Appeals

In All Housing Courts

Representing Yourself in an Eviction Case

If you lose your eviction trial and think you have a good case, you may appeal and have your case reviewed in a higher court. To appeal, you must act quickly. If you cannot afford the cost of appealing your case, make sure you have **Booklet 9: Affidavit of Indigency**.

The forms in this booklet will only get you started with your appeal. But because the appeal process is complicated, you should try to get a lawyer as soon as possible.

Who Can Use This Booklet?

- ☐ The forms in this booklet are for tenants who have lost an eviction trial in a Massachusetts Housing Court.
- ☐ If your case was in a District Court, you should use Booklet 7B.

BOOKLET

7A

Produced by the Mass. Law Reform Institute with assistance from legal services offices in Massachusetts and available at www.MassLegalHelp.org.
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What Happens If You Appeal?

If your eviction trial was in a Housing Court and you appeal, there is no second trial. The appeal is to the Appeals Court. The purpose of this appeal is to **review the court's decision to see if there were any legal mistakes**. You do not get another trial.

When Do You Appeal?

You must deliver the forms in this booklet to the court in which your case was heard **within 10 days** of when that court "enters a judgment" in your case or you lose your right to appeal. A *judgment* is the official decision of the judge. **Be very careful**—the forms in this booklet must be filed within 10 days of when the court **enters** a judgment, **NOT** within 10 days of when you **receive** a notice of a judgment.

The notice of judgment you receive from the court should state the date on which the judgment was "entered." If you are not sure what this date is, call the court as soon as you receive the court's judgment and ask a clerk to tell you. If you do not receive a notice of the judgment within 7 or 8 days after your trial, call the court and ask the clerk whether a judgment has been "entered" and on what date. You should follow up with calls every 7 days or so because you need to know as soon as the court enters a judgment so that you can file these forms right away and not miss the appeal deadline.

Is There a Court Fee to Appeal?

Before you can move on with an appeal in your case, you may have to pay money into court to cover back rent, if any, and other costs. This is called an **appeal bond**. If there was no money judgment for the landlord or if the tenant is no longer in the apartment, there should be no bond.

There is also an **entry fee** to file the appeal, which is due not when you first file your appeal, but after the court (where your case was first heard) assembles all the court documents. To find out what the entry fee is call the Clerk's office at the Appeals Court at 617-725-8106. In addition, you need to get a copy of the tape recording and/or transcript of the tape of your trial. (Each tape costs about $50.50. The cost for the transcription of the tape varies.)

If you cannot afford these costs, you should fill out Form 2 in this booklet and ask the court to *waive* (not require you to pay) the appeal bond and other costs. You must also fill out the forms in **Booklet 9: Affidavit of Indigency** in order to request that the court approve state payment of the entry fee and other costs. (***Note:*** Even if a judge does waive the bond, s/he will likely require you to pay all or part of your current rent each month until your appeal is heard.)

How To Appeal Your Case

Fill Out the Appeals Forms

The top of the forms in this booklet should all be filled out the same.
The letters in the instructions below match those on each of the forms.

a. Write the name of your county.
b. Write the landlord's name as it is written on the Summons and Complaint.
c. Write your name as it is written on the Summons and Complaint.
d. Copy the name of the court from the Summons and Complaint.
e. Fill in the Docket Number, which is the number the court has given your case. You can ask the court for it.

Form 1: Notice of Appeal

To appeal your case, you must file Form 1. **The numbers in the instructions below match those on Form 1.**

1. Fill in the date judgment was "entered." This date will be on the Notice of Judgment sent to you by the court.

3. Circle whether you delivered or mailed this form to your landlord or the landlord's lawyer and fill in the date you did this.

4. Sign and fill in your name, address, and phone number.

Form 2: Motion to Waive Appeal Bond and Other Costs

If you cannot afford an appeal bond, the entry fee for the appeal, or the cost of obtaining and transcribing the tapes of your hearing, fill in Form 2. **The numbers in the instructions below match those on Form 2.**

1. Attach a copy of your Answer from the eviction case or list the legal defenses to your eviction case. *(For a list of defenses, see **Booklet 3: Answer**.)*

2. If you are willing to pay the full rent while waiting for your appeal, check Box 2 and fill in the amount of the rent.

3. If your rent is subsidized, check Box 3 and fill in your portion of the current rent.

4. If you still have bad conditions in your apartment and want a rent reduction before your appeal is heard, check Box 4, fill in the amount of rent you think is fair, and list the conditions or refer to and attach a Board of Health (or Inspectional Services Department) report.

5. Circle whether you delivered or mailed this form to your landlord or the landlord's lawyer and fill in the date you did this.

6. Sign and fill in your name, address, and phone number.

Court Form for Getting Tapes

In most cases, you will need a copy of the tape recording of your trial. To get the tape, you will need to fill out and submit the "Cassette Copy Order Form" available at the clerk's office. You will need to do this when you file your Notice of Appeal.

Deliver Forms

When the forms are completed, remove them from the booklet by taking out the staples. Make 2 additional copies. Take the original to court. Give one copy to your landlord or his/her lawyer and keep the remaining copy for yourself.

Also at this time, give the court the completed original of any forms from **Booklet 9: Affidavit of Indigency** that you need to submit. Make and save a copy for yourself. (You do not need to deliver the forms in **Booklet 9** to the landlord or the landlord's lawyer.)

Remember: You must get these forms to the court where your case was originally heard **within 10 days** of when judgment was entered or you lose your right to appeal. On the same day you get the forms to the court, you must mail or deliver the copies of the forms to the landlord's lawyer (or to the landlord, if the landlord has no lawyer).

Prepare for the Appeal Bond Hearing

Before the appeal is heard, there will be an **appeal bond** hearing where the judge decides if you have to pay an appeal bond, and, if so, how much.

Soon after you get the forms to the court, you should receive a card, letter or call from the court clerk giving you the date and time for your appeal bond hearing. This hearing will be held in the court where your case was originally heard.

When you go to court for the appeal bond hearing, tell the judge that you want to appeal and whether or not you can afford the appeal bond. Then **briefly** tell the judge what your legal *defenses* are. Refer to the defenses you listed on your Motion to Waive Appeal Bond and Other Costs (Form 2 in this booklet) or the **Answer** form in **Booklet 3**. If you still have bad conditions in your home, tell the judge what they are and how much rent you think is fair for you to pay until the appeal is heard.

If you are *indigent* (low-income) **and** you have a legal *defense* to the case that is not *frivolous* (which means you have more than a "prayer of a chance" of winning your appeal), the law requires the judge to *waive* the appeal bond (in other words, you will not be required to pay the appeal bond). But, even if the appeal bond is waived, you will still be required to make monthly rent payments to the landlord during the appeal in an amount to be determined by the judge.

Look for the Court's Decision

Soon after the appeal bond hearing, you should receive written notice of the judge's decision. If you do not receive the court's decision, call and ask the court clerk about it.

If you won, the notice will tell you that you do not have to pay an appeal bond (or that it is *waived*). The notice will also tell you the amount of rent that the judge requires you to pay to your landlord each month as a condition for waiver of the bond. If you are not sure what is required, who is to be paid, or when the payments are due, ask the court clerk. **Your failure to make any payments ordered by the court can lead to dismissal of your appeal—which means your landlord will be able to evict you.**

> *Note: There are a lot of technical requirements and deadlines, so try to get a lawyer to help you. If you are unable to get legal help, look at the "Massachusetts Rules of Appellate Procedure" found in the book* ***Massachusetts Rules of Court****, available in law libraries or possibly other libraries.*

If you lost, the notice will say that you have to pay an appeal bond to the court.

If it is more than you can afford, or if the judge set a monthly rent payment that you think is unfair because of the conditions in your home, you have the right to ask a higher court to review that decision. **You must act quickly and do this within 6 days of the court's decision.** See the section in this booklet called **What to Do If You Lose the Appeal Bond Hearing**.

FORM 1

Please print or type

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

a. _____, ss:
County

b. _____
Plaintiff(s) – Landlord(s)

vs.

c. _____
Defendant(s) – Tenants(s)

d. _____
Name of Court

e. _____
Docket No. Summary Process

NOTICE OF APPEAL

1. The defendant (tenant) hereby appeals from the judgment of this Court entered on _____(*date judgment entered*).

2. The defendant further requests that the Court provide him/her with a copy of the tape of the proceedings in the above-captioned action. This notice is accompanied by a Motion to Waive Appeal Bond and Other Costs in conjunction with such tapes, the appeal bond, and the appellate court entry fee.

3. I delivered or mailed (*circle which one*) a copy of this Notice of Appeal to my landlord or to his/her lawyer on _____(*date*).

4.

_____	_____
Signature of Tenant	Signature of Tenant
_____	_____
Tenant's Name (*print*)	Tenant's Name (*print*)
_____	_____
Address	Address
_____	_____
City State Zip	City State Zip
_____	_____
Telephone Number	Telephone Number

FORM 2

Please print or type

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

a. _____, ss:
County

b. _____
Plaintiff(s) – Landlord(s)

vs.

c. _____
Defendant(s) – Tenants(s)

d. _____
Name of Court

e. _____
Docket No. Summary Process

MOTION TO WAIVE APPEAL BOND AND OTHER COSTS

The defendant (tenant) requests that this Court waive the appeal bond, the appellate entry fee, and the costs of obtaining and transcribing the tape recording of this case because the tenant does not have enough money to pay those costs and requiring payment would deprive the tenant of the right to appeal.

The tenant meets the M.G.L. c. 239, §5 appeal bond waiver standard in that:

1. The tenant is indigent within the meaning of M.G.L. c. 261, §27A, and the tenant has non-frivolous* defenses in this case, as set forth in the Answer or as follows:
_____

***A frivolous defense is one which "...would not have a prayer of a chance." *Pires v. Commonwealth*, 373 Mass. 829, 838 (1977).**

The tenant requests that the following payments during the appeal be ordered under M.G.L. c. 239, §5:

2. ☐ Full contract rent of $_____at the usual time each month.

3. ☐ Tenant's portion of the subsidized rent as calculated under the applicable subsidy rules at the usual time each month. This amount is currently $_____.

4. ☐ The fair value of the home, $_____, at the usual time each month. Payments should be reduced because the following substandard conditions still exist in the tenant's apartment:
_____

5. I delivered or mailed (*circle which one*) a copy of this Motion to my landlord or to his/her lawyer on _____(*date*).

6.

_____	_____
Signature of Tenant	Signature of Tenant
_____	_____
Tenant's Name (*print*)	Tenant's Name (*print*)
_____	_____
Address	Address
_____	_____
City State Zip	City State Zip
_____	_____
Telephone Number	Telephone Number

What To Do If You Lose The Appeal Bond Hearing

If a judge says that you have to pay an appeal bond in an amount more than you can afford, or a judge sets your monthly rent payments higher than you think is fair given the conditions in your home, you have the right to a second hearing. Here are the instructions for getting a second appeal bond hearing.

Fill Out Form 3

Fill out Form 3 the exact same way you filled out Form 2 in this booklet.

In the box that starts off "Dear Clerk," **fill in the date** on which the court entered orders relating to your appeal bond.

When the form is completed, make 2 additional copies. Give the original to the court where your appeal bond motion was originally heard and one copy to your landlord (or your landlord's lawyer). Keep the remaining copy for yourself.

You must deliver Form 3 to the court where your appeal bond hearing was held and to the landlord (or the landlord's lawyer) **within 6 days** of the judge's decision about your appeal bond. **If you do <u>not</u> do this within 6 days, you will <u>not</u> get a second hearing.**

Go to the Review Hearing

Soon after you get Form 3 to the court, you should receive a notice telling you the date of the second hearing. The second hearing will be held in a different court from where the first hearing was held. It will be in the Massachusetts Appeals Court. If you are not sure where the hearing will be held, ask the clerk in the court where your case was originally heard.

Get to the court on time. When your case is called, tell the judge **briefly** what your *defenses* are. Refer to the defenses you listed on your Request for Review of Orders Relating to Appeal Bond (Form 3) or the **Answer** form in **Booklet 3**. Show the judge any documents about bad conditions, such as inspection reports and pictures. Also bring any documents that show your income. **Be prepared to explain why you cannot afford to pay the bond and other costs.**

> The law requires the judge to *waive* (not require you to pay) the appeal bond if you are *indigent* (low-income) and you have a defense to the case that is not *frivolous* (which means you have more than a "prayer of a chance" of winning your appeal). Even if the appeal bond is waived, you will still be required to make monthly rent payments to the landlord during the appeal in an amount to be determined by the judge.

Then tell the judge why you think the first decision on the appeal bond was wrong. For example:

- You are poor (unemployed, on TAFDC, etc.), so the first judge should not have ordered you to pay any appeal bond.
- You have valid legal *defenses*.
- You still have bad conditions in your house or apartment, so the judge should have let you pay **less** than the full rent until the appeal is heard.

Look for the Court's Decision

Soon after your second hearing, you should receive written notice of the court's decision. If you do not, call the court clerk to see if and when a decision was made.

If the bond is ***waived*** (that is, you do not have to pay it), you must then take the next step in your appeal. You will also need to pay any rent that the judge may have required as a condition for a waiver of the bond. If you are not sure what is required, who is to be paid, or when the payments are due, check with the court clerk. Your failure to make these payments can lead to dismissal of your appeal (which means that your landlord will be able to evict you).

If the bond is ***not waived*** (that is, you are ordered to pay it), you have **5 days** to comply with this decision and to make all required payments to the Housing Court that issued the decision.

- **If you do make the payments** required, you must then take the next steps in your appeal. Again, consult a lawyer or the rules of the court.
- **If you do not make the payments** required by the court during your appeal, your appeal will be dismissed and your landlord can then evict you. The landlord will do this by getting a document from the court called an "Execution." The landlord will then give this Execution to a sheriff or constable, who will move you out if you do not leave voluntarily. A sheriff or constable may move you out only between 9:00 a.m. and 5:00 p.m. Monday through Friday after giving you **48 hours written notice**.

FORM 3

Please print or type

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

a._____, ss:
County

b._____
Plaintiff(s) – Landlord(s)

vs.

c._____
Defendant(s) – Tenants(s)

d._____
Name of Court

e._____
Docket No. Summary Process

REQUEST FOR REVIEW OF ORDERS RELATING TO APPEAL BOND

Dear Clerk of the Housing Court:

On _____*(date)* I received the Court's order relating to the tenant's appeal bond. Pursuant to M.G.L. c. 239, §5, I am seeking review of these orders by the Massachusetts Appeals Court. This request is timely as it is made within six days of the date I received the order. Under this statute, this Request for Review of Orders Relating to Appeal Bond is to be filed with the Court where the case was originally heard, and the clerk's office is then to transmit the Request, the Court's findings (if any), and any other documents relevant to the Appeal to the Clerk of the Appeals Court.

The defendant (tenant) requests that this Court waive the appeal bond, the appellate entry fee, and the costs of obtaining and transcribing the tape recording of this case because the tenant does not have enough money to pay those costs and requiring payment would deprive the tenant of the right to appeal.

The tenant meets the M.G.L. c. 239, §5 appeal bond waiver standard in that:

1. The tenant is indigent within the meaning of M.G.L. c. 261, §27A, and the tenant has non-frivolous* defenses in this case, as set forth in the Answer or as follows:
_____
_____

***A frivolous defense is one which "...would not have a prayer of a chance." *Pires v. Commonwealth*, 373 Mass. 829, 838 (1977).**

The tenant requests that the following payments during the appeal be ordered under M.G.L. c. 239, §5:

2. ☐ Full contract rent of $_____at the usual time each month.

3. ☐ Tenant's portion of the subsidized rent as calculated under the applicable subsidy rules at the usual time each month. This amount is currently $_____.

4. ☐ The fair value of the home, $_____, at the usual time each month. Payments should be reduced because the following substandard conditions still exist in the tenant's apartment:

_____

_____

_____

5. I delivered or mailed (*circle which one*) a copy of this Request to my landlord or to his/her lawyer on _____(*date*).

6.

_____	_____
Signature of Tenant	Signature of Tenant
_____	_____
Tenant's Name (*print*)	Tenant's Name (*print*)
_____	_____
Address	Address
_____	_____
City State Zip	City State Zip
_____	_____
Telephone Number	Telephone Number