

Stay

Representing Yourself in an Eviction

Need time to move?

If you lost your eviction case, or you agreed in a court judgment to move out, and you need more time to move, you can ask the judge to let you stay in your home longer. You must **act fast** and use the **Stay of Execution** form in this booklet.

Act fast

10 days after you lose your eviction case, your landlord can get an **Execution** from the court. The Execution is the court order a landlord must give a sheriff or constable so they can move you out. A sheriff or constable can only move you out if your landlord has given them an Execution.

If you appeal a case you lost within 10 days of the court's decision, your landlord cannot get the Execution right away. See **Booklet 7: Appeal**.

The longer you wait to request a **Stay of Execution**, the more risk you run that the landlord will get an Execution and move you out.

You can also ask the court for more time before if you signed an agreement and you cannot move out by the date in the agreement.

How much time can I stay?

The Stay of Execution form in this booklet asks the court to postpone the Execution order and allow you more time to find new housing. The amount of time you can ask for depends on the reason for the eviction.

No-fault eviction

If your landlord brought a no-fault eviction, for example, because their family wants to move into your apartment or because they want to sell the building, the judge can let you stay for up to 6 months. They may allow you 12 months if you or someone in your household is over 60 or has a physical or mental disability.

If they only let you stay for a shorter time, like 3 months, you can file another motion if you need more time.

Non-payment of rent or fault eviction

If your landlord brought an eviction for non-payment of rent or a reason that is your fault, the court may not give you any more time, or might give you a little extra time, like a few days or a few weeks.

If the judge gives you a Stay of Execution, they will probably order you to pay rent or a fair value of your apartment while you stay.

Keep a record of your housing search

Use the **Housing Search Log Form** at the end of this booklet to keep track of the apartments you try to rent and the things you do as you look for a new apartment. You can show this record to the court so they know you are looking. Attach the form to your motion when you file it.

How to ask for a Stay of Execution

Fill out 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, even if it is wrong. You can ask the court to fix the mistake.
- 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 assigned to your case. You can ask the clerk at the court for it.
1. Describe what you have done to find a new place to live. Use the **Housing Search Log Form** in this booklet to help you keep track of the things you did to find a new apartment. Make a copy of your Housing Search Log Form and attach it to your motion form in this booklet.
2. Check the box if you or someone in your household is 60 years old or older.
3. Check the box if you **or someone in your household** has a disability. **You do not have to get SSI or SSDI.** For the **Stay of Execution**, your disability can be a physical or mental impairment that significantly limits:
 - The kind of housing you can live in.
 - Your ability to look for new housing. Or
 - Your ability to care for yourself, perform manual tasks, walk, see, hear, speak, breathe, learn, or work.
4. Use the blank lines to explain that moving now would be very hard. For example:
 - I have rented a new apartment, but it will not be available for a month.
 - I cannot move until my children finish school.
 - I am handicapped or elderly and cannot find a suitable place.
 - I am on a waiting list for housing.
 - I should be receiving a subsidy soon.
 - I have a child with a disability.
5. Check the box 5 if you got a 48-hour notice of eviction from a sheriff or constable. Fill in the date and time on the sheriff's eviction notice.
Bring the 48-hour notice with you to court.
6. Use the blank space to describe any other information you think may help the judge decide to give you more time. Tell the judge about ways you are working with your landlord while you are getting ready to move. For example, if you are up to date on your rent, tell the judge in this space.
7. Call the court clerk or fill out this section when you bring your motion to court. **Ask the clerk** when you will have a hearing and if you should put the date and time on the motion or if the clerk will do it. If the clerk tells you to do it, fill in the date and time.

8. Check the box next to the way you delivered/plan to deliver your motion and Housing Search Log to your landlord or their lawyer. Write in the date you deliver or send the forms.
9. Sign and write your name, address and phone number.

File and deliver the Motion to Stay Execution

1. Make 2 copies each of your completed **Motion to Stay Execution** and **Housing Search Log**
2. Call the clerk's office.
 - Tell the clerk you need to have a hearing right away before the sheriff moves you out.
 - Ask the clerk:
 1. "Who should fill in the hearing date on my Motion to Stay Execution?" And,
 2. "What is the best way to file my Motion with the court?"
3. After you talk to the clerk:
 - File the **original** forms with the court as soon as possible. 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!
 - ✓ If you absolutely cannot deliver it in person or send it electronically after talking to the clerk, you can mail it. But the mail is slow and you risk being evicted if court does not receive it in time.
 - 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:
 - ✓ Deliver it by hand or email it to your landlord's lawyer. The lawyer's email address is at the bottom of the Summons and Complaint. If your landlord does not have a lawyer you need a written agreement from your landlord that says they agree to get your motion by email. **It is important to deliver this Motion to Stay Execution by hand or email it,** because the mail may be too slow.
 - Keep a copy for yourself.

Get to your hearing on time

Tell the judge:

- The reasons you need more time to move.
- The things you have done to find a new place.
- The number of days, weeks, or months you need.

The judge will probably want to know if:

- The eviction was not your fault.
- You can pay rent.

- You have not found a new place to live, even though you have made diligent efforts. Or
- You have specific reasons why you have not moved yet. For example, you may get a subsidy soon.

At the hearing, the judge will probably decide if you can stay longer in your apartment and tell you how long you have before you have to move. If they do not tell you at the hearing, the court will mail you a notice in a few days.

If you get a Stay of Execution

If you get a Stay of Execution, you do not have to move until the date in the Stay of Execution order.

If you cannot find an apartment by the date in the Stay of Execution order, and you still need more time to move. Complete **another Stay of Execution form** and attach a Housing Log to show what you have done to find another apartment. .

If you go back to the court to ask for more time, show the court you tried your hardest to find new housing. Use the **Housing Search Log Form** again to do this.

If you do not get a Stay of Execution

If you do not get a Stay of Execution, try to move yourself and your belongings as soon as you can.

If you do not move your things before the sheriff or constable arrives, your landlord can move your belongings into storage. You will have to pay to get your things out of storage. You could lose your belongings forever.

If the sheriff or constable are at your door, try to negotiate for more time to move. **Pack your most valuable belongings — things you need, like important papers and medications.**

The storage law requires that a constable move your belongings to a **public warehouse** licensed by the Department of Public Safety to store items.

You have the right to choose **a licensed public warehouse within 20 miles** of your apartment to store your belongings. You must write to the constable **at or before the time they remove your property** to tell them where you want your things to go.

You can find a list of **approved** public warehouses where a sheriff or constable can take your things online: [Mass.Gov/service-details/public-warehouse-evictions](https://www.mass.gov/service-details/public-warehouse-evictions)

The sheriff can **only** move your belongings to a self-storage facility or a friend or family's house if your landlord agrees. Ask your landlord to agree to move your belongings to a place you choose so you do not have to pay storage fees. The landlord must agree, if you ask

See [MassLegalHelp.org/housing/eviction-storage-law](https://www.mass.gov/help/help/masslegalhelp.org/housing/eviction-storage-law)

Housing Search Log Form

Date	Address/Location of Apartment	Contact Person	Result

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 STAY EXECUTION

c. _____
Defendant(s) – Tenants(s)

The tenant in this case requests this Court to stay the issuance of execution under M.G.L. c. 239, §§9 and 10, applicable rules, and the court's equitable powers.¹

1. The tenant has been unable to find a new place to live, despite diligent efforts as follows:

2. Tenant or someone in his/her household is 60 years of age or older.
3. Tenant or someone in his/her household has a physical or mental impairment.
4. It would be a special hardship to move now, because:

- 5.

Emergency Motion for Temporary Stay of Execution Pending a 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.

¹ Pursuant to *LoRusso v. Talbot*, 1999 Mass. App. Div. 301, 304, "[w]hile it is within the judge's discretion to consider any hardship a stay may cause the landlord, the legislative purpose and policies underlying the above statutes [M.G.L. c. 239, §§9 and 10] appear to mandate a judicial thumb on the scale of any balancing of interests in favor of the tenant."

6. Other relevant factors that I would like the Court to consider:

7. **Clerk:** I request this motion to be heard on _____(date) at _____ o'clock.

Landlord: Please take note that this Motion will be heard at the above time.

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

9. _____
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

Email (if any)

Email (if any)

Date: _____