

HOUSING LEGAL TECHNICIAN PILOT PROJECT

The housing subcommittee -- pilot project taskforce, considered two potential types of pilot projects – a courthouse based “housing law facilitator,” which would function much like the family law facilitators currently in place; and a “housing legal technician” who would provide limited advice in discrete areas of housing law where there is an unmet legal need.

The Civil Legal Needs Study (2003), commissioned by the Supreme Court, established that the legal needs of the consuming public are not currently being met. The Legal Technicians would be well trained and provide only limited legal assistance under carefully regulated circumstances in ways that will provide access to justice and protect the public interest from the unauthorized practice of law.

Housing Legal Technician Facilitator Model

Courthouse facilitators assist pro se family law litigants with the mandatory forms and with procedural issues. Almost every Superior Court has family law facilitators, with the exact nature of their assistance to pro se litigants varying by county. In many counties, the facilitators assist with preparation of pleadings and screen all pro se family law pleadings before the pleadings can be filed and hearings scheduled. The facilitators are not permitted to offer any legal opinions about what their clients should do. The legal effect of the content of the forms is not discussed with the clients. They assist the clients by making sure that the required paperwork is adequately completed.

The Housing Legal Technician Facilitator pilot project could perform in a similar way for pro se housing litigants involved in unlawful detainers (evictions). The role would expand from that of the Courthouse Facilitator by having the Legal Technician offer advice not only about the legal process, but within a proscribed framework/limited practice area, assist clients with procedural defenses. The Legal Technician would act as more than facilitators, but less than attorneys. The pilot project will serve both pro se tenants and landlords. Certain requirements would apply to potential clients in order to access services (e.g. tenants would be required to file a certification that they do not owe rent or have paid rent into Court Registry). This type of program would increase access to justice and provide information to tenants and landlords in those courts that do not have a Housing Justice Project.

Just as there are local rules mandating that pro se family law litigants must see a Court Facilitator to ensure their paperwork is in order before the hearing, the pilot project could include that a local rule be enacted to mandate that pro se landlords must meet with the Legal Technician prior to filing a UD. The Legal Technician would be available for consultations with tenants who believe they may have a substantive or procedural defense. The Legal Technician would be available for tenants appearing for the ‘show cause’ motion calendar.

The exact details of the project will be determined by the Practice of Law Board in conjunction with the Superior Court that is the site for the project. The program will provide access to justice in areas where there is an unmet legal need and offer administrative and judicial economies to the Court.

Forms & Local Rules

Family Law Facilitators have pattern forms for clients to use. A part of the Housing Legal Technician pilot project would include the development of pattern forms to help with housing issues and legal processes. Some local jurisdictions already have some forms in this practice area, and these could be adapted for use in the pilot project. The instruction package/process guide for pro se housing litigants currently posted on washingtonlawhelp.org would be a starting point and already existing information will be used wherever possible.

Administration / Supervision of Housing Legal Technicians

The Housing Legal Technicians would be located with the county court system, under the Court Administrator, just as Family Law Facilitators are. Another possible location for the Housing Legal Technicians would be in the county Law Libraries.

Proposed Assistance to be Offered by Housing Legal Technicians

1. Unlawful Detainer - review sufficiency of Notices, suggest procedural defenses (nominal if any fees);
2. Eviction - help prepare Notices (could charge fees for preparation, like with Family Law Facilitators), give advice regarding proper service of Notices;
3. Small Claims Court - help prepare pre-trial paperwork (for a fee), give advice on who should testify, give advice on what types of evidence are needed for the case and how to present it.

Like Family Law Facilitators, the Housing Legal Technicians could charge fees for consultation, and possibly for the preparation of forms (but not the unlawful detainer action itself). All substantive legal issues would be referred to legal services, a private or pro bono attorney.

Having Housing Legal Technicians would:

- Identify cases having incomplete or incorrect paperwork (increases access to justice);
- Identify substantive legal issues, as distinguished from procedural issues, which would be directed to an attorney;
- Reduce the number of simple pro bono cases for attorneys, so they can concentrate on more complex cases;
- Provide information that will combat the self-help and private services that are providing misinformation and engaging in the unauthorized practice of law.

The committee drafting the final project must develop relationships with the courts, the legal community, other providers of legal services (pro bono or otherwise), to inform them of the goals of the pilot project, and the services to be provided, as well as what the benefits are to the community.

Data Collection

The Pilot Project will develop a data collection system, in order to analyze important information about the project's clients. This will help the POLB make informed judgments about the success of the project, as well as the viability of the proposed LT program. Data analysis may also help in the development of other Pilot Projects, either in other geographic areas, or other limited practice areas.

To Do

- Draft a guide describing legal process for a variety of scenarios for pro se housing litigants.
- Develop a training program for the pilot project, so they will be able to deliver services efficiently and effectively.
- Develop Local Rule for requiring pro se landlords to meet with a Housing Legal Technician prior to filing pleadings or scheduling show cause hearings.
- Develop pattern forms after a review of existing forms.
- Research the various counties for service models, fees, administration, etc. used by the Family Law Facilitators that could be adapted for Housing.
- Make contact with Small Claims Courts to determine if assistance to the litigants would assist with the Small Claims Court process.
- Develop a 'marketing' approach to make the legal community and potential clients aware of the services to be provided by the pilot project.
- Devise a program for recognition of pilot project Legal Technician participants.

- Investigate whether some kind of malpractice coverage must be put into place for pilot project.
- Funding of the pilot project must be addressed, as well as potential future funding.

Housing Legal Technician for Non-profit Organizations

A Housing Legal Technician pilot project could be sited at a non-profit organization that provides services to low-income clients. Community Action Programs or other non-profit agencies providing housing assistance often encounter clients involved in unlawful detainer actions, needing advice about how to enforce housing code compliance (repairs) and needing assistance with how to get a refund of the damage deposit.

The primary difference between this model and the Courthouse Legal Technician is the community based location and the addition of assistance with sub-standard housing and repair issues.

Similar to the Facilitator model, the Agency based Housing Legal Technician would:

1. In evictions (unlawful detainers) review sufficiency of notices; suggest procedural defenses; assist clients with drafting Answers and preparing argument at a Show Cause Hearing; and where there are significant substantive legal defenses, refer the case to the local volunteer lawyer or legal services program;
2. To recover a wrongfully withheld security (damage) deposit, help draft a demand letter; assist with filing the small claims case; offer advice regarding service of process; and prepare the client for the small claims trial including advice on presenting the case to the court, exhibits and witnesses.
3. When the client is in sub-standard housing, assist client with contacting the local building and health departments for enforcement of housing quality standards; and if the landlord fails to repair the property, assist the client with the process to escrow rent in accordance with RCW 59.18

Any Non-Profit Housing Legal Technician must meet certification requirements proposed by the Practice of Law Board and at a minimum shall:

1. Be at least 18 years of age and be of good moral character.
2. Education. Have graduated from a paralegal/legal assistant program that is approved by the American Bar Association or the Practice of Law Board which includes: a) An associate degree or other paralegal/legal assistant program that consists of a minimum of 90 quarter hours (900 clock hours or 60 semester hours) of which at least 45 quarter hours (450 clock hours or 30 semester hours) are substantive legal courses; or b) A bachelor's degree program in paralegal/legal assistant studies; or c) A post-baccalaureate certificate program in paralegal/legal assistant studies.
3. Experience. Possess substantive legal experience as a paralegal/legal assistant under the supervision of a lawyer for a minimum of two years.
4. Examination. Satisfactorily complete an examination which shall, at a minimum, cover the rules of professional conduct, rules of ethics, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to housing and landlord-tenant law.

Administration / Supervision of Housing Legal Technicians

The Housing Legal Technicians would be located with a non-profit agency serving low-income clients. Supervision (indirect) and assistance would be provided by the local pro bono program or other volunteer lawyer(s).

Proposed Legal Tasks

The Legal Technicians in the Pilot Project will:

- Determine whether the problem presented is within the scope of the defined housing law limited practice area, and if so, obtain the relevant facts and explain their relevancy to clients.
- Inform clients of the procedures that apply in their case, including deadlines, documents to be filed, and the anticipated course of the legal proceedings.
- Inform clients of the procedures for proper service of process for motions, and proper filing procedures.
- Provide clients with self-help materials that have been developed by a legal services program, an attorney or approved by the Practice of Law Board or designee.
- Review pleadings, documents, exhibits received by clients from the opposing side and explain their relevance to clients; make referrals to a volunteer lawyer or private attorney when the issues are beyond the scope of the legal technician.
- Select and complete appropriate forms, and advise clients of their significance in their case. The template forms shall be prepared by a legal services program, an attorney or approved Practice of Law Board or designee. Forms that have been approved by the State of Washington, either through a government agency or by the Administrative Office of the Courts, or those which are specified by statute, as well as federal forms may also be used.
- Legal Technicians will indicate on any pleading to be filed with the court that the pro se litigant has had assistance from a Legal Technician.
- Advise clients of other documents which may be helpful for the successful resolution of their case. Explain how such additional documents may affect their case, and assist clients in obtaining them. Such documents might include: health department inspections; building permits; witness or party declarations; pleadings and exhibits.