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HB1050

Access to Counsel in Evictions - Funding

House Appropriations

SUPPORT

The Maryland Access to Justice Commission (A2JC) is an independent entity powered by the Maryland State Bar Association (MSBA). We unite leaders to drive reforms and innovations to make the civil justice system accessible, equitable and fair for all Marylanders. Prominent leaders from different segments of the legal community in Maryland – including the deans of the two Maryland law schools, law firm partners, heads of the legal services and social services providers and funders, corporate general counsel, academics, legislators, the state bar and judiciary comprise the A2JC.

A2JC’s top priority this year is to ensure full and continuous state funding for the Access to Counsel in Evictions law and thus, strongly supports HB1050 and encourages a favorable committee report.

Background on ACE Funding

During the 2021 legislative session, the Maryland General Assembly passed HB 18, making Maryland only the second state in the nation to have a program that provides access to legal representation to all income-qualified persons facing eviction on a statewide basis (the Program). Maryland was part of a larger national movement which saw many state and local jurisdictions using the influx of federal emergency rental assistance (ERA) funds to adopt transformational eviction prevention measures, including a legislatively mandated access to counsel.

The resulting Access to Counsel in Evictions law, which went into effect on October 21, 2021, provides that all Marylanders who income qualify, **shall** have access to legal representation in “a judicial or administrative proceeding to evict or terminate a tenancy or housing subsidy,” including the most voluminous type of landlord/tenant case, Failure to Pay Rent. In FY 2021, landlord/ tenant cases made up 45% of the civil legal cases in Maryland in 2021, if Motor Vehicle cases are excluded.

At the start of the 2022 legislative session, the Program remained unfunded. The Access to Counsel in Evictions Task Force, which was created by HB 18 to monitor implementation of the ACE Program, strongly asserted in its inaugural report that funding was the ACE Program's "**most urgent and critical need.**" The Maryland Access to Justice Commission, along with other justice partners, made Program funding its top priority during the 2022 legislative session and succeeded in advocating with the General Assembly and Governor to provide two years of start-up funding for the Program through FY2024.

Now, during the 2023 legislative session, the General Assembly must act to ensure stable and continuous state funding for the ACE law. Successful implementation of the ACE Program is even more urgent now as we deplete the last of the federal emergency rental assistance, which has been a key driver in keeping eviction case filings significantly lower than pre-pandemic levels. As this important safety net for landlords and tenants expires, the ACE Program is poised to serve as the strongest bulwark against evictions.

The True Cost of Evictions

The need for the Access to Counsel in Evictions law in Maryland acknowledged the personal and societal costs of evictions, citing the following:

- Evictions are a detriment to public health, especially during the COVID-19 pandemic.
- In addition to the loss of a home, evictions come with collateral consequences that may have generational impact.
- Evictions also cost state and local governments a significant amount of money, including costs associated with shelters, education, transportation for homeless youth, foster care, and health care provided in hospitals rather than community based care.
- Evictions have a disparate impact on Black and Brown households and those led by women.
- Evictions are a high stakes legal process where access to legal representation is markedly uneven between landlords and tenants.

The General Assembly sought to address the myriad of personal and societal challenges posed by evictions by adopting a recognized and cost-effective eviction prevention strategy - *access to legal representation* - that had been proven in other jurisdictions to reduce disruptive displacement of families as well as the attendant social, economic and public health costs to society at large.

The Effectiveness of Legal Counsel in Reducing Eviction

Indeed, jurisdictions that have enacted right-to-counsel laws before the pandemic, like New York City, saw drastic reductions in evictions – without any of the other factors that have aided in eviction prevention since the pandemic – including moratoriums and rental assistance. In New York City, 86% of represented tenants remained in their homes and eviction filings decreased by 30% just through the provision of counsel.

Recognizing the importance of legal representation in preventing evictions, the federal government urged that ERA funds can and should be used to provide legal representation for households facing eviction proceedings. For example, Treasury Secretary Janet Yellen, U.S. Attorney General Merrick Garland, and Secretary of Housing and Urban Development Marcia Fudge echoed this point in an August, 2021 letter to state and local officials across the country, explaining that “tenants are more likely to avoid eviction and remain stably housed when they have access to legal representation. Legal counsel can also aid in the successful completion of [rental assistance] applications.”

As a result, a year later in August 2022, during a national briefing on [Building Lasting Eviction Prevention Reform](#), The White House reported that ERA funds fueled the expansion of right to counsel programs across the country. Indeed, while only 5 cities had adopted a legislative right to counsel prior to the pandemic, Maryland was part of a national wave where it became one of three states and fifteen cities that either legislatively adopted a right or access to counsel for tenants, while an additional sixty cities expanded legal representation for tenants using federal ERA funds.

Stable and Continuous Funding is the Lynchpin to Successful ACE Implementation

It is not an understatement to say that successful Program implementation hinges on continued and stable funding. While last year’s challenge was the complete lack of funding, this year’s challenge is to identify a stable and continuing source of state funding that will enable progress towards full implementation by October 1, 2025 and allow for maintenance of the Program subsequent to that. Currently, the Program is funded with a mix of federal and state funds, but as federal ERA funds expire, investment of state funds is necessary in order for us to realize the benefits of an ACE Program.

Fluctuations that come from intermittent funding sources will have deleterious impacts on staffing levels, outreach and evaluation efforts, and more. Without sufficient funding on an on-going basis, full implementation of the Program will not be possible, resulting in many low-income Marylanders needing to navigate complex eviction cases on their own, without legal representation.

Stakes are high for vulnerable Marylanders facing eviction and the ACE Program has the potential to be game-changing and transformative. The Maryland General Assembly was a leader in establishing a state-wide right to access to counsel in eviction proceedings. It must now provide a stable and continuous source of state funding for the ACE Program in order to make this ground-breaking law effective at keeping Marylanders housed.

For the reasons stated, the Maryland Access to Justice Commission requests the House Appropriations Committee to issue a FAVORABLE report HB1050. For more information, please contact Reena K. Shah, Executive Director of the Maryland Access to Justice Commission, at reena@msba.org.

The Maryland Access to Justice Commission is an independent entity and does not endorse or oppose any political party or candidate for elected office.