

## Consumer Protection Law (93A) Suing Your Landlord Under the Consumer Protection Act

This information sheet will focus on how to go about suing your landlord for unfair or deceptive practices under Massachusetts General Law 93A, known as the Consumer Protection Act.

It is illegal for your landlord to use (or attempt or threaten to use) any unfair or deceptive practices. These unfair or deceptive practices include, among others:

- 1- Failing to comply with local building and housing codes or the state sanitary code;
- 2- Violating state statutes against retaliatory eviction;
- 3- Unfair debt collection practices;
- 4- Sending you documents which look like court papers but are not;
- 5- Refusing to accept notices from you;
- 6- Not complying with a provision of your lease that had been previously agreed to (such as an agreement allowing you to have a pet or a waterbed)
- 7- Including illegal terms in your lease;
- 8- Omitting from your lease the name, addresses, and phone numbers of the owners and managers of your building;
- 9- Failing to give you a copy of your lease within 30 days after you signed it;
- 10-violating any state or federal law or local ordinance intended to protect consumers;
- 11- Violating the state condo conversion law; or
- 12- Any other conduct which you can convince a judge was unfair or deceptive.

When beginning an action under the Massachusetts Consumer Protection Act, the law requires you to send the landlord a letter 30 days before filing a claim in court. ( M.G.L. c. 93A). This is called a 30 Day Demand Letter and must outline your complaint, the harm you suffered, and how you want the problem resolved. There is a sample demand letter attached.

To meet your legal obligations, include the following information in your 30 Day Demand Letter:

- Your full name and address
- The description of the unfair or deceptive act or practice including all the unfair or deceptive practices claimed, the dates involved in the transaction, and any other important facts. If you know the regulation number of the regulation violated, you may wish to include it. However, you are not limited to written regulations or laws.
- Clearly explain the injury you suffered as a result of the unlawful act;
- The demanded relief including the amount of money you are demanding to recover.

Although it is not required by law, the 30-Day Demand Letter should be sent by certified mail, return-receipt requested, so that you will have proof of delivery. Send the letter by regular mail also, and keep a copy for your files.

The landlord must make a good faith response within 30 days, or it could subject him/her to triple damages and attorney's fees. The 30 Day Demand Letter serves to encourage the landlord to negotiate and settle the claims out of court. It also establishes the amount of monetary damages you can recover if the charges are proven in court.

Should the landlord respond with an offer, you must choose to either reject or accept the offer. If you reject an offer that the Court later finds to be reasonable, the amount you can recover might be limited. The Court may limit the amount you can collect to what the landlord originally offered you. If s/he doesn't make an offer and you can prove that s/he violated the Consumer Protection Act, you are entitled to \$25 per violation, or actual damages, whichever is greater. If you can prove that s/he knew or should have known the acts were unfair or deceptive, you could get double or triple damages, plus reasonable attorney's fees and court costs.

If the initial amount of your claim is \$7000 or less, you may file suit using the Small Claims procedure, and no matter what the amount you may file a regular civil action; either may be filed in District Court or, if your area has one, in Housing Court. In Small Claims Court it is not necessary that you have a lawyer; otherwise you will generally want to get the assistance of a lawyer if you are thinking about filing or have decided to file suit against your landlord. If other tenants were similarly affected or injured by your landlord's acts, you can talk to a lawyer about bringing a class action suit.

You should realize that if you sue your landlord state law makes it illegal for the landlord or the landlord's agent to retaliate against you for your action. This also applies to joining or organizing a tenants' union, requesting a housing inspection, reporting violations of law to your government officials, etc.) If, within 6 months of your suit, your landlord tries to evict you, raise your rent, or otherwise change the terms of your tenancy, the law should "presume" that your landlord's action was retaliatory and illegal. If s/he cannot prove convincingly that the action would have occurred regardless of your actions, then s/he will be liable to you for between one and three month's rent or for actual damages, whichever is greater, and for court and attorney's fees.

Your name  
Your address  
Your telephone number

Date

Name of Merchant  
Merchant's address

Dear Merchant:

Under the provisions of Massachusetts General Laws, Chapter 93A, Section 9, I hereby make written demand for relief as outlined in that statute.

On or about {date}, the following unfair or deceptive act occurred:

*{EXPLAIN WHAT HAPPENED}*

This unfair or deceptive act or practice is, in my opinion, declared unlawful by Section 2 of Chapter 93A, (you may want to give regulation number, if applicable) which reads as follows:

*{Quote text or section. Remember: You are not required to quote written regulations or laws to support the assertion that the merchant's conduct was unfair or deceptive; it is, however, desirable. You will want to include all the regulations which you believe were violated.}*

As a result of this unfair or deceptive act or practice, I suffered injury or loss of money as follows:

*{Indicate Injury or Money or Property Loss}*

Therefore, I hereby demand the following relief:

*{Indicate Relief, or Payment for Damages, Which is Sought}*

Chapter 93A gives you the opportunity to make a good-faith response to this letter within thirty (30) days. Your failure to do so-could subject you to triple damages, attorney's fees and costs if I decide to institute legal action.

Sincerely,

Your Name



# Chapter 3

## Security Deposits and Last Month's Rent

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# Security Deposits and Last Month's Rent

by **Maureen McDonagh**

*Italicized words are in the Glossary*

At the beginning of a *tenancy*, a landlord is allowed to demand certain payments from you before you move into your new apartment. These may include a security deposit and last month's rent payment.

The single most important step that every tenant should take when giving a landlord a security deposit or last month's rent payment is to get a written receipt. A receipt is your best protection. It may save you money and prevent problems between you and your landlord later on.

Because landlords had been known to wrongfully hold on to security deposits and last month's rent payments and force tenants to sue to get their money back, the state legislature passed a security deposit law to protect tenants. This law applies to all landlords, regardless of how many apartments they own.<sup>1</sup> This chapter tells you what these laws are and how you can protect your rights.

## How Much Can a Landlord Request

The most a landlord can charge you when you first move into an apartment is:

- First month's rent;
- Last month's rent payment;
- A security deposit; and
- The cost of a new lock and key.<sup>2</sup>

The last month's rent and security deposit each can be no more than the first month's rent. For example, if your first month's rent is \$1,000, a

landlord can charge you \$3,000 (\$1,000 for the first month's rent, \$1,000 for a security deposit, and \$1,000 for a last month's rent payment), plus the cost of a new lock and key.

## 1. Differences Between a Security Deposit and a Last Month's Rent Payment

A security deposit and a last month's rent payment are not the same thing. A security deposit is money that you pay and expect to get back after you move out. The purpose of this money is to protect the landlord in case you damage the apartment or leave owing rent. In the eyes of the law, a security deposit is your money. For this reason a landlord must keep it in a bank account separate from the landlord's money (and safe in case he goes bankrupt or gets foreclosed on) and must pay you interest every year. When you move out, you do not automatically have the right to withhold your last month's rent simply because the landlord holds a security deposit.

The purpose of a last month's rent payment is to protect a landlord against a tenant's leaving without paying the last month's rent. When you pay last month's rent in advance, you should not expect to get this money back when you move out. Instead, it will pay for your last month in an apartment. Also, a landlord does not have to put your last month's rent money in a separate bank account while she holds onto it. She does, however, have to pay you interest on it every year.

## 2. Illegal Practices

### a. Illegal Fees

Massachusetts law clearly states that before you move in, a landlord can charge you only first month's rent, a last month's rent payment, a security deposit, and the cost of a new lock and key. Often, landlords try to impose extra charges on tenants. They may call these "holding deposits," "pet fees," "fees for credit checks," "cleaning fees," or "application fees." These extra fees are illegal.<sup>3</sup>

A separate broker, independent from the landlord, may, however, also charge a "finder's fee" or "broker's fee."

A landlord cannot try to escape the requirements of the security deposit law by taking what is really a security deposit and calling it a "cleaning fee" or something else.<sup>4</sup> This is also illegal.

The problem is that if a landlord demands these illegal charges and you either accuse the landlord of violating the law or refuse to pay, the landlord may not rent you the apartment. If you want the apartment and can afford to pay the extra fees, get a detailed receipt for whatever you pay and then take the extra fees out of your future rent after you safely move in. When you do this, write the landlord a letter telling her what you are doing and why.

### b. Discrimination

You may want to consider whether a landlord is imposing either legal or illegal deposits as a way to keep out certain groups of people whom she doesn't want as tenants. It is illegal for a landlord to discriminate against people because they are single parents, people of color, people on welfare, people with small children, people who have a rental subsidy or people who are members of other protected groups. For more information about illegal discrimination, see **Chapter 7: Discrimination**.

### c. Illegal Lease Clauses

Your landlord cannot take away your rights under the security deposit law by using a written

lease that conflicts with the law. For example, a lease clause is illegal if it says that the landlord can keep your security deposit if you rent an apartment for less than six months. If a landlord has you sign a lease with a clause that conflicts with the security deposit law, you are entitled to get your security deposit back upon demand. For information about how to do this, see the section in this chapter called **Getting Back Your Security Deposit**.<sup>5</sup>

### d. Increases in Deposits

If your rent increases during your tenancy, your landlord may not increase your security deposit. Your security deposit is limited to the amount of your first month's rent.<sup>6</sup>

Your landlord may, however, request an increase for the last month's rent payment if she has terminated your tenancy and you have accepted a new tenancy at a higher rent. In this case, the landlord may lawfully request that the last month's rent payment match the new higher rent.

## Security Deposit and Landlord's Responsibilities

If a landlord takes a security deposit, the law says that she has certain obligations. These obligations include providing you with a written receipt, giving you a statement that describes the condition of your apartment, holding your money in a bank account that is separate from the landlord's money, paying you interest every year, and keeping records of deposits and repairs.

### 1. Providing Written Receipts

**Never give a landlord cash without getting a written receipt.**

If a landlord demands a security deposit or last month's rent payment, the law requires her to give you a written receipt when she takes your money.<sup>7</sup> After the landlord deposits the security

deposit in a bank, she must give you a second receipt that tells you the name and location of the bank and the account number.<sup>8</sup> In addition, at the end of each year of your tenancy, the landlord must give you a statement telling you the amount of interest to which you are entitled on your security deposit and last month's rent payment.<sup>9</sup>

The information that must be included in each of these receipts or statements includes:

First Receipt when you first give the landlord your security deposit	Security Deposit	Last Month's Rent
Amount of money received	✓	✓
Date money was received	✓	✓
Intended use of the money	✓	✓
Name of person receiving the money	✓	✓
Name of landlord (if different from person receiving the money)	✓	✓
Statement that you are owed interest on the money	✓	✓
Statement that you should give a forwarding address so when you move landlord can send you interest		✓

Second receipt within 30 days after the landlord deposits the security deposit in a bank	Security Deposit	Last Month's Rent
Location and name of bank where your money is	✓	
Account number of the fund where your money is	✓	

Statement at the end of each year	Security Deposit	Last Month's Rent
Statement of the amount of interest you are owed on your deposit	✓	✓

All your rights are based on being able to prove that you paid the landlord a security deposit and/or last month's rent payment. For this reason, the most important step you can take to protect your rights is to get a complete receipt at the time you give a landlord any deposit. No responsible landlord should object to giving you a receipt if she knows the law. And, if she does object, use **Form 4: Security Deposit and Last Month's Rent Receipt**). **Never give a landlord cash without getting a written receipt.**

## 2. Statement of Condition

Within ten days of your giving a landlord a security deposit, the landlord must give you a document called a Statement of Condition. The purpose of a Statement of Condition is to prevent disputes between you and your landlord when you move out about what damage you may have caused and what damage existed when you moved in.

This statement, which must be signed by the landlord, must list all damage existing in your apartment and the common areas of the place you are renting at the time you move in. You then have an opportunity to add damages that exist that the landlord has not included in the list. This includes all Sanitary Code violations



cited by the Board of Health or found by a court.<sup>10</sup>

#### **a. Take the Statement of Condition Seriously**

If the landlord gives you a Statement of Condition, you are required by law to return it to the landlord within 15 days of receiving it. Make sure that you keep a copy of whatever you send back to the landlord. You may either sign the Statement of Condition without making any changes or you may attach your own list of damages that you believe exist on the premises. Take this task seriously. Check over the apartment carefully before signing the statement, and consult Booklet 2: **Housing Code Checklist**. Add to your list even small defects, such as holes in the walls and windows that do not work well. If you sign the landlord's statement as is or you fail to send it back within 15 days of receiving it, this means that you agree that the landlord's list is correct and complete. If you send the landlord your own list of damages, the landlord must return a copy, with her signature, within 15 days, noting her agreement or disagreement with your list.

#### **b. What If You Do Not Get a Statement of Condition**

If your landlord fails to give you a Statement of Condition, it may not be worth your while to press for one immediately. Except for a possible \$25 penalty, a landlord cannot be punished for failing to give a tenant a Statement of Condition.<sup>11</sup> Also, a landlord, who knows the condition of the apartment better than you do when you first move in, may be unlikely to confess to serious code violations if she is aware of them.

If there are any serious problems with the apartment, it is in your interest to put the landlord on notice by filling out your own Statement of Condition and sending it to the landlord shortly after you move in. You can use **Form 3: Statement of Condition**. This is important not only to prevent the landlord from later using your security deposit to pay for damage that you did not cause, but also to put the landlord on notice of problems that exist in

the apartment. Keep a copy of your Statement of Condition in a safe place. You may also want to take pictures of certain problems. Make sure you date your pictures by writing when you took them on the back of each one.

**As soon as you become aware of new problems, send the landlord written notice of these problems.** For example, if you move in during August, you might not find out that the heating system is broken until several months later. As soon as you notice a new defect, send the landlord a letter telling her about the problem and asking her to repair it. Keep a copy of this letter for yourself as proof that you properly notified the landlord.

### **3. Holding Funds in a Separate Bank Account**

In the eyes of the law, the security deposit is your money unless and until the landlord has the right to use it.<sup>12</sup> To prevent a landlord from using it for her own benefit, a landlord must place it in a Massachusetts bank account separate from her own money, in an "account protected from creditors." The name on the account must make it clear that the money does not belong to the landlord.<sup>13</sup>

If a landlord fails to put your money in a separate "account protected from creditors," you may be entitled to three times the amount of your deposit.<sup>14</sup>

Within 30 days of taking your deposit, the landlord must give you a written receipt with the name and location of the bank and the amount and account number where she has placed your money. If she fails to do this, you are entitled to have your security deposit returned.<sup>15</sup> See the section in this chapter called **Getting Back Your Security Deposit**.

### **4. Payment of Interest**

Because a security deposit is your money and because if you had it, it could be earning interest in a bank, you are entitled to earn interest on it. You are entitled to receive 5% interest per year, except that if the landlord's bank pays less than

5%, you are entitled only to the amount actually earned.<sup>16</sup> Your landlord must pay you this amount at the end of each year of your tenancy and within 30 days after you finally move out.<sup>17</sup>

At the end of each year of your tenancy, the landlord should also send you a notice restating where the security deposit is, how much interest she owes you, and that you can deduct this interest from your next rent payment, unless the landlord pays you the interest directly.<sup>18</sup> Usually, landlords do not provide tenants with this notice. If you do not receive the interest or a notice within 30 days after the anniversary date of your tenancy, you have the right to deduct the interest to which you are entitled from your next rent payment.<sup>19</sup> When your tenancy terminates, your landlord must give you all of the interest she owes you within 30 days.<sup>20</sup>

### How Much Interest Does Your Landlord Owe You

If you pay a \$1,000 security deposit and a \$1,000 last month's rent payment and the interest on the account is 2%, your landlord must pay you a total of \$40 in interest for every year that you rent. If the landlord does not pay you directly, you may deduct this \$40 from your rent payment. Here's how the math works.

#### ① If the Interest is 2% on Your Security Deposit and Last Month's Rent

\$1,000	Security Deposit	\$1,000	Last Month Rent
<u>x .02</u>	Interest	<u>x .02</u>	Interest
\$ 20 =	Amount owed	\$ 20 =	Amount Owed

#### ② Deduct Total Interest Owed from Your Rent

\$1,000	Rent
<u>- \$ 40</u>	Total interest owed tenant on security deposit and last month's rent payment
\$ 960 =	Amount of next rent check

## 5. Keeping Records of Deposits and Repairs

Any landlord who accepts a security deposit must keep a written record of all deposits she has received from current tenants and from former tenants for two years after their tenancies

end.<sup>21</sup> These records must include the following information:

- A detailed description of what damage has been done in an apartment where the landlord took a security deposit;
- When repairs were made; and
- How much repairs cost (including receipts proving the cost).

A landlord must make these records available during normal business hours to any "tenant or prospective tenant" who asks to see them.<sup>22</sup> If you pay a security deposit and the landlord then refuses to let you see the records, you are entitled to an immediate refund of the deposit.<sup>23</sup>

## Last Month's Rent Payments and Landlord's Responsibilities

### 1. Providing a Written Receipt

Never give a landlord cash without getting a written receipt. A landlord must give you a written receipt including specific information when you make a last month's rent payment. See the chart that describes this information in the section called **Security Deposit and Landlord's Responsibility**.

For this reason, the most important step you can take to protect your rights is to get a complete receipt at the time you give a landlord any deposit. No responsible landlord should object to giving you a receipt if she knows the law. And, if she does object, use the sample receipt (see **Form 4: Security Deposit and Last Month's Rent Receipt**).

### 2. Payment of Interest

A tenant is entitled to receive 5% interest on her last month's rent payment every year, except that if the landlord keeps the money in a bank and the bank pays less than 5%, you are entitled only

to the amount actually earned.<sup>24</sup> For example, one year after you sign a lease or move into an apartment, and on every anniversary date after that, your landlord must send you a statement telling you how much interest she owes you or a notice telling you that you can subtract this interest from your next rent check. If, 30 days after the anniversary date of your tenancy, your landlord has not sent you this interest or told you that you can subtract it from your next rent check, you may legally subtract it from your next rent check.<sup>25</sup> For an example, see **How Much Interest Does Your Landlord Owe You** in the section called **Security Deposit and Landlord's Responsibility**.

When your tenancy terminates, your landlord must give you all of the interest she owes you within 30 days. If she does not, you may file a court case against the landlord and have a right to three times the interest owed, plus reasonable court costs and attorney's fees.<sup>26</sup>

### **3. Last Month's Rent and Section 8 Housing**

Rules on exactly what can be charged vary by program. For the tenant-based voucher program, there is no provision for charging a last month's rent payment (but there is nothing specifically in federal regulations that would prohibit this). If an owner demands a last month's rent, it should be limited to your portion of the rent, since the owner will be paid by the housing agency for its portion of the rent for your last month.<sup>27</sup>

## **Getting Back Your Security Deposit**

### **1. When Must a Landlord Return a Security Deposit**

A landlord must return your entire security deposit immediately upon your demand in the following situations:

- If the landlord fails to put your money in a bank account separate from the landlord's money;<sup>28</sup>

- If the landlord does not give you a receipt within 30 days of receiving your security deposit that has:
  - the name and address of the bank where your money is,
  - the amount you gave the landlord as a security deposit, and
  - the bank account number;<sup>29</sup> or
- If the landlord does not allow you to inspect the records she is required to keep under the security deposit law.<sup>30</sup>

In each of these cases, you can demand your security deposit back and your landlord must return it to you even though you are still living in the apartment. The reason for this is that if your landlord does not properly account for your money, the law requires her to return it. See a sample demand letter at **Form 5: Security Deposit Demand Letter**.

A landlord must also return your entire security deposit within 30 days from the day you move out of your apartment.<sup>31</sup> There are two exceptions to this rule. First, if you are a tenant with a written lease, a landlord does not have to return your deposit until 30 days after the "end of the tenancy" as specified in the lease, even if you actually leave sooner.<sup>32</sup> Second, your landlord can use your security deposit to pay for certain expenses.<sup>33</sup> The next section tells you what these expenses are. Before you leave an apartment, give your landlord an address where she can send the security deposit and any interest.

### **2. What Can Security Deposits Be Used For**

While you are living in the apartment, you and the landlord may agree to use your security deposit to pay for rent or to repair any damage you or a guest may cause. Your landlord cannot use a security deposit in this way unless you and your landlord both agree to it.<sup>34</sup> If you do, put this agreement in writing.

At the end of your tenancy, your landlord may deduct the following expenses from your security deposit:

- Any unpaid rent, unless you legally withheld it for bad conditions;
- Any unpaid increase in real estate taxes for which you are responsible under a valid tax escalator clause in your lease (for more information about tax escalator clauses, see **Chapter 5: Rents**); and
- A "reasonable amount necessary to repair any damage" caused by you, your family members, or guests, beyond any "reasonable wear and tear."<sup>35</sup>

Of course, any sentence with two "reasonables" in it invites argument. What one person thinks is reasonable, another person may think is unreasonable. Routine painting and cleaning, new locks, and minor carpentry are generally considered "reasonable wear and tear" and not chargeable as damage. The security deposit law is also supposed to protect you against phony or inflated deductions for damages. For example, the landlord cannot deduct for damages that she says existed when you moved in unless she can prove that she fixed them after you moved in and you caused the damage again. If the landlord wants to make a deduction for repairs, she must give you a complete list of the damaged items and the repair costs needed to correct them within 30 days of your moving out. The list must be signed and sworn to by the landlord "under penalties of perjury," and must be accompanied by written documentation of the actual or estimated repair costs.<sup>36</sup>

Your landlord gives up the right to keep any portion of your security deposit, or gives up the right to counterclaim for damages to the property if you file a lawsuit to get the security deposit back, when she:

- does not properly put your deposit in a separate bank account or give you the required receipt;
- does not give you an itemized list of damages within 30 days after you move out;
- has terms in your lease which conflict with the security deposit law, and tries to enforce them or get you to waive any of your rights;
- does not properly transfer your deposit to a new owner; or
- does not return your deposit or any balance owed you, with interest, within 30 days of the tenancy's termination.<sup>37</sup>

If you end up suing your landlord for the deposit, the law says she is not allowed to argue that you caused damage. If she wants to accuse you of causing damage, she must bring a separate lawsuit.<sup>38</sup> To repeat: Even if the damage is real, the landlord is not allowed to keep any part of your deposit unless she documents it within 30 days and with written proof.

### 3. Inspecting Your Apartment

If you have reason to believe the landlord will withhold your security deposit and you are leaving your apartment in good condition, there are some common-sense steps you can take to protect yourself.

Try to have the landlord inspect the apartment while you are present before you move out. Make sure that a friend is present to witness this inspection. As you walk around the apartment, make sure the landlord specifies what damage she intends to deduct from your security deposit. If you have a Statement of Condition, have copies of this statement ready showing what damage was present when you moved in. Do not be afraid to challenge the landlord if you have a basis for doing so. Be polite, but firm. If you reach a satisfactory agreement with the landlord about what should be deducted from your security deposit, get it in writing and make sure both of you sign it. Ideally, try to get your security deposit, or the portion agreed to by you and the landlord, back at that time.

If you think the landlord is being unreasonable about what is "reasonable wear and tear," take pictures of the areas that the landlord claims you have damaged. Take detailed notes describing the conditions and have a friend take notes, as well. If your landlord refuses to conduct an inspection with you, conduct one with a friend. Take pictures and make a list of damages and of improvements that you have made. Write to the

landlord informing her of your inspection and your findings. If there is no damage, send your landlord a *demand letter* stating that you expect the entire deposit returned on the day you move out, and that you will collect it at her office on that day. Offer once more to let her inspect.

If you still have reason to believe your landlord will unreasonably withhold your security deposit, consider withholding the last month's rent before you leave. If you have paid last month's rent in advance, you will have to withhold the last two months' rent in order to come out even.

## 4. Demand Letter

If you do not receive your security deposit or an itemized list of deductions within 30 days of moving out, you have several options. You can send your landlord a letter requesting the immediate return of your security deposit.<sup>39</sup> This is called a *demand letter*. See a sample at **Form 5: Security Deposit Demand Letter**. You can use a demand letter whenever you have the right to an immediate return of your deposit, even if it is not at the end of your tenancy. See 1. **When Must a Landlord Return a Security Deposit?**

The purpose of a demand letter is to give your landlord a chance to return your deposit without both of you having to go to court. It also informs the landlord that you have the right to triple the amount of your security deposit (referred to in the law as "treble damages") if she refuses to refund your money when it is due. If you send a demand letter, send it by both *certified mail*, return receipt requested, (so you can prove the landlord received it), and first-class mail. Keep a photocopy for yourself.

If you are writing a demand letter, you should see the information about demand letters on the official website for the state of Massachusetts at: [www.mass.gov](http://www.mass.gov), then type "demand letter" in the search box.

## 5. Taking Your Landlord to Court

If a landlord has failed to return your security deposit or has not given you a complete list of

the damages she is deducting from your deposit within 30 days of your moving out, you can sue her for three times the amount of the deposit (treble damages). You are also allowed to sue her for any interest that she did not pay you during your tenancy and for the amount of money you have to pay an attorney to represent you.<sup>40</sup>

If you sue a landlord for your security deposit, the law does not allow the landlord to walk into court and accuse you of causing the damage. She must file her own separate lawsuit to make such a claim.<sup>41</sup> The reason is that the security deposit law provides procedures for your landlord to claim and document damages within 30 days after you move out.<sup>42</sup> If she does not follow these procedures and forces you to sue her, then she must take the consequences. The law does not allow her to use your lawsuit against you.

### a. Triple Damages

A court must award three times your security deposit in damages whenever a judge finds that a landlord has failed to:

- Return the security deposit or balance to which the tenant is entitled within 30 days of the end of the tenancy;
- Properly deposit a security deposit in a bank account separate from the landlord's funds and "protected from creditors"; or
- Transfer a security deposit to a new owner.<sup>43</sup>

A landlord cannot use the fact that she did not know the law as a defense. In most cases, you can sue your landlord for the security deposit in the Small Claims session of your local District Court, Housing Court, or Division of the Boston Municipal Court. While small claims suits are limited to claims of no more than \$7,000, as long as your security deposit was \$7,000 or less, you can sue for three times the deposit in Small Claims Court even though the tripled amount may be more than \$7,000.<sup>44</sup>

Small claims blank complaint forms are available at the courthouse. For more about how to file a small claims form, see the official website for the state of Massachusetts at: [www.mass.gov](http://www.mass.gov), then type "small claims court" in the search box.

There is one unique feature related to security deposit lawsuits that you need to know. If a tenant wins her security deposit case and a landlord wishes to appeal the court's decision, the landlord must "post a bond." A bond is money that the landlord must pay to appeal the case. In a security deposit case, a landlord must post a bond equal to the triple damages you are claiming, plus interest, court costs, and your attorney's fees.<sup>45</sup> This law is designed as yet another incentive for the landlord to refund the deposit rather than prolong litigation by appealing.

## **Why Is There a Security Deposit Law**

In 1975, the Massachusetts Public Interest Research Group (MassPIRG), a nonprofit advocacy organization, conducted a survey that proved that landlords were wrongfully holding on to deposits and forcing tenants to sue to get them back. If a tenant won, she got the deposit back and the cost of filing the lawsuit, but nothing more. The amount of the deposit was often not worth the expense and effort of trying to get it back. Dishonest landlords knew this and had no incentive to obey the law. The worst punishment they would face was to be ordered to pay the deposit that they should have paid in the first place.

In response to the MassPIRG study, the state legislature made the security deposit law stronger. Now, if the landlord refuses to refund your deposit or part of your deposit within the 30 days, you may sue her for three times the amount she owes you. If you win your lawsuit, the landlord is also required to reimburse your court costs and your attorney's fee, if you are represented by an attorney.

## **Deposits and New Owners**

If a new landlord buys your building, your landlord goes bankrupt, a bank forecloses on the property you rent, or a new building management company takes over, you should not lose your security deposit or last month's rent payment. It is vital that you do your homework when there is any change in ownership or control of your building.

In many cases, tenants routinely lose track of their deposits when the property changes hands. It's not hard to see why. As a tenant, you are most likely to think about your deposit when you are getting ready to move out. If at that point your new landlord denies having received the deposit from the old landlord, you will probably have a difficult time proving that she did receive your money.

Under the law, you cannot be made to pay a new or additional security deposit or last month's rent payment because someone else has taken over the building.<sup>46</sup> The old landlord or manager is required to transfer all last month's rent payments and security deposits, with their interest, to the next owner. The next owner then becomes fully responsible for the deposits and must notify you within 45 days that she has them. Until the new landlord gives you this notice in writing or returns the deposits to you, the old landlord remains financially responsible for your deposits.<sup>47</sup>

If you do not receive this written notice from the new landlord within 45 days of her taking ownership of the building, you should promptly demand in writing that the old landlord refund your money. She must comply.<sup>48</sup> If you have to sue the old landlord for your deposits, you can sue her for triple the amount that she owes you.<sup>49</sup>

Meanwhile, the new landlord—except some foreclosing banks or a government agency that takes over property for back taxes—is still responsible to you for the amount of your deposit, even if the new landlord never actually received it from the old landlord. The new landlord can satisfy this obligation by letting you have free rent for the time period represented by the deposits.<sup>50</sup> You can also sue the new landlord for the return of the basic deposit, assuming you can still prove you paid it to the former landlord. The law, however, does not allow you to sue the new landlord for treble damages.

For more information about security deposits and foreclosures, see the section called **Getting Your Security Deposit Back After Foreclosure** in **Chapter 21: Foreclosures**.

## Security Deposits and Section 8 Housing

If you live in housing subsidized by the federal Section 8 rental assistance housing program, there are several things you should know if your landlord asks for a security deposit.

First, landlords who rent under Section 8 leases are subject to all state laws governing the security deposits. This means that if a landlord takes a security deposit from a tenant, the landlord must give the tenant a written receipt, must deposit this money in a bank account separate from the landlord's funds, and must pay the tenant interest on the tenant's portion of the security deposit. The amount the landlord can ask for as a security deposit might also depend on what type of Section 8 assistance you have.

### 1. Portable Vouchers

If you can move from one property to another with your Section 8 voucher, that voucher is a "portable" voucher (also referred to as a "tenant-based," "mobile," or "Housing Choice" voucher). If you have a portable Section 8 voucher, the landlord may charge a security deposit in an amount up to one full month's rent, just as she can in the private sector.<sup>51</sup>

### 2. Project-Based Vouchers

If you cannot move from one property to another with your Section 8 assistance, you have a "project-based" subsidy. If you have a project-based subsidy, the landlord may ask for a security deposit of \$50 or your share of the rent payment—approximately 30% of your monthly income—whichever is greater.<sup>52</sup> Thus, if your monthly income is \$1,000 per month, 30% of your monthly income is \$300, and therefore the maximum security deposit that your landlord can charge you is \$300.

Sometimes, landlords will try to collect the full rent as a security deposit from a tenant with a project-based Section 8 subsidy. The full rent is the tenant's portion combined with the *housing authority's* portion of rent. This is illegal. The one

exception is if you enter into a Section 8 lease after you have already lived in an apartment and already paid a security deposit based on the full market rent. In this case, a landlord is not required to refund the difference until you move out.

### 3. Unpaid Rent or Damages

If a tenant under a Section 8 lease moves out and there is unpaid rent or property damage, a landlord has a number of options. She can apply the tenant's security deposit, or, if the damage is more than the tenant's share of the deposit, the landlord can sue the tenant for the balance.<sup>53</sup>

(Note, however, that if a landlord sues a tenant who has very little or no money to pay any *judgment*, the landlord may never be able to collect this money).

A landlord with a "project-based" Section 8 lease has a third option. She may apply to the housing authority for a damage payment. If a landlord applies to a housing authority for a damage payment after a tenant moves out, this payment cannot exceed the actual cost to repair the damages or two months' rent at the full contract rent minus whatever security deposit she could have legally collected from the tenant (regardless of whether she actually collected it).<sup>54</sup> The following example explains how this works.

\$ 1,000 =	Full contract rent for apartment
<u>  x 2</u>	
\$ 2,000 =	Two months' rent
<u>- 350 =</u>	Tenant's share of rent or tenant's security deposit
\$1,650 =	Amount landlord may be able to collect from housing authority and amount tenant, in turn, may owe housing authority.



If the housing authority believes that the "project based" landlord's damage claim is valid and it pays the landlord, the housing authority may treat this payment as a debt you owe to the housing authority. Because the law does not specify any procedures that a housing authority must go through before paying a landlord's claims, many housing authorities pay such claims routinely, without investigating the tenant's side of the story. Even if the housing authority appoints an employee to hear both sides and resolve whether the claim should be paid, a tenant has no right to appeal to court if she disagrees. For this reason, tenants need to protect themselves by showing the housing authority that the landlord's claim is not valid, if that is the case.

There may be serious consequences that could hurt you if you fail to reimburse the housing authority for a valid damage claim. If you owe money to the housing authority, it or any other housing authority can refuse to give you a new Section 8 voucher so you can move to another housing unit. It can also refuse to let you back into the Section 8 program if you go off the program for any reason. And the housing authority may refuse to give you a subsidy to allow you to move to a new apartment, approve a new lease, or execute a new subsidy contract.<sup>55</sup> If you cannot resolve the problem with your housing authority and former landlord, seek legal advice early, before the housing authority threatens to take action against you for not paying the claim.



## Endnotes

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1. [G.L. c. 186, § 15B](#). There is one exception to this rule. The security deposit law does not apply to landlords who rent places for seasonal or vacation purposes for 100 days or less. G.L. c. 186, § 15B(9).
2. [G.L. c. 186, § 15B\(1\)\(b\)](#).
3. Under [G.L. c. 186, § 15B\(1\)\(b\)](#), the law is clear that a landlord can charge only first month's rent, last month's rent, a security deposit, and the cost of a new lock.
4. A rental agent can charge a "finder's fee" only if she is a licensed real estate broker or salesperson. [G.L. c. 112, § 87DDD½](#). There is no other authoritative Massachusetts law on the subject of finder's fees, but in any case where the landlord seems to be adding a charge that bears no relation to any real work or cost, consult the Consumer Protection Act, G.L. c. 93A, §§2 and 9, and its regulations, 940 C.M.R. § 3.17.
5. [G.L. c. 186, § 15B\(6\)\(c\), \(8\)](#). If a landlord has a tenant sign a lease that violates the security deposit law, but doesn't try to enforce the illegal terms, although the landlord is not subject to penalties under the security deposit law, she may still be in violation of the Consumer Protection Act. 940 C.M.R. § 3.17(3)(a)(1) and (4)(k).
6. According to [G.L. c. 186 § 15B\(1\)\(b\)](#): "At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following: (i) rent for the first full month of occupancy; and (ii) rent for the last full month of occupancy calculated at the same rate as the first month; and, (iii) a security deposit equal to the first month's rent. . . . Also, see G.L. c. 186, § 15B(1)(d), which states: "No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by this section. . . ." (Emphasis added.) Thus, the security deposit can never exceed the first month's rent.
7. [G.L. c. 186, § 15B\(2\)\(a\) and \(b\)](#).
8. [G.L. c. 186, § 15B\(3\)\(a\)](#).
9. [G.L. c. 186, § 15B\(3\)\(b\) and \(2\)\(a\)](#).
10. [G.L. c. 186, § 15B\(2\)\(c\)](#).
11. [940 C.M.R. § 3.17\(4\)\(e\)](#). Because the landlord's right to take a security deposit is conditioned on providing the Statement of Condition, G.L. c. 186, § 15B(1)(b)(iii), you may demand the deposit back if the landlord does not comply. However, most tenants will choose as a tactical matter not to make this a bone of contention at the very beginning of a tenancy.
12. [G.L. c. 186, § 15B\(1\)\(e\)](#).
13. [G.L. c. 186, § 15B\(1\)\(c\), \(3\)\(a\)](#). Placing the money in an out-of-state bank does not conform to the statute. *Taylor v. Burke*, 69 Mass. App. Ct. 77, 86 (2007). "[P]rovisions are designed to recognize the ownership of the deposit by the tenant and the landlord's duty to hold the monies in trust." *Id.* at 84.
14. [G.L. c. 186, § 15B\(7\)](#). The tenant is entitled to this treble damage remedy whenever the landlord fails to comply strictly with the terms of the statute. The penalty is not discretionary. The tenant does not need to prove that the landlord acted in bad faith or that the tenant lost money because of the landlord's actions. *Mellor v. Berman*, 390 Mass. 275, 283 (1983).
15. [G.L. c. 186, § 15B\(3\)\(a\)](#).
16. [G.L. c. 186, § 15B\(3\)\(b\)](#).
17. [G.L. c. 186, § 15B\(3\)\(b\)](#). The statute leaves some question as to whether any interest is payable if you stay in the rental unit less than a year.

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18. [G.L. c. 186, § 15B\(3\)\(b\)](#).
  19. [G.L. c. 186, § 15B\(3\)\(b\)](#).
  20. [G.L. c. 186, § 15B\(3\)\(b\)](#).
  21. [G.L. c. 186, § 15B\(2\)\(d\)](#).
  22. [G.L. c. 186, § 15B\(2\)\(d\)](#).
  23. [G.L. c. 186, § 15B\(2\)\(d\)](#).
  24. [G.L. c. 186, § 15B\(2\)\(a\)](#). This section requires interest to be paid no matter how long you remain as a tenant. Interest does not accrue during the last month of your tenancy.
  25. [G.L. c. 186, § 15B\(2\)\(a\)](#).
  26. [G.L. c. 186, § 15B\(2\)\(a\)](#), last paragraph.
  27. HUD regulations previously specifically did not permit charging a last month's rent payment for the Section 8 program. As stated, now they neither specifically permit nor prohibit such a payment. If an owner insisted that a Section 8 tenant pay full contract rent as a last month's rent, this would likely be in violation of [G.L. c. 151B, § 4\(10\)](#).
  28. [G.L. c. 186, § 15B\(3\)\(a\)](#); (6)(a).
  29. [G.L. c. 186, § 15B\(3\)\(a\)](#).
  30. [G.L. c. 186, § 15B\(2\)\(d\)](#).
  31. [G.L. c. 186, § 15B\(4\); \(6\)\(c\)](#).
  32. [G.L. c. 186, § 15B\(4\)](#). *Rendall v. Tarvezian*, 1984 Mass. App. Div. 13 (N. Dist.), the only reported case on this subject, says that this language means what it says even if you and the landlord agree to an early termination of the lease. However, in that case, the landlord actually did not consent to early termination.
  33. [G.L. c. 186, § 15B\(4\)](#).
  34. [G.L. c. 186, § 15B\(4\)](#), last sentence "No deduction may be made from the security deposit for any purpose other than those set forth in this section."
  35. [G.L. c. 186, § 15B\(4\)](#). Under G.L. c. 186, § 15B(4)(i) and G.L. c. 186, § 22(i), after a tenancy is terminated a landlord who is in compliance with the water submeter law may deduct final unpaid water charges from the tenant's security deposit for a billing period for which the landlord has not yet been billed.
  36. [G.L. c. 186, § 15B\(4\)\(iii\)](#).
  37. [G.L. c. 186, § 15B\(6\)](#).
  38. [G.L. c. 186, § 15B\(6\)](#). This language does not prohibit the landlord from filing a separate lawsuit against the tenant to recover the damages. *Jinwala v. Bizzaro*, 24 Mass. App. Ct. 1, 7 (1987). A landlord cannot condition her return of part of the deposit on your agreement to release her from paying the balance. In *Goes v. Feldman*, 8 Mass. App. 84 (1979), a case decided under the Consumer Protection Act, a trustee who tried to retain \$125 by using a restrictive endorsement on a check was held liable for three times the entire deposit, plus costs and attorney's fees, a total of \$3,187.80.
  39. [G.L. c. 186, § 15B\(6\)\(c\), \(7\)](#). In those cases where the landlord's conduct entitles you to get the deposit back while you are still living on the premises, but the landlord refuses to return it after demand, the security deposit law is

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ambiguous regarding treble damages, but the Appeals Court has interpreted the statute to require such a remedy. *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986); *Young v. Patukonis*, 24 Mass. App. Ct. 907, 909 (1987) (rescript). *Castenholz* further holds that filing a lawsuit is itself considered a "demand," so that a landlord who is properly sued for the return of the deposit and does not immediately tender it thereby becomes liable for treble damages. *Castenholz*, 21 Mass. App. Ct. at 764. Also, if the landlord is subject to the Consumer Protection Act, G.L. c. 93A, recourse can be had to its treble damage provisions. 940 C.M.R. § 3.17(4)(a),(b),(c), and (k). See *McGrath v. Mishara*, 386 Mass. 74, 82-87 (1982), regarding the interplay between security deposit statute and Chapter 93A claims. Chapter 93A requires a demand 30 days before filing suit, except where the tenant's claim is asserted by way of counterclaim against the landlord.

40. [G.L. c. 186, § 15B\(6\)\(e\) and \(7\)](#).
41. [G.L. c. 186, § 15B\(6\)](#). This language does not prohibit the landlord from filing a separate lawsuit against the tenant to recover the damages. *Jinwala v. Bizzaro*, 24 Mass. App. Ct. 1, 7 (1987).
42. [G.L. c. 186, § 15B\(4\)](#).
43. [G.L. c. 186, § 15B\(7\): \(6\)\(a\), \(d\) and \(e\)](#).
44. [G.L. c. 218, § 21](#).
45. [G.L. c. 218, § 23](#). The constitutionality of this statute was upheld in *Hampshire Village Assocs. v. District Court of Hampshire*, 381 Mass. 148, 153 (1980), cert. denied sub. nom. *Rublander v. District Court of Hampshire*, 449 U.S. 1062 (1980).
46. [G.L. c. 186, § 15B\(1\)\(d\)](#). See *Mall Apartments Realty Trust v. Hilda Hernandez*, Hampden Housing Court, 91-SC-1865, p. 3 (March 16, 1992), where the court found that security deposit law did not insulate purchaser at foreclosure sale from liability for deposits. See also *Cruz v. Cabrera*, Northeast Housing Court, 92-SC-00074, p. 4 (Sept. 25, 1992), where court found buyer at foreclosure sale liable to tenants for the return of security deposit and awarded tenant treble damages, plus court costs (credited against unpaid rent).
47. [G.L. c. 186, § 15B\(5\), \(7A\)](#).
48. [G.L. c. 186, § 15B\(6\)\(d\)](#).
49. [G.L. c. 186, § 15B\(7\)](#). See *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986).
50. [G.L. c. 186, § 15B\(5\) \(last paragraph\), \(7A\) \(last paragraph\)](#). In *Vinton v. Demetrios*, 19 Mass. App. Ct. 948, 949 (1985) (rescript), the court affirmed that the new landlords could be liable to the tenants for damages even though they took ownership of the property shortly after the tenants had been evicted. The decision does not address their liability for treble damages claimed by the plaintiffs.
51. [24 C.F.R. § 982.313](#). While there is no provision for charging a last month's rent, there is nothing specifically in federal regulations that would prohibit this. If an owner demands a last month's rent, it should be limited to your portion of the rent, since the owner will be paid by the housing agency for its portion of the rent for your last month. HUD regulations previously specifically did not permit charging last month's rent for the Section 8 program, since the housing agency would reimburse the owner for any vacancy loss if the tenant moved out without prior notice. *Attorney General v. Brown*, 400 Mass. 826 (1987) (issue of whether landlord unlawfully discriminated against Section 8 subsidy holders because of policy of not accepting tenants where last month's rent could not be collected). These regulations were changed in 1995. If an owner insisted that a Section 8 tenant pay the full contract rent as a last month's rent, this would likely be a violation of G.L. c. 151B, § 4(10).
52. [24 C.F.R. § 886.315](#). For federal multifamily subsidized housing, there is no provision for charging a last month's rent and the rules on what exactly can be charged for a security deposit vary by program. 24 C.F.R. §§ 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775; *HUD Multifamily Occupancy Handbook* 4350.3 CHG-1 (Aug. 2004), Chapter 6, § 2, and in particular Figure 6-6, which describes what can be charged for each program.

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53. [G.L. c. 186, § 15B\(4\)\(iii\)](#); 24 C.F.R. § 982.313(e). The statute appears to let a landlord sue for the balance only where the tenant has "wilfully or maliciously" destroyed or damaged property. This limitation, which appears contrary to general tort law principles, has not been discussed in any published decision.
  54. [24 C.F.R. § 886.315\(d\)](#).
  55. *Brauer v. Philadelphia Hous. Auth.*, 495 A.2d 987 (90 Pa. Commw. Ct. 503, 507-08 (1985)) (Housing Authority does not have to offer tenant an opportunity to cure by paying for damages).

Date

Landlord's Name

Landlord's Address

Dear Landlord,

This letter is a demand for relief under the Consumer Protection Act, Chapter 93A, for certain unfair and deceptive practices that you have engaged in.

I live at \_\_\_\_\_ (address) and have been a tenant of yours for the past \_\_\_\_\_ (time frame). Since \_\_\_\_\_ (date), I have experienced substantial interference with the use and enjoyment of my home because of the serious conditions that you have failed to repair. I notified you in writing of these conditions on \_\_\_\_\_ (date). Those violations include, but are not limited to:

- 1.
- 2.
- 3.
- 4.

Chapter 93A forbids unfair or deceptive practices in the conduct of any trade or business including the rental of residential property. Each and every month you had knowledge of the conditions listed above and failed to make repairs constitutes a separate violation of Chapter 93A. You have thus violated Chapter 93A \_\_\_\_\_ (number of times). The existence of these conditions also constitutes a breach of implied warranty of habitability and law of quiet enjoyment, for which I have an independent right to compensation and relief.

Furthermore, I have repeatedly notified you about these conditions and requested that you make the necessary repairs. You have, in turn, repeatedly ignored these requests. This constitutes a willful violation of Chapter 93A

Under Chapter 93A, I am entitled to \$25.00 or the actual damages, whichever is greater, for each time that you violated Chapter 93A. This amount is \_\_\_\_\_ (state amount). Since these violations were willful, I am entitled to triple this amount.

If I do not receive a reasonable offer of settlement from you within 30 days or your receiving this letter, I can proceed to file a lawsuit. A reasonable offer would include, at a minimum, the damages as I have listed them on this letter and prompt correction of the violations of the state sanitary code.

Sincerely,

\_\_\_\_\_





**The Official Website of the Office of Consumer Affairs & Business Regulation  
(OCABR)**



**Consumer Affairs and Business Regulation**

**Small Claims Courts**

If you are unable to resolve your complaint through self-help or local consumer group mediation, you may wish to use the Small Claims Court. Known popularly as the people's court, this informal and inexpensive forum is designed to help you settle disputes of \$7,000 or less without the aid of an attorney.

Unless your suit is based upon property damage sustained in an automobile accident, it cannot exceed \$7,000. The claim may, however, be subject to statutory damages or attorney's fees in excess of \$7,000 (e.g. consumer protection cases or certain landlord/tenant cases). In those cases, the base amount may not exceed \$7,000 even though the potential award may exceed that amount.

**What is the filing fee for a small claim?**

The filing fee for small claims of \$500 and under is \$40. The filing fee for claims of \$501 to \$2,000 is \$50. The filing fee for claims of \$2,001 to \$5,000 is \$100. The filing fee for claims of \$5,001 to \$7,000 is \$150. The filing fee for claims of property damage of more than \$7,000 arising from an automobile accident is \$150.

If your claim exceeds \$7,000 you may wish to retain the services of an attorney and sue in another court.

Note: Should you decide to use Small Claims Court, you will be precluded from bringing the same claim to any other court.

**Small Claims Court Functions**

The atmosphere of Small Claims Court is informal, and the rules of the Court are simple. You can sue or be sued in this Court without being represented by a lawyer, because the more formal procedures characteristic of other courts are not required. Instead, you are allowed to present your own evidence and speak in layperson's terms.

By choosing a Small Claims Court, you waive all rights to a jury trial. Furthermore, it is only in very specific instances that you have the right to appeal to a higher court if the Clerk does not find in your favor. Defendants, however, always have the right to appeal.

If the other party has a lawyer, you are not necessarily at a disadvantage because you are representing yourself. The participation by lawyers representing parties may be limited in a manner consistent with the simple and informal adjudication of the controversy. It is the Clerk's duty to ensure all parties a fair hearing.

### **Selecting the Appropriate Court**

Small Claims sessions are conducted in every Massachusetts District Court, the Boston Municipal Court, and the Boston Housing Court. Each District Court is informally identified by the name of the city or town where it is located. (See the Directory of Small Claims Courts at the end of this publication).

The Plaintiff (the person bringing the suit) has the option to file suit in the District court where either the Plaintiff or Defendant lives or has her/his place of business or employment. In landlord-tenant disputes, the Plaintiff could sue in the district where the property is located.

### **Filing Your Claim**

To file suit, obtain the appropriate form, called the Statement of Claim and Notice, from the Small Claims Clerk in your district. Fill out the form completely and accurately.

You must furnish the precise legal name and address of the party you are suing. For example, John & Jane Doe Construction, Inc. You may sue any individual, business, partnership, or corporation. The legal name of a business which is not corporation may be determined by contacting the clerk at the city or town hall and requesting business certificate information. The legal name of a corporation can be obtained from the Secretary of State, Corporations Division, One Ashburton Place, 17th Floor, Boston MA 02108 or by telephoning 617-727-2850 or 617-727-9640 or online at [www.sec.state.ma.us](http://www.sec.state.ma.us) .

You can only sue for money in Small Claims Court. The amount of your claim should include both the actual damage done and any additional costs incurred due to the damage, such as taxi fares, postage, photocopying, and court costs.

At the time of the filing, you must pay a small court entry fee. This fee and any other court fees will be assessed against the Defendant if you win your case.

Your claim may be filed in person or by mail. However, when the papers are sent by mail to the clerk, the action is not commenced until the papers are actually received.

The Clerk will provide a copy of your completed Statement of Claim and Notice form, which will show the date and time of trial. You will also receive a Docket Number, or reference number for your suit. Use this number to identify your case when you contact the Clerk.

The Clerk then will promptly send to the Defendant by first class mail, at the address or addresses supplied by you, a copy of the Statement of Claim and Notice form. The court may provide for other means of service in individual cases as is deemed necessary.

### **Preparing for Trial**

A week before the hearing, call the Clerk to ensure that the Defendant has received the Statement of Claim and Notice. The Clerk will inform you if the case was postponed, or if the Defendant has filed an answer. Obtain a copy and use the Defendant's answer to prepare your case more effectively.

To refresh your memory, prepare a chronological summary of events and relevant facts to facilitate your presentation. Pull together all the evidence that will help you prove your case, such as contracts, letters, canceled checks, receipts, leases, estimates, and the actual damaged goods or photographs. Bring certified copies of the applicable Attorney General's regulations if you are citing a specific violation. These are available at the State Bookstore, State House, Room 116, Boston MA 02133, telephone: 617-727-2834.

If you are suing under the Consumer Protection Act, Chapter 93A, notify the Clerk of that fact and that you may be entitled to double or treble damages under that statute. Bring a copy of your 30 day demand letter. You may also wish to schedule witnesses prior to your court date who can verify your claims or confirm your statements. If a witness refuses to participate, the clerk can help subpoena him or her. A subpoena is a court notice ordering a witness to appear in court on a trial date.

## **The Trial**

Arrive at the Court House at least an hour before your case is heard. When your case is called, you, the Defendant, and any witnesses must be sworn in. Then, the Clerk will hear each side of the case allowing each side to develop the story with evidence and witness participation. The Plaintiff, or person suing, presents the case first. The presentation should be brief, well-organized and emotion-ally controlled. Then, the Defendant, or person being sued, presents his or her version of the case. Always speak directly to the Clerk. Don't argue with the Defendant in Court, or interrupt his or her presentation.

After the presentations, you and the Defendant may ask questions of each other. The Clerk may act as moderator, asking questions and encouraging discussion to develop all the facts in the case. If the Clerk decides that a party has set up a frivolous or misleading claim or answer, then the Clerk may award additional costs to the other party of up to \$100.

If the Defendant defaults, or does not show up, and you appear for trial, you automatically win. However, you must show the Court proof of your claim. (If the Defendant appears for the trial and the Plaintiff fails to appear, the case will be dismissed. If neither Plaintiff nor Defendant appears for trial, the claim must also be dismissed.)

## **Options for the Defendant**

**Settle:** The parties may come to an agreement to settle out of court even after the suit has started. The agree-ment must be in writing. Notify the Court of settlement by providing a copy to the Clerk. The original copy of this settlement, entitled Agreement for Judgment, should be signed by both you and the Defendant and filed with the Court's records, so that it may be enforced by law. Keep a copy for your records.

**Answer:** The filing of an answer by the Defendant is optional. The Defendant will be instructed that he or she may, if he or she wishes, submit a written answer to the claim in the form of a letter to the court, signed by him or her and setting out in clear and simple language the reason(s) why the Plaintiff should not prevail.

**Default:** If the Defendant fails to appear at the trial, the Plaintiff automatically wins. A Judgment and Order requiring payment of a stated amount, remains valid for 20 years. A court will require some type of showing by the Plaintiff that the claim is valid prior to entry of judgment.

**Counterclaim:** A Counterclaim is a Defendant's suit in reverse against a Plaintiff. The counterclaim procedure is optional. If you have a valid claim against a party suing you, notify the Clerk that you wish to file a counterclaim. For example, if a repair shop is suing you for repair costs, you might counterclaim for the cost of repairing the part improperly installed. In the answer, or in the course of the proceedings, the Defendant may set forth in writing any claim which he has against the Plaintiff. No written answer to the Defendant's claim is required and both the Plaintiff's and the Defendant's claims are deemed one case. If the Plaintiff wants more time to prepare for the counterclaim, he or she may ask the court for a continuance. (See Continuances.) A counterclaim must be filed with the Clerk at least two days prior to the hearing. A nominal charge is collected for this filing.

**Continuances:** Where the Defendant has been given notice, trial will not be continued to another date unless by agreement of the parties with the approval of the court, or unless there is a showing of good cause. Any motion for continuance must be in writing unless the court permits an oral application.

### **Decision of the Court**

After hearing the arguments of both parties, the Clerk may make an immediate decision, or may require more time for deliberation, which would leave the case Under Advisement and you would be notified by mail of the final decision.

If the Clerk finds in favor of the Defendant, then the case will be over and you will receive no payments. You will not be required to pay the court costs for the Defendant. If the decision is for the Plaintiff, then the court will issue a Notice of Judgment and Order that orders the Defendant to pay you the damages and court entry fee. The Clerk may award you less than your original claim.

The Defendant has the right to appeal the decision within 10 days. The Defendant must pay an appeal fee and post \$100 in cash or certified check or bond, unless the Court waives this requirement.

### **Collecting your money**

If the Defendant fails to pay you, then you must inform the Clerk who will issue a Notice to Show Cause to you. You then must arrange to have the notice delivered to the Defendant by a county Deputy Sheriff or municipal Con-stable. The Notice to Show Cause will indicate the date and time of hearing. At the hearing, the Court will take appropriate action to recover payment.

Alternatively, you may ask the Clerk for an Execution form. This form allows the county Deputy Sheriff or municipal Constable to seize and sell the Defendant's property to recover the amount owed.

Within one year of the Court's decision, a party can apply for relief from the judgment or order. This means that the Court may decide to reverse the decision because of an error or other reasons that the Court finds sufficient. Ask the Clerk if you have any questions about this or other Small Claims Court procedures.

### **Sources of Help**

For further information, contact the Small Claims Advisory Service, Phillips Brooks House, Harvard Yard, Cambridge, MA 02138: 617-497-5690 or on-line at: <http://www.masmallclaims.org/>.

### **For More Information**

To find a small claims court, obtain contact information or location, or for further information, please visit the Massachusetts Court Website: <http://www.mass.gov/courts/selfhelp/small-claims/>.

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