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LITIGATION

Pa. Supreme Court Should Continue to Support ADR Efforts in Eviction Proceedings

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Special to the Legal

Thousands of households across the country remain at risk of eviction. Pennsylvania is no different. In Allegheny County, nearly 20,000 households have applied for the federally funded, county-administered Emergency Rental Assistance Program, and nearly 14,000 applications remain pending with the number still growing. In Philadelphia, nearly 50,000 rental assistance applications remain pending, which represents a potential eviction volume that would inundate the landlord-tenant docket for years to come. With the recent or nearing expiration of federal, state and local eviction-related emergency measures, potential eviction proceedings threaten to overwhelm dockets in counties throughout the commonwealth. This would deny landlords and tenants a venue for litigating disputes for months to come.

In the past few months, multiple county courts have sought permission to utilize alternative dispute resolution (ADR) procedures in eviction proceedings, including procedures for collaborating with their county rental assistance provider. These include Philadelphia, Allegheny, Montgomery, Bucks,



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Dauphin, Delaware and Washington counties. The Pennsylvania Supreme Court has granted many of these requests and in doing so has ensured that these counties have been able to distribute millions of dollars in rental assistance funding to landlords and tenants.

ADR is a tool used for conflict resolution since ancient Greece and up to the present time as an anchor in our justice system. In 2017, the Joint State Government Commission, a nonpartisan, bicameral research and policy development agency for the General Assembly of Pennsylvania, issued a report highly recommending ADR as a means for expedited and mutually beneficial resolution of issues outside of the court process. The commission found that ADR would lessen the burden on the courts and make resolution a more attainable goal for would-be litigants. While this report was issued prior to the

pandemic, the findings in the report have proven especially relevant now.

The COVID-19 pandemic has caused millions of Pennsylvanians to lose income and has forced them to choose between paying for food, utilities or rent. This has put particular stress on both landlords and tenants and requires a different approach than just relying on eviction proceedings to resolve landlord-tenant disputes. ADR has proven to be extremely beneficial to litigants and to the courts, and it is particularly well-suited for landlord-tenant disputes. Experience demonstrates that mediation and other types of ADR can resolve disputes more rapidly and less expensively than litigation. ADR is much more cooperative than adversarial litigation and gives the parties the tools to develop mutually beneficial solutions. Participating in ADR has been shown to improve, rather than worsen, relationships between disputing parties, which is a key advantage in situations where the parties will continue to interact after a settlement, such as in landlord-tenant relationships. ADR procedures also consistently have resulted in considerable savings for the courts by preventing ongoing litigation both at the trial and appellate levels.

Call to arms! Now is the time for us to leverage what we know works. On June 24, the Department of Justice sent a letter to each of the 50 state chief justices requesting their leadership in collaborating with ADR programs and rental assistance in a national attempt to get much needed funds in the hands of landlords and tenants. Additionally, the White House has repeatedly held out Philadelphia and Philadelphia's ADR process as a national model, because of its continued success this year and last. The Urban Institute highlighted Philadelphia's program among the top ADR programs nationwide.

At a time when jurisdictions across the nation are struggling to distribute over \$47 billion in federal rental assistance, Philadelphia is leading the nation in distribution of funds, having distributed over \$200 million of rental assistance to over 33,000 households. This success is a testament to the leadership of the Philadelphia Municipal Court in educating landlords seeking to evict of the availability of this federal funding. Eviction filings are at one-third the pre-pandemic volume because landlords and tenants have been able to stabilize financially and resolve issues pre-filing. Philadelphia's successful Eviction Diversion Program, modeled after Philadelphia's nationally renowned Mortgage Foreclosure Diversion Program, has helped over 2,300 landlord and tenant pairs, with over 90% reaching mediated agreements or other resolution. The program has helped an additional 7,000 landlords and tenants meaningfully access rental assistance who would not have otherwise been able to do so, without the need for full mediation sessions. The program matches each tenant with a HUD-certified

housing counselor who helps connect with resources, apply for rental assistance and supports the tenant in mediation with a trained volunteer mediator. This is assistance for households and landlords in the moment.

As Philadelphia's success demonstrates, pre-filing ADR works as a court management tool. The current municipal court order in Philadelphia manages the eviction

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court docket by diverting cases that can be resolved through access to rental assistance and agreements to pre-filing mediation. This has reduced the burden on the courts and has allowed those cases that need to be litigated to receive timely trials. When the court reopened last year, there was a four-month delay between date of filing and the hearing date, and the delay was growing longer due to more cases being filed than could be scheduled. Within six months of the Philadelphia municipal court order requiring diversion, the court is now able to schedule hearings within 30 days of filing.

What has history taught us? Just as in the mortgage foreclosure context where Philadelphia set the standard for the nation on use of ADR in the midst of the foreclosure crisis in 2008, Philadelphia's use of ADR in eviction cases is now receiving national attention. Due to its success, multiple other counties across the commonwealth and jurisdictions around the country have reached out to Philadelphia to consult on how to build their own diversion programs. Each county is determining what ADR works best for them based on their needs and resources.

Although the pandemic is a unique crisis and threat to both housing stability and the status quo for how such matters are litigated, we have survived a severe housing crisis before and weathered the storm by innovating ADR for foreclosure prevention. Now is the time to continue to build on the successful history of ADR in other contexts as we build it into the landlord tenant context. Let us learn from the past as we move forward in these extraordinary times. So what is the ask? That our Pennsylvania Supreme Court, recognizing the successes to date, continue to support, on a county basis, ADR efforts in eviction proceedings. •