

New Eviction Storage Law



Protecting the Belongings
of Tenants Facing Eviction

On November 8, 2004, a new law went into effect in Massachusetts that provides important rights to tenants who are facing an eviction or who have been evicted.

This booklet answers basic questions about the new eviction storage law.

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Please post and give this flyer out widely	

Who the Law Protects

1. Whom does the new storage law protect?

If you are a tenant in Massachusetts and are facing an eviction or you have already been evicted, the new eviction storage law provides very important protections. If you are unable to find a new place to live and your landlord has your belongings put into an eviction storage facility, the new law:

- Requires that you be told who is storing your property;
- Requires that your property be inventoried before being put in storage;
- Requires that all fees charged by an eviction storage company be filed with and not rejected by the Department of Public Safety;
- Gives you the right to choose where your property is stored instead of the place the landlord has listed;
- Gives you one-time access to remove items of primarily personal or sentimental value free of charge; and
- Provides other protections described in this booklet.

The law was enacted to stop eviction storage companies from engaging in practices that are wrong and harmful to tenants. It is important to understand this law so that you can make sure your property is removed and stored in a lawful manner. **To let others know about the law, please give out or post the one-page flyer on page 20.**

Note: An eviction storage company mainly moves and stores the property of people being evicted from their home, as opposed to other storage facilities which provide additional services.

Link to Law

The “Eviction Storage Law” is officially called *An Act Relative to the Storage of Personal Property upon Execution of a Summary Process Judgment* and was passed as Chapter 271 of the Acts of 2004.¹ To link to this Chapter, go to: www.mass.gov/legis/laws/seslaw04/sl040271.htm.

2. When and why did the eviction storage law become law?

The eviction storage law became law on November 8, 2004. It came about as a result of two tenants who joined with legal services advocates and a broad-based coalition to fight for storage protections so other tenants would not face the abuse that they had faced.

The two tenants, Rosemary Niland and Margaret Pierone, had been evicted through no fault of their own from an apartment that they had lived in for 20 years. The landlord had their belongings moved and put into storage by an eviction storage company which then held their personal belongings hostage, charged thousands of dollars in unreasonable fees, denied them access to the facility, and allowed their cherished belongings to deteriorate.

These tenants were not alone. Such bad practices by eviction storage companies had become increasingly common, especially against elderly and low-income families. Now, because of this new law, for the first time Massachusetts is regulating the moving and storage companies that deal with the belongings of tenants who are evicted.



Photo by Ken Martin

Margaret Pierone, one of the tenants who fought for the new eviction storage law, unpacks one of the boxes she retrieved from storage.

Facing Eviction

3. What should I know if I am facing an eviction?

To legally evict you and remove you and your belongings from your residence, your landlord must get the court's permission. If your landlord tries to evict you, you have a right to go to court and argue that you should not be evicted. For court forms and information that will help you protect yourself, go to www.MassLegalHelp.org and click on "Housing."

If the landlord gets what the law calls *possession* of your apartment (either because of a judge's order or because you have signed an agreement giving the landlord *possession*), the court will give the landlord a court order called an *execution*. On page 17 of this booklet there is a sample *execution* so you can see what the document looks like.

The landlord then gives this court order to a **constable, who is the only person who can legally move you out**. Your landlord does not have a right to physically remove you or your property.

The constable who comes to your residence must give you a written notice at least 48 hours before he or she comes to physically remove your property. This 48-hour period may not include weekends or holidays. Under the new storage law, the constable's notice must have certain information in it so that if you cannot move out within the 48 hours, your property will be protected.

IMPORTANT:

- ✓ A landlord can get an execution 10 days after a court enters a judgment and has up to 3 months to use it. **After 3 months, the execution is no longer valid.**
- ✓ If you have lost your eviction case or you agreed to move and you need more time to move, you can ask a judge to postpone your eviction. To do this, **immediately** fill out a form called a **Stay of Execution**, which you can get on www.MassLegalHelp.org.

4. What information must the 48-hour notice that a constable gives me have in it?

At least 48 hours before a constable can move you and your belongings out of your residence, the constable must give you written notice that tells you:²

	<p>Date and Time of Constable’s Arrival The specific date and time that the constable will arrive at your residence to physically remove your property.</p>
	<p>Constable’s Contact Information Constable’s full name, address, and telephone number in case you need to call the constable.</p>
	<p>Court Information Name of the court and the number of your eviction case.</p>
	<p>Notice That Storage Company Is Licensed The constable will place all personal property at storage company that is licensed by the Department of Public Safety.</p>
	<p>Storage Company Contact Information The full name, address, and phone number of the storage company where your belongings are being stored.</p>
	<p>Storage Fee Information The address and phone number of the Department of Public Safety where you can find out whether the company has filed its fees and whether they have been rejected or approved.³</p>
	<p>Notice About Sale of Your Property A statement that the storage company may sell your property if you do not claim it after 6 months and that funds from the sale can be used to pay any unpaid storage fees.</p>
	<p>You Must Notify the Storage Company If You Move A statement that you must notify the storage company in writing of any change in your mailing address.</p>

To make sure the notice from the constable has all of the information on it as required by law, use the above as a checklist.

5. Can I choose where my property will be stored?

The storage law requires a constable who is evicting you to move your belongings to a *licensed public warehouse* company. (A *licensed public warehouse* is a facility that has been licensed by the Department of Public Safety to store goods.) This warehouse must be within a reasonable distance of the place that you were renting.⁴

You have a right, however, to have your belongings stored **at a place of your own choosing**.⁵ To do so you must notify the constable of this **in writing at or before the time of removal of your property**.⁶

For example, to avoid having to pay storage costs you can choose to have your property stored at a relative's house, a friend's garage, your work storage area—**anyplace at all**. Or you can choose to have your belongings stored at a self-storage facility where you may have greater access to your belongings. The place you choose should be a reasonable distance from your home (for example, not from Boston to Springfield).

Important: If you do choose your own storage facility, you must pay the storage fees at this location. If your belongings are taken to a *warehouse* that your landlord or a constable has chosen, your landlord may have to pay a certain amount of storage fees because many warehouses will not take goods without an up-front payment from the landlord. A landlord has the right to seek reimbursement from you for storage costs.

6. How do I know what has been stored?

The storage law requires a constable who is moving your belongings to give you a written receipt that has a description of all of the goods removed or of the packages containing them. The constable must sign this list and include his or her name.

The constable must hand you this list if you are present. If you are not present while your belongings are being moved out, the constable must mail it to you at your last and best known address. The constable must also file this list in the court where your eviction case was heard.

The storage company must also give or send you a written receipt that includes a description of the goods or packages being stored within 7 days after your property was removed from your home.⁷

Storage Company's Responsibilities

7. Does the storage company have to send me anything in writing?

Yes. Within 7 days of your property's having been put in storage, the storage company must mail or hand deliver to you a written receipt that lists its storage rates.⁸ **This is why you must notify the storage company in writing if your address changes.** Even if you have not found other housing, you should notify them of any temporary address where you can receive mail. The receipt must also include the following information:

	After 6 Months, Your Property Can Be Sold After 6 months, the storage company may sell any of your unclaimed property at an auction and keep the money from the sale for storage fees that you have not paid as of the auction date.
	List of Storage Rates A list of the storage rates and a statement that the rates can be checked by contacting the Department of Public Safety (address and telephone number of the Department must be included).
	Statement Concerning Your Address Change A clear and obvious statement that you should notify the storage company in writing if there is a change in your mailing address.
	How to Get and Access Your Property How you can get your property back and your right to access your belongings once for free.
	Warehouser's lien on your property A statement that the storage company has a <i>lien</i> on your property for storage charges. This means that they may sell or dispose of your property after 6 months if you do not pay your storage fees.

The eviction storage company must give you the written receipt either by hand or by receipted mail to your last and best known address. The company must keep a duplicate copy of the receipt on file at the warehouse.

8. What can a storage company charge?

The storage law requires a constable who is evicting you to move your belongings to a *licensed public warehouse* company. A licensed public warehouse is a facility that has been licensed by the Department of Public Safety to store goods. Its rates must be filed with and not rejected by the Department of Public Safety.

If you feel that the rates are too high, you can contact Guy Licciardi at the Department of Public Safety at 617-727-3200, extension 25262 (or other person responsible for the eviction storage law at the Department), to see whether the storage company has filed its rates with the Department, whether the rates filed are the same as the rates you are being charged, and whether the rates filed were rejected by the Department of Public Safety.⁹ A storage company cannot change its rates more than once a year, unless the Department of Public Safety approves such a change. In addition, these rates cannot be higher than rates for similar quality storage facilities in the storage company's area.

Also, the storage company can charge you only for the actual storage of your property. It cannot add extra charges, which they may call "docking fees" or "administrative fees" or "warehouse labor fees."

The storage company must give you credit for any monies paid in advance by your landlord. In other words, the storage company cannot "double charge" you by having both you and your landlord pay for storage for the same period.

Lastly, the storage company cannot charge any minimum fees. This means that they can charge you only for the time that your property is actually stored. They cannot, for example, have a minimum of a month or two of storage fees.

Protecting My Belongings

9. Who pays for the property to be moved and stored?

The landlord in the eviction case must pay the cost of moving your property to the storage place. However, the landlord is then entitled to be reimbursed by the tenant for this cost.¹⁰

As the tenant, you are responsible for paying the monthly fees for storage of your property. These fees must be “reasonable” and must be filed with and not rejected by the Department of Public Safety. If you do not pay the fees that are owed, the storage company may sell your belongings after a 6-month period of time. (See Question 13 for more about when a company can sell your belongings).

10. Can I get access to my belongings?

Under the storage law, you have a right to get into your stored property once free of charge to inspect the property or to remove items that have a primarily personal or sentimental value. Such items may include funeral urns, photographs, passports, other documents, or anything else that has personal or sentimental value to you.¹¹

11. How can I get my property back?

You can get your stored property back any time upon payment of all of the monthly storage fees that are owed.¹² If you do not claim your property after 6 months from the date that it was stored, the storage company may sell it and keep the money from the sale to pay for the monthly storage fees.

12. What can I do if my belongings are damaged while they are in storage?

An eviction storage company has a duty of care under the law. This means company must treat your stored property with the watchfulness and care that any reasonable person would use in the same circumstance.

A storage company cannot require you to sign any papers that release it of liability for damage to your property. To protect yourself, you should make a list of the damaged items and their approximate value. Give this list to the storage company and ask for reimbursement. Or try to negotiate a deal when you get your belongings so that you do not have to pay the entire storage bill.

If the company refuses to reimburse you for the damage or renegotiate your storage bill, you can consider filing a court case against it in either small claims or another court. In many cities and towns there are Consumer Councils or programs that may have staff who can provide you with advice. You can also contact the Department of Public Safety and/or the Consumer Division of the Attorney General's office if you need more assistance. See Question 14.

13. Can an eviction storage company sell or dispose of my belongings?

If you have not paid your monthly storage fees, an eviction storage company can sell or dispose of your belongings. However, they must wait 6 months before doing this.

If you pay the eviction storage company for half of all storage fees, plus reasonable costs it incurred in preparing for the sale, then you have a right to postpone the sale or disposal of your property for 3 months.

14. What should I do if a constable or storage company violates the eviction storage law?

If a constable or an eviction storage company does something unlawful, you should report this to:

Attorney General's Office

Office of the Attorney General Consumer Complaint Hotline
at 617-727-8400

Department of Public Safety

Guy Licciardi at 617-727-3200, extension 25262 or 25249
(or other person responsible for the eviction storage law at the Department)

Consumer Councils

You can also contact your local Consumer Council or program to help you enforce the new eviction storage law. See the list below.

15. Where is the nearest Consumer Council?

The Consumer Protection Division of the Office of the Attorney General, which is the primary agency that enforces state consumer laws, funds the following 20 local consumer programs to mediate complaints from individual consumers, including complaints involving landlord/tenant issues. Look for the program nearest you.

Berkshire County Consumer Advocates, Inc.413-443-9128
150 North St., Suite 34, Pittsfield MA 01201

Bentley Consumer Action Line, Bentley College800-273-9494
Lindsay Hall, 175 Forest St., Waltham MA 02452

Boston Consumer Affairs and Licensing Division617-635-3834
City Hall, Room 817, Boston MA 02201

Cambridge Consumers' Council 617-349-6150
831 Massachusetts Ave., Cambridge MA 02139

Consumer Assistance Council, Inc......800-867-0701
149 Main St., Hyannis MA 02601

Fall River Consumer Program508-324-2672
One Government Center, Fall River MA 02722

**Consumer Protection Office,
District Attorney's Office**413-774-5102
238 Main St., 4th fl., Greenfield MA 01301

District Attorney's Office413-586-9225
One Gleason Plaza, Northampton MA 01060

**Consumer Protection Program
Haverhill Community Action, Inc.**.....978-373-1971
25 Locust St., Haverhill MA 01830

Greater Lawrence Community Action, Inc.978-681-4990
350 Essex St., Lawrence MA 01843

Middlesex Community College Law Center.978-656-3342
33 Kearney Square, Room 117, Lowell MA 01852

Medford Consumer Advisory Commission.....781-393-2460
90 Main St., Medford MA 02155

Consumer Assistance Office of Metro West, Inc.508-651-8812
209 West Central St., Natick MA 01760

**Newton-Brookline Consumer Office,
Newton City Hall**.....617-796-1292
1000 Commonwealth Ave., Newton MA 02459

**Consumer Protection Division
Norfolk District Attorney's Office**.....617-769-6100
1515 Hancock St., 4th fl., Quincy MA 02169

**MassPIRG Consumer Action Center,
Whipple Center**781-335-0280
182 Green St., Weymouth MA 02191

Consumer Affairs Office, Revere City Hall781-286-8114
150 Beach St., Revere MA 02151

Consumer Aid Program

South Shore Community Action Council508-747-7575
265 South Meadow Rd., Plymouth MA 02360

Mayor's Office of Consumer Information.....413-787-6437
1600 East Columbus Ave., Springfield MA 01103

Consumer Council of Worcester County

Worcester Community Action Council, Inc......508-754-1176
484 Main St., 2nd fl., Worcester MA 01608

Sample Letters and Forms

Sample Execution

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

No.

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 May 01, 2003, against

Defendant

For Possession of premises at PROPERTY ADDRESS, and

For:

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

SAMPLE

We command you, therefore, to deliver said premises to the [PLAINTIFF or DEFENDANT], 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.

WITNESS, _____, Judge of the _____ Housing Court, on DATE PREPARED.

Clerk Magistrate

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

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 or DEFENDANT)

16. Sample Letter to Give Constable About Where to Bring Your Belongings

If you do not want your belongings stored at a storage facility chosen by the landlord or constable, you need to put this request **in writing**. On the next page is a sample letter that you can give to the landlord or the constable whom the landlord has hired to move your belongings. (To be safe, give the letter to both.) What follows are instructions about how to fill in the letter on the next page.

1. First paragraph

Write your: 1) name, 2) the address of the place you are being evicted from, and 3) the date that the constable is planning to move you out (which you should have received in a notice at least 48 hours in advance).

2. Second paragraph

Write exactly where you want your belongings delivered to. **The alternate location may be anything from a relative's basement to a self-service storage facility.** Write the name of street and the number of the house. Also say whether you want your belongings put on a porch or a landing or in a particular room, and not on the sidewalk. It is important to be very specific.

IMPORTANT: You will be responsible for the payment of any storage charges at your chosen location. You should make sure, in advance, that the business or people at your chosen location are willing to accept your belongings at the time and date that is specified in the 48 hour notice.

3. Third paragraph

Write all phone numbers where the landlord or constable can reach you.

4. Sign the letter and write in the date

The date can be the same date that a constable is coming to move your belongings.

5. Deliver letter

If you can, make a copy of the letter for your records. Hand deliver the original and/or fax it to the landlord or constable (preferably both). You can do that **at** or **before** the removal of your property. It is a good practice to call the constable and/or landlord and tell them you will be delivering this notice.

5. New address optional

You can include your new address after your signature. You do not have to do this.

Notice of Delivery of Tenant's Belongings to Alternate Location

Dear landlord and/or constable,

1. I, _____,
am the tenant at _____,
and am facing eviction on _____.
2. Pursuant to my rights under Massachusetts law,* I am requesting
that you deliver my belongings to the following an **alternate location**:

I understand that if there is any payment due for storage
at this alternate location, I am responsible for it.

3. Please call me at _____ if you have any questions.
You may also reach me at _____.

Signature

Date

New address and phone:

* As amended Massachusetts General Law, Chapter 239, Section 4(a) states: " ... the officer **shall store** the property with a warehouse **or other storage facility of the defendant's choosing** if the defendant notifies the officer of his choice in writing **at or before the time of removal of the property.**"

New Eviction Storage Law

Protecting the
Belongings of Tenants
Facing Eviction

If you are a tenant and facing an eviction or you have already been evicted, a new eviction storage law:



- ✓ Requires that you be told who is storing your property;
- ✓ Gives you the right to choose where your property is stored **instead of** the place the landlord has listed;
- ✓ Requires that your property be inventoried before being put in storage;
- ✓ Requires that all fees charged by an eviction storage company be filed with and approved by the Department of Public Safety;
- ✓ Gives you one-time access to remove items of primarily personal or sentimental value free of charge; and
- ✓ Provides other protections.

For a **free booklet** with more information about the eviction storage law, go to your nearest legal services office or go on-line to:

www.MassLegalHelp.org/EvictionStorage

Endnotes

- ¹ Chapter 271 of the Acts of 2004 amended M.G.L. c. 239, §§ 3, 4, and G.L. c. 4, § 105.
- ² M.G.L. c. 239, § 3, 3rd paragraph.
- ³ Fees will be deemed approved so long as they have been filed with and not rejected by the Department of Public Safety; and so long as they are not more than the market rates for similar storage facilities in the area. M.G.L. c. 239, § 4(b)(3) and (4).
- ⁴ M.G.L. c. 239, § 3, 4th paragraph.
- ⁵ M.G.L., c. 239, § 4(a), 2nd sentence.
- ⁶ M.G.L. c. 239, § 4(a).
- ⁷ M.G.L. c. 106, § 7-202(f).
- ⁸ M.G.L. c. 239, § 4(d).
- ⁹ M.G.L. c. 239, § 4(b)(3).
- ¹⁰ M.G.L. c. 239, § 4(c).
- ¹¹ M.G.L. c. 239, § 4(f).
- ¹² M.G.L. c. 239, § 4(f).

Acknowledgments

This booklet was prepared by Annette Duke at the Massachusetts Law Reform Institute with assistance from Jeff Purcell, Greater Boston Legal Services, and Ellen Shachter, Cambridge and Somerville Legal Services, an Office of Greater Boston Legal Services. MLRI would also like to thank Mia Baron, a law student with the Suffolk University Housing & Consumer Protection Clinic, for her work on an earlier handout on the new eviction storage law, from which we took excerpts and for her help continued help researching the law; Ken Martin, for the use of his photo; Donna Southwell of Massachusetts Legal Assistance Corporation, who helped arrange for the use of the photo and whose article in the *Legal Services Reporter* (December 2004) we relied on; and Gale Halpern at Massachusetts Law Reform for her editing assistance.