

CITY OF BOSTON

Eviction Guide



City of Boston
Mayor Martin J. Walsh



NEIGHBORHOOD
DEVELOPMENT

TOP TENANT TIPS

The City of Boston created this guide to help you understand the eviction process, which is the permanent removal of a tenant from a rental property. Eviction is a legal process that is serious, and can be difficult to navigate. You need to know your legal rights, to understand the steps along the way, and know where to turn for resources and help.

Eviction has many steps, but it can go very quickly. Be informed. Reach out for help.

Keep a Copy of Important Documents

If you have a lease or rental agreement, keep a copy along with copies of any notices or emails that you receive from the landlord.

Ask for Receipts

When you pay your rent, or put down a security deposit, get a receipt.

Communicate

If you cannot make your rent payment, talk to your landlord about a repayment plan. If you've violated a term of your lease, explain to your landlord how you plan to resolve it. If your landlord is proposing a rent increase you cannot afford, ask if the landlord will accept a smaller increase, or one that rises over time.

Notice to Quit Must be in Writing

If your landlord tells you that you must leave, remember that a Notice to Quit must be in writing and that your landlord must follow a legal process, including going to court, in order to evict you.

Only a Judge Can Order You Out

Only a judge can order you and your family out of your apartment. It is illegal for a landlord to lock you out or try to force you out by shutting off the utilities.

Do Not Miss Your Court Appearance

If you are served with a document titled Summons and Complaint, go to court. If you do not show up in court, the court will decide in favor of the landlord and order an eviction.

Get Legal Help

Some legal service organizations hold clinics or offer free legal assistance and may be able to help you fill out forms, file legal documents ("motions"), or negotiate a resolution.

Call the City of Boston Office of Housing Stability at 617-635-4200

We can help you navigate the eviction process and may be able to help you access legal, financial or other assistance, including low to no cost mediation services.

STEPS IN THE EVICTION PROCESS

BEFORE COURT

- STEP 1: LANDLORD PROVIDES TENANT WRITTEN NOTICE**
Tenant receives Notice to Quit stating that landlord intends to end the tenancy.
- STEP 2: LANDLORD STARTS COURT CASE**
Tenant receives Summons and Complaint, which states the landlord's claims, and when and where the parties must appear for court.
- STEP 3: TENANT RESPONDS TO LANDLORD'S CASE**
Tenant can respond by filing legal documents stating their side of the case.
- STEP 4: PREPARING FOR TRIAL**
Tenant can prepare for trial by gathering documents and witnesses.

AT COURT

- STEP 5: APPEARING IN COURT**
Tenant must be in court on the date and time listed in the Summons and Complaint. If the tenant does not appear, the judge can order an eviction.
- STEP 6: TENANT & LANDLORD CAN REACH AN AGREEMENT: MEDIATION/NEGOTIATION**
On the date of trial, tenants may be able to resolve their case through mediation or negotiation, rather than having a trial.
- STEP 7: TENANT & LANDLORD CAN HAVE A TRIAL**
If the parties go to trial, a judge or jury will hear the facts and review evidence.

AFTER COURT

- STEP 8: JUDGE OR JURY MAKES A DECISION**
At the end of the trial, the judge or jury will decide who wins the case.
- STEP 9: LOSING PARTY APPEALS THE DECISION**
The losing party can appeal the decision.
- STEP 10: JUDGE GIVES ORDER TO MOVE OUT**
If the landlord wins and there is no successful appeal, the judge will issue a legal document that allows a sheriff or constable to move you out.
- STEP 11: TENANT PROVIDED NOTICE TO MOVE OUT**
Before moving you out, the sheriff or constable must serve you with a 48-Hour Notice/ Notice to Vacate.
- STEP 12: TENANT AND BELONGINGS MOVED OUT OF UNIT**
After the 48-Hour Notice, the sheriff or constable can remove your belongings from the apartment and change the locks. There are rules on where and for how long your belongings must be stored.

LEGAL ASSISTANCE

LEGAL SERVICES

There are a number of legal service organizations and resources that may be able to assist if you're facing an eviction.

Greater Boston Legal Services (GBLS)

GBLS provides free legal help to low-income tenants in greater Boston. If you need legal help, call **617-371-1234** and speak with an advocate. GBLS holds a clinic on Mondays to help tenants respond to an eviction case; it's best to call **617-371-1234** and make a reservation.

Harvard Legal Aid Bureau (HLAB)

HLAB provides free legal help to low-income tenants in greater Boston. If you need legal help, call **617-495-4408**. HLAB is student-run and under the supervision of practicing attorneys, and may not be accepting new cases during the summer, or when school is not in session.

Volunteer Lawyer's Project (VLP)

VLP provides eviction assistance for low-income tenants and landlords who own and occupy their property. Contact VLP at **617-603-1700** through the Eastern Region Legal Intake from 9:00 AM to 12:00 PM, Monday through Friday. VLP can help determine if you are eligible for legal services and may be able to give you information or advice.

Mass Legal Help

The MassLegal Help website provides practical information about the eviction process and easy to use forms to help you respond to an eviction. Go to: www.masslegalhelp.org.

Attorney for the Day Program at Boston Housing Court

Attorneys offer free legal assistance to tenants and low-income landlords at the Boston Housing Court on Wednesday and Thursday mornings. If your eviction case is being heard at the Boston Housing Court, talk with attorneys staffing the program that day.

Court Services Information Desk

There is a Court Services Information Desk **located on the Second Floor of the Edward Brooke Courthouse (Boston Housing Court)**. The Court Services Desk may be able to provide you with information if your eviction case is at the Boston Housing Court.

Massachusetts Bar Association (MBA):

The Massachusetts Bar Association runs a Lawyer Referral Program. Referral services are free, but the attorneys will charge a fee. Call **617-654-0400** to learn more.

OTHER RESOURCES

HOUSING ASSISTANCE AND MORE

There are a number of other organizations that may be able to offer assistance if you're facing eviction, including housing search assistance, and/or financial assistance.

Metropolitan Boston Housing Partnership (MBHP)

MBHP provides housing search workshops and administers RAFT, Rental Assistance for Families in Transition, to help stabilize their housing. To learn more about MBHP's programs, call **617-859-0400**.

Homestart

Homestart offers housing search counseling for low-income households and may be able to provide rental assistance to families in subsidized properties facing eviction. To learn more about Homestart's programs, call **617-542-0338**.

Tenancy Preservation Program (TPP)

TPP is a homelessness prevention program that works with tenants who are facing eviction as the result of behavior related to a disability. Tenants are most frequently referred to this program through the court or a social service provider.

Elderly Commission, City of Boston

The Elderly Commission can provide advice and information on housing resources for Boston residents age 55 and older. To learn more about the Elderly Commission's resources and its referral partners, call **617-635-4366**.

Other non-profits or agencies may be able to offer financial assistance or housing resources; call the **Office of Housing Stability** with questions: **617-635-4200**.

ACKNOWLEDGMENT

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BEFORE COURT

STEP 1: LANDLORD PROVIDES TENANT WRITTEN NOTICE

To start the eviction process, the landlord or owner must provide you with a Notice to Quit. An example of a Notice to Quit is on page 8 of this guide. The Notice to Quit is a written document that states:

- Your landlord's intent to end the tenancy.
- The reason your landlord is ending the tenancy, if there is one.
- The number of days until the tenancy ends, most often 14 or 30 days. This time period is called "the notice period."

Landlords typically start the eviction process for three reasons:

- **Non-payment.** You have failed to pay the agreed upon rent. Typically, the notice period for a non-payment of rent case is 14 days. Some subsidized housing or voucher programs require a longer notice period.
- **Lease violation.** You have violated lease terms. This could be a violation of a lease term relating to hosting guests, smoking, noise, pets, sub-leasing, criminal activity or other lease term. This may also be called a "cause" eviction.
- **No-Fault.** If you do not have a written lease agreement, your landlord can end your tenancy and begin the eviction process even if you have paid rent on time and followed the rules. No-fault evictions often occur when: your landlord would like to sell the property, renovate the property, move in relatives or increase the rent. The notice period for a no-fault eviction is at least 30 days.

The Notice to Quit can be delivered by sheriff or constable, left at the apartment or sent by mail.

TENANT TIP: NOTICE TO QUIT

The Notice to Quit may use language that says you must "vacate" or "quit and deliver up" the apartment. You can -- but do not have to -- move out by this date. The landlord must follow a legal process to evict you.

BEFORE COURT

DO NOT IGNORE A NOTICE TO QUIT. TAKE THESE STEPS:

If you've received a Notice to Quit for non-payment:

- If you've paid the rent, find your receipts and review them with your landlord.
- If you're behind on rent, pay what's owed. If the landlord won't take the rent, document this in a letter that you send via US Mail with a return receipt requested. Make sure you keep a copy of this letter, and also set aside the rent money in an account.
- If you're behind on your rent and need time to pay, talk with your landlord about making a reasonable repayment plan; agencies or non-profits may be able to provide financial help.
- If you have a voucher and you've had a loss of income, let your leasing officer know and tell your landlord that you're looking for an adjustment. You're only responsible for your portion of the rent.
- If the notice gives you the right to request a meeting or hearing, ask for one.

If you've received a Notice to Quit for a lease violation:

- Review the lease to see whether it allows the landlord to evict you for this reason. If it does not, raise this with your landlord.
- Offer a solution to the landlord that addresses the lease violation. Solutions could be removing an unlawful pet or occupant, for example.
- Request a hearing or meeting, if the notice gives you the right.
- If you have a voucher, talk to your leasing officer. An eviction for a lease violation may lead to termination of your subsidy. Ask about ways to resolve the eviction.

If you've received a No-Fault Notice to Quit:

- If the landlord wants more rent, try to negotiate a smaller increase and no further rent increases for a certain period.
- If the landlord is selling or renovating, negotiate an agreement with the landlord that gives you adequate time and resources to move out.

BEFORE COURT

SAMPLE NOTICE TO QUIT

Tenant _____ Date _____
Address _____
City, State, Zip _____

Fourteen Days Notice to Quit for Nonpayment of Rent

Your rent being in arrears, you are hereby notified to quit and deliver up in fourteen (14) days from your receipt of this notice, the above described premises now held by you as my tenant.

If you fail to so vacate, I shall employ the due course of the law to evict you.

Signed by landlord or attorney

Reservation of Landlord's Rights

All monies paid to the landlord after your receipt of this notice will be accepted as use and occupancy and not as rent, without waiving any right to possession of the premises, and without any intention of reinstating your tenancy or establishing a new tenancy.

Cure Rights of Residential Tenant at Will

If you are a tenant at will, and if you have not received a Notice To Quit for Nonpayment of Rent within the last twelve months, you have a right to prevent termination of your tenancy by paying or tendering to your landlord, or your landlord's attorney, or to the person to whom you customarily pay your rent, the full amount of rent due within ten days after your receipt of this notice.

Cure Rights of Residential Tenant under Lease

If you are a tenant under an unexpired written lease, and you have not received a Notice to Quit for Nonpayment of Rent within the last twelve months, you have a right to prevent termination of your tenancy by paying or tendering to your landlord, or landlord's attorney, or the person to whom you customarily pay your rent, the full amount of rent due within ten days after your receipt of this notice, CHAPTER 494, ACT OF 1977.



BEFORE COURT

STEP 2: LANDLORD STARTS COURT CASE

Once the notice period (e.g., 14 days, or 30 days) runs out, your landlord can start the court eviction process. Your landlord starts the court eviction process by giving you a legal document called the Summons & Complaint. You should receive a Summons & Complaint in-person or at your apartment.

There is a standard Summons & Complaint form that is a single, two-sided document. An example of this standard form is on pages 10 and 11.

TENANT TIP: DO NOT IGNORE A SUMMONS & COMPLAINT

It will tell you:

- When you must appear in court for trial.
- Where to appear for trial, including the name and location of the courthouse.
- When the tenant's response is due (including any answer, counterclaims and/or discovery).
- How much rent, if any, the landlord claims is owed.

BEFORE COURT

Commonwealth of Massachusetts
SUMMARY PROCESS (EVICTION) SUMMONS AND COMPLAINT

_____ Department Residential Docket No. _____
_____ Division Commercial (To be added by clerk's office)
_____ ss Entry Date: _____

NOTICE OF A COURT CASE TO EVICT YOU - PLEASE READ IT CAREFULLY
ESTA ES UNA NOTIFICACION DE UN CASO EN CORTE PARA DESALOJARLE -
FAVOR DE LEER EL MISMO CON CUIDADO

TO DEFENDANT(S)/TENANT(S)/OCCUPANT(S): _____
ADDRESS: _____ CITY/TOWN: _____ ZIP: _____

You are hereby summonsed to appear at a hearing before a Judge of the Court at the time and place listed below:
DAY: _____ DATE: **TRIAL DATE** TIME: _____ COURT NAME: _____
COURT ADDRESS **APPEAR AT THE COURT LISTED HERE** ROOM: _____
to defend against the complaint of PLAINTIFF/LANDLORD/OWNER: _____

_____ of
STREET _____ CITY/TOWN: _____ ZIP: _____
that you occupy the premises at _____
being within the judicial district of this court, unlawfully and against the right of said Plaintiff/Landlord/Owner
because: _____

and further, that \$ _____ rent is owed according to the following account:

WITNESS: **ACCOUNT ANNEXED (itemize)**

First or Chief Justice

Printed Name of Plaintiff or Attorney

Signature of Plaintiff or Attorney

Date of Signature of Plaintiff or Attorney

Address of Plaintiff or Attorney

Telephone Number of Plaintiff or Attorney

**ALL PARTIES MUST
APPEAR IN COURT ON
THE TRIAL DATE.**

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT: At the hearing on **TRIAL DATE** you (or your attorney) must appear in person to present your defense. You (or your attorney) must also file a written answer to this complaint. An answer is your response stating the reason(s) why you should not be evicted and may, in residential cases, include any claims you have against the Landlord. (An Answer Form is available in the clerk's office whose telephone number is **CLERK'S PHONE NO.**) You must file (deliver or mail) the answer with the court clerk and serve (deliver or mail) a copy on the landlord (or landlord's attorney) at the address shown above. **The Answer must be received by the court clerk and received by the landlord (or the landlord's attorney) no later than Monday, ANSWER DUE DATE,** which is the first Monday after the "entry date" listed above. The entry date is the day by which your landlord must file this complaint with the court clerk.

**THE ANSWER & DISCOVERY
DEADLINE IS TYPED HERE.
SAMPLE FORMS ARE AVAILABLE**



BEFORE COURT

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT: IF YOU DO NOT FILE AND SERVE AN ANSWER, OR IF YOU DO NOT DEFEND AT THE TIME OF THE HEARING, JUDGMENT MAY BE ENTERED AGAINST YOU FOR POSSESSION AND THE RENT AS REQUESTED IN THE COMPLAINT.

SI USTED NO REGISTRA O NOTIFICA UNA CONTESTA, O SI USTED NO PRESENTA UNA DEFENSA A LA HORA DE LA AUDIENCIA, UNA SENTENCIA PUEDE SER REGISTRADA EN SU CONTRA PARA POSECCION Y POR LA RENTA REQUERIDA EN EL RECLAMO.

To the Sheriffs of our several counties, or their Deputies, or any Constable of any City or Town within said Commonwealth, GREETINGS: We command you to summon the within named defendant(s)/tenant(s)/occupant(s) to appear as herein ordered.

Clerk-Magistrate

Officer's Return

THE SUMMONS AND COMPLAINT MUST BE SERVED BY SHERIFF, CONSTABLE OR DISINTERESTED THIRD PARTY

_____, ss City/Town: _____ Date: _____

By virtue of this Writ, I this day served the within-named tenant or occupant, and summonsed him/her as herein directed, by giving in hand to _____ or leaving it at _____ the last and usual place of abode. A copy of this summons was mailed first class to each tenant/occupant at the address on: _____.

Fees for Service:

- Service \$ _____
- Copy/Attest _____
- Travel _____
- Use of Car _____
- Mailing _____

TOTAL \$ _____

Signature of Officer

Printed Name of Officer

Address of Officer

Telephone Number of Officer

NOTICE TO PLAINTIFF/LANDLORD/OWNER: Have the Officer complete and return above. Service must be made on the defendant(s) no later than the seventh day and not earlier than the thirtieth day before the Monday entry date. This form must be filed in court no later than the close of business on the scheduled Monday entry date. In appropriate cases, proper evidence of notice to quit must be provided to this court upon the filing of this complaint. See Uniform Summary Process Rule 2(d). According to Uniform Summary Process Rule 2(c), the hearing date is the second Thursday after the entry date. In some courts, the hearing date is the second Monday, third Tuesday, third Wednesday, or second Friday.

Amended effective: 09/01/05

IF YOU RECEIVE A SUMMONS AND COMPLAINT AND HAVE QUESTIONS, CALL THE OFFICE OF HOUSING STABILITY: 617-635-4200



BEFORE COURT

STEP 3: TENANT RESPONDS TO LANDLORD'S CASE

As a tenant, you have the right to respond to the case made by your landlord. Your response may include filing the following documents:

- **Answer:** Tenant's response and defenses to claims made by the landlord in the Complaint.
- **Counterclaim.** Claims the tenant has against the landlord. The counterclaims, if successful, can reduce the amount you owe or may even mean the landlord owes you money. You do not have the right to bring counterclaims if you are being evicted for a lease violation.
- **Motion to Dismiss.** A request to the court to throw out the landlord's case. If successful, this will end your landlord's case against you, or require them to begin the process again.
- **Discovery.** A request for more information from your landlord. The timely filing of discovery automatically postpones the trial date two weeks, but will rarely stop an eviction.

There are sample response forms available. Mass Legal Help website offers sample Answer and Counterclaims Forms, Motions to Dismiss and Discovery, with easy-to-use templates. The Massachusetts Court offers a variety of sample eviction forms, including an Answer Form.

Below, we highlight common defenses, counterclaims and reasons for a motion to dismiss that you may be able to use. If you have any questions about whether you should assert a particular defense or claim, ask an attorney or legal services organization.

Common Defenses

1. **Defective or no Notice to Quit.** The landlord did not provide a Notice to Quit or the Notice to Quit did not have all the required information.
2. **Defective Summary Process Complaint.** This could include, for example, misspelled occupant names, stating a different reason for the eviction in the Notice to Quit and Summary Process Complaint, or filing the Summons and Complaint before the notice period ended.
3. **Unlawful Discrimination.** Discrimination is the unlawful mistreatment based on: race, color, religious creed, national origin, sex, sexual orientation, age, ancestry, marital status, disability, presence of minor children or receipt of public assistance or a rental subsidy. It can include refusal to rent or offering to rent on different terms.

BEFORE COURT

4. **Denied/Entitled to a Reasonable Accommodation.** Tenants have the right to reasonable accommodations if they or a member of their household has a disability. A reasonable accommodation is a change to a rule or policy that allows a person with a disability to fully enjoy the apartment.
5. **Eviction is Retaliatory.** Your landlord cannot retaliate against you because you exercise your legal rights.
6. **Tenancy Reinstated.** Tenant paid the amount due by the Answer Date or the parties signed a new lease.
7. **No Significant Lease Violation.** The violation was minor or can be corrected through means other than eviction.

Common Counterclaims (In Non-Payment And No-Fault Evictions)

1. **Breach of Warranty of Habitability.** Landlord failed to provide safe and decent housing, e.g., lack of heat in winter, lack of water and/or hot water, bugs, mice, or other pests.
2. **Breach of Quiet Enjoyment.** Landlord unreasonably interfered with your use of the apartment. Some examples include: failure to enforce property rules on noise or smoking; entering the unit for improper reasons or without proper notice.
3. **Security Deposit Law Violation.** Landlord did not lawfully take, account for, or return a security deposit.
4. **Improper Rent or Adjustment.** For tenants in subsidized or public housing, rent was not accurately set or adjusted and the landlord is seeking money you do not owe.

Common Bases for Motion to Dismiss

1. **You did not receive a Notice to Quit.** Your landlord must provide you with a Notice to Quit before filing a case in court.
2. **The Landlord started the Court Process too soon.** You received the Summary Process Complaint before the time period stated in the Notice to Quit.
3. **You cured a non-payment.** You have a written lease and paid all the rent you owed.
4. **Notice and Hearing Rights Denied.** Your landlord didn't follow notice or pre-court hearing requirements found in a public housing or subsidized housing tenancy.

BEFORE COURT

How to File the Answer, Counterclaim, or Discovery

- **When:** The tenant must deliver the Answer (and Counterclaims) to the court and landlord (or landlord's attorney) by the date listed in the box at the bottom of the Summons and Complaint (see sample above). At the same time, you must file Discovery with the court no later than the Monday before the trial date and provide it to the landlord or landlord's attorney.
- **Where:** You must deliver the Answer (and Counterclaims) to the court and landlord or landlord's Attorney. The landlord's attorney may accept a copy by email or fax.
- **Cost.** There is no cost to the tenant to file an Answer or Counterclaim or Discovery.

TENANT TIP: TRANSFERRING A CASE TO THE BOSTON HOUSING COURT

If your landlord files a summary process case in one of the District Court divisions of the Boston Municipal Court, you have the right to transfer the case to the Boston Housing Court. You can find the Court Division in the upper left hand corner of the Summons and Complaint.

Why Transfer?

- Boston Housing Court judges only hear housing cases
- The Clerk's staff has a greater expertise in housing matters.
- Mediation and legal help is available through the Lawyer for the Day Program.

How to Transfer: Complete the Notice to Transfer form (available on the Mass Court website) and file it in three places: the District Court; the Housing Court; and with the landlord (or landlord's attorney).

You must file the Notice to Transfer form by the day before the original court date. There is no cost to transfer an existing case to the Housing Court.

BEFORE COURT

STEP 4: PREPARING FOR TRIAL

Before you go to court, be prepared.

You should have all paperwork and witnesses ready for court. Judges are unlikely to give you more time or a new trial date because the paperwork is at home.

You can organize your paperwork and any witnesses in advance. This may mean printing out your communications, requesting any citations issued by the Inspectional Services Department (ISD) or another agency, ordering your paperwork in a logical fashion and preparing questions for your witnesses and the witnesses you expect your landlord will call (such as a property manager).

TENANT TIP: WHAT TO BRING TO TRIAL

- **Copies of the rental agreement**
- **Receipts of payment in a non-payment case**
- **Pictures or written documentation of any apartment condition at issue**
- **Citations from the Inspectional Services Department, if apartment condition at issue**
- **Any letters, e-mails, or communications that document offers to cure complaints that the landlord may have with you (non-payment, pets, etc.). Be sure to bring receipts for any letters sent by registered mail.**

AT COURT

STEP 5: APPEARING IN COURT

It is important to appear in court at the date and time indicated on any court notice. Failure to appear can result in the loss of your housing.

Appearing In Boston Housing Court

The Boston Housing Court is located at 24 New Chardon Street (the Edward W. Brooke Courthouse). You will have to go through security to enter. Be sure to leave plenty of time to get through security, check-in and find a seat in the courtroom.

Tenants should proceed to the Fifth Floor to check-in and confirm courtroom assignment.

When court begins, the judges will take the bench and explain the Housing Court process.

When the judges finish, the clerks in each courtroom will call the names of the parties scheduled to appear in that courtroom at that time. As the clerk calls out the names of the parties, he or she will ask whether the parties would like to participate in mediation. When it is your turn, you should respond loudly and clearly that you are present and say whether you wish to take part in mediation.

TENANT TIP: LEGAL HELP IS AVAILABLE; KNOW WHERE TO FIND IT

Tenants may seek assistance from the Lawyer for the Day table, staffed by attorneys from legal service organizations and volunteers,

You can find these attorneys in the Boston Housing Court outside of the Courtrooms on the Fifth Floor and outside of the Clerk's Office on the Third Floor.

AT COURT

Appearing In District Court

If your case will be heard in one of the District Courts, go to the court identified in the Summons & Complaint on the day and time listed. You can expect to go through security and should leave plenty of time to find the courthouse and your courtroom. Confirm the courtroom assignment with the clerk's office. The judge will likely hear your case with other civil and criminal matters. When the courtroom clerk calls your name, respond clearly and loudly that you are present. If the clerk finishes calling the cases and your name is not called, verify with courtroom staff that you are in the correct courtroom. Some District Courts, although not all, have mediation and/or legal services available. Ask the clerk about these services.

Failure To Appear

If you do not appear in court, the judge will rule in favor of your landlord and you will be evicted. You may need to miss work or arrange for alternate childcare. If you have another event which cannot be re-scheduled, like surgery or attendance at a funeral, contact your landlord or their attorney and see if they will agree to postpone the case.

If you do not appear in court, the judge enters a decision called a "default judgment." The court will mail you a copy of the default judgment. If you receive a default judgment, you should seek legal help with filing a motion to vacate the default judgment. A motion to vacate asks the court to take the default judgment off the record and allow a trial. You must file a motion to vacate the default judgment within ten days of the default judgment and must:

1. state a good reason for missing the original court date; and
2. show that you had a defense to eviction.

If you are unsuccessful in removing the default judgment, the court will issue an execution. The execution allows a constable or sheriff to move you and your belongings from the apartment.

If the landlord fails to appear, the court may dismiss the landlord's case.

AT COURT

STEP 6: TENANT AND LANDLORD CAN REACH AN AGREEMENT: MEDIATION/NEGOTIATION

Negotiation and mediation are alternatives to trial that allow the parties to come to an agreement to resolve the case. You are not required to come to an agreement. If you cannot reach an agreement, you will have a trial. The mediators and parties must keep the discussion at mediation confidential.

In a mediation you will have a third party present - a mediator - who can help the parties reach a resolution.

The wait time for a mediator can be long. Landlords or their attorneys may approach you about directly negotiating a settlement. You may be negotiating for yourself against your landlord's lawyer; be sure to advocate for your own interests.

The settlement terms must be put in writing, signed by both parties, and provided to the court. The court can enforce the settlement agreement.

TENANT TIPS FOR A SUCCESSFUL MEDIATION OR NEGOTIATION

- Do not agree to terms you don't understand; have unclear terms explained or re-written.
- If you agree to a repayment plan, be realistic about what you can afford. If you miss a payment, your landlord can bring you back into court and ask the judge to order you to move out.
- If you agree to move out, make sure that you have enough time to find a new place and money to pay moving costs (this could include first and last month's rent, and a security deposit at a new place).
- In a no-fault case, there are certain rights to request a "stay of execution" -- that allow you to ask for more time to move out. Ask an attorney what "stay of execution" rights you have.
- The attorneys at the Lawyer for the Day table can help negotiate or review an agreement.
- If you have a voucher, and the landlord is evicting you for a lease violation, you could lose your voucher. Try to resolve the case in a way that will not impact your voucher. Talk to an attorney.

AT COURT

STEP 7: TENANT AND LANDLORD CAN HAVE A TRIAL

If the parties are unable to resolve the case at mediation, the judge will hold a trial. A trial is an opportunity for each side to present his or her case.

Most trials will have these steps:

- **Opening Statements.** An opening statement is an opportunity for both sides to summarize their side of the story to the court.
- **Landlord's Presentation of Case.** The landlord will present witnesses and documents in support of their case. Tenants will have an opportunity to question their landlord's witnesses and challenge the documents the landlord tries to present.
- **Tenant's Presentation of Defense.** The tenant can present witnesses and documents in their defense. This is the tenant's opportunity to present evidence of why the landlord should not win their case. If the tenant has asserted counterclaims, the tenant can also present witnesses and documents in support of their counterclaims. The landlord will have an opportunity to question the tenant's witnesses and challenge any documents the tenant tries to present to the court.
- **Closing Statements.** An opportunity for both sides to summarize their side of the story to the court and to ask the court to make a decision in their favor.

The court will hold all parties to the rules of procedure and evidence during the trial. Therefore, it is important to seek advice or help from legal counsel before representing yourself in court. If you're in Boston Housing Court, ask the attorneys at the Lawyer for the Day table for help.

AFTER COURT

STEP 8: JUDGE OR JURY MAKES A DECISION

At the end of the trial, the judge or jury will typically take the matter “under advisement.” This means that the judge will review the facts presented at trial and make a decision later. The judge’s decision is called a Judgment. The court will send you the Judgment by mail. The Judgment will say who is entitled to possession of the apartment and how much money, if any, is awarded.

STEP 9: LOSING PARTY APPEALS THE DECISION

If the landlord wins the eviction case, but you believe the judge made an error, you may appeal the decision. This will postpone the eviction, but you must act within 10 days of the date on the Judgment or you lose the opportunity to appeal.

Before you are allowed to appeal, you normally have to pay the court to cover any back rent you owe and other costs. This is called an appeal bond. The court may waive the appeal bond. Ask the Clerk’s Office for more information. The appeals process is complicated; it is best to get detailed legal help.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK SUPERIOR COURT
SUCV2006-00000

MARY MOE

v.

BOSTON GENERAL HOSPITAL

NOTICE OF APPEAL

Mary Moe gives notice that she appeals from the judgment which entered against her on July 16, 2008.

Mary Moe
123 Main Street
Boston, MA 02108
617-555-1234

SAMPLE

AFTER COURT

STEP 10: JUDGE GIVES THE ORDER TO MOVE OUT

If the judge rules in favor of your landlord, the landlord must wait at least ten days after the decision to get an execution. The execution is the piece of paper that allows a constable or sheriff to legally remove you, your family and your belongings from the apartment.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
EXECUTION ON JUDGMENT FOR SUMMARY PROCESS

No. 00-XX-00000

To the Sheriffs of our several Counties, their Deputies, or to any Constable of any City or Town within the Commonwealth, Greeting:

BY ORDER of the Judge of the HOUSING COURT,
Plaintiff
Recovered Judgment on , against
Defendant

For Possession of premises at , and

For:

Compensatory Damages	\$.00
Punitive Damages	\$	0.00
Attorney Fees	\$	0.00
Prejudgment Interest	\$.00
Court Costs	\$.00
Judgment Total	\$.00
Postjudgment Interest	\$	0.00
Execution Total	\$.00

We command you, therefore, to deliver said premises to the plaintiff, and to collect the above sum, with your fees, of the money of said judgment-debtor, or his or her goods, chattels, lands or tenements, in any manner permitted by law, and to return this writ, satisfied or unsatisfied, to the Clerk of this Court, all within twenty years of the date of judgment, or within ten days after this writ has been satisfied or discharged.

WITNES\$:
Court, on _____ Judge of the Housing
_____ Clerk Magistrate

NOTICE TO OFFICER: This Execution may not be used to recover possession after

This execution is returned to Court in [no part] [part] satisfied [for the sum of _____], never having been in the hands of an officer.

Attorney for Plaintiff

ECMS: EXON-SP

AFTER COURT

Stay of Execution (in No Fault Evictions)

If you are facing a no-fault eviction, you may file a motion with the court asking the court to delay the eviction (called a “stay of eviction”) for up to 6 months to find new housing. The clerk’s office or a legal services organization may be able to help you file this request with the court. If you or someone in your household is disabled or over 60 years old, you may request up to 12 months to find new housing. Judges may grant more time to move out even if it is not a “no fault” case if the judge thinks it is appropriate.

STEP 11: TENANT PROVIDED NOTICE TO MOVE OUT

You must be given a written notice at least 48 hours before the date and time that the constable or sheriff will be coming to your apartment to use the execution to move you and your family out. You cannot be moved out on a weekend or legal holiday, and you can only be moved out during business hours. An example of a Notice to Vacate is on page 23.

If you receive a 48-hour notice, and you weren’t expecting it, you should go to the court immediately and seek an emergency stay. It may be that there was a court hearing that you missed and you can show that you didn’t get notice of the hearing.

If you’ve received a 48-hour notice and need a limited amount of time to move out, you can go to the court that issued the execution and request to file a Temporary Restraining Order (TRO) to prevent the immediate eviction. There is a fee associated with filing the request, but it may be waived depending on your income. If successful, this will only give you a few more days (typically ten days) to move out.

STEP 12: TENANT AND BELONGINGS MOVED OUT OF UNIT

If you do not remove your belongings from the apartment by the deadline, movers will come to remove your property. Your belongings must be taken to a warehouse. You may be able to ask the movers to take your belongings to a specific location. The 48-hour notice you received will give you information on the storage of your belongings, including:

- Information about the warehouse where your property will be stored after eviction;
- Notice of the storage fees for that warehouse;
- Notice that the warehouse may sell your property after six months;
- Notice that you must inform the warehouse if your address changes; and
- Notice of how to reclaim your property
- If your notice does not include all these items, or if your landlord dumps your belongings on the street or in the trash, call the court that ordered the eviction to stop it.

AFTER COURT

Date

Tenant

Apartment

Street

City, State, Zip

Forty-Eight Hours Notice to Vacate Premises

On information from the City of _____
Police Department (which is enclosed), I hereby elect to annul and void
your lease and tenancy, under the public nuisance law, Massachusetts
General Law chapter 139 § 19, effective immediately.

You have forty-eight (48) hours from the date of this notice to remove all
belongings, surrender all keys, and leave the premises.

If you fail to so vacate, I shall employ the due course of law to evict you.

Signed by landlord or attorney

The Constable

Name

Street

City, State, Zip

Telephone

AFTER COURT

EMERGENCY SHELTER

Individual Eligibility. Emergency shelter options exist but intake hours and policies vary.

Family Eligibility. Families may be eligible for emergency shelter assistance, but the rules are very strict, and there is no guarantee you will get into shelter. You must be a resident of Massachusetts, meet the income standard, and either be pregnant or have children under 21. Also, your reason for homelessness must be one of the following: foreclosure, condemnation of your house or apartment, fleeing domestic violence (current or within the past 12 months), no-fault eviction (which may include eviction from private housing for nonpayment of rent where there was a change in circumstances, such as loss of income or increase of rent), or children exposed to a substantial health and safety risk. If you are evicted from subsidized housing, the state may bar you from accessing emergency shelter for 3 years.

Getting Help. Boston families should apply for emergency shelter in person at the Department of Transitional Assistance (DTA) 1010 Massachusetts Avenue. Individuals can contact the Office of Housing Stability at **617-635-4200 (select option 1)** to learn more about shelter options.

FAMILY EMERGENCY SHELTER TIP

Do not refuse a shelter placement or you will lose your right to shelter for 12 months. You can appeal a placement that is too far away from your community.

APPENDIX: DEFINITIONS

Answer: The tenant's response to the landlord's complaint. It should set out any defenses that the tenant has to the eviction as well as any claims (counterclaims) that the tenant is asserting against the landlord, if counterclaims are permissible. **Step 3**

Appeal: A legal process by which a case is brought before a higher court for review of the decision of a lower court. **Step 9**

Complaint: A document which starts a court case and states the landlord's claims against the tenant in the eviction proceeding. **Step 2**

Constable: A public officer responsible for certain duties, such as serving court papers and enforcing court judgments. **Step 12**

Default Judgment: A court ruling made when one party fails to appear in court or perform a court-ordered action. In an eviction case, if a tenant does not appear in court, the judgment would be in favor of the landlord, and can lead to eviction and money damages. **Step 7**

Defenses: Legal or factual reasons the landlord should not win the case. **Step 3**

Discrimination: Unlawful mistreatment of a tenant based on the age, race, national origin, sex, sexual orientation, disability, religion, receipt of public or rental assistance, presence of children, or other protected characteristics of a household member. **Step 3**

Eviction: The legal process by which a landlord removes a tenant from property. **Step 1**

Execution: A legal document entitling a landlord to move out a tenant. **Step 10**

Housing Court: A court that hears only housing and landlord/tenant disputes. There is a Boston Housing Court which covers all of the City of Boston. The Boston Housing Court is located in the Edward Brooke Courthouse at 24 New Chardon Street. **Step 7**

Lawyer For a Day: A Housing Court program where volunteer attorneys assist tenants. **Step 7**

Lease: A contract between landlord and tenant giving the tenant the right to live in the apartment for a specified amount of time, at a specified amount of rent. The lease may also contain provisions that explain what actions are or are not allowed. **Step 1**

Mediation: The tenant and landlord agree to sit down with a person who has been trained to help people resolve disputes. This person will work to understand both sides of the issue and to find a solution. If both sides agree, the eviction case will not continue to a trial. **Step 6**

Motion to Dismiss: In an eviction case, a tenant's motion to dismiss asks the court to "throw out" the landlord's case. **Step 3**

APPENDIX: DEFINITIONS

No Fault Eviction: Occurs when a tenancy at will or lease ends or is terminated for no reason, or for a reason which isn't related to a lease violation or nonpayment of rent. **Step 1**

Non-Payment of Rent: Eviction based on failure to make rent payments. **Step 1**

Notice to Quit: The written notice from a landlord to the tenant asking that they leave the premises by a certain date, ending their tenancy. **Step 1**

Quiet Enjoyment: The right to live in a home without unreasonable interference. As a defense against eviction, the landlord or someone under the landlord's control is interfering with the tenant's enjoyment of their home, because of excessive noise, smoke, odor, etc. **Step 3**

Retaliation: When a landlord acts against a tenant after the tenant engages in a lawful activity. Retaliatory action may include eviction, rent increases, or other negative treatment. **Step 3**

Settlement: An agreement reached between opposing parties resolving the conflict without a judgment from the court. **Step 6**

Sheriff: Public official responsible for certain legal functions, including serving of court papers and enforcing court judgments. **Step 7**

Stay of Execution (Motion to Stay Eviction): A delay in carrying out a court order. In the eviction context, the tenant asks the judge to postpone their eviction for up to six months (or 12 months if someone in the tenant's home is disabled or 60 years of age or older) in order to find new housing. **Step 9**

Summary Process: Another term for the eviction process, including the trial. **Step 2**

Summons and Complaint: The two-sided document which the landlord must serve upon a tenant to start court proceedings for eviction. The Summons and Complaint will identify the court where you are to appear, when to appear, and when an answer is due. **Step 2**

Tenant at Will: When a tenant lives in an apartment without a lease but with the permission of their landlord. This is the most common type of tenancy. It is also referred to as month-to-month tenancy. **Step 1**

Violation of Lease Provision (Type of Eviction): Tenants may be evicted for actions that are not allowed in the terms of their lease. **Step 1**

Warranty of Habitability: This requires landlords to keep their property safe and livable, in compliance with the State Sanitary Code and Building Code. **Step 3**

NOTES



City of Boston
Mayor Martin J. Walsh



NEIGHBORHOOD
DEVELOPMENT