



MORTON
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To: Delaware Apartment Association Members
From: Morton, Valihura & Zerbato, LLC, General Counsel
RE: SS 1 for SB 116 w/ SA 1 + HA 1, HA 2 – Delaware Right of Redemption
Dated: July 24, 2026
Bill Effective Date: September 1, 2026

On June 30, 2026, the Delaware General Assembly passed the above-referenced bill, amending the Delaware Landlord Tenant Code and creating a right of redemption for Delaware residential tenants in failure to pay rent matters. The Bill is waiting for Governor action but is fully expected to be signed into law. It becomes effective September 1, 2026. The stated purpose of this bill is to allow tenants who are being evicted for failure to pay rent to remain in their homes if they pay all amounts owed prior to being evicted. Below is a list of key points and take aways from this bill. It is suggested that certain actions start to be taken now so that members are prepared for the inevitable changes that will become effective on September 1, 2026.

Please be aware that this memo is simply guidance based upon my firm's experience and interpretation of the bill's language. Further, this is not intended as a fully comprehensive overview of the bill. Due to the nature of the bill and its creation of a right that has not previously existed in Delaware, it is not and cannot be considered definitive as to its guidance. As with nearly all statutes, certain provisions may be ambiguous or deemed to be ambiguous by the Court. I fully expect that the full impact and requirements of this bill will not be known until the Court decides and/or provides clarity regarding its application and interpretation. I believe the guidance provided by this memo should be considered best practice until case law develops or further guidance is issued.

1. **Required Cure Period - § 5502(a)** – This bill changes the number of days a landlord must provide to cure a failure to pay rent violation from five (5) days to seven (7) days. While this appears substantive, it's largely semantics as by definition, the prior five (5) day period was business days, and any time period of seven (7) days or longer consists of calendar days. In other words, five (5) business days is equivalent to seven (7) calendar days. However, I do suggest any late notice be revised to reflect it providing at least seven (7) days to cure the back rent.
2. **Time to Send a Late Notice - § 5502(a)** – This bill materially alters when a landlord can send a late notice. It now provides,

A landlord or the landlord's agent may, **any time after the time period between the date the rent is due and the date under this Code when late fees may be imposed,** demand payment for the past due rent and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 7 days after the date notice was given or sent, the landlord may file a court action to terminate the rental agreement. (emphasis added)

Based on this new language, we do not believe a landlord may send a late notice until **after** the 7th day of the month. This is based upon prior guidance issued by the DOJ regarding when a late fee may be charged. Therefore, any late notice should not be mailed until the 8th of the month at the earliest.

3. **Right of Redemption: Prior to Judgment** – If a tenant, or any person or entity on their behalf, pays all “rent due” prior to the filing of a complaint, the landlord no longer has the right to file a complaint.

If a tenant, or another person or entity on their behalf, pays all “rent due under the terms of the lease” **after** the landlord has initiated an action for nonpayment or late payment of rent against the tenant, then the landlord may not maintain such action for failure to pay rent.

Rent is defined by the Code as base rent, utilities (water, sewer, electricity or fuel) and late fees. Under this definition, the tenant would only have to pay these charges to redeem the right of possession. However, the bill enlarges the definition of “rent” after a summary possession action has been filed by specifying “rent due **under the terms of the lease.**” Therefore, if your lease defines fees, charges and other financial obligations as “rent,” there is a very good argument that such additional charges would also have to be paid to redeem the right of possession. A fair interpretation of this would also include the entire rent due for the current month compared to per diem rent due as of the date of payment. In other words, the tenant would likely have to bring their account to zero to exercise their right of redemption.

In any event, a landlord may not refuse payment, but is permitted to restrict the method of payment to those provided by the lease. Practically, landlords should emphasize the timely filing of failure to pay rent cases after the notice period expires to possibly take advantage of the broader definition of “rent” the bill provides after a failure to pay rent case is filed.

A landlord is further obligated to accept payments from third parties which may be made via check or ACH.

4. **Right of Redemption: Post Judgment** – A tenant has the right to redemption of the rental unit **after** a judgment for possession has been entered by the court by tendering “all past due amounts as determined by the Court, including all rent due under the terms of the lease, plus all court-awarded costs and fees, to the landlord or the landlord’s agent.” Such right exists up and until the actual execution of the eviction order. If a tenant exercises this right and pays the required amount, a landlord has a duty to notify the court and constable and make all reasonable efforts to prevent execution of judgment that is based upon failure to pay rent. The landlord has the post-judgment right to require that any payment be made via certified check or money. This of course is to avoid issues with payments clearing or not.

As with the right of redemption during the pendency of a failure to pay rent case, the language used here is broader and includes the requirement that not only the judgment amount be paid, plus awarded costs, but “all rent due under the terms of the lease[.]” A fair

reading of this would mean all amounts defined as “rent” under the lease, plus the current’s month rent in full. Further, as with the pre-judgment time frame, a landlord cannot refuse payment post-judgment and must also accept payment from third parties on behalf of the tenant.

As stated, a tenant may exercise the right of redemption up and until the actual execution of the eviction order. We would suspect the precise moment or action that cuts off the right of redemption will be defined by the Court as the issue gets litigated, but for now, we believe a reasonable interpretation would be that the right may be exercised up until the moment the constable turns over possession of the unit to the landlord, whether by word, deed or action. We believe the changing of the locks can only take place legally after possession has been returned to the landlord. Therefore, the execution of the judgment must come before the locks are changed.

- 5. Notice Requirement Post Judgment When Tenant Pays in Full** - As stated previously, a landlord has the obligation to notify the court and the constable when a tenant has redeemed possession of the rental unit. From both a practical and reasonableness perspective, it would be good practice for the landlord to file a letter/notice with the court immediately informing the court that the tenant has redeemed the rental unit as well as calling or telling the constable (depending on the timing). As most landlords are obligated to efile matters with the Court, to avoid issues with the rejection of notice, or the Court not considering it, efilers should avoid calling or emailing the Court. Further, such actions are typically not “of record” and may be difficult to prove.

Section 5716A(b)(3) provides that if the Court receives notification of or evidence of redemption, an immediate stay shall issue, and the Court must provide a minimum of 5 days for any appropriate evidence or filings to be submitted to the Court. This provision has no actual standard applicable to such notice and does not require that evidence actually be provided at the time of the filing. It could allow a tenant to either resolve any dispute about payment(s) by simply filing a letter with the court which would act as an automatic stay of the eviction until evidence is submitted or a hearing is held (depending on what the court decides to do in this situation). It could also allow a savvy or unethical tenant to merely file a notice with the Court without having actually paid in full, delaying the eviction. Given the Court’s prior policy and procedural decisions, we suspect that it will defer to scheduling a hearing on the matter and allow the parties to present evidence to support the redemption or not. However, this remains to be seen.

Such automatic stay does not apply to situations where the writ of possession has already been posted. In these circumstances, in order to be entitled to a stay of execution, a request must be filed with the Court. The implication here is that the tenant must file the notice with the court to obtain a stay as presumably they are the ones seeking it. However, as discussed above, if the tenant has in fact made payment in full, §5716A puts the obligation on the landlord to notify the court and constable. Therefore, if a tenant actually pays in full pursuant to the statute after the writ of possession has been posted, but before the lock out, the landlord should notify the Court, even if the writ of possession has already been posted.

Further, if payment is made after the writ of possession has been posted, the landlord has the right to request that any dismissal or vacating of the judgment be delayed until such payment clears. However, best practice would be to require the judgment be paid via money order or certified check as permitted by the statute to avoid additional motion practice.

6. **Vacating of Judgment** – Should a tenant exercise their right of redemption, the judgment for possession will be vacated by the Court. This fails to consider that in a failure to pay rent case, a successful landlord is awarded both a judgment for possession, as well as a monetary judgment. This statute provides that the judgment for possession will be vacated, but does not specify what happens to the monetary judgment. It further does not reference a judgment holder's obligation to satisfy a monetary judgment when paid in full. Given the monetary judgment would presumably be vacated along with the judgment for possession, there would be nothing to satisfy, but the statute does not directly address this.

Importantly, even if vacated, the judgment still counts towards the judgments needed to foreclose on the right to redeem as provided below.

7. **Foreclosure of Right to Redeem Rental Unit** – The statute does not apply to any tenant who has had two (2) or more judgments for possession due to failure to pay rent entered against them within the 18-month period prior to the initiation of the action to which the statute would otherwise apply. Any other judgment for possession that may have been entered against the tenant during this time period does not count towards the two (2) judgments. This time period does not run from the judgment date, but the date the complaint was filed. A landlord seeking to foreclose on a tenant's right to redeem should closely monitor the applicable time period and file the third case (presumably) so that it gets **filed** within 18 months from the oldest judgment date.

It does not appear that anything specific needs to be done in order to foreclose on the right to redeem as the statute explicitly carves out tenants who fall under this exception. It will however require landlords to keep records of the prior judgments as we would presume that tenants, on their own or through counsel, will seek to seal these prior matters. It is not clear how effective this may be as typically, in order to be entitled to have a case shielded, five (5) or more years have passed since it was entered, however, given the judgment would have been vacated, they will certainly argue it's in the interest of justice to do so, among other reasons.