

Stay

Representing Yourself in an Eviction Case

Need Time to Move?

If you lost your eviction case or agreed in court to a judgment to move out and you need more time to move, you can ask a judge to postpone your eviction. To do this you must **act fast** and fill out the **Stay of Execution** form in this booklet.

The reason you must act quickly is that **10 days** after you lose your eviction case, your landlord is entitled to a legal paper from the court called an **Execution**. The Execution is the document that a landlord gives to a sheriff or constable, who then has the legal authority to move you out if you do not move on your own.

Note: Even if 10 days have passed, you may still ask for a Stay of Execution, although the more time that passes, the more at risk you will be that the landlord will get an Execution and move you out.

The form in this booklet lets you ask the court to **postpone** when the landlord can get an Execution and to allow you more time to find new housing.

A judge can allow you to stay a maximum of 6 months—or 12 months if you or someone in your household is over 60 or has a physical or mental disability. However, a court may initially give you a shorter period of time and then allow you to file another motion if you need more time. The court also considers the hardship that your staying has on the landlord. (If you are being evicted for non-payment of rent or for a reason that is your fault, the court might not give you extra time to move.)

If you do get a Stay of Execution, you will usually be required to pay rent (or what the judge thinks is a fair value of your apartment) until you move.

How To Request a Stay of Execution

Fill Out the Form in This Booklet

Complete the motion form in this booklet by following the instructions below. The letters and numbers in these directions match those on the form.

- 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, if you know it. The Docket Number is the number the court has assigned to your case. You can ask the court for it.
1. Fill in everything you have done to try to find a new place to live. As you look for new apartments, it is a good idea to keep a written record of what you do. In this booklet you will find a **Housing Search Log Form** that you can use to help you keep track. Then you can make a copy of the Log Form and attach it to the motion form in this booklet.
 2. Check here if you or someone in your household is 60 years of age or older.
 3. Check here if you or someone in your household has a disability. **A disability can be a physical or mental impairment** which significantly limits:
 - The housing that is appropriate for the person; or
 - The person's ability to seek new housing; or
 - The person's ability to care for herself, perform manual tasks, walk, see, hear, speak, breathe, learn, or work.

One does not have to be receiving disability benefits to be considered disabled for purposes of getting a Stay of Execution.

4. Fill in a reason why moving now would be a special problem. For example:
 - I have rented a new apartment, but it won't be available for a month.
 - I can't move until my children finish school.
 - I am handicapped or elderly and can't find a suitable place.
 - I am on a waiting list for housing.
 - I should be receiving a subsidy soon.
 - I have a child with a disability.

5. **If you have received a 48-hour notice of eviction from a sheriff or constable, check this box** and fill in the date and time on the sheriff's eviction notice. It may be helpful to bring this notice with you to court. When you bring this motion to court, tell the clerk you **would like to speak to a judge right away or at least before you are moved out.**
6. Fill in any other relevant information that you want the court to know, such as whether the rent is current.
7. When you deliver this form to the court, **ask the clerk** how and when a hearing can be scheduled and whether you or the clerk will put this in the motion form. If you are instructed to do so, fill in the date and time.
8. Circle whether you delivered or mailed this form to your landlord (or to your landlord's lawyer), and write in the date you did this.
9. Sign and write your name, address and phone number.

Deliver the Form

When you complete the form in this booklet, take it out of the booklet and make 2 copies in addition to the original. Remember: When you go to court, be sure to ask the clerk to set up a date for a hearing on your Motion to Stay the Execution and that you or the clerk fill in this date and time on all copies of the form (as explained in instruction #7 above).

Leave the original form with the court and deliver one copy to your landlord or the landlord's lawyer. Keep a copy for yourself. It is important that you deliver this form because the mail may be too slow. **The sooner you file this form, the more likely it is that you will have a hearing before the landlord receives the Execution to move you out.**

Go to Court

Get to court on time. When your case is called, go up to the front of the court and tell the judge:

- Why you need more time to move,
- What you have done to find a new place, and
- How much time you need.

The judge will probably want to know if:

- The eviction was not your fault,
- You can pay rent,
- You have not found a new place to live even though you have made diligent efforts, or
- There are special circumstances that are affecting you and your family. *(For example, if you will receive a subsidy soon, this will increase your chances of finding a new apartment.)*

The judge will probably tell you at the hearing whether you will get a Stay of Execution. If the judge does not tell you at the hearing, you should receive written notice in a few days.

If You Get a Stay of Execution

If you get a Stay of Execution, you do not have to move until the date stated in the court's order. If you are unable to find an apartment by this date and still need more time to move, follow these instructions again and ask for **an extension** on the Stay of Execution.

If you go back to the court to ask for more time, you will need to show the court that you have been making diligent efforts to find new housing but have not been successful. The best way to do this is to keep a record or log of your search efforts. Attached is a Housing Search Log Form you can use to do this.

If You Do Not Get a Stay of Execution

If you do not get a Stay of Execution, you should try to move yourself and your belongings as soon as possible before the sheriff or constable arrives. Otherwise a landlord can move your belongings into storage and you will have to pay a lot of money to get them out, and you risk losing them forever.

You do have a right to request that your landlord move your belongings to another location, for example, to a friend or relative willing to store your property. For more information about how to do this go to: www.MassLegalHelp.org and in the “Housing” section under “Booklets and Handbooks” click on “Eviction Storage Law.”

At a minimum, move your most valuable belongings, what you need, important papers, and medications.

As a last resort, try to negotiate with the sheriff or constable or your landlord for more time to move.

Housing Search Log Form

Date	Address/Location of Apartment	Contact Person	Result

FORM

(Please print or type)

COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

a. _____, ss:
County

d. _____
Name of Court

b. _____
Plaintiff(s) – Landlord(s)

e. _____
Docket No. Summary Process

vs.

MOTION TO STAY EXECUTION

c. _____
Defendant(s) – Tenants(s)

The tenant in this case requests this Court to stay the issuance of execution under M.G.L. c. 239, §§9 and 10, applicable rules, and the court's equitable powers.¹

1. The tenant has been unable to find a new place to live, despite diligent efforts as follows:

2. Tenant or someone in his/her household is 60 years of age or older.
3. Tenant or someone in his/her household has a physical or mental impairment.
4. It would be a special hardship to move now, because:

5. **Emergency Motion for Temporary Stay of Execution Pending a Hearing**

I received a notice that a constable or sheriff will move me from my home on _____(date) at _____(time) and I request that the Court immediately stay issuance or use of execution pending a hearing and decision on the above Motion.

¹ Pursuant to *LoRusso v. Talbot*, 1999 Mass. App. Div. 301, 304, "[w]hile it is within the judge's discretion to consider any hardship a stay may cause the landlord, the legislative purpose and policies underlying the above statutes [M.G.L. c. 239, §§9 and 10] appear to mandate a judicial thumb on the scale of any balancing of interests in favor of the tenant."

6. Other relevant factors:

7. **Clerk:** I request this motion to be heard on _____(date) at _____ o'clock.

Landlord: Please take note that this Motion will be heard at the above time.

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

9. _____
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

Date: _____