

Chapter 14

Using the Court System

Legal Tactics: Tenants' Rights in Massachusetts
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How to Use the Courts

Tenants' Rights in Massachusetts

Deciding to go to court is not an easy decision to make. Going to court takes time and money. Also you cannot be sure what will happen. But if you have a strong case, going to court can lead to negotiating a solution or winning.

Are You a Plaintiff or Defendant?

Plaintiff

If you are taking your landlord to court you are the *plaintiff*.

Defendant

If your landlord is evicting you or taking you to court for another reason, you are the *defendant*.

Going to Court

- Take the whole day off from work.
- If you have children, arrange child-care that is not at court.
- Get to court early so that you do not miss when your case heard.
- Leave your cell-phone at home if the court house you are going to does not allow cell phones. For a list of courts that do not allow cell phones:
mass.gov/courts/banned-electronics

Protect Yourself Get Legal Help

Filing a Case Against Your Landlord

The court system is complicated. It has lots of rules and deadlines. If you take your landlord to court, you are usually better off if you can find a lawyer to represent you.

If you cannot pay upfront, some lawyers take certain types of housing cases that make your landlord pay your lawyer's fees if you win. These types of cases involve:

- Retaliation
- Unfair or deceptive practices
- Consumer protection violations
- Violation of the security deposit law
- Interference with your "quiet enjoyment"

Fighting an Eviction

Many Housing Courts have Lawyer for the Day Programs that help low-income tenants facing eviction. They offer advice, and sometimes they will go into mediation or the court room with you. They also help homeowners facing eviction after a foreclosure.

Ask the clerk's office in your District or Housing Court how to find the Lawyer for the Day Program.



Forms

Use preprinted forms to help make your case. You can get the forms you need online, at court, and from legal services offices and community groups.

- **Massachusetts Trial Court** has court forms: www.mass.gov/courts/forms
- **MassLegalHelp** has self-help housing forms and sample letters you can use: MassLegalHelp.org/housing-forms

Where to File Your Case

You can file most landlord-tenant cases in Housing Court or District Court. If there is a Housing Court where you live, consider starting your case there. Housing Court staff know a lot about landlord and tenant disagreements. They often offer more support to tenants than District Courts.

Court Fees

When you file a complaint in court, you must pay a filing fee. In Housing Court the fee is \$135. In District Court the fee is \$195.

If you cannot afford the fee, file an “Affidavit of Indigency” form. This form asks the court to let you file a complaint without paying a fee. You can get the form at the court or online. See **Affidavit of Indigency (Booklet 9)**.

Defendants do not pay any fee to file an *Answer*.

Serving a Complaint

You must let your landlord know you are taking them to court. When you file a complaint, the clerk will give or mail you a *summons and complaint*. You *must* have the summons and complaint *served* on your landlord. You cannot serve it yourself. You pay a Sheriff or Constable \$50-65 to serve your landlord. You can include these fees in Affidavit of Indigency.

Interpreters

If you do not feel confident communicating in English, you have the right to an interpreter in court. It does not matter what your native language is. The court is supposed to give you a free interpreter.

Tell the court clerk you need an interpreter. You can ask for an interpreter when you get to court, but it is better to ask ahead of time. Use the interpreter request form: mass.gov/courts/interpreter-request.pdf

You can get translated court forms online: mass.gov/courts/translated-forms-info

Mediation

Housing Courts and some District Courts have mediators to help landlords and tenants come to an agreement. Community groups also offer mediation services before you get to court. Mediation is voluntary.

Before you sign an agreement, read it carefully. Be sure that you understand it and can meet its terms.

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Using the Court System

by Gary Allen

Italicized words are in the Glossary

Many tenants have been successful in court, but the court system may be challenging and unfamiliar. It has its own rules and procedures.

Many issues can also be resolved outside the court system. When evaluating your case, you should consider whether you have tried all the reasonable alternatives before filing a law suit. For more see **Chapter 13: When to Take Your Landlord to Court - Resolving Your Problem Outside the Court System.**

Whether you are facing an eviction, or bringing a lawsuit against your landlord, the more you know about how courts work, the better. The purpose of this chapter is to give you some basic information about the court system.

Getting Legal Help

You have the right to represent yourself in court. This is called *pro se* (pronounced pro say”), meaning "on one's own behalf."

If you can find a lawyer to represent you, you are almost always in a better position to use the courts. See the **Directory** for a list of lawyer referral services and legal services offices, which represent low-income tenants. You may also want to ask a tenants' rights organization or people you know for names of lawyers who represent tenants.

If your landlord has violated certain laws, and you win your case, the court should order the landlord to pay your attorney's fees. In these situations, private lawyers may take a tenant's case even when the tenant can't pay in advance. For example, the following types of legal claims provide for attorney's fees if you win your case:

- Retaliation
- Unfair or Deceptive Acts or Practices
- Violating the security deposit law
- Interference with your use of the apartment, called “breach of quiet enjoyment.”

See **Chapter 13: When to Take Your Landlord to Court** for descriptions of these claims.

Mediation

1. What Is Mediation

The purpose of mediation is to arrive at an agreement that is **agreeable to both sides**. It is available in Housing Court and a number of District Courts. Community groups also offer mediation services which you can use even before you get to court.

A mediator helps landlords and tenants through a focused discussion about how to resolve problems. It is a voluntary process. A mediator is not supposed to take sides. A mediator will not be able to tell you if the agreement is good or bad. The mediator's job is to help people reach an agreement, but not to make recommendations on the substance of the agreement

Some mediators are trained in landlord-tenant law, others are not. Unlike a judge, a mediator is not required to know the law. While it may be acceptable to minimize the legal issues in your search for a fair agreement, you should do so only after you thoroughly understand what these issues are. You do not want to find

yourself in the position of giving up something because you are unaware of what your rights are. **Remember, the mediator is not there to give advice or protect your rights.**

A successful mediation will result in a written agreement between the parties. Before you sign an agreement, read it very carefully. Be sure that you can meet its terms. For example, do not agree to a payment plan for back rent that is more than you can afford. If you have no other place to live, do not agree to move. Make sure that you understand every word of the agreement. If you do not, ask the mediator to rewrite the agreement using clearer terms that you understand.

If you are unable to resolve your dispute through mediation and your case is in court, you still have the right to use the court system. Everything said in **court-connected** mediation is confidential and cannot be used in court.¹ If information from the court's mediation is used in court, be sure to object to its use by asking the judge to disregard it.

2. Who Does Mediation

Many courthouses provide mediators. Housing Courts have mediators on staff to mediate landlord-tenant cases. The mediators are called "Housing Specialists." District courts may also have mediators available, and you can ask the court clerk to find out how to schedule mediation in your case.

There are also independent neighborhood agencies that provide *mediation* for a small fee or for free. You can use these services before something goes to court. A list of **Mediation Services** is in the **Directory**. **You can take a friend to mediation if you need help negotiating or want support.**

3. Advantages and Disadvantages

There are several advantages to using mediation instead of going to court.

- You can create an agreement that is tailored to the exact needs of the parties instead of asking a judge to decide. Taking your case to the judge means you give up control about the outcome.
- Mediation often provides a faster and much cheaper resolution to problems.
- It can also provide an opportunity to repair the often very personal relationships between landlords and tenants.

There are also disadvantages to using mediation.

- If you do not feel on equal footing with your landlord, it may be challenging to negotiate a good agreement for yourself.
- **If you are unable to maintain your position in the face of a stronger personality, mediation may not result in a fair outcome.**

Massachusetts Court System

There are both federal and state courts in Massachusetts. Typical landlord-tenant matters can be addressed in state court. The Massachusetts state court system has three levels:

- Trial courts
- Appeals courts
- Supreme Judicial Court

Trial Courts

The trial court is where you first file a *complaint*. In Massachusetts, the trial court system has different types of courts including the housing court, the district court, and the superior court.

What court you go to depends on where you live, what the case is about, and how much money the case involves. Most housing cases are filed in either housing or district court. Your area may not have access to both. In general, housing court is an advantageous option because you'll find the judges and staff have more knowledge about housing issues.

1. The Housing Court

Housing courts handle a variety of issues about housing, including housing code violations, *evictions*, lockouts, housing discrimination, and *receiverships*. Housing courts also handle small claims and criminal complaints.² In most cases, the staff in a housing court will be well-informed on landlord-tenant issues, so it is recommended that you choose a housing court over a district court when both are available.

While housing courts are best equipped to deal with landlord and tenant matters, housing courts are not yet available in every part of Massachusetts. Currently, there are five housing courts:

- Boston Housing Court
- Worcester County Housing Court
- Northeast Housing Court
- Southeast Housing Court
- Western Housing Court

Phone numbers for housing courts are listed in the **Directory**.

The Housing Court also has a website with forms and information about court locations, contact information, fees and frequently asked questions. Go to:
www.mass.gov/courts/court-info/trial-court/hc/

2. The District Court

District courts have the greatest number of locations throughout the state. Districts courts handle minor criminal offenses, civil cases under \$25,000, eviction cases, and small claims cases (for \$7,000 or less).³

For a list of district courts, see the **Directory**. For more information about the District Courts go to: www.mass.gov/courts/court-info/trial-court/dc/

3. Superior Court

Superior courts handle criminal cases and civil cases over \$25,000. They also handle appeals of certain agency proceedings.

4. Boston Municipal Court

The Boston Municipal Court serves the City of Boston, and generally functions like a district court. It handles minor criminal offenses, civil cases under \$25,000, eviction cases, and small claims cases (for \$7,000 or less). Because housing court coverage overlaps with Boston Municipal Court, you may want to choose the Boston Housing Court for landlord tenant matters. For a list of Boston Municipal Courts, see the **Directory** or go to:
www.mass.gov/courts/court-info/trial-court/bmc/.

5. Landlord Bankruptcy

If your landlord has a bankruptcy case in progress, you cannot bring a lawsuit against her in housing or district court.⁴ If you want your complaint heard by a judge, you must go before the U.S. Bankruptcy Court in the District of Massachusetts. You can ask the bankruptcy court to hear your complaint. Or you can ask the bankruptcy court for permission to have your case heard in housing or district court.

If you are trying to get back your security deposit, Massachusetts law says that a security deposit is not part of your landlord's property

for the purposes of a bankruptcy proceeding. This means that the landlord cannot use your security deposit to pay off other debts. If she does this is illegal.⁵

If you had security deposit claim against your landlord before the landlord files a bankruptcy case, you can file court papers in the bankruptcy court and ask the bankruptcy court to protect your claim. This means that the landlord cannot use the bankruptcy case to get out of owing you your security deposit.⁶

If your security deposit claim arises after the landlord starts a bankruptcy case, you can either wait to raise the claim until after the bankruptcy case is over or ask the bankruptcy court for permission to bring the case outside of the bankruptcy court by filing what is called a motion for relief from stay.

To see if your landlord has declared bankruptcy, you can call the bankruptcy court in Boston (617-748-5300), Worcester (508-770-8900) or Springfield (413-785-6900) The U.S. Bankruptcy Court is part of the federal court system. For more information, see www.mab.uscourts.gov/mab

Court Forms

Using forms is one of the best ways that people without lawyers can help themselves in a court case. You can find forms online, at the court house, and at local legal services offices and community organizations. To find legal forms related to housing go to:

- **Massachusetts Trial Court** has forms online by subject area. Go to: www.mass.gov/courts/forms
- **MassLegalHelp** has self-help housing forms and sample letters. See: MassLegalHelp.org/housing/self-help-forms

Court Resources

The court system provides a number of resources to help you learn the law and better represent yourself in court.

1. Court Service Centers

Court Service Centers are set up in larger courthouses. They are open the same hours as the court. You can walk in and get help filing out forms, information about court rules, and access to interpreter services. They are currently located at the following locations:

- Boston
Edward Brooke Courthouse
- Greenfield
Franklin County Courthouse
- Lawrence
Fenton Judicial Center
- Brockton
George Covett Courthouse
- Springfield
Springfield Hall of Justice
- Worcester
Worcester Trial Court Complex

For more information go to:
www.mass.gov/courts/csc

2. Lawyer for the Day Programs

Most housing court locations and some district courts have Lawyer for the Day programs. Lawyer for the Day programs provide legal advice, help completing forms, and sometimes limited representation. They provide help for both unrepresented tenants and landlords. You must be income eligible to receive assistance. Call your nearest courthouse for days and hours or ask the clerk in the courthouse if there is a Lawyer for the Day Program. Bring all documents and arrive early so that you have time to get help.

3. Trial Court Law Libraries

The Massachusetts Trial Court Law Libraries are great resources and open to the public. You do not need to be a lawyer. Librarians are there to help you with questions.

You can find laws, regulations, local ordinances, forms, and much more online at:
www.mass.gov/courts/case-legal-res/law-lib/

The Trial Court Law Library also has a service where you can “**Ask a Law Librarian**” a question. You can email, call, or text message. For more about this service go to:
www.mass.gov/courts/case-legal-res/law-lib/libraries/services/ask.html

There are 15 law libraries located throughout Massachusetts. For a list go to the **Directory** in this book or go to: www.mass.gov/courts/case-legal-res/law-lib/libraries/

4. Language Access

a. Interpreters

If it is hard for you to understand or speak English, you have the right to an interpreter in court.⁷ It does not matter what your native language is. The court is supposed to give you a free interpreter.

Tell the court clerk that you need an interpreter. It is best to request an interpreter before you get to court. You can also request one when you get to court. To get an interpreter request form go to:

www.mass.gov/courts/interpreter-request

You can email this form to the court.

Also, each court has a special clerk called a “Court Liaison” who requests interpreters. For the names and phone numbers of Court Liaisons ask the Clerk’s office, or go to:
www.mass.gov/courts/docs/admin/interpreters/court-liaison-list.pdf

For more general information about court interpreter services go to:

www.mass.gov/courts/selfhelp/language-access/interpreter-services/

b. Translated Forms

The courts have translated some forms. You can download translated forms by going to:
www.mass.gov/courts/translated-forms-info

MassLegalHelp has also translated legal information into different languages. For more go to: www.masslegalhelp.org.

Court Staff

1. Judges

Judges rule on what procedures to follow, what evidence is acceptable, and how the law applies to your case. They hear *motions* and *trials*. When making decisions, judges interpret the law. Judges are appointed by the governor. They must retire at age 70.⁸

Judges are faced with the difficult job of making very important decisions that affect people’s lives. They have to hear a lot of cases, one after the other, often under high-pressure conditions. Judges also have different temperaments and interpret the laws differently.

Judges must be neutral. You must not expect a judge to be your advocate. To put yourself in the best position to be heard by a judge, come prepared. Know what your legal claims are and bring key documents and evidence to prove your claims. When you present your case, be brief. Judges appreciate when people get to the point. If you ramble and are not prepared, the judge might not understand your key points.

2. Clerk-Magistrates

Clerk-magistrates in district, housing, and superior courts are judicial officers charged with organizing and sometimes conducting court business. Their job is to call cases to be heard, locate files, make routine *fee waiver* decisions, conduct certain kinds of hearings, and otherwise assist the judge. Oftentimes, clerk-magistrates serve as a judge in small claims matters such as security deposit complaint. In the courtroom, the clerk magistrate usually sits in front of or next to the judge. You may ask the clerk to explain court procedures. However, clerk-magistrates are not permitted to give legal advice.

3. Housing Specialists

Housing specialists work only in the housing court. Their primary function is to mediate cases. Their job is to be neutral and listen to both parties. In some courts, they also go out to properties to inspect them. They work closely with the other court personnel to resolve housing problems.

4. Court Officers

Court officers are the uniformed officers responsible for keeping order in the court. They open and close each court session with the familiar "all rise."

Court Records

In general, court records are public documents and are available for public access during normal business hours.⁹

If you want to see your court record, go to the clerk's office in the court where your file is kept. Court staff may ask you to fill out a form. If **they do, you will need to give the name of your case** and the docket number for the case. If you do not know the docket number, give the clerk the name of the case and ask them for the docket number.

You can also view publicly available information about your case online at www.masscourts.org. You will not be able to view documents, but you can review what has happened in the case, identify the parties and lawyers, and see any upcoming court dates. If you see that there is a clerical error, use **Error Correction Form (Booklet 11)**. Your courthouse should also have computer kiosks that you can use to access the same information through www.masscourts.org. You can refer to this information when requesting documents from the clerk. There is no fee to use a court computer kiosk, but it does not provide any more information than you can get online.

You are allowed to make copies of any documents in the file. The court clerk must allow members of the public to use personal electronic devices, such as a camera or a cell phone, to take still images, or make copies, of records.¹⁰ But some courts do not allow the public to bring cell phones into the court to protect the security of people in the court. For a list of courts that do not permit the use of cell phones see:

www.mass.gov/courts/banned-electronics

Even these courts will likely allow you to bring in a small scanner to copy documents.

Criminal Cases

Criminal cases are pursued by the district attorney's office on behalf of the citizens of the Commonwealth. They are violations of the law that carry criminal penalties.¹¹

Any person can file a criminal complaint with the court, or ask the police or health department to file a complaint on their behalf.

If the state Sanitary Code has been violated, the Board of Health can also file a criminal complaint. For more about criminal complaints and Sanitary Code violations, see **Chapter 8: Getting Repairs Made**. For a list of criminal laws most frequently violated by landlords, see **Chapter 13: When to Take Your Landlord to Court**.

Before you file a criminal complaint, ask yourself what outcome you want. In many cases, a criminal complaint may take much longer time to get results. For example, although you can file a criminal complaint if your landlord won't make Sanitary Code repairs, a civil complaint will move through the system much faster, allowing a civil judge to issue repair orders in just a few weeks. In comparison, a criminal complaint could take several months to get a similar result.

1. Filing a Criminal Complaint

To file a criminal complaint, go to a housing or district court and ask the court staff for a criminal complaint.¹² Fill it out and return it to the clerk. There is no charge to file a criminal complaint. You can also ask a Board of Health or police to file a criminal complaint on your behalf.

If you are in an area with a housing court, the housing court has criminal complaints online. Go to:
www.mass.gov/courts/forms/hc/hc-forms-gen.html

The clerk will then schedule a hearing called a show-cause hearing to determine whether your complaint should be issued by the court. The clerk will schedule a show-cause hearing for the next available court date.

If it is an emergency and your physical safety is in immediate danger, ask the clerk to schedule a show-cause hearing that day. You can also call the police and ask that a criminal complaint be filed against your landlord.

2. The Show-Cause Hearing

A show-cause hearing is used by a clerk or magistrate to determine whether your complaint should be officially issued by the court. It is less formal than a court hearing.

At a show-cause hearing, the clerk will ask you to state the facts in your complaint. A landlord may not have to be present at the show-cause hearing. If the landlord is present, the clerk will then ask the landlord for her version of events. The clerk must then decide whether the facts taken at face value match what are known as the "legal elements" of a crime. The clerk does not decide who is telling the truth or the guilt or innocence of your landlord. If the clerk finds that the law may have been violated, she should issue a criminal complaint.

In the district court, and in housing cases in particular, some clerks will not issue a criminal complaint immediately. Instead, the show-cause hearing will be postponed, for example, to give the landlord time to make the repairs and avoid criminal liability. Sometimes clerks will repeatedly delay issuing a criminal complaint. If this occurs, complain to the presiding judge of the court.

3. Arraignment and Thereafter

If the clerk issues a criminal complaint, a court date will be set to arraign the landlord. At an arraignment, the person charged with a crime appears before a judge and enters a plea of guilty, not guilty, or nolo contendere (which means the charges are not contested). A district attorney will be assigned to prosecute the case. The case will be called *Commonwealth v. The Name of Your Landlord*.

After the arraignment, a pre-trial conference date is set. The judge may allow the landlord time to correct the violation and remove the grounds for the complaint.

At the pre-trial conference, the case might be settled ("plea bargained"), postponed for another pre-trial conference, or a trial date will be set. Again, this date may be postponed several times as the judge gives the landlord time to remove the underlying grounds for the complaint. If the landlord does resolve the issue in the complaint, the district attorney may

dismiss or settle the case. If not, a trial will be held and the landlord may be fined or even face jail under some statutes. See **Chapter 13: When to Take Your Landlord to Court** for landlord-tenant statutes with criminal consequences.

Civil Cases

Civil cases are cases brought to seek court *orders* telling someone to do something (or to stop doing something) or ordering someone to pay money *damages*.

You should consider carefully whether the person or entity you want to sue may have counterclaims against you before you file a lawsuit. It could turn out that you owe someone more money than she owes you.

A civil court case requires you to:

- File a *complaint*,
- Pay *filing fees*,
- *Serve* the complaint and any other documents you file,
- Participate in preliminary hearings, and
- Prepare for and conduct a *trial* (unless parties come to an agreement).

Time limits are set by the court for taking all the steps necessary. You must be aware of these timing issues when you use the court system. This information can be found in the Massachusetts Rules of Civil Procedure, Massachusetts Uniform Small Claims Rules, and local court rules.¹³ These rules can be complicated. These rules can be found at: www.mass.gov/courts/case-legal-res/rules-of-court

1. The Complaint

a. Tenant Friendly Complaints

While civil cases can often be complicated. Two types of civil cases are specifically designed to be filed without the help of an attorney:

1. Small Claims Cases

Small claims cases involve claims for \$7,000 or less.¹⁴ Courts have small claims forms online and available at the court house. For more about how small claims works and forms go to: mass.gov/courts/selfhelp/small-claims

2. Tenant Petitions to Enforce the State Sanitary Code

To ask a judge to order your landlord to repair bad conditions that violate the state Sanitary Code use **Tenant Petition for Enforcement of the State Sanitary Code (Form 14)**. For more about tenant petitions, see **Chapter 8: Getting Repairs Made**.

b. Writing the Complaint

The first step to starting a civil case is to write and file a *complaint* with the court. At a minimum, the complaint identifies the parties.

You are the *plaintiff* and the person or entity you are suing is the *defendant*. The complaint tells the court how the defendant violated the law. It also includes the basic facts that support your claim. And finally, it outlines the solution (*remedy*) that you want the court to provide. For example, do you want the court to:

- Order your landlord to make repairs?
- Order your landlord to turn on the heat?
- Order your landlord to return your security deposit?
- Order your landlord to compensate you for the harm you have suffered?
- Fine or jail your landlord for her behavior toward you?

The courts provide complaint forms in the Clerk's office for small claims actions and Sanitary Code enforcement petitions. For other types of civil complaints, you can go to a Trial Court Law Library and ask them for books that provide a guide to writing civil complaints. However, depending upon how complicated your case is, an attorney's guidance may be important to be certain that your complaint is in the proper form. You can ask the court clerk's office if they have pro-bono (free) attorney days if you need assistance, or if you are in Greater Boston you can call the Volunteer Lawyers Project. See Directory.

c. Filing the Complaint

To begin a lawsuit, the original copy of the complaint is filed in the clerk's office of the court where you can file your case. The clerk does not have to accept complaints that do not comply with court rules.¹⁵ You should keep at least **three** copies of your complaint.

When you file your complaint, you must pay a *filing fee* unless you can show the court that you are unable to afford the fee.¹⁶ The procedure for not having to pay (waiving) filing fees is discussed in the **Paying Court Fees** section in this chapter.

When your complaint is filed, a court clerk will assign a case number called a "docket number." Ask the clerk to write this number down for you, and keep it in a safe place. This number **must appear on all court papers filed in your case.**

Some courts won't assign a docket number at the time that you file your complaint. In that case, the court will send you additional papers in the mail with the information you need to take additional action on your case.

It is very important that you follow up diligently with the court to make sure that your case was properly filed. If you don't hear back from a court 10 days after you file your case, call the Clerk's Office to ask about the status of your case. You should also be able to track your case

on the MassCourts.org website using your docket number or your name.

d. Serving the Complaint

When you file a complaint, the clerk will usually give or mail you a document called a summons. You must deliver (*serve*) the summons and the complaint on the person or entity named as the *defendant* in your lawsuit. While the complaint tells a person why she must appear in court, a summons is the official court document that tells a person when to appear in court. It notifies her that you are starting a lawsuit.

If the clerk does not give you a summons the same day you file a complaint, ask when you should expect to receive it.

You must have a sheriff or a constable deliver a copy of the summons and a copy of the complaint to the defendant within a certain period of time. The time period will vary, depending on the type of legal action you are starting. This delivery is called *service*.¹⁷ You cannot serve a summons and complaint yourself. Also if you are suing more than one person in the same lawsuit, you must serve each person separately. For example, if two brothers are the landlords of your property, you must serve each brother with a copy of the summons and complaint.

To serve the summons and complaint, you can either:

- Hire a sheriff or constable to serve the papers, or
- Ask the court to appoint a "special process server." A special process server is someone who is not involved in your case, over age 18, and willing and able to serve the papers on the defendant.¹⁸ A special process server usually does the work at no cost. The disadvantage is often a lack of experience in dealing with a defendant who may be very upset or try to refuse receipt of service.

After service is made, the person who served the complaint (called a “process server”) completes what is called the “return of service” section on the original summons. The person must describe for the court how service was made. For example, the process server may give a copy of the summons and complaint in person to the defendant, or the process server may have left a copy at the landlord’s door and sent a second copy by first class mail.

The server then files the original summons and complaint with the court, or returns it to you so that you can file them. Service is not complete until the summons, with the return of service section properly filled out, is filed with the court. **Improper service of the complaint is grounds for your complaint to be dismissed.**¹⁹ For example, you cannot mail a summons and complaint to an individual defendant.²⁰

2. Paying Court Fees

If you cannot afford court fees, a court can *waive* these fees if you meet the court's definition of *indigency* under certain guidelines.²¹ This means that you will not have to pay them. See **Affidavit of Indigency (Booklet 9)**. You can use this form to ask that you not have to pay court fees. If a clerk or judge determines that you are indigent, the same form can also be used to ask the county's sheriff to serve your summons and complaint without charging you for the service.

The clerk is authorized to make the decision to waive routine filing and service fees without asking you to make an appearance in front of a judge. However, you must go before a judge to waive special fees, such as fees for a *deposition* or an expert witness

3. Preparing for Trial

a. The Answer and Counterclaims

Except in small claims cases, the defendant is required to file an *answer* to your complaint with the court. If a defendant does not file an answer, she will default, and a judgment will enter against her.) The answer admits or denies the allegations in your complaint. The answer also state *defenses* to your claims, and asks the court to take action favorable to the defendant. In the answer, the defendant may also file *counterclaims* that create a countersuit against you. If the defendant files any counterclaims, **you must file your own answer to these counterclaims**, just as the defendant is required to file an answer to your complaint.²²

b. Motions

Motions are written requests filed with the court that ask the judge to take action in your case.²³ Most motions can be made at any time in the case by any party to the case. Common examples are:

- A *motion to dismiss*, which asks the court to end the case.
- A motion for a *temporary restraining order*, which asks the court to prevent or require certain actions by a party.
- A motion for an *attachment*, which asks the court to freeze the assets of a party in anticipation of a *judgment* for money.
- A motion to compel discovery if the other side does not produce the information or documents that you are entitled to examine.

c. Discovery

All parties to a lawsuit are entitled to ask for *discovery*.²⁴ Discovery is the process that allows the parties to “discover” and examine each other's evidence, including a list of witnesses. This a powerful tool for both sides, because it

requires both parties to put their evidence on the table before trial.

Discovery takes different forms:

- **Interrogatories**
Interrogatories are your written requests for sworn written answers to questions.
- **Request for Production of Documents**
Requests for Production of Documents are your written requests to examine documents or receive copies of documents.
- **Requests for Admissions**
Requests for Admissions are your written requests that a party admit or deny in writing particular statements of fact.
- **Depositions**
A deposition is your verbal questioning of a witness under oath in front of a court reporter who produces a transcript of the deposition.

The discovery process can be very complicated and time-consuming, but it can be a very important part of a civil lawsuit. Remember: **Both sides in a case are entitled to discovery.**

Discovery can force both sides to show the other side the evidence available in the case, but it does have limits. If you ask for something that the other side does not think you have a reason to review, they may not respond, or they can ask the court for an order denying the disclosure of the disputed item. In turn, you can file a motion asking the court to force them to produce the information if they refuse to give it to you.

4. Trying Your Case

When you go to trial, your goal is to persuade a judge or a jury to decide in your favor.²⁵ You must prove your case. To prove your case you must tell your story with evidence and then make an “argument” that the law has been violated. To accomplish this, you must prepare

ahead of time how you will prove your case. Before you go to court, you should:

- Outline on paper the facts in your case. The better you know your case, the more persuasive you will look in court.
- Prepare yourself and your witnesses to testify about these facts.
- Gather all the evidence, including documents, photos, and paperwork, that you want the court to see. Notify the other side in advance about your witnesses.
- Evaluate each witness, document, or object and consider whether people who have no knowledge about your case will find the facts as you present them believable and relevant.

a. What Is Evidence

Evidence is what the court allows you to use to prove your case.²⁶ It can be testimony from you, or the defendant, or witnesses. It can be documents and physical evidence, such as letters, photographs, and reports.

Evidence is convincing if it is credible or believable. For example, a witness may testify to the exact facts of your case, but if she also admits that she previously told a very different version of the facts, few judges will rely on her testimony to decide your case.

b. Preparing Witnesses

Witnesses play an important role in a trial. The purpose of a witness is to reveal the facts of a case or to confirm facts already revealed. In some cases, the testimony of witnesses may be your best evidence.

With some exceptions, witnesses may testify only about events of which they have personal knowledge. Witnesses cannot testify about what most people said to them or to anyone else. This is called *hearsay*.

Hearsay is generally not allowed in court. For example: Your neighbor can testify that she saw a worker in the basement working on the furnace. She usually cannot testify about what the worker said to her.

Before you go to court, it is very important that you prepare all of your witnesses. This includes yourself, if you plan to testify. Witnesses are telling a story to a judge or jury who, in most cases, are completely unfamiliar with the facts of your case. You must draw out their testimony in an organized and logical way to present all the important facts.

Preparing witnesses is also important because people are usually nervous when they are in court testifying. Preparation helps them feel more comfortable.

Preparation also is important because you do not want to have any surprises when your witnesses testify. You want to ask them questions and know what their answers are before you get to court.

To prepare each witness:

- Make a list of the facts that you believe this person may be able to testify to.
- Create a list of questions that help the witness to state the facts.
- Write your questions down in a logical order.
- Go through your questions with your witnesses once or twice so you are all familiar with both the questions and the answers. Your witness should be familiar with the questions, but not overly rehearsed.

When you create questions to ask witnesses, the court does not allow you to put the answer in the question. This is called "leading the witness." To use a very simple example: If you want a witness to say that a person was present on a particular day, you should ask: "On June 1,

2008, who visited you?"—not: "On June 1, 2008, did Jane Doe visit you?"

Here is an example of questions that create a story and do not lead the witness. You want to prove that your landlord knew about bad conditions using the testimony of a neighbor who was present when your landlord visited your apartment. You might ask questions as follows:

- Please state your name and address.
- On January 1, 2003, did you visit my apartment?
- On that date, was anyone else present?
- Who was present?
- What rooms did my landlord enter?
- Did I say anything to the landlord?
- What did I say? (This is not hearsay because a witness can testify about what you, as the plaintiff or defendant in a case, said.)
- Did my landlord say anything?
- What did my landlord say?

Go through your questions with your witnesses, and write down the answers. If you are the witness, go through the questions yourself.

You can bring a written list of the questions and answers to court. You do not have to memorize them. Witnesses, however, may not bring a written list of answers, but sometimes the court will allow them to refer to their own notes to refresh their memories. Also, make sure you tell your witness—**and remind her of**—the date and time your case is scheduled in court.

c. Preparing Evidence

Evidence such as documents, damaged personal property, photographs, reports, and other papers or objects are important to proving your

case. For example, a photograph of a ceiling falling down, or dead mice in an apartment, can create a lasting impression on a judge or jury. As they say, "a picture is worth a thousand words."

In court, documents and physical evidence will be referred to as "exhibits." The court will assign each exhibit a number.

Exhibits can be very important proof. Here is a list of evidence that you may be able to use in court:

- A written *lease* to prove you have a *tenancy*.
- Rent receipts and cancelled rent checks to prove that you have paid rent.
- Board of Health reports, which can be used to prove violations of the state Sanitary Code.
- Letters and notices that you sent the landlord, which prove you gave her notice of bad conditions.
- Photographs of bad conditions, which can prove their existence.
- Diaries, logs, calendars, or other written records, which may be used to show when certain events occurred and can also be used to refresh your memory of them.
- Damaged personal property. There are procedures for items to be accepted as evidence by the court. The admission of evidence can be a complicated matter, and not all courts handle it the same way.

First, you must ask a judge permission to have your evidence (or exhibit) "marked for identification." A clerk will then give your evidence an exhibit number. Then you must establish that the evidence is authentic and relevant. Usually this is done by asking a witness questions about the exhibit. For example, you might ask a witness to identify a photograph, and then ask if the photograph is a fair and accurate representation of the place or object

just identified. Then you ask a judge to "admit" the exhibit into evidence.

d. Board of Health Reports

It is very important to ask the Board of Health to provide "certified" (sometimes called "attested") copies of their report before your court date. If you have a Board of Health report that has been *certified* "under the penalties of perjury" by the Board of Health inspector, you can put it into evidence - even if the inspector is not in the courtroom to testify about the report.

Be prepared to testify about when and why you called the Board of Health for an inspection, and then after you do that, you can put the inspector's report into evidence.

e. Preparing Your Arguments

You make a statement or "argument" to the court when you summarize the facts of your case and explain what you want the court to do for you. Before the court hears testimony in a trial, the parties sometimes each make an "opening statement" or "opening argument." This statement should be short and to the point, highlighting the main points of your case and what you are asking the court to do. At the end of the trial, each side will make a "closing statement" or "closing argument." At this time, you should emphasize the facts that support your case, explain why you believe your case is the more persuasive, and again tell the judge what you want her to do.

f. Going to Court

Going to court is an unfamiliar experience for most people. One way to help yourself feel more comfortable in court is to visit the courthouse before your trial date. You can learn a great deal from simply watching court cases. Don't be shy about calling your court to ask when they hear cases like yours.

In most cases, courtrooms are always open to the public. If possible, watch cases similar to yours. Look at where the parties stand, where

they put their papers, and how they address the judge. Watch how the clerk and the judge do their jobs.

Just remember that almost everyone is nervous in court. You can steady your nerves by being prepared and clear about what your goal is.

g. Common Sense Tips about Going to Court

When you go to court, you should keep the following in mind:

- **Dress Respectfully**
Unfortunately, people make quick judgments based on appearance, and your clothing might influence the treatment that you receive. Judges, clerks, and lawyers wear business clothing. If you dress nicely, you may be treated with greater respect than if you appear in jeans and a T-shirt.
- **Be on Time**
Not being on time can have serious consequences in court. If you are not present when your case is called, a clerk may *dismiss* your case and you will lose your case. If court begins at 9:00 a.m., be there early to give yourself time to find the right room. If you know you will be late, call the court and let the clerk know. For example, if you do not appear in an eviction case when the list of cases is called, the clerk will enter a *default judgment* and you will lose your case. If you had a good reason for being late, you can later ask the court to remove the default judgment. You do this by filing a motion to remove a default judgment. If the court will not remove the default judgment, you cannot file the case again.
- **Be Respectful**
While you may find that some court staff are more agreeable than others, they have the power to make your life very difficult if they feel mistreated. When you arrive at the courthouse, you should be polite to everyone. You never know when you may

need to ask someone for assistance. Always resist the urge to let nervousness control how you interact with others.

- **Find the Right Courtroom**

When you arrive at the court (and remember, arrive **early**), go to the clerk's office and ask which courtroom your case is in. Go to that courtroom.

The first thing that usually happens is that a clerk calls the names of all the cases scheduled. When your name is called, let the clerk know that you are present by standing up and saying “here,” or going up to the clerk’s desk when you arrive to tell the clerk you are present, depending upon the court’s system. At that time, if you have started to negotiate a settlement with the other side, you can ask the clerk for more time to work out your agreement. If this is the first time the parties have met in court, you should expect that the judge will encourage you to talk with the other side and try and reach a settlement instead of having a trial. Some courts will also have mediators available as well.

If the clerk finishes reading the list of case names without calling your name, immediately go to the clerk and ask her to determine where your case is. You may be in the wrong courtroom, or the clerk's office may have made an error and not sent your case to the courtroom yet. If you don't resolve why your case wasn't called, the court may inadvertently default you.

- **Ask Questions**

If you are unsure of what to do or what has happened, ask someone for help. On the whole, court staff can be very helpful.

5. The Trial

If your case is scheduled for trial, your trial begins when your case is called by the clerk. The parties are then usually asked to make brief opening statements. Remember, your statement should be short and to the point. You should

tell the court the important facts of your case and what you want the court to do for you.

After both sides make opening statements, each side will present its case by calling witnesses to testify and by introducing exhibits. After each witness testifies, the other side will have a chance to question the witness. This is called *cross-examination*.

When all the evidence has been presented, the parties will make closing arguments to the judge. This is when you tell the judge what you have proved and why she should decide in your favor.

If the case is before a judge, she may tell you her decision when closing arguments are completed, but, more often, the judge will take the case “under advisement.”²⁷ This means the judge wants to think about it for a while. If that happens, you will receive the decision in the mail. Do not be surprised if you have to wait a few weeks or even a few months for a judge’s decision.

6. Judgments and Appeals

The court’s decision is called a *judgment*.²⁸ Under certain circumstances, you may wish to consider challenging the decision and *appealing* the case. Note: If you brought your case in small claims court, you cannot appeal if you lose. Generally, if a judge decided against you because she felt that the other side was more believable, you probably have no *grounds* for an appeal. On the other hand, if the judge did not follow the law, you may have a better chance of succeeding on appeal. A decision to appeal is complicated, and requires the assistance of an attorney. It is important to be careful when filing an appeal because you can be required to pay money to the other side for filing an appeal where there isn’t a reasonable basis for overturning the original decision.²⁹ In other words, if you file an appeal when you don’t have a good reason, a court could say your appeal is “frivolous,” and you could end up paying the other side’s legal costs.

If you want to appeal a decision, you must act quickly after receiving the court’s decision, because **appeals must be filed within a very short time**. For example, in most civil lawsuits, the parties have 30 days to appeal a decision. In eviction cases, the appeal period is only 10 days. If the decision is not appealed within the time limit, the judgment becomes final.

7. Enforcing Court Judgments

Collecting money from a landlord or enforcing a *judgment* can be the hardest part of winning your case, and it certainly can be the most frustrating.

If your landlord is not willing to pay you or cooperate with the court’s order, you should probably consult an attorney who specializes in collection law. In most cases, a judgment is enforceable for 20 years.³⁰ The primary legal ways to seek compliance with and payment of a civil judgment are:

- Attachment,
- Trustee Process,
- Execution,
- Supplementary Process,
- Contempt.

a. Attachment

An *attachment* is created to place a hold on the sale or transfer of property before or during a lawsuit so that it will be available to satisfy a court judgment.³¹ An attachment can be requested as soon as you begin your court case or after you win. You must show the court that you have a good chance of winning your case and that your landlord may dispose of the property if she is not prevented from doing so. If you win a court judgment, the property attached can be sold by the sheriff without the losing side’s permission in order to pay the judgment.³²

b. Trustee Process

Trustee process is similar to the attachment process in that it places a hold on property during a lawsuit.³³ The difference is that a third party, a trustee, is asked to control or hold the property owned by the landlord. Most often, trustee process is used to ask a bank to freeze accounts held in the name of the landlord. When used against bank accounts, trustee process is a powerful weapon. It is hard to do business on a cash basis.

c. Execution

When your court judgment is final, you must ask the court to issue an *execution* in order to enforce the judgment.³⁴ A sheriff can then be hired to "levy on" the execution to obtain satisfaction of the judgment.³⁵ This means that a sheriff can have certain property sold to satisfy the judgment or order money to be removed from the losing side's bank account. Because the levy process is complicated, an attorney should be hired to oversee it.

d. Supplementary Process

When you have an *execution* that requires your landlord to pay money to you, you are a creditor and your landlord is a debtor. In supplementary process, a court hearing is held so a creditor can ask a debtor about the debtor's ability to pay the money owed under the judgment.³⁶ Using the information obtained from a supplementary process hearing, the court can create an order requiring payment according to a specific schedule. In some cases, however, the court may be powerless because a debtor has no assets and is judgment-proof.³⁷ Small claims (for no more than \$7,000) has its own supplementary process.³⁸

e. Contempt

When a landlord fails to follow the terms of a court order, she may be held in contempt and punished by the court.³⁹ For example, a landlord who fails to make court-ordered repairs may be

ordered to live in her building until the repairs are completed.⁴⁰

Negotiating a Good Settlement

Most people settle cases before the trial begins. Many times, settlement occurs on the trial date. This happens because trials are time-consuming, risky, and expensive. They are also unpredictable. No one can be sure how a judge or jury will decide a case, and it is often better to reach your own settlement than to allow a judge to make those choices for you.

For this reason, you should know what your bottom line is for settlement of your case. There are a number of factors to consider:

- How strong is your case?
- If money is involved, what is the most or least you could gain in a court decision, and what is the lowest amount acceptable to you?
- What alternative settlement options do you have? For example, would you rather have money or stay in your home?
- Do you have any other goals, such as repairs or better security?

It is helpful to prepare a list of your goals to write into your settlement. Include in the agreement a timeline for action by your landlord or you. The more specific you are, the better.

The heart of settlement negotiations is the willingness, on all sides, to compromise. Try and think about what the other side wants to happen, and figure out which compromises you are willing to make to resolve your case and what compromises you are not willing to make. You will feel better about the decisions you make in settlement talks if you have thought your choices through in advance.

When you negotiate, be persistent. If you feel that you are losing control of your emotions or actions, ask to take a break in order to calm down and think clearly. You are allowed to do this. You can also ask for time out if you feel the other side is losing control. Try to have a friend or someone else with you when you negotiate so that you are not alone. When you are alone it is difficult to catch everything that is happening and it is very helpful to have another set of ears and eyes. If you are feeling pressured to sign an agreement, take time out to consider what your options are. If the other party has a lawyer and you don't, the lawyer may argue that you can't bring a civilian with you to negotiations. That's not true.

While you cannot have a non-lawyer represent you in court you can have a non-lawyer with you during private negotiations or mediations.

If you reach a settlement, you must put it in writing and file it with the court as a settlement. Before you sign this document, **read it very carefully**. Be sure you understand its terms and can carry them out. In addition, once you have signed the agreement, it will be very difficult, if not impossible, to make any changes. At the request of either party, the settlement can be enforced by the court. For more help see **Booklet 10: Negotiating a Settlement of Your Case**.

Endnotes

1. See [Massachusetts Guide to Evidence, § 408\(a\)\(2\) \(2016\)](#); [Supreme Judicial Court Rule 1:18: Uniform Rules on Dispute Resolution](#). See specifically [Uniform Rules on Dispute Resolution 6\(f\)\(iii\)](#) and 9.
2. [G.L. c. 185C](#).
3. [G.L. c. 218](#). District courts have broad equity powers in landlord and tenant cases. [G.L. c. 186, §14](#). District courts also have an Appellate Division that hears certain limited appeals. [G.L. c. 231, §§108-110](#).
4. [11 U.S.C. §362](#) provides that once a petition for bankruptcy has been filed, all actions already filed prior to the petition or which may be filed in the future are stayed.
5. “A security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claim of any creditor of the lessor or of the lessor’s successor in interest, including a foreclosing mortgagee or trustee in bankruptcy.” [G.L. 186 § 15B\(1\)\(e\)](#). If a landlord invades the account where your security deposit is held and dissipates the security deposit, the landlord cannot be discharged from the debt based on fraud or misappropriation or in bankruptcy terms “defalcation.” [11 U.S.C. § 523\(a\)\(4\)](#).
6. If the tenant has a prepetition claim against the landlord that is based on fraud, false pretenses, or willful and malicious injuries, they should raise the claim in bankruptcy court by filing an adversary proceeding to determine that the debt is nondischargeable. [11 U.S.C. 523\(a\)\(2\)](#).
7. [G.L. c. 221C](#).
8. [Mass. Const., Pt. 2, Ch. III, art. 1](#). After retiring at age 70, a judge may still be assigned to hear cases, as long as no one assignment lasts longer than 90 days. [Mass. Const. Art. of Amend., art. XCVIII](#); [G.L. c. 211B, §14](#).
9. For rules about public access to court documents, see [Trial Court Rule XIV, Uniform Rules on Public Access to Court Records, Rule 2](#).
10. [Trial Court Rule XIV, Uniform Rules on Public Access to Court Records, Rule 2\(j\)\(1\)](#).
11. [G.L. c. 218, §§26-37](#).
12. [G.L. c. 185C, §19](#) (housing court procedure); [G.L. c. 218, §35A](#) (process for criminal misdemeanor complaints).
13. [Massachusetts Rules of Civil Procedure are found in Massachusetts Rules of Court](#), West Publishing Company.
14. [G.L. c. 218, §§21-25](#).
15. [Mass. R. Civ. P. 7-10](#).
16. [G.L. c. 261, §§27A-27G](#).
17. [Mass. R. Civ. P. 4](#).
18. See [Mass. R. Civ. P. 4\(c\)](#), which allows service by a disinterested person.
19. [Mass. R. Civ. P. 12\(b\)\(5\)](#).
20. [Mass. R. Civ. P. 4](#) tells you how court papers must be served.
21. [G.L. c. 261, §§27A-27G](#). The guidelines for determining indigency status are revised each year. Be sure the clerk is using the most recent guidelines.
22. [Mass. R. Civ. P. 12-13](#).
23. [Mass. R. Civ. P. 7\(b\), 12](#).

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24. [Mass. R. Civ. P. 26-37.](#)
 25. You can request a jury by including the request for a jury demand in the caption of your complaint. The complaint's title would read "Complaint and Demand for Jury Trial." You can also ask for a jury trial for 10 days after your complaint is served. [Mass. R. Civ. P. 38.](#)
 26. See Paul J. Liacos, *Handbook of Massachusetts Evidence* (8th Ed. 2006).
 27. If it is a jury trial, the judge will give the jury instructions on how to make its decision. The jury will then go to the jury room to make its decision. When the jury has made its decision, it will return to the courtroom and the judge will ask the foreperson to announce the jury's decision.
 28. [Mass. R. Civ. P. 54-63.](#)
 29. [Mass. R. App. P. 25.](#)
 30. [G.L. c. 260, §20.](#)
 31. [Mass. R. Civ. P. 4.1.](#)
 32. A sheriff can "levy on the attachment." [G.L. c. 236.](#) See also [G.L. c. 235](#) (regarding execution on personal property following judgment). This means that a sheriff can sell the attached property at an auction. Proceeds from the sale can then be used to pay the judgment. Because auctions often bring a low price, the threat of this proceeding is often sufficient to make a landlord pay a judgment. The levy process is complicated, and should be handled by a lawyer who specializes in "collections."
 33. [Mass. R. Civ. P. 4.2.](#)
 34. [Mass. R. Civ. P. 69.](#)
 35. [G.L. c. 235](#) (regarding personal property); [G.L. c. 236, §1 et seq.](#) (regarding land).
 36. [Mass. R. Civ. P. 4.3](#); [G.L. c. 224, §§14-18.](#)
 37. [G.L. c. 224, §16](#) (debtor unable to pay judgment); [G.L. c. 235, §34](#) (property exempt from execution).
 38. [Uniform Small Claims Rule 9.](#)
 39. [Mass. R. Civ. P. 65.3](#) (civil contempt).
 40. See *Rodgers v. Smith*, Boston Housing Court, 27890-91-92-93 (Daher, C.J., Nov. 22, 1989).

