

Removing a Default

Representing Yourself in an Eviction

Did you miss your court date?

If you miss your eviction court date, the court will allow the landlord to evict you. But you can ask the court for another court date. As soon as you can, fill out the Motion to Remove Default form in this booklet and file it.

What happens if I do not show up for court?

If you do not show up for your court date or you arrive after the case is called, the court enters a “default judgment.” The court decides your landlord wins the case because you did not show up for your court date. Your landlord can evict you about 2 weeks after the date you were supposed to be in court if you do not file a Motion to Remove Default.

Ask the court for a new court date

You can ask a judge to remove the default judgment and schedule another court date. You must give the judge a good reason for missing the court date. You must also have a “legal defense” that might prevent your eviction.

If you did not file an Answer yet, read **Booklet 3: Answer** to learn about the legal defenses you may have. Then fill out and attach your Answer form to this motion.

Try to file your **Motion to Remove Default Judgment within 10 days of the court date you missed**. If you do not file a Motion to Remove Default, your landlord can evict you about 2 weeks after the date you were supposed to be in court

If possible, you should also file an **Answer** before the hearing on your **Motion to Remove Default Judgment**.

How to remove a default judgment

Fill out the Motion to Remove Default

Use the free online tool, CourtFormsOnline.org/housing/#nan to help you complete this motion.

Or complete the form in this booklet.

The letters and numbers in these directions match those on the form.

- a. Write the name of your county.
- b. Copy your landlord's name from the Summons and Complaint.
- c. Copy your name from the Summons and Complaint. Spell your name the way it appears on the Summons and Complaint, even if it is wrong. You can ask the court to fix mistakes later.
- 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. It may be on the top right corner of the Summons and Complaint. You can ask the court clerk for it.
1. If you missed your court date and you:
 - Did not file your Answer, check the box ☐ next to: "Permit me to file an Answer late and schedule a new court date" Use Booklet 3 and attach your Answer to this motion.
 - Already filed your Answer check the box ☐ next to: "Schedule a new trial because my Answer has already been filed"
 - If you are attaching your Answer to this motion check the box ☐ next to "I am attaching a copy of my Answer to this motion."
2. Check box 2 if you are filing your motion within 10 days of the default judgment.
3. Check box 3 if you are filing your motion more than 10 days after the default judgment. If you check this box, you also ask the court to stop the eviction until you can have a hearing on your motion.
4. Tell the court why you missed your court date. Check one reason and explain why you were not in court on the scheduled court date. Examples of good reasons for not appearing in court could include not receiving notice of the hearing, serious and documented illness, or your landlord's having told you the case was worked out and that you did not have to go to court. The judge may not consider lack of transportation, not having childcare, or not wanting to miss work good enough reasons for missing court, but if that's the reason, do your best to explain the situation (for example, you arrived late because your child's school bus is at 8:20 and then you had to take 2 busses to get to court).
5. If you are not attaching your Answer to this motion, use the language in Booklet 3: The Answer, to describe your "good defense to the landlord's case, as specified below." For example: if you lived with bad conditions that your landlord knew about, that may be a defense.
6. Ask the clerk at the court when a hearing can be scheduled, and if it will be a phone, zoom or in-person hearing. Ask if the clerk will put this information in the motion or do you have to.

7. Check the box next to the way you plan to get your motion to your landlord or their lawyer, and write in the date you will hand-deliver or mail it.
8. Sign and write your name, address, and phone number on the bottom of the form.
9. If you got a 48-hour notice of eviction from a sheriff or constable, check box 9. Check both boxes and fill in the date and time on the sheriff's or constable's eviction notice. When you bring this motion to court, tell the clerk, "I would like to speak to a judge right away before the sheriff moves me out."

Fill out an Answer

If you have not done so already, try to fill out the **Answer** form in **Booklet 3** before your court date.

Your Answer tells the court why you should not be evicted and the things your landlord did that were wrong. File your Answer with this **Motion to Remove a Default**.

- The **Answer** form is available online [MassLegalHelp.org/housing/self-help-forms](https://www.masslegalhelp.org/housing/self-help-forms).
- Or use the Massachusetts Defense for Eviction (MADE) free online Answer form tool: [GBLS.org/MADE](https://www.gbls.org/MADE)

If you are about to be moved out, ask to speak to a judge right away!

If you get a 48-hour notice from a sheriff or constable, ask to see a judge to **Stay the Execution** or stop the eviction until the judge can hear your motion. Check #9 on the Motion to Remove a Default and include, if possible, a copy of the constable's 48-hour notice.

Deliver the Motion

Make 2 copies of the Motion to Remove Default and the Answer forms, if you are attaching it. **Do not include the instructions.**

- File the original forms with the court as soon as possible. Call the clerk before you file and ask them what the best way is to file. You can:
 - ✓ Take it to the clerk's office. If you hand-deliver to the court, ask the court to stamp the date on your copy so you have proof that you filed it on time.
 - ✓ Send it to the court electronically. Use the court's online filing system or call and ask the court if you can email them. This is the best way if you can do it!
- Deliver a **copy** of your forms to your landlord's lawyer or your landlord. Look at the right side of the Summons and Complaint. If there is a number on the "BBO#" line, your landlord has a lawyer. To deliver a copy, you can:
 - ✓ **Hand-deliver** it to your landlord's lawyer or your landlord.
 - ✓ **E-mail it.** Your landlord's **lawyer** must accept the copy you email them. You can find their email at the bottom of the Summons and Complaint. If your **landlord doesn't have a lawyer**, ask your landlord if they will accept your forms by email. If they agree **in writing**

in an email or text, you can email it. If your landlord does not agree, you must get it to them a different way.

✓ **Fax it.** You can fax your landlord's lawyer or your landlord, but only if they agree in writing to accept it by fax. If they do not agree, you must get a copy to them in a different way.

✓ **Mail it** if you absolutely cannot deliver it in person or send it electronically.

- **Keep a copy** for yourself. Keep it safe and bring it with you when you go to court.

Prepare for court

Read your Answer so you remember your defenses and counterclaims before you go to court. If a judge removes the default, it is possible the judge will also hold a trial that day.

When you go to court, bring any papers that can help you prove why you missed your court date. For example, medical records can show you were at the hospital, or you may have a doctor's letter that says you could not travel. Also bring papers and witnesses that help you prove your "defenses" and "counterclaims." See **Booklet 3: The Answer**.

When the clerk calls your case, tell the judge:

- The reason you missed the scheduled court date. Tell the judge you have proof and show them your papers.
- Your "defenses" and "counterclaims" from your **Answer**. Tell the judge if you have proof or witnesses with you.

After court

If you win your motion, the judge will **remove the default**. The judge may:

- Order your trial for the same day as the hearing on your motion, while you are still at court.
- Schedule your case for another day.

The judge may say they will remove the default if you pay your rent money to the court while the court is hearing your case.

If you lose your motion, the judge will not let you have a new court date. Ask the court for more time to move if you need it. See **Booklet 9**.

FORM

(Please print or type)

COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

a. _____, ss:
County

d. _____
Name of Court

b. _____
Plaintiff(s) – Landlord(s)

vs.

c. _____
Defendant(s) – Tenants(s)

e. _____
Docket No. Summary Process

MOTION TO REMOVE DEFAULT AND VACATE JUDGEMENT UNDER M.R.C.P. 59 AND/OR 60(b)

1. As the Tenant/Defendant in this case, I request this Court to remove the default and vacate the judgment, and

- ☐ Permit me to file an Answer late and schedule a new trial or
☐ Schedule a new trial because my Answer has already been filed.

A copy of my Answer is/is not (**circle one**) attached.

2. ☐ I am filing this motion within 10 days of the default judgment and, under Rule 59 of the Massachusetts Rules of Civil Procedure and Rule 4(a) of the Massachusetts Rules of Appellate Procedure (for Appeals Court) or Rule 4(a) of the Dist./Mun. Cts. R.A.D.A. (for appeals to the Appellate Division of the District Court), the execution is automatically stayed.
3. ☐ I have not filed this motion within 10 days of the default judgment and therefore I am asking the Court to stay the execution until I can be heard by the judge on this motion.
4. I did not appear at the original hearing for the following reason:

- ☐ Clerical Mistake ☐ Inadvertence ☐ Surprise ☐ Excusable Neglect ☐ Other

Explain _____

5. ☐ I already filed an Answer which explains my defense.
- ☐ I am filing a proposed Answer (attached), which explains my defenses/counterclaims, and ask that it be approved as a late filed answer if this motion is allowed.
- ☐ I have a good defense to the landlord's case, as specified below.

6. **Clerk:** Please schedule this motion for a hearing on _____ (*date*) at _____ o'clock.
Landlord: Please take note that this motion will be heard at the above time.

7. I ☐ delivered or ☐ mailed (*check one*) a copy of this Motion to my landlord or their lawyer on _____ (*date*).

- 8.
- | | |
|---|---|
| _____
Signature of Tenant | _____
Signature of Tenant |
| _____
Tenant's Name (<i>print</i>) | _____
Tenant's Name (<i>print</i>) |
| _____
Address | _____
Address |
| _____
City State Zip | _____
City State Zip |
| _____
Telephone Number | _____
Telephone Number |
| _____
Email (if any) | _____
Email (if any) |

9. **Emergency Motion for Temporary Stay of Execution
Pending Further 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 to remove the default.

Signature of Tenant

Tenant's Name (*print*)

Address

City State Zip

Telephone Number

Email (if any)

Date: _____