

By Mr. Flaherty of Boston, petition of Michael F. Flaherty, Ronald A. Pina and Gary D. Jones relative to establishing a procedure for appeals from the failure to waive certain bonds. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT ESTABLISHING A PROCEDURE FOR APPEALS FROM THE FAILURE TO WAIVE CERTAIN BONDS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 239 of the General Laws is hereby amended by striking
2 out section 5, as most recently amended by section 3 of c. 667 of
3 the Acts of 1975, and inserting in place thereof the following
4 section.

5 *Section 5.* If the defendant appeals from a judgment of the
6 Superior Court, a Housing Court, or a District Court, rendered
7 for the plaintiff for the possession of the land or tenements
8 demanded, he shall, except as provided in section 6 before such
9 appeal is allowed, give bond in such sum as the court orders,
10 payable to the plaintiff with sufficient surety or sureties approved
11 by the court, or secured by cash or its equivalent deposited with
12 the clerk, in a reasonable amount to be fixed by the court;
13 provided that in any action brought to recover residential
14 premises, the bond required shall not be greater than the
15 equivalent of one months rent based on the most recent rent
16 actually agreed to by the plaintiff and the defendant, and in
17 addition the court shall require the defendant to pay in
18 installments on the dates on which rent payments were
19 customarily made pursuant to the terms of the tenancy, rent in
20 the amount most recently agreed to, or if the unit is in defective
21 condition, the fair value for the continued occupancy of the
22 premises; and provided further that the foregoing shall not apply
23 where the court finds that there is clear and convincing evidence
24 presented by the plaintiff that a bond in a greater amount must be

25 required to protect the plaintiff from greater damage due to
26 actions of the defendant which will cause further loss to the
27 plaintiff through destruction of plaintiff's property. In an appeal
28 from a judgment of a District Court such bond shall be
29 conditioned to enter the action in the Superior Court for that
30 county at the return day next after the appeal is taken. In an
31 appeal from a judgment of the Superior Court or a Housing
32 Court such bond filed shall be conditioned to enter the action in
33 the Appeals Court. Any appeal taken from a judgment of any
34 court pursuant to this chapter shall be taken by filing a notice of
35 appeal within 10 days of the entry of judgment. Appeals from
36 judgments of the Superior Court or a Housing Court shall
37 otherwise be governed by the Massachusetts Rules of Appellate
38 Procedure. Such bonds shall also be conditioned to pay to the
39 plaintiff, if final judgment is in plaintiff's favor, and only to the
40 amount of the bond filed, all rent accrued at the date of the bond,
41 all intervening rent, and all damage and loss which he may sustain
42 by the withholding of possession of the land or tenements
43 demanded and by any injury done thereto during such
44 withholding, with all costs, until delivery of possession thereof to
45 him.

46 In appeals from a district court the deposit shall be transmitted
47 by the clerk with the papers to the clerk of the Superior Court,
48 who shall thereupon deliver a receipt therefor to such clerk, but in
49 such appeals from a judgment of the Superior Court or a Housing
50 Court the deposit shall not be transmitted to the Appeals Court
51 unless specifically requested by said Appeals Court. The Superior
52 Court or a Housing Court may give directions as to the manner of
53 keeping such deposit. Upon final judgment for the plaintiff, all
54 money then due to him may be recovered in an action on the
55 bond.

56 The court shall waive the requirement of such bond or security
57 if it is satisfied that the defendant has a defense which is not
58 frivolous and that he has insufficient funds available to him to
59 furnish the necessary bond or security. The court may require any
60 person for whom such bond or security has been waived to pay in
61 installments as the same becomes due, pending appeal, all or any
62 portion of any rent which shall become due after the date of such
63 waiver or, if the premises are in defective condition, the fair value,
64 for the continued occupancy of the premises.

65 Any party aggrieved by the denial of a motion to waive such
66 bond may take a bond appeal as hereinafter provided. If the
67 matter arises in the Superior or Housing Court, the bond appeal
68 shall be to the single justice of the Appeals Court at the next
69 sitting thereof. If the matter arises in any District or Municipal
70 Court, the bond appeal shall be to the Superior Court then sitting
71 in the same county, if any, or, if not, to the Superior Court sitting
72 in the nearest county or in Suffolk County. The court hearing the
73 bond appeal shall review the findings and amount of bond or
74 deposit, if any, appealed from as if it were initially deciding the
75 matter, and may withdraw or append any finding or reduce or
76 rescind any amount of bond or deposit when in its judgment the
77 facts so warrant.

78 Any party may file a notice of bond appeal with the clerk of the
79 court originally hearing the motion within ten days after receiving
80 notice of the decision thereon. The clerk shall then forward the
81 motion, the court's findings and any other documents relevant to
82 the appeal to the clerk of the court hearing the bond appeal who,
83 upon receipt thereof, shall schedule a speedy hearing thereon and
84 send notice thereof to the parties. Any bond appeal to the
85 Supreme Judicial Court or the Appeals Court, or to a justice of
86 either court, shall proceed according to the Massachusetts Rules
87 of Appellate Procedure. Any other bond appeal filed pursuant to
88 this section shall be heard upon statements of counsel,
89 memoranda and affidavits submitted by the parties with or
90 without the taking of further testimony.

91 Further testimony shall be taken if the court hearing the bond
92 appeal shall find that the taking of further testimony would aid
93 the disposition of the bond appeal.

94 Pending a decision on the bond appeal the defendant shall file
95 his notice of appeal from the judgment of the court within the
96 time period provided in this section for filing appeal from
97 judgment. Upon the rendering of a decision in the bond appeal
98 the defendant shall comply with the requirements of such decision
99 within five days after receiving notice thereof. If the defendant
100 fails to file with the clerk of the court rendering the judgment, the
101 amount of bond or deposit required by the decision of the court
102 hearing the bond appeal within five days from receipt of notice of
103 said decision, the appeal from the judgment of the court shall be
104 dismissed.

