

Jurisdiction of the Housing Court

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Code Enforcement in the

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Types of Code Enforcement Housing Court Cases

Civil Cases

- Applications for Temporary Restraining Order (“TRO”)
- Petitions to Enforce State Sanitary Code (M.G.L. c. 111, §127C-H)
- Verified Civil Complaints and Requests for Injunctive Relief
- Petitions for Receivership (M.G.L. c. 111, §127I)

Criminal Cases and Tickets

- Show Cause Hearings (a/k/a Probable Cause Hearings)
- Criminal Complaints
- Code Enforcement Ticket Hearings

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Civil vs. Criminal

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Seeks injunctive relief (a Court order)

- Burden of proof is “preponderance of the evidence”
- Appear before a judge at the first instance and/or on

short notice

- Can seek contempt order upon non-compliance with an order
- If defendant fails to appear, can seek a capias (civil arrest warrant)

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Seeks fines and incarceration

- Burden of proof is “beyond a reasonable doubt”

- Appear before a magistrate, then a judge
- Can proceed to arraignment and trial upon non-compliance
- If defendant fails to appear, criminal arrest warrant may issue

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CRIMINAL CASES

- Criminal Complaint may be sought to enforce State Codes and city/town ordinances.
 - After citing the defendant, and having repairs not being made in compliance with State Sanitary Code and in violation of said citation; BOH/city or town may seek to have sworn out a Criminal complaint.
 - After a Criminal complaint is sworn out and accepted by the Clerk, the Court schedules a Probable Cause hearing and sends notice to the parties of such hearing.
- Probable Cause Hearing: BOH/the Commonwealth must show there is enough cause for a criminal complaint to issue.
 - Upon showing sufficient cause for a Criminal complaint to issue, the Clerk schedules an arraignment and sends out notice.
- Criminal complaints are prosecuted by a City/Town or BOH attorney as a prosecutor or the Attorney

General's Office.

- After arraignment, the Court will schedule necessary proceedings in accordance with the Rules of Court Procedures and the Standing Orders of the Housing Court.

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Presenting a Criminal Case in Housing Court

Step 1: Serve a Notice of Code Violation

- Proper service of any notice of a code violation is important - it ensures that the responsible party is afforded his/her rights to due process.
- Notice of Code Violation - Sanitary and Building Code provide for notice of a code violation to be served on the responsible party as follows:
 - Personally by a person authorized to serve civil process
 - By leaving a copy at the last and usual place of abode
 - By registered or certified mail, return receipt requested (if party is within the Commonwealth); or,
 - If the last and usual abode is unknown, by posting a copy in a conspicuous place on or about the dwelling.

See M.G.L c. 111, § 124; M.G.L. c. 143, § 51; 105 CMR 410.8333; 780 CMR 118.6

- The respective Codes define the owner or responsible party as one that:

- Has legal title to the property;
- Has care, charge or control of the property;
- Is a mortgagee in possession;
- Is an agent/trustee and has possession or control of the property; or,
- Is an officer or trustee of the condominium association.

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Presenting a Criminal Case in Housing Court

Step 2: Swear Out a Criminal Complaint

- After expiration of the Notice of Code Violation and re-inspection to confirm that the violation still exists, an inspector may draft and file a criminal complaint in a Housing Court Clerk's Office
- The criminal complaint should be filed with a copy of the Notice of Violation and its return of service
- A Clerk Magistrate or Assistant Clerk Magistrate will ask that the inspector filing the complaint take an oath
- The oath will require that the inspector affirm that the information set forth in the criminal complaint is true and accurate to the best of the inspector's knowledge, information, and belief.
- This process is known as “swearing out” a criminal complaint

- Once a criminal complaint has been sworn out and filed, the Clerk's Office will schedule a Show Cause hearing and send notice to the defendant with a copy of the complaint. (M.G.L. c. 218, § 35)

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Presenting a Criminal Case in Housing Court

Step 3: Show Cause Hearing (a/k/a Probable Cause)

- Purpose of the Show Cause hearing is to give the defendant an opportunity to “show cause” why a criminal summons should not issue.
- Burden of proof is on the City/BOH

- Show Cause hearing will be held before a Clerk Magistrate or Assistant Clerk and may be held in a hearing room instead of a courtroom.
- The hearing is semi-formal, and neither the City/BOH nor the defendant are required to appear with counsel.
- City/BOH may send a representative inspector (meaning that it need not be the inspector that swore out the complaint).
- Defendant is not required to appear, or may appear through counsel only, but he/she does so at his/her own risk.

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Presenting a Criminal Case in Housing Court

Step 3: Show Cause Hearing (a/k/a Probable Cause)

- City/BOH will meet its burden of proof if it can show that:
 - Prospective Defendant as named on the complaint is the responsible party as defined by the relevant code;
 - Notice was properly served;
 - Existence of code violations; and,
 - No compliance with the notice of violation.
- The inspector can prove these elements through the Notice of Violation, Criminal Complaint, and presentation of an updated inspection report and/or photographs
-
- After hearing, the Clerk may:
 - Dismiss case if violation corrected or if City/BOH has not met burden of proof;
 - Continue the hearing if proposed defendant alleges that the work is done or if he/she appears to be making efforts to correct the violation and needs a short amount of time to finalize repairs and allow the City/BOH to reinspect; or,
 - Find probable cause and issue process (a criminal summons and notice of arraignment before a judge).

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Presenting a Criminal Case in Housing Court

Step 4: Criminal Summons

- If the Clerk finds probable cause and issues process, the Housing Court will issue a criminal summons with a notice of an arraignment.
- An arraignment is one of the first steps of a criminal trial. It is the formal reading of the criminal charges to the defendant. In response, the defendant is expected to enter a plea (i.e. guilty or not guilty), chose bench or jury trial, and accept or waive appointment of counsel.
- At this point, the case is now “criminal” in nature and will proceed in a courtroom before a judge.
- Unlike at the Show Cause stage, the defendant must now personally appear at every hearing (or an arrest warrant may issue) and the City/BOH must now appear through counsel.

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Presenting a Criminal Case in Housing Court

Step 5: Resolution of the Case

- In the eyes of the Housing Court, the purpose of a criminal code enforcement case is not to punish the defendant, but rather to obtain the defendant's compliance with the relevant code.
- The goal is to get the defendants to get the work done, not put them in prison.
- At the first arraignment, the Clerk will call the list in the courtroom, and each defendant will have a chance to conference with the City/BOH's attorney before addressing the judge.
- The parties will propose a plan of corrective action and a return date, reduce it to writing, and present the plan to the judge for approval.
- The judge will monitor the progress at each return date and may set further return dates if necessary.
- If at any time the defendant stops making progress or

refuses to cooperate, the judge may direct that the defendant be arraigned and that the case be scheduled for trial.

- If the defendant fails to appear at any hearing, the judge may authorize that a criminal arrest warrant issue against the defendant.

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Presenting a Criminal Case in Housing Court

Step 6: Trial

- At trial, the burden of proof is on the City/BOH and the standard is “beyond a reasonable doubt”. The City/BOH must prove:
 - the elements set forth in the Show Cause hearing (proper party, proper service, existence of code violation, and noncompliance with notice of violation); and
 - that the defendant's conduct is a “willful, intentional, reckless, or repeated” violation of the relevant code. (Commonwealth v. Olivo, 369 Mass. 62 (1975)).

- Depending on the defendant's response at the arraignment, the case may proceed as a bench trial before a judge or as a jury trial before a panel of jurors.
- In the vast majority of cases, the defendant completes the necessary work before the case goes to trial (or even arraignment).

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Ticket Hearings

- Ticket Hearings are appeals from a municipality's administrative disposition of noncriminal code violations (fines).
- Usually arise from minor violations of the building/sanitary/fire code, and regulations/bylaws governing housing, snow removal, trash removal, etc.
- These appeals to the Housing Court are governed by statute (M.G.L. c. 40U, M.G.L. c. 40, § 21D; and M.G.L. c. 148A)

- Ticket Hearings are not criminal in nature.
- They provide an alternative method of code enforcement to criminal actions.
- In the event of non-compliance after the Ticket Hearing has been held, the City/BOH still has the option of filing a criminal action.

- Ticket Hearings are held before a Clerk Magistrate on a de novo basis and under a civil standard (preponderance of the evidence).
- After hearing, the Clerk Magistrate may uphold the fines, reduce the fines, or dismiss the fines
- If defendant does not pay the fines as ordered, the City/BOH can assess the fines against the property as a tax lien.

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Preparation for Any Type of Housing Court Hearing

- Have your documents prepared and ready.
- If the condition of a unit is going to be discussed, you will want to have an up to date inspection report (and the same is true for each and every hearing thereafter).
- Recent photographs of the alleged conditions are helpful.

- Arrive on time.
- If you are early, you are on time. If you are on time, you are late. If you are late, you better have called the Clerk's Office before hand.

- Do more than just cite the code violation.
- State explicitly how the code was violated and what the remedy should be.
- The judges are very knowledgeable, but they are not code inspectors. It may be helpful to bring the Code (or a copy of the relevant section) to the hearing.

- Listen carefully to the questions from the magistrate or judge, and try to answer that question as directly as possible.

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Application for Temporary Restraining Order (“TRO”)

- A request for a temporary restraining order of the Court to address an immediate need, to prevent immediate and irreparable harm (which may exist if the State Sanitary Code BOH violation/citation is not complied with).
- No notice for a hearing is required in emergency circumstances.

- TRO applications may also be used as an “easy to use” and general form for seeking a Court order.
- File a copy of the cited violations/order to correct that was issued by the city/town or BOH agent, showing what relief is sought.
- If TRO request is not an emergency, the usually at least two-day Order of Notice must be served in accordance with the Rules of Civil Procedure, Rule 4C. (Court notice and Orders issued by the Court must be served by an uninterested person who is authorized to serve civil process).
- TRO is only good for ten days unless the Court enters further orders, which may include another date to reappear, or enter a preliminary injunction.

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Verified Civil Complaint and Request for Injunctive Relief

- Purpose: A civil action seeking injunctive relief through a court order to order the defendant to desist and refrain from failing to comply with State Code(s) and requirement, and to comply with the city/town or state citation.
- Usually prepared and filed by an attorney.
- Must comply with Massachusetts Rules of Civil Procedure.
- Service requirements of Civil Summons in accordance with Massachusetts Rules of Civil Procedure, Rule 4a-e.
- May seek costs and penalties.

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Enforcing a Housing Court Order

- There are two basic ways to enforce a court order (or an agreement that the court has adopted as an order): 1) file a motion or 2) file a contempt complaint.

-

Motion

- Motions may be scheduled upon relatively short notice.
- There is no cost to file a motion, and there is no need for constable service.

-

Contempt (Massachusetts Rule of Civil Procedure 65.3)

- Commenced upon filing of a contempt complaint alleging evidence of clear disobedience of an equally clear and unequivocal order.
- Complaint must conform to the Civil Procedure Rule, and be verified or otherwise supported by affidavits.
- Court will issue a Summons, which must be served on the defendant in hand.
- No filing fee for the complaint, but there may be a cost for service.
- Court will hold a trial on the issue of contempt within the existing case.
- As a remedy, the judge can impose sanctions or, in extreme

cases, order imprisonment.

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Mediation

- All parties participate in coming to a mutual resolution.
-
- Agreements are Court Orders signed by a judge.
- Saves time and costs to both parties.
- Agreements between the parties often include a repair schedule that is both feasible and timely.
- Mediation is less formal than appearing in front of the judge; with parties having open, free and confidential

settlement discussions.

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Receivership

- Purpose: A last resort option for a municipality to correct violations of the State Sanitary Code in which the owner(s) of the property cited is unwilling or unable to correct the violations.
- M.G.L. c. 111, § 127I, governing statute for receiverships.
- Brought into the Housing Court with assistance of the municipality's law department, city/town counsel, or for many smaller towns, by the Attorney General's Office.
- At a minimum of 14 days prior to the hearing, the petitioner must send a copy of the petition to all mortgagees, mortgage holders, and lienholders by certified mail. Petitioners can file a motion asking the Court to shorten the time period of this process.
- When a receiver is appointed, he/she is required to make all repairs cited and maintain the property. The Court can remove a receiver that is not accomplishing the work or if it is in the best interest of the occupants.
- The receiver is authorized to collect rents, which are applied to repairs at the property.
- When the municipality closes open orders of the cited violations and the work is complete, the receiver will file a motion for the final accounting and seek to dissolve the receivership.

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