condition of the premises which the landlord knows or on a reasonable inspection of the premises should have known would constitute a noncompliance [concerning maintaining premises in habitable condition] and would materially interfere with the health or safety of the tenant or immediate family member or would materially interfere with the use and enjoyment of the premises by the tenant or immediate family member; (2) whether, to the knowledge of the landlord, a foreclosure action or nonjudicial foreclosure proceeding has been commenced against the premises; (3) if rent is prepaid, the month or other period of the lease to which the rent is to be applied; and (4) the rules affecting the tenant's use and enjoyment of the premises, whether adopted by the landlord or another person. Model Act Sec. 108(b).

b. Repair and Deduct Linked to the amount of One Month's Rent

The 2015 Model Act expands a tenant's options for recourse when the landlord fails to comply with the lease or the duty to maintain the premises in habitable condition beyond what is currently provided by the RLTA. Section 402 (a)(2)(D) states that when the landlord is in noncompliance and the tenant provides the landlord notice of the noncompliance, the tenant may

make repairs and deduct the cost from the rent. Section 406 further specifies that the tenant is entitled to recover the actual and reasonable cost incurred or the reasonable value of the work performed to remedy the noncompliance up to but not exceeding one month's periodic rent. Amending the RLTA to match the Model Act would, of course, raise the limit of what a tenant can repair and deduct, but more importantly would eliminate the need to periodically revise the repair and deduct amount in the Rhode Island statute to account for inflation.

c. <u>Definition of Transient Occupancy</u>

Including a definition of "Transient Occupancy" in the RLTA would provide clarity to many landlords and tenants. The Rhode Island Center for Justice has represented numerous individuals who resided in the same hotel room for months or years and despite the long term relationship between the lessor and the lessee neither was clear about whether their rental agreement was covered by the RLTA. Currently, the RLTA excludes from its protections "[t]ransient occupancy in a hotel, motel, or other lodging as defined under § 44-18-7(11), which is subject to the state sales and use tax, or lodgings tax as allowed by state enabling legislation." R.I.G.L. 34-18-8(4). However, no further definition of transient occupancy is provided in the RLTA.

To properly understand the meaning of transient occupancy, it is necessary to turn to the Rhode Island sales tax regulations to determine what type of occupancy is subject to the "state sales and use tax, or lodging tax." The RLTA points to R.I.G.L. § 44-18-7(11), which provision simply includes "the rental of living quarters in any hotel, rooming house, or tourist camp" in the definition of sales taxable under the state's sales and use tax statute. The state regulations on the taxation of hotels adds parameters to what type of rental may be subject to the sales and use tax and the hotel tax (the lodging tax). The regulations make clear that:

> Sales and use tax is imposed on the sale, storage, use, or other consumption in this state at the rate as provided in R.I. Gen. Laws §§ 44-18-18 and 44-18-20 on the rental charges for living quarters in hotels, motels, inns, tourist/lodging houses and tourist camps. Tax is imposed on the rental charges for the first thirty (30) consecutive days of each rental period. *The portion of the rental period that exceeds thirty (30) consecutive days is not subject to sales (or hotel) tax.* 280-RICR-20-70-51.6(A)(1) (emphasis added).

Furthermore, 280-RICR-20-70-51.5(D) and R.I.G.L. §42-63.1-2(6) (Tourism and Development) define occupancy as "a person, firm or corporation's use of space for transient lodging accommodations not to exceed thirty (30) days." Finally, the sales and use tax regulations provide some insight into what is meant by transient when they provide that:

> Any break in occupancy results in the creation of a new and separate rental. A break occurs when a guest terminates his occupancy by checking out or by transferring from one hotel to another hotel, even if such hotels are operated by the same owner. The tax will apply to charges for such new and separate rentals in the same manner and to the same extent as though such guest had just checked in for the first time, and the thirty (30) day taxable period starts all over.
>
> a. However, a mere change of rooms in the same hotel, motel, rooming house or tourist camp does not constitute a break in occupancy. 280-RICR-20-70-51.6(A)(2).

This squares with the plain meaning of transient, as lasting for a short time or moving from place to place. Reading the statutes and regulations together while giving weight to the

plain meaning of the word transient clarifies that when the R.I. Residential Landlord Tenant Act excludes "transient occupancy…which is subject to the state sales and use tax, or lodgings tax" it is excluding from its protections those individuals who have been residing at a hotel, motel, or other lodging for a period of 30 days or less, or who have been moving from hotel to hotel despite the facilities having common ownership.

The Model Act helpfully provides a definition of Transient Occupancy which could incorporate aspects of the state sales and use tax regulations as appropriate. The definition provided is as follows:

> (2) "Transient occupancy" means occupancy in a room or suite of rooms which has the following characteristics:
>
> (A) the cost of occupancy is charged on a daily basis;
>
> (B) the operator of the room or suite provides housekeeping and linen service as part of the regularly charged cost of occupancy; and
>
> (C) the occupancy does not exceed [30] consecutive days.

Model Act Sec. 103(a)(2).

This definition could include the parameter found in the state regulations that a change from one room to another, in the same building and without checking out, does not create a break in occupancy. Incorporating such a definition in the RLTA would provide helpful clarification to the relationship between owners of hotels who nonetheless rent rooms to tenants on a long term basis. Making this modification would provide that clarification without changing the current application of this provision of the law.

d. <u>Delivery of Lease to Tenant</u>

The 2015 Model Act places an additional obligation on the landlord to provide a copy of the signed lease. If the copy of the signed lease is not provided the tenant may recover actual damages or one month's periodic rent, whichever is greater. Model Act Secs. 201(d) and (e).

e. Attorney's Fees

The 2015 Model Act specifically acknowledges that a court may not award a landlord attorney's fees or costs in an uncontested action to recover possession of a dwelling unit. Model Act Sec. 205(c).

f. Rules Of Third Parties Governing Use And Enjoyment Of The Premises

While the RLTA already makes it clear when a landlord adopted rule or regulation is enforceable on the tenant under R.I.G.L. 34-18-25, it fails to acknowledge what would happen when a third party, such as a condominium association, adopts a rule or regulation that would affect the tenant's use and enjoyment of the premises. The 2015 Model Act allows the tenant to recover actual damages from the landlord or terminate the lease with at least 30 days notice to the landlord when the landlord fails to disclose a rule or regulation adopted by a third party and affecting the tenant's use and enjoyment of the premises before commencement of the term of the lease. Model Act Sec. 305(a).

g. Remedies for Abuse of Access

R.I.G.L. 34-18-45 provides that when a landlord abuses access to the rental unit or when a tenant unreasonably denies access to the landlord, the opposing party may obtain injunctive relief or terminate the tenancy and recover actual damages, costs, and reasonable attorney's fees. The 2015 Model provides a heightened standard of potential damages to both the landlord and the tenant by allowing for recovery of "actual damages or one month's periodic rent, whichever is greater." Model Act Sec. 702.

h. Retaliation

R.I.G.L. 34-18-46 states that retaliatory conduct by the landlord will be prohibited and provides a list of what constitutes retaliatory conduct by the landlord. The 2015 Model Act expands the list of what constitutes retaliatory conduct to include "committing a criminal act against the tenant, immediate family member, or guest" as a basis for a retaliation claim. Model Act Sec. 901(b)(6).

i. Early Release or Termination of Lease- Domestic Violence

Unlike the RLTA, the 2015 Model Act provides a means by which a survivor of domestic violence, with a reasonable fear that the violence will continue if they remain in the unit, has the right to break their lease. Even when the landlord does not consent, the tenant may give 30-day notice to the landlord not more than 90 days after the violent incident occurred and provide a detailed account of the events to the landlord in order to effectively terminate the lease. Model Act Sec. 1102.

j. Landlord Conduct with Respect to Survivors of Domestic Violence

Unlike the RLTA, the 2015 Model Act provides additional protections from retaliatory conduct by the landlord to tenants who are survivors of domestic violence. The 2015 Model Act states that a landlord cannot refuse to rent to a tenant if they previously broke a lease due to a domestic violence situation. Retaliation is presumed if a landlord performs any retaliatory conduct (raising rent, decreasing services, etc.) within 6 months after an incident of domestic violence occurred. Model Act Sec. 1109.

k. Disposition Of Security Deposit On Termination Of Landlord Interest In Premises

The 2015 Model Act accounts for the potential of the landlord's interest in the rental premises terminating and provides clarity on the process by which the tenant's security deposit

will transfer. The Model Act states that when a landlord sells the property, the security deposit must transfer to the new owner and the old owner must provide the tenant with the successor's information within 30 days of the real estate closing. Model Act. Sec. 1205.

IV. Eviction Right to Counsel

a. What is it?

The right to counsel is a guarantee by the government that all litigants should have access to legal representation. The United States Supreme Court has recognized a right to counsel for indigent criminal defendants. *Gideon v. Wainwright*, 372 U.S. 335 (1963). However, a similar right to counsel for civil litigants has not been recognized by the Supreme Court. Thus state, county, and city governments are at the forefront of guaranteeing the right to counsel to indigent litigants in certain categories of civil matters deemed to have an elevated importance like securing parental rights or housing. In the housing context, a right to counsel would guarantee that tenants are provided with legal representation in eviction proceedings. State and local governments may extend this protection to all tenants, or a subset of tenants based on income. The right to counsel may apply only in eviction proceedings, or it may extend to other proceedings where a tenant is at risk of losing their housing, such as administrative hearings to preserve a tenant's state or federal housing subsidy.

b. Why is it necessary?

Eviction is correlated with negative impacts on tenants' physical and mental health, loss of educational opportunities for children, and financial instability. *See* ACLU Research Brief, *No Eviction Without Representation*. However, on average nationwide, only 4% of tenants are represented, while 83% of landlords are able to retain counsel. *See* National Coalition for a Civil

Right to Counsel, *Eviction representation statistics for landlords and tenants absent special intervention*. One eviction can trap tenants in a cycle of displacement and poverty, as landlords often refuse to rent to tenants with evictions on their records. This leads to higher costs to states and municipalities related to homelessness and other social services. Studies have shown that providing a right to counsel in eviction proceedings actually saves states and city governments money. For example, a study by the Boston Bar Association found that the "monetary benefits of representing eligible beneficiaries in eviction and foreclosure proceedings far outweigh the costs of providing these services," and that a right to counsel in eviction proceedings would save the State of Massachusetts a net of $16 million. According to the report, "for every dollar spent on civil legal aid in eviction and foreclosure cases up to $28.5 million, the Commonwealth stands to save $2.69 on the costs associated with the provision of other state services, such as emergency shelter, health care, foster care, and law enforcement (Boston Bar Association, *Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts*, page 20). Additionally, the consulting firm Stout Risius Ross, LLC has produced cost-benefit evaluations of the right to counsel in eviction proceedings for numerous states and cities, finding that the benefits of implementing these programs often far outweigh the costs (*see, e.g. The Economic Impact of an Eviction Right to Counsel in Baltimore City*, finding that "for every dollar invested in a right to counsel for low-income tenants facing eviction in Baltimore City, there is a cost savings or value of those services estimated to be at least $6.24 that would be recognized by Baltimore City and Maryland."). Finally, beyond costs to the state or the impact on tenants' daily lives, the right to counsel is inextricably tied to the principles of access to justice and equality before the law.

c. Examples from other states

Currently, five states (WA, CT, MD, MN, and NE) have enacted eviction right to counsel legislation (*See* National Coalition for a Right to Civil Counsel, *The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*). Additionally, seventeen cities and two counties have also enacted eviction right to counsel legislation. The American Bar Association has also approved "Basic Principles for a Right to Counsel in Civil Proceedings" which indicates that a person's interest in shelter is "so fundamental and critical as to trigger the right to counsel" (American Bar Association, *ABA Toolkit for a Right to Counsel in Civil Proceedings*, page 40-41). All five states that have enacted right to counsel legislation have done so after the Covid-19 pandemic, with three states (WA, CT, and MD) leading the way in 2021. Minnesota and Nebraska followed suit in 2023 and 2024.

I. Washington:

The Washington state legislature established a right to counsel for indigent tenants in eviction proceedings in 2021. Under RCW 59.18.640, "the court must appoint an attorney for an indigent tenant" in eviction proceedings, and directs the Office of Civil Legal Aid to implement the statute and administer funding. The statute defines "indigent" as either receiving an income "200 percent or less of the current federally established poverty level" or a tenant who receives "one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or Supplemental Security Income" at any stage of the court proceeding. The Office of Civil Legal Aid (OCLA) published its Implementation Plan shortly after passage of the statute. In the

Implementation Plan, the OCLA prioritizes "implementation in the counties in which most evictions occur (King, Pierce, Clark, Snohomish, Spokane) and for tenants disproportionately at risk of eviction (BIPOC, immigrant, Native, LGBTQ+, tenants with disabilities, tenants in rural and remote locations including on or near Indian Reservations, and limited English speaking (LEP) tenants)." The Implementation Plan lays out criteria for contracting with private attorneys and non-profit legal aid organizations, mandatory training, and eligibility screening.

II. Connecticut:

A right to counsel law was enacted in Connecticut in 2021, and launched in January of 2022 (codified at Ct. Stat. § 47a-75). Tenants are eligible for the program if their household income is at or below eighty percent of the state median income adjusted for family size at the time the tenant requests representation, or if the tenant receives one of the following types of public assistance: (i) Temporary Assistance for Needy Families, (ii) Supplemental Nutrition Assistance Program benefits, (iii) Medicaid, (iv) Supplemental Security Income, (v) refugee resettlement benefits, (vi) rental assistance under chapter 138a of the general statutes, or (vii) the federal Housing Choice Voucher Program. The Connecticut Bar Foundation oversees and implements the Right to Counsel program and has engaged five legal services providers to represent eligible tenants. Connecticut's Right to Counsel initially launched in 14 ZIP codes that historically had the highest rates of eviction in the state (*see Connecticut Right to Counsel: A Qualitative Evaluation 2023* at page 10). Tenants receive an informational flier regarding Connecticut's right to counsel along with a Notice to Quit, as well as when the tenant receives the summons and complaint. Legal assistance provided may range from brief

legal advice and counsel to full representation. The statute includes "receipt of a notice to quit" under its definition of "covered matters," thus extending a tenant's right to counsel to the beginning of the eviction process. The statute also establishes a working group to advise on matters and policies affecting the right to counsel program in order to make the program more effective. The working group is composed of individuals appointed by the state legislature, as well as the Commissioner of Housing and representatives from the Judiciary and the Connecticut Bar Foundation. According to the *Qualitative Evaluation* published in 2023, the Right to Counsel Program "helped clients to achieve approximately 73% of their housing stability goals," and increased "the percentage of tenants with legal representation from 6% to 14% in the ZIP codes where the service was available."

III. Maryland:

Maryland passed legislation establishing a right to counsel in eviction proceedings in 2021. The statute, under Md. Real. Prop. § 8-901 et seq., establishes eligibility criteria for tenants, directs the Maryland Legal Services Corporation to administer the right to counsel program, and establishes an "Access to Counsel in Evictions Task Force." The Task Force is composed of representatives from the Maryland State Bar Association; tenant advocacy groups or designated organizations; the Judiciary; community groups; landlords; MLSC; and tenants and other interested citizens, three of whom must be tenants whose income does not exceed 50% of the State median income adjusted for household size. The Task Force is directed by statute to study and evaluate the right to counsel program and potential funding sources for the program. The Task Force also produces an annual report, in which it makes recommendations for policy changes. One

such recommendation, discussed in the Task Force's 2024 Report, was the implementation of a statewide Coordinated Intake System to screen tenants and connect them with legal services organizations. Other recommendations from the Report include directing public housing authorities to include information about the right to counsel in every pre-filing notice to tenants related to termination of tenancy or housing subsidy and increased signage and court navigators in courthouses to assist tenants in connecting with attorneys. The Task Force represents Maryland's ongoing efforts to refine its right to counsel program.

IV. Minnesota

In 2023, Minnesota passed a limited statewide right to counsel for tenants in public housing. As part of a general budget bill, SB 2909 Sec.89, the Minnesota state legislature established that tenants in public housing who are being evicted based on an alleged breach of their lease are entitled to a court-appointed attorney. A covered eviction complaint must include the following notice: "If financially unable to obtain counsel, the defendant has the right to a court-appointed attorney." The program also requires appointed counsel to have a minimum of two years' experience in handling public housing evictions, or be trained or supervised by an attorney with the required experience. The section went into effect on August 1, 2023.

V. Nebraska

Nebraska is the most recent state to enact right to counsel legislation for tenants facing eviction, with a law going into effect in July of 2025. However, like Minnesota, R.R.S. Neb. § 71-15,139 provides counsel only to tenants in public housing. The statute creates a notice requirement similar to Minnesota's, requiring a public housing authority to include

the following in a notice of termination of tenancy: “You have the right to representation by an attorney. This right applies to eviction proceedings before a court and in any hearing to contest termination of your tenancy before the [name of housing agency]. An attorney will be appointed to represent you, at no cost to you, at the beginning of such proceedings or hearing.” However, the statute applies only to premises “located in a city of the metropolitan class,” defined at R.R.S. Neb. § 14-101 as cities with a “population of four hundred thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.” Currently, this only applies to Omaha, making Nebraska’s right to counsel limited to only public housing tenants in Omaha.

Submitted: October 1, 2024