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HOUSING COURT RULES

Standing Orders

First amended Housing Court Standing Order 6-20: Temporary modifications to court operations based on the coronavirus (COVID-19) pandemic and recent legislation affecting summary process cases

ADOPTED DATE:

10/05/2020

EFFECTIVE DATE:

01/19/2021

REFERENCED SOURCES:

St. 2020, c.65 (https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter65)
MGL c. 211B, § 10 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211b/Section10)
MGL c. 185C, § 8A (https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter185c/Section8a)

UPDATES:

Issued October 5, 2020, effective October 19, 2020 (https://www.mass.gov/media/2187216/download)
Amended January 15, 2021, effective January 19, 2021 (https://www.mass.gov/media/2232871/download)

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Introduction

In light of (1) the continued public health concerns arising from the coronavirus pandemic; (2) the expiration of the moratorium on evictions and foreclosures under St. 2020, c. 65,[1]; and (3) the enactment of St. 2020, c. 257, the Chief Justice of the Housing Court, pursuant to his statutory authority under G.L. c. 211B, § 10 and G.L. c. 185C, § 8A, hereby promulgates this Standing Order, which shall be effective January 19, 2021. This Standing Order shall repeal and replace Standing Order 6-20 dated October 5, 2020.

Where appropriate, this Order is intended to be consistent with the Supreme Judicial Court's "Fourth Updated Order Regarding Court Operations" effective September 17, 2020 ("SJC Order"). This Order is temporary and is subject to be modified or rescinded at any time, as necessary to address the fluctuating circumstances arising from the coronavirus pandemic.

1. Court business generally

Each Housing Court division will remain open to conduct court business virtually and in-person. To continue to limit the number of persons entering the courthouses, all divisions shall strive to continue conducting court business and proceedings virtually, to the extent possible.[2] In cases with one or more self-represented litigants (SRLs) where a court is scheduling a videoconference, divisions will recognize the possibility that SRLs may have limited access to the technology needed to conduct videoconferences or limited experience with it, and will either assist the SRL in being able to conduct a videoconference or offer an alternative to videoconferencing for the hearing. Unless directed otherwise by the Chief Justice of the Housing Court and the Housing Court's Deputy Court Administrator, the Clerk-Magistrate, First Justice, and Chief Housing Specialist of each division shall determine each division's minimum staffing needs, respectively, while giving due consideration to social distancing guidelines, the recommendations by the Centers for Disease Control and Prevention and from state health officials, and reopening protocols established by the Trial Court. Where possible, the Clerk-Magistrate and First Justice of each division shall limit court operations to the respective division's main location(s).[3]

2. Summary process (eviction) cases

a. In general

i. All summary process cases will be scheduled generally based on the order in which they were filed (i.e., by docket number). Each division shall have the discretion to group cases in a manner that will promote efficiency, as determined by the Clerk-Magistrate, in consultation with the First Justice.
ii. Until further notice, (1) the opening speech and "the call of the list" conducted during summary process sessions; and (2) site inspections and views conducted by the Housing Specialists Department are suspended.
iii. The court shall allow (1) motions to vacate a dismissal for failure to appear; and (2) motions to vacate a default judgment entered in a summary process case between March 1, 2020, and through the expiration of the eviction moratorium under Chapter 65 of the Acts of 2020.
iv. Consistent with Housing Court Standing Order 1-20, all attorneys shall continue to eFile in summary process cases. While not mandatory for self-represented litigants, they are encouraged to eFile.
v. Answers in pending and new summary process cases shall be due no later than three (3) business days before the date of the first-tier court event. An Answer that is filed in accordance with this Order shall be deemed timely, including in a pending case. An Answer that is not filed in accordance with this Order shall be left to judicial discretion and determination.

b. Pending summary process (eviction) cases

i. Pending summary process cases shall be handled in a two-tier process, as outlined below.
ii. The Clerk's Office shall send all parties (1) a written notice of court event, informing the parties that the case has been scheduled for a date certain, along with the manner and method by which the case will be heard (e.g., by videoconference); and (2) an information sheet setting forth a list of resources that may be available to assist the parties in resolving their case.[4]
iii. The Judge, Clerk-Magistrate, and Chief Housing Specialist, respectively, shall have discretion to designate the type of event that will be held (e.g., by videoconference).

- First Tier

1. A Housing Specialist will conduct the first scheduled case event with the parties and their attorney(s), if any, by video conference or telephone conference call, unless it has been determined that the first event will be held in person at the courthouse.
2. The purpose of the first scheduled case event will be for the parties to determine the "status" of the case, explore the availability of assistance with housing costs, identify the application of the order issued by the Centers for Disease Control and Prevention ("CDC Order"), and attempt a mediation in order to reach a resolution to the case.
3. In attempting to resolve their case, the parties may agree in writing to (1) continue the matter for specific purposes (e.g., to pursue rental or other monetary assistance such as RAFT and ERMA); and (2) return to court on an agreed-upon date for a continuation of the first-tier court event.
4. If the parties do not agree to a continuance, a party may request a continuance by motion. Notwithstanding its equitable authority, pursuant to Section 2(b) of St. 2020, c. 257, the court "shall grant a continuance for a period as the court may deem just and reasonable if" the court determines that the criteria enumerated in the statute are met.

5. Pursuant to Section 2(b) of St. 2020, c. 257, no judgment may enter, nor may any execution issue, in a summary process action for nonpayment of rent if there is a pending application for rental assistance. While parties may enter into an agreement for judgment in such an action, the agreement shall include language that entry of judgment and enforcement of the agreement is subject to St. 2020, c. 257 and the CDC Order.
6. Subject to any continuance required under Section 2(b) of St. 2020, c. 257, in a case in which there is no settlement and a trial must be scheduled, the Clerk or designee will work with the Housing Specialist to join the proceeding (whether remotely or in person) to establish the next available trial date and identify the next steps in preparing the case for trial (e.g., scheduling motions, establishing discovery and other necessary deadlines, notifying the parties of the need to submit any documents they intend to introduce as evidence before the trial (and the manner and timeframe to do so), etc.).
7. Defaults shall not enter at the first tier.

- Second Tier

1. For cases which do not resolve in mediation, the Clerk's Office shall send a written notice of the trial date. Such notice of the trial date need not include the information sheet that will accompany a notice of first-tier court event.
2. Subject to any continuance required by Section 2(b) of St. 2020, c. 257, trials should be held as soon as practical, but no sooner than 14 days after the first-tier event. Despite any required continuance under the statute, the court may schedule a hearing on any meritorious counterclaim brought in the case, at the discretion of the Clerk-Magistrate, in consultation with the respective First Justice.
3. Most trials will be held by video conference. A small subset of trials may be conducted in-person, as determined by the Clerk-Magistrate in consultation with the respective First Justice.
4. Defaults and dismissal may enter at the second tier if a party fails to appear as instructed. However, pursuant to Section 2(b) of St. 2020, c. 257, no judgment may enter, nor may any execution issue, in a summary process action for nonpayment of rent if there is a pending application for rental assistance.

c. New summary process (eviction) cases

i. For new summary process cases, plaintiffs shall not provide a trial date on the summary process summons and complaint ("S&C"), but rather should indicate on the S&C that the trial date is "to be determined by the court" or "TBD by the court."[5]

ii. Pursuant to Section 1(a) of St. 2020, c. 257, beginning "on and after the effective date of [the statute —i.e., December 31, 2020]," a notice to quit for nonpayment of rent shall be accompanied by the form required under the statute, as developed by the Executive Office of Housing and Economic Development.[6] In light of St. 2020, c. 257, beginning on January 25, 2021,[7] the court shall not accept for filing a summary process case for nonpayment of rent without the "**Affidavit of Compliance with Section 1(a) of Chapter 257 of the Acts of 2020** (https://courtforms.jud.state.ma.us/publicforms/TC0012)," as promulgated by the court and available on the court's website.

iii. Upon the filing of a new summary process case, the Clerk's Office shall send all parties (1) a written notice of court event, informing the parties that the case has been scheduled for a date certain, along with the manner and method by which the case will be heard (e.g., by videoconference); and (2) an information sheet setting forth a list of resources that may be available to assist the parties in resolving their case.[8]

iv. New summary process cases shall be handled in the same two-tier process, outlined above, as the pending cases.

v. Just as with the pending cases, the Judge, Clerk-Magistrate, and Chief Housing Specialist, respectively, have discretion to designate the type of event that will be held in new cases (e.g., by videoconference).

d. Affidavit required with request or motion for issuance of an execution in a summary process action that includes a claim for nonpayment of rent

At the time of a written request or a motion for issuance of an execution in a summary process action that includes a claim for nonpayment of rent, the plaintiff shall file the "**First Amended Plaintiff's Affidavit Concerning CDC Order** (https://courtforms.jud.state.ma.us/publicforms/TC0011)," indicating whether the plaintiff has received a declaration from the tenant under the CDC Order. The affidavit, as amended and promulgated by the court, will be available on the court's website.

e. Executions

i. Subject to the requirements of the CDC Order, if an execution was tolled and the 90-day expiration date on the execution has passed, a plaintiff may file a written request or motion for a new execution, which must include the affidavit required under Section 2(d) above. Upon such a request or motion, the Clerk's Office shall issue a new execution for the statutory 90-day period. Such executions shall be issued administratively (without a hearing) under the same terms as the original execution based on the original judgment. If a landlord seeks an execution for a different amount of money damages, (s)he shall file and serve a motion to amend the underlying judgment. The Clerk's Office shall schedule such motion for hearing, which, together with any opposition, shall be heard in a manner and method determined by the Clerk-Magistrate, in consultation with the respective First Justice.

ii. Pursuant to Section 2(b) of St. 2020, c. 257, a court shall stay an execution if the court determines that the criteria enumerated in the statute are met.

iii. Executions in a summary process case for nonpayment of rent that are subject to the CDC Order shall not be levied upon until the expiration of the CDC Order, including those executions in which a stay of execution was granted through December 31, 2020.

3. Non-summary process (eviction) cases; emergency matters, method of proceedings

Each division may continue to advance, schedule, and conduct proceedings in all non-summary process cases. In addition, all divisions shall continue addressing emergency matters, including applications for injunctive relief (asking the court to order someone to do or not do something, e.g., start paying utilities or stop damaging property); temporary restraining orders where a complaint involves a lockout, condemnation, no heat, no water, and/or no utilities; a stay of a levy on an execution (e.g., a court order stopping a landlord or constable from physically removing an occupant from a property); where access is required to address an emergency (e.g., burst water pipe, gas fumes, etc.); and other matters to be determined at the discretion of the Clerk-Magistrate and First Justice of each division. Any such proceedings should, to the extent possible, continue to be conducted virtually. In addition, due consideration must be given to the Trial Court's reopening protocols.

4. Jury trials

Jury trials shall resume in accordance with any guidance and procedures established by the SJC and the Executive Office of the Trial Court.

Downloads

First Amended Housing Court Standing Order 6-20
(https://www.mass.gov/doc/first-amended-housing-court-standing-order-6-20/download) (PDF 177.19 KB)

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[1] The eviction moratorium order set forth by the Centers for Disease Control and Prevention, effective September 4, 2020, see 85 Fed. Reg. 55292, may continue to afford protection to certain litigants in summary process cases. In addition, there may be other protections from eviction available in limited cases to certain litigants. See, e.g., the Federal Housing Finance Agency's Eviction Moratorium, available at **fhfa.gov** (https://www.fhfa.gov/).

[2] Pleadings and other documents may be filed with the court by mail, by eFiling (where available), or in person. Court users may also access each division's virtual front counters, available at https://www.mass.gov/info-details/remotevirtual-court-services, through which court staff will be able to answer questions and assist court users virtually, including by providing information on available court resources. A listing of the Housing Court's contact information may be found online by visiting **https://www.mass.gov/orgs/housing-court/locations?_page=1** (/orgs/housing-court/locations?_page=1).

[3] For example, in the Western, Central, Eastern, and Metro South Divisions, each division's main location is as follows: Springfield, Worcester, Boston, and Brockton, respectively. In the Northeast Division, main locations include Salem and Lawrence. In the Southeast Division, main locations include Fall River and New Bedford. For further details or questions regarding a division's location or contact information, call the Trial Court's Help Line at 833-91COURT or visit **https://www.mass.gov/orgs/housing-court/locations?_page=1** (/orgs/housing-court/locations?_page=1).

[4] Information as to certain resources available by division for landlords and tenants will be available on the court's website at **https://www.mass.gov/guides/housing-court-resources** (/guides/housing-court-resources). To promote

upstreaming, the court encourages plaintiffs to explore any such options in the first instance before the filing of a summary process action.

[5] A modified summary process summons and complaint (S&C), which reflects certain changes in procedure relative to new case filings, has been promulgated by the court for temporary use. Prior versions of the S&C may continue to be used, subject to any new requirements of this Order. Court users are encouraged to exchange prior versions of the S&C with the newly modified one, free of charge.

[6] The required form (entitled "Notice to Quit Attestation Form"), as well as information pertaining to St. 2020, c. 257, may be found at **https://www.mass.gov/info-details/notice-to-quit-attestation-form-and-submission-information** (/info-details/notice-to-quit-attestation-form-and-submission-information).

[7] Under the statute, a landlord's obligation to provide her tenant(s) with the required form begins "on and after the effective date of" the law, which is December 31, 2020. Under the Uniform Rules of Summary Process, January 25, 2021, is the next possible "entry day" on which the court would come across any notice to quit that is subject to this statute. That is, before filing the nonpayment action in court, a landlord must (1) allow the 14-day notice to quit for nonpayment of rent to expire; and (2) serve the tenant(s) with a copy of the summons and complaint between seven and thirty days before the Monday "entry date" by which the landlord is required to file the action in court. See Rule 2(b) of the Uniform Rules of Summary Process.

[8] Information as to certain resources available by division for landlords and tenants will be available on the court's website at **https://www.mass.gov/guides/housing-court-resources** (/guides/housing-court-resources). To promote upstreaming, the court encourages plaintiffs to explore any such options in the first instance before the filing of a summary process action.

REFERENCED SOURCES: St. 2020, c.65 (https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter65)

MGL c. 211B, § 10 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211b/Section10)

MGL c. 185C, § 8A (https://malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter185c/Section8a)

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Amended January 15, 2021, effective January 19, 2021 (https://www.mass.gov/media/2232871/download)

RELATED

Affidavit of compliance with St.2020, c.257, § 1(a)

(https://courtforms.jud.state.ma.us/publicforms/TC0012)

First amended plaintiff's affidavit concerning CDC order

(https://courtforms.jud.state.ma.us/publicforms/TC0011)