

Tenants' Rights in Massachusetts
MCLE Basic Benefits Training Series
September 16, 2025

Facing Eviction

Part II

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Key Takeaways

- Resources available for tenants facing eviction.
- How to identify where a tenant is in the eviction process.
- How you can help a tenant facing eviction.

Remote Hearings

Most Court events are in person, but some are still held remotely.

- **Zoom** is being used for remote court events
- Video is the default, but litigants can call in by phone if they don't have access to the internet.
- Contact the clerk's office if:
 - If a tenant has disability or technology challenges; you can request an in-person hearing.
 - the tenant needs an interpreter.

A Right to an Interpreter

- All courts should give people an **Interpreter** (free of charge) if they need one.
- If possible, call the court clerk's office to request an interpreter before the court date.
- If you cannot get the help you need from court staff or an interpreter, you can make a complaint online:
macourtsystem.formstack.com/forms/language_access_complaint

Court Service Center

There are 9 Court Services Centers (CSC) statewide – one Virtual Court Service Center and 8 physical locations various courthouses.

- Virtual Court Service Center provides limited assistance, referrals and appointments at the local CSC.
 - Open M-F 9-2pm
 - Available via phone (646) 828-7666
 - Available via Zoom <https://www.zoomgov.com/j/1615261140>
- 8 Local Court Service Centers
 - Generally open M-TH 8:30-1 pm; 2-4:30pm
Fri 8:30-1pm (check hours in your location)
 - Locations and additional information at:
https://masslrf.org/en/programs/view/court_service_center

Refer tenants who need assistance filling out Answer and Discovery, motions, and other important forms.

Lawyer for the Day

- Many of the Housing Courts have a Lawyer for the Day program where unrepresented tenants can get information, advice, and limited assistance.
- Some Housing Courts have in-person Lawyer for the Day, and some Housing Courts may have virtual Lawyer for the Day.
- Strongly recommend to tenants that they arrive early to court on the day of their hearing and ask to speak to someone from the Lawyer for the Day program as soon as they get to court.
- To find out whether Lawyer for the Day is available in your court, contact the court's clerk's office.

Tenancy Preservation Program

- The Tenancy Preservation Program (TPP) is a homelessness prevention program based in the Housing Court.
- TPP works with tenants facing eviction as a result of behavior related to a disability.
- TPP works with tenants to set up services to address the underlying causes for the eviction.
- TPP may be available to assist “upstream” before a court complaint is filed.
- Let tenants know about TPP and encourage them to reach out to TPP.

First Tier Event

- The first court event after a landlord files an eviction case is called a *First Tier event* (or *Housing Specialist Status Conference* in Housing Court or *Case Management Conference* in District Court).
- The First Tier event is where the parties may have the opportunity to meet with a housing specialist to try to reach an agreement to resolve the case (“mediation”).
- The tenant may not get to meet with a housing specialist, but instead may end up speaking directly with the landlord or their lawyer to try to resolve the case.

First Tier Event

A landlord attorney or mediator may pressure a tenant to:

- Sign a temporary agreement, for example to pay rent while a case is pending.
- Sign an agreement resolving the whole eviction case where a tenant agrees to something that hurts them, for example the amount the landlord claims is owed, even though it may not be the right amount.

Many cases should not settle at the first court event

- A tenant may need time to apply for rental assistance or may need legal advice, a landlord may not have completed Discovery or may be insisting that the tenant move.

It is okay not to settle at the First Tier Event!!

First Tier Event in Non-payment Cases

- If a case is brought for non-payment of rent related to a financial hardship and the tenant has a pending application for rental assistance (RAFT or other program), the case should be continued for another First Tier event to allow time for the application to be processed.
- In some courts, the case may not be continued but scheduled for a Second Tier event (with a judge).
- If the landlord does not agree to continue, the tenant may file a motion to continue.

What happens after the First Tier Event?

- If the case is not continued for another First Tier event or is not settled, the case will be scheduled for a *Second Tier* event with a judge for a motion or status hearing or for trial.
- The Second Tier event is scheduled for a date **two weeks** after the First Tier event.
- If the tenant has not filed an Answer with a jury demand, the Second Tier event will likely be the trial.

Resolving an Eviction Case

- Eviction cases can be resolved in two ways: either by an agreement between the parties or after a trial.
- More than 90% of eviction cases are resolved by an agreement reached between the parties.

Agreements

Agreements in Housing Court are usually in the form of an **Agreement for Judgment (AFJ)**, where “judgment for possession” and any rent owed enters for the landlord.

- A “judgment for possession” means that the landlord won the right to the apartment.

Agreements can also be an agreement without a judgment entering.

- Often the AFJ or agreement where judgment doesn’t enter will allow a tenant to stay in their home if they comply with certain terms (for example, involving rent payments or behavior).

Agreements

A tenant should not agree to terms they are unable to follow

- Regardless of the form, an Agreement resolving an eviction case is signed by a judge and becomes an order of the Court.
- The consequence of violating an AFJ/Agreement is almost always immediate eviction.
- Agreements cannot be changed unless both sides agree, so don't agree to terms thinking they can be changed later.

Mediation or Negotiation

- Most summary process cases are resolved by an agreement between the parties rather than going to trial.
- Parties at Housing Court are invited to mediate using a Housing Specialist, or they may negotiate directly with the opposing party in an effort to reach a settlement.
- Often, the landlord's attorney will approach a tenant to negotiate directly rather than waiting for a mediator. If the tenant prefers to mediate with a Housing Specialist, the tenant should let the clerk and the landlord's attorney know.

Mediation or Negotiation

- Mediation is an opportunity to problem-solve about the case and craft a compromise between the parties.
- While agreements arising from mediation or negotiation can be good for the tenant, sometimes unrepresented tenants are taken advantage of since many landlords have experienced attorneys representing them.
- Advocates have to be vigilant to make sure that tenants are not pressured into settling their case or agreeing to bad settlements or terms that they cannot comply with.
- **Ask for help from the Lawyer for the Day Program!**

Tips for Agreements

- Ask to talk to the Lawyer for the Day for assistance negotiating an agreement or to review the terms of the agreement before the tenant signs it, if one is available.
- Make sure that what's important is in the agreement (for example, that repairs are getting done or that the tenant is given an extension on when the monthly rent is due).
- Make sure the tenant gets what they need out of the agreement too!
- Above all - do NOT sign anything that is unrealistic for the tenant to fulfill because if they cannot comply with the agreement, the landlord can come back to court and ask that they be allowed to move the tenant out.

Booklet 10 Negotiating a Settlement

Booklet 10: Negotiating a Settlement in Your Case helps tenants understand how to protect themselves before they get into court, it includes:

- A **Worksheet: What Terms Do I Want** to help a tenant be clear on their goals and demands as well as their vulnerabilities
- Answers to common questions
- Alternative Stipulation forms for settlements besides an Agreement For Judgment

After an Agreement: Motion to Enforce

- If the eviction case settled by an Agreement and terms are not complied with, either party can file a Motion to Enforce the Agreement.
 - If the tenant doesn't comply, the landlord can file a motion (commonly called a Motion to Issue Execution) asking for permission to move the tenant out of their home
 - If the landlord doesn't comply, the tenant can file a Motion to Enforce, asking the court to order the landlord to do what they should have done (ex. make repairs)
- If the motion is based on non-payment of rent, the tenant should immediately apply for rental assistance and bring proof to show the judge that they have done so; if there is a pending application for rental assistance, the judge should allow more time before ordering a tenant out of their home, but that doesn't always happen.

What Does the Court Consider in Deciding a Motion to Issue Execution

- An “Execution” is the order from the court that gives a landlord permission to physically evict and move a tenant out.
- If a landlord files a Motion to Issue Execution, the only question before the Court is whether the tenant complied with the terms of the agreement (“whether there was a substantial breach of a material term of the agreement”).
 - Example: if a tenant agrees to pay their rent on time for 6 months and the landlord files a Motion to Issue Execution because they didn’t pay one month, the judge will usually not consider conditions of disrepair, even if the tenant did not pay rent because of problems in their home.
- **A tenant should NEVER withhold rent if they’ve signed a court agreement that requires them to pay rent.**

Motion to Issue Execution

- If the court allows a landlord's Motion to Issue Execution, it typically issues the next day.
- A landlord then takes the Execution to a constable or sheriff to serve a notice on tenant that if they do not vacate the premises, the tenant and all property will be removed on a specific date and time.
- The notice (often called a 48-hour notice) must give a tenant at least 48 hours after the notice is served.
- A tenant who has signed an agreement and then violates it **can be moved out very quickly** - which is why it is very important to make sure the tenant can comply with terms of the agreement **before** they sign.

See
Sample
Execution
in
materials
and
in *Legal
Tactics*
Form 20,
page 824

Summary Process Trial

- If the parties can't reach an agreement resolving the case, it will go before a judge for a trial. Most tenants who go to trial do so without a lawyer.
- Tenants do not need to use special legal language, they just have to make sure the judge understands the issues, facts and arguments that are important to the tenant's case.
- Use the **What to Bring to Court** checklist in **Booklet 1** to help tenants organize what they should bring to court; this could be one of the most important things they do.

See *What to Bring Checklist* in materials and
in *Legal Tactics, Booklet 1, page 604*.

What Happens in a Summary Process Trial

- Landlord goes first and presents their evidence, including witness testimony, documents, photos, and notices.
 - Tenant has a chance to cross-examine witnesses and object to evidence.
- Tenant then gets to present their case and evidence, including witness testimony, documents, and photos.
 - Tenant must bring all evidence in a form that can be submitted to the court, for example, the judge will not look at texts or photos on a phone.
 - Landlord has a chance to cross-examine witnesses and object to evidence.

What Happens After the Trial

- The court will mail the decision to the parties.
 - Tenant may win “possession” (the right to the apartment) and/or damages or may need to make a payment in order to stay in their home.
 - Landlord might win possession and/or money damages against the tenant.
- If the landlord wins at trial, they may be entitled to a **judgment for possession** and/or a judgment for unpaid rent.
- The parties have 10 days from the date of the court’s decision to appeal.

After the Court's Decision

- If the landlord wins at trial and the tenant does not appeal within 10 days, the landlord can get an Execution, the order that gives them permission to physically evict a tenant.
- The landlord must give the execution to a sheriff/constable who serves a 48-Hour Notice notifying the tenant that if they do not move, the sheriff/constable will levy on the Execution – which means they will move the tenant and her property out.
- The 48-Hour Notice must state the date and time the tenant will be moved out and must be served at least 48 hours prior.
- A tenant can seek a stay of Execution in certain cases to ask the judge for more time while they look for a new place to live, but they must act quickly; use **Booklet 9: Stay**.

See sample 48-Hour Notice in materials.

What to Do If a Tenant Receives a 48-hour notice

- **Seek a “Stay” Against Use of Execution:** If the tenant has been served with the 48-hour notice and is not ready or able to move, they may go to court to ask for more time in his home.
 - If the case is based upon non-payment of rent and tenant has a pending application for rental assistance, tenant should seek a stay under G.L. 239 sec 15.
- **Get Default Removed or Ask for New Hearing:** If tenant was defaulted, or if they missed a hearing on a Motion to Issue Execution (lack of notice, illness, etc.), tenant should file papers to get the default removed or to ask for another hearing; use **Booklet 6: Removing a Default.**

Motion for a Stay

- File a motion explaining what is going on and what the tenant wants the court to do about it.
- Bring all proof.
- Hearing will be right away or soon after the motion is filed.
- Tell the judge what is happening and what the tenant wants the court to do.
- Listen carefully to the court's decision and get a copy of her written order granting or denying the request for relief.

Levy on the Execution

- If the tenant does not ask for stay of Execution or the judge denies their request, the **levy** will go forward, which means that the tenant and their property will be moved out.
- Advise tenants to get their important belongings together and get them out of the unit (clothes, birth certificate and other important papers, medicines, etc.).
- Under Massachusetts storage law, a tenant's property must be stored in a licensed and bonded warehouse; can be sold after 6 months.

For more about the Massachusetts Storage Law go to:

[MassLegalHelp.org/housing-apartments-shelter/eviction/massachusetts-eviction-storage-law-protecting-belongings](https://www.masslegalhelp.org/housing-apartments-shelter/eviction/massachusetts-eviction-storage-law-protecting-belongings)

Questions to Ask Tenants to Figure Out Where They are in the Eviction Process

The most important thing to do when helping a tenant is to assess where they are in the process. Here are some questions to ask to quickly figure out what stage the case is at:

1. Can you read me the notice you have received?

The notice might be a Notice to Quit, Summons, Notice of Court Date, Execution, or a 48-Hour notice—advice and options are different depending on the notice.

2. Have you ever been to court before?

If yes there could be an underlying agreement in the case and you want to ask about that; check [MassCourts.org](https://www.masscourts.org) to look up the case.

3. Does the notice say that the Sheriff will be coming to your house to move you out?

Consider filing a Motion for a Stay, trying to negotiate with the landlord, or preparing for levy by applying to shelter.

Ways to Help Tenants Facing Eviction

- Get them connected to legal services/Lawyer for the Day.
- Provide assistance applying for rental assistance (if needed).
- Help them file an Answer, Discovery and Jury demand using MADE or forms in *Legal Tactics* and on MassLegalHelp.org.
- Connect them with the Tenancy Preservation Project.
- Connect them with a community group or local tenant organization that can provide additional services and support.

Ways to Help Tenants Facing Eviction

(continued)

- Help them print out and organize documents needed for a motion hearing or trial:
 - Notices to the landlord about conditions (including emails and texts)
 - Rent receipts
 - Photographs of poor housing conditions
 - Inspection reports verifying poor housing conditions
- Help them prepare for the hearing
 - Create a list of things to say to the judge
 - A list of questions to ask the landlord
- After their eviction case is over, If they are eligible to seal their eviction record, help them seal by going to SealMyEviction.org

Booklets

Representing Yourself in an Eviction

Booklet 1: Protect Yourself in an Eviction

What steps to take before going to court and what to bring to court

Booklet 2: Housing Code Checklist

What conditions violate the State Sanitary Code

Booklet 3: The Answer

How to defend yourself and explain why you should not be evicted

Booklet 3A: Late Answer & Discovery

How to ask the court to accept your Answer and Discovery forms late

Booklet 4: Discovery

How to get information to prepare for your trial

Booklet 4A: Discovery for tenants in foreclosed properties

How to get information to prepare your case Booklet

Booklet 5: Transfer

How to transfer a case to Housing Court

Booklet 6: Removing a Default

How to get a new court date if you missed your court date

Booklets

Representing Yourself in an Eviction

Booklet 7: Motion to Dismiss

How to ask the court to dismiss your case

Booklet 8A and 8B: Appeals

Where to file an appeal if you lost your case

Booklet 9: Stay

How to get time to stay in your home if you lost your case

Booklet 10: Affidavit of Indigency

How to ask the court to pay for court costs

Booklet 11: Negotiating a Settlement of Your Case

How to think through the terms you want in an agreement

Booklet 12: Error Correction Form

How to correct certain errors in your online court record

All booklets available in Legal Tactics and at:

MassLegalHelp.org/housing-apartments-shelter/eviction/booklets-representing-yourself-eviction

Court Information

Court Locator by Area

www.mass.gov/courthouse-locator

District Court Locator

www.mass.gov/orgs/district-court/locations

Housing Court Locator

www.mass.gov/orgs/housing-court/locations

Housing Court Information

www.mass.gov/orgs/housing-court

Remote Court Hearings

www.mass.gov/info-details/remotevirtual-court-services