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ALAN G. DAVIS  
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**POLICY DIRECTIVE 26-277**

**TO: ALL JUSTICES OF THE PEACE  
ALL JUSTICE OF THE PEACE EMPLOYEES**

**FROM: ALAN G. DAVIS**   
**CHIEF MAGISTRATE**

**DATE: SEPTEMBER 11, 2026**

**RE: RIGHT OF REDEMPTION**

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**PURPOSE:**

The purpose of this policy directive is to provide uniform operational and judicial guidelines for processing nonpayment summary possession cases, managing stays of execution, executing post-judgment orders, and applying statutory Right of Redemption procedures under 25 Del. C. § 5716A.

**LEGAL AUTHORITY:**

Effective September 1, 2026, 25 Del. C. § 5716A establishes a statutory Right of Redemption in residential summary possession actions under Title 25 of the Delaware Code.

The Right of Redemption law was enacted to give tenants in residential landlord/tenant relationships (including traditional rentals, room rentals, manufactured housing, but not commercial leases) facing eviction for nonpayment a final opportunity to remain in their homes by paying the full amount owed. As stated in the preamble to Senate Bill 116, Right of Redemption addresses the disruption, displacement, and downstream costs that follow from evictions that could be resolved through payment. These policy goals establish Right of Redemption as a remedial statute. The Delaware Supreme Court

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has explained that a statute is remedial when it is designed to protect certain classes of people.<sup>1</sup> For example, Delaware courts have found statutes to be remedial when they are intended to benefit workers<sup>2</sup>, protect claimants<sup>3</sup>, or provide mechanisms for enforcing rights.<sup>4</sup>

The classification as remedial does not depend on the statute explicitly stating that it is remedial. Courts examine the statute's purpose, structure, and effect. Statutes prohibiting discrimination, for example, are generally deemed remedial even without such express language.<sup>5</sup>

Under Delaware law, remedial statutes should be liberally construed to effectuate their purpose.<sup>6</sup>

### **POLICY:**

Right of Redemption is a remedial law enacted to preserve residential tenancies and prevent avoidable displacement for nonpayment. Consistent with Delaware law that remedial statutes are liberally construed to effectuate their intended purpose, judicial officers should resolve genuine statutory ambiguity in favor of preserving the tenant's opportunity to redeem, so long as the result is consistent with the statutory text.

It is the policy of the Justice of the Peace Court that the statutory Right of Redemption be applied uniformly across all locations. Courts, judicial officers, and administrative staff shall process nonpayment residential summary possession actions, stays of execution, and redemption filings in accordance with the statutory standards and operational procedures set forth in this directive.

### **EFFECTIVE DATE:**

This policy directive shall take effect immediately upon issuance. The Court shall evaluate the implementation of the statute under this policy not less than 60 days and issue subsequent rules consistent with its intent and any results of that evaluation. The Court welcomes input from effected parties in advance of the issuance of the rules.

### **IMPLEMENTATION:**

#### **NOTICE COMPLIANCE**

##### **Statutory Notice Requirements**

- A. Proper statutory notice serves as a foundational prerequisite for summary possession actions under Title 25.
- B. Judges should be aware of the updated notice and payment acceptance standards under § 5716A:

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<sup>1</sup> Stop & Shop Companies, Inc. v. Gonzales, 619 A.2d 896 (Del. 1993).

<sup>2</sup> In re Port of Wilmington Gantry Crane Litigation, 238 A.3d 921 (Del. Super. Ct. 2020).

<sup>3</sup> Reid v. Spazio, 970 A.2d 176 (Del. 2009).

<sup>4</sup> Stifel Financial Corp. v. Cochran, 809 A.2d 555 (Del. 2002).

<sup>5</sup> Chance v. Kraft Heinz Food Company, 2018 WL 6655670 (Del. Supr.)

<sup>6</sup> Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247 (Del. 2011).

- **7-Day Cure Period:** A landlord must give a written notice demanding payment that provides at least 7 days from the date of notice or mailing for the tenant to pay before a court action can be filed.<sup>7</sup> Cases filed prior to September 1, 2026 may still provide for a 5 day notice, but the stator changes eliminate the 5 day notice going forward.
- **Termination Phrasing:** The nonpayment notice must state that the landlord may file a court action to terminate the rental agreement if payment is not made, rather than stating that the notice terminates the lease.<sup>8</sup> If a notice states that the lease is terminated upon nonpayment, such language is legally void and without effect, but shall not require dismissal of the action.
- **Acceptance of Rent / Reservation of Rights:** A nonpayment notice should not contain a "reservation of rights" clause. If a tenant, or someone on their behalf, pays all rent due and the landlord accepts payment, the landlord cannot initiate or maintain a summary possession action based on that nonpayment. Because full payment prevents or ends the action, reserving rights to proceed with an eviction despite accepting full rent is no longer permitted under 25 Del. C. §§ 5502(c)–(d) and 7016(b)(3). Any clause in a notice purporting to reserve the right to evict despite full payment is void as matter of law. The inclusion of a reservation of rights clause in a notice does not render the notice fatally defective or require dismissal of the complaint, but the Court will be mindful that persistent inclusion of this language can cause confusion about the Right to Redemption and may result in appropriate sanction as the Right to Redemption becomes ingrained in practice.
- **Timing of Demand:** A landlord may only demand the past-due rent and give written notice after the grace period for late fees has expired.<sup>9</sup>
- **Federally Subsidized Housing:** Where a property is subject to federal regulation, the landlord must comply with all applicable federal notice timelines and requirements prior to initiating a court action, in addition to satisfying state notice requirements.

## MANDATORY FINDINGS IN ORDERS AND LEASE STATUS

### A. Summary Possession Judgments (Eligibility for Redemption)

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<sup>7</sup> 25 Del. C. § 5502(a)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

To prevent ambiguity regarding whether a tenant may exercise the statutory Right of Redemption under 25 Del. C. § 5716A, every final order awarding possession in a summary possession action must contain an explicit finding determining redemption eligibility based upon the underlying cause of action:

- **Sole Cause of Action Nonpayment Complaints:** When possession is granted solely for nonpayment of rent, the order must explicitly state the case is **Redemption Eligible**.
- **Multi-Claim Complaints ("Sole Basis" Rule):** Where a landlord asserts both nonpayment of rent and non-monetary grounds (e.g., material rule violations under 25 Del. C. § 5513 or termination under 25 Del. C. § 5106):
  - **Non-Monetary Breach Unproven:** If the landlord fails to prove the non-monetary breach but proves nonpayment, the order must state that possession is awarded solely on nonpayment of rent, rendering the judgment **Redemption Eligible**.
  - **Non-Monetary Breach Proven:** If the landlord proves a material non-monetary lease breach—regardless of whether nonpayment is also proven—the order must state that possession is awarded on independent non-monetary grounds, rendering the judgment **NOT Redemption Eligible**.

#### **B. Lease Status Upon Entry of Judgment for Possession**

Whenever an order awards possession in favor of the landlord in a nonpayment action, it must explicitly state the status of the lease:

- **Lease Termination Provision:** The order shall state that the rental agreement or lease between the parties is **terminated**, subject to the tenant's statutory Right of Redemption.

#### **C. Lease Status Upon Granting Redemption**

When a tenant meets the statutory requirements under 25 Del. C. § 5716A, the court shall issue an order on the Right of Redemption reflecting one of the following determinations:

- **Approval and Lease Restoration:** If the tenant satisfies all statutory redemption requirements, any outstanding Writ of Possession is terminated, the possessory judgment is vacated, the case is dismissed with prejudice, and the lease between the parties is **restored**.
- **Denial:** If the application fails to meet statutory criteria, the request is denied with the specific reason for denial set forth in the order.

### **STATUTORY DISQUALIFICATION**

#### **A. The 18-Month Lookback Rule**

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Under subsection (b)(6) of §5716A, the Right of Redemption does not apply to any tenant against whom two (2) or more judgments of possession for failure to pay rent have been entered 18 months before the initiation of the present action.

- **Vacated Judgments Count:** The statute explicitly states that a prior judgment for possession that was subsequently vacated upon redemption still counts as a judgment for calculating the 2-judgment threshold in the 18-month window.
- **Shielded Cases Excluded:** Cases shielded pursuant to 25 Del. C. § 5720 are deemed not to have been filed and do not count as judgments under this section.

#### **B. Inadmissibility During Trial on the Merits**

- **Trial Phase:** Testimony or documentary evidence concerning a tenant's prior eviction judgments is inadmissible during the trial phase to prove nonpayment or liability under Delaware Rules of Evidence 404(b) and 403. A tenant's prior evictions have no bearing on whether rent was paid for the period in dispute and poses an impermissible risk of unfair prejudice.
- **Post-Judgment Application:** Evidence of prior judgments of possession shall be considered solely during post-judgment administration under 25 Del. C. § 5716A(b)(6) to determine whether the tenant is disqualified from exercising the Right of Redemption under the 18-month lookback rule.

#### **C. Landlord Responsibility and Judicial Verification**

Statutory disqualification based on prior nonpayment judgments is ordinarily an affirmative defense raised by the landlord; the burden of identifying and proving prior judgments rests with the landlord.

- **No Administrative Pre-Screening:** The Court and its administrative staff have no affirmative duty to monitor historical filings, conduct independent record searches, or pre-screen applications to identify prior judgments.
  - **Evidentiary Support:** A landlord objecting to a tenant's request for redemption on disqualification grounds must identify or submit evidence of the prior judgments.
  - **Judicial Review:** Upon a landlord's objection or challenge, the assigned Judge shall review court records to verify the prior judgments under § 5716A(b)(6). If disqualification is confirmed, the Judge shall issue an order denying redemption and state the specific prior judgments as the reason for denial.
  - **Judicial Notice of Apparent Disqualification:** Nothing in this section limits the Court's authority to take judicial notice of its own prior judgments. Where a disqualifying prior judgment is apparent on the face of the court's records, the Judge may raise the § 5716A(b)(6) disqualification on the Court's own motion, provided the tenant is given notice and an
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opportunity to respond before redemption is denied. This authority does not create a duty to search for or pre-screen for prior judgments.

#### **D. Co-Tenancy Applications**

- **Indivisibility of the Unit:** A lease represents a single interest in the rental unit.
- **Rule:** An 18-month lookback disqualification must apply to all named co-tenants under the lease to bar redemption for the dwelling unit.
- **Outcome:** If at least one named co-tenant remains statutorily eligible, that eligible co-tenant may exercise the Right of Redemption to cure the judgment and stay execution for the entire unit. Upon full payment, the judgment is vacated for all co-tenants, but a vacated judgment is recorded against all named defendants for future lookback tracking.

#### **COMPUTATION OF THE STATUTORY REDEMPTION AMOUNT AND SPECIFICATION ON WRIT**

To effectuate redemption under § 5716A, the tenant must pay all rent due, not merely the monetary amount awarded in the trial judgment.

| <b>Charge Category</b>                     | <b>Included in Redemption Total?</b> | <b>Notes / Statutory Basis</b>                                                    |
|--------------------------------------------|--------------------------------------|-----------------------------------------------------------------------------------|
| <b>Trial Judgment Amount</b>               | <b>YES</b>                           | Back rent, court costs, and pre-judgment fees awarded in the order.               |
| <b>Post-Judgment Per-Diem Rent</b>         | <b>YES</b>                           | Daily rent accrued from judgment date to the start of the current billing period. |
| <b>Current Month's Rent</b>                | <b>YES</b>                           | Regular monthly rent that has become due under the lease at time of redemption.   |
| <b>Unadjudicated Utilities / Late Fees</b> | <b>NO</b>                            | Excluded unless reduced to judgment or defined as rent under the lease.           |

- **Judicial Determination on Writ:** Prior to issuing a Writ of Possession, the Court shall determine total redemption eligibility, incorporate the full rent due under the lease for the current

monthly rental period, and explicitly specify the calculated redemption total on the face of the Writ. Landlords requesting a Writ of Possession shall file an updated accounting at the time of the request, using the form designated by the Court.

## **Motions for Stay of Execution**

### **A. Mandatory 5-Day Stay Upon Motion**

#### **Upon receiving a post-judgment notice of payment of all rent due:**

- The judge shall issue an immediate stay of execution of the writ of possession. Notwithstanding Justice of the Peace Court Civil Rule 69(f)(4), the issuance of an administrative stay under this Rule shall automatically toll the 15-day return requirement for a writ of possession. The writ shall remain stayed and unenforceable until the Court enters an order vacating the judgment, terminating the writ, or officially lifting the stay.
- The Court must hold the writ in abeyance for a minimum of 5 days to permit funds to clear (e.g., electronic checks, government or charitable assistance disbursements) and allow parties to submit evidence.

### **B. Payment Formats & Landlord Acceptance**

- Pre-Judgment: Landlords may restrict payment formats to those specified in the lease.
- Post-Judgment: Landlords may require payment via certified check or money order.
- Charitable & Government Funds: Landlords cannot refuse electronic or written checks issued by charitable organizations or government assistance programs.

**C. Exemption from Filing Fees** No filing fees or administrative court fees shall be assessed against any party for filing a motion, request for stay, or pleading directly related to exercising the Right of Redemption.

## **STIPULATED AGREEMENTS**

### **A. Non-Waivability of Redemption Rights**

Under 25 Del. C. § 5101(a), statutory tenant protections under the Landlord-Tenant Code cannot be waived by private contract. Beyond the statutory prohibition against waiving tenant rights under 25 Del. C. § 5101(a), the characterization of 25 Del. C. § 5716A as a remedial statute provides an independent legal basis prohibiting any waiver of the Right of Redemption. As remedial legislation, the statute was enacted to protect tenants from the disruption of eviction and to prevent its societal costs by preserving residential tenancies whenever nonpayment of rent can be satisfied. Under Delaware law, remedial

statutes should be liberally construed to effectuate their intended purpose.<sup>10</sup> Allowing parties to contract around or waive the statutory Right of Redemption in a Court-approved agreement would undermine the core statutory purpose of the law. Because judicial officers are required to resolve statutory ambiguities in favor of preserving the tenant's Right of Redemption, the Court cannot give effect to any agreement that purports to limit or forfeit this remedy.

- **Rule:** Because the Landlord-Tenant Code contains no statutory authorization allowing a tenant's waiver of the Right to Redemption, any provision in a lease, lease amendment, or court-approved stipulated agreement that purports to waive, restrict, modify, or forfeit a tenant's statutory Right of Redemption under § 5716A is void as against public policy and legally unenforceable.

## **B. Enforceability of Additional Terms and Effect of Breach**

Where the sole basis of the original summary possession complaint is nonpayment of rent, the tenant's statutory Right to Redemption remains strictly preserved throughout the entirety of the action.

- **Rule on Additional Terms:** Parties may include additional non-monetary terms, conditions, or agreed move-out dates within a stipulated agreement. However, if an action originated solely as a nonpayment complaint, any non-monetary terms or move-out dates are legally unenforceable to the extent they are used to deny the tenant's Right of Redemption.
- **Effect of Breach:** If a tenant breaches a court-approved stipulated agreement in a case where the originating complaint was based solely on nonpayment of rent—whether by failing to make payments or failing to comply with additional agreed terms—the tenant retains full statutory redemption rights and may remain in the unit by paying all accrued rent, court costs, and court-awarded fees due prior to actual eviction.

## **LANDLORD RESPONSIBILITIES AFTER PAYMENT**

**A. Duties Upon Receipt of Payment** Upon receiving full payment of the redemption amount, the landlord or landlord's agent must immediately notify the Court. If a writ of possession has already been issued, the landlord must also make all reasonable efforts to notify the constable to halt execution of the writ. If any payment (including a partial payment) is received after the issuance of a writ of possession, the landlord must notify the Court in writing immediately so the remaining redemption balance can be calculated.

If the landlord receives a payment after the issuance of a writ of possession that does not cover the full redemption total, the landlord must provide written notice to the tenant stating that the payment is being reported to the Court as a partial payment. This ensures the tenant receives timely notice of the

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<sup>10</sup> Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247 (Del. 2011).

remaining balance and has an opportunity to dispute the reported amount if they believe the payment satisfied the full redemption requirement. Failure of a tenant to dispute the amount may result in

**B. Penalties for Non-Compliance** If a landlord accepts full payment but fails to notify the Court or permits a constable to execute a writ of possession on a satisfied claim the Court may take such action as it deems appropriate. Failure to notify the Court of payment may delay the eviction process (see subsection B below).

## **CONSTABLE DUTIES AND PAYMENT DISPUTES**

**A. No Payment Handling or Dispute Mediation:** Constables executing a Writ of Possession shall not accept payments of any kind from tenants or landlords, nor shall they attempt to mediate disputes regarding whether payments were made or if the redemption amount was satisfied.

**B. Tenant Payment Claims:** If a tenant informs a Constable during an eviction attempt that full or partial payment has been made, the Constable shall advise the tenant to immediately contact the Court and submit proof. The Constable shall contact the Court to verify whether a stay of execution or redemption motion has been filed but shall not delay or halt execution based solely on a tenant's unverified verbal claim without court confirmation or an issued order. If the Court confirms to the Constable that the tenant made any payment, even a partial one, that the landlord failed to report, then the Constable shall halt execution of the writ. The Constable should not attempt to resolve disputes about whether the tenant paid the full amount.

**C. Last-Minute Landlord Notification:** If a landlord or landlord's agent notifies a Constable prior to or during execution that the tenant has paid the redemption amount in full, the constable shall instruct the landlord to immediately notify the Court in writing and shall halt execution of the writ pending judicial verification.

## **CONCLUSION:**

This policy directive is intended to implement the statutory Right of Redemption under 25 Del. C. § 5716A and provide for uniform operational and judicial guidelines for processing nonpayment residential summary possession cases, managing stays of execution, executing post-judgment orders, and applying statutory Right of Redemption procedures. The Court shall strive toward consistency in its implementation of this statutory right and receive comment on the effect of this policy directive for no less than 60 days. The Court will follow up with rules to permanently effectuate the Right of Redemption.

cc:

Honorable Collins J. Seitz, Jr.

Honorable Eric M. Davis

Honorable Kathaleen S. McCormick

Honorable Carl C. Danberg

Honorable Michael K. Newell

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