

# Negotiating a Settlement of Your Case

## Representing Yourself in an Eviction Case

If you are facing an eviction, negotiating a settlement with your landlord can be a better way to resolve your case than going before a judge. With a settlement you can come up with terms that fit your situation. Other times going before a judge may be better.

The settlement with your landlord can be called an Agreement, Agreement for Judgment, or a Stipulation. This booklet explains the differences. It has:

- **A Worksheet** to help you think through the terms you want in an agreement.
- **Answers to Common Questions** tenants have when they negotiate.
- **Forms** you can use to help you record your agreement.

### Important!

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- Never sign an agreement if you do not understand it.
- **Only** sign an agreement if you are sure you can do the things you have agreed to.
- Get help. Ask if there is a Lawyer for the Day Program or volunteer lawyers in the court.
- Ask if the court has mediators to help landlords and tenants explore solutions.
- Tell your side of the story. Speak up for what you need.
- You are not required to make an agreement.
- You have the right to have a judge or jury decide your case.
- If your landlord pressures you to sign an agreement, tell the clerk you want to see a mediator.

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# Worksheet: What Terms Do I Want

This worksheet helps you think about the terms you want in the agreement. It also connects the worksheet with questions in the next section.

Do not give this worksheet to the landlord, the landlord's lawyer, or the mediator. It is only for you to use. Make notes on it and use it to help you remember the things you want when you are negotiating.

## 1. Do I want to stay?

- I want to stay.  I want to move.

## 2. If I have to move:

- How much time do I need to find another place and move?

- Do I want to pay rent so I can stay longer?

- What are the trade-offs of moving sooner or paying rent so I can stay longer?

## Question 5

How much time can I ask for if I have to move?

## Question 6

What if the landlord does not give me enough time to move?

## 3. If I owe rent:

- What is the total I owe? \_\_\_\_\_  
For what months?

- Do I have proof that I paid rent, like receipts or cancelled checks?  
 Yes  No

- In addition to my current rent, how much back rent can I afford to pay and still pay for food transportation and other basic needs?

## Question 7

What if I owe rent?

## 4. If I have a housing subsidy and I owe rent:

- My rent is not calculated correctly.  
 My rent should be changed because my household size or income changed.  
 I need to move because I am in the wrong sized apartment.

## Question 8

Will I lose my rental voucher if I make an agreement?

**5. Does my landlord owe me any money?**

- I paid a security deposit or last month's rent. If yes:
  - The landlord did not put my security deposit into a separate bank account
  - I did not get interest due for my security deposit and last month's rent.
- My landlord entered my apartment without my permission.
- My landlord did something to get back at me for standing up for my rights.
- My landlord broke other laws. If yes, explain:

**Question 3**

Did my landlord violate my rights?

**Question 13**

What if my landlord asks me to give up my rights?

**6. If I have lived with bad conditions, what are they?**

- How long did I live with these conditions?
  
- I had no heat or no water.
- Lead paint was in my unit when I was pregnant or my child was less than 6.
- The landlord knew about the bad conditions.
- I have proof of the bad conditions.
  - Photos.  Letters.  Board of Health Report  Witnesses.
- The bad conditions should lower the amount of rent I owe.
- The following repairs need to be made:

**7. If my landlord is evicting me for a reason that is my fault:**

- Is it my fault?  Yes  No
- What is my side of the story?
  
- Is the eviction related to a disability that someone in my household has?
- Can I do anything to show the landlord there will be no more problems?

**8. Is there anything else I need in my agreement?**

**Question 10:**  
What should I agree to?

**9. Which Stipulation form should I use?**

See Forms  
on page 599

# Answers to Common Questions

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## 1. What is court mediation?

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Court mediation is a way for you and your landlord to work out an agreement that meets your needs and your landlord's needs. Court mediation is voluntary, but many judges encourage it. **If the court provides mediation, try it.**

Court mediation is helpful if you do not want to negotiate directly with your landlord or your landlord's lawyer. A mediator is a person who helps you and your landlord reach an agreement. A mediator does not take either person's side. When you go into mediation be prepared to negotiate on your own behalf to protect your rights. You may have to wait to see a mediator.

Housing court mediators are called Housing Specialists. Some District Courts also have mediators. Make sure you are talking with the mediator, not your landlord's lawyer. If they are the landlord's lawyer, ask to speak to a mediator.

If you cannot reach an agreement in mediation, or you feel pressured to sign an agreement, do not sign it. Tell the mediator you want to see a Lawyer for the Day, if there is one, or a judge.

## 2. Do I understand the agreement completely?

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Before you sign an agreement, read all of it. If you do not understand something, ask the mediator or the other side to write it in a way you can understand.

Make sure you understand the terms in the agreement and you can do all the things you have agreed to do. Once you sign the agreement, it becomes a court order. And it may be impossible to change. Before you leave court, get a copy of the agreement.

## 3. Did my landlord violate my rights?

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If your landlord is evicting you for nonpayment of rent or for a reason that is not your fault and they did something wrong, you may have a "legal claim" against them. A legal claim means your landlord violated your rights.

Before you negotiate, identify your legal claims - things your landlord did that violated your rights. Then bring these legal claims up during your negotiation. Your agreement should address legal claims you have against the landlord, not just legal claims your landlord has against you.

For example, if you lived with bad conditions, ask your landlord to fix them by a certain date. Your landlord may also owe you money because of the bad conditions. Ask your landlord to lower the amount of rent you owe. If the conditions were very bad, your landlord may owe you at least 3 months' rent.

If there is a Lawyer for the Day, they can help you identify your legal claims. For more, see **Chapter 13: When to Take Your Landlord to Court.**

## 4. Where can I get help?

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### Legal Aid Programs

Legal aid programs in Massachusetts provide free information, advice or representation to low-income people. Some programs help tenants fill out court papers before their court date. The kind of help you can get depends on where you live, your income and the kind of problem you have. Use the Massachusetts Legal Resource Finder to find your local legal aid program. [MassLegalHelp.org/find-Legal-Aid](http://MassLegalHelp.org/find-Legal-Aid).

### Legal Referral Services

If you cannot get help from a free program, and need to pay for a lawyer, see the list of Lawyer Referral Services at [MassLegalServices.org/content/lawyer-referral-services](http://MassLegalServices.org/content/lawyer-referral-services).

Contact a Lawyer Referral Service even if you are not sure you can pay for a lawyer. Sometimes, a Lawyer Referral Service can refer you to a reduced-fee lawyer. In some cases, you only need to pay lawyer's fees if you win. And in some cases, the other side will pay your lawyer's fees if you win.

### Lawyer for the Day Program

Some courts have volunteer lawyers who can give you advice and help negotiate your case. Always ask the clerk if a Lawyer for the Day Program is available. Lawyer for the Day is free.

Bring your paperwork and arrive early so you have time to discuss your case. For a list of Lawyer for the Day programs in Housing Court and when they are available see the court's website [www.mass.gov/courts/programs/legal-assistance/lf-d-hc.html#hc-bos](http://www.mass.gov/courts/programs/legal-assistance/lf-d-hc.html#hc-bos)

### Mediators

A mediator is a person who helps you and the landlord reach an agreement.

- Housing Courts have Housing Specialists. They are court staff trained to help landlords and tenants reach agreement.
- Some District Courts have volunteers who mediate cases between landlords and tenants.
- Some communities have mediation programs that can help you negotiate an agreement before a court case is even filed.

### Tenancy Preservation Program

If you are in Housing Court and you or someone in your household is disabled, ask the clerk where the Tenancy Preservation Program is. The Tenancy Preservation Program works with tenants facing eviction that is related to a disability. Disabilities include mental health, substance abuse, and age-related disabilities. The Program helps individuals and families with children. It is voluntary and works with the landlord and tenant to develop a plan to preserve the tenancy.

## 5. How much time can I ask for if I have to move?

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If you have to move out, pick a date that gives you enough time to find a new place. **Do not agree to move in a short time if you have no place to go.**

- **If you do not owe rent and your landlord is evicting you for a reason that is not your fault**, you should be able to negotiate more time to stay. If you go before a judge and lose, they **may** give you up to 6 months to find a new place or up to 12 months if someone in your house is over 60 or disabled. Keep this in mind when you negotiate for more time.

You will need to pay rent while you are looking for another place. Judges are not required to give you extra time.

The landlord or the landlord's lawyer may ask you to "waive the right to any further stay" or that there will be "no further extensions." Try to keep this language out of the agreement so you can ask the court for more time if you need it.

- **If you owe the landlord rent or you are being evicted for a reason that is your fault**, do not agree to move out in less than 13 days. If you had a trial and lost, your landlord could not move you out sooner than 13 days **after the trial**. Even if they evict you for a reason that is your fault, sometimes a landlord will agree to give you more time to move. Many landlords would rather see you move voluntarily. They do not usually want to pay a sheriff to evict you and a mover to put your things in storage.

## 6. What if the landlord does not agree to give me enough time to move?

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If you think your landlord will not agree to give you enough time to move:

- **Ask for a review date** in court instead of an actual move-out date. Put this in the agreement. This keeps the process moving. If you cannot find a place by the review date, report your efforts back to the landlord. They may give you more time. If your landlord does not agree to give you more time, you can ask a judge for more time.
- **Pay while you stay**. If you cannot pay back the rent you owe, but you can pay the current rent, offer to pay rent while you stay in the apartment and look for a new place. If your landlord agrees to this, put it in the agreement. This way, you can stay in your apartment while you look for another place and the landlord does not lose more rent.

## 7. What if I owe rent?

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If you owe rent, prepare to negotiate and record in your agreement:

- **How much rent you owe:**

In the agreement, write the correct amount of rent you owe and the exact months owed. If you pay rent for the month you are working out an agreement, include that month in the agreement and the exact amount of rent you are paying.

- **Rent reduction and repairs:**

If the apartment needs repairs, negotiate:

- To lower your rent because you lived with bad conditions,
  - The repairs the landlord will make, and
  - A deadline for the landlord to make the repairs.
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- **Does your landlord owe you money?**

Your landlord may owe **you** money, for example, for your utilities, security deposit or entering your apartment without permission. For some legal claims they may owe you at least 3 months' rent.

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- **Reasonable payment plan:**

Tell the landlord you want to find a way to pay the rent you owe over time. If you agree to a payment plan for back rent, make sure it is realistic. **Do not agree to make payments you are not sure you can pay.** If you do not make a payment and you break the agreement, your landlord can go back to court and get an order to evict you.

### **Getting help to pay back rent:**

Some agencies have funds to help tenants pay back rent so they will not become homeless. Ask volunteer lawyers or court staff if they have a list of local agencies. Ask about the RAFT program if you have children and you are at risk of becoming homeless. RAFT are funds that you can use to pay back rent or move to a new place.



## 8. Will I lose my rental voucher if I make an agreement?

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If you have a Section 8 or other housing voucher and a judge decides that you owe rent or violated your lease, the housing agency will probably terminate the voucher they gave you. So, you may decide it is too risky to fight the eviction in front of a judge.

To protect your voucher, the agreement must say:

- You do not admit to doing the things that the landlord claims you did wrong.
- You and the landlord agree that the eviction is not for the reason described in the Summary Process Complaint, but for a reason that is not your fault.
- If there were problems, you and the landlord have worked them out. For example, you have worked out a repayment plan to pay rent owed.
- If you agree to move out, you are moving out voluntarily.

## 9. If I am evicted, can I get into a shelter?

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If you are being evicted, you may be able to get into Emergency Assistance shelter for families. You must have a child under 21 or be pregnant. You must also meet income guidelines.

The rules for getting into an Emergency Assistance shelter are strict. **Talk with a legal services lawyer or volunteer lawyer at the court before you sign any agreement.** You want to make sure the agreement does not hurt your chances of getting into shelter.

- To find out about shelters for people with children or pregnant women see [www.MassLegalHelp.org/homelessness/basic-shelter-rights](http://www.MassLegalHelp.org/homelessness/basic-shelter-rights)
- To find out about shelters for people without children see [www.MAhomeless.org/index.php/adults](http://www.MAhomeless.org/index.php/adults)

## 10. What should I agree to?

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1. Try to use the forms in this Booklet to record your agreement.
2. **Only agree to things you know you can do.** Do not agree to something you only hope you can do. An agreement becomes an order of the court. If you do not follow the agreement, your landlord can go back to court for permission to move you out.
3. **Do not agree to move if you cannot find another place by the date the landlord wants you to move.**
4. **Only agree to make payments you are sure you can pay.** If you do not make the payments you agree to, the landlord can go back to court for an order to move you out.
5. **Negotiate reasonable accommodations if you have a disability.** If your landlord is evicting you for a violation of your lease and the violation is related in some way to a disability that you or someone in your family has, you may have the right to a *reasonable accommodation*. Put in the agreement how to fix the problem. For example, if they are evicting you because your disability makes it hard to pay rent by a certain date, negotiate a better rent due date. In Housing Court, ask the Tenancy Preservation Program for help.
6. **Read the agreement.** Once you sign an agreement, you can **only** change it if the landlord agrees or the court orders it.
7. **Make sure the eviction case is dismissed if you follow the terms of the agreement.**
8. Put in your agreement that the court will dismiss your eviction case once you have met the terms of the agreement.
  - Put in a fixed time that your eviction case will be dismissed. For example, put in the agreement: “The judgment will be vacated and the case dismissed within 5 business days of all payments being made.”
  - If you are staying in your apartment, put in the agreement that your “tenancy will be reinstated.”
  - Always check with the court to make sure that the case has been dismissed.
9. **Protect yourself in case you or your landlord do not follow the agreement:**
  - Include in your agreement that if you do not follow the agreement, your landlord must file a motion for a hearing to get a final eviction order. This means you have a chance to explain to a judge why you could not follow the agreement.
  - Include in your agreement that if your landlord does not follow the agreement, you can file a motion. Your motion would ask the court to order your landlord to follow the agreement. For example, if your landlord agreed to make certain repairs and did not make them, your agreement would allow you to file a motion that asks the court to order the landlord to make the repairs.
  - **You must hold up your end of the agreement even if you believe the other side is not holding up their end.** For example, if you agreed to make payments to your landlord, you must continue to make those payments, even if you believe there are problems with your apartment that the landlord has failed to repair.

## **11. Do I have to pay the landlord's costs for bringing the case?**

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If you lose your case, the judge will order you to pay:

- \$135 in Housing Court or \$195 in District Court to repay the landlord the filing fee for the case and
- \$35-\$65 to repay the landlord for the fee to a sheriff or constable for serving the summons.

Your landlord probably has the right to ask you to pay these costs. But if you negotiate an agreement you can ask the landlord to give up or *wave* these costs.

## **12. Do I have to pay the landlord's lawyer's fees?**

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Your landlord cannot make you pay their lawyer's fees if you have no lease or written rental agreement or your lease or written rental agreement says nothing about lawyer's fees. You only have to pay your landlord's lawyer's fees if:

- Your lease or written rental agreement says your landlord can get these fees from you, **and**
- The landlord gets a court order that allows them to evict you.

Even if you have a lease, you can negotiate not to pay the landlord's lawyer's fees. If the landlord insists that you pay their lawyer's fees, ask that a judge review the amount in your agreement to make sure it is fair.

## **13. What if my landlord asks me to give up my rights?**

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Your landlord may ask you to sign an agreement that gives up your legal claims. This means you are giving up your right to take your landlord to court in the future.

For example, the agreement might say that you agree to "waive or release any legal claims you have against the landlord." *Waive* or *release* means you give up something.

If you agree to do this:

- The *waiver* or *release* of claims should go both ways. Ask your landlord to *wave* all claims against you.
- Only agree to give up legal claims you know about. Put in the agreement that you "agree to waive only those claims that are known or are reasonably knowable as of the date of the agreement."

## 14. What if my landlord agrees to dismiss the case?

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Sometimes, a landlord will agree to dismiss or drop the eviction, if you give up your claims against the landlord. Often getting the eviction dropped is exactly what you want.

- If you see language that says you agree to “dismiss the case without prejudice,” it means you can take your landlord to court later if you have any claims against them now.
- If you see language that says you agree to “dismiss the case **with** prejudice” it means you cannot take your landlord to court if you have any claims against them now. Be careful. Only agree to dismiss the case “with prejudice” if the landlord dismisses the eviction or other claims “with prejudice.”

## 15. Will it be hard to rent a new place if I make an agreement?

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When a landlord files an eviction against you, the court creates a public record. When you apply to rent another place, landlords can see any evictions filed against you. You cannot stop them from checking, but you can try to protect yourself.

- Try to do a *stipulation*, not an *agreement for judgment*. If you do what you agreed to in the *stipulation*, you will not have a *judgment* against you in your court record.
- If the landlord agrees not to charge you some rent because you were living with bad conditions, make sure the agreement makes this clear. Then you can tell a new landlord you did not pay your rent because of these problems. Explain that you are looking for a new apartment because the conditions in your apartment were so bad.
- If you fell behind on rent because of illness, a loss of income, or the size of your household changed, say this in the agreement. It may not protect you from being evicted, but it may help you get emergency shelter or public or subsidized housing.
- It may be okay to ask the landlord evicting you to give you a reference. It depends on the circumstances. The reference can say good things about you. Or it can just say that you do not owe rent and you did not cause damage or other problems at the property.

## 16. What if later, I cannot keep the agreement?

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Once you sign an agreement you cannot change it on your own. You **may** be able to change the agreement if your landlord agrees. If your landlord does not agree, you can try to ask the court to change the agreement. Use the **Motion to Amend an Agreement** form in this Booklet.

You can also ask the court for more time to stay while you look for another place. This is called a Motion for Stay. Use **Booklet 8: Stay**. At the hearing, you will have a chance to explain why you could not keep the agreement and why you need more time. Some judges may give you more time, others may not.

# Forms

## What is the difference between a stipulation and an agreement for judgment?

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You can use different kinds of forms to record an agreement with your landlord. Courts and landlords often use *agreement for judgment* forms. You are not required to use these forms. You can use a *stipulation* form instead.

There is a big difference between an *agreement for judgment* and a *stipulation*.

### *Agreement for Judgment*

If you do everything you agreed to in an *agreement for judgment*, there is a court *judgment* against you. A *judgment* can go on your credit report and hurt your chances of finding new housing later. If you do not follow an *agreement for judgment*, your landlord can get a court order **immediately** to move you out.

### *Stipulation*

If you do everything you agreed to in a *stipulation*, the court should dismiss your case. You will not have a *judgment* entered against you. If you use the stipulation forms in this booklet and you do everything you agreed to do in the stipulation, your eviction is dismissed and you will have no judgment against you. If you do not follow a *stipulation*, your landlord must take you back to court.

## Forms in this booklet

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- Stipulation to Continue**..... 600  
Use this form to reschedule your case and give yourself time to resolve the issues.
- Stipulation to Reinstate Tenancy** ..... 605  
Use this form to keep your home, if possible. This form allows you to stay in your home if you do the things you agree to do in the stipulation.
- Stipulation to Vacate**.....611  
Use this form if you are prepared to move. You can use it to negotiate a realistic amount of time to move, a reference for your next apartment search, and money to help you move.
- Motion to Amend Agreement**..... 619  
Use this form if you need to change your agreement. If you cannot do everything you agreed to in your agreement and your landlord does not agree in writing to change it, use this form to ask a judge for permission to “amend” the agreement.