

Discovery for Tenants and Former Owners in Foreclosed Properties

Representing Yourself in an Eviction Case

Discovery is a way to get information from the Bank to help you prove your case. When you request Discovery, the Bank must answer questions in writing and provide you documents about your eviction case. **The Bank must answer your questions in writing under oath.**

Discovery also **postpones your eviction hearing for two weeks** if you give a copy of your Discovery requests to the court and to the Bank's attorney **on or before your Monday Answer Date.**

If you do not request Discovery, you must go to court on the Original Trial Date listed on your Summons and Complaint.

How to Use Discovery

Fill Out the Form in This Booklet

Fill in the top of the Discovery form the same way you filled in the top of your **Answer** form in **Booklet 3**. To decide what information will help your case, read over your **Answer**. As you go through the Discovery form, check the box next to every question that you want answered and every document that you want sent to you. If you have more questions or requests for documents, write them in the blank spaces at the end of the Discovery form.

In this Discovery form, certain standard questions and documents are checked because tenants would want to request these in every case. Make sure you do not ask more than 30 questions. There is no limit on the number of document requests.

Deliver Discovery by Your Answer Date

When you are finished, fill in your name and address and circle whether you mailed or delivered these forms. Remove the form from the booklet by taking the staples out. Make two copies. Deliver the original form to the court and one copy to your landlord (or your landlord's lawyer). Keep one copy for yourself. **You must get the Discovery to the court and to your landlord (or your landlord's lawyer) with the Answer on or before the Monday Answer Date.** If you mail your Discovery on the Answer Date, it will not get there in time.

Make Sure You Get Your Discovery Responses

Your landlord must then get Discovery responses and documents back to you within 10 days from the date the landlord receives your request. If your landlord does not answer your Discovery within 10 days, or does not provide information you requested, you can ask the judge to order your landlord to answer Discovery, and to postpone the court hearing until the landlord **fulfills this request**. (The last two pages of this packet, the **Compelling Discovery** form, tell you how to do this.)

Prepare for Court

When you receive the Discovery responses that you have requested, read your landlord's answers and examine all documents carefully. Look for statements or information on documents that back up your case. For example, your landlord may admit that you offered to pay rent, or that she knew about bad conditions in your apartment, or that she did not put your security deposit in a special bank account. Also watch for contradictions in your landlord's story. For example, your landlord may deny knowing about bad conditions, but state that she was in your apartment or hired people to do repairs.

Use Discovery at Your Trial

At the court hearing, tell the judge or jury if your landlord, in her Discovery responses, admitted facts important to the case. You may also ask the landlord the same questions you asked in Discovery. If the landlord gives a different answer, point out the difference to the judge or jury. You can also ask the judge to look at documents that support your side of the story, including the landlord's Discovery responses themselves.

DISCOVERY FORM

(Please print or type)

COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

a. _____, ss:
County

e. _____
Name of Court

f. _____
Docket No. Summary Process

b. Rescheduled Trial Date (2 weeks after original trial date) _____

c. _____
Plaintiff(s) – Landlord(s)

vs.

d. _____
Defendant(s) – Tenants(s)

[POST FORECLOSURE]
DEFENDANT’S REQUEST FOR
DISCOVERY (INTERROGATORIES,
DOCUMENT REQUESTS, and REQUESTS
FOR ADMISSIONS)

Notice to Plaintiff

- A. Because this Discovery has been filed and served, the trial date is automatically postponed for two weeks until the date stated above. If a jury trial has been requested, then a pre-trial conference will be held on the Rescheduled Trial Date (after or at which time a jury trial date will usually be assigned).
- B. You are required by law to answer the interrogatories (questions) checked off below truthfully and fully, and to ***sign them under the pains and penalties of perjury***. Before each of your answers, you must re-state the interrogatory to which you are responding. Include all information that is available to you and to those who work with and for you. You must also provide any and all requested documents in your possession or that of your agents or employees.
- C. The court and the Tenant must receive your responses to these questions and documents requested no later than ten (10) days after you or your attorney receives this Request for Discovery. Answers should be mailed or delivered to the Defendant’s Apartment (or to his/her attorney, if s/he is represented).
- D. You are also required to supplement and/or amend your responses to this discovery if after you have responded you learn:
 - a. The identity of other persons with information about the questions asked (including expert witnesses you intend to have testify at trial); and/or
 - b. That any of the information you gave in the responses was incorrect when made or is no longer correct.

- E.** If any documents that are responsive to the requests for production of documents checked off below are redacted or are not produced based on a claim of privilege or on any other grounds, please identify as to each such document or part of such document:
- a.** The nature of the privilege claimed; and
 - b.** The factual and legal basis of the claim of privilege or ground for not producing the document.
- F.** As required by Mass. R. Civ. Proc. 26(b)(5), as amended:
When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as material prepared in anticipation of litigation or for trial, the party shall make the claim expressly and, without revealing information that is privileged or protected, **shall prepare a privilege log** containing the following information: the respective author(s) and sender(s) if different; the recipient(s); the date and type of document, written communication or thing not produced; and in general terms, the subject matter of the withheld information (emphasis added).

DEFINITIONS

- A.** The terms "You," "Your" and "Plaintiff," include the Plaintiff named above and any and all other persons or entities with any asserted ownership in the Property, as well as Plaintiff's principals, agents, loan servicers, brokers, employees, relatives, attorneys, and anyone acting on their behalf.
- B.** The term "former landlord" refers to the prior owner(s) of the Property upon which You foreclosed.
- C.** The term "Apartment" refers to the house or unit that the Tenant occupies, including the exterior and common areas.
- D.** The term "Tenant" includes the defendant(s) named above and his or her agents, relative(s), attorney(s) and anyone else acting on the Tenant's behalf.
- E.** The term "tenancy" refers to a tenancy at will, under a lease, or at sufferance, i.e., the period during which the Tenant has occupied the Property unless otherwise specified.
- F.** The term "Property" refers to the subject premises, as well as common areas, and any other apartments at the address where the Tenant's Apartment is located, and is meant to encompass terms such as "premises," "land," "building" and the like.
- G.** The term "document" includes: writings, videotapes, electronic mail or other documents electronically stored and/or transmitted, drawings, graphs, charts, photographs, digital images, recordings, contracts, agreements, correspondence, memoranda, reports, notes, requests, bills, orders, notices, writs, declarations, complaints, answers and other court pleadings, schedules, tabulations, checks, diary entries, telegrams, diagrams, films, newspaper clippings, and other writings and recordings of whatever nature. A draft or non-identical copy is a separate document within the meaning of this term.

- H. The term "identify" used with respect to a conversation or oral statement means that the following information shall be furnished: names, addresses, and telephone numbers of all persons participating in the conversation or making the statement; names of all other persons present at the time that the conversation or the statement was made; the date that the conversation or statement was made; the place where the conversation or statement was made; and the substance of the conversation or statement.
- I. The term "concerning" means referring to, relating to, supporting, describing, reflecting, constituting or in any other way referencing.
- J. The term "communication" means the transfer, exchange, disclosure, or transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally, or in writing, whether face to face, by telephone, by mail, by personal delivery, by computer, by e-mail, or otherwise.
- K. Unless otherwise specified, the *applicable time period* for these requests is the period of the Tenant's occupancy of the Apartment(s), plus one month before such occupancy and one month afterward if the Tenant has vacated.
- L. The term "legal or beneficial" owners includes but is not limited to: the owners of record, trustees of a trust, beneficiaries of a trust, general and limited partners, corporate officers or directors or corporate stockholders who own at least ten (10) percent of the stock or corporation.
- M. The term "mortgage" means the security instrument for the Property on which you foreclosed.
- N. The term "note" means the promissory note signed by the former owner/mortgagor and secured by the mortgage.
- O. The term "Custodian" meant the entity acting as keeper of the mortgage files on behalf of the trustee of any securitized trust purporting to own the Property.
- P. Whenever a *person is identified* in response to these interrogatories, in addition to her/his name, please furnish the following information: mailing address; residential address; and telephone number.

Parties, Tenancy, and Property

1. Please identify in detail all person(s) consulted or involved in answering these discovery requests, other than Your attorneys, including for each her/his name, address, telephone number, occupation and title, and a description of such person's actual involvement with the Tenant's Apartment and/or the Property.
2. Please identify each legal or beneficial owner of the Property, including: the date such entity acquired an ownership interest in the Property, how it was acquired, and whether such owner is a corporation, partnership, limited partnership, trust (detailing type of trust) or other business form (indicating which form specifically).

3. Please describe in detail the history of Your involvement with the Property including:
 - a. How You became involved with the Property, e.g., by granting, acquiring or being assigned a mortgage on the Property or otherwise, and from which person or entity you acquired an interest in the Property;
 - b. If you acquired the mortgage from another entity, the date(s) on which any assignment(s) of interest were executed (and whether signatures were notarized), the dates, if different, of the effective date(s) of such assignment(s), and the date on which you received a physical copy of the endorsed note; and
 - c. The nature of Your relationship(s) to the Property since that time (e.g., as mortgagee, investor, owner, trustee, etc.) and any changes therein.
4. Please describe Your acquisition of the Property, including:
 - a. The identity of the individual or entity from whom You allege to have acquired the Property;
 - b. The date You claim to have acquired the Property;
 - c. The price paid for the Property (including whether there were any prior bids that failed, whether there was ultimately an actual tender of any funds, and if so, when and by what means);
 - d. The circumstances of the sale, such as foreclosure auction; and
 - e. The identities of any of Your agents involved in any transaction to acquire the Property, including the name, address and role of each individual who was present for any foreclosure sale.
5. Please describe how You first became aware that the Tenant was occupying the Property including but not limited to: when; by what means (including with whom if anyone You communicated); and the identities of the persons providing and receiving such information (and whether You were informed orally or in writing).
6. Please describe in full and complete detail how You made Your asserted ownership of the Property known, including but not limited to: whether and if so, when, Your ownership was recorded (indicating in your response whether the Property is recorded or registered land); when and how it was communicated to the Tenant and/or to the public; whether, how and when You posted your ownership information visibly at the Property; and whether and when You notified tax assessors/collectors or water & sewer providers of such change in ownership.
7. Please identify in detail all individuals or entities who have been retained or authorized to act on Your behalf relating to the foreclosure, sale, management, maintenance of the Property, or eviction of the Tenant (e.g. agents, employees, trustees, real estate brokers, Property management agents, loan servicers, and the like), stating for each: their identity and title; the effective date and nature of the relationship between You and the person/entity; the rate and any applicable conditions of compensation for each such person/entity; and the scope of the person's or entity's authority and duties with regard to the Property and with regard to this litigation.
8. For each relationship described in the Interrogatory above, please describe any and all communications relating to the Tenant or the tenancy, whether oral or written, between or among You and your agents, including but not limited to:
 - a. The date and manner of, and persons involved in, each communication;
 - b. The substance thereof; and
 - c. Any documents that accompanied or constituted the communication.

9. Please describe in full and complete detail any evaluation(s) of the market value of the Property before or after foreclosure, *e.g.*, appraisals, estimates (by realtors or otherwise), and the like, describing for each evaluation the date, result/dollar value provided, person(s) involved and any related documents.

Reasons for Eviction

10. Please describe in factual detail how You decided to evict the Tenant, including who made the decision to evict (and the name, title, and contact information for such person(s)), when the decision was made, and what policies or practices of You or any of Your agents played any role in the decision to evict.
11. Please describe the business purpose, if any, for which You desire the Tenant's Apartment to be vacated, including but not limited to:
- a. Whether You intend to renovate, demolish, board up, or sell the Property in whole or in part;
 - b. If You intend to sell the Property, why evicting the Tenant is necessary for such sale to occur; and
 - c. What, if any, attempts You have made to market the Property occupied, and if You have not yet marketed the Property, the reasons for the delay in doing so.
12. Please identify and describe any policy or practice You have concerning the rental to existing occupants of property acquired through foreclosure and/or concerning the eviction of tenants from such properties. For each such policy or practice, please identify any related documents.
13. If You claim the Tenant, household member, or guest has violated a provision of the lease or rental agreement or law, or you have another reason for eviction related to the Tenant's or other individuals' conduct, please describe each such violation or reason for eviction in full and complete detail, including but not limited to:
- a. What happened;
 - b. The dates of each such alleged violation;
 - c. When and how You learned of the alleged violation;
 - d. The names and addresses of anyone with knowledge of or information about such alleged violation;
 - e. The substance of the information known to each person; and
 - f. What if anything You did after becoming aware of each alleged violation, including the substance and date(s) of any written or oral communication to the Tenant regarding such alleged violation and the Tenant's response(s) to such communication(s).
14. Please describe in detail all communications or offers You have made to the Tenant concerning payments to move (*e.g.*, "cash for keys"), including but not limited to the following:
- a. The specific terms of any offer(s) or agreement, including amount(s) and other conditions;
 - b. The manner in which the terms were communicated;
 - c. The substance and date(s) of such communications;
 - d. Whether any documents were exchanged; and
 - e. The identities of any of Your agents involved.

15. If You claim to have caused any Notice(s) to Quit and/or Summons and Complaint(s) to be served on the Tenant and/or a public agency/subsidy provider, please describe in detail how service was made upon the Tenant and/or such agency for each such Notice or Summons, including but not limited to:
- The name and address of the person who served the document;
 - The date on which service was made;
 - The manner in which service was made;
 - The person upon whom service was made; and
 - Any communications related to such service.

Alleged Rent, or Use and Occupancy

16. If you claim in this action that the Tenant owes you money for use and occupancy of the Apartment or any other reason, please describe:
- Such amount(s) in detail, including a breakdown of any time period(s) and applicable amount(s);
 - The basis used for calculating such amount(s); and
 - Any communications with the Tenant regarding such amount(s) (including, without limitation, any efforts You made to request payment or inform the Tenant where payment should be sent and in what amount, and any efforts by the Tenant to tender any payment).
17. Please describe in detail any policies or practices You have with regard to the collection of rent or use and occupancy ("rent") from occupants in foreclosed properties, including whether you routinely request rent payments outside of the court process and if so, how, and whether you accept rent payments if offered by an occupant. If you claim to accept rent from occupants, please describe all property addresses for which You have done so in Massachusetts in the past six (6) months.

Communications with Tenant

18. Please describe in detail all communications You have had with the Tenant with respect to his/her occupancy and/or vacating the Property, including but not limited to:
- The date and time of the conversation;
 - Who initiated the conversation;
 - Where the communication took place;
 - The length and substance of the conversation; and
 - The name of the person acting on Your behalf who had the conversation with the Tenant.

Condition of the Apartment/Repairs

19. Please describe in detail (providing date, substance and source) any information You had or have concerning the condition of the Property either before or after Your asserted acquisition, including but not limited to information from:
- Any visits You made to the Property;
 - Any communications, whether oral or written, between You and previous owners of the Property;
 - Any inspection or assessment of the Property;
 - Any other individual, agency, bank, realty, government division, or other entity;
 - Any independent inquiry made or research You have done; and
 - Any photographs or video images of the Property.

20. For each individual condition of disrepair (including but not limited to those alleged in the Tenant's Answer and Counterclaims), please state:
- a. Whether You agree that said condition of disrepair exists or has existed on the Property during the period of Your asserted ownership;
 - b. The date and manner in which You first became aware of said condition of disrepair (even if prior to Your ownership of the Property); and
 - c. The specific steps if any You have taken to address each such condition (including the date and substance thereof, cost, and persons involved).
21. If You claim that any conditions of disrepair have been caused by the Tenant or anyone acting under his/her control, please describe in detail the basis for this allegation, including but not limited to the following:
- a. The date on which You state that said condition was caused by the Tenant or anyone acting under his/her control;
 - b. The date on which You became aware of the fact that said condition was so caused;
 - c. The manner in which You allege that the Tenant or someone acting under his/her control caused the condition; and
 - d. The information on which You rely to form such conclusion, including but not limited to, the name, address and telephone number of anyone who provided information to You in this regard.
22. If you claim the Tenant prevented or hindered You from inspecting the Apartment and/or making repairs, for each attempt to inspect or make repairs, please describe any such hindrance in detail, including but not limited to the following:
- a. The date of the attempt;
 - b. How and when You let the Tenant know of your plan to inspect and/or to repair;
 - c. What the Tenant did or said to prevent or hinder the inspection or repair;
 - d. The name, address and telephone number of anyone present at the time who has information about the Tenant's alleged interference with the inspection or repair; and
 - e. Any financial or other loss You suffered as a result of the Tenant's alleged action or inaction.
23. Please identify and describe in detail all times You were at the Property, including any indoor or outdoor common areas, since acquiring an interest in the Property. For each visit, please include:
- a. The name and title of anyone who visited the Apartment or the Property;
 - b. The date and length of the visit;
 - c. The purpose of the visit;
 - d. The specific areas of the Apartment or Property that were visited; and
 - e. Whether any photographs and or video images were taken.
24. For each month You have owned the Property, please state your opinion of the fair market rental value of the Apartment in compliance with all applicable codes and regulations, and the basis for that opinion (including, but not limited to, any research You conducted or information obtained from a broker or other knowledgeable person and the names and addresses of any sources of such information), and identify any documents that support this opinion.
25. Please describe in detail facts concerning the existence of any lead paint in the Apartment (including common areas), including but not limited to: Your efforts, if any, to identify the ages of any young children living in the Apartment; investigations or inspections to determine the

existence or location of any such lead paint (including the dates and substance thereof); any notices or other documents You have received concerning such lead paint; and what if any remedial action You have taken in response (*including but not limited to investigation and/or action in response to your receipt of the Tenant's Answer indicating the potential existence of lead paint which would endanger a child under the age of six living at the Property*).

Utilities

26. Please describe in full detail the provision of utilities (*hot water, water and sewer, heat, gas and electrical service*) at the Apartment and in the common areas, including for *each* such utility without limitation:
- The name of the party in whose name the utility is billed or who is otherwise responsible;
 - Any information received from any source about the utility payment arrangement between the Tenant and the former landlord;
 - All efforts You made to determine whether you were responsible for providing each type of utility service;
 - The effective dates on which You took responsibility for any utility;
 - The substance and date of any communications between You and any other person or entity regarding responsibility for each such utility (including, but not limited to, communications reflecting investigation of utilities at the Property with any utility company or other person/entity), requests for You to take action, and notice of threatened shut-off or interruption); and
 - For any utility you claim is the responsibility of the Tenant, all facts upon which You base such claim.
27. If you have received any information with respect to any of the utilities (water, gas or electricity) at the Property having been shut off, discontinued or threatened to be shut off/discontinued (by You, a utility company, or anyone else), please describe such information in detail, including which utility and when, the reason for the shutoff or notice/threat of shutoff, what if any steps You took in response, and when the utility was turned back on.
28. If at any point during the Tenant's occupancy the Tenant has been charged for the cost of water and/or sewer service, please describe in detail what if any steps were You have taken to comply with the provisions of G.L. c. 186, § 22 with respect to submetering at the Property and related requirements.

Security Deposit and/or Last Month's Rent

29. Describe in detail how you have handled the Tenant's security deposit and/or last month's rent, including:
- Whether you requested and/or received the deposit and/or last month's rent from the former landlord and if so in what amount;
 - The amount, account number(s), and the name(s) and address(es) of any bank(s) in which you have placed or held the security deposit and/or last month's rent, and the date(s) of the initial deposit in a bank and of any transfer;
 - Whether the security deposit has at all times since the foreclosure been kept in a separate escrow account protected from creditors and if not, the reasons why not;
 - A full and complete description of any notice(s) You provided to the Tenant about any deposit(s) and/or payment(s) made to a former landlord, including the date(s) of such notice(s);

- e. If the Tenant claims a violation of the law regarding last month's rent, whether you have paid the Tenant interest on his/her last month's rent;
 - f. If the Tenant claims a violation of the law regarding security deposit, whether you have paid the Tenant interest on his/her deposit and/or returned the deposit, and if so, the date and amount of any funds so paid; and
 - g. What if any policies, procedures or practices You have regarding tenants' security deposits or prepaid rent concerning properties on which You have foreclosed.
30. If You or, if You are the trustee of a trust, if the trust claims to be a bank chartered in the Commonwealth of Massachusetts or the United States, please explain in detail how, where and when the trust was chartered.

Disability

31. Please describe any knowledge, information, or beliefs You have of the Tenant or a household member having any mental and/or physical disability, including but not limited to how You were made aware of such disability and what disability You believe or were informed the Tenant or the household member has.
32. Please describe in detail any requests made by or on behalf of the Tenant or household member for an accommodation (e.g., a change in rules or policy, a physical change to the Apartment, not proceeding with an eviction, or other special treatment) due to her/his disability, including but not limited to:
- a. When and how the Tenant or other person asked You for an accommodation;
 - b. What s/he requested that You do or not do on account of her/his disability;
 - c. Your response; and
 - d. If You denied the request, the reasons for such denial, including the complete factual basis for any denial based on financial or administrative burden, and/or the alleged unreasonableness of the request.

Public and Subsidized Housing

33. If you have investigated, and/or have knowledge of, the Tenant's receipt of a subsidy or subsidy attached to the Apartment or Building, please describe all information with respect to subsidy, including but not limited to:
- a. How and when you first investigated or became aware that the Tenant received a housing subsidy;
 - b. The full contract rent under the subsidy program and the Tenant's portion of such rent (and whether you have received, been offered, and/or affirmatively rejected rent from a housing agency);
 - c. Any and all communications, whether oral or written, you have had with the Tenant and/or a housing agency with respect to such subsidy, including but not limited to the substance and date of, and persons involved in, each such communication.
34. If You are unwilling to accept the Tenant's housing subsidy for the Apartment, please describe the reasons for such unwillingness in full and complete detail.
35. If the Tenant has a housing subsidy, or claims to have a housing subsidy, please state all facts supporting your claim, if any, that you have good cause to evict the Tenant.

Condominium

36. If the Property or the Tenant's Apartment has been converted to the condominium or cooperative form of ownership, *or if there is an intent to do so*, please state: (a) when the conversion took place or will take place; and (b) the substance and date(s) of information or notices, if any, provided the Tenant by the Plaintiff or any other person or entity regarding any rights the Tenant may have under any applicable condominium conversion eviction laws.
37. If the unit You foreclosed upon is a condominium, please describe any and all information with respect to the condominium association, including, but not limited to:
- a. Its by-laws, rules or the like;
 - b. The identities of all trustees of the condominium trust and the units with which they are associated, if any;
 - c. All efforts you have made to appoint any trustee(s) or otherwise participate in the condominium association;
 - d. The substance and date of, and persons involved in, any communications You have had or attempted to have with the association or any trustee;
 - e. Whether there has been any allegation that You owe any money to the condominium association and if so, how much;
 - f. What if any provision you have made for payment of common area utilities at the Property; and,
 - g. What, if any, other units You own at the Property.
38. If you claim that any of the conditions of disrepair or utility violations alleged in the Tenant's Answer or Counterclaims are the responsibility of the condominium association, please describe all efforts you have made to ensure that the association makes the necessary repairs and/or utility payments.

Eviction Against Former Owner

(The following questions only apply where the Defendant was an owner of the Property)

39. Please describe in detail any mortgage(s) and/or note(s) given or acquired by You with regard to the Property, including but not limited to:
- a. The date(s) of such document(s);
 - b. The date(s) of all assignment(s) of such mortgage(s), and/or note(s) including to You, and by whom the mortgage(s) and/or note(s) were assigned;
 - c. The date(s) of all endorsements of the promissory note, including to You;
 - d. The type (i.e., fixed and/or adjustable), and amount and effective date(s) of interest rate(s); and the amount(s) of monthly payments or other payment schedule, and any changes thereto;
 - e. The dates and amounts of each monthly payment received;
 - f. The dates, amounts and nature of any fees, charges or assessments against the loan(s); and
 - g. The current balance on the loan(s) broken down into: principal, current due interest; past due interest; penalties; fees; charges; and assessments.
40. Please describe any and all communications, whether oral or written, between You and the Defendant/Tenant prior to or following foreclosure with respect to mortgage default, foreclosure, sale of the Property, and the like (including for any written communications or notices the date, title, and manner of delivery of every such communication or notice).

41. Please describe in full detail the foreclosure sale and surrounding events, including but not limited to:
- a. How, when, in what manner, and in what publication the foreclosure sale was advertised;
 - b. What, if any, open houses or views were scheduled or advertised (and if so, when) to allow prospective buyers to see the Property;
 - c. How, when, and by whom entry was made onto the Property prior to foreclosure sale;
 - d. An identification of the auctioneer and all others who attended either an open house and/or the foreclosure sale;
 - e. The amount of any bids that were made at such sale;
 - f. What, if any, determination of the market value of the Property was made (and, if so, by whom, when, and with what result, i.e. dollar value or estimate); and
 - g. A full accounting of amounts received upon or after foreclosure sale identifying amounts paid toward the mortgage(s); toward costs of sale or auction; other associated charges or fees; any determined losses to You; and any surplus or overage payable to or due the Defendant.

Other

42. Please list the names of any individuals with knowledge of the facts alleged in Your Complaint or the facts alleged in the Tenant's Answer and Counterclaims, and for each person, please state: (a) his or her name, occupation, telephone number, and address; (b) the factual substance of the information known to such person; and (c) the expert qualifications, if any, of said person.

43. _____

TENANT'S REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents received from any predecessor(s) in interest (people or business(es) that owned the Apartment or Property before You did) related to the Property, including but not limited to documents concerning:
 - a. The condition of the Property;
 - b. Tenancies at the Property;
 - c. Assignments of rights/obligations; and
 - d. Security deposit and/or last month's rent for the Tenant's Apartment.

Your Involvement with the Property

2. Any and all assignments of mortgage or other interest in the Property.
3. Any and all documents concerning the foreclosure through which You acquired an ownership interest in the Apartment, including but not limited to: Land Court documents; mortgage documents or other security instruments; note(s); foreclosure deeds; publications; powers of attorney; conditions of sale; bids; auctioneer statements; and the like.
4. Any and all documents concerning the market value of the Property before or after foreclosure, including but not limited to appraisals, realtor or other estimates, and the like.
5. All documents reflecting or concerning whether You have received or are likely to receive any remuneration for Your role in the foreclosure process for, or ownership, management, or maintenance of, the Apartment or Property.
6. All documents purporting to give You specific or general authority to bring this eviction action or to obtain possession of the Apartment.
7. Any declaration of trust of the Plaintiff or principal trust.
8. Any powers of attorney authorizing anyone to act on Your behalf with regard to the Apartment or Property.
9. Any pooling and servicing agreement concerning the Apartment or Property or, in the alternative, if such agreement was filed with the Securities Exchange Commission ("SEC"), the electronic/URL address to enable the Tenant to obtain public access to the agreement on the SEC website.
10. All documents concerning Your relationship with any real estate or property management agents or brokers who are authorized to act on Your behalf with regard to the Apartment or Property and/or that concern the scope of such persons' or businesses' authority and responsibility with regard to the Apartment or Property.
11. All documents concerning Your relationship with any servicer(s) or similar companies that are authorized to act on Your behalf or who share responsibility with You relating to the Apartment or Property and/or concerning the scope of the servicer's authority and responsibility with regard to the Apartment or Property.
12. All documents regarding the ownership of the Apartment or the Property from the date the Tenant asserts s/he moved into the Apartment until the present.
13. All documents concerning lawsuits or claims related to the Apartment or Property involving You and any tenant who occupies or used to occupy any unit at the Property.

14. All documents concerning challenges to your rights or related claims against You regarding the Property or Apartment raised by the borrower (i.e. prior owner of the Apartment or Property), regardless of whether such claims are the subject of litigation.

Eviction

15. Every notice upon which You relied to terminate the tenancy at issue in this summary process action and every other notice to quit You served on the Tenant at any time.
16. All documents related in any way to any of Your reasons for evicting the Tenant.

Communications with or About the Tenant (Oral or Written)

17. All written communications, applications, correspondence or records relating to the Tenant's occupancy of the Apartment.
18. All documents concerning communications between You or Your agents and the Tenant or members of the Tenant's household regarding the Tenant's occupancy of the Apartment.
19. All documents concerning communications between or among the Plaintiff and its agents, or between You or Your agents and third parties, concerning the Tenant's occupancy of the Apartment.
20. All documents including correspondence and notices that You or Your agents received from any source regarding the Tenant's occupancy of the Apartment.
21. All documents concerning Your knowledge of the identities, ages, and relationships of any individuals who have occupied the Apartment at any time since You acquired an ownership interest in the Apartment.
22. All documents related to any complaints received from any source about the Tenant and/or members of the Tenant's household or guests.

Rent or Use and Occupancy

23. All documents concerning the rent or use and occupancy payments for the Apartment, including demand, tender, payment, and acceptance or rejection.
24. All notices, calculations, correspondence, verifications, studies, reports, or other documents that You have used to calculate the fair market value of rent or use and occupancy payments for the Property.

Property Management and Maintenance

25. All documents concerning Your efforts to notify the Tenant of the person(s) responsible for repairs or maintenance at the Property.
26. All documents concerning responsibility for management of the Apartment or Property from the date You acquired ownership of the Apartment until the present.
27. All documents, including but not limited to, agreements, memoranda, and email or other communications, relating to any of Your policies or procedures or any of Your servicers, brokers, or agents with regard to repairs in or maintenance of properties or units acquired through foreclosure.

28. All documents concerning responsibility for maintenance of the Apartment and/or Property.

Condition of the Apartment/Property

29. All documents relating to or representing any inspections, assessments or evaluation of the Property or the Apartment itself that You obtained prior to, at the time of or following the purchase of the Apartment or Property.
30. All documents and internal communications concerning notice, complaint, certification, report or request for repair or the like which You or Your agents have received or obtained concerning purportedly or admittedly defective sanitary, building, or health conditions in the Apartment or Property and common areas or grounds associated therewith, since the beginning of the Tenant's occupancy of the Apartment and continuing to the present.
31. All documents and internal communications concerning notice, report or request for repair or the like which You or Your agents have received or obtained concerning any allegedly defective conditions in the Apartment.
32. All documents concerning all inspections, repairs or other work that You have attempted, performed or caused to be performed at the Property at any time, including both internal documents and external communications such as emails, work orders, invoices, or receipts.
33. All documents concerning any claim that the Tenant or any member of the Tenant's household or guest has caused any damage or conditions of disrepair at the Apartment or Property.
34. All photographs, videos, and/or digital images of the Tenant's Apartment or of the Property at any time.
35. All documents related to or reflecting Your compliance – if any – with any local ordinance(s) concerning foreclosing properties, e.g., the City of Boston Ordinance entitled "An Ordinance Regulating the Maintenance of Vacant, Foreclosing Residential Properties."
36. All documents concerning lead or lead paint at the Property or Apartment, including but not limited to notices, certifications, reports or requests for repair or the like, and all records and communications that the Plaintiff has made itself, or received from any person or agency, regarding investigation for, or the presence or absence of, lead or lead paint.

Utilities

37. All notices, correspondence, bills, payments or other documents concerning the provision of utility services to the Apartment, including any utility payments You made and any utility accounts in Your name or the name of any of Your agents.
38. All documents concerning the threatened or actual termination and/or re-connection of utilities (including water and sewer, electricity, and/or gas) in the Apartment and/or Property since the date of the foreclosure sale.
39. All documents, including but not limited to agreements, memoranda, and communications relating to any of Your policies or procedures or any of Your servicers or agents with regard to the provision of or payment arrangements for utility services in occupied properties or units acquired through foreclosure.
40. All documents concerning any written agreement between You and the Tenant or the Tenant and any prior owner of the Apartment with regard to who is responsible for paying for any utility service, including water, heat and hot water, to the Apartment.

41. All documents concerning Your compliance with G.L. c. 186, § 22.

Intent to Sell the Property

42. All documents relating to any of Your efforts to sell or rent the Apartment or Property to anyone other than the Tenant, including any communications with any potential purchasers regarding their interest or potential interest in acquiring the Apartment or Property.
43. All documents pertaining to any of Your efforts in the past twelve (12) months to sell any property(s) acquired through or after a foreclosure insofar as such sales were attempted or completed with pre-existing tenants remaining in the property through the sale.
44. All documents concerning any formal or informal policy You or any parent company or subsidiary has with regard to the sale of Property acquired through foreclosure, including any documents related to communications within or between You and Your parent, subsidiaries, and agents regarding such policy.
45. All documents which concern each and every study or research You conducted or any other facts You gathered which led to Your implementation or continuation of any policy that requires or recommends properties to be vacant prior to their sale.

Public and Subsidized Housing/Governmental Assistance

46. All leases or rental agreements between the Tenant and any current or former owner of the Apartment and any related subsidy contracts between the owner and any governmental agency providing subsidy on Tenant's behalf and/or providing subsidy to the Apartment or the Property in which the Apartment is located or providing low-income tax benefits to the Apartment or Property.
47. All documents concerning communications between the Plaintiff or its agents and any housing authority or subsidy agency regarding the Tenant, the Apartment, or the Property.
48. All documents pertaining to any request by any tenant or occupant at any Property You owned that You enter into a housing subsidy contract or otherwise accept payments through Section 8 or similar rental subsidy program and Your response thereto.
49. All agreements, contracts, vouchers, checks, records, notices, correspondence or other documents concerning rental assistance You received from any governmental agency in connection with the tenancy of the Tenant or any other occupant or potential occupant of any other property You own or manage.
50. All documents concerning any "good cause" You have to evict the Tenant, including all studies, research, or data supporting or contradicting such claim.
51. All documents referring to any formal or informal policy You have with regard to the acceptance of housing subsidies including, but not limited to, Section 8, including any documents related to communications within or between You and Your agents regarding such policy.
52. All documents concerning any policies or procedures of any servicer currently associated with the Apartment or Property with regard to the acceptance of housing subsidies in properties it acquires or manages after a foreclosure.

- 53. All documents which concern each and every study You conducted or research You conducted or any other facts You gathered which led to Your implementation or continuation of any policy, which bars or limits Your acceptance of public rental assistance.
- 54. All documents concerning conditions or use restrictions for the Apartment and/or Property related to Your (or Your predecessor's) receipt of any form of government assistance, including but not limited to low-interest loans, subsidies, tax credits, de-leading and/or rehabilitation assistance, and the like.
- 55. All letters and other written communications between You and any housing authority or agency, e.g., DHCD (formerly EOCD), MHFA, HUD, the Rental Housing Resource Center (formerly the Boston Rent Equity Board), and/or any other relevant agency regarding the Tenant or the Apartment.

Last Month's Rent and/or Security Deposit

- 56. All documents concerning the Tenant's security deposit and/or last month's rent, including but not limited to records, notations, notices, communications, and documents received from any prior owner of the Apartment, such as receipts, copies of any bank records or statements, notices given to the Tenant about the deposit/payment, conditions statement, and documents concerning payment and/or crediting of interest to the Tenant.
- 57. If You claim that You or, if You are the trustee of a trust, that the trust is a bank chartered in the Commonwealth of Massachusetts or the United States, all documents concerning such status.

Eviction Against Former Owner

- 58. All assignments of mortgage(s) with regard to this Property starting from the mortgagor/defendant to You, the Plaintiff.
- 59. Any and all documents concerning the accounting of amounts calculated, charged, paid and/or received with respect to foreclosure sale, including but not limited to: auction costs; legal or other charges or fees; amounts credited to mortgage; and any surplus or overage payable or creditable to the Defendant.
- 60. Any and all documents concerning applicable interest rates, charges, monthly payments, and calculation thereof, with respect to the Defendant's mortgage account(s), including but not limited to: the amount and effective date of interest rate(s) and changes thereto; the dates and amounts of monthly payments; the dates, amounts and nature of any fees, charges or assessments against the account(s); and the current balance on the loan(s) (broken down into principal, current interest due, past due interest, and any other charges).
- 61. The original mortgage note(s) bearing all intervening endorsements showing a complete chain of endorsement from the originator to the last endorsee.
- 62. If the purported owner of the mortgage loan for this property is a securitized trust:
 - a. All delivery and acceptance receipts for original mortgage note from the originator to the trust(s); and
 - b. All pooling and servicing agreements for trust(s) claiming to be owner and holder of mortgage(s) and note(s) regarding the Property.

Other

- 63. All documents You intend to introduce into evidence at trial.
- 64. All documents related in any way to Your claims and/or to the Tenant's defenses or counterclaims (to the extent not addressed elsewhere in Your responses to these document requests).
- 65. All documents relied upon in answering any of the Tenant's Interrogatories in this summary process action.
- 66. All documents concerning the Tenant's or household member's disability and/or need for accommodation (i.e., a change in rules or policy/practice, a physical change in the Apartment and/or common areas, etc.), including but not limited to: any request that the Tenant or anyone on his/her behalf has made to You, Your response to such request, any offers of reasonable accommodation that You otherwise have made to the Tenant or household member, notes, internal communications, and any reasonable accommodation forms, policy or the like that You have in use.
- 67. All documents concerning actual or proposed condominium or cooperative conversion of the Apartment or Property, including, but not limited to, correspondence related to the establishment of a condominium, by-laws, master deed, and named trustees (including appointment thereof or changes thereto) or the granting of any mortgage with regard to any past or anticipated condominium conversion.
- 68. All documents concerning insurance for the Property (general liability, fire or other insurance) during Your ownership, including but not limited to policies, binders, correspondence, notices of initiation, cancellation and/or renewal, and the like. (See Mass. R. Civ. Proc. 26 (b) (2))
- 69. _____

DEFENDANT'S REQUESTS FOR ADMISSIONS

The Tenant requests that the Plaintiff admit or deny, *under penalty of perjury* and *within ten days*, the statements which follow numerically below for the purpose of this action only and subject to all pertinent objections to admissibility which may be raised at hearing.

In responding to said requests for admissions, the Plaintiff is advised that Rule 36 of the Massachusetts Rules of Civil Procedure requires that "a denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party **may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry** and that the information known or **readily obtainable** to him is insufficient to enable him to admit or deny" (emphasis added).

1. You are not a bank chartered in the Commonwealth of Massachusetts or the United States.
2. You did not assume responsibility for payment of the following utilities to the Property within seven (7) days of assuming ownership of the Property (please admit or deny each of the following):
 - a. water service;
 - b. common area electricity;
 - c. heat to the Apartment; and
 - d. hot water to the Apartment.
3. There are no submeters for water service at the Property in accordance with the requirements of G.L. c. 186, § 22.
4. There is no written agreement between You and the Tenant making the Tenant responsible for heat for the Apartment.
5. There is no written agreement between You and the Tenant making the Tenant responsible for hot water for the Apartment.
6. You have not assumed responsibility for payment of hot water to the Apartment.
7. As of the date of the Tenant's Answer, You had not assumed responsibility for payment of hot water to the Apartment.
8. You have not assumed responsibility for payment of heat to the Apartment.
9. As of the date of the Tenant's Answer, You had not assumed responsibility for payment of heat to the Apartment.
10. As of the date of your commencement of this eviction action, You had not posted visibly at the Property complete information regarding the owner or managing agent of the Property, including a name, address and telephone number. (*See* 120 CMR 410.481)
11. Each of the following conditions existed at the Property as of the date of the Tenant's Answer and Counterclaims, or as of the date of your responses to these Requests (*add a letter before each condition, i.e. a, b, c*):

12. You have continued to demand use and occupancy in this action from the Tenant despite having information that the Tenant has a Section 8 subsidy to assist with rental payments.
13. (*For City of Boston properties only*) As of the date of the Tenant's Answer, You had not registered the Property as a foreclosed building with the City of Boston's Inspectional Services Department.
14. Had the Tenant offered to pay rent for the Apartment, You would not have accepted it.
15. As a general matter, You do not accept rent payments from occupants of Massachusetts properties you acquire after foreclosure.
16. You have not conducted any individualized analysis to determine whether the Property is likely to be worth more, or easier to sell, with the Tenant living in it.
17. You have not placed the Tenant's security deposit in a separate, interest-bearing account protected from Your creditors.
18. You have not paid the Tenant interest on his/her security deposit.
19. You have not paid the Tenant interest on his/her last month's rent.
20. You have not returned any amount for security deposit to the Tenant.

Eviction Against Former Owner

(The following Requests for Admission only apply where the Defendant was an owner of the Property)

21. You are not holder of the original mortgage note for the Property or Apartment.
22. You are not in possession of the original mortgage note for the Property or Apartment.
23. Mortgage Electronic Registration System ("MERS") has at no time been the holder of the original mortgage note for the Property or Apartment.
24. If the purported current holder of the note is a securitized trust, any and all documents that claim to transfer the original mortgage note from the Originator to You are not permitted by the Mandatory Conveyancing Rules of the Pooling and Servicing Agreement which created said trust.
25. If the purported current holder is a securitized trust, the original mortgage note was not in fact transferred and delivered to the Custodian for the trust.
26. If the purported current holder is a securitized trust, the original mortgage note was not received by the Custodian for the trust prior to the final date for the delivery of same as set forth in the conveyancing rules of the Pooling and Servicing Agreement.

Additional requests for admissions

27. _____

28. _____

29. _____

I hereby certify that I delivered or mailed (*circle which one*) a copy of this Discovery to the Plaintiff's lawyer on _____ (*date*).

Signature of Tenant

Tenant's Name (*print*)

Address

City State Zip

Telephone Number

Signature of Tenant

Tenant's Name (*print*)

Address

City State Zip

Telephone Number

Compelling Discovery

What can you do if your landlord does not answer your Request for Discovery?

Your landlord must give you his/her responses to your Discovery within ten (10) days after receiving it. **If your landlord does not answer your Request for Discovery, or gives you incomplete answers or objects to your request, you may file a Motion to Compel Discovery and for a Continuance.**

If your case is in Housing Court and you do not think that the landlord's responses to Discovery were complete or responsive, you may have to provide the Court with more detailed information. Ask the Court Clerk if there are any special requirements.

This motion, which you must file in court **within five business days** after the date Discovery responses were due, asks the judge to order the landlord to completely answer Discovery and to continue (or postpone) the trial until the landlord does so.

How to Make the Motion to Compel Discovery

- Fill in the spaces at the top of the motion the same as you did in the Answer and Request for Discovery forms.
- Write in the date you mailed or delivered your Discovery to the landlord or the landlord's lawyer.
- Check the box(es) that describe what your landlord failed to do.
- On the bottom of the form, circle whether you delivered or mailed a copy of this motion to your landlord (or the landlord's lawyer). Fill in the date, your name, address, and telephone number. Sign the motion.
- Make two (2) copies. Deliver the original to court, and one copy to your landlord (or his/her lawyer). Keep one copy for yourself.

IMPORTANT: You **must** get the form to the court and your landlord (or the landlord's lawyer) within 5 business days of the date the answers to your Discovery were due.

Prepare for Court

The hearing on your Motion to Compel Discovery will be held on the **Rescheduled Trial Date**. Be prepared to go ahead with your eviction trial on that date since there is always a chance that the judge will not order your landlord to answer Discovery or postpone the trial date.

When your case is called, be sure to tell the clerk that you have filed a Motion to Compel Discovery. When you go before the judge, **tell the judge that you requested Discovery**, and that your landlord **did not answer** (or did not answer fully). Tell the judge why you need the information that is missing.

Ask the judge to order your landlord to answer your Discovery fully, and not to have the eviction trial until after the landlord answers your questions and gives you the requested documents. The judge should tell you at this point whether your trial will be postponed and whether your landlord will be ordered to answer your Discovery.

If you win this motion, your landlord will be ordered to answer your Discovery and the eviction trial should be postponed.

If you lose this motion, you will have the eviction trial that day. Do the best you can. If you lose at trial, you may have the right to appeal, and/or to ask the judge for more time to move. See **Booklets 7 and 8**.

