

SB671

**Foreclosure Proceedings - Residential Mortgagors and Grantors -
Access to Counsel**

Senate Judicial Proceedings Committee

FAVORABLE

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 Attorney General, deans of the two law schools, law firm partners, heads of the legal services providers and funders, corporate counsel, academics, legislators, the state bar and judiciary comprise the A2JC.

A2JC supports SB671 and is heartened by the recognition in this body that increasing access to counsel in civil proceedings is a beneficial investment that has far-reaching benefits to constituents and society beyond success in the particular case.

A2JC has been a thought-leader and has advocated for implementing the right to counsel in civil legal cases that implicate basic human needs cases for many years. In 2011, A2JC authored a report entitled, [“Implementing a Civil Right to Counsel in Maryland.”](#) Thereafter, in 2013, it staffed the [Task Force to Study the Implementation of a Civil Right to Counsel in Maryland.](#)

The Civil Right to Counsel Task Force concluded that “Maryland would benefit significantly by making a commitment to ensure that low-income Marylanders have a right to counsel at public expense in those categories of cases where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody.”

A2JC was also the lead partner in the [The Maryland Attorney General’s COVID-19 Access to Justice Task Force](#), which released its final report entitled [Confronting the COVID-19 Access to Justice Crisis](#) in January, 2021. That report also recommended a civil right to counsel in eviction proceedings as a key component of broader housing justice reforms because it was a cost-effective means to prevent the projected tsunami of COVID-19-related evictions.

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Reena K. Shah
 Executive Director

In 2021, this body successfully passed HB18, becoming the second state in the nation to pass a statewide access to counsel in evictions law.

The other side of ensuring Marylanders stay housed is foreclosure prevention

Avoiding foreclosure is an important piece of housing preservation, in addition to preventing evictions. Especially for families of color, foreclosures can decimate wealth accumulation and have generational impacts.

An [issue brief from the National Consumer Rights Center](#) points out that the disparity in foreclosure rates is greatest among Black families and communities:

Black communities have yet to recover from the rampant foreclosure of the Great Recession. As of the first quarter of 2020, the Black homeownership rate is 44% compared to 74% for whites. This is a slight increase from the last quarter where the rate sunk to 40.6% a level not seen since the 1960s. The looming foreclosure crisis (following COVID-19 pandemic) threatens to decimate Black homeownership and destroy wealth for generations.

Homeowners of color, particularly Black and Latinx homeowners, will face disproportionately high foreclosure rates in the coming ... years unless substantial foreclosure prevention measures are adopted immediately.

As such, focusing on foreclosure prevention prior to the onslaught of foreclosure cases is a smart investment for the state for reasons of equity, retaining generational wealth and preserving housing for Marylanders.

Right to counsel is a potent and cost-effective access to justice solution

Legal Representation is the key to case outcomes in civil cases

Legal representation is the key to more just outcomes in court. For homeowners struggling to navigate the legal process on their own to fend off foreclosure proceedings against powerful banks, legal representation can be an equalizer.

In eviction cases, for example, only 1% of tenants have legal representation, compared to 96% of landlords. However, when those 1% of tenants are able to get representation, the result is impactful. Ninety-two percent of tenants are able to avoid disruptive displacement when a right to counsel is implemented. More than any other factor, the inequities in legal representation have proven to lead to evictions.

These findings in eviction cases are supported by findings in other types of civil legal cases. Research shows that representation by counsel results in markedly better outcomes for litigants. One Maryland study found that in appeals where public benefits were denied, the rate of reversal for the unrepresented was 40 – 45%, whereas the rate of reversal for the represented doubled to 70 –

80%.¹ In another Maryland study looking at the impact of counsel on consumers sued by debt buyers, the rate of dismissals or judgments for the consumer dropped from 71% for the represented to 23% for the unrepresented.² In yet another Maryland study, the rate of acquiring a protective order with counsel was 83%, but without counsel was 32%.³

ROI may be high based on ROI in other types of civil legal cases

While there is not a direct study on the ROI in foreclosure context, we can surmise from the eviction context that the ROI in foreclosure cases is similar and that the investment in counsel on the front end is more cost-effective than the costs of foreclosure to families and society at large on the back end. For example, the cost-effectiveness and ROI in the eviction context is proven. A report from [Stout Risius and Ross \(The Stout Report\)](#) shows a return on investment of 624% from implementing a right to counsel in eviction proceedings.

Access to Counsel delivers results

Many other jurisdictions⁴ have implemented a right to counsel in other areas of law and have seen impressive results, especially in evictions. New York City began a phased implementation of a right to counsel in evictions in 2018. Evictions have since dropped 29% in zip codes where the right to counsel was implemented. In zip codes with right to counsel, tenants remained in their homes in 84% of the cases.

Maryland Access to Justice Commission Urges Support of SB671

For the reasons stated, the Maryland Access to Justice Commission requests the Senate Judicial Proceedings Committee to issue a FAVORABLE report SB671. For more information, please contact Reena K. Shah, Executive Director of the Maryland Access to Justice Commission, at reena@msba.org.

¹ ADVISORY COUNCIL OF THE MARYLAND LEGAL SERVICES CORPORATION, ACTION PLAN FOR LEGAL SERVICES TO MARYLAND'S POOR (1988), 12.

² PETER HOLLAND, EVALUATION OF THE PRO BONO RESOURCE CENTER CONSUMER PROTECTION PROJECT (2013), at 6-7, on file with the Maryland Access to Justice Commission.

³ Jane C. Murphy, Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 511 (2003).

⁴ Right to Counsel in evictions is being implemented in other jurisdictions including Philadelphia, San Francisco, Cleveland, and Newark. It is also being considered in numerous others, including state-wide efforts in California, Connecticut, Massachusetts, Minnesota, New Jersey, Ohio, Washington state; and city-wide efforts in Los Angeles, Santa Monica, Boulder, D.C., Kansas City, Detroit, Jersey City, New York City, Toledo, Oklahoma City and San Antonio.