

# Chapter 11

# Receiverships

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*Legal Tactics: Tenants' Rights in Massachusetts*  
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# Receiverships

by Susan Hegel

*Italicized words are in the Glossary*

You're living in a building with little or no heat, poor plumbing, cockroaches, or any number of other problems. You have repeatedly asked your landlord to fix these problems. The Board of Health has ordered your landlord to make repairs. You have withheld your rent. You have done everything you can to get the building into safe and sanitary condition and now your landlord refuses to even answer your calls.

Chances are your landlord has gone bankrupt, abandoned the property, or decided not to put any more money into it. If your landlord refuses to maintain your apartment, there is something you can do to get repairs made and prevent conditions from getting worse. You can ask the court to appoint a temporary landlord called a *receiver*. A receiver takes over the management of the property, collects rent, and makes repairs with your rent money.

The purpose of this chapter is to explain when receivership is a possible strategy, what steps you need to take to get a receiver, and what strategies you can use to get the court to appoint a good receiver.<sup>1</sup> **Because the receivership process can be complex, you should try to retain a lawyer as soon as possible.** A list of Legal Services offices and Legal Referral Services is in the **Directory** at the end of this book.

## What Is a Receivership

A receivership is the appointment of a person or organization by a court to temporarily manage a property in order to enforce the state Sanitary Code and respond to an irresponsible or absentee landlord. Tenants can use receivership as a strategy to accomplish needed repairs and prevent a building from deteriorating. Tenants get a receiver by asking a court to appoint one.<sup>2</sup>

If a court appoints a receiver, the receiver usually is empowered by a court to:

- Make repairs and improve the conditions.
- Manage the building.
- Collect the rents.
- Pay expenses, including taxes and insurance.

Additional duties of a receiver vary depending upon what tenants request and what a judge eventually puts in a written receivership *order*.

## What to Do Before Requesting a Receiver

### 1. Consider All Possible Options

Asking a court for a receiver is a remedy of last resort. In most cases, tenants ask for a receiver because they have tried other strategies without success. Read **Chapter 8: Getting Repairs Made** to satisfy yourself that you have considered other more effective or less time-consuming strategies.

#### a. What to Do in Case of Foreclosure

If your landlord has stopped paying her *mortgage* loan, you may want to contact the lender and ask what they plan to do with the property. In many cases, a lender will be a bank or a mortgage company.<sup>3</sup> If the landlord has stopped making loan payments to the bank or mortgage company, the bank or mortgage company may schedule an auction to sell the building. This is called a *foreclosure*.

Tenants have successfully organized during the foreclosure process to save their apartments. For example, in Salem, when tenants who shared the same landlord learned that a bank was planning to foreclose on almost 100 apartments in their neighborhood, they feared that rents would go up and that many people would be forced out. When the bank refused to sell the buildings to a local nonprofit organization, tenants organized a protest at the foreclosure sale. As a result of their two-day demonstration, only two of the 14 buildings were sold to new landlords and the bank bought back the other 12. Over the course of the next year, the local community development corporation, working with the tenants, developed a plan and purchased approximately 70 apartments. These apartments are now owned by the local nonprofit community development corporation and will stay affordable.<sup>4</sup> Recently, the City of Worcester has used the receivership law in an attempt to obtain repairs in occupied apartments in foreclosed upon buildings.<sup>5</sup>

For more information about foreclosures, see **Chapter 21: Foreclosures**.

### **b. How to Track Down Your Landlord's Lender**

To find out who lent your landlord money to buy your building, go to the Registry of Deeds in your county.<sup>6</sup> The Registry is the place where documents relating to the sale and ownership of property must be filed. You will need to find a mortgage document for your building on which the name of the lender is listed. A *mortgage* is an agreement between a purchaser of property (in this case, your landlord) and a lender that if the borrower (landlord) does not repay the loan, the lender can get the money back by foreclosing or selling the property.

When you go to the Registry of Deeds, ask a person who works there for help. In most situations, someone will be able to assist you.

Basically, you need to look up your landlord's name or the name of the entity that owns your building (for example, a realty trust or company)

in the "grantor index."<sup>7</sup> You may have to look through several years before you find an entry. When you find an entry, check the address to make sure it's your building and look for the word "mortgage" or the abbreviation "Mtg." This will give you the book and page number in another book where you can find the mortgage document on which the lender's name will appear.<sup>8</sup>

Some property, called registered land, is indexed in a slightly different manner at the Registry of Deeds. Ask for help at the Registry if the property is registered land.<sup>9</sup>

Note: If you request that the court appoint a receiver, the landlord must file a written response which must provide you with the names and addresses of all lenders.<sup>10</sup>

## **2. Get an Inspection**

Before you go to court and ask a judge to appoint a receiver, you should get a report from the Board of Health that documents the condition of your building. In Boston, Cambridge, and Worcester, the health code enforcement agency is known as the Inspectional Services Department, not the Board of Health.

Call your local Board of Health and ask them to inspect your apartment, along with, if possible, all other apartments and common areas in your building. After the Board of Health inspects your building, an inspector must give you a report listing all the conditions that violate the state Sanitary Code. A detailed and accurate report from the Board of Health is important documentation if you plan to ask a court for a receiver. For more information about how to prepare for an inspection and get an accurate report, see the section called **Getting an Inspection** in **Chapter 8: Getting Repairs Made**.

### 3. Take Photographs

A picture may be worth a thousand words. Depending on the type of code violations, you should take photographs of the bad conditions in your apartment and in the building's common areas and later show these to the judge. Write the address and the date the photo was taken on the back of each photograph.

### 4. Talk to Other Tenants

In most cases, when tenants go to court to ask a judge for a receiver, they do so as a group of people who share the same building or have the same landlord. When considering receivership as a strategy, tenants need to talk to one another about what problems each has faced in getting repairs made and what repairs people want made. This is important information that a judge will need to hear.

If you are the person who is raising the idea of a receivership, share with other tenants the information in this chapter. Read **Chapter 10: Getting Organized** for ideas about developing a strong tenant group and strategies you can use to achieve your goals.

If all the tenants in your building want a receiver to take over the building and you are willing to organize your efforts as a group, your chances of improving the conditions of your building will be much greater.

## How to Get the Court to Appoint a Receiver

### 1. Filing a Tenant Petition

If you decide that you want a receiver, you need to go to court. If there is a housing court in your area, go there. Housing courts have more experience in dealing with receiverships than other courts do. If there is no housing court, you must go to the local district or superior court.<sup>11</sup>

When you go to court, it is best to bring as many other tenants from your building as possible. Tell the court clerk you would like to file a **Tenant Petition for Enforcement of the State Sanitary Code**. The purpose of a tenant petition is to give tenants a way to enforce the state Sanitary Code. Some courts have tenant petition forms that you can simply fill out. You can also use **Form 14: Tenant Petition**.<sup>12</sup>

When you fill out the petition, you will need to know your landlord's name and address. If your landlord does not live in the building and there is no on-site manager, the law requires the landlord to post her name and address in the building.<sup>13</sup>

In the petition you must specifically request the court to appoint a receiver. You must also describe the bad conditions. Attach copies of the Board of Health reports or, if an inspection has not been made yet, the date you requested an inspection. It is best to get an inspection before you file a petition.<sup>14</sup>

### 2. Getting an Order of Notice

When you file the tenant petition with the court, the clerk's office must issue a document called an "Order of Notice."<sup>15</sup> This document requires the owner to:

- Appear in court for a *hearing* at a designated date and time within 14 days; and
- File an answer to the petition and include the names and addresses of any *mortgagees* or *lienors of record*.

### 3. Serving the Petition and Order of Notice

You must then take a copy of your tenant petition and the order of notice to the sheriff or a constable, who must deliver (*serve*) these documents on your landlord. This delivery must be done at least seven days before the hearing date stated in the Order of Notice. The original Order of Notice (indicating the delivery details

by the sheriff or constable) must be filed with the court.

If your tenant petition asks for the appointment of a receiver, then the owner must (within three days) provide you with a written list of all the mortgagees and lienors of record. You must then send a copy of your tenant petition and notice of the hearing date, time, and place to each of the mortgagees and lienors by *certified mail* at least 14 days before the hearing (or less than 14 days if the court so orders).<sup>16</sup>

## 4. Payment or Waiver of Fees

There is a court fee to pay for filing a tenant petition and a fee for serving the petition on your landlord.<sup>17</sup> If you are a low-income person, you can file a form asking the court to *wave* or eliminate the fee.<sup>18</sup> This form is called an **Affidavit of Indigency**. To see a copy, go to **Booklet 9**.

## 5. Preparing for the Hearing

As soon as you file a tenant petition, you should begin researching who might be a good receiver, so that when you go back to court, you are prepared to give the judge your recommendation. (See **How to Get a Good Receiver** in this chapter.) It is also important to take to court any evidence showing the conditions of the building and any evidence that shows tenants' efforts to get the landlord to make repairs in order to demonstrate to the court that a receiver is necessary.

## 6. The Hearing

When you go to court for the hearing, you should be prepared to tell a judge how bad the conditions are and why you need a receiver. Read **Chapter 15: Using the Court System** for information about how to prepare for court. On the day that you go to court, bring any information or pictures that will help the judge understand how your landlord has not properly managed the building.

Since receivership is a remedy of last resort, you may want to first ask the judge to order you to pay your rent (or a percentage of your rent) to the court<sup>19</sup> and give the landlord another chance to make the repairs herself according to a written repair schedule approved by the court. If your rent is subsidized by a housing authority or other entity, you could also ask the court to order the subsidy provider to pay the subsidy into court.<sup>20</sup>

## 7. The Receivership Order

If the court decides to appoint a receiver, a judge must prepare a receivership order. This order says: (1) who the receiver is, and (2) what powers and duties the receiver will have.<sup>21</sup>

It is important for tenants to work together, and if possible with a lawyer, to develop a proposed order to give to the court. Your proposed order should outline what specific powers and duties you want a judge to include in a receivership order. For example, a receivership order can:

- Require that all funds received by a receiver first be used to make emergency repairs.<sup>22</sup>
- Require the receiver to install a security system for vacant units.<sup>23</sup>
- Order the receiver to make reasonable efforts to keep rents affordable.<sup>24</sup>
- Lower tenants' rents by 50% until repairs are made and the court orders tenants to pay more rent.<sup>25</sup>
- Require the receiver to submit monthly project reports to the tenants and the court, showing what money has been received and how money is being spent.

A receivership order could authorize the receiver to seek and obtain rental subsidies to be attached to some of the apartments.<sup>26</sup>

## How Bankruptcy Affects Your Case

If your landlord is having financial trouble and has filed for bankruptcy, it may be more difficult to get a receiver. When a landlord files for bankruptcy, the landlord must put all of her property into the hands of the bankruptcy court. The court then decides how to use this property to pay the landlord's debts. In fact, if you gave your landlord a security deposit, you should receive a notice of bankruptcy proceedings because the landlord owes you money.<sup>27</sup>

To oversee the bankruptcy process, a bankruptcy judge appoints a person called the Trustee in Bankruptcy. As long as the Trustee in Bankruptcy decides to keep your building in the hands of the bankruptcy court, no other court can appoint a receiver.

There are several ways that tenants have approached this situation. One alternative is to ask both the Trustee in Bankruptcy and the bankruptcy court judge to give permission for another court to appoint a receiver.<sup>28</sup> If your building is in really bad shape and not worth very much, you may also ask a trustee to remove the property from the bankruptcy process. This is called "abandoning the property." Once your property is abandoned by a bankruptcy court, a judge in another court is free to appoint a receiver. Try to meet with the Trustee in Bankruptcy to find out what the plans are for your building. The trustee may be glad to abandon the property and give you helpful information.

### 1. How to Find Out Who the Trustee in Bankruptcy Is

The bankruptcy court sometimes sends tenants a notice after a landlord files bankruptcy. If you have received any written papers from the court, check to see if they have the name and phone number of a trustee. If not, call the bankruptcy court closest to you. Ask for the name and phone number of the trustee for your landlord's

case. If you have difficulty getting this information from the bankruptcy court, try to get the phone number of the Trustee in Bankruptcy from your landlord or your landlord's lawyer.

## How to Get a Good Receiver

### 1. Possible Receivers

When you go to court to request a receiver, you will have the most control over who the receiver is—and you may have a quicker result—if you suggest to the court possible people, organizations, or companies that are available to be a receiver. But remember—while you may suggest or recommend possible receivers, it is the court that ultimately has the power to appoint a receiver.

It is a good idea to find out before you go to court about a judge's track record in appointing receivers. Who has the judge appointed as receivers? Did the judge take the tenant's recommendations? What kind of job did that person do? Network with other groups to find out who would be qualified. Good starting places are the Community Economic Development Assistance Corporation (617-727-5944) and your local nonprofit housing developer. The following sections suggest a few other places to look for possible receivers.

#### a. Local Nonprofit Organization

A local community development corporation (CDC), local nonprofit housing organization, or housing authority may be a good place to start. Nonprofit housing organizations have experience in operating and developing housing and keeping rents low. Because an organization is nonprofit, it may be less likely to charge a fee above its own expenses for its services as receiver.<sup>29</sup> Also, if your goal is to keep your housing affordable for the long term, this goal may best be realized through a nonprofit's involvement. A nonprofit might in the future purchase the property or help you and a group

of tenants buy it. A list of nonprofit housing organizations is in the **Directory**.

### **b. Private Management Company**

If the nonprofit organization is not available, you may also consider a private management company. The drawback of a private company is that its decision to become receiver will be driven in part by its desire to make money. For this reason, it is more likely that a for-profit company will charge a higher fee for its services than a nonprofit organization.<sup>30</sup> In order to maximize profits, a for-profit management company may not be as aggressive in making necessary repairs. It may also be more aggressive in collecting rents and evicting tenants. On the plus side, a management company is in the business of managing properties. It has expertise in operating and running residential property. If you do not know of any management companies that may act as receivers, a court may be able to assist you in finding one.<sup>31</sup>

### **c. Trustee in Bankruptcy**

If your landlord has filed for bankruptcy, you may ask the bankruptcy court judge to order the Trustee in Bankruptcy to manage the property.<sup>32</sup> Before you do this, make sure that the trustee is qualified or agrees to hire someone who is qualified. In this case, you are not asking the judge to appoint a receiver. Instead, you are asking a judge to recognize that the trustee should operate as a receiver. Because of the complexity of bankruptcy court, this strategy usually requires the assistance of an attorney.

### **d. Experienced Individuals**

Individuals can also be receivers. For example, attorneys who have experience in nonprofit housing development have acted as receivers. Experienced contractors have also acted as receivers.

## **2. Defining the Receiver's Role**

Part of the challenge of getting a good receiver is finding a person or an organization that has the skills, desire, and time to do the job. There are several ways to define the receiver's job so that someone may be more willing to take on the task.

First, in most cases, receivers require that they be reimbursed from rent payments for all of their out-of-pocket costs of running the receivership.<sup>33</sup> These costs may include hiring a manager, transportation to the building, legal fees, and other costs associated with managing the property. Second, receivers can be paid a fee for their services above and beyond out-of-pocket expenses.<sup>34</sup> Finally, receivers may be concerned about being vulnerable to tenant lawsuits for bad conditions and other violations of law that they did not cause. By law, a receiver's *liability* is limited.<sup>35</sup> A court can also protect a receiver from legal liability for bad conditions in the building or for any of their actions as receiver.<sup>36</sup> Courts may require the receiver to have or obtain liability insurance, the cost of which is also reimbursable from the rents.<sup>37</sup>

## **3. Selecting a Receiver**

### **a. Networking to Find a Receiver**

In evaluating possible receivers, it is important that you find someone who is qualified to take your building out of its current bad condition and who will deal with issues that are of concern to you. Use the tenant and housing development network to help you narrow your search (see the **Directory**).

### **b. Interviewing Candidates**

After you get the names of possible receivers and narrow down your list, you should conduct interviews with each candidate. Clarify your goals and then develop a series of questions that you can ask potential receivers. Here are some questions you can ask these candidates.

- Have you ever been a receiver? If so, describe the circumstances, including the size of the building, the powers and duties you had, and the final outcome.
- Have you ever owned or managed rental property? If so, how many properties, what size are they, and what condition are they in?
- What kind of experience have you had in terms of getting repairs made? Have you had to hire and supervise people to make repairs? Have you had to deal with emergency repairs and, if so, what kinds of emergencies?
- Have you ever evicted tenants? What were the reasons? Did you go to court? Were the tenants awarded any money by the court for bad conditions or other violations of law?
- Have you had experience negotiating loans with banks for rehabilitation work or applying for government funding to do repairs? If so, describe.
- Have you worked with a tenants group? If so, what did you learn from that experience?
- Do you have the time and resources to manage our building(s)?
- Do you have references we can call, including tenants in buildings you have managed?

It is very important to check a possible receiver's references and to contact people who may be familiar with a person's or company's reputation.

#### **4. Possible Conflicts Between You and Your Receiver**

There are a number of situations where the interest of tenants or an individual tenant may conflict with the responsibilities of a receiver. The most common conflicts arise around withholding rent and evictions.

##### **a. Rent Withholding**

Your receiver needs your rent money to make repairs to your home. You, however, may rightfully feel that you should not have to pay the full rent for living in bad conditions. The problem is if all the tenants withhold 100% of their rent, there may be no money to make repairs. Fortunately, there are some solutions:

1. You can ask a judge to allow all tenants to pay only a percentage of the rent until sufficient repairs have been made to justify an increase. For example, a judge may temporarily lower everyone's rent by 50%.<sup>38</sup>
2. Each tenant may work out with the receiver an individual payment schedule that lowers future rent for a period of time based on the conditions in an apartment. For example, a tenant who has endured cockroaches, broken windows, and a leaking ceiling for six months may feel that her rent for those six months should have been \$100 less. The receiver, in turn, may agree that the tenant should be credited for \$600 and then spread this credit out so that the tenant's rent would be lowered by \$50 a month over the next 12 months.<sup>39</sup>

##### **b. Evictions**

A receiver may decide that in order to increase the income for the building, she must raise rents and evict lower-income tenants and tenants who are not paying their rent. Tenants can protect themselves against this possibility by asking a judge to include in a receivership order two specific provisions:

1. In the event the receiver tries to evict a tenant for non-payment of rent, a tenant has the right to argue that her apartment is worth less than what she agreed to pay the receiver.
2. In the event the receiver wants to evict for reasons other than non-payment, the receiver must have "good cause" to evict. A tenant can be evicted for good cause if she is using the apartment for unlawful

purposes or interfering with the health, safety, and well-being of other tenants in the building.<sup>40</sup> Tenants have the right to defend themselves against eviction.<sup>41</sup>

## Getting More Money for Repairs

As a practical matter, in many cases, even if every tenant paid the full rent, a receiver may not have enough money to make the necessary repairs. Here are some ways to get more money for the receivership.

1. Get banks or organizations that lend groups money, such as local revolving loan funds, to lend money to the receiver by offering them what's called a "priority lien" or "super lien." This means that when the building is sold, the bank or organization that gave the loan can get back the money they lent before any other bank or person recovers what they are owed.<sup>42</sup> They have first priority. In some cases, tenant groups and local nonprofit development groups have used specific projects as the motivation to actually create local revolving loan pools.<sup>43</sup>
2. Negotiate with the bank that holds the mortgage on the property to give the receiver money for repairs. Since the bank has an interest in preserving the value of the property, it has a reason to pay for repairs. Because banks do not want to be held legally responsible for the condition of the property, if you propose that a bank take steps that make it look like it is legally responsible, such as paying for repairs, it may not cooperate. You may relieve a bank of these fears by having a judge indicate in an order that the bank's money for repairs will not make it legally responsible for the property.<sup>44</sup>
3. Investigate other possible sources of funds, such as local Community Development Block Grant (CDBG) funds; funds from a local affordable housing trust fund; local

rehabilitation, energy conservation, and deleading funds; or state funds.

4. Ask the court to order the landlord to provide funds from other property that she owns.

## Options After the Receivership

A receivership, while it may be needed to repair bad conditions, can be one of those bad things that can turn into something good. When a landlord abandons a building or files for bankruptcy, tenants can organize, grab onto all the uncertainty in their situation, and make their homes better places to live.<sup>45</sup>

As a tenant, you may be able to work with your receiver to help motivate a bank to sell to a nonprofit organization at a below-market price. Under both federal and state laws called the Community Reinvestment Act (CRA), the government requires banks to meet the credit and banking needs of low- and moderate-income people in the bank's "designated lending area."<sup>46</sup> Tenants have used CRA to negotiate below-market loans in order to buy their buildings.

A tenant group can also become a nonprofit organization and try to purchase the building itself. There are resources to provide tenants with legal help and groups that help tenants develop strong, democratic, and effective organizations. For information about where to get legal services and tenant-organizing assistance, see the **Directory**.

You can also seek out local city officials from the Board of Health or the community development department to get their help in moving the banks to act responsibly in terms of providing financing on good terms.<sup>47</sup> Local governments may have Community Development Block Grant funds which tenants can use to hire organizers, staff, and experts to help them purchase their building.<sup>48</sup>

When tenants have needed to act quickly to prevent their building from deteriorating, they have found strength in numbers.<sup>49</sup> Organized tenants have successfully taken back their properties from irresponsible landlords and improved their living conditions. Where tenants have not acted quickly, vacancies and vandalism

have become obstacles to getting tenant support and keeping a core group of tenants together. The more organized and united you are in demanding what you need, the more likely judges, banks, or government officials will be to respond with assistance. You have a right to a decent place to live.

## Endnotes

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1. A useful publication with more information about receiverships is *How to Take the Distress Out of Abandoned Housing* (1998), by Massachusetts Continuing Legal Education. It is available at the Massachusetts Trial Court law libraries (at Barnstable, Berkshire, Brockton, Essex, Fall River, Lawrence, and Worcester, and through inter-library loan at the other courthouse libraries). It may also be available at libraries at the local law schools or at your local legal services office.
2. G.L. c. 111, §127B through O sets forth the relevant provisions regarding receivership. See also Mass. R. Civ. P. Rule 66.
3. Frequently, the lender will be listed as "Mortgage Electronic Registration Systems, Inc." (MERS). MERS acts for the mortgagee (lender) or the entity servicing the mortgage but is not the "real" lender. To find the identity of the entity for which MERS is acting, check the MERS website at [www.mersinc.org/homeowners](http://www.mersinc.org/homeowners).
4. For information about how tenants in Salem organized, see *Salem Tenants Take Action*, HOUSING MATTERS, Vol. 4, #3 (December 1990), published by the Massachusetts Law Reform Institute.
5. See article in *Banker and Tradesman* entitled "City Blazes Trail with Receivership Law," by Amy Wyeth (April 7, 2008).
6. The Registry of Deeds records are available online at [www.sec.state.ma.us/rod](http://www.sec.state.ma.us/rod), but the extent of the free information varies by county. For example, the actual records of the Middlesex County (South) Registry of Deeds are available (for free) at [www.cambridgedeeds.com](http://www.cambridgedeeds.com).
7. If you do not know the name of the legal owner of the property, look at the tax assessor's records at your city or town hall. These records will tell you either the name and address of the person who owned the property at least within the last year or the book and page number where you can find the deed. Frequently, the assessor's records are available online at the city or town's website.
8. See endnote 3.
9. Information about how to track down a landlord's lender was adapted from *People Before Property: A Real Estate Primer and Research Guide*, published by Urban Planning Aid, 1972.
10. G.L. c. 111, §127D and G.L. c. 111, §127I, ¶2.
11. G.L. c. 111, §127C. G.L. c. 218, §19C provides that district courts have the power to appoint receivers. Receivers can also be appointed under G.L. c. 186, §14. See also G.L. c. 223, §130 for law on dissolution of certain attachments by a receiver.
12. See G.L. c. 111, §127C for the required content of the petition.
13. G.L. c. 143, §3S, and 105 C.M.R. §410.481. See also G.L. c. 244, §15A (lenders must notify tenants and others when taking possession of a building before foreclosure or transferring title to the building.)
14. Because receiverships are a remedy of last resort, it is best to have as much documentation as possible so that when you present a petition to the court, a judge will see what steps you have taken to get repairs made.
15. See G.L. c. 111, §127D.
16. See G.L. c. 111, §127I, ¶2.
17. The filing fee for a tenant petition is \$2 (G.L. c. 111, §127D), plus the \$15 surcharge (G.L. c. 262, §4C). Service costs vary, but are generally at least \$25-30 per defendant.
18. G.L. c. 261, §27A-G.
19. If a tenant paid rent into court under G.L. c. 111, §127F (even where no receiver was appointed), then the tenant cannot be evicted except for tenant fault for the nine months after the court order has ended. See the uncodified statute at St. 1968, c. 404, and *Olde Holyoke Development Corporation v. Morales*, Hampden Housing Court, 90-SP-01291-H (Abrashkin, J., July 3, 1990).

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20. In *Belizaire v. Hsu and Chen*, Cambridge District Court, Civil Action 0152-CV-0629 (Sprague, J., April 10, 2001), the court allowed the tenant's motion to authorize tenant and the Cambridge Housing Authority to pay the last agreed-upon rent into court.
  21. See G.L. c. 111, §127I.
  22. *Rogers v. Smith*, Boston Housing Court, CA-27890, CA-27891, CA-27892, CA-27893, Order for Appointment of Receiver (December 8, 1989).
  23. *Mena v. Shapiro*, Hampden Housing Court, LE-3696-89 (Order of November 16, 1989).
  24. *Rogers v. Smith*, see endnote 22.
  25. *Mena v. Shapiro*, see endnote 23.
  26. See paragraph 7 of the undated Order (issued in June 1987) in *Pires et al. v. Ribeiro*, Cambridge District Court, 2530/06 (Menton, J.), where the court authorized the receiver to obtain rental subsidies for all the units for a 10-year period. The receiver then obtained project-based Massachusetts Rental Voucher Program (MRVP) subsidies for most of the rental units. Although such subsidies are no longer available, there are Section 8 subsidies which could be attached to rental units.
  27. There are three different types of bankruptcy cases that a landlord may file: Chapter 7, Chapter 11, and Chapter 13. This section in the text applies to a Chapter 7 bankruptcy. A Chapter 7 bankruptcy is one in which a landlord is trying to sell all of her property and a trustee steps in to manage it. In a Chapter 11 or Chapter 13 bankruptcy, a landlord, not a trustee, continues to manage her property. In order to get new management in a Chapter 11 or a Chapter 13 bankruptcy case, you would need to go to bankruptcy court, as opposed to a state trial court, and ask for a new manager. Chapter 11 and Chapter 13 cases can be complicated, and tenants and tenant advocates should seek the expertise of a lawyer who specializes in bankruptcy.
  28. In *Garcia v. Shea*, Hampden Housing Court, CA-90-CV-0022-H (Order of March 23, 1990), the Trustee in Bankruptcy and the bankruptcy court judge gave their permission for a receivership to continue without abandonment.
  29. In *Harris v. Houde*, Worcester Housing Court, CA-90-CV-0052 (Order of February 28, 1990), the Fitchburg Community Development Corporation volunteered to become receiver of eight properties without requesting any additional fees for its services.
  30. See, e.g., *Garcia v. Shea*, Hampden Housing Court, CA-90-CV-0022-H (Order of March 23, 1990), where the receiver, V.P.M., Inc., was paid 6% of the collected rents over and above its out-of-pocket expenses, but only after securing vacant units and making emergency repairs.
  31. See, e.g., *Gonzales v. Cohen*, Worcester Housing Court, CA-88-CV-0350, 88-CV-0401, CV-0402, CV-0403, CV-0404, CV-0405 (Order of November 29, 1988), where Judge Martin drew from the court's list of potential receivers to assist pro se tenants and appointed D&H Realty, Inc. as receiver for seriously deteriorated properties.
  32. Prior to obtaining receivership in *Mena v. Shapiro*, Hampden Housing Court, LE-3696-89 (Order of November 16, 1989), the tenants' motion in bankruptcy court to prevent the Trustee in Bankruptcy from abandoning the properties was denied. On a more optimistic note, however, tenants in West Virginia obtained an order from the bankruptcy court requiring the trustee to collect rents from the tenants and pay the utility bills so that service would be restored. See also *In re Bush v. Standish*, U.S. Bankruptcy Court, S.D. W.Va. 89-20949 (Order of February 7, 1990). See generally *Midlantic National Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494, 106 S. Ct. 755, 88 L.E.2d 859 (1986), *reh. den.* 475 U.S. 1090, 106 S. Ct. 1482, L.E.2d 736 (1986) (trustee may not abandon property in contravention of state public health or safety statutes or regulations).
  33. See, e.g., *Garcia v. Shea*, endnote 30; *Harris v. Houde*, endnote 29.
  34. See, e.g., *Garcia v. Shea*, endnote 30; *Mena v. Shapiro*, endnote 23; *Cardona v. Sheedy*, endnote 36. These orders are orders which include fees.
  35. G.L. C. 111, §127I, ¶7.
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36. See, e.g., *Garcia v. Shea*, endnote 30; *Mena v. Shapiro*, endnote 23. In *Cardona v. Sheedy*, Hampden Housing Court, CA-91-CV-0181, Findings and Rulings on Tenants' Petition to Enforce the State Sanitary Code (September 10, 1991), the court concludes that receivers are generally held to the same legal requirements of owners, including the obligation to delead apartments and make other repairs. However, tenants, code enforcement agencies, or others can require only that receivers make repairs or pay damages out of the funds of the receivership, and not out of their own personal assets. See also Department of Public Health Opinion Letter, attached to the finding and rulings in *Cardona v. Sheedy*. Limited immunity of the receiver, however, should not apply to your right to seek damages against parties other than the receiver, including the owner. You should have the judge make that explicit in her order. See *Mena v. Shapiro*, endnote 23.
  37. See endnote 34. See also *Harris v. Houde*, endnote 29.
  38. See, e.g., *Rodgers v. Smith*, Boston Housing Court, CA -27890, CA-27891, CA-27892, CA-27893 (Order of December 8, 1989); *Mena v. Shapiro*, endnote 23; and *Garcia v. Shea*, endnote 30, where increases or decreases in the rent occurred by way of the court's housing specialist, who, upon request by either the tenant or receiver, inspected the premises and determined the appropriate rent. The determination was binding unless modified by the court after a hearing which could be requested by either party.
  39. See *Harris v. Houde*, endnote 29. In the event of a dispute between the tenant and the receiver regarding the appropriate abatement, either party could request a hearing to allow the court to decide.
  40. See, e.g., *Garcia v. Shea*, endnote 30; *Harris v. Houde*, endnote 29.
  41. Many of the receivership orders cited in these endnotes contain this provision. See **Chapter 13: Evictions** for further explanation of your defenses and counterclaims under G.L. c. 239, §8A.
  42. Pursuant to G.L. C. 111, §127I, receivers can have a lien with priority over all other liens except municipal liens. Such liens may be assigned to lenders for purposes of securing loans for repairs, operations, maintenance, and management of priority. See also *Turner v. State Wharf and Storage Co.*, 263 Mass. 92 (1928).
  43. In Lowell, the Coalition for a Better Acre, a nonprofit community development corporation, when seeking financing for the redevelopment of a 267-unit subsidized apartment complex, was instrumental in creating the Lowell Development Financial Corporation (LDFC), which set up a special loan pool to increase affordable housing development in Lowell. Start-up funds for LDFC came from nine local banks. For information about how the loan pool was set up, see *Everybody in the Pool*, HOUSING MATTERS, Vol. 4, #3 (December 1990), published by the Massachusetts Law Reform Institute.
  44. In *Garcia v. Shea*, *Mena v. Shapiro*, and *Cardona v. Sheedy*, endnotes 30, 23 and 36, respectively, mortgagees of the properties involved agreed to advance to the receivership money for repairs to the extent rent money collected was insufficient. Depending upon the language of the bank's mortgage agreement with the landlord, money given by the bank to the receiver may be added to the landlord's mortgage and may have the same priority as the bank's original mortgage.
  45. In *Olde Holyoke Dev. Corp. v. Morales*, Hampden Housing Court 90 SP 01291 H (July 3, 1990), the court held that, pursuant to St. 1965 c. 898, §4, as amended by St. 1968, c. 404, §1, after a receivership ends, for nine months following the receivership, the new owner was prohibited from terminating the tenancy without a reason. The reasonings of this decision would presumably also prohibit rent increases during this nine-month period.
  46. Community Reinvestment Act of 1977, as amended, 12 U.S.C. §§2901 et seq. The state community reinvestment law is found at G.L. c. 167, §14. For more about federal CRA history, regulations, and how to access CRA lending information, see the Federal Financial Institutions Examination Council website at [www.ffiec.gov/cra/default.htm](http://www.ffiec.gov/cra/default.htm).

In the *Cardona* receivership (see endnote 36), a local community development corporation contacted the CRA compliance officer at the landlord's bank, who played an important role in persuading the bank to fund the receivership.

You may want to call the bank and ask to speak with its Community Reinvestment Act (CRA) officer. Every bank appoints an officer to monitor compliance with the CRA. If a bank has been unresponsive to your requests for assistance, you may want to write a letter to the bank, outlining all of the relevant facts and specifically stating what you would like the bank to do. At the end of the letter, ask the bank to "include your letter in their Community Reinvestment Act Public Comment File." As a result of making this request, the bank will be required to show your letter to government officials who monitor the bank's compliance with this law. You may also want to send a copy of your letter to the monitoring agency. Remember to keep a copy of the letter for future reference.

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47. In Fitchburg, tenants of the *Harris* receivership, endnote 29, worked closely with city officials in their efforts to get BayBank to deal with three properties for which it held mortgages; the Fitchburg Board of Health pursued the bank by issuing correction orders regarding the properties; the Planning Department pursued contacts with bank officials in the unrealized hopes of negotiating the properties' sale to the CDC; and the mayor wrote a letter to BayBank, attaching a local paper's editorial condemning BayBank's inaction.
  48. In Somerville, the Human Services Office provided a local community action program with a Community Development Block Grant of \$10,870 to hire a full-time organizer to help tenants at Clarendon Hill Towers, a federally subsidized housing development, organize to purchase their building. The Community Development Office, a different office with the Somerville City Hall, gave tenants at Clarendon Hill Towers a grant of \$25,000 to hire a law firm to negotiate an option agreement and structure a preservation plan.
  49. In Salem, organized tenants stopped a bank's attempt to sell a property at foreclosure by picketing and rallying at the sale itself. These efforts led to the bank's agreement to provide the tenants and a local nonprofit organization with the opportunity to negotiate and purchase the property themselves. Also, in Fitchburg, tenants from the *Houde* receivership demonstrated outside of Housing Court against BayBank's failure to act to provide money to the receiver, negotiate with the city, or bring it to foreclosure—eventually forcing the CDC to withdraw from acting as the properties' receiver. The demonstration received substantial local press, and a few weeks later BayBank scheduled foreclosure sales.

