

By Mr. Businger of Brookline, petition of John A. Businger for legislation to clarify the commencement of summary process actions in residential property. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT CLARIFYING COMMENCEMENT OF SUMMARY PROCESS ACTIONS IN RESIDENTIAL PROPERTY.

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 amended by striking  
2 section 2, as appearing in the 1984 Official Edition, and substi-  
3 tuting therefor the following section:—

4 (a) Such person may bring an action in the superior, housing,  
5 or district court division in the venue of which the land lies, by a  
6 summons and complaint in the form prescribed by the supreme  
7 judicial court.

8 (b) The summons and complaint shall state:

9 (1) the location of the premises in question;

10 (2) that the defendant is in possession of the premises;

11 (3) that the plaintiff seeks to recover possession of the  
12 premises;

13 (4) whether the underlying tenancy is (A) a tenancy under  
14 a lease, (B) a tenancy at will, or (C) another type of tenancy, the  
15 nature of which must be described in the complaint;

16 (5) whether the tenancy is a residential tenancy;

17 (6) the method by which the tenancy was terminated; and

18 (7) if rent and use and occupation is claimed, that the  
19 defendant owes rent and use and occupation in the amount stated.

20 Failure to claim rent and use and occupation in said action shall  
21 not bar a subsequent action therefor.

22 (c) If the underlying tenancy is a residential tenancy, the com-  
23 plaint shall also state:

24 (1) whether the tenancy was subsidized by any federal, state or  
25 local subsidy program, the specific type of subsidy, if any, and the  
26 facts demonstrating compliance with the termination requirements  
27 of the subsidy program;

28 (2) whether the tenancy is governed by any rent, eviction, or  
29 condominium control law, including local ordinances, by-laws, or  
30 regulations. In jurisdictions where such controls are in effect, the  
31 plaintiff shall state what type of controls apply to the premises and  
32 the facts demonstrating compliance with said controls;

33 (3) whether the termination of tenancy was due to fault by the  
34 defendant;

35 (4) the reasons for the eviction, which shall be stated in con-  
36 cise untechnical form and with sufficient particularity and com-  
37 pleteness to enable an unrepresented defendant to understand the  
38 reasons for the eviction and the facts underlying those reasons so  
39 as to prepare a defense. The plaintiff may rely only upon the rea-  
40 sons stated on the complaint, and no amendment to the statement  
41 of reasons shall be permitted. If the reasons stated on the com-  
42 plaint allege that the tenancy was terminated due to fault by the  
43 defendant, the court may award possession to the plaintiff only if  
44 the plaintiff proves such fault; if the reasons stated on the com-  
45 plaint do not allege that the tenancy was terminated due to fault  
46 by the defendant, the termination shall be deemed to have been  
47 without fault.

48 (d) The plaintiff must file with the clerk of the court, no later  
49 than the entry date, the following documents:

50 (1) the original of the properly completed summons and  
51 complaint;

52 (2) a return of service showing that service has been made  
53 in accordance with subsection (e), where applicable;

54 (3) a copy of any applicable notice of termination of the  
55 defendant's tenancy and any proof of delivery of such notice. The  
56 plaintiff may not rely upon any notices or proof of delivery of  
57 such notices unless they have been filed in accordance with this  
58 subsection;

59 (4) a copy of any applicable lease or rental agreement.  
60 The plaintiff may not rely upon any lease or rental agreements  
61 unless they have been filed in accordance with this subsection;

62 (5) in jurisdictions where rent and/or eviction controls are  
63 in effect, a copy of any documents which applicable law requires  
64 to be filed to show that the eviction complies with such controls;

65 (6) in jurisdictions where condominium conversion con-  
66 trols are in effect, a copy of any documents which applicable law  
67 requires to be filed to show that the eviction complies with such  
68 controls.

69 (e) If the underlying tenancy is a residential tenancy:

70 (1) The summons and complaint shall be served upon the  
71 defendant by delivering a copy to the defendant personally, except  
72 as provided in subsection (3)(2).

73 (2) If the person authorized to serve process makes return  
74 that after diligent search he cannot find the defendant, the court  
75 may on motion of the plaintiff permit service to be made in accor-  
76 dance with Rule (d) of the Massachusetts Rules of Civil Pro-  
77 cedure, provided that if service is made at the last and usual place  
78 of abode, service shall not be deemed completed until the officer  
79 making service has also mailed first-class to such last and usual  
80 place of abode.

81 (3) If the return of service fails to show that service was  
82 made in accordance with this subsection, or if the court finds  
83 insufficiency of service, the court or the clerk shall dismiss the  
84 action unless the defendant waives the insufficiency of service in  
85 a writing filed with the court.

86 (f) No judgment shall enter in favor of the plaintiff unless the  
87 plaintiff has complied fully with the requirements of this section.

88 (g) Any provision of any rental agreement purporting to waive  
89 the provisions of this chapter shall be deemed to be against public  
90 policy and void.

