

A GUIDE TO BASIC MASSACHUSETTS LAW

HASSETT | DONNELLY

INTRODUCTION

Hassett | Donnelly's *A Guide to Basic Massachusetts Law* is designed to be a concise reference source for issues of Massachusetts law arising in insurance defense cases and business litigation.

The summaries provided for each of the topics covered in this material are meant to provide a beginning point and should be utilized with other reference materials to ensure a complete and accurate analysis with respect to a particular case. The summaries are not meant to set forth a complete legal analysis of the topics addressed in the *Guide*. Given the varying complexity of cases and the ever-changing interpretation of the law, Hassett | Donnelly's *A Guide to Basic Massachusetts Law* should not be interpreted as definitive legal advice.

In the event that you require additional information or assistance with respect to any issue, whether or not it is addressed in Hassett | Donnelly's *A Guide to Basic Massachusetts Law*, please feel free to contact any of our attorneys.

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*This publication, *A Guide to Basic Massachusetts Law*, is intended as a service to Hassett & Donnelly, P.C.'s clients, but may be considered advertising under the rules of the Supreme Judicial Court. Copies of court decisions may be obtained by calling Attorney David Hassett at (508) 791-6287.

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Massachusetts Law

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A. CIVIL PROCEDURE

1. State Court System. Massachusetts has a number of different departments of the trial court. Civil cases are most typically filed in the Superior Court or in the District Court/Boston Municipal Court. The remaining departments of the trial court consist of the Housing Court, Juvenile Court, Land Court and Probate and Family Court.

Civil cases should proceed in District Court/Boston Municipal Court only if there is no reasonable likelihood that recovery will exceed \$25,000.00. G.L. c. 218 § 19. Civil cases should proceed in the Superior Court only if there is no reasonable likelihood that recovery will be less than or equal to \$25,000.00. G.L. c. 212 §3. This limit was raised by the Supreme Judicial Court in its *Order Regarding Amount-In-Controversy Under G.L. c. 218 §19 and G.L. c. 212 §3*, dated July 17,2019 and effective January 1, 2020, to \$50,000. One may obtain a six-person jury trial in District Court if properly requested. *See* G.L. c. 218 § 19B. Cases in Superior Court are afforded a 12-person jury trial. Cases from the District Courts/Boston Municipal Court are typically appealed to the Appellate Division. The Massachusetts Appeals Court is the state's intermediate appellate court and reviews decisions made in the Superior Court to determine if errors of law have been made. The Supreme Judicial Court is the state's highest court. Most appeals are first brought to the Appeals Court. However, the Supreme Judicial Court can elect to take appeals from the Superior Court *sua sponte* and bypass the Appeals Court.

2. Commencement of an Action. A civil action is considered commenced by the mailing to the clerk of the proper court by certified or registered mail a Complaint and entry fee or by filing a Complaint and fee with the clerk. Mass. R. Civ. P. 3. The summons and Complaint must be served within ninety (90) days after the filing of the Complaint unless the party on whose behalf service was required can show good cause why such service has not been made. Mass. R. Civ. P. 4(j). In order to extend the time for service beyond the ninety days, as a matter of practice, a motion must be filed prior to the expiration of the ninety-day deadline, demonstrating good cause as to why service has not been effectuated. *See* Mass. R. Civ. P. 4(j) and 6(b). Otherwise, the Complaint may be dismissed without prejudice upon the court's own initiative or upon a Motion to Dismiss. Mass. R. Civ. P. 4(j).
3. Service of Process. Service of the summons and Complaint is governed by Mass. R. Civ. P. 4. Under the rule, an individual may be served personally or by leaving the summons and Complaint at his last and usual place of abode. Mass. R. Civ. P. 4(d)(1). Service may be made upon a corporation by delivering a copy of the summons and Complaint to an officer, to a managing or general agent, or to the person in charge of the business at the principal place of business within Massachusetts. Mass. R. Civ. P. 4(d)(2). An individual or a corporation may also be served by delivering a copy of the summons and Complaint to an agent authorized by appointment or by statute to receive service of process, subject to any further statutory notice requirements. Mass. R. Civ. P. 4(d)(1) and (2). In addition, if the process server makes return that after a diligent search a proposed defendant cannot be located, the court upon motion may issue an

- Order of Notice as prescribed by law. Id. Out-of-state service is authorized by G.L. c. 223A, otherwise known as “the long-arm statute.” Mass. R. Civ. P. 4(e) embodies the procedure set forth in the long-arm statute for effectuating service outside of Massachusetts. As a matter of practice, out-of-state defendants are typically served by return receipt mail.
4. Answer to Complaint and Affirmative Defenses. The defendant must serve an answer to a Complaint within twenty (20) days after service of the summons and Complaint. Mass. R. Civ. P. 12(a)(1). An answer to a Crossclaim, Counterclaim or Third-Party Complaint must be served within twenty days as well. Mass. R. Civ. P. 12(a)(1). In responding to any of these pleadings, the answer must raise the following affirmative defenses or they will be waived: accord and satisfaction; arbitration and award; assumption of risk; contributory negligence; discharge in bankruptcy; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; waiver; and any other matter constituting an avoidance or affirmative defense. Mass. R. Civ. P. 8(c).
 5. Motions to Dismiss. Prior to filing an answer, a party may choose to raise certain defenses by motion. These include: lack of jurisdiction over the subject matter (Mass. R. Civ. P. 12(b)(1)); lack of jurisdiction over the person (Mass. R. Civ. P. 12(b)(2)); improper venue (Mass. R. Civ. P. 12(b)(3)); insufficiency of process (Mass. R. Civ. P. 12(b)(4)); insufficiency of service of process (Mass. R. Civ. P. 12(b)(5)); failure to state a claim upon which relief can be granted (Mass. R. Civ. P. 12(b)(6)); failure to join a party under Rule 19 (persons needed for just adjudication) (Mass. R. Civ. P. 12(b)(7)); misnomer of a party (Mass. R. Civ. P. 12(b)(8)); pendency of a prior action in a court of the Commonwealth (Mass. R. Civ. P. 12(b)(9)); and improper amount of damages in the Superior Court as set forth in G.L. c. 212, § 3 or in the District Court as set forth in G.L. c. 218, § 19 (Mass. R. Civ. P. 12(b)(10)). In pursuing a Motion for Failure to State a Claim Upon Which Relief Can Be Granted pursuant to Mass. R. Civ. P. 12(b)(6), if materials outside the pleadings are presented and considered by the court, the motion may be treated as a Motion for Summary Judgment. Mass. R. Civ. P. 12(b). If a Motion to Dismiss is brought, all available defenses should be included as grounds for the motion. Mass. R. Civ. P. 12(g). Otherwise, certain defenses may be waived. Mass. R. Civ. P. 12(g) and Mass. R. Civ. P. 12(h). If a Motion to Dismiss is filed, it stops the clock on the twenty-day (20) deadline for filing an answer. If the court denies the motion to dismiss or postpones a decision until the time of trial, an answer must be filed within ten (10) days after the court takes action on the motion. Mass. R. Civ. P. 12(a)(2).
 6. Default/Default Judgment. If no responsive pleading is timely filed to a Complaint, Crossclaim, Counterclaim or Third-Party Complaint, a default may be requested pursuant to Mass. R. Civ. P. 55(a). Default Judgment may be obtained by filing appropriate Affidavits with the Clerk of Court if the amount sought is for a sum certain. Otherwise, judgment may be obtained following a hearing to determine damages. Mass. R. Civ. P. 55(b). No judgment by default shall be entered until the filing of an affidavit showing that the defendant is not a person in military service as defined in the

“Servicemembers Civil Relief Act,” except upon order of the court in conformance with the Act. Mass. R. Civ. P. 55(b)(4). An Entry of Default may be set aside for a good cause shown. Mass. R. Civ. P. 55(c).

7. Third-Party Practice. A defending party may implead a person who is or may be liable to him for all or part of the plaintiff’s claim against him at any time after commencement of an action. Mass. R. Civ. P. 14(a). It is not necessary to obtain leave of court if the Third-Party Complaint is filed no later than twenty (20) days after the original answer is filed. Otherwise, a motion must be filed with the court to obtain leave to file a Third-Party Complaint. *Id.*

8. Counterclaims and Crossclaims. Both Counterclaims and Crossclaims are governed by Mass. R. Civ. P. 13. With certain exceptions, a responsive pleading must include any Counterclaims that arise out of the transaction or occurrence that is the subject matter of the opposing party’s claim or such claims are waived. Mass. R. Civ. P. 13(a). A permissive Counterclaim, which arises out of a different transaction or occurrence, may also be raised. Mass. R. Civ. P. 13(b). A responsive pleading may further state as a Crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of either the original action or of a Counterclaim. Mass. R. Civ. P. 13(g).

9. Amendments to Pleadings. A party may amend his pleadings once as a matter of course at any time before a responsive pleading is served and prior to the entry of an Order of Dismissal. Mass. R. Civ. P. 15(a). If the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, an amendment may be made at any time within twenty (20) days after it is served. Otherwise, a party may only amend a pleading by leave of court or by written consent of the adverse party. Mass. R. Civ. P. 15(a). It should be noted that the rules dictate that leave to amend a pleading shall be freely given when justice so requires. See Mass. R. Civ. P. 15(a).

10. Limitations of Actions. The time frame within which a civil action may be filed can be controlled by a statute of limitations or a statute of repose. Statutes of limitations govern the time within which legal proceedings must be commenced after a cause of action accrues. *See Joslyn v. Chang*, 445 Mass. 344 (2005) (*citing Tindol v. Boston Housing Authority*, 396 Mass. 515, 517 (1986)). A statute of repose limits the time within which an action may be brought and is not related to the accrual of any cause of action. *See id.* Some commonly implicated statutes of limitations or statutes of repose are as follows:
 - a. Tort Actions. For most civil actions sounding in tort, the cause of action accrues when the injury or damage is sustained. The action must be commenced within three (3) years of such accrual. G.L. c. 260, § 2A.
 - b. Improvements to Real Property. For claims involving improvements to real property arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property, an action

may be commenced only within three (3) years after the cause of action accrues. G.L. c. 260, § 2B. However, in no event shall actions be commenced more than six (6) years after the earlier of the dates of the opening of the improvement to use or substantial completion of the improvement and the taking of possession for occupancy by the owner. *Id.* The six-year time limit constitutes an absolute limit within which such an action may be brought and accordingly, is a statute of repose. As such, it is not affected by the tolling statute G.L. c. 260, § 7. *See infra* paragraph 10(i). Moreover, a defendant may not be added to an existing action under a relation-back theory of amending pleadings pursuant to Mass. R. Civ. P. 15(c) after the period of the statute of repose has expired. *Tindol v. Boston Housing Authority*, 396 Mass. 515, 519 (1986); *James Ferrera & Sons, Inc. v. Samuels*, 21 Mass. App. Ct. 170, 173-74 (1985).

- c. Wrongful Death. A wrongful death action must be commenced within three (3) years from the date of death or within three years from the date the decedent's executor or administrator knew, or in the exercise of reasonable diligence, should have known, the factual basis for a cause of action. G.L. c. 229, § 2.
- d. Decedent's Estate. Generally, suits against an estate must be commenced and served within one (1) year after the date of death. G.L. c. 190B, § 3-803. Service must be made in hand upon the administrator or executor of the state, or a notice of the suit, including the name of the estate, the name and address of the creditor, the amount of the claim and the court in which the action has been brought, must be filed in the proper registry of probate. *Id.* However, actions for personal injuries or death, if brought after the one year deadline, may be brought against the executor or administrator as long as such suits are commenced within three (3) years after a cause of action accrues and provided that any judgment may be satisfied only from the proceeds of an insurance policy and not from the general assets of an estate. G.L. c. 190B, § 93-803(d)(2).
- e. Medical Malpractice. Actions sounding in contract or tort for medical malpractice shall be commenced only within three (3) years after the cause of action accrues. G.L. c. 260, §4. In no event shall any such action be commenced more than seven (7) years after the occurrence of the act or omission which is the alleged cause of the injury upon which such action is based, unless the action is based upon leaving a foreign object in the body. *Id.* Medical malpractice actions brought on behalf of minors are governed by G.L. c. 231, § 60D. Under that statute, minors under the age of six (6) have until age nine (9) to commence their medical malpractice suit. G.L. c. 231, § 60D. The seven-year statute of repose also applies to such minors. *Id.*
- f. Legal Malpractice. Actions in contract or tort for malpractice, error or mistake against attorneys shall be commenced only within three (3) years after the cause of action accrues. G.L. c. 260, § 4.

- g. Contract Actions. In general, the statute of limitations for contract actions is six (6) years from the time of the breach of contract. G.L. c. 260, § 2. There are numerous exceptions, however, to this six-year time frame. Among the exceptions are the following: In the context of a sale of goods, the statute of limitations is four (4) years after the cause of action has accrued. The parties may reduce the period of limitation to not less than one year by the original agreement, but may not extend it. G.L. c. 106, § 2-725(1). An action in contract for personal injuries must be commenced within three years after the cause of action accrues. G.L. c. 260, § 2A. The date of the injury is the date on which the action accrues. *Id.* See also, *Stark v. Advanced Magnetics, Inc.*, 50 Mass. App. 226 (2000). A breach of contract action against an executor, an administrator or other legal representative of the estate of the deceased person shall be brought within one (1) year after the right of action accrues. G.L. c. 260, § 11. Such an action against the trustee, guardian or conservator must be brought within two (2) years after the cause of action accrues. *Id.* For contracts executed under seal, the action must be commenced within twenty (20) years of the breach. G.L. c. 260, § 1.
 - h. Consumer Protection Actions. Actions arising out of violations of any law intended for the protection of consumers shall be commenced only within four (4) years after the cause of action accrues. See G.L. c. 260, § 5A (which enumerates numerous consumer protection laws covered by the statute, including G.L. c. 93A).
 - i. Tolling Statute. If a person is a minor or is incapacitated by reason of mental illness when a right to bring an action first accrues, the limitation period for commencing an action does not begin to run until after the disability is removed. G.L. c. 260, § 7. There are certain instances where this tolling statute does not apply, such as those instances where there is an applicable statute of repose.
 - j. Claims Against the Commonwealth. Actions brought against the Commonwealth of Massachusetts pursuant to G.L. c. 258, the Massachusetts Tort Claims Act, may only be brought within three (3) years after the cause of action accrues. G.L. c. 260, § 3A. This three-year statute of limitations also applies to breach of contract claims. *Wong v. University of Massachusetts*, 438 Mass. 29, 30, 36 (2002). In addition, a civil action may not be instituted pursuant to G.L. c. 258 unless presentment of the claim has been made in accordance with G.L. c. 258, § 4 within two (2) years after the date upon which the cause of action arose. G.L. c. 258, § 4.
 - k. Modification of Limitations Period by Contract. A limitations period may be shortened by contractual agreement of the parties. Such shortening of the limitations period is enforceable if it “is subject to negotiation by the parties, is not otherwise limited by controlling statute, is reasonable, is not a statute of repose, and is not contrary to public policy.” *Creative Playthings Franchising Corp. v. Reiser*, 463 Mass. 758 (2012).
11. Discovery. The Massachusetts Rules of Civil Procedure provide a number of different mechanisms for discovery. In general, “[p]arties may obtain discovery regarding any

matter, not privileged, which is relevant to the subject matter involved in the pending action” Mass. R. Civ. P. 26(b)(1). “A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.” Mass. R. Civ. P. 26(b)(2). “[A] party may obtain [materials] prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative (including his attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” Mass. R. Civ. P. 26(b)(3). In general, discovery of facts known and opinions held by experts expected to testify at trial may be obtained through interrogatories. Upon motion, the court may order further expert discovery by other means. Mass. R. Civ. P. 26(b)(4)(A).

- a. Depositions. Depositions may be taken upon oral examination as governed by Mass. R. Civ. P. 30, or upon written questions as permitted by Mass. R. Civ. P. 31. Rule 32 governs the use of depositions at trial or in other court proceedings. The deposition of a party may be used by an adverse party for any purpose in a court proceeding. Mass. R. Civ. P. 32(a)(2). A deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. Mass. R. Civ. P. 32(a)(1). “The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is out of the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of a witness by subpoena; or (E) upon [motion for other exceptional circumstances].” Mass. R. Civ. P. 32(a)(3).
- b. Interrogatories. A party may serve on any other party thirty (30) interrogatories. For good cause shown, the court may permit service of additional interrogatories. Mass. R. Civ. P. 33(a)(2). Answers to interrogatories are due within forty-five (45) days after service of the interrogatories. Mass. R. Civ. P. 33(a)(3). If a party fails to answer interrogatories, the propounding party may serve a Final Request for Answers to the interrogatories. In the event that answers or objections have not been received after the expiration of forty (40) days from the date of service of the Final Request for Answers, the interrogating party may file a written Application for Entry of Final Judgment for Relief or Dismissal. Mass. R. Civ. P. 33(a)(4). It should be noted that “[w]here the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served . . . and the burden of deriving or ascertaining the answers is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such an interrogatory to specify the records from which the answer may be derived and to afford the interrogating party a reasonable opportunity to [examine and copy such records.]” Mass. R. Civ. P. 33(c).

As of January 1, 2013, for cases pending in Superior Court, all interrogatory answers regarding experts pursuant to 26(b)(4)(A)(i) must be signed, or “certified,” by the identified expert. Superior Court Rule 30B.

- c. Request for Production of Documents and Entry Upon Land for Inspection. A party may serve on any other party a request to inspect and copy documents or to permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing or sampling the property. Mass. R. Civ. P. 34(a). A written response is required within thirty (30) days after the service of the request, except that the defendant may serve a response within forty-five (45) days after service of the summons and Complaint upon the defendant. Mass. R. Civ. P. 34(b).
- d. Physical and Mental Examination of Persons. A defendant may obtain an independent medical examination of a plaintiff when the mental or physical condition of the plaintiff is in controversy. Mass. R. Civ. P. 35(a). A Court Order for such an examination shall be made only upon a motion for good cause shown and upon notice to the person to be examined and to all parties. If requested by the party against whom an Order is made under Rule 35(a), “the party causing the examination to be made shall deliver to [that party] a copy of the detailed written report of the examining physician setting out his findings” Mass. R. Civ. P. 35(b).
- e. Request for Admissions. “A party may serve upon any other party a written request for admissions, for the purposes of the pending action, only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or to the application of law to fact, including the genuineness of any documents described in the request.” Mass. R. Civ. P. 36(a). Any matter set forth in such a request will be deemed admitted unless within thirty days after the service of the request, the party to whom the request is directed serves a response denying the matter or setting forth in detail why the answering party cannot truthfully admit or deny the matter, or written objections are furnished. *Id.* Any matter admitted by virtue of such a request is conclusively established unless the court on motion permits withdrawal or amendment of the admission. “Any admission made by a party under [Rule 36] is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.” Mass. R. Civ. P. 36(b).
- f. Failure to Make Discovery. If any deponent fails to answer questions at a deposition or any party otherwise fails to respond to any other discovery request, the discovering party may move for an order compelling an answer or response. Mass. R. Civ. P. 37(a)(2). The court may order the objecting party to pay reasonable fees and costs associated with the motion if it is granted. Mass. R. Civ. P. 37(a)(4). The court may impose a variety of sanctions should a party fail to comply with a prior court order. Mass. R. Civ. P. 37.

12. Motion Practice.

- a. District Court. The district courts and Boston Municipal Court hear civil motions on various days and times of the week. At the time that a moving party files a motion all other parties must be provided notice of the date and time that a motion shall be heard. In general, written motions and notice of the hearing on the motion shall be served not later than seven (7) days before the time specified for the hearing. Mass. R. Civ. P. 6(c). However, whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers and the notice or paper is served by mail, three (3) days are added to the prescribed period. Mass. R. Civ. P. 6(d). Accordingly, in practice, at least ten days' notice is typically given for motions filed in the District Court if such motions are filed by mail. Oppositions to such motions usually may be filed up until the time of the hearing. Opposing affidavits may not be served later than one day before a hearing without leave of court. Mass. R. Civ. P. 6(c). Summary Judgment motions must be served at least ten days prior to a hearing. Mass. R. Civ. P. 56(c).

- b. Superior Court. Motion practice is governed by Superior Court Rule 9A. A moving party is required to serve on all other parties a motion with a statement of reasons contained in a separate memorandum outlining why the motion should be granted. Superior Court Rule 9A(a)(1). A party opposing such a motion may serve an opposition upon the moving party within ten (10) days after service of a motion other than a Motion for Summary Judgment. Superior Court Rule 9A(b)(4)(i). A party has twenty-one (21) days after service of a Motion for Summary Judgment to serve an opposition. Superior Court Rule 9A(b)(5)(iii). As indicated above, an additional three (3) days shall be added when the motion is served by mail. Mass. R. Civ. P. 6(d).

Effective November 1, 2018, several substantial changes to Superior Court Rule 9A were adopted. The amendments apply to all motions served on or after that date. Dispositive or discovery motions require attorneys to confer about narrow issues and attempt to resolve any disputed issues. This conference must be initiated by the moving party. Superior Court Rule 9A(a)(1); Superior Court Rule 9C. In deciding a motion, a court need not consider facts not apparent from the record, verified by affidavit, or agreed upon in writing by the parties. Superior Court Rule 9A(a)(4). Service on (advance notice to) nonparties is required when the motion seeks to add the nonparty as a party or seeks other relief against a nonparty, or the issues affect the personal information or other interests of the nonparty. Superior Court Rule 9A(b)(1)(ii).

A Motion for Summary Judgment must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Superior Court Rule 9A(b)(5)(i).

Any party may request a hearing on a motion filed with the court. The court will determine whether a hearing will be conducted and will schedule the hearing if one is permitted. Certain types of motions are typically granted a hearing when requested, including motions for attachments, motions to dismiss and motions for summary judgment. Superior Court Rule 9A(c)(3). The requirements of Rule 9A do not apply to *ex parte* motions, emergency motions, and motions excepted by administrative order. Superior Court Rule 9A(b)(5)(d). Motions for Reconsideration are governed by Superior Court Rule 9D and are served and filed consistent with Rule 9A. Superior Court Rule 9D. Motions to Dismiss pursuant to Mass. R. Civ. P. 12 and post-trial motions pursuant to Mass. R. Civ. P. 50, 52, 59 and 60 are governed by Superior Court Rule 9E and are also subject to Rule 9A. Superior Court Rule 9E. When serving a Motion to Dismiss or a post-trial motion, a “Notice of Motion to Dismiss” or “Notice of Motion,” respectively, must also be filed with the court in a timely manner. *Id.*

13. Interest on Judgments. In a civil action based on personal injury, consequential damage or property damage, the Clerk of Court must add interest on the judgment at a rate of 12% from the date of the commencement of the action. G.L. c. 231, § 6B. In a contract action, interest is calculated at the rate, if any, established by the contract at issue, or at a rate of 12% from the date of the breach of contract. G.L. c. 231, § 6C. Post-judgment interest accrues from the date of entry of judgment until the time the judgment is paid at the same rate as provided for pre-judgment interest. G.L. c. 235, § 8.
14. Costs and Attorney’s Fees. The prevailing party may be entitled to recover certain costs from the losing party. These costs include filing fees, fees for service of process, and reasonable travel costs. *See* G.L. c. 261, §§ 23, 25A and 26. *See also* Mass. R. Civ. P. 54(d). The court may, upon Affidavit by the prevailing party or his attorney, award costs in a sum not exceeding \$500.00 for expenses actually incurred for plans, drawings, photographs and certified copies of public and court records necessary and used at the trial. G.L. c. 261, § 25A. The court in its discretion may also award costs related to depositions. Mass. R. Civ. P. 54(e).

Typically, the prevailing party is not entitled to recover attorney’s fees. Where attorney’s fees are allowed, it has been specifically provided for by statute. *See, e.g.*, G.L. c. 90, §34M (PIP statute); G.L. c. 93A, §11 (Consumer Protection Act); G.L. c. 186, § 14 (Quiet Enjoyment Statute).

Additionally, upon motion, a party may pursue reasonable attorney’s fees and costs in actions which are deemed frivolous pursuant to G.L. c. 231, § 6F.