

Removing a Default

In All Housing, Superior,
and District Courts

REPRESENTING
YOURSELF IN AN
EVICTION CASE

DID YOU MISS YOUR TRIAL?

If you missed your eviction trial, you can try to get another one. To do this, you should immediately fill out the form in this booklet, which is called a **Motion to Remove Default and Vacate Judgment**.

This booklet is for tenants who missed an eviction trial in a **Housing Court, Superior Court, or a District Court**. Different rules apply for complaints **served before August 31, 2004** in evictions in District Courts in Suffolk, Plymouth, or Worcester counties. Check with a lawyer.

A **Default Judgment** is the legal term that means that you did not show up for your trial. It also means that your landlord won the case and can evict you approximately **two weeks** after the date on which you were supposed to be in court.

If you had a good reason for missing the trial date and you have a legal *defense* that might prevent your eviction (read **Booklet 3**), you can ask the judge to schedule another trial. To do this, fill out and file the form in this booklet as soon as possible. **It is best to file this within 11 days of your missed trial date. If you do this, you will have protected more of your rights.**

HOW TO REMOVE A DEFAULT JUDGMENT

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 the date of the Default Judgment. You will find this date on the court papers mailed to you after the day your trial was scheduled or you can get the date from the court clerk. It will usually be the day after the trial date that you missed.

Circle whether your Answer **is** or **is not** attached. To get an Answer form contact your local legal services program and ask for **Booklet 3: The Answer**.

2. Check this box if you are filing this motion within 10 days of the default judgment.
3. This part of the form tells the court why you were not in court. Check off one of the reasons **and** explain why you were not in court *on the scheduled trial date*. For example:
 - "Clerical mistake" may mean that you never received notice of the original hearing.
 - "Inadvertence" may mean that you and your landlord worked it out and he said you did not have to go to court.
 - "Surprise" may mean that you never knew the hearing was on that day.
 - "Excusable neglect" may mean that you were very sick and couldn't get out of bed or there was a death in the family. (*In many cases, the reason is "excusable neglect."*)
4. Fill in your legal *defenses* to the landlord's case (see **Booklet 3: The Answer** for a description of some potential *defenses* you may have) or complete and attach an Answer form from Booklet 3.
5. **Ask the clerk** at the court how and when a hearing can be scheduled and whether you or the clerk will put this in the motion form.
6. Circle whether you hand-delivered or mailed this motion to your landlord, and write in the date you did this.
7. Sign and write your name, address and phone number on the spaces at the bottom of the form.
8. **If you have received a 48-hour notice of eviction from a sheriff or constable, complete box 8.** Check off 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 you **would like to speak to a judge right away or at least before you are scheduled to be moved out.**

Fill Out an Answer

If you haven't done so already, you should fill out the **Answer** form in **Booklet 3** and deliver it with this motion. To get an Answer form contact your local legal services program and ask for **Booklet 3: The Answer**.

Ask to Speak to a Judge Right Away If You Are About to Be Put Out

If the landlord is about to have you evicted, ask to see a judge to *stay the execution* (stop the eviction) until this motion is heard. See the instructions in #8 on the previous page.

Deliver the Motion

Make two additional copies of the completed motion in this booklet and the completed Answer form. Go to court and ask the clerk to set up a date for a hearing on your Motion to Remove Default and Vacate Judgment.

Fill in this date and time on the motion form on all copies as explained in instruction #5 above.

Leave the original forms with the court and deliver a copy to your landlord or the landlord's lawyer. Keep a copy for yourself. It is important that you deliver the form in this booklet because the mail may be too slow, and **if your papers are late, you will be evicted.**

Be Prepared for Court

When you go to court, bring any papers that will help you prove why you missed your trial, such as medical records or doctor's letters.

When your case is called, go up front and tell the judge why you missed the scheduled trial date and what your *defenses* and *counterclaims* will be if a new trial is allowed (see **Booklet 3: The Answer** for a list of *defenses* and *counterclaims*).

If you win your motion, the judge will *remove the default* in your case and allow you to have a trial. The judge may either order that your eviction trial take place immediately or schedule the case for another day. Because you won't know this until you get to court, you must be prepared to present your case to the judge on the day the motion in this booklet is scheduled. To prepare, fill out **Booklet 3: The Answer** and bring all of your witnesses and evidence to court. Also be prepared that the court may impose conditions if it removes the default, such as your paying the rent money into court during your case.

If you lose your motion, the judge will not allow you to have a trial. You have several choices at this point:

- You may ask the court for more time to move if you need it (see **Booklet 8**).
- You can appeal the court's refusal to remove the default to a higher court. Use Appeal **Booklet 7A** if your case was in a Housing or Superior Court or Appeals **Booklet 7B** if your case was in a District Court.

FORM

(Please print or type)

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

a. _____, ss:
County

d. Name of Court _____

e. Docket No. _____
Summary Process

b. _____
Plaintiff(s) - Landlord(s)

vs.

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

c. _____
Defendant(s) - Tenant(s)

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. 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 did not appear at the original hearing for the following reason:
 Clerical Mistake Inadvertence Surprise Excusable Neglect Other

Explain _____

4. I have a good defense to the landlord's case, as specified below (or in my Answer, which is attached to this motion).

5. **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.

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

7.

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

8.

**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

Date: _____