

Right to Counsel Legislation

Principles and Key Components in Right to Counsel Legislative Efforts

As the demand for a renter's Right to Counsel grows, it's critical to define what a successful and powerful Right to Counsel means and looks like.

Key Principles for Legislation

- ❑ Adopt the language and legal principle of a right:
 - ❑ Legislation should establish a right to an attorney versus a program that is subject to budget appropriations.
 - ❑ The language of a right is critical--rights are things we claim, use, and organize with. They also change landlord behavior and restructure how the courts work. Access is the language of service and benefits---that's not what Right to Counsel is.
 - ❑ A budget allocation, pilot, or funding initiative is not a right.
 - ❑ The language must make the government entity, and not the legal services provider, be legally responsible for providing the right.
 - ❑ Language that lets judges choose which tenants get counsel is not a right.
- ❑ Coverage for all tenants:
 - ❑ Tenants in all kinds of rental housing, including public housing, rent controlled housing, subsidized housing, small homes, etc. should all have the right to an attorney. The right to an attorney should exist, irrespective of the type of housing someone lives in.
 - ❑ A right should cover all tenants regardless of age, family composition, immigration status, etc.

While some jurisdictions have special programs for seniors or families with children, a right must cover all tenants.

 - ❑ Income eligibility: ideally there should be no means testing for the Right to Counsel for tenants--the right should exist regardless of income, like it does in San Francisco. Given budget restrictions, we understand that's not always possible, especially in the first phase. In those instances, we recommend following NYC's efforts to make the threshold 140% of AMI
- ❑ Coverage for all legal matters related to tenancy:
 - ❑ Not all evictions happen in housing court. All venues where evictions happen, such as administrative hearings, rent board hearings, Supreme Court cases, among others, should be covered.
 - ❑ The right should also include representation for tenants in matters that will lead directly to an Eviction case, for example, proceedings to terminate Section 8 subsidies.
- ❑ Level of representation:
 - ❑ This should be full representation for all, including appeals.
 - ❑ Advice only, attorney for a day programs, etc., are not Right to Counsel.
- ❑ Attorneys:
 - ❑ Not-for-profit legal service providers with expertise in housing law should be the ones doing this work. This should be part of any Right to Counsel legislation.
 - ❑ The government cannot expect pro bono attorneys to staff a right to counsel. Attorneys providing legal services must be fully compensated.
- ❑ Support for organizing:
 - ❑ Having a right is different than claiming a right. Tenants need to know about the new right, understand how to use it, be equipped to confront landlord retaliation, etc. Funding tenant organizing/advocacy/tenant leadership development at the grassroots level is critical and we

suggest looking to NYC's current campaign to legislate this as part of their Right to Counsel legislation, as an example.

Key Principles for Fully Funded Right to Counsel

- ❑ Funding sources:
 - ❑ The government must fully and permanently fund Right to Counsel. This funding cannot be subject to appropriation or take resources away from existing tenant protection, eviction defense, or affordable housing programs.
 - ❑ The government cannot depend on the private market, either through firms, corporations or non-profits, to fund this work.
- ❑ Right to Counsel must be fully funded to truly be a right. A fully funded Right to Counsel must Include:
 - ❑ Support for quality attorneys:
 - ❑ This includes supervision, training, support, and infrastructure at legal service providers, including funding levels that support public benefits specialists, social workers, investigators, space needs, etc.
 - ❑ The funding levels should reflect supporting a caseload that incorporates aggressive eviction defense so that attorneys can use all available law and effective strategies to file counterclaims, fight for repairs, etc. in the context of an eviction case.
 - ❑ Public awareness and outreach campaigns to ensure that tenants know about their new right and that it is implemented in a powerful and just way.
- ❑ There should also be sufficient funding for affirmative litigation to enforce tenant rights, ie. suing landlords for repairs, neglect, harassment, etc., where necessary.

Supporting Implementation

- ❑ Coordination with courts:
 - ❑ Courts should have: confidential meeting spaces, adjournments for assigned counsel to prepare, getting copies of court documents to tenant attorneys when they are assigned, translation and interpretation services, court reporters, etc. as well as mechanisms to connect tenants to their Right to Counsel.
- ❑ Evaluations
 - ❑ A cost evaluation to help legal service providers assess how much the work is actually costing in order to adjust funding levels as Right to Counsel rolls out.
 - ❑ A mechanism for tenants to evaluate how Right to Counsel is working and give feedback to adjust implementation efforts as Right to Counsel rolls out.