SCAS

The Massachusetts Small Claims Advisory Service

Volunteer Manual

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History of SCAS

The Small Claims Advisory Service (SCAS) is an undergraduate public service organization at Harvard University affiliated with the Phillips Brooks House Association (PHBA). Its primary focus is to help clients navigate the confusing world of small claims court law through its telephone service, in-person assistance, and instructional manuals. SCAS is exclusively dedicated to assist with small claims court problems and this makes it the only organization of its kind in the Commonwealth of Massachusetts.

The Early Years

The history of SCAS is a short but interesting one. It was founded as the Roxbury Small Claims Advisory Project (SCAP for short) in October of 1974 by a group of six dedicated students and was little more than an offshoot of PBHA's Legal Committee. The impetus for the project was a request by Judge John Cratsley of the Roxbury Municipal Court for an advisory service similar to the one existing previously in the Dorchester and Roxbury courts. The earlier project had been funded by a group affiliated with the consumer crusader Ralph Nader, and consisted fo two full-time small claims specialists who gave free advice on organizing and presenting small claims cases. In addition, they acted as third party mediators and observers at the behest of the court, and, in certain situations, as advocates. It was this type of organization that SCAP sought to create.

In order to train themselves in small claims court procedure, the volunteers read and studied Sue the Bastards, a popular manual for small claims litigants. In addition, they read a booklet on how to sue by Mass PIRG, various other miscellaneous information on the court, and of course, the rules of small claims procedure. The volunteers also attended two specialized training sessions, one with Alan Dietch, the former adviser of the Nader project, and the other with judge Cratsley, who instructed the volunteers on the nature of an effective small claims case from a judge's perspective.

Judge Cratsley generously provided the fledgling project with a rent-free office in the Roxbury Municipal Court. The office was open Monday and Wednesday mornings and Tuesday and Thursday afternoons. Soon after opening, two more volunteers were added to help alleviate the swiftly rising workload. In addition to the new volunteers, a night-line was established through a phone at the Phillips Brooks House, and was attended Monday, Tuesday, and Wednesday nights from 7-9 PM.

Complete success eluded the project, however. SCAP's proposal to set up operations at the Cambridge court was turned down by Chief Justice Lawrence Feloney, who cited SCAP's possible unauthorized practice of law as his main reason for refusal. Also, SCAP's attempts to be included as a full committee within the greater Phillips Brooks House Association met with repeated failure - PBH officials remained unconvinced about the focus of SCAP. As a result, the program remained a subordinate group within the larger Legal Committee. Perhaps the biggest problem with SCAP, however, was the lack of focus. As David Bixby, one of the original volunteers explained in a 1975 grant proposal, "The group neglected to develop clearly-defined ideas on the precise nature of what they were doing, why they were doing it,

and what they ultimately hoped to accomplish. The group recognized this problem somewhat, yet decided to leave the resolution of these issues, particularly the last two, to time and experience."

In 1976, only a few years after the project was founded, the Boston Globe took notice of the impact the project - now known as the Small Claims Advisory Service - was having in the Roxbury area. Citing it for its success in "easing the way into small claims court," the newspaper interviewed both Judge Crastley and student volunteers like then chairperson Tony Gentry. The Globe was full of nothing but praise:

"[The Small Claims Advisory Service] is the only on of its kind in the state....When citizens call the Small Claims Advisory Service at 427-8782, they are invited to visit the office and are assisted in either filing a claim or defending against a suit. The student volunteer will explain how to father resources like documents, letters, bills, and witnesses, and explain how the court hearing will work. Sometimes nervous citizens are brought into the small claims session to see it in action and reduce their anxiety."

The Globe article succeeded in attracting more attention to SCAS, and thanks in part to the favorable publicity, interest in legal advocacy surged and the number of volunteers increased twofold. As one of the larger programs within PBHA, SCAS was subsequently granted independent committee status and separated from its parent, The Legal Committee. This move affirmed SCAS's importance as a separate organization and highlighted the impact of legal advocacy within the larger conglomerate of service programs.

The Search for a Home

The late 1970s and the early 1980s were difficult years for SCAS, as the initial excitement and newness of legal advocacy and small claims wore off. In an extreme low point in 1981, two volunteers were mugged on their way to the Roxbury courthouse. This situation, combined with the threat of future security problems, forced SCAS to close their Roxbury office and withdraw from the area altogether. While the move was intended to preserve volunteer safety, however, closing the Roxbury office seriously hampered SCAS in its attempts to help small claims litigants. Since it was essentially left without office space, SCAS could no longer function properly. In frustration, SCAS officials quickly began searching for office space elsewhere. During the spring of 1982, officers contacte d 114 courthouses, community service organizations, and Harvard alumnae in an effort to locate another rent-free office space. Finally, after much deliberation with PBHA executive board members, SCAS found a permanent home in a 2nd story communal office in the Philips Brooks House in Harvard Yard.

But while this original PBH office provided much needed office space for the group, it left much to be desired. Occupying a desk in a lager communal office, SCAS volunteers had to deal with the background of volunteers of other programs. The office lacked the privacy SCAS needed to conduct its business. Perhaps most importantly, the communal nature of the office prevented clients and volunteers from meeting face-to-face. "Our present location on campus at Philips Brooks House prohibits us from providing 'walk-in' service to our callers. We are anxious to move back into the community," grumbled a 1982 grant application.

The closing of the Roxbury office in the early 1980s signaled SCAS's withdrawal from the community. For twelve years, SCAS remained cloistered in Harvard Yard and community contact was minimal. In July 1994, however, the efforts of Executive Director Frank Pasquale '96 paid off with the opening of an office at the Cambridge and Somerville Legal Services (CASLS). Located in Inman Square at the office of the Cambridge and Somerville Legal Services, the CASLS office, unlike the one at PBH, invited clients to come in with their problems for a one-on-one help session. Volunteers could then assist the clients with writing demand letters, filing out forms, or listening to arguments. One volunteer explained the daily operations at the CASLS office:

"After meeting with a client to discuss a case, we often make phone calls and write letters on their behalf. Since we are working in a law office, we can also ask any of the then on-site lawyers particularly complex questions and can use their law library to research legal issues. Whenever possible, volunteers even accompany clients to court...SCAS volunteers at [CASLS] play an active role in helping disadvantaged individuals assert their rights."

Not only did the CASLS office facilitate client contact, but it also fostered a healthy relationship between SCAS and the Cambridge and Somerville Legal Services. Patrick Arnerson, Director of CASLS, pointed out, "CASLS have provided SCAS volunteers with free office space and telephone privileges, while SCAS personnel have created a handy in-house referral option for overworked attorneys and paralegals."

Sadly, budget cuts at the Cambridge and Somerville Legal Services forced the closing of SCAS's CASLS office in 1997. Alarmed at the thought of losing valuable community contact, SCAS officers immediately began looking for alternate office space. Thanks to some lucky networking by Executive Director John Orsini '98, SCAS officers were able to get in touch with the Greater Boston Legal Services (GBLS), the federal legal aid program serving the Boston area. GBLS was able to provide SCAS with a small interview room on the second floor and allow SCAS to use office supplies as well as a state-of the-art computer. SCAS's GBLS office opened in the winter of 1998 and currently serves as SCAS's base of community operations. SCAS's two main offices - the GBLS office and the Harvard office in the Phillips Brooks House basement - make up the bedrock of SCAS's client contact.

The Spirit of Reform

But SCAS was also devoting its resources to tasks other than contacting clients. Starting in the early 1980s, for example, SCAS began exploring ways to make the small claims system better through legal reform. One frustration that had been plaguing litigants was the low $750 limit on small claims cases. This limit meant that many cases could not be heard in small claims court simply because the amount of money involved exceeded the limit. As a result, SCAS began working on changing the system itself. In the spring of 1981, a SCAS chair testified before the state legislature on behalf of a small claims reform bill. In 1982, that bill became law, and the ceiling of small claims court was raised from $750 to $1,250. This simple measure was to be the first involvement by SCAS in the legislative arena.

SCAS's involvement in legislative reform continued to grow in the late 1980s and early 1990s. At this point, the problem SCAS addressed was no longer the limit on small claims cases. The system worked smoothly, except when it came time for clients to collect. Indeed, the small claims system was unable to ensure that winning parties would be able to collect their rightful dues, and many judgment debtors were able to get off the hook. "Throughout Massachusetts there are thousands of people each year who go to small claims court, follow the correct procedures, win their cases, and are still never able to collect what they are owed," wrote Elizabeth Pope '98, a SCAS volunteer. This one weakness was causing the small claims system to lose much of its prestige and respect. SCAS was one of the first organizations to stand up and take notice.

It was out of the frustration over collection problems that the Law Reform committee was created in January of 1998. Law Reform had existed previously as a joint committee with Legal Research. The split was made under the advisement of Carlton Larson '97, Legal Research Director. As soon as it was created, the committee, under the leadership of newly appointed director Micah Myers '00, immediately began researching and scrutinizing bills pending in the Massachusetts legislature. After analyzing the various problems that successful plaintiffs in small claims court had in trying to collect their settlements, the Law Reform committee drafted its own bill to toughen collections procedures. HB1344 proposed reforms that would have made it easier for individual plaintiffs to collect the judgments they had won in small claims court and found a sponsor in State Representative Paul Demakis '75, JD '78. The bill had five provisions:

1. Payment hearings were to be automatically scheduled once a judgment was awarded.
2. Easier wage assignments
3. Escalating fees for non-payers
4. Non-renewal of driver's licenses for those with outstanding judgments
5. Clear information on this process must be provided to all parties.

HB1344 was ultimately combined with a Senate bill on the same topic sponsored by State Senator Cheryl A. Jacques.

Structure and Organization

In addition to its attempts to reform the legal system, SCAS has had a long history of restructure and reorganization. Originally starting out with six students in 1974, the number of SCAS volunteers has risen steadily. Indeed, soon after SCAS won United Way approval in 1986 (five years before the Phillips Brooks House was awarded this honor), SCAS membership was close to one hundred members.

The growth was not consistent, however. In the fall of 1994, for example, SCAS was able to enlist only four new volunteers into its training schedule. It became apparent to 1995 Executive Director Frank Pasquale '96 and 1996 Executive Director Christian Chu '97 that restructure and reorganization were needed in order to attract more volunteers and to better train them in small claims court procedure.

Under the leadership of Pasquale and Chu, the entire system of training was revamped so that new volunteers ("compers") learned the ropes of small claims court procedure in small groups led by an experienced volunteer ("workgroup leader"). Additionally, the teaching curriculum was updated to create more comprehensive and interactive weekly lessons for the group setting and began to encompass ample case studies and other exercises for compers to learn the law.

The need for more interactive training procedures also led to the creation of SCAS's very own website, designed by Sharon Yang '98, former Director of Communications. The website features an online training manual, brochures, and other contact information, both for new volunteers and interested members of the public. Perhaps the most interesting feature of the SCAS website is the on-line Legal Research question book, an addition made by 1998 Legal Research Director Steve Won. Here, volunteers can enter their questions and expect a speedy email reply from one of the members of the Legal Research Committee.

Perhaps the most radical and recent upheaval at SCAS was the shift from the ubiquitous "blue cards" to a computerized database in the summer of 1999. Previously, volunteers would have to write information out by hand on blue cards, which would then be sorted in different boxes according to case status. This system was cheap, but cumbersome. Cards were easily lost, misplaced or rendered indecipherable by a volunteer's poor handwriting. The computer database, designed specifically for the needs of SCAS by Aaron Brofman '02, truly brought SCAS into the computer age. The subsequent i3 system, designed and put into place by David Monteiro '04, made the database more user-friendly, and also made it accessible via the internet to all users. Volunteers can now access and edit information and call up cases on the basis of certain characteristics. Perhaps most importantly, the use of the computer database has increased SCAS's efficiency and has made locating client information all that much easier.

In the early 2000s, SCAS aggressively sought more and more grant funding through various means. SCAS is currently working on the Small Claims Research and Education Project (SCREP), a Massbar funded project whose components include an information video for clients on English language brochures. SCAS was also the recipient of the HULA grant, another Massbar project that funded the formation of foreign language office hours at SCAS's community office, a Spanish-language instructional video, and various Spanish brochures.

In recent years, SCAS has been trying to export its model to other states in the country. SCAS volunteers have now completed an instructional manual for California and New York. The host colleges have not yet been determined. In addition, SCAS has started doing more direct community work. In 2004, under the leadership of Henry Mak '06 and Jasmine Zhang '06, SCAS opened a satellite office in the Boston Chinatown, at the Chinese Progressive Association (CPA). SCAS gets Cantonese and Mandarin-speaking referrals from GBLS, and from other sources, and schedules appointments with them. In the fall of 2006, under the leadership of Marco Basile '08, SCAS will be opening an office to service the Spanish-speaking community in the greater Boston area. Hai Pham '09 is working with VietAid to open another satellite SCAS office in Dorchester, serving the Vietnamese-speaking population.

Office Protocol

Your first time in the office can often be a daunting and outright intimidating experience. You may know the manual, but if you do not know how to effectively run the office, you will not be successful in getting anything done. This protocol is a basic how to guide of the Office.

The Basics of the Office

The SCAS Office is where you will conduct most of your work as a volunteer for the organization. There are a few basic things that you will need to know.

* The Key to the office is located in the SCAS Mailbox in the back right of the first floor of the PBHA building. ALWAYS PUT THE KEY IN THE EXACT SAME MAILBOX. If you realize that you have the key after you have left, immediately return back to PBHA and bring the key back. If you arrive at the office and find that the key is missing, you should 1)check the entire mailbox, 2)go to the office and make sure no one is inside, 3)ask someone to open the door, and 4)send an email immediately out over the SCAS HCS list requesting that whoever has the key return it. Make sure that the key is also not in the office by accident.

* The Computer is also a valuable resource. It has the I3 and most, if not all of the files you will need. DO NOT TURN OFF THE COMPUTER. Simply leave it when you are done with your office hours.

* The Phone and Voicemail system are to the left of the computer.

* You will also find multiple copies of the manual in the office. This manual is to stay exclusively in the office. Do not take it or "borrow it."

* You will also find copies of the pamphlets that many other organizations have left in the office, as well as copies of many of the forms that clients will have to fill out for small claims court. Use those copies if you need to reference them for a call or for a client meeting.

The Voicemail System

Accessing the Voicemail

Accessing the voicemail is the most basic task you will perform in the office. To do so, follow the steps below.

1. On the Vonage Machine, click the select button

2. Scroll down with the arrow to highlight Easy Dialing and press Select.

3. Press the voicemail button with the select button.

At this point, if you do not already have the phone off the hook, the phone will ring. Pick it up, and you will be prompted with the password (1965). At that point, follow the protocol outlined by the machine to get to new messages (The short cut is to press 1 and then 1 again at the next prompt to start new messages.)

At that point, the new messages will play from oldest to most recent. When listening to the messages, make sure that you take notes that include:

* The name of the client

* The phone number(s) of the client

* What the client wants

* Brief details of the case

* Any special info about the case (did the individual request a specific person, foreign language problems, etc.)

When you are finished with the messages, upload them to the I3 (as outlined below) and then delete the old messages.

Changing the Voicemail

To Change the voicemail (For when we go on break or are returning from one), follow the procedure below:

1. On the Vonage Machine (the black machine), press **select**.

2. Use the **down arrow** to select **easy dialing** and then press **select.**

3. Press select on **voicemail**.

4. Pick up the phone and follow the instructions to be able to change the voicemail.

For a normal voicemail, use the following as a template:

"You have reached the Small Claims Advisory Service. For immediate assistance, please visit our website at masmallclaims.org where there is already a great amount of information. For faster service, you can email us at masmallclaims@gmail.com. Otherwise, please leave a message with your name, your phone number, and a brief description of your case. Thank you for calling!"

For setting a voicemail during vacation, use the following as a template:

"You have reached the Small Claims Advisory Service. We are a student organization and are currently on winter/summer/spring break. For immediate assistance, please visit our website at masmallclaims.org where there is already a great amount of information. You can also email us at

masmallclaims@gmail.com. We will not be returning to normal office hours until [Insert date here], but if your matter is not urgent, you can leave a message after the tone with your name, the spelling of your name, your phone number, and a brief description of your case. Again, we apologize for the delay and thank you for calling."

Accessing the Voicemail from Another Location

If you are away and want to check voicemails to put them in I3, follow one of the two procedures below.

If you would like to check voicemails by phone:

1. Call SCAS at (617) 497-5690 then press *

2. You'll be prompted for the password, so enter the password and then you'll be at the normal voicemail menu.

Please note that while you use this method, no one in the office can make phone calls. Therefore, do not use this method while someone else has office hours. Instead, it is a great way to 1)do office hours from another location or 2)to check voicemails while we are on vacation.

You may also do it by email:

1. Go to vonage.com and click on **Manage My Account.**

2. Enter SCAS's 10-digit phone number and use **SCAS1965** as the password.

3. Choose **voicemail**, and you should be able to see all voicemails that we've received them and the phone number from which we received them. To listen to the voicemail you can click the listen link and it'll download the message as a WAV file onto your computer. Vonage's website is very slow though. If you plan to call many clients, use this as a way to jot down the numbers and call the clients back. Clients often retell their stories, so not having the case info is not a huge deal as long as you eventually put all the information onto the I3.

The I3 - How to Use It

The I3 is the software by which SCAS deals with its clients. You amy enter new clients, work with existing clients, and perform many of the tasks that being a SCAS volunteer requires. Learning how to use the I3 is critical to your success as a volunteer.

Logging On

On the office computer, start up Firefox and you should see several tabs preloaded on the computer. One of them is the SCAS i3. Click on it. There, you will be prompted with a Username and Password. The Username is SCAS while the password is the same as the password for voicemails. Once you've put that on, you will be taken to the main screen for the i3. You will notice three items on the screen.

1. The only pull down menu has a list of every volunteer. Simply scroll down to your name, click it, and then press the "Log in" button to log in. You'll know that you've logged in when the bar Currently Logged In As: has your name next to it.

2. If your name does not appear, then you may have to create a new user profile. To do, simply click the Create new user profile button. It will request your Name, Email Address, Year of Graduation, whether or not you are a comper, and any particular committee memberships you may have. Once you have filled in the information, click the create user profile button. You will then be able to find your name in the server.

Once inside, you will notice many buttons.

The **main menu** button takes you to the main screen you see when you immediately log into it.

The **database menu** will allow you to find *existing clients/enter new clients*, look at *cases by priority*, view *a list of clients that are currently in the system*, *view cases by category* (sorted by callback priority), or *return to the main menu*.

The **list of cases by priority** lists out clients that currently need to be serviced. It is sorted in order of case status, with Urgent cases being at the top, followed by phone tag cases, then clients who have never been contacted. Clients who have one message left will fill the remainder of the screen.

The **find/add client** tab will allow you to search for clients or add new clients to the database. It crosschecks the database to ensure that there are currently not clients that match the client that you are about to put in to avoid duplication.

The **SCAS leaderboard** is a fun, competitive way to evaluate how you stack against the rest of the volunteers in the organization. There are three different categories to compete against. The first category only measures how many clients that you have called and helped by phone. The second category evaluates everything except clients that you have put in the system. That means any messages left, any calls that you have made, or calls that you have received. The final category analyzes all categories to see who has actually input the most data.

Clients and the I3 - The stepwise approach

When putting in new clients who have left messages, follow these steps:

1. Go to the Find/Add Client tab.

2. Enter the first and last name of the client in the respective slots.

3. Place the telephone number in the primary phone and, if possible, specify with the drop down menu next to it if it is a home, work, or cell phone number.

4. Put an additional number in the secondary phone if it is provided, along with what number it is if possible.

5. If the client speaks a language outside of English, put it in the slot for Language. By default, English will appear.

6. If you have it, place the email for the client. Please remember, you do NOT need to put clients who email us in the I3. You should, however, check the I3 when answering emails to make sure that the person you are helping through email has not already been helped OR that the person is not listed as an individual who is in need of help. If you run into a client who has left an email and called the phone, make sure that on the client's file that you are dealing with to mark how the client is being dealt with.

7. Once you have finished, press the submit client button.

Once you have submitted, you will be taken to either one of two screens. If the client does not exist in the system, the screen will tell you that there are no matches in the record. If, however, there are possible matches, you will be taken to a screen that states other clients matched the data you entered.

BE SURE TO CHECK OTHER CLIENTS IF THERE ARE POTENTIAL CLIENTS. Often time a client has already called and left a message, meaning that we have a case record for them already. While names may sometimes match, be sure to check the phone numbers for possible matches. If you find someone who already matches your client, then click the match's button and then hit Select Client. If you do not see any matches, then select the last choice that says Add New with the new information that you just entered. Once that has happened, press the choice, then hit select client.

You will then be taken to the Main Client Assistance Database. The Client Info tab has all information relevant to a client. It will include Name, Number, address, language, notes, and other information. Although most of this information will never be filled out, fill it out as the information becomes available.

The Case Info is the most important section. When entering a new client, it will be blank. If a client has a court appointment within the week, has a question about Auto Law, or is involved in something that requires immediate response, mark the case as urgent. If a client is marked urgent, call them back yourself IMMEDIATELY. If it is possible, identify the case by type in the Case Category drop down menu. Most of the categories will correspond to the name of the chapters in the manual.

If you know the name of the Opponent, place it in the name as well.

The Notes section is where you will put any information relevant to the case. When you have taken a message, place the notes of the message in the notes. Place the date that you took the message, the message, and at the end of it, place your email address (ex. taylor8@fas or kwalsh@college) so that if there are questions about what you wrote, someone can contact you. When you have finished putting information in the Notes section, be sure to press the Update Client Record. If you do not, it will not save your changes to the information.

Once you have finished inputting data into the case info section, click on the tab contact info and select the correction option depending upon what you have done. When done, click **add new** to update it as to the last action taken.

Calling Existing Clients

When calling clients back, go to the List of Cases by Priority tab. There you will see clients arrayed. You should answer clients in the following priority:

1. Clients marked Urgent
2. Clients who have never been contacted (starting from the bottom and working up)
3. Everyone else (phone tag)

After having dealt with a client, be sure to

1. Take Demographic Information (located under the demographic info tab under a client's information). It includes a dialogue to use. Use it verbatim.

2. Update the Case Info (Don't forget to press Update Client Record when done!)

3. Go to Contact info and fill in the appropriate response.

Troubleshooting

If you have any problems with the i3, follow the technology referral protocol listed in this guide.

Referrals and Basic Procedures

Below are procedures for referring clients either to other legal remedies or for dealing with problems and questions that come up. Follow the procedures so that things run in a smooth and orderly fashion. Regardless of whether or not you know who to contact personally, FOLLOW THE PROCEDURES. If you do not, your requests will most likely NOT be answered.

Mediation and Arbitration

In cases that are personal or family related disputes, we tend to encourage our clients to seek mediation/arbitration over immediately going to small claims court so that there is a chance to continue the relationship after the case.

Please refer clients who you think would benefit from mediation/arbitration to the Harvard Mediation Program at the Harvard Law School at 617-495-1854.

The following cases may be good for referral:

* Problems not easily resolved by court settlement (if it isn't "all about the money")

* Emotional disputes

* Parties with continuing relationships

To refer individuals to mediation, use the following script:

* I would also like to suggest a possible alternative to going to court. Are you familiar with mediation?"

* If they have not heard of it before: "Mediation is a voluntary process aimed at resolving disputes outside of court. The mediator is not a judge and he or she does not make a ruling. Rather, the mediator is a trained community member who helps you have a constructive discussion with the other party in order to reach agreement."

* "There are several advantages to mediation. In small claims court, the clerk-magistrate hears each side and renders a final decision on who wins or loses. In mediation, you have the chance to tell your whole story and work out a holistic solution that is acceptable to both you and the other party. Everything is voluntary and confidential. If you do not reach a settlement in mediation, you retain the right to go to court."

Foreign Language Client

If you receive a message from a client who does not speak English or about a client who is need of foreign language legal services, take the following actions:

1. Tell your client you will contact Foreign Language.

2. Email masmallclaims@gmail.com with the subject line stating "FOREIGN LANGUAGE"

3. In the body, include the client name, phone number, language and a brief synopsis of the case.

That email is then forwarded to the Outreach Director in charge of On-Campus outreach. In the case of an emergency, call the On-Campus Outreach Director.

Client Meeting Request or Court Accompaniment:

If a client requests a meeting or a court accompaniment, follow the procedure below:

1. Tell the client that you will contact Client Meetings/Court Accompaniments. **DO NOT SCHEDULE AN APPOINTMENT OR GIVE A PERSONAL EMAIL TO THE CLIENTS.**

2. Email masmallclaims@gmail.com with the subject line stating "**CLIENT MEETING**"

3. In the body, include the client name and phone number.

That email will be forwarded to the Client Services and Office Director. In the event of an emergency, call the Client Services and Office Director.

Legal Research Questions

On occasion, you will run into a client who may have a particular legal issue that may not clearly be found in the manual. In cases like this, make sure that 1)the answer is NOT in the manual and 2)that the answer is not located on the SCAS wiki. Questions that are found in the manual WILL NOT be answered and you will look like an idiot.

If the answer is not in either location, then follow the procedure outlined below:

1. Tell the client that you will get back to them.

2. Email masmallclaims@gmail.com with the subject line as "**LEGAL RESEARCH**" in the subject.

3. In the body of the email, state the name of the client, phone number, facts pertinent to the legal question and the actual legal question.

Legal Research will then email you back within 48 hours with the answer so that you can give the client a call back with the answers.

In the event there is an emergency, call the Legal Research Director.

Technology

If you encounter any problems with the I3, the voicemail system, or other technology, follow this procedure:

1. Email masmallclaims@gmail.com with the subject line stating "TECHNOLOGY"

2. Include the problem, what you were doing, and where it took place (i.e. the office, your personal computer, etc.) in the body of the email.

That email will then be sent to the Technology Director. If there is an emergency, call the Technology Director.

All other inquiries should be forwarded to the Executive Director.

Checking Emails

Although we deal with a great number of clients by phone, many times clients will email us for faster service. As of now, the emails are dealt with exclusively by the Legal Research Committee.

In order to answer emails, simply follow the procedure outlined below:

1. Go to gmail.com and log into the account. The gmail username is masmallclaims and the password is SCAS1965.

2. Emails are categorized based upon the subject matter. Emails are to be labeled and then archived when answered to maintain order and ensure that emails that are answered are put in a set location. If an individual emails you while it is archived, it will return to the inbox.

3. When answering emails, be sure to check the i3 for clients to ensure that we are not duplicating the same cases. If a client who emailed you has also left a message and has not been called, write on the client's case info that he or she is being dealt with via email along with your email address so that any further inquiries will be handled by you.

The gmail account is also where all requests for referrals are done. Any requests that are sent should be:

1. Labeled appropriately

2. Forwarded to the respective director

Editing the Wiki

Edits to the wiki should only be made by the Legal Research Director. If you notice any changes that need to be made in the wiki, send an email to the legal research director that states what needs to be changed on what specific page.

Chapter 1

General Procedure

Small claims court is the way in which Massachusetts citizens and businesses can resolve disputes without an attorney's help. Known as "the people's court," this informal and inexpensive forum is designed to help resolve legal disputes of $7000 or less, and is run somewhat like the hit TV show of the same name. It is unnecessary to use legal terms in small claims court, and it is actually not advisable to try to "act like a lawyer" when presenting a small claims case. Rather, a clear, concise, and well-supported story is the best weapon. SCAS callers will likely know something about small claims court and its procedures before they call, but often this knowledge will be pretty vague. Our job is to clarify the ins-and-outs of the small claims system in Massachusetts and make callers feel more empowered to exercise their rights through this venue.

This chapter will go through the basic procedure involved in settling a dispute. The chapters that follow will discuss, in greater detail, the laws most relevant to the cases we hear; however, the information in this chapter applies to all small claims disputes. Be sure to read carefully! And remember, small claims court is not the only option for resolving disputes involving less than $7000 – settlement through negotiation, mediation, or arbitration is often just as (if not more) effective. Be sure to remind callers of these options as well.

Before Small Claims Court

Friendly Negotiation is the first step individuals should consider taking to resolve a dispute. Sometimes all it takes is a conversation to work out a mutually agreeable solution.

Mediation is another good way to resolve disputes. Put simply, mediation is "formal negotiation," an opportunity for both parties to sit down in the presence of a neutral moderator to attempt to settle their disagreement. It is most successful when both parties are willing to compromise to avoid the hassle of going to court and/or when the two sides have an ongoing personal (or business) relationship that might become strained should actual "litigation" take place. A few things to know about mediation:

- It is *non-binding*, which means that the mediator cannot force (or enforce) a decision. If an agreement is reached, it will be, by definition, an agreement that satisfies both parties.
- The mediator acts as a go-between for the two parties, often asking one party what he wants from the settlement, presenting this proposal to the other party, listening to his counteroffer, presenting this to the original party, and so on until an agreement is reached (or the parties agree that they cannot agree!)
- Mediation can be *terminated* at *any point* during the process by *any party* for *any reason*. This fact may often help one party convince the other party to agree to mediation, as they can remind the reluctant party that he can "opt out" at any point.

- Consenting to mediation *does not* prevent either party from filing a small claim, should mediation fail to lead to an agreement. There is no harm done to at least *try* mediation when a dispute arises. If it does not work, a claim can follow.
- Mediation is usually conducted at no cost to the two parties and is always done without a lawyer.

Why should parties chose mediation? It works. When people voluntarily mediate, the overwhelming majority of disputes are settled. Also, people who go through mediation are more likely to be satisfied with the result than people who go to trial, because they have more opportunity to take part in the decision. For the same reason, people who reach a mediated settlement are much more likely to pay than people who receive a judgment through trial. Mediation provides a good answer to the most common complaints about the small claims court process: excessive delay, high cost to litigants, cumbersome procedures, and inaccessibility. In addition, small claims court clerk-magistrates are often more sympathetic to cases when they know that parties have already tried mediation. The court often notifies the plaintiff about the option to mediate and submits the claim to mediation at the request of either party and with the agreement of both parties.[1]

Arbitration is another means of resolving a dispute before going through the small claims court system. The primary difference between arbitration and mediation is that *arbitration is binding*, unless otherwise agreed.[2] If the parties cannot come to mutually satisfactory agreement after meeting with an arbitrator, then this arbitrator is bound to come to a decision, just as a judge would. This decision is *final* and *cannot be appealed*, except under very specific cases of error.[3] It becomes a decision of the court.[4]

Some things to keep in mind about arbitration:

- Arbitration is pursued *instead of* going to small claims court. An unhappy party cannot take the case to small claims court after going through arbitration.
- It usually takes place without the aid of a lawyer.[5]
- As with small claims court, the costs of arbitration may be included in the award, unless otherwise proved. This does not include counsel fees.[6]
- Arbitration is usually faster than small claims court (i.e. you can usually schedule an arbitration date earlier than you could schedule a small claims court date).
- Arbitration is a very common way of dealing with the Massachusetts Lemon Law (see Automobile Law for details on the Lemon Law).

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[1] M.G.L. c. 218, §22

[2] Some manufacturer-sponsored automobile arbitration programs, such as Ford's Dispute Settlement Board, is binding only on the manufacturer. There are other cases of non-binding arbitration.

[3] M.G.L. c. 251, § 18

[4] M.G.L. c. 251, § 14

[5] Although, under the Uniform Arbitration Act for Commercial Disputes, M.G.L. c. 251, § 6, a party has the right to be represented by an attorney.

[6] M.G.L. c. 251, § 10

Although arbitration has some disadvantages, it is worth considering in cases where parties seek a quick and equitable solution or if the disputed amount exceeds the small claims limit of $7000.

A "'Demand Letter'" is the final pre-small claims step. If mediation and/or arbitration cannot resolve the dispute (or one or more parties does not agree to mediation/arbitration), then the individual who has suffered (a.k.a. the future plaintiff) should write a 30-day demand letter to the individual or business who is liable for the suffering (a.k.a. the future defendant), explaining the complaint and demanding specific compensation for the damage caused. Although these letters are only *required* for consumer law cases that fall under Chapter 93A[7] (See Consumer Law for more information), they are *very* helpful in **all** small claims cases. SCAS usually recommends writing a demand letter as the first step towards filing a small claim. A 30-day demand letter should be **typed**, if possible, and should include:

- A chronology of the events prompting the letter. This should include the dates and details of all relevant interactions, as well as an explanation of why the plaintiff feels he has been wronged (i.e. what laws have been broken/rights have been violated).
- A statement of the remedy the plaintiff requests (payment in the amount of $500 or correction of the shoddy repair work, for example).
- A clear statement that informs the reader that, if this demand is not met within thirty days (a recommended, not mandatory, period of time), he will be subject to legal proceedings in small claims court.

In short, a demand letter should be a concise statement of the plaintiff's side of the case. A client who succeeds at organizing his thoughts into a compelling demand letter usually has a well thought-out case that would be easy to present if it goes all the way to small claims court. Individuals writing demand letters should always:

- Keep *at least one copy* of the letter for his own records. **A demand letter is a very helpful piece of evidence in court, as it shows that the plaintiff made a "good faith effort" to resolve the situation prior to bringing it to court.**
- Send a copy of this letter to the party who has caused him to suffer a monetary loss. This may be a tenant, landlord, car dealer, travel agent, next-door neighbor, mechanic, ex-roommate, etc. If the responsible party is a business, the demand letter must be addressed to the *proper business name*, and not to an individual. **Proper business names** can be obtained through the Secretary of the Commonwealth's Corporations Division. Individuals can access the public records by calling (617) 727-9640 or by writing to "Secretary of the Commonwealth, Corporations Division, One Ashburton Place, 17th floor, Boston, MA 02108."
- Send the letter **certified mail, return receipt requested** AND **regular, first class mail**.[8] If the sender receives the certified mail receipt back (indicating that it was not received), he should

[7] M.G.L. c. 93A, § 9(3A)
[8] A User's Guide to the Consumer Protection Statute, Massachusetts Attorney General's Office website.

hold onto this as potential evidence in court. If not, however, he can assume the letter was received *as long as the first class mail is not returned to him*[9]

Filing a Claim

Filing a Small Claim is the next step. If the writer of a demand letter does not have his demands met within the span of time specified in the letter (again, 30 days* is a popular time window), he may go forward and file a claim in small claims court. Plaintiffs should hold onto a copy of the demand letter and also take note of any interactions between the two parties (attempted mediation, phone conversations, etc.), as these may be relevant later on.

*The only time you **have** to use the full 30 days is in situations where you are suing for double/treble damages beyond the $7,000 small claims limit; otherwise the number of days is up to your own discretion.

Who can Sue?

Any person of legal age may file a claim in his or her own name as plaintiff.[10] A parent or guardian can file a suit on behalf of a minor.[11] Automobile damages must be sued for by the registered owner (not the driver, if there is a discrepancy between the two).

Who to Sue?

It is very important that a plaintiff is suing the correct person.

- If it is a personal dispute (i.e. not against a business of any sort), the person(s) who committed the action/broke the contract/failed to act is liable.
- If he is suing a proprietorship, the single owner is liable.
- If he is suing a partnership, then partners are liable.
- For corporations, the person filing the claim must write down the name of the corporation. Clients should not list particular individuals unless they are suing them directly. A person can find the real legal name of the business by checking with the Secretary of the Commonwealth's Corporations Division.

The long-arm statute of Massachusetts

If a client is suing a person/corporation that is located **out of state**, he may do so if the party being sued transacts any business in Massachusetts, contracts to supply services in Massachusetts, or has an interest in using or possessing real property in Massachusetts. If the person/corporation has done something or failed to do something outside of the Massachusetts, he can still be sued in Massachusetts

[9] Uniform Small Claims rules, Rule 3(a)
[10] Standards of Judicial Practice 3:02
[11] *The Attorney General's Guide to Small Claims Court*, Massachusetts Attorney General's Office Website

if his action (or failure to act) causes injury that occurs within Massachusetts and if he regularly solicits business or derives substantial revenue from goods used or services rendered in Massachusetts.[12] Otherwise, he cannot be sued in Massachusetts.

Where to Sue?

There are five places a small claim can be filed:[13]

- Where the plaintiff lives
- Where the plaintiff works/has his business
- Where the defendant lives
- Where the defendant works/has his business
- Where the property is located (in landlord-tenant cases)

The plaintiff can choose among the district courts that represent those above five options. **Generally, it is better to file a claim in the district that is most convenient for the *defendant* (i.e. where the defendant lives or works), because it makes collection easier later on.** However, no claim will be rejected if the venue is found improper.[14] The court will normally refer clients to the proper venue unless there is reason to think that the defendant will waive his right to proper venue [15] >or if filing must be immediate to be permitted under the statute of limitations.[16]

What to Sue For?

Ordinarily, whenever one party can show that he has suffered a loss of no more than $7000 that another party should be legally held accountable for, he may file a claim in small claims court. Although the original action brought must include a claim for monetary damages, the court may order non-monetary, or "equitable" relief, such as **specific performance**, instead of, or in addition to, damages.[17] For example, if you sued your neighbor for failing to mow your lawn despite your paying him to do so, the court could award you monetary damages *or* order your neighbor to mow the lawn *or* both. However, you cannot file a claim solely for equitable relief.

There are a few cases that *cannot* be brought to small claims court, however. These include: (1) **slander** or **libel** cases[18] and (2) claims **against the Commonwealth**, a county, or municipality[19] that are brought under the Massachusetts tort.

[12] M.G.L. c. 223A, § 3
[13] M.G.L. c. 218, § 21.
[14] Standards of Judicial Practice 3:02
[15] M.G.L. c. 218, § 21
[16] Standards of Judicial Practice 3:02
[17] Standards of Judicial Practice 7:02
[18] M.G.L. c. 218, § 21
[19] M.G.L. c. 212, § 3

How Much to Sue For?

The *monetary limit* in small claims court is $7000 plus court costs, with three exceptions:

- If a small claim falls under Chapter 93A and involves unfair or deceptive business practices, double or treble (triple) damages may be awarded for a total of up to $21000.[20]
- In certain landlord/tenant cases, double or treble damages may be awarded, again up to $21000.[21]
- *Automobile accident cases (i.e. cases involving property damage caused by a motor vehicle) are an exception and have no monetary limit.[22] Personal injury cases caused by automobile accidents, however, must either meet the $7,000 limit or be filed in formal civil court.

Although a plaintiff may sue the same party in small claims court multiple times for different claims - as in, monetary damages arising from completely different transactions or injurious actions - and hence recovering move than $7,000 from a single party, he may not split a claim into multiple parts.[23] Furthermore, if the clerk-magistrate detects an "artificial division of the claim to bring it within the small claims limits," he is obliged to transfer it immediately to the civil docket.[24]

Plaintiffs may sue for any or all of the below, but may not sue for punitive damages. He may also include any court costs incurred, such as:

- Property damage/loss
- Doctor's bills
- Repair of property
- Consequential damages (i.e. the cost of renting a car if such a rental was made necessary by shoddy repair work that had to be corrected).
- Lost wages
- Any other "damages" that can be "monetized" in some way
- In some cases, a plaintiff may be able to sue for mental distress or pain and suffering. Though not explicitly precluded, the client should be warned that certain districts do not permit it. It is also uncertain if any weight is given to these claims.

Keep in mind that a plaintiff can, at ***most*** be awarded the amount he asks for on his claim form. For this reason, it is wise not to underestimate. The clerk-magistrate can decide to award the plaintiff less than this amount if he believes some of it to be frivolous, but he cannot award more than what the plaintiff asked for. If a plaintiff thinks he is eligible for double or treble damages, he should indicate this on the "description of the claim" part of the claim form (but should fill the "claim amount" box with the $7,000 or less that was originally owed before the doubling or tripling of damages).

[20] M.G.L. c. 93A, § 9(3A).
[21] M.G.L. c. 186, § 15B(7)
[22] M.G.L. c. 218, § 21
[23] Standards of Judicial Practice 3:01
[24] Standards of Judicial Practice 5:03

It is also worth keeping in mind that a plaintiff can only recover the "fair market value" for damaged or missing property.[25] This is *not* the replacement value (i.e. how much the item would cost to replace at today's prices), but rather is the amount the item was worth when it was damaged or lost (an amount that is likely the original price of the item, less depreciation).

The Claim Form is a simple document; however, callers often ask for help in filling it out.

A **Statement of Claim and Notice Form** (the official name of the Small Claims Court claim form) can be obtained from the Small Claims Court Clerk at the district courthouse in which the claim will be filed. It can be picked up in person or requested by mail.[26] The court encourages most people to file through mail.<ref>Standards of Judicial Practice 3:02</ref> They will usually mail a small claims form requested over telephone at no cost to the caller. A copy of the Statement of Claim and Notice form is included in the appendix of this manual.

The **Directory of Small Claims Courts** in Massachusetts can be used to provide addresses and phone numbers of all district courts.

A Statute of Limitations is also available to help clients by verifying that they are still able to sue over a particular dispute.

The Filing Fee for filing in small claims court in Massachusetts varies depending on how much the client is suing for. The entry fee is entry fee of $40 for claims less than or equal to $500; entry fee of $50 for claims greater than $500 but less than or equal to $2000; entry fee of $100 for claims greater than $2000 but less than or equal to $5000; entry fee of $150 for claims greater than $5000. (*Surcharge included in all figures).[27]

Fee Waivers are available for clients who cannot afford any legal fees in Small Claims (waivers can apply to any fees that might be incurred, including, but not limited to, the filing fee).[28] Always make sure clients are aware of the fee waiver option in case they qualify. If a client thinks that he may be eligible, he should contact the courthouse.

Defendant's Response

Once a claim has been filed, a court date will be set by the clerk. The plaintiff will receive a copy of the "Statement of Claim and Notice of Trial" form back from the clerk, indicating the date and time of the scheduled trial. Another copy of this form will be immediately mailed to the defendant at the address provided on the form by both certified mail and first-class mail. As in the case of the demand letter, the

[25] Compensation in the amount of the fair market value appears in many areas of law. See M.G.L. c.255, § 20B(e)(2), M.G.L. c. 106, § I-201(37), M.G.L. c. 93B, §5(1)(3)
[26] Rule 2, Uniform Small Claims Rules.
[27] The entry fee required by M.G.L. c. 218, § 22 and the surcharge ($10) required by M.G.L. c. 262 § 4C
[28] M.G.L. c. 261 §§ 27A - 27G

court will presume this document was received as long as the first0class mail is not returned to the court undelivered.[29]

Once the defendant receives this Notice, he has five options[30]:

1. **Settle** - Now that the defendant knows that his opponent "means business," he may want to settle the dispute out of court. If an out-of-court agreement is reached prior to the court date, the plaintiff should get this agreement written (and signed by both parties) and can then grant the defendant ***forebearance***, which means that he will no longer be taking the defendant to court. The court should be notified, either in person, or by mail, and they will enter the agreement as an order of the court.[31] If this is done before the scheduled trial date, neither party need appear.
2. **Answer** - if the defendant believes that the plaintiff should not win the judgment, he may file an answer, outlining the reasons why. If possible, this written answer should be filed with the court prior to the court date. If an answer is not filed, the defendant may still come to court on the scheduled date and defend his side. However, if the defendant's failure to submit a written answer, or to send a copy of it to the plaintiff in a timely manner, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.[32]
3. **Counterclaim** - if the defendant not only believes that he is not liable for the plaintiff's damages, but *also* believes that the plaintiff is liable for some of his, the defendant may file a counterclaim, arguing that the defendant has a claim against the plaintiff. The counterclaim *must be mailed to the plaintiff at least 10 days before the trial date* in order for it to be considered at the same trial as the original claim for no additional filing fee. The court may also permit the defendant to bring such a claim in writing at any time. No written answer for the defendant's claim is required. If the defendant's counterclaim, or failure to send timely notice to the plaintiff, has prejudiced the presentation of the plaintiff's case, the court will grant a continuance at the plaintiff's request.[33]
4. **Third Party Claim** - the defendant may also file a claim against a third party who may be liable to him/her for all or part of the plaintiff's claim if the defendant's claim (1) is within the jurisdiction of small claims court and (2) the notice is mailed to the third party at least 10 days before the trial date. The court may also permit the defendant to bring such a claim in writing at any time. There shall be no filing fee or surcharge for such a claim.[34] A defendant who wishes to file a third-party claim should contact the small claims court clerk for more information.
5. **Request Postponement of the Case** - the defendant may call or write to the court clerk and request a postponement of the case if: (1) it is impossible for him/her to show up in the person

[29] Uniform Small Claims Rules, Rule 3(a)
[30] Uniform Small Claims Rules, Rule 3(b-d)
[31] Uniform Small Claims Rules, Rule 7(a)
[32] Uniform Small Claims Rules, Rule 3(b)
[33] Uniform Small Claims Rules, Rule 3(c)
[34] Uniform Small Claims Rules, Rule 3(d)

on that date, or (2) the defendant was improperly served with court papers by the plaintiff (i.e. if the plaintiff serves the papers too soon before the court date).

6. **Default** - if the defendant does not show up for the scheduled court hearing, he automatically "defaults" and hence loses the case. A judgment will be handed down in the plaintiff's favor, and the defendant will be required to pay the judgment amount.[35]

Before the Court Date

After the Statement of Claim and Notice of Trial is filed and a court date is scheduled, either or both parties may find that the scheduled date, time and place of the court hearing is inconvenient or undesirable. If this is the case, the inconvenienced party has a few options:

- If the matter is *urgent*, the party may file a **motion for a speedy trial**. If this motion is granted, the trial will be scheduled for the earliest possible date/time.
- If the *date and/or time* of the scheduled hearing is impossible or extremely inconvenient, the party may file for a **continuance**. If granted, the date and time of the hearing will be rescheduled for a later date.
- If the location of the hearing is impossible or extremely inconvenient, the party may file for a **change of venue**. If granted this will move the location of the trial to another district court.
- If the party cannot physically appear in court for some reason, the clerk magistrate may consider hearing its side through a non-lawyer representative if it can convince the court that it needs assistance, and that the person it is sending to court is familiar with what happened.

In all of these cases, the clerk should be contacted for more specific instructions.

Preparing for Small Claims Court

Organization is perhaps the most important part of a small claims presentation. If the story being told is hard to follow, the clerk-magistrate may not see the validity of a party's claim. Creating an outline is one way of making sure that a story is told logically, and may also be an incredibly helpful "cheat sheet" on trial-day, when nerves may kick in. A good order of presentation for a plaintiff might be:

1. Brief overview of the case (e.g. "The defendant hit my car after failing to stop at a stop sign. My car now requires $1,500 worth of repairs).
2. What happened in chronological order
3. What steps have been taken in order to try to solve the problem
4. What the law says "briefly".
5. Suggested Judgment

Presenting Evidence is another way of making a claim more persuasive to a clerk-magistrate. If a party can present hard evidence to back up an assertion, then this assertion automatically becomes more believable. A word of caution, though: *evidence is only as useful as the way in which it is presented*.

[35] Uniform Small Claims Rules, Rule(c)

Throwing a pile of evidence at a clerk-magistrate will be of little help. But incorporating evidence when relevant can be enormously helpful. Again, an outline can help here. If a plaintiff/defendant creates an outline of his case, he can place, in the margin, little notes remind him to pull out a receipt or present a photograph when these pieces of evidence serve to pack up a point he is making. If applicable, parties should bring items such as

- Receipts
- Contracts
- Warranty Policies
- Leases
- Photographs
- Damaged items
- Inspection Forms
- Written Estimates

Calling Witnesses is another way of helping to validate statements made in small claims court. Although witnesses are not required in small claims court (and, in fact, are frowned upon if the clerk magistrate finds them to be frivolous or unable to enhance understanding of the case), they can be very helpful when cases are of a "he said, she said" nature. Choose witnesses carefully, however; if there is any chance that a witness will hurt your case, erring on the side of "not" calling the witness is advisable.

If a witness refuses to appear at a small claims trial, the court can **subpoena** the person. In order to subpoena someone, the litigant must go to the sheriff's office and fill out a subpoena form, which will then be delivered to the witness's home by a sheriff, constable, or other detached party. There is a service fee for the subpoena procedure, which is determined by the county. Evidence can also be subpoenaed in similar fashion.

The final piece of advice is simple: **Practice**. Practicing is critical to success in small claims as it allows you to work out the kinks in your presentation and helps to deal with nerves that arise during a trial.

The Basics of Small Claims Court

Before a small claims court participant enters the courtroom on trial-day, it is helpful for him/her to know the "basics" of how the court operates and how the actual hearing will proceed. Here are a few key terms:

- **Clerk-Magistrate** - In the early 1980s, Massachusetts began employing "clerk-magistrates" to preside over small claims court hearings instead of judges. Clerk-magistrates act in the same capacity as judges; however, clerk-magistrates do not necessarily have the same legal training as judges. It is not necessary to use legal terms with clerk-magistrates. The clerk-magistrate should be called Mr./Ms. Clerk and not "Your Honor." Sometimes judges may hear small claims matters if the court approves, but only if the defendant first acknowledges in writing that he is waiving

his right to appeal for a subsequent trial by a judge or before a jury since he is being heard by a judge in his initial trial.[36]

- **Plaintiff** - the party who institutes the claim (i.e. the party who thinks it has been wronged). Plaintiffs may *not* appeal in small claims court.[37]
- **Defendant** - the party being sued (i.e. the party allegedly responsible for wronging the plaintiff). Defendants *can* appeal. The only exception is that a defendant who brought a counterclaim in the original trial cannot appeal the "counterclaim" portion of a decision, if he loses. The defendant (who is the litigant for the counterclaim portion) is considered to have waived his right to appeal in the same fashion as the plaintiff.

Once a small claims case is "called to trial" (i.e. the parties are told that their trial is to begin), the hearing will proceed as follows (keep in mind that the entire process can take as little as five to ten minutes):

1. Both parties will be invited to cross "the bar" (the small fence separating the clerk-magistrate and the plaintiff/defendant table from the "public seating" in the courtroom) and have a seat at either side of the table. The table will face the clerk-magistrate, who will be seated at an elevated dais at the front of the room.
2. The clerk-magistrate will ask one side to briefly present his side of the case. The plaintiff usually goes first. As in all levels of our legal system, the **burden of proof** is on the plaintiff, which means that the he must convince the clerk-magistrate that the defendant has caused him/her to suffer monetary damages and should be held liable for them. The plaintiff's evidence and/or witnesses should be presented at this time. The plaintiff will usually concludes his presentation by reminding the clerk-magistrate of the amount in damages he is seeking (plus court costs).
3. The clerk-magistrate will ask the other side (usually the defendant) to present his side of the case. The defendant's job is merely to explain either why he should not be held liable for the plaintiff's damages, and/or why the plaintiff's claim is not legitimate (i.e. no law has been broken/no right has been violated). Again, the defendant's evidence and/or witnesses can be presented at this time.
4. The clerk-magistrate may then ask the plaintiff if he has anything further to add, now that the defendant has presented his side.
5. Each party may then be asked a series of questions by the clerk-magistrate (if he feels as though further clarification is necessary to completely understand the case).
6. When all presentations/questions have concluded, the clerk-magistrate may immediately render a decision (rare) or may **reserve decision**, which means that he will come to a decision later, and mail this decision to each party within 10 days of the hearing (more common).
7. Both parties will be thanked, and may exit the courtroom. The trial is over.

A few other things to keep in mind about courtroom demeanor:

[36] Uniform Small Claims Rules, Rule 7(h)
[37] Standards of Judicial Practice 3:00

- All parties should dress *respectfully*. Suits are unnecessary, but looking neat and tidy will indicate to the clerk-magistrate that the party takes the proceeding seriously.
- All statements should be *addressed to the clerk-magistrate*. Parties should *not* speak directly to each other unless instructed to do so by the clerk-magistrate.
- Plaintiffs/defendants should *never* interrupt either the clerk-magistrate or the other party. Speak only when instructed to do so.

After the Judgment

Once the clerk-magistrate has reached a decision, both parties will be sent the **Notice of Judgment and Order** as well as a **Notice of Payment Hearing**, via first class mail.[38] In some cases, the defendant will be deemed *not liable* for the damages, and he will not have to pay the plaintiff anything. In other cases, the defendant will be held liable for all/part of the damages sustained by the plaintiff. If so, the defendant is required by law to pay the plaintiff the amount of money indicated on the mailed judgment form. In practice, however, collecting this money is often difficult for plaintiffs.

The defendant is afforded several options within the thirty-day period. First, the defendant in a case that went to trial may claim an **appeal** within ten days of receipt of the Notice of Judgment, in which case the payment hearing would be canceled. Second, the defendant can simply *pay* the successful party and satisfy the judgment. Third, the defendant can appear at the payment hearing and the burden would then fall upon him or her to show that payment should not be made in full. To use this option, however, the defendant would have to fill out a **financial statement** and provide a copy to the plaintiff in advance of the payment hearing.[39]

A Default Judgment occurs when the defendant in a small claims case does not appear in court on the scheduled hearing date. In these cases, the plaintiff automatically wins (and is usually granted the full amount of money he requested on the claim form).

A Dismissal occurs when a *plaintiff* does not show up on the day of a hearing. The case is automatically dropped and the defendant may be let off the hook.

Relief from Judgment may be requested by the defendant or the plaintiff within one year of the date of judgment.[40] This is *not* an appeal and is typically used when a defendant wants to **remove a default** judgment or when **a plaintiff wants to vacate a dismissal for failure to appear for trial**. The party must file a **Motion for Relief from Judgment** form with the court that issued the judgment. Valid reasons for filing for relief from judgment include mistakes by courts (such as if the court magistrate overlooked or misinterpreted a piece of evidence), a good excuse for not showing up, new found evidence that may change the outcome of the case, and/or the plaintiff used fraud or improperly served papers on the defendant.[41] The court requires a hearing in which the party requesting relief from judgment attempts

[38] Uniform Small Claims Rules, Rule 7(h)
[39] Standards of Judicial Practice 7:04
[40] Uniform Small Claims Rules, Rule 8.
[41] Massachusetts Domestic Relations Procedure Rule 60: Relief from Judgment or Order

to show cause for a new trial, at which the other party oppose the relief from judgment request. While the court may permit a motion for relief from judgment to be filed, whether it will be granted is *completely* up to the clerk-magistrate's discretion. Technically, a "meritorious excuse" is not, in and of itself, sufficient reason to require the removal of a default.[42] The court, in vacating an order of dismissal or a default judgment, may, in appropriate circumstances, award reasonable expenses such as lost wages to the other party if the party was present on the day the case was dismissed or the defendant defaulted.[43] Getting a relief from judgment does not guarantee a win in small claims court, but does give the defendant or plaintiff another opportunity to be heard.

An Appeal may be filed if the *defendant* in a small claims case believes that the decision made by the clerk-magistrate is incorrect due to an error in fact or law. However if a defendant elected to have his case tried initially by a judge, there is **no possibility of appeal**. In Massachusetts, the defendant, if he wishes to appeal, must file an appeal **within 10 days of receiving judgment**; after that time, the right to appeal is gone. (However, the court may award an extension if he can prove that he could not make the deadline because of excusable neglect or some other good reason.[44]) To file an appeal, a defendant must pay a $25 fee (this may be waived in cases of indigence) AND post a **bond**, usually in the amount of $100, though there are some exceptions. The appellant (the defendant who is appealing) must send his papers via first class mail to the appellate court clerk, who must receive the paperwork within the ten-day deadline.[45] He must also file an affidavit, a notarized statement that specifies issues of fact or law in the case that require a trial by judge or jury of six and that states that such trial is intended in good faith. Copies of paperwork that are not required to be served by the clerk must be served on the other party by the appellant, either in person or by first class mail. An appellant should contact the court at which the case was decided for the specific filing procedures.

Plaintiffs cannot appeal in Small Claims Court.[46] [47] Defendants should know that if they failed to show up in small claims court, they do not have the right to appeal unless they obtained relief from judgment. Appellants may or may not choose to rely on the assistance of a lawyer.[48] They should also keep in mind that if they lose their appeals case, the judge or jury may find them responsible for paying costs (court costs or otherwise) for the other party.

An Appeals Hearing is held before either a jury of six or a judge (not a clerk-magistrate). Once the defendant has appealed the case, both parties have the right to a jury trial, so the case will be heard by a judge only if both parties waive this right (i.e. neither party requests a jury trial).[49] [50] The defendant is entitled to a jury trial only for disputed questions of fact and should be prepared to inform the jury session or judge about which issues of fact are disputed by him and the plaintiff. The District Court jury

[42] Standards of Judicial Practice 7:06
[43] Uniform Small Claims Rules, Rule 8.
[44] Mass. District/Municipal Courts Appellate Division Appeals Rule 4(c)
[45] Massachusetts Appellate Procedure Rule 13
[46] M.G.L. c. 218 § 23
[47] Standards of Judicial Practice 8:00
[48] Ralph Warner, "Everybody's Guide to Small Claims Court." 12th ed, 2008.</
[49] M.G.L. c. 218 § 23
[50] Standards of Judicial Practice 8:00</

sessions (to which appeals are directed) **are not** governed by the informal and flexible rules of small claims court. For this reason, a client involved in an appeal may wish to hire an attorney.

Chapter 2

Collections

Collections is the process by which an individual who has been awarded damages in Small Claims Court actually gets the monies that are owed to them.

Legal Process

After a clerk-magistrate has made a decision about a case, the person to whom money is owed is called the **judgment creditor** while the individual who owes money is called the **judgment debtor**. It is important to not confuse these terms with plaintiff and defendant, since a defendant can counter-sue for money, win his case, and consequentially be the judgment creditor. While in the collections process, the terms plaintiff and defendant are no longer used.

Notice of Judgment and Order Form

The Notice of Judgment and Order Form, which is mailed to both parties once the clerk-magistrate reaches a decision, will include the following:

1. An indication of whether or not the clerk-magistrate found the defendant liable for the plaintiff's damages (i.e. did the plaintiff win?)
2. An exact amount of money that the defendant must pay to the plaintiff within 30 days of the date of judgment, unless a previous payment plan has been worked out.
3. A court date (ordinarily scheduled for approximately one month after the date of judgment) for the payment hearing (explained below). If the clerk-magistrate renders decision immediately on the trial date, however, the payment hearing will commence on that same date.[51] Unless the plaintiff waives the hearing or the defendant decides to appeal the decision, both parties are expected to appear in court.[52]

Prior to the Payment Hearing, the judgment debtor (hereafter called "the debtor") must either pay the entire amount of the judgment to the judgment creditor OR complete a written financial statement.

The Financial Statement

The Financial Statement form asks the debtor to detail his income and assets as well as other pertinent financial information.[53] The financial statement must be completed prior to the scheduled payment hearing and a copy must be provided to the creditor before this date, as well. Although the financial

[51] Standards of Judicial Practice 7:03
[52] Standards of Judicial Practice 7:04
[53] Uniform Small Claims Rules, Rule 7(g)

statement will be kept separate from other case paperwork (i.e. it will not be made part of the public record), it will be accessible by the court, all parties to the case, and any attorneys that have officially become involved in the case. The Statement must be signed as "true" by the debtor. Providing inaccurate or false information will be punished by penalty of perjury.[54]

At a Payment Hearing held on the original trial date, the presiding official will first ask the debtor if he wishes to appeal the decision. If the debtor wishes to appeal, the payment hearing will not be conducted. Otherwise, the clerk-magistrate will issue a payment order for the amount of the judgment plus allowable costs, and this order will require payment by a definite date or on a definite schedule.[55]

If the payment hearing is scheduled for after the trial date, the clerk-magistrate will have already issued a payment order along with the Notice for Judgment. In that case, the debtor had three potential responses:[56]

1. Appeal the decision within ten days of receipt of the Notice of Judgment. The payment hearing is then canceled.
2. Pay the plaintiff the entire amount owed. The plaintiff and defendant must together fill out a court-provided form and file it with the court indicating that the defendant has paid. The payment hearing is then canceled.
3. Appear at the payment hearing. The defendant will have to file the Financial Statement with the court and fulfill the burden of explaining why he has not yet paid the entire amount owed.

Judgment Proof Status

Judgment debtors often claim that they are too impoverished to pay, but usually the court official disagrees and makes them pay something (even if it's only $5 or $10 a month). The judge may devise a gradual payment plan for the debtor. Although a clerk-magistrate or a judge may preside over a payment hearing, only judges can actually order incarceration, or another measure deemed appropriate, for non-payment or for failure to appear at the hearing (civil contempt). Clerk-magistrates cannot[57], and even judges tend to exercise this power quite infrequently.

Inability to Pay is somewhat common in small claims court. Although most debtors will be considered "able to pay," on occasion the court will find that the judgment debtor actually is too poor to pay his sentence. These people are often informally called **judgment proof**. Because judgment proof status is ultimately the judge's decision, it is often hard to accurately predict who will qualify. Here are some general guidelines, though:

- Those that are exempt from paying state taxes would probably be deemed too poor to pay outstanding judgments.
- Bankrupt individuals are probably not expected to pay immediately.

[54] Uniform Small Claims Rules, Rules 7(g) and 9(c)
[55] Standards of Judicial Practice 7:03.
[56] Standards of Judicial Practice 7:04
[57] Uniform Small Claims Rules, Rule 9.

- Those who are on public assistance under the:
    - Massachusetts Aid to Families with Dependent Children (AFDC)
    - General Relief program
    - People who are fully blind / disabled
    - Veteran's Benefits program
    - Social Security benefits & Supplemental Security Income (SSI) benefits
    - Welfare benefits (any benefits paid by MA Department of Transitional Assistance)
    - Railroad retirement benefits
    - Income from most ERISA-backed pensions
    - Medicaid program
    - Income from unemployment insurance[58]
    - Worker's compensation[59]
- People who earn about $10,000 or less annually are at the poverty level and might be considered judgment proof. The amount of income required for poverty level designation also changes according to other factors, such as the number of dependents a wage-earner has.
- If you have $1000 or more in the bank that does not fall into the aforementioned categories and/or you own property, you will not be considered judgment proof.

The judgment proof status is not permanent. How long a judgment extension will be is for the judge to decide (but the extension is usually about a year). Younger people are more likely to get called back into court than older people, because the assumption is that younger people will have more of an opportunity to bounce back. At the end of this time period, the judgment debtor is called again to court either to explain again why he has not paid damages or to prove to the judge that he still cannot pay. These payment reviews and hearings will continue until the debtor pays damages or until the court official does not think that he qualifies for judgment proof status anymore.[60] The judgment creditor can only request these reviews and hearings once a year for up to 20 years.

Non-Appearing Judgment Debtors

Non-Appearing Judgment Debtors are also common when it comes to payment hearings. If a debtor fails to show up on the date designated for the payment hearing, and the creditor does show up (and signs a sworn statement that payment by the debtor has not yet been made), then a capias may be immediately issued. A capias is a notice threatening arrest if the debtor does not appear in court. The cost of a capias is usually $20-$30 and is sometimes added to the judgment amount that must be paid by the debtor. The creditor can also pay a constable or sheriff to physically arrest and bring the debtor into court to explain why he has not paid. The fee paid by the creditor for such an arrest is $100-$300, and may or may not be added onto the judgment amount that must be paid by the debtor.[61]

[58] M.G.L. c. 151a, § 48
[59] M.G.L. c. 152
[60] Standards of Judicial Practice 7:04.
[61] Uniform Small Claims Rules, Rule 7(g)

Extracting Money from Non-Cooperative Debtors

Often none of the above "threatening mechanisms" will work, and the plaintiff (if he still wishes to collect his money) may have to take additional (sometimes costly and inconvenient) steps in order to do so. Some of his options are discussed below.

Obtain a Writ of Execution

Obtaining a Writ of Execution i is an attempt to levy some part of the debtor's property and is issued 15 business days after the date of judgment at the request of the plaintiff.[62] Some examples of property that can ordinarily be levied in this way are:

- Money in a bank account
- Personal Property
- Motor Vehicles owned by the debtor
- Money that is inherited from friends and relatives
- Retirement funds

If a creditor knows the location of any of these assets (or may be able to find out their location), then requesting a writ of execution from the court is often very helpful. Once a writ of execution (specifying the property to be levied) is granted:[63]

1. The creditor must bring this writ to a constable, sheriff or other "levying officer."
2. The creditor must also give the constable/sheriff information on the location of the assets to be levied.
3. The constable/sheriff must then serve, in person, the writ of execution to the debtor and collect the property specified in the writ. This property will be kept in the sheriff/constable's safekeeping for a period of time.
4. If the debtor does not file a "claim of exemption" (which he is entitled to do), then the sheriff will either turn the money directly over to the creditor (in the case of cash assets) or sell the assets (i.e. a car) and return the proceeds to the creditor.

The Financial Statement that debtors are required to fill out prior to the payment hearing has a space in which the name of the debtor's bank (and his account number there) is requested.[64] Creditors should make note of this information, and verify that it is correct, as knowing this information may make the above procedure possible.[65]

[62] Standards of Judicial Practice 9:05.
[63] *How Do I Execute and Levy Against Property Owned By a Judgment Debtor,* Law.Freeadvice.com
[64] Financial Statement, Massachusetts Small Claims Forms.
[65] *Collect Your Court Judgment From Deposit Accounts*, Nolo.com Law Encyclopedia

Obtain a Wage Garnishment

Obtaining a Wage Garnishment allows a creditor to collect his judgment by taking the owed money directly out of the debtor's wages. In order to "garnish someone's wages", a creditor must:[66]

1. Obtain a Writ of Execution (as explained above).
2. Obtain an Application and Order for Wage Garnishment (ask Clerk for details), which is directed to the debtor's employer and orders this individual/company to withhold a portion of the debtor's wages (usually no more than 25%) and pay this amount to the creditor.
3. Have the Order for Wage Garnishment "served" upon the debtor's employer by a sheriff/constable.

Again, the creditor must know the name and location of the debtor's employer. This information can be found on the Financial Statement filed by the debtor before the payment hearing.

Put a Lien on a Property

Putting a lien on the debtor's property entitles a creditor to automatically collect the amount of his judgment from the proceeds that result when that piece of property is sold. In order to create a lien on the debtor's property, the creditor must record the judgment with the land records office in the county in which the property is located. When the debtor sells or refinances the property, the buyer will see the lien, and the creditor will be paid out of the proceeds. (*Note: It is possible to "execute on the lien," forcing the sale of the property immediately. However, this is expensive and usually requires the assistance of a lawyer. For these reasons a lien is rarely used).

[66] Collect Your Court Judgment With a Wage Garnishment, Nolo.com Law Encyclopedia.

Chapter 3

Landlord/Tenant Law

Landlord/Tenant law deals with issues of real estate leasing. There are many very specific laws that must be followed, by both tenants and landlords, when dwellings are rented in this manner. The following chapter will detail the laws that are relevant to landlord/tenant interactions.

Basics of Landlord/Tenant

Looking for & Choosing an Apartment

A Finder's Fee (Finder's fee, registration fee or commission for helping a tenant to find an apartment may only be charged by a licensed real estate broker or salesperson[67], and only after the broker or agent has signed a contract that states the fee amount and the tenant's requirements for an apartment. The contract must also state that the broker or agent will provide a certain number of listings, which may not be less than five[68].

Tenant Discrimination. *Federal Law* prohibits a landlord from refusing to rent any apartment to a potential tenant because of race or color[69]. *State law* prohibits a landlord from refusing to rent an apartment to a potential tenant because of dependence upon public or rental assistance [70]. Except in owner-occupied two-family dwellings, the Massachusetts Fair Housing Law prohibits discrimination on the grounds of religion, national origin, age, ancestry, military background or service, gender, sexual orientation, marital status, blindness, deafness, or the need of a guide dog[71]. With some exceptions, no landlord can refuse to rent an apartment because the tenant has children[72].In particular, a landlord cannot simply refuse to rent to a tenant with children in order to comply with the prohibition against exposing children to lead[73].

Types of Tenancy

A Tenant with a Lease is a tenant who has signed a written agreement with a landlord to rent a dwelling for a particular amount of time, usually one year. During the year, the landlord cannot raise monthly rent, and the landlord will not be able to end tenancy unless the tenant fails to maintain the terms of the lease.

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[67] M.G.L. c. 112, § 87RR
[68] *Questions of the Week: Tenant's Rights*, Massachusetts Attorney General's Office website
[69] 32 USC 1982
[70] M.G.L. c. 151B, § 4(10)
[71] M.G.L. c. 151B, §4(3B)
[72] M.G.L. c. 151B, § 4(11).
[73] M.G.L. c. 111, § 199A

A Tenant-at-Will is a tenant who has not signed a lease, but who pays rent periodically (usually monthly). Although there is not always a written agreement in a tenancy-at-will, often the tenant is asked to sign a "Rental Agreement" or "Tenancy-at-Will" form. Such a form should include the amount of monthly rent at the time of the agreement and any additional basic rules for tenancy[74].

A tenant-at-will may end his tenancy for any reason as long as he gives his landlord notice that he is planning to leave, either thirty days or one month before the next rent payment due date, whichever is longer. Likewise, a landlord may end the tenancy for any reason as long he gives his tenant notice that the tenant must leave either thirty days or one month before the next rent payment due date, whichever is longer[75].

The landlord can raise the rent of a tenant-at-will as long as he informs the tenant of the rent increase, either thirty days or one month before it takes effect, whichever is longer. If, however, the tenant receives a rent subsidy from the government, the landlord may not raise rent without governmental approval.[76]

A Rooming or **Boarding House Tenant** becomes a tenant-at-will after three months of tenancy and is then afforded the rights of a tenant at will.

Termination notices vary depending on the length of tenancy:

*Less than 30 days - no notice required.

*Between 30 and 90 days - 7 days of notice required.

*Over 90 days - 30 days of notice required

However, the landlord is only required to give 7 days of notice if tenant is disorderly or bothersome to other tenants OR if tenant pays rent weekly[77].

The Lease or Rental Agreement

The Lease or Rental Agreement should include the name, address, and phone number of the owner and the person responsible for the apartment's maintenance and repair; and the name, address, and phone number of the person to whom the tenant can give copies of formal notices, complaints, or court papers. If the tenant pays a security deposit, the lease or rental agreement must show the amount paid, and must explain the rights regarding security deposits[78].

[74] *The Attorney General's Guide to Tenants' Rights*, Massachusetts Attorney General's Office website
[75] *The Attorney General's Guide to Tenants' Rights*, Massachusetts Attorney General's Office website
[76] *The Attorney General's Guide to Tenants' Rights*, Massachusetts Attorney General's Office website
[77] *The Tenant's Commandments*, Massachusetts Executive Office of Consumer Affairs
[78] 940 CMR 3.17(3b)

The lease or rental agreement cannot require the tenant to give up any legal rights in return for renting the apartment. In particular, the terms of the lease or rental agreement cannot prevent the tenant from suing the landlord, reporting violations of the Sanitary Code, or joining a tenants' union[79].

A Copy of the Lease or Rental Agreement must be provided to the tenant by the landlord within "30 days" of signing. A landlord who does not provide the lease within 30 days may be fined up to $300[80].

Types of Leases

*Fixed-term lease: Typically runs for one year. May or may not be renewed after the period expires.

*Self-extending lease: Automatically renews if neither the landlord nor tenant gives formal notice that there will be no renewal by a date specified in the lease.

Prepayments are often required by landlords before a tenant moves in. The following rules regulate repayments that a landlord can charge on residential property that is being leased for more than 100 days. Note that this law does not apply to property that is used for commercial reasons[81].

The only prepayments that a landlord may lawfully charge are[82]

1. **First Month's Rent**

2. **Last Month's Rent** - to protect the landlord from a tenant residing in the apartment for his last month and then "taking off" without paying rent. This covers the last month's rent payment, and need not be paid again at the end of tenancy.

3. **Security Deposit** - a deposit to a landlord no greater than one month's rent, intended to ensure that conditions of the lease will be met and that the cost of damage to the apartment will be covered.

4. **Installation Costs for Lock & Key**

The Last Month's Rent[83]

*Last month's rent is a prepayment for the last month of tenancy. A security deposit cannot be used as the last month's rent and vice versa.

*The amount of the last month's rent cannot be greater than one month's rent. If a landlord later raises the rent, he can require his tenant to increase the amount of the last month's rent to equal the new rent.

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[79] M.G.L. c. 186, § 18.
[80] 940 CMR 3.17(3c).
[81] For more information on the distinction between commercial and residential property, see Shwachman v. Khoroshansky (15 Mass. App Ct.)
[82] M.G.L. c. 186, § 15B
[83] M.G.L. c. 186, § 15B

*A landlord is required to deposit the last month's rent in a Massachusetts bank and must give his tenant a receipt for the deposit within 30 days.

*A tenant is entitled to "at most ***5% interest*** (and *at least* the amount of interest given by the bank) on the last month's rent, payable at each year on the anniversary date of tenancy. This interest is to accrue and be paid even if the tenancy lasts less than one year, and must be paid within 30 days of the termination of tenancy.

*A landlord must transfer the last month's rent with any interest accrued to the new landlord if ownership of the dwelling changes hands. This must be done within 45 days of ownership transfer.

*If a landlord fails to pay interest on last month's rent within 30 days after termination of tenancy or fails to transfer the last month's rent with interest accrued to the new landlord within 45 days of t he date of ownership transfer, *the tenant is entitled to TREBLE (triple) DAMAGES plus court costs and reasonable attorney's fees.*

Security Deposit[84]

*The amount of the security deposit cannot be greater than one month's rent. If the landlord later raises the rent, he can require the tenant to increase the amount of the security deposit to equal the new rent.

*A landlord must give his tenant a **statement of condition** (including any certified violation of the Sanitary Code) of the premises upon receiving a security deposit or within 10 days of tenancy, whichever comes later. Once the tenant receives a statement of condition, he has 15 days to return a corrected copy to the landlord, after which time the landlord has 15 days to either sign the agreement or state disagreement. If the tenant does not submit a separate or correct list, a court may later view this lack of action as the tenant's agreement that the list was complete and correct.

*A landlord is required to deposit the security deposit in a Massachusetts Bank and must give his tenant a receipt for the deposit within 30 days.

*A tenant is entitled to at most ***5% interest*** (and *at least* the amount of interest given by the bank) on the security deposit, payable at each year on the anniversary date of tenancy. If tenancy ends before one year, no interest is collected on the security deposit. The landlord must return the security deposit and accrued interest, less lawful deductions, within 30 days after termination of tenancy.

*A landlord may lawfully deduct from the security deposit for rent unlawfully withheld and for damages caused by the tenant or any of the tenant's guests or damages on the premise with the tenant's consent (Reasonable wear and tear attributed to normal use *does not* count).

*To deduct from the security deposit for damages, a landlord must provide a **detailed list of damages** and **estimates/bills for repair costs** within 30 days after termination of tenancy.

[84] M.G.L. c. 186, § 15B

*A landlord must transfer the security deposit with any interest accrued to a new landlord if ownership of the dwelling changes hands. This must be done within 45 days of ownership transfer.

*If the landlord:

*Uses a lease which attempts to influence the tenant to waive his security deposit rights,

*Fails to deposit the security deposit in a Massachusetts bank and provide a receipt from that bank within 30 days

*Fails to make security deposit records available

*Fails to provide a list of damages within 30 days of termination if deductions are to be made

*Fails to return the security deposit (or balance after lawful deductions) with accrued interest within 30 days of termination

*Fails to transfer the security deposit to the new landlord within 45 days of the date of ownership transfer,

The tenant is entitled to triple damages, plus court costs and reasonable attorney's fees.

The above rules do not apply to a commercial lease. The MA government assumes that businesses are better protected than your average citizen. If you are renting space for business purposes, you are not entitled to treble damages for the above.

Housing Court[85]

Housing Court deals with all legal matters related to habitation, including landlord/tenant problems. It is not bound by the $7,000 cap that applies to small claims cases. The housing court will apply the same laws and procedures as Small Claims.

Housing court has concurrent jurisdiction with Small Claims Court. This means that a suit related to housing and falling under the $7,000 limit can be filed in either Housing or Small Claims Court. Small claims decisions can be appealed in Housing Court, within restrictions pursuant to the laws of appeals.

During Tenancy

Once a tenant moves in there are still certain laws that must be followed by both parties.

[85] M.G.L. c. 185c § 3

Late Payment Fees cannot be charged by a landlord until 30 days after the due date. These include late charges, interest, and other penalties.[86] However, a landlord can begin the eviction process on the first day the payment is late.[87]

Utilities

The landlord may require tenants to pay their own electricity and gas bills, but this requirement should be written into the lease or rental agreement.[88] A landlord cannot cause the removal of or shut off utilities except for emergency repairs. If a utility company must shot off a tenant's utilities because of a landlord's inability to pay, the company must notify the tenant at least 30 days prior to shut off.[89] The Tenant may be asked to pay part or the entire overdue bill to the utility and to deduct that payment from his rent[90]. Tenants seeking to have their utilities turned back on should call the Department of Telecommunications and Energy at 1-800-392-6066.

The Landlord's Right of Entry Clause[91] allows a landlord to enter a tenant's apartment only for the following reasons:

*To inspect the premises.

*To make repairs.

*To show the apartment to a prospective tenant, purchaser, or mortgagee.

*In accordance with a court order.

*If the premises appear abandoned.

*To determine the amount of damage to the property for deductions from the security deposit after notice to terminate has been given.

If a landlord continually enters a tenant's premise unreasonably, the tenant may file for a temporary restraining order.[92]

Habitability Rights[93] are guaranteed to tenants by the State Sanitary Code. This code mandates that the following "habitability right" be ensured by a landlord:[94]

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[86] 940 CMR 3.17(6a)
[87] M.G.L. c. 186, § 17A(2)
[88] *Utilities*, Legal Assistance Corporation of Central Massachusetts Website.
[89] M.G.L. c. 164, § 124D
[90] M.G.L. c. 164, § 124D
[91] M.G.L. c. 186, § 15B(1a)
[92] *A. Joseph Ross, How to Be a Landlord in Massachusetts and Avoid Legal Trouble*. January 2002
[93] 105 CMR 410
[94] For cases that exceed the small claims limit, under MGL 186, Section 14, a tenant in any dwelling (except for a hotel) has special rights where the owners is required "by law or by the express or implied terms of any contract or lease or tenancy" to furnish water, hot water, heat, light, power, gas, elevator service, telephone service, janitor

1. Heat
2. Removal of cockroaches and/or rodents
3. Functioning Kitchens
4. Functioning Bathrooms
5. Hot Water
6. Structural Integrity
7. Snow Removal (One must be able to enter and exit their home safely)
8. No Lead Paint (if there are children under the age of 6 living in the dwelling.[95]

For more specific requirements, see the Code of Massachusetts Regulations, 105 CMR 410.

Dealing with Habitability Rights Violations[96]: If a tenant suspects that any of his habitability rights have been violated, the tenant should take the following steps:

1. Explain the problems to the landlord and request repair
2. Have an inspection by the local health department and be prepared with a list of suspected violations. *Make sure the inspector writes down all violations.*
3. If the inspector finds any violations and the landlord refuses to repair any damages, the tenant may lawfully **withhold part of the rent** or **repair the damages himself** and *deduct the costs* from future rental payments.

A tenant may not withhold rent if he was the cause of the problems, or if he was not current in his rent payments at the time of the problem. The tenant is still required to pay the fair rent for the apartment given its defective condition; so he may only be able to withhold a part of the rent, depending on the seriousness of the problem.[97] Although not required by law, the tenant is encouraged to deposit the withheld rent in an escrow account to show good faith. Any money that is withheld must be paid if the landlord fixes the habitability violations.

A tenant may **repair the damages himself** and **deduct the costs**[98] from future payments only if:

*The total deductions do not exceed four months' rent.

*The local Board of Health or other code enforcement agency has certified that the present conditions endanger the health or safety of tenants.

*The landlord receives written notice of the existing violations from the inspecting agency.

*The landlord is given 5 days from the date of notice to begin repairs or to contract for outside services and 14 days to substantially complete all necessary repairs.

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service or refrigeration has special rights. Landlords that violate these rights can be fined for up to 3 months of rent or put into prison for up to 6 months .

[95] M.G.L. c. 111, §197

[96] M.G.L. c. 239, § 8A

[97] M.G.L. c. 239, § 8A

[98] M.G.L. c. 111, § 127L

Other Housing Regulations

Massachusetts State Plumbing Code: 248 CMR 2.00

Massachusetts State Fuel Gas Code: 248 CMR 4.00-8.00

Massachusetts State Electrical Code: 527 CMR 12.00

Massachusetts State Building Code: 780 CMR 1.00-22.00

Regulation for Lead Poisoning Prevention and Control: 105 CMR 460.00

Program for Air Testing and Remedial Measures for Residential Dwellings Insulated with Urea Formaldehyde Foam Insulation (UFFI) 105 CMR 651.00

Regulations for Removal Containment or Encapsulation of Asbestos:

453 CMR 6.00 and 310 CMR 7.00

Special Living Arrangements

When dealing with Landlord/Tenant disputes, it is important to remember that there are unique living situations that have additional laws that may or may not apply to different situations.

Housing Law Section 8

Section 8 provides federal government assistance for very low-income families, the elderly, and the disabled to afford decent housing. It is the participant's responsibility to find housing including single - family homes, townhouses, and apartments. Local public housing agencies (PHAs) use U.S. Department of Housing and Urban Development (HUD funds to make direct payment to landlords. The person on section 8 subsidy pays the difference between the actual rent charged by the landlord and the amount subsidized by the program).

Eligibility for Section 8 assistance is determined by gross income and family size and is limited to U.S. citizens or non-citizens with specific immigration status. Once eligibility is determined, the participant is placed on a waiting list. Assistance is available for:

*Wheelchair accessible housing (open to anyone requiring wheelchair accessibility)

*Family public housing (open to anyone)

*Elderly/disabled public housing (open to those age 60 or over and/or disabled)

*Grandparents housing program (open to those age 60 and over and/or disabled with legal custody of 1 or 2 grandchildren of the same gender)

Massachusetts General Law makes it unlawful for landlords to discriminate against an individual who is the recipient of low-income housing.[99]

Roommates & Subletting

In many cases, tenants will share an apartment with another person. While his may help with loneliness and affordability, it also opens the door to a host of problems. It is important for a tenant to understand the legal relationship that exists between him and his roommate, and must know what to do when one of them does not hold up his end of the bargain.

There are two possible legal relationships that can exist between roommates who share a rented/leased apartment:

Co-tenants: Both roommates have their names/signatures on the lease issued by the landlord, and the landlord has accepted the presence of both in his dwelling. In this case, **joint and several liability** exists, which means that the two tenants are considered to be "one unit" by the landlord. In cases of "joint a nd several liability," the landlord can look to *either* tenant for resolution, should a problem arise. For example, if one co-tenant fails to pay rent on month, the landlord can hold the *other* roommate responsible for the delinquent tenant's portion. And if one roommate breaks a condition of the lease or rental agreement, the landlord may evict **both** tenants for the infraction. A co-tenant may not evict another co-tenant - this right is only granted to the landlord. For these reasons, it is crucial that those entering into a lease as co-tenants trust each other greatly.

Tenant/Subletter: In this situation, the original tenant is the only individual who's name/signat ure is on the landlord's lease. The subletter has no direct relationship to the original landlor d, but instead has signed a contract with the original tenant to follow certain guidelines and pay a designated amount towards rent, utilities, etc. This means that the original tenant has a degree of control over his "roommate," (the subletter) and, shoul d problems arise, has the power to evict the roommate himself. The primary drawback of this otherwise-superior option is that many landlords do not allow tenants to accept subletters (as it prevents the landlord from holding both responsible for late rent, etc.) If this is the case a tenant who takes in a subletter is in violation of his contract and m ay be evicted.[100]

Other: If neither of these legal relationships exists between two roommates (not an unusual scenario, especially when the two individuals were friends prior to being roommates or were involved romantically when the cohabitation began), then a dissatisfied roommate has little or no legal recourse available to him/her. Entering into such a roommate situation is usually not advised.

Renting with Roommates is complicated. Although many of our clients will call AFTER there has already been a roommate conflict regarding failure to pay rent, utilities, or other expenses, a few pointers for the NEW tenant who is going to be living with a roommate:

[99] M.G.L. c. 151b, § 4 (10)
[100] *Who Are Those Guys? Part Two,* landlord.com

*Before beginning a co-tenant relationship, be sure to create a **roommate agreement**. This agreement can be written by the co-tenants, and should spell out *exactly* what each roommate is responsible for, including shares of rent, housework, utilities, etc. It should also specify which amenities (e.g. food, cable TV, internet provider) will be shared and which will be provided individually. Additionally, it can discuss other issues such as guests, noise, and how disagreements will be resolved. Although this contract is not an official legal document, it *can* be critical (and very helpful) evidence should a violation occur and the case be brought to small claims court.

*Keep very careful records of all documents relating to the lease or rental agreement, including a copy of the signed agreement, rent payment receipts, repair records, correspondence between co-tenants and the landlord, etc.

*Think twice about rooming with someone you don't trust or sense is irresponsible. Although "cheated roommates" have some recourse in small claims court, often the hassle and expense of pursuing each action is greater than any amount a roommate could hope to receive as a result.

Termination and Eviction

There are two ways in which a tenancy can end:

Termination - the ending of a rental agreement or lease by either the landlord or the tenant.

Eviction - the forced removal of a tenant. Eviction can only be ordered by a judge [101].

While termination is a regular part of any landlord/tenant relationship (eventually the tenant moves to a new dwelling), eviction is much more serious as it may leave a tenant with nowhere to live. For this reason, Massachusetts law places strict guidelines on eviction.

Valid Reasons for Eviction vary depending on the type of tenancy:

Tenant with a Lease - a landlord can only attempt to evict a tenant with a lease if the tenant has 1)not been paying rent, 2)has caused excessive damage to the dwelling, or 3)has violated the terms of the lease.

Tenant-at-Will - a landlord may attempt to evict a tenant-at-will for any reason, except as an act of retaliation. A landlord is not required to provide a tenant-at-will with any reason for termination of tenancy; however, the landlord must still follow proper eviction procedures.

Retaliation - Although the landlord of a tenant-at-will can terminate the tenancy without reason, the landlord cannot do so in response to the tenant's exercising of legal rights. If a landlord attempts to

[101] *Questions of the Week: Tenant's Rights*, Massachusetts Attorney General's Office website

change or terminate a tenancy or increase rent within six months of a tenant's contacting the Board of Health, joining a tenants' organization, or exercising other legal rights, the landlord's actions can be considered retaliation against the tenant. Unless the landlord can prove that s/he is changing the tenancy for reasons other than your having exercised your rights, the landlord will not be able to raise the rent, change or terminate the tenancy. Penalties for violation of this law against retaliation include fines of up to three months' rent, actual damages sustained by the tenant, and costs of the tenant's suit against the landlord, including the attorney's fees.[102]

The Eviction Process

The eviction process has several steps:

Notice to Quit - filing a Notice to Quit is the first step a landlord must take to commence eviction procedures. This notice comes with a built-in time period (usually 14 days) during which the tenant can fulfill his obligations. If the tenant fails to do so, however, he does *not* have to move out at the end of this time period. Only a judge can order a tenant to move out.

Summary Process and Complaint - after notice period has passed, a Summary Process and Complaint is delivered to the tenant by the landlord, which officially informs the tenant that the landlord is taking legal action. The complaint will state the date of the "'eviction hearing"' and the date on which the answer must be filed. The Answer is the tenant's response stating why he should not be evicted. The Answer also gives the tenant the opportunity to make counterclaims against the landlord, including, for example, health code violations, retaliation, harassment, security deposit violations, or improper eviction procedure.[103]

The Eviction Hearing - takes place on the date indicated by the Summary Process and Complaint.

Notice of Appeal - if, at the hearing, the judge orders eviction, the tenant may file a Notice of Appeal. This must be done within 10 days after the judgment date.[104]

Execution - if the judge concludes that the tenant should be evicted, he will issue an execution which is an eviction order. This execution paper will be given to the landlord 10 days after the judgment is entered, and it is mandatory part of the execution process (i.e. a landlord cannot evict a tenant without it). The execution is good for 3 months so if the landlord allows the tenant to stay on the property, he/she can later use the execution at any time within the three months. However, if the within the three months the landlord accepts payment of the amount won in the summary process action and the current rent, he/she cannot use the execution.[105]

[102] M.G.L. c. 186, §18
[103] *The Tenant's Commandments*, Massachusetts Executive Office of Consumer Affairs
[104] *The Tenant's Commandments*, Massachusetts Executive Office of Consumer Affairs
[105] *The Tenant's Commandments*, Massachusetts Executive Office of Consumer Affairs

48 Hour Notice - at least 48 hours before the execution is served, the tenant must be given a written notice of the date and time when s/he will be physically removed.[106]

Landlords of public housing and rent control tenants must first go through the local housing authority and rent control board, respectively, before the landlord can proceed with the eviction. Public housing and rent control tenants have the ability to a hearing in front of the appropriate board on their eviction.[107]

Eviction - When the date written on the execution order arrives, the tenant must move out. If you do not, a sheriff or constable may remove your belongings and place them in storage if you are not there at the time of removal to claim them.[108]

Stay of Execution - if the eviction is not the tenant's fault or the tenant cannot find another place to live, the tenant may be able to receive a Stay of Execution, allowing the tenant to stay in his apartment for up to 6 months. Elderly or handicapped tenants can request a stay of up to one year.[109]

[106] M.G.L. c. 239, §3
[107] M.G.L. c. 121b, § 32.
[108] M.G.L. c. 239, § 4
[109] *The Tenant's Commandments*, Massachusetts Executive Office of Consumer Affairs

Chapter 4

Home Improvement Law

In addition to the normal protections of small claims court, certain types of recourse have, in recent years, been granted to homeowners who were victims of mistreatment at the hands of deceptive home improvement contractors. These protections stem from the provisions of M.G.L. 142A, the Home Improvement Contractor Law.

The main issues addressed by the Home improvement Contractor Law (HICL) are **contractor registration, building permits, contracts, arbitration**, and the **Guaranty Fund**. Most of the information in this chapter will seem almost like a procedural guide to reaching the Guaranty Fund. In a nutshell, this fund allows for payments of up to $10,000 on decisions where contractors have been delinquent in paying for damages and deceptive practices. Under the provisions of 142A, plaintiffs can circumvent the pitfalls of the small claims collections process.

Contractor Registration

Current Law mandates that home improvement contractors be registered with the Board of Building Regulations and Standards.[110] Certain types of contracting are exempt from this requirement.[111] Contracting jobs that are exempt from registration requirements include:

- Individuals who work for the Commonwealth or its political subdivisions
- Schools that offer vocational training in the form of home improvement
- Licensed professionals such as architects, electricians, and plumbers who provide services that are exclusively within the scope of their profession (does not include contractors)
- Home Improvement jobs done by the owner
- Individuals who do work for a contractor but are not actually a contractor
- Contracted jobs for $500 or less
- Individuals who perform contracting and subcontracting on a less than full time business AND receives less than $5000 a year in gross revenue from the jobs

Contractors who were exclusively in the following are also exempt from contractor registration requirements:

- Central Heating/Air Conditioning
- Energy Conservation
- Landscaping

[110] M.G.L. c. 142A, § 9
[111] M.G.L. c. 142A, § 14

- Interior Painting
- Wall and Floor Coverings
- Fencing
- Freestanding Masonry Walls
- Above Ground Pools
- Shutters and Awnings
- Ground Level Patios
- Driveways

If a homeowner has contracted for a service not listed above, and the contractor is not registered the homeowner has no rights under the HICL.[112] One may still, however, seek some recourse under the provisions regarding contracts in the Uniform Commercial Code, and furthermore, one should report the illegal contracting to the Attorney General's Office.

Registered contractors should be fairly noticeable because, by law, they must display their 60 digit registration number on all advertisements, contracts, and permits. To check up on a contractor's registration status, call (617) 727-3200 ext. 25205.

The Residential Contractors Guaranty Fund[113]

Arguably the most crucial part of home improvement law is the Residential Contractors Guaranty Fund. This allows wronged homeowners to collect money even if a registered contractor is unwilling to pay for damages and deceptive practices.

Every contractor who registers with the state pays a one-time fee based on the number of employees on his payroll. The money not needed to process the registration then goes into the Guaranty Fund.[114] When a claim is paid out to a consumer because a judgment award is not paid, the responsible contractor must reimburse the fund with interest within 30 days. If he does not, he may face fines, revocation of his registration, and in some cases, criminal prosecution.[115]

In order to receive payment from the fund, a consumer must file an application to the fun within 6 months of the initial judgment.[116] Applications can be obtained through the Office of Consumer Affairs and Business Regulation (OCABR). Consumers must demonstrate that "all customary and reasonable efforts" to collect the judgment award have been exhausted.

The state's definition of "all customary and reasonable efforts:

[112] M.G.L. c. 142A, § 13
[113] M.G.L. c. 142, § 5
[114] M.G.L. c. 142A, § 11
[115] M.G.L. c. 142A, § 19
[116] M.G.L. c. 142A, § 7

Customary and Reasonable Effort means that action has been taken by or on behalf of an aggrieved homeowner to secure a satisfactory resolution to a dispute between a home improvement contractor and a homeowner. This standard may be satisfied by all of the following:

(a) submitting evidence to the fund administrator that a writ of execution for a monetary court judgment was served upon the contractor by a constable or sheriff at the contractor's last known business address. An arbitration award must be converted to a court judgment in order to obtain a writ of execution for service by a constable or sheriff upon the contractor;

(b) if the contractor is bankrupt, submitting evidence to the fund administrator from the United States Bankruptcy Court confirming that the contractor has filed for bankruptcy;

(c) submitting evidence to the fund administrator that a service of court or arbitration order was attempted at all known or suspected addresses of the contractor by a constable or agent of the state;

(d) if a claim is properly made before small claims court, submitting evidence to the fund administrator that a notice to show cause has been served upon the contractor by a constable or sheriff at the contractor's last known business address, and that the contractor has failed to pay the claim and has failed to defend the claim.[117]

Finally, there are limits on the amounts and portions of the judgments that can be paid out by the Fund. The first is that no single claim can be paid more than $10,000 by the Fund. Furthermore, the fund will not pay out more than $75,000 in claims to victims of a single contractor within a 12 month period, unless the contractor has repaid the fund the full amount. Finally, the claims only cover what is defined by the state as "actual loss." This means that the fund will not cover consequential or punitive damages, personal injury, attorney's fees, court or arbitration costs or interest, even if the court or arbitrator figures them into the judgment.[118]

Home Improvement Guidelines

Building Permits

If a home improvement job requires a building permit, **make sure that the contractor, and not the consumer, secures it.** If the consumer secured the contract, the case is not lost, but the consumer may not apply to receive a payment from the Guaranty Fund in the event that he or she wins the case and the contractor does not pay. Under the provisions of HICL, a written contract must warn the consumer against securing his or her own building permit. However, if a contract did not warn the consumer about this exemption, the consumer can still seek financial recourse through the Guaranty Fund. [119]

[117] 201 CMR 14.02
[118] M.G.L. c. 142A, § 7
[119] M.G.L. c. 142A, § 2

Contracts

It is highly recommended that a consumer get a contract for any job, regardless of the size, but the state only mandates a written contract if the cost of the job exceeds $1000. **If a contractor does not provide a written contract for a job over $1000, his registration may be suspended or revoked, and he may be fined or face criminal prosecution**.[120] *Note that the law may be used or alluded to in a demand letter as leverage in an attempt to force a contractor to settle if he has not provided a valid legal contract when law requires it.*

In order for such a contract to be valid, certain requirements must be met:[121]

1. **Complete notification of all parties involved**, including registration numbers of all contractors and subcontractors.
2. **Complete description of the project**, with a completion schedule and a final cost agreement with payment schedule and signatures.
3. **A notification of the homeowner's right to cancel** the contract within three days of signing.
4. **A provision that the contractor should acquire all building permits**, and that if the homeowner secures them for himself, he will not be eligible for the Guaranty Fund in the event of a dispute.

Additional items of note in this section:

***By law, the contractor cannot collect more than one-third of the cost of the contract in advance**, unless the job calls for special order materials. Furthermore, no contract can contain an acceleration clause allowing the contractor to speed up the payment schedule because he feels insecure that the homeowner will not pay. He may, however, stop working and demand that the homeowner put the balance of payments in a joint escrow account (requiring both signatures for withdrawal) before continuing work.[122]

If the homeowner is financing the home improvements, the contractor is prohibited from being involved.** He may neither lend the money himself, nor act in association with any lending institution if the loan is secured by a mortgage on the home, nor may he offer financing with a specific lender if the home is used as collateral. ***The homeowner at all times has the right to shop around and negotiate a loan with anyone who he chooses.[123].

Resolving Disputes

When something goes wrong with the job, the first step is a standard 30-day demand letter, sent both certified and regular mail, return receipt requested. The letter should outline, in chronological order, how the contractor has violated the agreement. It should further suggest what action the customer

[120] M.G.L. c. 142A, § 2
[121] M.G.L. c. 142A, § 2
[122] M.G.L. c. 142A, § 2
[123] M.G.L. c. 142A, § 17

would like the contractor to take, such as finishing the job, paying for the damages, or canceling the contract.

If this measure does not resolve the dispute, there are three other options that may be pursued:

Mediation

This allows both parties to reach a mutually agreeable resolution with the help of a facilitator. Because of the voluntary nature of this procedure, mediation tends to result (if successful) in compromise and not victory. For this reason, it is ideal for parties who expect to work together in the future, but it will often fall through for contentious parties.

Arbitration

In certain situations, the case may be eligible for the state-approved Home Improvement Arbitration Program.[124] To qualify, one must be able to prove that:

- There was a written contract for the job.
- The contractor was registered at the time of the contract.[125]
- The work was done on a 1-4 family, owner-occupied, primary residence in Massachusetts.[126]

Arbitration is time sensitive. No claim may be filed for arbitration after two years from the date of the contract.[127] However, cases that do not meet this restriction can still be considered in small claims court.

Parties who have secured their own building permits are eligible for arbitration; they simply have forgone their rights to the Guaranty Fund.

As with other forms of arbitration, this process is binding and carries the full weight of a small claims court decision. It is a quicker process than small claims court, because it is less backlogged and the arbitrator will be able to arrange a date more quickly than the court clerk could. Furthermore, Home Improvement Arbitration is not subject to the $7,000 cap that governs most small claims court trials.

The downside of arbitration is that the filing fee is higher, though it is determined by the size of the case on a sliding scale. The cost of filing is added onto the decision if the plaintiff wins. If the case is lost, the plaintiff must pay the filing fee out of his or her own pocket. However, this risk should not deter anyone who wishes to proceed with arbitration - there are many advantages to this option in terms of the amount of time and energy that can be saved and the amount of money that can be awarded. If the consumer feels confident that he or she will win, arbitration can be the quickest resolution.

[124] M.G.L. c. 142A, § 3
[125] M.G.L. c. 142A, § 4
[126] M.G.L. c. 142A, § 1
[127] M.G.L. c. 142A, § 4

To initiate this process, the plaintiff should do the following:[128]

1. Select an arbitration firm that has been approved by the Office of Consumer Affairs and Business Regulation (OCABR). For more information on arbitration firms call the Executive Office of Consumer Affairs or the Director of Home Improvement Contractor Registration.
2. Fill out an application and pay the application fee for registration.

The firm will then set up a date for arbitration, and then the parties show up and present their cases.

Small Claims Court

If the dispute is for $7,000 or less, small claims court is an equally viable option, with a binding decision and a lower filing fee, just a bit more of a backlog. The process for initiating a claim is the same as in all other types of cases. Going through Small Claims Court rather than arbitration does not in any way prevent or hinder a plaintiff from applying to the Guaranty Fund.

If the plaintiff has won a case and has exhausted all reasonable means of collecting judgment payments, he or she can then apply to the Guaranty Fund to receive payments.

[128] 201 CMR 14.03

Chapter 5

Consumer Law

Consumer Law is aimed at preventing businesses/corporations from unfairly deceiving, cheating, or otherwise misleading consumers. The definitive consumer statue in Massachusetts General Law is **Chapter 93A, the Consumer Protection Act.** This statute, combined with the **Uniform Commercial Code (UCC)** and the **Code of Massachusetts Regulations (CMR)**, comprise the bulk of MGL consumer law. Most of consumer law *does not* cover private party sales. The following chapter will detail Chapter 93A, and will explain the portions of the Uniform Commercial Code and the Code of Massachusetts Regulations that are relevant to protecting consumers from unfair treatment by businesses.

Chapter 93A

Chapter 93A is designed to protect consumers from the ***unfair and deceptive practices*** employed by some businesses. It gives consumers (who feel they have been unfairly deceived by a business) the right to file a claim in court and thus receive compensation for the monetary loss they consequently suffered.

Double or Treble (triple) Damages may be awarded for cases falling under Chapter 93A. If a business knowingly violated the law or if, having been informed of such a violation, the business did not correct the problem, then the consumer is entitled to receive up to *three times* the amount of money he lost at the hands of the business. However there is an important exception. If the business makes a reasonable offer to that is rejected by the prospective plaintiff, then the court may limit the plaintiff's recovery to the amount of the settlement offer.[129] It is important, therefore, that the thirty-day demand letter be as specific as possible so as to inform the business of its violation of the law. The minimum amount a customer can get back is double damages, and triple damages plus attorneys' fees and court costs, is the maximum, when a violation of this type is proven.

Some examples of practice that might fall under the aegis of Chapter 93A would be if:

- A consumer is not fully informed of the nature of a product
- The refund/return policy is not clearly stated on a sign or receipt (it is not enough simply to have it written on the receipt. It must be known before purchase.)
- A business does not meet its warranty agreement
- A business engaged in false advertising

The following guidelines must be met in order for a case to fall under Chapter 93A:

- The matter must involve a business. Private party sales are not covered under 93A
- The good or service purchased must be for personal or household use

[129] M.G.L. c. 93A, § 9

- One must have suffered actual monetary damages (e.g. wasted money) unless one proves that this unfair practice may cause a loss of money or property
- The complaining party must write a 30-day demand letter

Chapter 93A requires that a consumer who believes him/herself wronged write a 30-day demand letter, send it to the offending party and give them 30 days to respond.[130] The time window is firm in 93A demand letters and **must** be 30 days.

Merchandise Credits & Gift Certificates

Gift certificates are defined as "a writing...purchased by a buyer for use by a person other than the buyer, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services supplied by the seller." Gift certificates include electronic cards with predefined dollar values, merchandise credits, certificates where the issuer has received payment for the future purchase of goods or services. Pre-paid calling cards are not considered gift certificates.[131] The recipient of a gift certificate has at least 7 years (from the date of purchase) to redeem it. If there is no expiration date marked on a gift certificate, then it does not expire under Massachusetts law.[132]

The final selling price must be affixed to all products (UPC barcodes that can be electronically scanned are sufficient).[133]

The Uniform Commercial Code (UCC)[134]

Although 93A grants consumers the right to sue businesses for unfair or deceptive practices, there are many other situations in which customers feel as though they did not get what they paid for, despite the fact that the business did not knowingly deceive them. The Uniform Commercial Code applies in many of these situations.

The Implied Warranty of Merchantability

There is no "as is" sale in Massachusetts. Instead, all goods and services come with an implied warranty of merchantability. If a customer buys a product, it is implied that the goods purchased will perform the basic functions for which they are intended reasonably well for a reasonable amount of time. The implied warranty of merchantability **does not** apply to private party sales. If a product does not meet the requirements of the implied warranty of merchantability, the consumer can sue the seller in small claims court.[135] However, if the buyer inspected obvious defects before purchase, or if the buyer refused

[130] M.G.L. c. 93A, § 9
[131] M.G.L. c. 355D, § 1
[132] M.G.L. c. 200A, § 5D
[133] 940 CMR 3.13(1a)
[134] M.G.L. c. 106
[135] M.G.L. c. 106, § 2-314

to inspect the goods, he cannot claim non-fulfillment of the implied warranty of merchantability due to such defects.[136]

The Implied Warranty of Fitness

If a seller informs a buyer that a product can serve a particular purpose to a particular extent, such a warranty is created, and a buyer can sue the seller if the product does not live up to this warranty. This is particularly true when the buyer is relying on the seller's skill or judgment to select suitable goods .[137]

To distinguish the implied warranty of fitness for a particular purpose from the implied warranty of merchantability, take the following example:

A shoe fits, and one can walk in it. This fulfills the implied warranty of merchantability because the product serves its basic function. But if the shoe salesman says that the shoe is suitable for hiking, the product must adequately serve this function for it to fulfill the implied warranty of fitness for a particular purpose, because the business told the customer that it would.

Other warranties/Guarantees are also included in the UCC:

- **Express Guarantee** - If the seller makes a verbal or written promise or affirms a fact about a product this constitutes an express guarantee. Descriptions, samples, demos, models, ads, and statements are all express guarantees.[138]
- **Unconditional Guarantee** - The seller indicates the buyer can have the product repaired, replaced, or refunded for any reason at all.[139]
- **Illusory Guarantee** - An illegal guarantee that attaches too many conditions to the repair or replacement of a good.[140]

Contracts are also covered under the UCC. A contract is an agreement between two parties. The parties can be **private parties** or **businesses**. There must be an offer an acceptance, and the contract must be potentially positive for both parties to be considered legal. Contracts are illegal in the following cases:

- **Fraudulent Misrepresentation** - Valuable information is omitted or fabricated.[141]
- **Incapacity of the Consumer** - at least one party to a contract is a minor, mentally incompetent, or intoxicated.
- **Incapacity of the Merchant** - The merchant is not registered as a merchant in this state. In this case, he must be used as a private individual, not a business.

[136] M.G.L. c. 106, §2-316
[137] M.G.L. c. 106, § 2-315
[138] M.G.L. c. 106, § 2-313
[139] M.G.L. c. 106, § 3-106
[140] 940 CMR 3.01
[141] M.G.L. c. 106, § 1-206

- **Unconscionable Contract Clauses** - If one party to the contract takes unfair advantage of the other party's inability to protect his interests. The court may refuse to enforce the entire contract, or refuse only enforce the unconscionable clause of the contract[142].
- **Mutual Mistake**- both parties misunderstood something important in the contract.

If a contract is illegal, one can:

1. Rescind the contract, or say that the contract once existed, but is no longer legally binding. In this case, a consumer should return the goods and receive a full refund.
2. Disaffirm the contract, or say that the contract never existed. This can be done in cases where there was incapacity of the consumer. Be sure to send a letter to disaffirm to the other party.
3. Collect Damages, possibly double or treble, by taking the other party to Small Claims Court. This can be done if there was fraudulent misrepresentation, unconscionable contract clauses, and/or unfair or deceptive practices on the part of the merchant.

The Code of Massachusetts Regulations: Title 940

Title 940 of the CMR is another place where consumer-relevant laws can be found. The provisions most relevant to consumers and their shopping rights are discussed below. Remember, if a business engages in an "unfair and/or deceptive" practice (which many of the below are), 93A grants consumers the right to sue and collect as much as three times the amount they lost. The regulation is contained in 940 CMR, and the right to sue and collect is contained in 93A.

Refund, Return & Cancellation Policies

A store may have any return policy it wishes as long as it is posted clearly and conspicuously where it can be seen before the purchase is made.[143] Having the return policy only on the receipt would not satisfy this law because the customer is not given the receipt until after the purchase. A store cannot use its return policy to refuse the return of **defective** merchandise under the implied warranty of merchantability, so a return policy stating that all sales are "as is" (without including a clause excepting defective merchandise) is unacceptable.[144]

Clear and Conspicuous Disclosure

[142] M.G.L. c. 106, § 2-302
[143] 940 CMR 3.13(4)
[144] *Consumer Affairs: Shopping Rights*, City of Boston website.

Clear and Conspicuous Disclosure means that a merchant must disclose whether any products (or parts of a product) for sale are used and/or defective in some way. Other information that would affect a buyer's decision to purchase a product must also be disclosed.[145]

Reasonable Supplies of all advertised products must be on hand, or else the business is an violation of 940 CMR. The only exception is if the advertisement claims that supplies are limited. If this claim is not made, and supplies are unreasonably low, the merchant must provide the customer with a rain check.[146]

Bait and Switch advertising involves luring customers with an especially good deal an then attempting to talk them into purchasing another product that is more advantageous for the merchant to sell. This type of advertising includes: refusal to sell advertised products, changing the terms advertised, claiming insufficient supplies, and demonstrating a different product than the one advertised. Such practices are illegal.[147]

Layaway Plans[148]

A layaway plan allows a customer to purchase merchandise through installment payments. A customer receives the merchandise after all payments have been made in full. Some restrictions on layaway plans include the following:

- **Full Disclosure** - a merchant must fully disclose his layaway policy and must inform the customer in writing if payments are not refundable or are only partially refundable.
- **Setting Aside of Specific Merchandise** - a merchant must be truthful when telling a customer that specific merchandise or exact duplicates are being set aside.
- **Time Period Disclosure** - a merchant must inform the customer if goods will only be set aside for a certain amount of time.
- **No Price Increases** - a merchant cannot increase the price of merchandise, either through a higher payment or through more payments; nor can the merchant substitute lower priced merchandise.
- **Receipts** - a customer must be given a dated receipt for each payment made, and, upon request, the merchant must tell the customer the total amount of payments already made.

Other Consumer Laws/Rules

The Cooling Off Period

[145] 940 CMR 3.01
[146] 940 CMR 3.02(3c, d).</
[147] 940 CMR 3.02M
[148] 940 CMR 3.12

The Cooling-Off Period is the period of time after a purchase during which a sales contract may be rescinded or merchandise automatically returned if the customer so desires. One common misconception among consumers is that there are fixed times to simply return consumer transactions.

THIS IS FALSE.

In fact, there are very few situations where the law allows a cooling-off period. Of course, if a contract contains a cancellation provision, then that would apply. But not all contracts have this provision. There are a few situations in which a cooling-off period does apply. They are:

- **Door to Door Sales** - If you make a purchase at home or at a location that is not the seller's permanent place of business, both Massachusetts law and the Federal Trade Commission's Cooling-Off Rule give you three business days to change your mind. The purchase must be made at a place other than the merchant's usual place of business and must be for goods costing more than $25. To cancel a contract, you must notify the seller in writing at the address given in the contract no later than midnight of the third business day following signing of the contract. Within 10 business days after receipt of your cancellation notice, the seller must return your payment. Within 20 days, the seller must either pick up the items left with you, or reimburse you for mailing expenses.[149]
- **Health Club Memberships** - if, after signing a contract to join a health club, you realize that you do not really want to join the health club, you have 3 business days in which to unconditionally cancel the agreement. The 3 days begin when you receive a copy of the written contract or a written receipt for payment.[150]
- **Credit Service Organizations** - if a consumer signs a contract with an organization that deals with restoring, improving, or servicing his credit, the contract may be canceled up until midnight of the third business day after signing it.[151]

In these cases, the Federal Trade Commission Cooling-Off Rule[152] mandates that:

- At the time of the purchase, the customer be given notice that s/he has the right to cancel the sale.
- The customer must be given two copies of the cancellation forms and a copy of the sales contract or receipt.
- The contract or receipt must include the merchant's address, the date, and notification of the right to cancel the sale during the cooling-off period.

'"Unsolicited Merchandise'" (i.e. merchandise that an individual never officially requested) can be considered an unconditional gift. Recipients are under no obligation to pay.[153]

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[149] M.G.L. c. 93, § 48
[150] M.G.L. c. 93, § 81
[151] *Credit Repair Organizations Act*, U.S.C. § 1679, *et. seq.*
[152] *FTC Facts for Consumers: When and How to cancel a Sale,* Federal Trade Commission website.
[153] M.G.l. c. 93, § 43

FTC's Mail and Telephone Order Rule

The Federal Trade Commission's Mail or Telephone Order Rule covers all merchandise ordered by mail, phone, over the internet, or via the fax machine. It stipulates that if a merchant does not promise a specific delivery time, the merchandise ordered must be delivered within 30 days of the merchant's receipt of the order (or the date merchandise is charged to your credit card.) If the company is unable to ship within the promised time, the company must give the buyer the choice of agreeing to the delay or canceling the order and receiving a prompt refund. However, if you are applying for credit to pay for your purchase and a company doesn't promise a shipping time, the company has 50 days to ship after receiving your order.[154]

Resolving Consumer Disputes

If a violation occurs, and a consumer is dissatisfied with the goods/services he received, there are several ways in which the consumer can attempt to retrieve what he lost:

- **Rejection** - the consumer looks over the goods and rejects them if they do not conform to the warranty or contract in any way. He or she must notify the seller reasonably soon, and should then receive a refund.[155]
- **Cover** - the consumer buys substitute goods and collects the difference between the contracted goods and the substitute goods from the seller.
- **Repair**
- **Specific Performance** - the consumer contracts for a specific good to be made and it does not come through. In this case, the consumer can sue for refund, fulfillment of the contract and/or appropriate damages.
- **Add Incidental Damages** - incidental damages arise from expenses from receipt and care of faulty goods and/or from expenses incurred as a result of delay or breach of warranty. A consumer can add incidental damages to his claim.

Problems with Collecting Damages

In Consumer cases, there are some common problems associated with collecting damages.

Insolvency or Bankruptcy of the Seller

A buyer can sue a bankrupt seller, but unless the seller has already been paid for services, the buyer is low on the totem pole of collectors from the seller. For this reason, filing a small claim is often futile.[156]

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[154] *FTC Facts for Consumers: Shopping by Phone or Mail,* Federal Trade Commission website.
[155] M.G.L. c. 106, § 2-602
[156] M.G.L. 106, § 2-502

Insolvency or Bankruptcy of the Buyer

A seller may refuse to sell goods to a bankrupt or insolvent buyer (except with cash payment). If a bankrupt consumer does not pay for goods received, a seller may reclaim the goods within 10 days of the receipt. (This is subject to the rights of the buyer in the usual course of exchange. It is best to give a consumer time to pay for a purchase.)[157]

Death

One may sue the state, but death is often a good enough excuse for the judge to end a debt.

[157] M.G.L. c. 106, §2-702

Chapter 6

Auto Law

Automobile Law encompasses three main laws that apply when an individual purchases either a new or used car, and then discovers, soon after purchasing it, that it is defective in way. The three laws are the *Massachusetts Lemon Law, The Lemon Aid Law,* and *The Used Vehicle Warranty Law*.

Massachusetts Lemon Law[158]

This law is intended to protect persons who buy new motor vehicles with substantial defects. It requires the dealer to repair any such defects and demands a refund, if, after a reasonable number of repair attempts, the defect persists.

Any new car, motorcycle, van or truck bought in Massachusetts from a new-car dealer for personal or family purposes is covered by the Lemon Law for the "term of protection" of one year or 15,000 miles of use from the date of original delivery, whichever comes first. In the case of a replacement vehicle provided by a manufacturer to a consumer under this section, one year or fifteen thousand miles from the date of delivery to the consumer of said replacement vehicle, whichever comes first.[159]

The law defines a "Lemon" as a new motor vehicle that has defect(s) that substantially impair the use, market value, or safety of the vehicle and has not been repaired after a reasonable number of attempts.[160]

Reasonable Number of Attempts

The Lemon Law defines a reasonable number of repair attempts as:

Repair is attempted 3 or more times for the same substantial defect, and the problem persists or recurs within the term of protection.

OR

Repair attempts for any substantial defect or combination of defects total 15 or more business days, not necessarily all at one time.[161]

[158] M.G.L. c. 90, § 7N 1/2 (1)
[159] M.G.L. c. 90, § 7N 1/2(1)
[160] M.G.L. c.90, §7N 1/2 (1)
[161] M.G.L. c. 90, 7N 1/2 (4b)

If a Defect Persists

If a defect still exists after a reasonable number of repair attempts, the consumer must do the following:

Grant the manufacturer (not the dealer) one final opportunity of an additional ***seven*** business days to fix any substantial defect. A notification of this final opportunity should be sent to the manufacturer/dealer by both certified mail and regular mail. Be sure to send it to the manufacturer's regional and/or corporate office (or both).[162] You may get this address from the Office of Consumer Affairs and Business Regulation, (617) 727-7780.

After the 7 business days, if the defect has not been repaired (or has been repaired and the problem recurs), the consumer may return the vehicle to the manufacturer and demand either a refund or a replacement. A consumer has a right to reject the offer of a replacement vehicle and demand a refund, but does not have the right to demand a replacement vehicle if offered a refund.[163]

Not Covered by the New Car Lemon Law

Vehicles NOT covered by the New Car Lemon Law include:[164]

- auto homes
- vehicles used primarily for off-road use (e.g. dirt bikes)
- vehicles used primarily for business purposes

Failure to comply with the Lemon Law is an unfair and deceptive act under the Massachusetts Consumer Protection Act, c. 93A, which may entitle you to double or treble damages, plus court costs and reasonable attorney's fees. The buyer must begin by sending the manufacturer a 30-day demand letter.[165]

The Lemon Aid Law[166]

This law is intended to protect persons who have purchased vehicles that fail the state safety or emissions test. This law allows for a cancellation for the sales contract and a refund. It applies to private party sellers, as well as dealers. The Lemon Aid Law covers all motor vehicles purchased for immediate personal or family use, new or used.

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[162] M.G.L. c. 90, §90, 7N 1/2 (4b)
[163] *Attorney General's Guide to Buying or Leasing a Car*, Massachusetts Attorney General's Office Website.
[164] M.G.L. c. 90, § 7N (1/2) (1)
[165] *A Massachusetts Consumer Guide to New & Leased Car Lemon Law*, Office of Consumer Affairs and Business Regulation
[166] M.G.L. c. 90, § 7N

What is a Lemon Under This Law?

In order for a car to be covered under the Lemon Aid Law, the car must meet two requirements:[167]

1. The vehicle must fail to pass the state safety and/or emissions test within 7 days of the date of sale. The failure cannot be caused by your negligence or abuse or by an accident that occurred after the date of sale.
2. The estimated cost of repair of safety and/or emissions-related defects must exceed 10% of the purchase price of the vehicle.

Complying with the Lemon Aid Law

The Lemon-Aid Law requires that a number of things be done within a very short time of purchasing the vehicle, so it is important that callers with automobile cases be immediately called back and assisted with their problems. If a case falls under the category of the Lemon Aid Law, the buyer must: [168]

1. Get a written statement signed by an authorized agent at an inspection station, stating the reasons why the vehicle failed to pass the safety (or combined safety and emissions) test. This safety test must have been conducted within 7 days of the sale.
2. Obtain a written estimate from the inspector of the costs of the necessary emissions or safety-related repairs, showing that these cots exceed 10% of the purchase price.
3. Notify the seller of his/her intention to void the contract under the terms of the Lemon Aid Law, and do so by both regular mail and certified mail (return receipt requested). The buyer should enclose a copy of the written statement and a copy of the written estimate that he/she collected in steps 1 & 2.
4. Deliver the motor vehicle to the seller, even if it must be towed. Bring a witness, copies of (1) the notification letter, (2) the rejection statement, and (3) the estimate. If the seller refuses to accept the car, the consumer should sign a statement with a witness before a notary affirming that the consumer did deliver the car to the seller on that date, but the seller refused to accept the car.

ALL STEPS MUST BE COMPLETED WITHIN 14 DAYS OF THE SALE.

If the above steps are taken within 14 days of the date of sale, then the consumer is entitled to: [169]

1. Cancel the contract that he/she signed for the car or motorcycle sale
2. Obtain a refund from the dealer/private party who sold the motor vehicle to him/her.

[167] M.G.L. c. 90, § 7N
[168] M.G.L. c. 90, § 7N
[169] M.G.L. c. 90, § 7N

Additional Information

Inspection stickers from previous owners are **not** transferable to new owners. This means that consumers who purchase used cars should always have the chair inspected within 7 days of its purchase, even if the inspection sticker on the windshield is still valid. If the car fails the inspection test and repairs are estimated at greater than 10% of the purchase price, then this law will cover them.[170]

Cars that do not run are considered to have **failed inspection automatically** (no written statement necessary). However, the owner must still prove that damages related to safety or emission defects total more than 10% of the purchase price.[171]

In order to qualify for any refund, the damages related to safety or emission defects must total more than 10% of the purchase price. Buyers are **not** eligible for partial refunds if the defects total less than 10% of the purchase price.

The Used Vehicle Warranty Law

This law is intended to protect persons who have purchased used cars. It requires that such person receive a written warranty from dealers for a guaranteed period of time, as determined by the mileage of the car. While this law is helpful for used cars, it is recommended to use the Lemon Aid Law when possible since it typically is quicker than the Used Vehicle Warranty Law. Private party sellers are also required to disclose any known defects under this law. The buyer is entitled to a refund in such a case.

Automobile Dealers (defined as anyone who sells 4 or more cars in a 12 month period),[172] are required to do the following when selling used cars:

(1) Provide a written warranty to consumers, stating that the automobile is under warranty for a certain number of days/mils (depending on the mileage of the car at the time of purchase). The warranty period begins when the car is picked up from the dealer by the consumer. These required warranty periods are:

Mileage at Purchase	Warranty Period (whichever comes first)
Less than 40,000 miles	90 days or 3750 miles
40,000 to 79,999 miles	60 days or 2500 miles
80,000 to 124,999 miles	30 days or 1250 miles
125,000 miles or over	No express warranty

[170] *A Massachusetts Consume Guide to Lemon Aid Law*, Office of Consumer Affairs and Business Regulation, 2001
[171] *A Massachusetts Consume Guide to Lemon Aid Law*, Office of Consumer Affairs and Business Regulation, 2001
[172] M.G.L. c. 90, § 7N 1/4 (1)

(2) Repair defects that impair the use or safety of the vehicle for as long as the vehicle is under the required warranty.

(3) The dealer must incur any and all costs associated with repairing the vehicle during the warranty period, but may legally require the consumer to pay up to $100 toward the total cost of all repairs (i.e. the consumer can be asked to pay, at most, $100 during the warranty period. The dealer must pay the rest.)[173]

If the used motor vehicle's true mileage is not known, the warranty period will be determined by the age of the used vehicle:

Age (x)	Warranty Period (Whichever comes first)
3 years or less	90 days or 3750 miles
3 years > x > 6 years	60 days or 2500 miles
6 years or more	30 days or 1250 miles

The vehicle's age will be determined by subtracting the model year from the year in which the warranty holder purchased the vehicle.

Car dealers cannot ask consumers to give up their rights under the Used Vehicle Warranty Law. Some may try to do so; however, this is illegal, and even consumers who believe that they have "signed away" their rights under this law are still covered.

Although a dealer must repair all defects for the duration of the warranty period, there may be instances where the necessary repairs are so extensive and time consuming that the customer is not really getting his money's worth. As long as the car is still under warranty, a customer has the right to a refund (deducting 15 cents per mile driven by the consumer since the purcha se of the vehicle) if:[174]

1. The persisting defect(s) impair the vehicle's use and/or safety **AND**
2. The vehicle was repaired 3 times for the same defect, and that defect persists or recurs within the warranty period **OR** if the vehicle was out of service by reason of repair for more than 10 business days (not necessarily all at one time) within the warranty period. The repairs need not be for the same defect = 5 days for repairing the brakes plus 6 for changing the transmission counts.

The dealer may repurchase the vehicle without making repairs.

[173] *A Massachusetts Consumer Guide to Used Vehicle Warranty Law*, Office of Consumer Affairs and Business Regulation, 2001
[174] M.G.L. c. 90, § 7N 1/4 (3A) (ii)</

IMPORTANT: If the dealer offers you a full refund under the law, and you refuse to accept it, YOU WILL NOT BE ENTITLED TO FURTHER WARRANTY REPAIRS UNDER THE WRITTEN WARRANTY PROVIDED BY THE DEALER. If you do not agree with the dealer's calculation of the repurchase amount, you can ask the Office of Consumer Affairs and Business Regulation (OCABR) to help calculate it: 617-973-8787. If the OCABR determines that the full repurchase amount is higher than the amount offered by the dealer, the dealer may either offer you the amount determined by the OCABR or withdraw the offer to repurchase. If the dealer withdraws the offer, you will still be entitled to warranty repairs and can apply for arbitration, if you qualify.

Private Sellers

The Used Vehicle Warranty Law requires private party sellers to tell buyers about all known defects before the buyer purchases the vehicle. Failure to do so will entitle the buyer, within 30 days after the sale, to rescind the sale and be entitled the return of all money paid (with a deduction of 15 cents per mile driven by the consumer since the purchase of the vehicle).[175]

If the buyer discovers a defect(s) that impairs the safety of the vehicle or that substantially impairs its use and can show that the seller knew about it and did not disclose it, the consumer may cancel the sale within 30 days of the purchase. The seller must refund the amount paid, deducting 15 cents per mile of use.[176]

It is important to note that not all used vehicles are covered by this law. There are some exceptions to the law. If a vehicle meets any of the following conditions:

- Costs less than $700[177]<ref>M.G.L. c. 90, § 7N 1/4 (7)</ref>
- Has more than 125,000 miles on the odometer when sold
- Is a motorcycle, a moped, a dirt-bike, an auto home, or an off-road vehicle[178]
- Is a leased vehicle[179]
- Is a vehicle used primarily for business purposes[180]

...then it will not be covered by the Used Vehicle Warranty Law. Such vehicles are, however, still covered by an implied warranty of merchantability[181] under which a product must do what it is designed to do with reasonable safety and ease for a reasonable amount of time.[182] Reasonable

[175] M.G.L. c. 90, § 7N 1/4 (8)
[176] M.G.L. c. 90, § 7N 1/4 (8)
[177] M.G.L. c. 90, § 7N 1/4 (7)
[178] M.G.L. c. 90, § 7N 1/4 (1)
[179] M.G.L. c. 90, 7N 1/4 (12)
[180] M.G.L. c. 90, 7N 1/4 (1)</
[181] Uniform Commercial Code, M.G.L. Chapter 106, §2-314
[182] M.G.L. c. 90, § 7N 1/4 (9)

time will take into account the age of the vehicle, mileage on the vehicle, price paid, and other factors.[183]

Arbitration

Manufacturer Sponsored Arbitration

Many vehicle manufacturers offer their own in-house mediation, with manufacturers' representatives and independent consumer advocates on the reviewing panels. Manufacturers' "zone representatives" will investigate problems in an effort to resolve them. To access these programs, the client should contact the specific manufacturer's zone or regional office for details. Manufacturer's arbitration is not required to comply with the Lemon Law standards concerning repairs, timing, or refund or replacement. Therefore, in manufacturer-sponsored arbitration, the manufacturer may propose a resolution that is different from the resolution the Lemon Law would provide. For example the manufacturer may offer to make additional repairs, extend the manufacturer's warranty on the vehicle, or replace the vehicle with a different model.[184]

Better Business Bureau

The Better Business Bureau (BBB) offers a "BBB Auto Line" arbitration program for most vehicles. Many manufacturers, such as Audi, BMW, Lincoln, Mercedes, and Toyota, use the BBB as their sponsored arbitration program. BBB arbitration is not required to comply with the Lemon Law standards. As in manufacturer sponsored arbitration, BBB arbitration may propose a resolution that is different from the resolution the Lemon Law would provide. It is also free and binding only on the manufacturer if the consumer accepts the decision. To file with the Better Business Bureau's AUTO-LINE arbitration, the client can call 1-800-955-5100 or file an online request form at http://www.lemonlaw.bbb.org/

State-certified Arbitration

State-certified arbitration is a very popular way of resolving disputes that arise under the above laws. The Office of Consumer Affairs is the state agency that operates the state-certified Lemon Law Arbitration Program. if the buyer and seller of the car are having trouble coming to terms on the car under the Lemon Law, the Lemon Aid Law, or the Used Vehicle Warranty Law, they may go to state - or court-sponsored arbitration instead of going to court.[185][186] Lemon Law arbitration is designed to be a speedy means of resolving auto disputes, and since most cars cost more than the small claims monetary limit of $7,000, arbitration may be a better option for many people than bringing a suit to District or Superior court. Lemon Law arbitration is governed by the same rules as all other types of arbitration.

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[183] *Attorney General's Guide to Buying or Leasing a Car*, Massachusetts Attorney General's Office Website.
[184] *Attorney General's Guide to Buying or Leasing a Car*, Massachusetts Attorney General's Office Website.
[185] M.G.L. c. 90, § 7N 1/4 (3A)
[186] 201 CMR 11.00

To qualify for this arbitration program, the client must have done everything that is stated in the lemon laws, including, for new cars, giving the manufacturer a final opportunity to repair the defect. If the vehicle continues to have the same defect following the final repair attempt, or it recurs during the period that the Lemon Law applies, you may apply for Lemon Law arbitration.

New Car Lemon Law

To be accepted for new car arbitration, the request for arbitration must be submitted on the designated form and received by the arbitration firm or OCABR within 18 months of the date that the owner took possession of the car.[187]

Used Vehicle Warranty Law

To be accepted for used car arbitration, requests for arbitration must be submitted within 6 months of the date that the consumer took possession of the motor vehicle (for used cars).[188]

You must apply for arbitration on the official form provided by the Office of Consumer Affairs. You may go to state-certified arbitration even if you have previously gone to BBB or manufacturer arbitration, but not if you have previously gone to court. The arbitration hearing must generally be held within 44 days of the receipt of the request for arbitration, and the arbitrator must issue a decision within 45 days of the hearing. The manufacturer must either comply with the arbitrator's order or file an appeal within 21 days of the arbitrator's decision.[189] There is no fee for this arbitration.

Filing a claim is, of course, another way of resolving these disputes. Remember, though, the limit in small claims court is $7,000. Cases in which the plaintiff hopes to reap more than $7,000 must be filed through regular, civil court, and will require the assistance of an attorney.

Auto Repair

You take your car to the repair shop for a yearly tune-up, and when you go to pick up your car, you're informed by the mechanic that you need new brakes, an alignment, and a paint job, none of which you expected and all of which will cost you about $1,500. Sounds familiar? Well, Massachusetts law protects individuals from unfair treatment at the hands of auto mechanics. Failure of auto mechanics to comply with these laws qualifies as unfair or deceptive practices or acts. The laws applying MA are:

[187] 201 CMR 11.00 (2a)
[188] 201 CMR 11.00 (3a)
[189] *Attorney General's Guide to Buying or Leasing a Car*, Massachusetts Attorney General's Office website

Untrue Statements

A repair shop may not make any statements which it knows to be untrue, such as calling for unnecessary repairs, claiming the consumer's car is in a dangerous condition when it is not, or telling the consumer repairs have been done when they have not.[190]

Record Information

Repair shops must record information about the customer and the car before beginning any work, including name, address, telephone number; the car's makes, year, registration number, odometer reading; and the specific repairs requested or brief description of the problem to be fixed. [191]

Written Estimates for All Repairs

A written estimate must be supplied by an auto repair shop and approved by the customer prior to repairs. If there is a charge for the estimate, the dealer must inform the customer of this charge prior to the verbal or written agreement authorizing repair, unless this charge is posted conspicuously. This law does not hold if the consumer brought his or her motor vehicle to the repair shop before or after its usual business hours, or, at the customer's request, repair services are done off the premises of the repair shop.[192] [193]

Old Parts

The customer is entitled to any old parts that are replaced (i.e. if a muffler is replaced, the mechanic must actually give the old muffler to the customer, after which the customer can do what he chooses with it (including giving it back to the mechanic). [194]

Improper or Shoddy Repair Work

The repair shop must correct any improper or shoddy repair work at no additional cost to the consumer.[195]

Repair Duration

A repair shop must complete work on a car the same day it is delivered unless the customer is notified to the contrary and consents to this delay.[196]

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[190] 940 CMR 5.05 (1)
[191] 940 CMR 5.05 (2)
[192] 940 CMR 5.05 (3)
[193] 940 CMR 5.05 (4)
[194] 940 CMR 5.05 (4)
[195] 940 CMR 5.05 (8)
[196] 940 CMR 5.05 (6)

Storage Costs

A repair shop can only charge storage costs for a vehicle if the consumer is informed before the charges begin to accumulate or if there is a sign posted conspicuously stating the conditions under which storage costs will be charged.[197]

Use of Customer's Car

A repair shop may not use a customer's car for any purpose other than a test drive or delivery unless the customer consents in advance.[198]

Itemized Bill

The repair shop must provide an itemized bill upon completion of the work.[199]

If any of the above laws regarding auto repair has been violated by a repair shop, and the consumer wishes to take legal action, he/she must first write a 30-day demand letter to the repair shop because it will fall under Chapter 93A of Consumer Law.[200] A dissatisfied customer may also wish to file a complaint with the Better Business Bureau by calling (508) 652-4800.

Auto Accidents

There are two possible claims that can arise out of auto accidents:

- **Property Damage/Damage to Vehicle** - as a result of an auto accident, an individual's vehicle was either "totaled" or sustained damages that needed repair OR other property was damaged as a result of the accident
- **Personal Injury** - as a result of an auto accident, an individual sustained bodily injury that forced him/her to receive medical attention or miss at least a day of work, for example

In both cases, the registered owner of the vehicle driven by the driver causing the accident (i.e. the driver who was determined to be at fault either by the police officer who wrote the accident report or if no accident report was written, by the clerk magistrate after listening to both parties at the small claims hearing), can be sued in small claims court.[201]

The monetary limit for these types of cases, however, differs.

- **Property Damage/Damage to Vehicle** - there is no monetary limit for property damage caused by another vehicle. Plaintiffs may sue for as much as the damaged vehicle was worth at the time

[197] 940 CMR 5.05 (4)
[198] 940 CMR 5.05(12)
[199] 940 CMR 5.05 (9)
[200] M.G.L. c. 93A, § 2
[201] M.G.L. c. 231, § 85A

of the accident (i.e. its fair market value) or the cost of accident-related repairs. This is the only exception (other than double and treble damages) to the $7,000 monetary limit in MA Small Claims Court.[202]

- **Personal Injury** - the ordinary $7,000 limit applies to these cases. Often times the sum of all doctor's bills and lost wages will be greater than this $7,000 limit. If this is the case, and the plaintiff wishes to sue for the entire amount in addition to pain and suffering, he/she must file a civil suit, usually with the help of an attorney.[203]

[202] M.G.L. c. 218, § 21
[203] M.G.L. c. 231, § 6D

Chapter 7

Personal Disputes

Personal Disputes are legal conflicts that arise that do not clearly fit the other chapters. These disputes typically arise from situations in which a person feels unfairly wronged by another and looks to remedy the situation through mediation, arbitration, or filing a small claim. We have put these cases into the category of "personal disputes." Examples that may fall under this heading are:

- A dry cleaner ruins your clothing, drapes, etc.
- You are attacked and bitten by your neighbor's pit bull.
- The family across the street has teenage children who regularly throw very loud parties that substantially disturb your peace and quiet.
- You were treated rudely, perhaps to the point of harassment, by a company representative.
- You were given a black eye by an angry little league parent when you, as the coach, failed to put his son in as a pinch hitter

Cases such as these, while variant, will typically follow a simple legal principle: one person suffered an injury (either personal or financial) that resulted in a monetary loss, and somebody else was directly responsible for this injury. There are several legal principles on which a personal dispute can be based on.

Negligence

Negligence, in short, amounts to carelessness. Legally, negligence is roughly defined as the failure of a person or persons to take precautions to prevent the occurrence of **reasonably foreseeable** consequences that may result from a dangerous condition on their property, or under their supervision, given that the person was **aware of the dangerous conditions** and had **ample time to correct it**, yet did not.[204] In the case of the neighbor's aggressive pit bull, a plaintiff who was bitten by the dog (and thus suffered some degree of monetary loss, be it time off from work, doctor's bills, etc.) would have to show:

1. That the neighbors were aware of the fact that the pit bull was dangerous (perhaps because the plaintiff told them or because aggressiveness is common among pit bulls) and had ample time to do something to alleviate the problem.
2. That they nonetheless did not take reasonable precautions to avoid attacks on neighbors (such as building a fence, tying it to a strong leash, or watching over it).
3. That, because of their negligence, a reasonably foreseeable consequence of keeping an unrestrained pit bull (i.e. a bitten neighbor) occurred.

[204] *Negligence: Law Dictionary*, Law.com online law dictionary

Usually, a plaintiff will want to establish a prima facie case of negligence, which will shift the burden of proof to the defendant.

Bailment

Bailment is the legal term for safekeeping. Bailment cases are a specific kind of negligence case. Legally, bailment occurs when one party entrusts a piece of its property to another party, under the assumption that this piece of property will be returned in **at least as good as a condition as when it was surrendered**[205]. The piece of property may be handed over either for safekeeping or for the performance of a particular service (e.g. tailoring). If the item(s) are not returned in good condition or are not returned at all, one may attempt to get compensation through small claims court. In the case of a plaintiff whose new silk shirt was ruined by a dry-cleaner, the plaintiff would want to establish a prima facie case of negligence by showing:

1. That the dry-cleaner willingly accepted the shirt for dry-cleaning. A dry cleaning ticket could serve as evidence for the dry cleaner's willing acceptance of the shirt.
2. That the shirt was in satisfactory condition when it was given over to the dry-cleaner. If the shirt had a stain on it, and was returned with the same stain, then it was technically returned in the same "satisfactory condition" in which it was given to the dry-cleaner. In this case, a person cannot sue for negligence, as the dry cleaner did not do additional harm to the shirt. A dry-cleaning stub (that indicates the condition of the item when it was dropped off) or a witness may help to establish the prior condition of the item.
3. That the shirt was returned in a damaged condition (or not returned at all). The best evidence is the actual item that was damaged.[206]

If a plaintiff can show that his or her goods were damaged in the defendant's possession, then the burden of proof shifts to the defendant to show that he or she did take proper or adequate care of your possessions.

If the bailer (the person who was in possession of the plaintiff's goods) did not knowingly accept responsibility for the items, then the plaintiff is not likely to win a suit against the bailer. For instance, if you mistakenly leave your purse in a restaurant, and find $40 missing from your wallet when you retrieve the purse, you cannot sue the restaurant for negligence, as it never actually "accepted" your property and promised it safekeeping. This type of bailment is called constructive bailment, and liability is often difficult to prove. If, in contrast, you gave your purse to a coat-checker in a restaurant and it was returned to you with $40 missing from your wallet, liability is easier to prove - this type of bailment is called active bailment.[207]

[205] *Bailment Law and Legal Definition*, USLegalForms.com
[206] *Insurance and the Legal Process*, a Bested.com Study Guide
[207] *Bailment: Law Dictionary*, Law.com online law dictionary.

Nuisance

A nuisance is created when one party intentionally engages in actions intended to harass or disturb another, and this disturbance causes the harassed party physical (and/or mental) losses.[208] An "illegal dunner" (who calls to request payment of a debt more often than the laws allow), a neighbor who throws extraordinarily loud parties every weekend or a "stalker" who leaves a plaintiff notes and phone messages twenty times daily, may be creating a nuisance, and could be sued in small claims court (although, in the case of a stalker, a client may wish to seek additional legal restraint against this person). A plaintiff in a nuisance case would have to show:

1. That the actions of the other party were deliberate and done with an intention to harass. This means a neighbor's smelly garbage (that sits outside a plaintiff's bedroom window) is only a nuisance if the neighbor is aware that he is disturbing the plaintiff and does not correct the problem.
2. That these actions have substantially diminished his day-to-day enjoyment of life. Explaining why the actions drove the plaintiff to the point of actually filing a small claim should do the trick.
3. That the actions of the other party were unreasonable (i.e. the benefit to the defendant was significantly less than the cost/nuisance to the plaintiff).
4. That the plaintiff suffered a monetary loss as a result of the defendant's behavior. Remember, a monetary loss can sometimes be alleged if one undergoes severe mental distress.

Assault and Battery

Assault, in its legal sense, occurs when someone tries to physically harm you in a way that makes you feel immediately threatened.[209] You do not need to be actually hit to suffer an assault. Battery occurs when someone physically contacts you with the intent to harm you.[210] Pointing a gun at you (assault) and then shooting you in the leg (battery), constitutes an "assault and battery". Although assault and battery is a criminal offense, it is also a civil wrong, and thus, if the damages sustained are less than $7,000, a person can sue in small claims court.

Intentional Infliction of Mental Distress

Intentional Infliction of Mental Distress is a specific claim against intentional actions to inflict extreme emotional or mental stress. In order to successfully bring this claim, one must prove:

1. The defendant intentionally reckless or dangerous
2. The defendant's actions were outrageous and extreme

[208] *Nuisance: Law Dictionary*, Law.com online law dictionary
[209] *Assault:Law Dictionary*, Nolo.com online law dictionary.
[210] *Battery: Law Dictionary*, Nolo.com online law dictionary.

3. The defendant's actions caused the plaintiff distress
4. Plaintiff suffers severe emotional distress as a result of defendant's conduct.

The intent of the act need not be to bring about emotional distress. A reckless disregard for the likelihood of causing emotional distress is sufficient. For example, if a defendant refused to inform a plaintiff of the whereabouts of the plaintiff's child for several years, though that defendant knew where the child was the entire time, the defendant could be held liable for IIED even though the defendant had no intent to cause distress to the plaintiff.

The conduct must be heinous and beyond the standards of civilized decency or utterly intolerable in a civilized society. Whether the conduct is illegal does not determine whether it meets this standard. Essentially, the activity must make someone say "That's Outrageous" for it to qualify. Typically this act must also be done in public, gain publicity, or be publicly known.

The emotional distress suffered by the plaintiffs must be "severe." This standard is quantified by the intensity, duration, and any physical manifestations of the distress. A lack of productivity or depression documented by professional psychiatrists is typically required here, although acquaintances' testimony about a change in behavior could be persuasive. An example of an act which might form the basis for a claim of intentional infliction of emotional distress would be sending a letter to an individual falsely informing the person that a close family member had been killed in an accident.

Breach of Contract

Breach of contract is a legal cause of action in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. If the party does not fulfill his contractual promise, or has given information to the other party that he will not perform his duty as mentioned in the contract or if by his action and conduct he seems to be unable to perform the contract, he is said to breach the contract.

There are many different types of breaches of contract.

A **minor breach** is a partial or immaterial breach of the contract that does not actually affect the entirety of the contract. An example of this would be the request that in a plumbing job all pipes be green when in reality the plumber installs blue. If that is simply a request in the contract, then you are entitled to the difference in the cost of what you asked for compared to what you got. In the case of the pipes, since the pipes are the same cost, you would not be entitled to any money.

If a specific request is actually a condition to the completion of the job, then this is a **material breach of contract.**

A material breach is any failure to perform that permits the other party to the contract to either compel performance, or collect damages because of the breach. If the contractor in the above example had been instructed to use copper pipes, and instead used iron pipes which would not last as long as the

copper pipes would have, the homeowner can recover the cost of actually correcting the breach - taking out the iron pipes and replacing them with copper pipes.

A **fundamental breach** is a breach so fundamental that it permits the aggrieved party to terminate performance of the contract, in addition to entitling that party to sue for damages.

Other Terms

Assumption of Risk

A tactic sometimes used by defendants to explain why they are not liable for a plaintiff's damages. For example, if a skier breaks his leg after getting his ski caught in a large chunk of ice on the slopes, then sues the ski resort for negligence (because they did not keep the slopes in a safe condition), the ski resort may counter that the skier took on an assumption of risk when he decided to go skiing, and thus they are not to be held liable for the injury. While this argument may be persuasive to a clerk magistrate, it is explicitly discouraged by the law in certain cases.[211]

Consequential Damages

The amount of any damages that were sustained by a plaintiff as an indirect result of the actions of the defendant.[212] For example, if a reckless driver crashes into a plaintiff's car, causing it to require $1300 worth of repairs, he may also sue the driver for the $300 he had a to spend on rental cars as a result of having his own car in the shop.

Covenant of Quiet Enjoyment

A covenant of quiet enjoyment is typically an agreement included in a lease agreement that states that the individual has the ability to live in a given location with relative quiet. The covenant of quiet enjoyment typically is included with individuals who have some medical or psychological reason for requiring a quiet living arrangement, but anyone can have it.

Disclaimer of Liability

A defendant may claim that it was made clear to the plaintiff (either on a receipt, a sign, a contract, a coat-check stub, a dry-cleaner's stub, etc.) that he was not responsible should an item be lost or damaged while the item was in his custody. In other words, the plaintiff knew that there was some risk involved in the transaction, and yet agreed to it anyway. In some cases, this will excuse the defendant from liability. However, if the disclaimer is not posted conspicuously (i.e. in a place where the plaintiff would have been expected to see it), or is written in overly fine print, the disclaimer may be deemed

[211] M.G.L. c. 231, § 85
[212] M.G.L. c. 106, §2-715

invalid. In short, if the plaintiff can prove that he was made unaware of any disclaimer, he may succeed in convincing the clerk magistrate to rule in his favor.

Prima Facie

If a plaintiff is able to prove that another party took on a duty of care (i.e. a dry cleaner took responsibility for a shirt), that he breached that duty (i.e. the cleaner ruined the shirt), that this breach of duty was the proximate cause of damages to the plaintiff, and that a monetary value can be placed on these damages, then a prima facie case of negligence has been established. Once this occurs, then the burden of proof shifts to the defendant, who must now explain why he should not be held liable for the damages.[213]

Punitive Damages

Civil courts can sometimes award punitive damages - money awarded to the plaintiff that is above and beyond the direct, consequential and/or mental damages that he as actually sustained. A plaintiff cannot seek punitive damages in small claims court.

Reasonableness

A standard employed in many small claims cases to determine whether a party is liable for damages. For example, a clerk magistrate may conclude:

"It was reasonably foreseeable that the plaintiff's young child would jump on the defendant's backyard trampoline (perhaps because the plaintiff lived right next door); hence the defendant is liable for the child's injuries."

"The defendant took reasonable precautions to ensure against a trampoline injury (i.e. he erected a fence between the two properties, or warned the plaintiff to watch his child carefully when playing outside); hence the defendant is not liable for the child's injuries."

"The defendant was given a reasonable amount of time to correct the problem (i.e. it had been 6 months since the trampoline was installed, and still the defendant did not erect a fence or issue a warning to the plaintiff); hence the defendant is liable for the injuries."

The standard of reasonableness applies in non-negligence cases as well. In short, it allows the clerk magistrate some discretion in deciding whether or not a claim is legitimate.

[213] *Everybody's Legal Dictionary*, Nolo.com LawCenter Dictionary

Chapter 8

Credit/Debit Law

Disputes often arise over the payment of debt or the collection of credits. These debts can arise from credit cards, loans, or other ways in which clients either owe money or are trying to actually recover debts that are owed to them.

Debt Collection

A debt arises when one party (the creditor) loans money to another party (the debtor) with an expectation of being paid back at a later date (usually with interest.) At time a person will find himself burdened with more debt than he can handle; however, all debts must be repaid according to the terms of the loan contract, even if economic hardships or other problems arise for the debtor. This means a debtor who finds himself in an economic tough time should immediately:[214]

- Contact each of his creditors and explain the situation.
- Try to work out a payment plan that, while different from the one originally agreed upon, will be feasible for the debtor and satisfactory for the creditor.
- Stick to the plan you work out. Although creditors are usually eager to work with their debtors to solve problems, they may lose patience if a debtor often reneges on newly formed payment plans.
- Consider contacting a credit counseling service. This service works out a payment plan for the debtor, and distributes the actual payments to the creditors.

Other methods of dealing with debt include consolidating debt through loans or declaration of bankruptcy. These are steps with serious consequences and should be taken only after consulting with an attorney.[215]

Although working toward a solution is advantageous for both sides, if a debtor fails to pay back the creditor, the creditor will likely take action to try to get his or her money back. Remember, if a client is the debtor, YOU OWE THE MONEY. Therefore, a debtor should do everything they can to pay back the money. There are no laws that allow you to simply "escape" debt.

[214] *A Massachusetts Consumer Guide; Managing Credit and Debt*, Massachusetts Consumer Affairs and Business Regulation.
[215] *A Massachusetts Consumer Guide; Managing Credit and Debt*, Massachusetts Consumer Affairs and Business Regulation.

Dunning (the practice of a creditor trying to encourage the payment of debts) is legal, but has a few restrictions.[216] A creditor may not:

- Call the debtor at home more than two times in each 7-day period or at any other place in each 30-day period for each debt.
- Call the debtor and not identify himself as a person calling on behalf of a creditor
- Send collection notices to the debtor that openly implies that the person is in debt.
- Tell anyone about the debt in hopes of intimidating the debtor into paying.
- Contact the debtor outside of normal waking hours (8AM to 9PM).
- Contact the debtor directly when the creditor has been notified to communicate only with the debtor's attorney.
- Cause the debtor to be charged for long distance phone calls.
- Falsely threaten to take legal action.
- Threaten to use violence
- Use obscene language

For telephone, gas and electric utility companies, however, some exceptions are made.[217]

If creditors engage in illegal dunning practices, they should be reported to the Office of the Attorney General (617) 727-8400.

The following are lawful methods of debt collecting for debts arising from a court order or adjudication:

- Set-Off: A bank where a debtor has funds deposited and to which a debtor owes money withdraws money from the debtor's account(s) to pay off the overdue debt. The bank does not have to go to court to do this, but it must notify the debtor in writing when it has "set-off" the account.[218]
- Lien: If agreed upon by both parties prior to a loan contract, a lien allows a creditor to take action against a debtor in the event of unpaid debt. This usually occurs by one of two methods:
    1. Foreclosure: A creditor takes ownership of a delinquent debtor's house. The creditor usually sells the house to pay off the balance of the debt, and the debtor is forced to move out.[219]
    2. Repossession: A creditor (usually a bank) takes possession of whatever property the debtor has used as collateral for a loan in the event the debtor is delinquent. To do this, the creditor must take the following steps:[220]
        a. Inform the debtor within 10 days of the missed payment that the debtor has 21 days to cure the default (bring the loan up to date) or repossession will occur.

[216] 940 CMR 7.00
[217] 940 CMR 7.04 (3)
[218] M.G.L. c. 62D, § 9
[219] *Consumer Concerns for Older Americans: Steps that Advocates Can Take to Help Prevent Foreclosure*, National Consumer Law Center, Inc.
[220] M.G.L. c. 255, § 131

b. If the default is not cured, the creditor can take possession of the property. However, the creditor must notify the debtor that the debtor has a right to regain possession within 20 days and notify how this can occur.

If the debtor cannot meet the terms to regain possession, the creditor may resell the property. [221]

Homestead Act

The only exception to this comes in the form of the Homestead Act. The Homestead Act allows homeowners to protect their principal place of residence from collections actions that might otherwise force the sale of the home to pay for an outstanding debt. In MA, the homestead exemption is $500,000. This is not applicable for debts accumulated prior to purchase of home, court ordered support payments to spouse or children, debts for taxes, or debits on 1st/2nd mortgages. [222]

If the unpaid balance on a debt is less than $2,000, then the debtor is not responsible if the property is sold for less than the amount owed. If the balance owed is greater than $2,000, the debtor is financially responsible for any discrepancy between the amount owed and the resale value. If the property is resold for more money than is owed, the creditor MUST pay the surplus to the debtor without the debtor having to ask for the money. The creditor may always resort to a lawsuit to make the debtor pay the balance owed, even if this means taking possession of other assets. [223]

Debt Collection Agencies

If you do not pay a bill, over time, your outstanding bill gets sold to debt collector agencies. Debt collection agencies buy outstanding bills in bulk at a very low price, and then ring people to court to collect their "debts".

If you are facing a debt collection agency in court, remember the following tips:

- Always show up to your trial
- Ask the lawyer to itemize each cost associated with the amount they claim you owe: By the time your debt gets to the debts collection agency, it has been passed along many hands, and often the debt collection agency cannot itemize the bill.
- Bring all documentation you have. Having your own documentation shows the court that you are organized and gives you the ability to know what you actually owe instead of simply accepting what the debt collection agency says you owe.

[221] M.G.L. c. 255, § 131
[222] Great Boston Legal Service Training with Betsey Crimmen, April 2006.
[223] M.G.L. c. 255, § 13J.

Credit Disputes

Congress passed the Fair Credit Billing Act in 1974 to help consumers resolve disputes with creditors and to ensure fair handling of credit accounts. The Act generally applies only to "open end" credit accounts, which include credit cards, revolving charge accounts (such as department store accounts), and overdraft checking. The Act covers the periodic bills received for such accounts, but does not apply to loans or credit sales that are paid according to a fixed schedule until the entire amount is paid back.[224]

When a mistake appears on a bill, the customer must send a notice to the address provided on the bill for billing error notices (and not, for example, directly to the store, unless that's where the bill says it should be sent) within 60 days after the bill containing the error was mailed.[225]

The letter must include:[226]

1. The customer's name and account number.
2. A statement that the customer believes there has been a billing error and the dollar amount involved.
3. The reasons why the customer believes there is a mistake.

It is a good idea to send the letter by certified mail, with a return receipt requested. The letter claiming a billing error must be acknowledged by the creditor in writing within 30 days after it is received, unless the problem is resolved within that time. In any case, within two billing cycles (but not more than 90 days), the creditor must conduct a reasonable investigation and either correct the mistake or explain why he believes the bill to be correct.[227]

A customer may withhold payment of the amount in dispute including the affected portions of minimum payments and finance charges until the dispute is resolved. The customer is required to pay any part of the bill that is not disputed.

Even after the dispute settlement procedure has ended, a customer may still feel the bill is wrong. If this happens, write the creditor within 10 days after receiving the explanation and state the reasons for refusing to pay the disputed amount. The creditor may begin collections procedure. If the creditor reports the individual to a credit bureau as a delinquent, the creditor must also report that the individual does not believe he owes the money.[228]

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[224] Fair Credit Billing Act; Public Law 930495, 93rd Congress, H.R. 11221; Oct. 28 1974
[225] *The Attorney General's Consumer Guide to Credit,* Massachusetts Attorney General's Office Website.
[226] *The Attorney General's Consumer Guide to Credit,* Massachusetts Attorney General's Office Website.
[227] *The Attorney General's Consumer Guide to Credit,* Massachusetts Attorney General's Office Website.
[228] Fair Credit Billing Act of 1974

Credit History

A credit history is a collection of data concerning a person's previous debts and whether or not these debts were paid satisfactorily. This history is usually compiled by specialized agencies and used by potential creditors as a collection of facts, not necessarily as an evaluation.

The agencies that gather and sell this information are called "Consumer Reporting Agencies" or CRAs. The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This report generally contains information about where a person lives and his bill-paying habits.[229]

If a person is denied credit, he has the right to be told by the creditor the specific reasons for the credit denial if he asks.[230] If information in a credit report was used to deny credit, the person has the right to be told by the creditor which CRA prepared the report,[231] and also has the right to obtain a free copy of his report from that CRA.[232]

Massachusetts residents are also entitled to request one free copy of their credit report per CRA per calendar year, and may request an additional copy at any time for a reasonable free.[233]

A person is protected from the circulation of inaccurate or obsolete information that may affect his credit standing, and he may dispute the accuracy of statement contained in his file. If the information in a person's file is inaccurate or incomplete, the person must notify the CRA in writing.[234] The CRA must investigate and, if necessary, correct each disputed entry in a reasonable amount of time. If a person cannot resolve the dispute with the CRA, he is entitled to enter a statement (100 words maximum) in the file and have it included in all future reports.[235]

Negative information that is more than seven years old cannot be included in the credit report. The main exceptions to this rule include bankruptcy, which may be reported for up to ten years; criminal convictions, which may be reported at any time; and lawsuits or unpaid judgments against the individual, which can be reported until the statute of limitations runs out.[236]

Loans

The practice of lending is defined as money given in advanced from one party to another with the expectation that the original creditor will be paid back. Typically, the practice of lending comes with

[229] *FTC Facts for Consumers: Fair Credit Reporting,* Federal Trade Commission
[230] *FTC Facts for Consumers: Equal Credit Opportunity*, Federal Trade Commission.
[231] *A Massachusetts Consumer Guide: Managing Credit and Debt*, Massachusetts Office of Consumer Affairs and Business Regulation
[232] *The Attorney General's Consumer Guide to Credit,* Massachusetts Attorney General's Office Website
[233] M.G.L. c. 93, § 56(b)
[234] *FTC Facts for Consumers: Fair Credit Reporting,* Federal Trade Commission
[235] *The Attorney General's Consumer Guide to Credit,* Massachusetts Attorney General's Office Website
[236] *FTC Facts for Consumers: Fair Credit Reporting,* Federal Trade Commission

interest, where the group that borrowed the money must pay back all that they borrowed with some additional gain (usually money).

There are two types of loans, secured and unsecure loans.

- **Secured loans** are backed by some sort of collateral. This collateral can be anything, including homes, cars, money, insurance policies with cash values, or even cattle. Anything of value can be used in this loan as long as you can prove you own it.
- **Unsecured loans** are **not** backed by collateral.

Secured loans use three basic instruments to create the loan. Secured loans will have the collateral (and proof of ownership) ready, along with a contract that has the terms of payment, interest and other agreements, and a security deposit. Federal law states that the Annual Percentage Rate (APR) be shown **boldly**. The APR is the interest rate you will pay on an annual basis, factoring in any long or short payment start dates, extra fees that are really interest and how often payments are made.

The security deposit shows that the lender has a security interest in the collateral that is being offered in the loan. The document is usually a financing statement for autos and other movable and tangible collateral (called *chattel* property), a mortgage for real estate and a purchase money mortgage for revolving credit (department store credit cards). These all show legally that the lender has an interest in the collateral and can seize the collateral to repay the debt. This seizure is called **repossession** for chattel property and **foreclosure** for real property. This security document is often filed publicly in a county courthouse, where it is made public record. In the case of real estate, however, it must be filed publicly.

Although not always a requirement, most lenders will also make you show proof that you have sufficient insurance for the collateral so that they will be able to recover the loss in the event that the collateral is gone (i.e. a house is used as collateral in a secure loan).

Loans can also be close-ended or open ended. **Close-ended loans** are loans whose terms cannot be changed except through paying off the loan and taking a new loan. For example, if two people are on a loan and one of the individuals wants to be off of the loan, the loan must be paid off to then take out a new loan for the changes to take effect. **Open-Ended loans**, however, do not have such terms. The agreements can be changed. These types of loans are most common with credit cards operated through department stores, while close-ended loans are more common in real estate and autos.

Other Notes

In Massachusetts, loans less than $6,000 are prohibited from charging over 23% interest. This restriction only applies to banks, credit unions and lenders that are licensed through the state of Massachusetts,

however.[237] Therefore, loans that are obtained over the internet are not subject to Massachusetts regulations.

Further Questions

Questions and complaints about credit or debt collection practices of collection agencies and banks should be directed to:

Massachusetts Division of Banks

Consumer Assistance Office

One South Station

Boston, Massachusetts 02110

(617) 956-1400 ext. 501

[237] M.G.L. c. 140 §96

Appendices

AGREEMENT FOR JUDGMENT
AND FOR PAYMENT ORDER

DOCKET NUMBER

Trial Court of Massachusetts
Small Claims Session

PLAINTIFF(S) WHO ARE PARTIES TO THIS AGREEMENT

VS.

COURT DIVISION

DEFENDANT(S) WHO ARE PARTIES TO THIS AGREEMENT

☐ *Check here if defendant has moved and write new address above or on back of court copy*

REQUESTED DATE OF PAYMENT REVIEW

☐ *No payment review requested*

☐ **JUDGMENT FOR PLAINTIFF(S).** It is hereby agreed that in this small claim the Court may enter a judgment **for the plaintiff(s)** named above and **against the defendant(s)** named above for:

$ _____ DAMAGES

$ _____ COSTS

$ _____ ATTORNEY FEES
(if authorized by contract or statute)

☐ Plus PREJUDGMENT INTEREST from _____ *(date)* at the 12% statutory rate or the _____% contractual rate

☐ Prejudgment interest is waived by the plaintiff.

☐ Postjudgment interest is waived by the plaintiff.

PAYMENT ORDER. It is also agreed that the Court may enter a payment order that requires the defendant(s):

☐ to pay the plaintiff(s) the total amount of the judgment on or before _____ *(date).*

☐ to pay the plaintiff(s) $ _____ each ☐ week ☐ month beginning on _____ *(date)* until the total amount of the judgment is paid in full.

This payment order will not be satisfied with any exempt income listed on pg. 2 of this form.

☐ **REVISED PAYMENT ORDER.** In this small claim the Court has already entered a judgment and it is hereby agreed that the Court may revise that payment order as follows:

This payment order will not be satisfied with any exempt income listed on pg. 2 of this form.

☐ **SATISFIED IN FULL.** It is also agreed that this claim or judgment has already been satisfied in full.
(By court rule plaintiff(s) must file an acknowledgment of satisfaction with the court when the judgment has been paid in full.)

☐ **JUDGMENT FOR DEFENDANT(S).** It is hereby agreed that in this small claim the Court may enter a judgment **for the defendant(s)** named above, and the plaintiff(s) shall take nothing on this claim.

☐ **DISMISSAL.** It is hereby agreed that the Court may enter a judgment **dismissing** this small claim.

☐ **JUDGMENT ON COUNTERCLAIM.** It is also agreed that the Court may enter the following judgment on the **counterclaim** brought by the above-named defendant(s) against the above-named plaintiff(s):

OTHER PROVISIONS OR COMMENTS

Upon acceptance by the Court, a judgment and payment order will be entered in accordance with the above terms and will be enforceable as an order of the Court.

X _____ _____ _____
SIGNATURE OF PLAINTIFF(S) OR ATTORNEY FOR PLAINTIFF(S) PRINT NAME DATE

X _____ _____ _____
SIGNATURE OF DEFENDANT(S) OR ATTORNEY FOR DEFENDANT(S) PRINT NAME DATE

RECORD OF COURT REVIEW *(For optional use by magistrate)*

☐ To be entered as court's judgment and/or payment order. ☐ Agreement was submitted in open court and Rule 7(a) inquiry made of defendant(s) as to any payment order.

X _____
CLERK-MAGISTRATE / ASST. CLERK

INCOME THAT IS EXEMPT FROM PAYMENT ORDERS

1. **ALL INCOME FROM THE FOLLOWING SOURCES** is exempt by law from any payment order:

   - Unemployment Benefits (G.L. c. 151A, § 36)
   - Workers Compensation Benefits (G.L. c. 152, § 47)
   - Social Security Benefits (42 U.S.C. § 401)
   - Federal Old-Age, Survivors & Disability Insurance Benefits (42 U.S.C. § 407)
   - Supplementary Security Income (SSI) for Aged, Blind & Disabled (42 U.S.C. § 1383[d][1])
   - Other Disability Insurance Benefits up to $400 weekly (G.L. c. 175, § 110A)
   - Emergency Aid for Elderly & Disabled (now G.L. c. 117A)
   - Veterans Benefits

     Federal Veterans Benefits (38 U.S.C. § 5301[a])
     Special Benefits for Certain WW II Veterans (42 U.S.C. § 1001)
     Medal of Honor Veterans Benefits (38 U.S.C. § 1562)
     State Veterans Benefits (G.L. c. 115, § 5)
   - Transitional Aid to Families with Dependent Children (AFDC) Benefits (G.L. c. 118, §10)
   - Maternal Child Health Services Block Grant Benefits (42 U.S.C. § 701)
   - Other public assistance benefits (G.L. c. 235, § 34, fifteenth)

2. In addition, **A PORTION OF WAGES OR EMPLOYMENT-BASED RETIREMENT PAYMENTS** is exempt by law from any payment order. The exempt amount is **$400 or 85% of your weekly gross earnings, whichever is greater.**

Massachusetts law exempts the greater of 85% of the debtor's gross earnings or 50 times the greater of the Federal minimum wage ($7.25 as of 7/24/09) or the Massachusetts minimum wage ($8.00 per G.L.c. 151, § 1) for each week or portion thereof. (G.L. c. 224, § 16 & c. 246, § 28). The Federal exemption (15 U.S.C. § §1671-1677) is not applicable as it will always be less than the Massachusetts exemption.

DEFENDANT'S WORKSHEET FOR CALCULATING EXEMPT AMOUNT OF WAGES OR EMPLOYMENT-BASED RETIREMENT PAYMENTS

Write the amount of your **"weekly gross earnings"** here = $ _____

*If your weekly gross earnings are **less than $400**,*
enter the amount of your weekly gross earnings →

*If your weekly gross earnings are **$400–$470**,* enter **$400** →

*If your weekly gross earnings are **more than $470**,*
enter 85% of your weekly gross earnings →

$

This is the amount of your weekly gross earnings that is exempt from any payment orders.

APPEARANCE OF COUNSEL

Trial Court of Massachusetts
District Court Department

CASE NAME:

_____

v.

_____

DOCKET NUMBER: _____

_____ DISTRICT COURT

To the Clerk-Magistrate:

Please enter my appearance as attorney for _____

in the above numbered court action.

ATTORNEY NAME			B.B.O. NUMBER (Required)
ATTORNEY FIRM			TELEPHONE NUMBER
STREET ADDRESS			
CITY / TOWN	STATE	ZIP CODE	

X_____

SIGNATURE OF ATTORNEY

_____

DATE

DEFENDANT'S CLAIM OF APPEAL	DOCKET NO.	Trial Court of Massachusetts District Court Department Small Claims Session

PLAINTIFF'S NAME, ADDRESS AND ZIP CODE	DISTRICT COURT FROM WHICH APPEALED
VS.	DEFENDANT'S DAYTIME TELEPHONE NO.
DEFENDANT'S NAME, ADDRESS AND ZIP CODE	PLAINTIFF'S ATTORNEY
	DEFENDANT'S ATTORNEY

Pursuant to General Laws chapter 218, section 23, I appeal from the decision of the magistrate in this small claim, and request a trial (*check only one*):

☐ by a District Court judge.

☐ by a District Court jury of six persons.

I understand that if I request a trial by a judge, I will not have any right in the future to a trial by a jury.

I received the court's "Notice of Judgment" in this case on _____.
Date

I state under the penalties of perjury that this claim of trial by a judge or a jury is intended in good faith, and that there are questions of fact and law requiring trial by a judge or a jury, specifically:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

This is signed under the penalties of perjury.

DATE	DEFENDANT'S SIGNATURE

INSTRUCTIONS TO DEFENDANT WHO WISHES TO APPEAL

1. Massachusetts General Laws chapter 218, section 23 (which is reproduced below) permits a defendant to appeal from a magistrate's decision in a small claim for trial before either a District Court judge or a jury. If you request a trial by a judge, you will not have any right in the future to a trial by a jury.

2. Generally the plaintiff does not have any right of appeal in a small claim. However, the plaintiff may appeal from a magistrate's decision in any **counterclaim** that was brought by the defendant against the plaintiff.

3. To claim an appeal, you must file this form or an equivalent claim of appeal **within 10 days** of receiving the court's "Notice of Judgment" form notifying you of the magistrate's decision. Saturdays, Sundays and holidays are included in counting the 10-day period, but if the tenth day falls on a Saturday, Sunday or legal holiday, you may file your claim of appeal on the following business day. File this form in the clerk-magistrate's office of the court where the small claim was tried. Within the 10-day period, you must also pay the $25 filing fee for the appeal required by G.L. c. 218 § 23. Make your check payable to "Clerk-Magistrate". Also within the 10 days you must generally post a $100 appeal bond. See Section 23 below for those situations when a higher bond, or no bond, is required. You must do all of these things timely or your appeal will be dismissed.

4. You are entitled to a trial by either a judge or a jury **only for disputed questions of fact**. Section 23 requires you to specify those disputed facts in your claim of appeal. If a judge finds that no legally-significant facts in this claim are disputed, the judge may decide your appeal without a jury and without conducting a trial, by a procedure known as "summary judgment,'' in which the judge applies the law to undisputed facts. **You should be prepared to inform the judge about which relevant facts the plaintiff and the defendant agree on, and which relevant facts they disagree about.**

5. Generally, the magistrate's earlier decision will be "prima facie" evidence in the trial by a judge or a jury. This means that the judge or the jury will be told about the magistrate's decision. It also means that the judge or the jury could again decide in the plaintiff's favor even if the plaintiff chooses to rest entirely on the magistrate's prior decision and presents no other evidence before the judge or the jury.

6. There is no right to a jury trial for certain types of claims, including claims under the Massachusetts Consumer Protection Act (General Laws chapter 93A). If you request a jury trial for such a claim, the judge may decide to submit your appeal to a jury (for either a binding verdict or an advisory verdict), or may determine them himself or herself without a jury.

7. You will be notified by the clerk-magistrate's office when to appear for a pretrial conference or for trial. Please notify the clerk-magistrate's office if you change your address.

Excerpts from General Laws chapter 218, section 23 (as amended by St. 1992, c. 379)

A plaintiff beginning a cause under the [small claims] procedure shall be deemed to have waived a trial by jury and any right of appeal to a jury of six session in the district court department. If, however, said cause shall be appealed to a jury of six session in the district court department by the defendant as hereinafter provided, the plaintiff shall have the same right to claim a trial by a jury of six.

The defendant may, within ten days after receipt of the magistrate's finding, file in the court where the cause was determined a claim of trial by jury, or in the alternative for a trial before a single justice and shall file his affidavit that there are questions of law and fact in the cause requiring a trial by jury or a single justice, with the specifications thereof, and that such trial is intended in good faith.

A defendant's claim for trial by jury or by a single justice shall be accompanied by twenty-five dollars for the entry of the cause in the court of the department to which the case has been appealed, and a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of the district court department, payable to the other party or parties to the cause, conditioned to satisfy any judgment and costs which may be entered against him in the jury of six proceeding or a proceeding before a single justice in said cause waiting thirty days after the entry thereof. Notwithstanding the foregoing, in any action brought by a tenant of residential premises pursuant to [G.L. c. 186, § 15B], bond shall be given in an amount equal to three times the amount of the security deposit or balance thereof to which the tenant is entitled, plus interest at the rate of five percent from the date when such payment became due, together with court costs and an amount equal to a reasonable attorney's fee for service which had been performed by an attorney, if any, or which may be expected to be performed by an attorney during the pendency of the appeal.

A finding for the plaintiff in the district court department shall be prima facie evidence for the plaintiff in the trial by jury of six or before a single justice. At such trial the plaintiff may, but need not, introduce evidence.

No bond shall be required of . . . a defendant in an action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in [G.L. c. 90, § 1] if the payment of any judgment for costs which may be entered against him is secured, in whole or in part, by a motor vehicle liability bond or policy or a deposit as provided in [G.L. c. 90, § 34D].

The court shall waive the requirement of a bond in the amount of one hundred dollars if it is satisfied that the defendant has insufficient funds available to him to furnish the necessary bond and that the defendant's appeal is not frivolous.

FINANCIAL STATEMENT
OF JUDGMENT DEBTOR

DOCKET NUMBER

Trial Court of Massachusetts
Small Claims Session

CASE NAME

CURRENT COURT

NAME OF JUDGMENT DEBTOR *(the person who lost the case and owes money)*

HOME ADDRESS	HOME TELEPHONE NUMBER	DATE OF BIRTH

SOCIAL SECURITY NUMBER	DRIVER'S LICENSE NUMBER & STATE	MARITAL STATUS	NO. & AGE OF CHILDREN LIVING WITH YOU

OCCUPATION	EMPLOYER'S NAME & ADDRESS	HOW LONG WITH EMPLOYER?

INCOME *(list all sources)*

Your Gross Pay:	$	per week
Your Take-Home Pay:	$	per week
Spouse's Take-Home Pay:	$	per week
Child Support Income:	$	per week
Pension:	$	per week
AFDC/SSI:	$	per week
Other *(itemize on back)*:	$	per week
Total Weekly Income:	$	per week

EXPENSES

Rent/Mortgage:	$	per week
Utilities:	$	per week
Food:	$	per week
Alimony/Child Support:	$	per week
Child Care:	$	per week
Transportation:	$	per week
Insurance:	$	per week
Entertainment *(including cable)*:	$	per week
Other *(itemize on back)*:	$	per week
Total Weekly Expenses:	$	per week

ASSETS *(list value of all assets)*

Real Estate you own or co-own	RESIDENCE	OTHER
Address:	. . . . .	
Other Owner(s):	. . . . .	
Mortgage Balance:	$	$ . . . . .
Fair Market Value:	$	$ . . . . .
Rental Income:	$	$ . . . . .
Vehicle(s)/Boat(s) You Own	VEHICLE/BOAT 1	VEHICLE/BOAT 2
Year/Make & Model:	. . . . .	
Purchase Year:	. . . . .	
Purchase Price:	$	$ . . . . .
Amount Owed:	$	$ . . . . .
Bank Accounts	CHECKING	SAVINGS
Bank/Credit Union:	. . . . .	
Account No.:	. . . . .	
Balance:	$	$ . . . . .

Expected Tax Refund: $ . . . . . .

How much money do you have in cash? $ . . . . . .

Have you disposed of or transferred any asset since this claim was brought? (If so, explain on back.) ☐ No ☐ Yes

(List on back anything of value not listed above that you own or co-own, or that is held for you by another.)

DEBTS *(list all debts not included above in your expenses – e.g., credit card debts)*

	CREDITOR	NATURE OF DEBT	DATE OF ORIGIN	TOTAL DUE	WEEKLY PAYMENT
1				$	$ . . . . .
2				$	$ . . . . .
3				$	$ . . . . .

Under the penalties of perjury, I swear that the above information is complete and accurate to the best of my personal knowledge.

DATE SIGNED	SIGNATURE OF JUDGMENT DEBTOR
	X

Pursuant to Uniform Small Claims Rule 9(c), all information in this affidavit is CONFIDENTIAL.
It shall be available to any other party to this litigation, but shall not be available for public inspection unless the Court so orders.

INCOME THAT IS EXEMPT FROM PAYMENT ORDERS

1. **ALL INCOME FROM THE FOLLOWING SOURCES** is exempt by law from any payment order:

   - Unemployment Benefits (G.L. c. 151A, § 36)
   - Workers Compensation Benefits (G.L. c. 152, § 47)
   - Social Security Benefits (42 U.S.C. § 401)
   - Federal Old-Age, Survivors & Disability Insurance Benefits (42 U.S.C. § 407)
   - Supplementary Security Income (SSI) for Aged, Blind & Disabled (42 U.S.C. § 1383[d][1])
   - Other Disability Insurance Benefits up to $400 weekly (G.L. c. 175, § 110A)
   - Emergency Aid for Elderly & Disabled (now G.L. c. 117A)
   - Veterans Benefits

     Federal Veterans Benefits (38 U.S.C. § 5301[a])
     Special Benefits for Certain WW II Veterans (42 U.S.C. § 1001)
     Medal of Honor Veterans Benefits (38 U.S.C. § 1562)
     State Veterans Benefits (G.L. c. 115, § 5)
   - Transitional Aid to Families with Dependent Children (AFDC) Benefits (G.L. c. 118, §10)
   - Maternal Child Health Services Block Grant Benefits (42 U.S.C. § 701)
   - Other public assistance benefits (G.L. c. 235, § 34, fifteenth)

2. In addition, **A PORTION OF WAGES OR EMPLOYMENT-BASED RETIREMENT PAYMENTS** is exempt by law from any payment order. The exempt amount is **$400 or 85% of your weekly gross earnings, whichever is greater.**

Massachusetts law exempts the greater of 85% of the debtor's gross earnings or 50 times the greater of the Federal minimum wage ($7.25 as of 7/24/09) or the Massachusetts minimum wage ($8.00 per G.L.c. 151, § 1) for each week or portion thereof. (G.L. c. 224, § 16 & c. 246, § 28). The Federal exemption (15 U.S.C. § §1671-1677) is not applicable as it will always be less than the Massachusetts exemption.

DEFENDANT'S WORKSHEET FOR CALCULATING EXEMPT AMOUNT OF WAGES OR EMPLOYMENT-BASED RETIREMENT PAYMENTS

Write the amount of your **"weekly gross earnings"** here = $ _____

*If your weekly gross earnings are **less than $400**,*
enter the amount of your weekly gross earnings →

*If your weekly gross earnings are **$400–$470**,* enter **$400** →

*If your weekly gross earnings are **more than $470**,*
enter 85% of your weekly gross earnings →

$

This is the amount of your weekly gross earnings that is exempt from any payment orders.

MOTION TO THE COURT AND AFFIDAVIT	CASE DOCKET NO.	**Trial Court of Massachusetts District Court Department**
_____ VS. _____ PLAINTIFF / COMMONWEALTH DEFENDANT		DISTRICT COURT

On behalf of the ◯ Plaintiff ◯ Commonwealth ◯ Defendant in this case, I respectfully request the Court:

☐ *Continuance*: to continue this case which is presently scheduled for _____ (Event) on _____, until _____, for the reasons given on page 2 of this form.

☐ *Remove default*: to order that the default, default order, or default judgment that was entered on _____ be set aside, and that this case be restored to the court's calendar, for the reasons given on page 2 of this form.

☐ *Remove dismissal*: to order that the order for, or judgment of, dismissal that was entered on _____ be set aside, and that this case be restored to the court's calendar, for the reasons given on page 2 of this form.

☐ *Speedy trial*: to order that the complaints whose numbers are listed above be advanced for speedy trial, for the reasons given on page 2 of this form.

☐ *New trial*: to order that the court's judgment in this case dated _____ (Date) be vacated and a new trial ordered,for the reasons given on page 2 of this form.

☐ *Revise or revoke sentence*: to revise or revoke the sentence(s) imposed in this case on _____ (Date) for the reasons given on page 2 of this form.

☐ *Amend or extend an abuse prevention order*: to extend or amend the abuse prevention order under G.L. c. 209A dated _____ in the manner and for the reasons given on page 2 of this form.

☐ *Withdraw from representation*: to be permitted to withdraw from further representation of the _____ (Party) in this case for the reasons given on page 2 of this form.

☐ *Other*: (Specify what you are asking the Court to do and the reasons on a separate piece of paper and attach it to this form.)

I have today ☐ mailed ☐ delivered a copy of this motion to all other parties to this case.

Any statements of fact made in this motion are made under the penalties of perjury and

◯ of my own personal knowledge. ◯ based on information that I believe is true.

DATE	SIGNED X	
PRINT NAME	ADDRESS	PHONE NO.

If motion is agreed to by other party, that party or attorney should sign here to indicate assent.

DATE	SIGNED X	PHONE NO.

FOR CLERK-MAGISTRATE'S USE ONLY

This motion has been scheduled for hearing > before the Court on this date and time >	DATE OF HEARING	TIME OF HEARING
DATE	CLERK-MAGISTRATE OR DESIGNEE	

FOR JUDGE'S USE ONLY

☐ After hearing ☐ Without a hearing this motion is ☐ Allowed. ☐ Denied.

DATE	JUSTICE X

MOTION TO THE COURT AND AFFIDAVIT - PAGE 2	CASE DOCKET NO.	

Please note that you must comply with any court rules that govern your specific motion. Attach any materials you wish the Court to consider. Include all reasons for your motion; failing to include a reason may bar you from raising it later. As indicated on page one, note that any factual statements are made under the penalties of perjury.

ACKNOWLEDGMENT OF
SATISFACTION OF JUDGMENT IN COUNTERCLAIM

DOCKET NUMBER

Trial Court of Massachusetts
District Court Department

DEFENDANT(S) FILING THIS FORM

COURT DIVISION

VS.

PLAINTIFF(S)

DATE THIS JUDGMENT WAS ENTERED

I (we) hereby certify under the pains of perjury that:

☐ I am (we are) the **defendant**(s) who prevailed in a counterclaim against the above-listed plaintiff(s) in the above-listed small claim or civil action,

☐ I am (we are) **attorney**(s) **for the defendant**(s) who prevailed in a counterclaim against the above-listed plaintiff(s) in the above-listed small claim or civil action,

and that the judgment entered by this Court in that counterclaim on the above-listed date for the defendant(s) and against the plaintiff(s) has been **FULLY SATISFIED.**

X _____ DEFENDANT	DATE	PRINT NAME
X _____ ADDITIONAL DEFENDANT	DATE	PRINT NAME
X _____ ADDITIONAL DEFENDANT	DATE	PRINT NAME
X _____ ADDITIONAL DEFENDANT	DATE	PRINT NAME

OR

X _____ ATTORNEY FOR DEFENDANT(S)	DATE	BBO No.
X _____ ATTORNEY FOR DEFENDANT(S)	DATE	BBO No.

ACKNOWLEDGMENT OF **SATISFACTION OF JUDGMENT**	DOCKET NUMBER	**Trial Court of Massachusetts** **District Court Department**
PLAINTIFF(S) FILING THIS FORM		COURT DIVISION
VS.		
DEFENDANT(S)		DATE THIS JUDGMENT WAS ENTERED

I (we) hereby certify under the pains of perjury that:

☐ I am (we are) the **plaintiff**(s) in the above-listed small claim or civil action,

☐ I am (we are) the **attorney**(s) **for the plaintiff**(s) in the above-listed small claim or civil action,

and that the judgment entered by this Court in this matter against the above-listed defendant(s) on the above-listed date has been **FULLY SATISFIED.**

X _____ PLAINTIFF	_____ DATE	_____ PRINT NAME
X _____ ADDITIONAL PLAINTIFF	_____ DATE	_____ PRINT NAME
X _____ ADDITIONAL PLAINTIFF	_____ DATE	_____ PRINT NAME
X _____ ADDITIONAL PLAINTIFF	_____ DATE	_____ PRINT NAME

OR

X _____ ATTORNEY FOR PLAINTIFF(S)	_____ DATE	_____ BBO No.
X _____ ATTORNEY FOR PLAINTIFF(S)	_____ DATE	_____ BBO No.

APPEARANCE OF SUBSTITUTE COUNSEL

Trial Court of Massachusetts
District Court Department
Small Claims Session

CASE NAME	DOCKET NUMBER
VS.	COURT DIVISION

To the Clerk-Magistrate:

Pursuant to Trial Court Rule III, Uniform Small Claims Rule 7(b), please enter my appearance for

_____
PARTY

as substitute counsel for current counsel of record in the above-numbered court action.

Pursuant to Rule 7(e), this appearance is limited to today's proceedings only and does not displace the appearance of current counsel of record, and all notices in this matter shall continue to be sent to current counsel of record.

ATTORNEY NAME			B.B.O. NUMBER *(Required)*
ATTORNEY FIRM			TELEPHONE NUMBER
STREET ADDRESS			EMAIL ADDRESS
CITY/TOWN	STATE	ZIP CODE	

X _____ _____
SIGNATURE OF ATTORNEY DATE

VERIFICATION OF DEFENDANT'S ADDRESS

BY PLAINTIFF IN TRADE OR COMMERCE OR PURSUING ASSIGNED DEBT

For Court Use Only →

DOCKET NO.

Trial Court of Massachusetts
Small Claims Session

PLAINTIFF(S)

vs.

COURT DIVISION

DEFENDANT(S)

This form must be filed along with the Statement of Small Claim for any claim incurred in the course of plaintiff's trade or commerce, or for assigned debt. Use separate forms for multiple defendants if they have different mailing addresses.

MAILING ADDRESS OF DEFENDANT(S)

Pursuant to Uniform Small Claims Rule 2(b), the defendant's mailing address shown above has been verified in the following manner:

*Check at least **one** of these methods:*

☐ Verified with the following municipal record within the past 12 months:

Municipal record (e.g., street list or tax records): _____

_____ *Date verified:* _____

☐ Verified with Registry of Motor Vehicles records within the past 12 months.

Date verified: _____

☐ Verified by receipt of correspondence from the defendant with that return address within the past 12 months.

Date correspondence received: _____

☐ Other verification from the defendant within the past 12 months that address is current:

Describe: _____

or

*Check at least **two** of these methods:*

☐ A letter was mailed to the defendant at the above address by first class mail on:

Date within past 6 months, and at least 4 weeks before filing this small claim: _____

and has not been returned to sender by the postal service.

☐ Verified using the following online database (other than white pages or other unpaid general telephone directory) within the past 6 months:

Name and source of database: _____

☐ Verified with an additional source, specifically: _____

_____

DATE SIGNED

SIGNED UNDER THE PENALTIES OF PERJURY

X _____
PLAINTIFF OR PLAINTIFF'S ATTORNEY

STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL

For Court Use Only. → DOCKET NO.

Trial Court of Massachusetts
Small Claims Session

PART 1

☐ **BOSTON MUNICIPAL COURT**

☐ **DISTRICT COURT** _____ **Division**

☐ **HOUSING COURT** _____ **Division**

PART 2

PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE

PHONE NO:

PLAINTIFF'S ATTORNEY (if any)

Name:

PHONE NO: BBO NO:

SAMPLE, NOT FOR USE

PART 3

DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE

PHONE NO:

ADDITIONAL DEFENDANT (if any)

Name:

Address:

PHONE NO:

PART 4

PLAINTIFF'S CLAIM. The defendant owes $_____ plus $_____ court costs for the following reasons: Give the date of the event that is the basis of your claim.

SAMPLE, NOT FOR USE

SIGNATURE OF PLAINTIFF X

DATE

PART 5

MEDIATION: Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date.

☐ The plaintiff is willing to attempt to settle this claim through court mediation.

PART 6

MILITARY AFFIDAVIT: The plaintiff states under the pains and penalties of perjury that the:

☐ above defendant(s) is (are) not serving in the military and at present live(s) or work(s) at the above address.

☐ above defendant(s) is (are) serving in the military

X _____ _____

SIGNATURE OF PLAINTIFF DATE

NOTICE OF TRIAL

NOTICE TO DEFENDANT:

You are being sued in Small Claims Court by the above named plaintiff. You are directed to appear for trial of this claim on the date and time noted to the right.

If you wish to settle this claim before the trial date, you should contact the plaintiff or the plaintiff's attorney.

SEE ADDITIONAL INSTRUCTIONS ON THE BACK OF THIS FORM

NAME AND ADDRESS OF COURT

DATE AND TIME OF TRIAL

_____ AT _____

DATE TIME

ROOM NO.

BOTH THE PLAINTIFF AND THE DEFENDANT MUST APPEAR AT THIS COURT ON THE DATE AND TIME SPECIFIED

COURT USE ONLY

FIRST JUSTICE

CLERK-MAGISTRATE OR DESIGNEE

INSTRUCTIONS FOR FILING A SMALL CLAIM — You must complete Parts 1-6 of this form. See instructions on reverse.

ATENCION: ESTE ES UN AVISO OFICIAL DE LA CORTE. SI USTED NO SABE LEER INGLÈS, OBTENGA UNA TRADUCCIÒN.