

# 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.

A Default Judgment is the legal term that means that you did not show up for your trial or you arrived at court after the case was called for attendance in the morning. 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, 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. Read **Booklet 3: Answer** to see if you have any legal defenses.

Please note: You should NOT use this form if you have defaulted on a motion after having signed an agreement. If that is your situation you can consider filing a Motion for Reconsideration or a Motion for Rehearing.

# How To Remove A Default Judgment

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## 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. Check off whether you are asking the court to allow you to file a late Answer and schedule a new trial date or whether you already filed an Answer and are just requesting a new trial date because you missed your court date. Circle whether your Answer **is** or **is not** attached.
  2. Check this box if you are filing this motion within 10 days of the default judgment.
  3. Check this box if you are filing this motion more than 10 days after the court issued a default judgment. You are also asking the court to stop the eviction until you can have a hearing on the motion.
  4. 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 rescheduled hearing from the court.
    - "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 or you thought that the case was scheduled in another court. (*In many cases, the reason is "excusable neglect."*)
  5. 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**, if you have not done so already.
  6. 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.
  7. Circle whether you hand-delivered or mailed this motion to your landlord, and write in the date you did this.
  8. Sign and write your name, address and phone number on the bottom of the form.
  9. **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 have not 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**. It is also available online at [www.MassLegalHelp.org](http://www.MassLegalHelp.org) in the "Housing" section in "Self Help Forms and Letters" under "Evictions."

## 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. A court also may permit you to file a late Answer, but not allow you to file counterclaims with that Answer. 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 may ask the court for more time to move if you need it (see **Booklet 8**)



# FORM

(Please print or type)

## COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

a. \_\_\_\_\_, ss:  
County

d. \_\_\_\_\_  
Name of Court

b. \_\_\_\_\_  
Plaintiff(s) – Landlord(s)

e. \_\_\_\_\_  
Docket No. Summary Process

vs.

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

c. \_\_\_\_\_  
Defendant(s) – Tenants(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 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.

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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 (*circle which one*) a copy of this Motion to my landlord or to his/her 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: \_\_\_\_\_