

**COMPARISON BETWEEN 1975 and PRESENT §5 LANGUAGE BARRED
FROM APPLICATION TO §6**

(green wording is only one version; colors highlight comparable wording)

Chapter 239 §5 1975 Amendment

If the defendant appeals from a judgment of the superior court, a housing court or a district court, rendered for the plaintiff for the possession of the land or tenements demanded, he shall, **except as provided in section six**, before such appeal is allowed, give bond in such sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the plaintiff or court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the plaintiff or court. In an appeal from a judgment of a district court such bond shall be conditioned to enter the action in the superior court for that county at the return day next after the appeal is taken. In an appeal from a judgment of the superior court or a housing court such bond filed shall be conditioned to enter the action in the appeals court. **An appeal from a judgment of the superior court or a housing court shall be taken by filing a notice of appeal within six days of entry of judgment. Appeals from judgments of the superior court or a housing court shall otherwise be governed by the Massachusetts Rules of Appellate Procedure. Any bond given shall also be conditioned that the defendant is to pay to the plaintiff, if final judgment is in his favor, all rent accrued at the date of the bond, all intervening rent, and all damage and loss which he may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during such withholding, with all costs, until delivery of possession thereof to him.**

Chapter 239 §5 Present

(c) **Except as provided in section 6**, the defendant shall, before any appeal under this section is allowed from a judgment of the superior court, a housing court, or a district court, rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the court. In an appeal from a judgment of a district court the bond shall be conditioned to enter the action in the appellate division at the return day next after the appeal is taken. In an appeal from a judgment of the superior court or a housing court the bond filed shall be conditioned to enter the action in the appeals court. **Appeals from judgments of the superior court or a housing court shall otherwise be governed by the Massachusetts Rules of Appellate Procedure. The bond shall also be conditioned to pay to the plaintiff, if final judgment is in plaintiff's favor, all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff.**

A certificate of such deposit of cash or its equivalent shall be issued to the depositor by the clerk. In appeals from a district court the deposit shall be transmitted by the clerk with the papers to the clerk of the superior court, who shall thereupon deliver a receipt therefor to such clerk, but in such appeals from a judgment of the superior court or a housing court the deposit shall not be transmitted to the appeals court unless specifically, requested by said appeals court. The superior court or a housing court may give directions as to the manner of keeping such deposit. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond.

The court shall waive the requirement of such bond or security if it is satisfied that the defendant has a defense which is not frivolous and that he has insufficient funds available to him to furnish the necessary bond or security. The court may require any person for whom such bond or security has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of such waiver, for the continued occupancy of the premises. Approved October 30,1975.

(d) In appeals from a judgment of the superior court, a housing court or a district court the deposit shall not be transmitted to the appeals court or the appellate division unless specifically requested by said appeals court or appellate division. The superior court, a housing court or a district court may give directions as to the manner of keeping the deposit. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond provided for in the third paragraph of this section.

(e) A party may make a motion to waive the appeal bond provided for in this section if the party is indigent as provided in section 27A of chapter 261. The motion shall, together with a notice of appeal and any supporting affidavits, be filed within the time limits set forth in this section. The court shall waive the requirement of the bond or security if it is satisfied that the person requesting the waiver has any defense which is not frivolous and is indigent as provided in said section 27A of said chapter 261. The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits. The court shall forthwith make a decision on the motion. If the motion is made, no execution shall issue until the expiration of 6 days from the court's decision on the motion or until the expiration of the time specified in this section for the taking of appeals, whichever is later.