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Ortega

DELAWARE STATE SENATE  
153rd GENERAL ASSEMBLY  
SENATE SUBSTITUTE NO. 2  
FOR  
SENATE BILL NO. 115

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SUMMARY POSSESSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 57, Title 25 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 5720. Shielding of records.

4 (a) A defendant in an action under this chapter may apply to the Court in which the action was filed for an order  
5 shielding the record of the action. The Court must grant the defendant's motion if the Court finds any of the following:

6 (1) The judgment against the defendant was a judgment on the merits, a default judgment, or a stipulated  
7 judgment, 5 or more years have passed since the judgment was entered, the defendant has satisfied any monetary award  
8 included in the judgment, and the defendant has had no other similar judgments within 5 years of the defendant's  
9 motion to shield.

10 (2) The parties resolved the action through a stipulated agreement, and the defendant has complied with the  
11 terms of the stipulated agreement.

12 (3) The plaintiff withdrew the complaint.

13 (4) The Court dismissed the plaintiff's complaint.

14 (5) The final judgment was in favor of the defendant.

15 (6) The plaintiff and defendant have agreed to the shielding.

16 (7) The shielding of the record is clearly in the interests of justice.

17 (b) If the Court determines the defendant is eligible for relief under subsection (a) of this section, the Court must  
18 issue an order shielding the record of the action and setting aside the original judgment, if a judgment was entered.

19 (c) On entry of the Court's order under subsection (b) of this section, the action that is the subject of shielding  
20 under subsection (a) of this section is deemed not to have been filed, and the defendant may answer accordingly any  
21 questions related to the action's occurrence.

22 (d) Within 45 days of the Court's entry of an order under subsection (b) of this section, the Court must do all of the  
23 following:

24 (1) Provide the defendant with written notification of the shielding and a certified copy of the records being  
25 shielded.

26 (2) Provide the defendant with written notification that the records being shielded will no longer be accessible  
27 to the public through the Delaware court system.

28 (3) Remove the record of the action from all of the Court's databases or systems that are publicly accessible.

29 (4) Ensure that all physical or electronic records held by the Court that are associated with the action are  
30 stored in such a way as to be permanently inaccessible to the public except as provided for under paragraph (e)(3) of  
31 this section.

32 (e) Shielded records may only be disclosed if one of the following occurs:

33 (1) The records are requested by the Department of Justice, which must maintain the confidentiality of the  
34 records.

35 (2) The records are requested by the defendant.

36 (3) The Court considers publication in the public interest and redacts or otherwise obscures the defendant's  
37 name, personal information, and the address of the property for which summary possession was sought.

38 (f) The Court may not charge a filing fee for filing a motion under subsection (a) of this section.

39 (g) The Court may adopt such rules as necessary to implement this section.

40 Section 2. This Act takes effect 6 months after its enactment into law.

#### SYNOPSIS

This Act provides a pathway for former defendants in eviction actions to have the eviction filings against them shielded from public view. Being the subject of an eviction filing can prevent an individual from securing housing for years after any judgment in the case has been satisfied. Even tenants who prevailed in eviction actions may be denied housing by landlords who turn away any applicant with a prior eviction filing, regardless of the outcome of the case. The well-known health, social, and economic consequences of eviction can thus linger for years after an eviction filing, and trap individuals – including many children and families – in a cycle of poverty and housing instability. The effects are particularly acute among already marginalized groups, such as Black and female renters. By shielding eviction records when an individual has met certain requirements, this Act will help break down barriers to stable housing and economic security.

Under this Act, the Court must grant shielding upon a motion by the defendant if the Court finds any of the following to be true:

1. The judgment against the defendant was a judgment on the merits, a default judgment, or a stipulated judgment, 5 or more years have passed since the judgment was entered, the defendant has satisfied any monetary award included in the judgment, and the defendant has had no other similar judgments within 5 years of the defendant's motion to shield.

2. The parties resolved the action through a stipulated agreement, and the defendant has complied with the terms of the stipulated agreement.

3. The plaintiff withdrew the complaint.

4. The Court dismissed the plaintiff's complaint.

5. The final judgment was in favor of the defendant.

6. The plaintiff and the defendant have agreed to the shielding.

7. The shielding of the records is clearly in the interests of justice.

The Court may not charge a filing fee for a motion to shield. Once the Court has granted the shielding, the Court has 45 days to effectuate it. An individual whose eviction record has been shielded can answer questions about prior evictions as if the shielded action was never filed.

This Act is a second Substitute for Senate Bill No. 115. Like Senate Substitute No. 1 for Senate Bill No. 115, Senate Substitute No. 2 for Senate Bill No. 115 does the following:

1. Adds judgement by stipulation to the list of judgments for which shielding is available after 5 years if the defendant has satisfied any monetary award included in the judgment.

2. Creates exceptions that make the shielded records available to the Department of Justice and the defendant in the action.

3. Allows for records of shielded actions to be available to the public for purposes of preserving case law, provided that all identifying information is redacted or otherwise obscured.

4. Makes minor technical changes.

The primary differences between Senate Substitute No. 1 for Senate Bill No. 115 and Senate Substitute No. 2 for Senate Bill No. 115 are as follows:

1. Senate Substitute No. 2 replaces the term "expungement" with the term "shielding" to better reflect how the Court will be handling records.

2. Senate Substitute No. 2 eliminates the provision in Senate Substitute No. 1 that would have allowed certain eviction records to be automatically shielded.

3. Senate Substitute No. 2 adds a requirement that a defendant seeking shielding under paragraph (a)(1) of § 5720 (lines 6 through 9) have no other similar judgments against them within 5 years of the motion to shield.

Senate Substitute No 2. also adds language specifying that redacted records are being made available for purposes of preserving important case law, and that the Court is responsible only for databases and systems that it controls.

Author: Senator Lockman