
From: connie pascale <cpascale24@gmail.com>
Sent: Friday, May 21, 2021 4:23 PM
To: Comments Mailbox
Subject: [External]Comments on Report of the Judiciary SpecialCommittee on Landlord Tenant
Attachments: COVID - Mediation - Inq Editorial.docx; COVID - Mediation bill - without HPP - Early Interv Ev Prevention program.docx

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Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Dear Judge Grant,

Thank you for the opportunity to submit the following comments. I am a retired Legal Services Housing Specialist with more than 30 years of experience with regard to summary dispossession proceedings in New Jersey. This experience is grounded in decades spent as a field attorney representing tenants and tenants organizations and defending eviction actions; nearly 20 years as the housing responsible person for Legal Services of New Jersey, which involved teaching, writing, appellate litigation, policy advocacy and fielding questions from the state's Legal Services programs; five years as the Executive Director of a field Legal Services program; and ongoing involvement with grass-roots, lower-income tenants groups, as well as the New Jersey Tenants' Organization.

Please accept the following brief comments regarding the Report, which are submitted in addition to my endorsement of the comments submitted separately by the Coalition of Housing and Racial Justice Advocates.

- The analysis and findings set forth in the introductory section of the Report are particularly noteworthy. They recognize safe, stable

housing as critically important to the lives, health, and optimal functioning of individuals, families, neighborhoods, communities and society overall. Decent, safe, suitable and affordable housing is a basic human right. It must be advanced and protected by every component of a just society, including and especially the Courts. The implications of the introduction are clear, if not precisely expressed: **maintaining housing stability, by limiting involuntary displacement to the greatest extent possible, must be a guiding principle of the courts, because doing so is important to tenants, landlords, the economy, the community and everyone else.**

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- Given the above, for the most part the recommendations in the Report represent a good first step toward eliminating the remaining vestiges of feudalism inherent in the summary dispossession process. **This requires a recognition that shelter has become almost entirely a consumer commodity**, i.e. basic survival must now be purchased in the marketplace like any other consumer good. The overwhelming preeminence of non-payment evictions, as opposed to other grounds, is clear evidence of this proposition. **In general, non-payment of rent evictions are the result of a multitude of societal conditions - including and essentially the systemic and structural racism that continues to pervade and afflict our country - which, taken together, render a large and growing number of tenants hard pressed to pay the rent and make ends meet. "Fault" lies with the economic and social systems themselves, not primarily with the tenants or the landlords. For these reasons, the eviction process should be viewed as a last resort, with rent payment difficulties being seen and responded to as a social issue requiring intervention for the purpose of preserving stable shelter and preventing involuntary displacement.** (The legislative findings at N.J.S.A. 2A:18-61.1a represent a cogent summary of the severe, deleterious effects of eviction on people and societies.)
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- **S3691/A5685, now moving through the Legislature, is a "no eviction" bill designed to prevent the looming eviction crisis which will otherwise be triggered by the end of the eviction moratorium. It's enactment should be welcomed and endorsed by the New Jersey Court system for that purpose alone. Moreover, in its current form it effectively establishes a framework for long-term reform of the eviction process. It shifts the focus from facilitating displacement to preventing it, in a way that recognizes the legitimate concerns of tenants, landlords, and society as a whole.**
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- **The mediation recommendations in the report don't go far enough. They should be crafted so as to establish an eviction diversion program, primarily designed to avoid court filings and unnecessary displacement while promoting individual, family and societal stability. The Philadelphia Inquirer has editorialized that the pandemic-generated eviction diversion program established in that city should be made permanent. (See editorial attached.)**
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- **A similar, but more extensive, pre-filing eviction diversion and mediation program - denominated the "NJ Early Intervention Eviction Prevention Program" - would be established by the attached bill. It is triggered by a pre-filing notice which opens the door to a community-based, non-judicial process designed to benefit both tenant and landlord. Combined with an "Office of Eviction Protection," charged with compiling, maintaining and sharing an up-to-date list of rental assistance and related programs (see section 5 of S3691/A5685), and an expanded version of the current Homelessness Prevention Program, to be known as the "Eviction and Homelessness Prevention Program" (see section 4 of S3691/A5685), this mediation effort would become part of an ongoing, permanent, comprehensive framework focused on preserving and enabling housing security and stability as a bedrock element of a properly functioning society.**

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- With regard to the other Recommendations in the Report:
 - **Recommendation 2, requiring the filing of a Tenant Case Information Statement (TCIS), should be withdrawn.** Given the numerous existing barriers confronting lower-income tenants attempting to navigate the Court system, adding another opens the door to a number of potentially serious misunderstandings, misapplications, and unintended consequences, especially if used to limit issues subject to trial. In addition, there could be a great temptation to make it mandatory, and use it, like the current "posting" requirement, to control the Court's calendar.
 - **Recommendation 3 should also be withdrawn, especially if S3691/A5685 is enacted.** There is no reason to deputize the court to help landlords, most of whom are or should be represented by counsel, file complaints that comply with both procedural and substantive requirements. Dismissal remains a necessary remedy for improper or negligent landlord pleadings.
 - **The numerous Recommendations concerning pre-trial case management and settlement conferences should be folded into the pre-filing mediation process described above.**
 - **Recommendations 14 and 15 should be modified to provide for the complete elimination of the posting requirement in all cases.** (S538, a bill pending in the Legislature, accomplishes this goal, and also reforms the eviction process in several other ways, particularly in relation to "habitability" matters.) New Jersey is one of only a small minority of states that mandates pre-trial posting. Not only should posting of any sort be eliminated but, as was recently done in New York, tenants and landlords should be entitled to a two-week adjournment as of right in order to make sure they are adequately prepared for the trial or settlement processes.

Please contact me at 732-691-1076 or cpascale24@gmail.com if you have any questions regarding the recommendations and attachments, or if you require anything else.

Thank you again for providing me with the opportunity to comment on the Report. Reform of the summary dispossess process, and of the courts' handling of tenant/landlord issues in general, is long overdue, and the Report represents a solid start in that direction.

Sincerely,

Connie M. Pascale
101 Dewey Street
Toms River, NJ 08753
732-691-1076
cpascale24@gmail.com

OPINION

Solving landlord-tenants disputes outside of court and without eviction should be the norm. | Editorial

Posted: December 6, 2020 - 5:08 AM

[The Inquirer Editorial Board](#) | opinion@inquirer.com

Keeping tenants struggling to pay rent in their homes while making landlords whole is always a challenge. The coronavirus pandemic made it many times more difficult with fewer resources and many more tenants facing the threat of eviction. Recognizing the danger of people losing their homes during a public health crisis, the city launched a new Eviction Diversion Program as a temporary fix — but it should become the norm.

On August 31st, the day before the city and state eviction moratoria expired, [Philadelphia launched the effort](#) as part of the implementation of the [Emergency Housing Protection Act](#), a package of legislation championed by Councilmembers Jamie Gauthier, Helen Gym, and Kendra Brooks. The law requires mediation before a landlord files an eviction in court when a tenant has suffered economic hardship related to the pandemic.

RELATED STORIES

- **Philly's Eviction Diversion Program shows some early success**
- **Kenney administration prioritizes renters in latest spending plan for federal coronavirus aid**

In collaboration with legal aid groups, social services providers, and the mediation non-profit [Good Shepherd](#), the [program brings together landlords and tenants](#) to discuss resolution. A volunteer mediator, often a former judge, facilitates the discussion. A housing counselor from a nonprofit such as the Urban League connects with the tenant before the mediation session to help assess their situation, what they are able to pay, and what resources could be available.

Mediation through the program started mid-September, with the number of [sessions growing over time to 90 a week](#). Early reports suggest that most landlords and tenants agree on a resolution. The program is based on Philadelphia's foreclosure diversion program, hailed nationally as a model that formed in the aftermath of the Great Recession.

The Eviction Diversion Program and the requirement of mediation is set to expire at the end of the year. On Thursday, [Council will vote on whether to extend it through March](#). Not only should Council pass the extension, they should consider making the program permanent.

Getting landlords and tenants to come to an agreement is a common outcome in Municipal Court. A [Reinvestment Fund](#) analysis of all residential eviction filings in 2017 and 2018 ([nearly 40,000 cases](#)) found that 34% of cases resulted in an agreement —usually a payment plan or timeframe to leave the property.

But even if resolved, [an eviction filing can harm tenants](#). Eviction records are public, permanent, and wreak havoc on tenants' credit scores and future housing prospects. A mediation process that potentially prevents a filing mitigates that damage.

There are other advantages of a diversion program instead of agreements in court. The outreach by housing counselors could increase the number of people who appear for mediation (currently a third of all eviction filings result in ruling against the tenant because they didn't show up, [often because they didn't receive notice](#)). There is more flexibility in scheduling, unlike court there are no added fees that get added to the tenant's debt, and tenants get an advocate in the counselor — one that is knowledgeable not only on the law but on available resources.

Landlord interest groups claim the diversion program prolongs the process for landlords, because if mediation fails, the eviction process has to start at square one. But the Eviction Diversion Program has the potential to help landlords more than court. An eviction, particularly with jammed courts, often means a prolonged process that all but promised that the debt won't ever be recouped. By helping renters get connected to assistance, landlords are more likely to get their funds.

The program will also reduce pressure from the courts, key as an avalanche of filings is expected once the [CDC moratorium](#) expires at the end of the year.

The more funds available for counselors and tenants to tap into, the more landlords will get more of what they are owed. The [Kenney administration has prioritized renters in their spending of CARES Act dollars](#), but those are running out. Meanwhile, Congress is nowhere close to passing another relief package and Republican [Majority Leader Sen. Mitch McConnell's latest proposal doesn't include funding](#) for housing or states and municipalities. That's a disgrace.

The Philadelphia Municipal Court deserves credit for extending a moratorium on lockouts through the end of the year [after Council failed to do so](#), potentially preventing an even greater surge in coronavirus cases. But if the main goal is to keep tenants at home, housing court should be used as last resort — not a first step. Diversion should be the norm, during the pandemic and after.

Posted: December 6, 2020 - 5:08 AM

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[Important Note: *The program created by this bill is intended to be the third element of a three-part approach to addressing the COVID-19 generated eviction crisis, while also preventing another wave of COVID infections and deaths driven by the massive overcrowding which would follow an avalanche of evictions. The other two elements are a ban on evictions for unpaid rent accruing prior to the end of the eviction moratorium, and establishment of a program to provide landlords with significant compensation for rents unpaid as a result of the COVID pandemic and the necessary steps, such as the moratorium, required to contain it. All three elements are critically important: this bill only works if the eviction ban – which is incorporated into the draft below - and landlord assistance program are enacted with it. In addition, the program proposed here would be ongoing, and provide a framework for significantly improving the housing security and stability of lower-income tenants going forward. In that sense it addresses both the effects of systemic racism and the important need to recognize that safe, secure housing is a human right and an absolute necessity, for both the households involved and the overall health of our society.]*

A bill prohibiting eviction as remedy for nonpayment of rent due during the time surrounding the COVID-19 pandemic and establishing the “NJ Early Intervention Eviction Prevention Program”

1. The Legislature finds and declares that:
 - a. The mortal threat posed by the COVID-19 pandemic compelled the Governor and Legislature to take drastic but necessary action. Executive Order 106 effectively shut down the New Jersey economy on March 9, 2020, in order to hinder the rapid spread of the virus and to limit as much as possible the number of infections, severe illnesses and deaths. At the same time, the Governor and Legislature implemented a moratorium on evictions, so as to ensure that households would be able to shelter in place and eliminate the threat posed by displacement, overcrowding, and the resultant spread of the virus.
 - b. The foregoing measures caused severe but unavoidable economic difficulties which have deeply affected the overall well-being of millions of NJ residents. Tenants, who in general have substantially lower-incomes and far less wealth than homeowners, have been disproportionately affected: a large and growing number of them immediately became and remain unemployed or underemployed. This is especially so for lower-income people of color, who are predominantly tenants and who continue to be victimized by the systemic and structural racism which has left them

severely disadvantaged and extremely vulnerable to health emergencies and economic downturns.

- c. Millions of jobs in our state and elsewhere have been permanently lost, and only around half of the total number of jobs abruptly interrupted by the virus-driven shutdown have returned. The general consensus is that it will take many months or even years for catastrophically high unemployment to recede, and for the economy to recover to anywhere near its pre-pandemic level.
- d. As a result, not only will hundreds of thousands of tenants in NJ be unable to pay all or even part of the rental arrearages caused by the pandemic when the moratorium ends, but they will also find it extremely difficult, or even impossible, to make their current, ongoing monthly rental payments once they resume.
- e. An overwhelming number of struggling tenant households – disproportionately Black and Brown - will therefore be at risk of eviction for non-payment of all or part of their regular rent shortly after the moratorium is lifted. Add them to those at risk of displacement if the arrearage issue is not addressed, and the resulting avalanche of eviction and overcrowding will create conditions likely to fuel the resurgence and spread of COVID-19 and threaten the health, safety and lives of their families, communities, and the society at large.
- f. In EO 106, the Governor expressly stated that protection and preservation of individual and public health was the primary reason driving the imposition of the economic shutdown and eviction moratorium, a health-centered concern echoed and reinforced by the national eviction moratorium subsequently mandated by the CDC. The need to strictly limit eviction, now and for the foreseeable future, is undeniable.
- g. Efforts must be made to provide financial compensation directly to landlords who have suffered deep economic losses through no fault of their tenants or themselves. At the same time, however, it is abundantly evident that, until the economy rebounds, hundreds of thousands of tenants will need help paying their regular rent going forward once the moratorium ends, in order to insure some measure of security and stability for their families and communities; provide landlords with the restored rental income stream required to safely and efficiently operate their buildings; and, most importantly, prevent a resurgence COVID-19 that will threaten the health and safety of tenants, landlords, and the public at large.
- h. In order to achieve the critically-needed results outlined above, a procedural mechanism is necessary which will limit or prevent a substantial number of summary

dispossess filings while bringing all parties together in a setting, and with appropriate assistance, so as to facilitate reasonable, informed, meaningful, and effective out-of-court settlements of rent payment issues.

2. Definitions

- “Agency” or “Department”
- “Eligible residential tenant”
- “Assisted mediation”
- “Conducted electronically”

3. Notwithstanding any other law to the contrary, evictions based upon non-payment or habitual late payment of rent which has accrued as of the date the eviction moratorium established by the Governor, as extended, formally ends, shall be prohibited. A landlord shall remain entitled to pursue recovery of the unpaid rent by filing an action in Superior Court for entry of a monetary judgment with applicable interest.

4. Establishes in DCA the “NJ Early Intervention Eviction Prevention Program”

- a. Within 30 days of the enactment of this legislation, the Department shall establish an “Office of Eviction Prevention,” which shall be responsible for the (1) identification of all federal, state, local and other sources of financial assistance which are intended or could be used to prevent the eviction of residential tenants, including but not limited to programs which provide both deep and shallow rental subsidies; (2) becoming knowledgeable with regard to the application process for each such program; and (3) identifying, and proposing remedies for, the gaps in the overall assistance system, especially in relation to eligibility requirements and the need for addition to, or revision of, subsidy programs so as to provide appropriate assistance of various sorts and in various amounts to households at different income levels. This Office shall be responsible for the compilation, publication, and ongoing update of this information, and shall also be responsible for identifying and training at least one non-profit, community-based organization in each County with regard to the availability of and means of accessing such financial assistance by at-risk tenants.
- b. Also within 30 days of the enactment of this legislation, the Department shall establish the “NJ Eviction Prevention Mediation Program,” which shall operate in a manner similar to the “NJ Foreclosure Mediation Program,” except as otherwise established herein. In addition to facilitating the provision of mediation in the form and for the purposes outlined below, it shall be the responsibility of the program to ensure that participating tenants are provided with legal advice and assistance if they are not otherwise represented or advised by counsel. The Department shall contract with a non-profit provider or providers in each County

for the purpose of conducting the mediation sessions, providing the necessary advice regarding tenants' rights, and also providing the necessary legal assistance. Each such provider shall be responsible for employing a sufficient number of mediators, in-house attorneys and experts in tenants' rights to ensure that mediation sessions are conducted in a timely fashion. DCA shall be responsible for ensuring that all mediators, attorneys and tenants' rights experts are appropriately trained, and that such training is ongoing to ensure that up-to-date assistance is provided.

- c. At least 21 days prior to the filing of an eviction complaint for non-payment of rent which has accrued subsequent to the end of the moratorium period, a landlord shall, using forms prepared by DCA, notify both DCA and the affected tenant that such an eviction filing may be necessary. If the matter is not resolved in accordance with the procedures outlined in the following sections, and a summary dispossession complaint is subsequently filed, a copy of this notice shall be attached to the complaint. Failure to serve and attach the required notice shall result in dismissal of the complaint.
- d. Within 7 days of receipt of such a notice, DCA shall contact both parties and establish a date and time for the convening of an assisted Eviction Prevention Mediation session, which shall take place no later than 16 days subsequent to receipt of the notice, and prior to the filing of an action for eviction.
- e. Eviction Prevention Mediation sessions shall be conducted electronically, on an agreed upon day at and agreed upon time, via a process that allows all parties, as well as the mediator and any other participants, to see and hear each other, unless all parties and participants agree that the session will be conducted in person. In person Eviction Prevention Mediation sessions shall not be conducted in the Courthouse or other government building. All such sessions shall be conducted at schools, churches, non-profit office facilities, or other appropriate locations within 5 miles of the Courthouse. All such sessions shall be scheduled at times agreed upon and convenient to all parties, including evenings and weekends.
- f. A knowledgeable, trained representative of the Office of Eviction Prevention shall be present at each scheduled mediation session, in order to facilitate resolution of all payment-related issues.
- g. The purposes and goals of the mediation process shall be: (1) to identify all existing and potential issues that are or may affect the participating tenants ability to make rental payments in a timely fashion and in full; (2) to identify, prepare and implement an affordable payment plan that will address all payment issues so identified, in order to insure to the greatest extent possible that rent will be timely paid; (3) identify all potential sources of one-time, short and long-term funding, including the use of deep and shallow subsidies, which will facilitate successful

creation and implementation of such a plan; (4) establish an implementation plan which identifies and provides the hands-on assistance tenants will need to pursue and apply to the particular funding sources identified as necessary; and (5) produce a written agreement embodying and memorializing all of the above.

- h. It shall be the obligation of all parties to undertake the mediation process in good faith and with the intent of reaching a reasonable resolution of all issues involved. Failure by a landlord to negotiate and participate in good faith shall be a defense to an action for eviction; failure to do so by a tenant may lead to an eviction filing and displacement.
 - i. If the mediation is successful, and the parties reach an agreement with regard to a reasonable and affordable payment plan, a Stipulation of Settlement will be prepared, which Stipulation shall be in the form established by the Department. The Stipulation of Settlement shall further provide that, in the event a tenant fails to abide by the payment plan, the landlord may institute a summary dispossession proceeding. If the matter cannot be resolved through mediation, and the amounts claimed due are not paid, the landlord may commence a summary dispossession proceeding against the tenant.
 - j. In any such civil action for non-payment of rent, a tenant shall be advised of her/his right to request a 2-week adjournment, which shall be granted as a matter of right. At least one-week prior to the trial of any matter involving non-payment of rent, the tenant shall again be advised of all rights provided by this act, as well as all potential sources of funding that may be available to reduce his/her obligation, and offered the opportunity to engage in a final mediation session on or prior to the trial date. Any and all payment arrangements subsequently agreed to shall be reviewed by the Court, and shall not be approved unless the Court finds that the tenant clearly understood his/her rights as well as the terms of the agreement.
5. The sum of \$20 million is hereby appropriated to establish and operate the “NJ Early Intervention Eviction Prevention Program,” including the “Office of Eviction Prevention” and the “NJ Eviction Prevention Mediation Program.
6. This Act shall take effect immediately.