



HOW TO BE A TENANT AND AVOID GETTING RIPPED OFF

By A. Joseph Ross



HOW TO BE A TENANT IN MASSACHUSETTS AND AVOID GETTING RIPPED OFF

Revised, June 2015

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Introduction

There are many perils for a tenant in the Massachusetts housing market. Without rent control, and with limited local code-enforcement budgets, a landlord often has little incentive to provide decent value for the high rents being charged. Laws give tenants many rights, but only by being an aware consumer can you have the benefits of those rights.

Most of us heard at an early age that ignorance of the law is no excuse for violating it. But all too often, a tenant winds up in the lawyer's office only **after** getting in trouble. When that happens, you may have already lost important rights, important evidence may have become unavailable, and all we can do is try to cut your losses. Please review these materials and consult with us if you have any questions. The best time to learn about these things is **before** you have a problem.

This guide is based on Massachusetts law covering residential rentals. In many instances, the laws are similar in other states, but there are no guarantees. Many situations are very complicated. This guide does not constitute legal advice and is no substitute for individual legal advice by a competent attorney who is familiar with the landlord-tenant laws of your state and with all the details of your situation.

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1. Keep a Paper (or Electron) Trail

If you learn nothing else from this guide, learn to keep good written records. Roughly six thousand years after the invention of writing, in a society with almost universal literacy, many people are inexplicably reluctant to keep written records of even the simplest things. It is important to document the landlord-tenant relationship, and, indeed, all consumer transactions.

Get Everything in writing. Don't believe spoken promises, especially when you are being shown an apartment. An oral promise isn't worth the paper it's not written on! Get all agreements between you and your landlord in writing. If you cannot do this, have a witness with you when talking to the landlord. Follow up with a letter or e-mail "confirming our conversation of (date), ..."

Beware of a landlord or real estate agent who won't put a promise in writing. It probably means they don't intend to keep it.

Get the names of the people you talk to. When you talk to anyone at any business or government agency, get the name of the person you talk to. "Somebody in the office told me..." has little credibility. If anyone won't give you their name, ask for someone who will.

Keep records. Get signed and correctly dated receipts for any money that you give to the landlord and make sure the receipt states the purpose for which payment was made. Save cancelled checks and copies of money orders. Since banks usually no longer return cancelled checks to customers, try to get an online copy of important checks. Pay attention to the distinction between a security deposit and a last month's rent deposit and make sure that any receipt or check for these deposits states the purpose correctly. In a dispute over rent, the winner tends to be the person with the better rent records. Save all receipts and letters from your landlord and make copies of any letters that you send him or her. Use certified mail, return receipt requested. Make sure you archive e-mails safely and backup files.

It is important to communicate with landlords in writing. Even if you communicate orally, send a letter or e-mail confirming the conversation in writing. Landlord-tenant disputes often turn on different interpretations of the same conversation. When you write a letter or e-mail, be sure to spell everything out in detail. Your letter to your landlord isn't just for the landlord. It's also for your own records, to refresh your memory years later, and, if necessary, to show to a court. Date each letter and keep a copy. Archive e-mails and back them up safely or print them out. If you deliver letters personally by sliding them under the landlord's door, note the date and time you did so on your own copy. Save the originals of all paper correspondence from the landlord. Note on each document the date you received it. If you correspond by fax, be sure to print out and save a transmission record for every fax that you send. We have seen judges refuse to admit a fax communication into evidence without a transmission record.

While e-mails can be very useful in keeping a "paper" trail, text messages can be difficult or impossible to archive, copy, or use in court. We've tried photocopying the phone display, without success. Some smart phones have the ability to capture a "screen shot" of whatever is on the display. This can be used to create copies of text messages, which can then be emailed to yourself, archived on a computer, and printed out. Some phone services offer the service, usually for a fee, of providing copies of text messages. Consider doing this for important messages, especially whenever you get a new phone. Unless you know how you will copy and archive text messages, they are not useful as a written record.

Some people still prefer to keep hard copies of correspondence. If you fax by computer, print out and save a hard copy of every fax with the transmission record. If you use e-mail, print

out and save every e-mail to and from the landlord. Be sure that the header on the printout contains the basic information of to, from, subject, and date. We've seen some e-mail software which omits this information on printouts. Write any missing information on the printout as soon as you print it out. If you do keep electronic copies, be sure to make regular backups and make sure that each document contains a hard date. The copy in your computer of a letter you sent to your landlord will be a much less useful record if, when you open it a year later, it shows the current date, rather than the date you wrote the letter.

Keep your records in an organized file and don't alter documents. We often get documents from clients on which they have written their own notes, hi-lightings, random phone numbers, or doodles. Courts want to see clean documents, preferably originals. If you must mark up a document, make a photocopy and make your notes on that. Don't mark up the originals. The original of the letter from your landlord is not a good place to write your notes. If you take pictures, don't write descriptions directly on the pictures. Keep your notes separate or on another print or with an electronic copy of the picture. Your own notes on a document may make the document inadmissible in court.

It is important to keep an inventory of the contents of your apartment, especially of valuable items such as a computer or a home entertainment center. Keep records of when and where you acquired each major item and how much it cost. Pictures of the items are also helpful. Keep these records, or a copy, in some safe place off the premises. These records can be valuable in case of a fire, theft, or other disaster, in making an insurance claim. They can also be helpful in the rare case where the landlord moves your property out of the apartment without warning.

2. Read your Rental Agreement

A standard lease or tenancy-at-will agreement has no special status; it is merely a form which the landlord has adopted for his or her own use. The most commonly used forms in the Boston area are published by the Rental Housing Association of the Greater Boston Real Estate Board, a landlord organization. They are written to the landlord's advantage. Read the agreement carefully before signing it. Like all contracts, it must be taken seriously. Make sure that it protects you as well as the landlord. Ask questions about any wording which is unclear. Write in as part of the lease any additional clauses or clarifications which you desire. Both you and the landlord should initial each change.

Make sure that the rental agreement reflects reality. For example, the standard RHA forms widely used in the Boston area provide that only the persons named in the agreement can occupy the apartment. Make sure that all persons, including children, who are going to live in the apartment are listed somewhere in the lease. If not, make sure that the agreement allows you to have the persons in your apartment that you intend to have living there.

Check whether the agreement permits subletting or pets. Don't rely on an oral promise that your dog or cat is OK. If the lease clause says that you need written permission to have a pet, make sure you get written permission. Remember what we said about oral promises. If you are going to have a washing machine, air conditioner, or waterbed, make sure that the standard lease clauses prohibiting those items is crossed out. Make sure that any changes are made on all copies of the lease. You and the landlord should both initial each change.

Some brokers are all too willing to tell you that a clause in the written lease doesn't really matter, that the landlord doesn't really care if you have pets, or the no-smoking clause is just there for insurance purposes, etc. This happens all too often and causes no end of headaches for both landlords and tenants. While some lease clauses may be invalid for legal reasons, you should generally assume that provisions in a written lease mean exactly what they say.

Examples of illegal lease clauses are provisions which require you to make all repairs or to waive your legal rights. Another illegal provision is one which charges you a penalty for late payment of rent when the rent is less than thirty days late. Illegal clauses are unenforceable and can result in damage awards under the Consumer Protection law.

Make sure you know what is included in the rent. The agreement should accurately reflect whether heat, hot water, electricity, and gas are included in the rent or are to be paid for separately. Additional charges are sometimes imposed for parking or recreational facilities. If the landlord is providing parking, make sure the agreement says so and that any clause in standard lease forms prohibiting parking is altered accordingly.

Finally, make sure all the blanks have been filled in correctly.

The written agreement usually limits your rights in important ways. Leases and tenancy-at-will agreements often restrict whether you can have an air conditioner or washing machine or other appliances. You can be evicted for not complying with these provisions.

Without express provisions in writing, you have virtual carte blanche ownership of the apartment during the tenancy. Unless the contract says otherwise, you have the right to bring in new occupants without the landlord's approval. You also have the right to have pets unless there is a written agreement to the contrary. It surprises many people, but there is no law entitling the landlord to a key to the apartment without a provision to that effect in a rental agreement.

3. Insurance

When a flood, fire, or other disaster occurs, the landlord is obligated to make repairs as quickly as possible, and you may be entitled to a rent abatement and to the cost of lodging during the time the apartment was uninhabitable. But the landlord is not responsible for the damage to your personal property unless the damage came from a condition that the landlord knew about previously. See the chapter on “Habitability.” For this reason it is important to have your own renter’s insurance to protect your property.

4. Utilities

The State Sanitary Code provides that you can only be required to pay for utilities which are separately metered, through meters which serve only your unit. You cannot be made to pay for utilities for any other part of the building. In some small buildings, it is common for basement or hallway lights, outlets, or laundry facilities to be metered to the unit once occupied by the owner and now occupied by a tenant. If you believe that you are paying for electricity, gas, or heat for any part of the building outside your own apartment, you should call the local code enforcement agency for an inspection.

There is one exception. In a building of three or fewer units, a light fixture in a common hallway may be metered to a unit on the same floor **provided** that the rental agreement explicitly states that you are responsible for paying for that light **and** the owner notifies the occupants of all other units. These requirements are strict, and the landlord must observe them to the letter.

An agreement for you to pay for electricity, gas, or fuel for heat and hot water must be in writing. If it is not, you may be able to require the landlord to pay for these bills. However, under the most recent decisions of the Massachusetts Appeals Court, if you pay for a utility for a long time without objecting, and there was no actual misrepresentation or cross-metering involved, you may only get \$25 damages, plus attorneys fees.

5. Water Charges

Until recently in Massachusetts, it was unlawful for a landlord to charge a tenant for water. Legislation enacted in 2004 now allows a landlord to charge tenants for water and sewer usage, provided that the very detailed requirements of the law are followed carefully. A landlord who does not follow all requirements exactly may be unable to charge tenants for water and may even be required to refund to tenants all charges already collected.

The requirements include the installation of submetering devices for each unit in the building and any common-area water usage, so that each tenant can be billed for only his or her own water usage, the installation of low-flow water conservation devices, and certification to the local code enforcement agency. The tenant must be a new tenant in that unit who has signed a written rental agreement that clearly and conspicuously provides for separate water charges and fully discloses the details. The previous tenant must have vacated the unit voluntarily or been evicted for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for the dwelling unit, and the new tenant must not have relocated involuntarily from another dwelling unit in the same building or building complex. For further information, please see the document *Charging Tenants for Water*, on our Website.

6. Housing Discrimination

Under state and federal law, a landlord cannot discriminate against you based on your race, religious creed, color, national origin, sex, gender identity, sexual orientation (unless your sexual orientation involves minor children as the sex object), age, genetic information, ancestry, or marital status, or because you are a veteran or member of the armed forces, blind, hearing impaired, or have any other handicap or because you have a trained dog guide as a consequence of blindness or hearing impairment. A landlord is not even allowed to ask questions about these subjects.

The prohibition against age discrimination does not apply to minors or to residency in state-aided or federally-aided housing developments for the elderly or to residency in housing developments assisted under the federal low income housing tax credit and intended for use as housing for persons 55 years of age or over or 62 years of age if the housing owner or manager registers every two years with the department of housing and community development.

Discrimination includes refusing to rent, setting different rental terms, providing different services or facilities, stating falsely that an apartment is unavailable, and advertizing or making any statement which indicates a preference based on race, religion, color, etc.

Your landlord also cannot discriminate against you if you receive federal, state, or local public assistance, including medical assistance, or are a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, either because you receive the subsidy or because of any requirement of the public assistance, rental assistance, or housing subsidy program. But your landlord may refuse to rent to you if, regardless of source, your income is not enough to be able to afford the rent. The landlord must apply the same standard of affordability to everyone, regardless of the source of their income.

In general, a landlord may not refuse to rent to you because you have children. This creates a problem for many small property owners because of the dangers of lead paint and the high cost of de-leading. See the chapter on Lead Paint for more details.

Under state law, a landlord may refuse to rent to a tenant with children in an two-family house where the landlord occupies the other apartment as his or her residence, or in a dwelling containing three or fewer apartments if one apartment is occupied by an elderly or infirm person for whom the presence of children would constitute a hardship. For this purpose, an elderly person is someone age 65 or over. An infirm person is one who is disabled or suffering from a chronic illness.

A landlord may also refuse to rent to a tenant with children in a temporary rental of a single unit for a period of one year or less if the landlord is the owner or tenant of the unit and usually occupies it as their principal residence.

The law on discrimination against a tenant with children is subject to any local, state, or federal restrictions regarding the maximum number of persons permitted to occupy a dwelling.

However, while a landlord may refuse to rent to a tenant with children in these circumstances, the landlord is still subject to the prohibition in the law against discriminatory advertising or statements. In other words, a landlord may be allowed to discriminate, but he or she is not allowed to say so. A landlord is also prohibited from refusing to rent to tenants with children because of the presence of lead in the premises and the obligation to de-lead.

If you feel you are being discriminated against, you can bring a complaint against the landlord before the Massachusetts Commission Against Discrimination, the Boston Fair Housing Commission (if the property is in Boston), or the federal Department of Housing and Urban Development.

7. Disabled Tenants

Both state and federal law prohibit discrimination against tenants with disabilities. This is a difficult area because it is not sufficient just to treat all tenants or rental applicants equally. The law also requires a landlord to treat some people differently by making “reasonable accommodations” to a tenant who has a physical or mental impairment which substantially limits one or more major life activities. Some examples are hearing, mobility and visual impairments, alcoholism, mental illness, mental retardation, or AIDS.

The really hard question is what is a “reasonable” accommodation. The answer depends on the situation. If you need a wheelchair, your landlord will have to install a wheelchair ramp if

this can be done easily and inexpensively. An elevator, on the other hand, in a building that doesn't have one, is expensive and probably not reasonable. A landlord who has a "no pets" policy must make an exception for a guide dog. If a landlord must make changes to the physical facilities, they can condition any changes in the physical facilities on your agreeing to restore the property to its original condition when you move out, provided that the requirement is "reasonable."

"Reasonable accommodation" does not mean that a person with a disability is excused from complying with the basic obligations of a tenancy. But it does mean that you can have help or can comply in a manner different from other tenants. The law does not require a landlord to rent to you if you directly threaten the health or safety of others or if you are currently using illegal drugs.

Multiple Chemical Sensitivity. One form of disability needs specific mention here: a person who is sensitive to many of the substances that are commonly used in paint, cleaning materials, carpet cement, and other applications in the apartment or in the common areas. If you have this condition, you know how thoroughly frustrating it can be, both for you and for your landlord. Acting proactively can save a lot of headaches and expense. One company which does environmental consulting, and can provide help to your landlord in choosing appropriate materials for the living environment, can be found at <http://www.eheinc.com> . Other resources can be found on the web at <http://www.webmd.com/allergies/multiple-chemical-sensitivity> and <http://www.holistichelp.net/multiple-chemical-sensitivity.html> .

8. Lead Paint

If a child under age 6 resides or will reside in your unit, the landlord must de-lead the unit. A landlord cannot refuse to rent to you because you have children and the unit contains lead paint (see the chapter on Housing Discrimination). If you must vacate the unit while de-leading is taking place, the landlord may also be required to pay for your temporary lodging during de-leading. Because of the cost burden to the landlord of de-leading, if you have been withholding rent because of lead paint violations, a court can order that the withheld rent be applied toward the de-leading costs.

If no one has suffered lead poisoning yet, your landlord can delay complete de-leading by developing an emergency lead management plan and obtaining a Letter of Interim Control from a licensed inspector. The inspector must do an inspection and determine if any urgent lead hazards are present, such as chipping and peeling lead paint; lead dust; or structural defects, such as roof or plumbing leaks or deteriorating windows, that could cause damage to lead-containing surfaces.

If these or any other urgent problems are found, your landlord will have to abate or contain them and have a re-inspection before getting a Letter of Interim Control. Your landlord must provide you with educational materials and notices from the Department of Public Health as part of the emergency lead management plan.

A Letter of Interim Control is valid for one year and can be renewed for one more year. After that, your landlord must de-lead completely and obtain a full Letter of Compliance. The Letter of Interim Control can be rescinded if your landlord fail to maintain the required standards of lead control.

A revised lead law effective in April 1994 authorized new regulations which now allow encapsulating lead, rather than removing it. Formerly, all lead removal had to be done by a certified de-leader, but now there are certain things that the state allows landlords to do themselves. The work still must be inspected by a certified lead inspector. Since these are private contractors, their quality varies, and there is danger of collusion between lead inspectors and de-leaders, so that an inspector may pass a unit which still contains unlawful levels of lead. If possible, you should try to get a town or state inspector to verify the results of the final de-leading inspection.

Since de-leading is never truly complete, and regulations keep changing, the fact that an apartment was previously de-leaded does not mean that it is still in compliance with current regulations.

9. Lead Paint Notification

Your landlord must provide you with an official notice outlining the hazards of lead poisoning on a form prepared by the state Department of Public Health. Your landlord must enclose a copy of the most recent lead inspection report for the unit if there has been one, a Letter of Interim Control if intermediate steps are being taken to control the lead paint, or a Letter of Compliance indicating that any necessary de-leading measures have been taken. You will be asked to sign a statement certifying that you have received these materials.

This notification requirement parallels the tenant notification requirements under Title X, a comprehensive federal lead poisoning prevention law signed in 1992 by President George H. W. Bush.

10. Rent Control

Tenants often ask us, “Is there any limit to how much the landlord can increase my rent?” The answer is almost always, *no*. As a result of a statewide ballot question in 1994, rent control in Massachusetts ended for almost all tenants by 31 December 1996. Certain subsidized apartment complexes still have their rents regulated by HUD or by the Massachusetts Housing Finance Agency (MHFA). There are also about a dozen communities in Massachusetts that still have rent control for manufactured home parks only. There are also rent limits in various subsidy programs.

11. Nonpayment and Late Payment of Rent

When you don't pay rent, the landlord can begin the eviction process by giving you a 14-day Notice to Quit for Nonpayment of Rent in writing. That notice doesn't actually require you to move, it just allows the landlord to bring a legal action for eviction. Only a judge can order you to move.

Some people believe there is a grace period for payment of rent. Technically, there isn't. If rent is due on the first of the month, it is legally delinquent if it is not paid by the second, unless the first of the month is a Sunday or a legal holiday. This means that the landlord can send a 14-day notice on the second of the month and start the eviction process 14 days thereafter.

If you have a lease and get a 14-day notice, you can cure the nonpayment and reinstate the tenancy by paying to the landlord or to the landlord's attorney all rent then due, with interest and costs of suit, on or before the day the answer is due in the legal action for eviction (called “summary process”). If you are a tenant at will and have not received a similar notice from the landlord within the past twelve months, you can cure by paying all rent due within ten days of receiving the notice. The 14-day notice must include statutory language notifying you of the right to cure within ten days. If it doesn't, your time to cure is extended to the day the answer is due in the eviction action.

If the nonpayment was caused by a failure or delay by any government agency in sending any subsistence or rental payment, the court is required to continue the hearing for at least seven days in order to furnish notice to the government agency. If all rent due with interest and costs of suit has been tendered to the landlord within that time, the court will treat the tenancy as not having been terminated.

Some leases contain specific provisions for a penalty or surcharge for late payment of rent. Those provisions are illegal unless they apply only to rent which is more than 30 days late.

12. Rent Subsidies

There are a number of rent subsidy programs in existence, but the principal program is administered under Section 8 of the United States Housing Act of 1937, and the other subsidy programs work in a similar fashion. Section 8 subsidies are administered by local housing

authorities, certain private nonprofit organizations, and the Massachusetts Department of Housing and Community Development. These agencies are called “Public Housing Agencies,” or “PHAs.” You go to the PHA and, if qualified for assistance, are generally placed on a waiting list until a voucher is available.

Eligibility. Eligibility is based on the family’s total gross income. At least 75% of all vouchers issued by a PHA must be targeted to households whose total income does not exceed 30% of the area median income, as established by HUD.

PHA Jurisdiction. A Housing voucher from any PHA may be used anywhere in Massachusetts. As a result, you may find yourself dealing with a local housing authority in a community other than the one where the housing is located. Some local housing authorities may attempt to require you to use the subsidy in their own community, but federal court rulings have held that the entire state is within the jurisdiction of any PHA in Massachusetts.

Housing search. When you receive a voucher, you have up to 180 days to locate rental housing which qualifies. Your present apartment may qualify. Once you have found housing, you submit a “Request for Tenancy Approval” form to the PHA. The PHA then determines the eligibility of the apartment and the appropriate rent and determines the subsidy amount. If the housing fails to meet program requirements, the 180-day clock will be restarted, and you resume searching for housing that meets the requirements.

Inspection. Part of the process for qualifying an apartment includes an inspection by a representative of the PHA to determine if the apartment meets HUD’s Housing Quality Standards. The PHA will report on what repairs the landlord must make to bring the apartment up to their standards. The landlord must make those repairs before they can rent the apartment to you. A similar inspection will occur annually so long as the subsidy continues.

Lease. Once the apartment is found to meet all Section 8 requirements, you sign a lease with the landlord. The PHA will also enter into a Housing Assistance Payment (HAP) contract with the landlord. It is important for you to obtain copies of both the lease and the HAP contract, as these documents define your rights. Keep them in a safe place. You should review these documents and, as with all written contracts, make sure that they reflect the verbal understandings. In particular, make sure that provisions on who pays for which utility are correctly filled in.

Rent Payments. The PHA will determine what the market rent should be for the apartment, based on formulas promulgated by the United States Department of Housing and Urban Development (HUD). The share of the rent you are to pay will be determined from time to time by the PHA based on your income. Your share is usually set at 30% of the total household income. You pay your share to the landlord every month, and the PHA pays the rest to the

landlord directly. Report promptly to the PHA any changes in your household size and income. If you are found to have concealed such changes from the PHA, you may be required to reimburse the PHA large sums of money in back rent subsidies, and you may lose your Section 8 subsidy completely. If you are found to have wilfully defrauded the subsidy program, you may be criminally prosecuted.

The landlord cannot charge and you cannot pay more than the rent determined by the PHA. A landlord who attempts to collect more rent from you under the table is committing fraud, and both the landlord and you (if you pay it) can be prosecuted. The landlord may request the PHA to allow him/her to collect additional rent from you, beyond the 30% of income set by the PHA, effectively charging a higher rent than the official "market rent." But the landlord can charge it only if the amount is approved by the PHA. It is important to read the terms of the Housing Assistance Contract to be sure that this is permitted under your program.

If a landlord tries to collect more money from you than the program allows, you should report this immediately to the person you deal with at the PHA. Even when such additional charges are permitted, they must be set up at the start of the tenancy, or at the tenancy's annual renewal, and not be demanded by the landlord after you have moved in expecting to pay a different rent.

Discrimination. A landlord is prohibited from discriminating against you because you are on public assistance. That includes discrimination based on program requirements, such as the requirement for a lease or the terms of the HAP contract. The landlord may, however, refuse to rent to you because, under the program, you cannot pay the rent which the landlord can obtain on the open market.

Eviction. As a Section 8 tenant, you can be evicted only for reasons stated in the lease or HAP contract. The landlord must state the reason for the eviction in the Notice to Quit and must send a copy of the Notice to Quit to the PHA.

13. Satellite and Cable TV

State law provides that your landlord cannot refuse to permit a cable TV operator access to the building to provide cable service to tenants. A landlord cannot prevent a cable operator from entering the building for the purpose of installing or maintaining the cable system if one or more tenants have requested cable. The cable company cannot install cable in your unit without your permission and cannot interfere with your existing rights to use any existing master or individual antenna system. Your landlord cannot discriminate, in rental or other charges, between tenants or occupants who subscribe to cable TV and those who don't.

A regulation of the Federal Communications Commission provides that your landlord cannot prohibit you from installing a "video antenna" within the part of the building which is under your control. The regulation applies to television antennas, satellite dishes less than one meter in diameter, and wireless cable antennas. That means that the landlord can prohibit you from putting an antenna on the roof or on the exterior of the building, but cannot prohibit you from putting one inside a window or on a porch or patio which is part of your apartment.

The FCC regulation prohibits any restriction on property within the exclusive use or control of the tenant which impairs a viewer's ability to install, maintain, or use a video antenna. A restriction impairs if it unreasonably delays or prevents the use, unreasonably increases the cost, or precludes a viewer from receiving an acceptable quality signal. The regulation does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the purpose.

14. Habitability

The State Sanitary Code contains detailed requirements for the physical condition of all residential rental units. This includes many requirements that we ordinarily would not associate with "sanitation," such as requirements for security locks and rules about who pays for utilities. Here are some of its requirements:

- **Heat:** The landlord must provide and maintain a heating system in good operating order. The landlord must provide and pay for heating fuel unless you are required to supply the fuel under a **written** rental agreement. From 16 September to 14 June every room must be heated to a temperature of at least 68 degrees Fahrenheit between the hours of 7:00 a.m. and 11:00 p.m. and at least 64 degrees between the hours of 11:01 p.m. and 6:59 a.m. During the heating season, the maximum heat allowable in the apartment is 78 degrees.
- **Extermination:** The owner of a rooming house or any other dwelling of two or more dwelling units must maintain the units free from rodents, skunks, cockroaches, and insect infestation and is responsible for exterminating them. Upon reasonable advance notice, you must give the landlord access for extermination.
- **Kitchens:** The landlord must provide, within the kitchen, a sink of sufficient size and capacity for washing dishes and kitchen utensils, a stove and oven in good repair, and space and proper facilities for the installation of a refrigerator. NOTE: The landlord does not have to provide a refrigerator. However, if the landlord

does provide a refrigerator, or agrees to provide one, he or she is required to maintain or replace it as needed.

- **Water:** The landlord is usually responsible for providing and paying for water. The landlord cannot require you to pay for water, except as explained in Chapter 4.
- **Hot Water:** The landlord must provide and maintain in good operating condition the facilities capable of heating hot water to a temperature of not less than 110 degrees and not greater than 130 degrees Fahrenheit, in a quantity and pressure sufficient to satisfy the ordinary use of all plumbing fixtures. The landlord is required to pay for the fuel for heating the water unless a **written** rental agreement provides that the occupant provides the fuel.
- **Structural Elements:** The landlord must maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of the dwelling so that it excludes wind, rain, and snow; and it is rodent-proof, weathertight, watertight, and free from chronic dampness; in good repair, and in every way fit for the use intended.
- **Snow Removal:** The landlord is required to keep all means of egress at all times in a safe, operable condition. The landlord must keep exterior stairways, fire escapes, egress balconies, and bridges free of snow and ice. The landlord can require you to be responsible for snow removal only for pathways and stairways which lead only to your apartment and are not common to the exit of any other unit.
- **Garbage and Rubbish:** The owner of a rooming house or any other dwelling containing three or more dwelling units is responsible for collection and final disposal of garbage and rubbish. The owner of any parcel of land, vacant or otherwise, is responsible for maintaining it free from garbage, rubbish, or other refuse. In any dwelling, the owner is responsible for maintaining common areas free of garbage, rubbish, other filth, or causes of sickness. As a tenant, you are responsible for maintaining in sanitary condition parts of the building which you occupy or control exclusively.
- **Smoke and CO detectors:** The landlord is required to provide and maintain all smoke and carbon monoxide detectors required by state laws and regulations.

- **Locks:** Every entry door of the building, every door of the main common entryway, every exterior door into the building, and every entry door of each apartment must be “capable of being reasonably secured against unlawful entry” and properly fitted with an operating locking device. The main entry door of a building containing more than three apartments must be equipped to close and lock automatically with a lock, including a lock with an electrically-operated striker mechanism, a self-closing door, and associated equipment. Every opening exterior window must also be capable of being reasonably secured and properly fitted with an operating locking device.

It is a good idea for any tenant to review these requirements. A complete copy of the Code can be found at <http://www.mass.gov/courts/lawlib/104-105cmr/105cmr410.html> .

15. Reporting Code Violations

If you think that there are violations of the Code in your apartment, you should first notify the landlord in writing of your concerns. If you cannot get action from your landlord or if you do not want to deal with him or her, call the local code enforcement agency and ask for an inspection. The local code enforcement agency can order the landlord to make repairs. It can also document conditions. Code violations can be used as a defense to any court action brought by your landlord. Your landlord is also prohibited from retaliating against you for reporting actual or suspected code violations to code enforcement authorities or to the landlord in writing. For more information on retaliation, see Chapter 22.

The name of the local code enforcement agency varies from community to community. In Boston and Cambridge it is the Inspectional Services Department or Division. In Brookline, it is the Health Department. In most smaller towns, it is the Board of Health. For a heat or other serious violation, the Code requires an inspection within 24 hours.

A code inspection is usually available only on weekdays during business hours. If your heat goes off at night or on a weekend, try calling the police department to document the problem. In some places, they will take a temperature reading and report the results to the code enforcement agency.

When the inspector comes, s/he should fill out an inspection report and leave a copy with you. If s/he does not, you should ask for it. It is required by the State Sanitary Code. If the inspector finds a code violation, the inspector should issue a written order to your landlord and mail you a copy. This is also required by the State Sanitary Code. Ask the inspector when you may expect to get your copy. After a week or so has gone by, and you haven't received a copy of the order, you should call the inspector from time to time to inquire about it. In some places,

local officials may be very cozy with property owners. Be pleasant and polite, but be a “squeaky wheel.” If necessary, call the inspector's boss, the agency head, the Selectmen, the mayor's office, or a local state representative, town meeting member, or city councillor. Save all documents. They are your evidence in case of a court hearing.

Perhaps the violation will be corrected promptly. But if your landlord is a chronic violator of the Code (for example, if your heat goes off repeatedly), you should continue calling the code enforcement agency to document your complaint. But now you have additional options:

- **Rent Withholding:** You have the right to stop paying rent if conditions are not being corrected and you meet all of the following requirements:
 - The conditions are serious enough to endanger or materially impair your health or safety;
 - You can show that your landlord knew of the conditions before you were in arrears in rent. Since your landlord may lie about what you reported orally, this usually means that you must be able to show a copy of a written complaint or e-mail from you or a notice from the local code enforcement agency before you began withholding rent. The law presumes that the landlord knew of conditions which have existed since you first moved in. But if you have lived in the apartment for several years and you can't show that you've complained about the condition during that time, you may have trouble proving that the conditions have lasted that long.
 - The violations were not caused by you or by anyone acting under your control;
 - The violations can be repaired while you continue to live in the apartment. Lead paint is an exception to this rule. The landlord is required to provide you with alternate housing while your apartment is being de-leaded.

If you decide to use this remedy, you should consult with an attorney to make sure that you have followed all the correct procedures. If you have done so, you cannot be evicted, but you may be required to pay back some of the withheld rent. While the law does not require it, you should put aside all withheld rent in a separate account and keep it there until the dispute has been resolved. When rent-withholding disputes get to court, landlords usually emphasize the non-payment of rent and try to make you look like a deadbeat. It is important to the credibility of your case for you to show that you

have all the rent money put aside. Legislation which would require tenants to put withheld rent in escrow is often introduced in the Legislature, but so far has never gone anywhere.

- **Repair and Deduct:** Under certain circumstances, you can make the repairs yourself and then deduct the cost from the rent. To do this, you must first have a code inspection and verification that violations exist and that they may endanger your health and safety. After the landlord has been notified by the code enforcement agency, s/he has 5 days to begin repairs and 14 days to substantially complete them. If the landlord does not make the repairs within the time limit, you may have the repairs made yourself and deduct the cost from the rent. You may not deduct more than 4 month's rent in any 12-month period. If you decide to repair and deduct, save all bills and receipts for material and labor. The landlord may sue you for excessive deductions, but cannot combine that claim with an eviction action.

16. Building Security

The State Sanitary Code requires that a dwelling "shall be capable of being reasonably secured against unlawful entry." Every entry door of the building and of each unit and every openable exterior window must be "capable of being reasonably secured from unlawful entry" and be "fitted with an operating locking device."

In a building containing more than three units, the main entry door must be able to close and lock automatically with a lock, including a lock with an electrically-operated striker mechanism, a self-closing door, and associated equipment.

These are the minimum requirements. But if you have any special needs, you should consider asking your landlord. If you are injured or your property is stolen by an intruder, your landlord's actions will not be measured by the minimum legal requirement, but by what was *reasonable*.

Some landlords or their employees regularly leave security doors open, or give plumbers, carpenters, and "handymen" keys to tenants' apartments and leave them alone there, or fail to respond promptly to requests to repair locks. In such circumstances, you should complain to the landlord in writing and keep a copy, so that if later you suffer an injury or a theft, you will be able to show that the landlord had notice of the condition. According to a recent court decision, the landlord can also be held liable for crimes committed against you by the landlord's own employees.

17. Disputes Between Tenants

Disputes between house-mates or between tenants in neighboring apartments can be very difficult to deal with. The landlord may prefer to avoid getting in the middle of these disputes, and that is often the best course. But sometimes you need the landlord's help. We can't tell you how to handle every dispute, but we can try to offer some guidance.

A dispute with a house-mate can be the most difficult to deal with, since you still have to live with the person. If the dispute must be solved through legal process, your rights may depend on who is on the lease. The person(s) on the lease may be a sub-landlord and the others sub-tenants. As sub-landlords, the lease tenants may have the right to evict house-mates who are not on the lease. If all tenants are on the lease, when the lease is up for renewal, the landlord has the right to determine which tenants, if any, s/he will allow to stay under a new lease. So long as the landlord does not engage in unlawful discrimination or retaliation, s/he can enter into a new lease with some house-mates and ask others to leave. If a court action is necessary to evict the tenant(s) who have been asked to leave, it can get complicated. The action may have to be brought with the landlord as a co-plaintiff with the tenants who have signed the new lease.

Lease clauses generally obligate tenants not to disturb residents of neighboring apartments, and courts have held that these clauses give the landlord both the right and the obligation to control such conduct. If you have a problem with a neighbor which you can't resolve by direct discussions, you should discuss this with your landlord. If a neighbor complains about your conduct, you should try to cooperate in resolving the problem.

There are mediation services available which can often be helpful in such instances. Mediation is a process whereby a neutral party tries to help the parties themselves to agree on a solution to a dispute. It can be much less expensive than litigation and, when possible, may produce a better result. In some courts, we have seen court personnel who can be very helpful in trying to resolve a dispute by mediation.

18. Illegal Drugs

If a landlord becomes aware that a tenant is involved in illegal drug-related activities on the premises, the law requires him or her to "take all reasonable measures" to evict the tenant as soon as it can be lawfully done." If you have a problem with drug-related activities in your building, you should complain to the police and to the landlord, in that order. If your landlord refuses to deal with drug-related activities in your building, this may entitle you to move out or to break your lease.

If you or any resident of your unit is involved in illegal drug-related activities on the premises, the law gives your landlord some special remedies to evict you more quickly. If your landlord can prove that you are involved in illegal drug activities on the premises, he or she can begin immediate legal action against you, without waiting for the standard notice requirements. The landlord still cannot evict you without going to court, but he or she can go to court in an expedited eviction proceeding. Many housing authorities now have a zero-tolerance policy towards illegal drugs. If you live in public housing, you need to do your best to keep all illegal drugs out of your apartment at all times. You can get in trouble, and even evicted, if other members of your household or even your visitors have drugs on the premises, including common areas, even if you didn't know about it.

If you are the subject of an eviction for illegal drug activities, the landlord must prove that these activities are taking place on the premises. Without a lab analysis, a bag of white powder is only a bag of white powder. The landlord has no right to enter your unit or to take what he or she believes to be illegal drugs for analysis. Only the police, with a proper search warrant, can come in and remove suspicious substances from the premises.

19. Security Deposits and Last Month's Rent

Under Mass. General Laws, ch.186, §15B, at the beginning of the tenancy, your landlord may charge only:

- rent for the first month;
- rent for the last month, calculated at the same rate as the first month;
- a security deposit equal to the first month's rent; and
- the purchase and installation cost for a key and lock. This does **not** mean a key deposit. The law does not provide for a key deposit.

This means that your landlord cannot charge any other fees at the outset of the tenancy, nor can they charge several months' rent in advance. The law also regulates how your landlord can accept and hold these funds. For a security deposit, the landlord must:

- place it in an escrow account in a **Massachusetts** bank free from the reach of the landlord's creditors;

- transfer the deposit to the new owner when s/he transfers the premises;
- give you a receipt showing the amount of the deposit, the landlord's name, the address of the premises, and the name of the bank and the account number in which the security deposit is being held;
- give you a statement of the present condition of the premises (see the chapter on Property Damage for further information about this important document);
- If you submit to the landlord a separate list of damages, the landlord must return a copy of your list to you within fifteen days of receiving it, with either the landlord's signed agreement with the list or a clear statement of disagreement attached.
- pay you 5% interest per year on the deposit, or the amount of interest the landlord actually receives from the bank if that is less;
- keep careful records on the security deposit and make them available to you for inspection at the landlord's office during normal business hours.

Your landlord must return the deposit within 30 days after you move out if you are a tenant at will or within 30 days after the expiration of your lease. The landlord may only deduct unpaid rent which has not been validly withheld, taxes due under an escalator clause, and the cost of damage you have done to the premises (this does **not** include normal wear and tear). If the landlord deducts for damages, he or she must follow the procedure in the statute **exactly**.

The landlord must provide you with an itemized list of damages, signed under penalties of perjury, itemizing in precise detail the nature of the damage and the repair necessary to fix it, with written evidence, such as estimates, bills, invoices, or receipts, indicating the actual or estimated repair cost, within 30 days of termination of occupancy under a tenancy at will or the end of the tenancy under a lease. This rule must be followed exactly, or you can sue the landlord for treble damages plus attorneys fees.

For the last month's rent, your landlord must:

- give you a receipt that states:
 - the amount of the rent,
 - the address of the premises,

- the person receiving the rent,
 - that the landlord must pay interest, and
 - that you should provide the landlord with a forwarding address where the interest may be sent; and
- pay you 5% interest yearly or notify you that you may deduct the interest from your next rental payment. The landlord doesn't have to hold the last month's rent in an escrow account, but he or she may not deduct for damages to the unit from the last month's rent. If the landlord does use an escrow account for last-month's rent, he or she may pay you the amount of interest actually received in the account, rather than 5%.

If your landlord fails to comply with any of these requirements, the law allows you to sue the landlord for damages, including return of the deposit. For some violations, damages include **three times** the interest due or **three times** the amount of the deposit, plus your attorney's fees. The Massachusetts Appeals Court has ruled that if you still occupy the apartment, the landlord may avoid the treble damages by returning the security deposit to you promptly on demand. (*Castenholz v. Caira*, 21 Mass. App. Ct. 758, 490 N.E. 2d 494 (1986).) A violation of any of these provisions may also be a violation of Mass. General Laws, ch.93A, the Massachusetts Consumer Protection Law.

Since the rules are different for security deposits and last months rent deposits, it is important for you to see that the documents make clear which kind of deposit you are paying. If you pay by personal check, be sure to write an accurate description of the payment in the memo section of the check. If you are paying in any other way, be sure that you get a receipt which includes an accurate description of your payment.

The security deposit and last month's rent law does not apply to any rental for a vacation or recreational purpose of 100 days or less in duration. It also does not apply to commercial rentals.

Since the landlord is only allowed to charge the payments listed above, there is no provision for a "pet deposit" except as part of an authorized security deposit. One Housing Court case holds that a monthly "pet fee" is prohibited, at least when the lease does not specify that it is additional rent.

20. Property Damage

It goes without saying that it is important to be careful not to damage the apartment or its facilities. Of course, no apartment is in perfect condition to start with, and even normal living will cause a certain amount of wear and tear on an apartment. In recent years, there seems to have been an increase in lawsuits over apartment conditions. Whether or not your landlord has taken a security deposit, it is important to document carefully the condition of the apartment when you move in. You must again take steps to document its condition when you move out.

If your landlord takes a security deposit, s/he may send you a form labeled "Apartment Condition Statement," which you are supposed to return with any corrections or additions. Be thorough and take this form seriously. You can be blamed for causing the slightest thing wrong with the apartment that is not listed on the form. Be sure to keep a copy of the form that you send to the landlord, and keep it in a safe and secure place.

If your landlord does not give you an Apartment Condition Statement, take an inventory of the apartment when you move in and send the landlord your own condition statement. Be careful to specify which conditions you are asking the landlord to fix and which ones you are just noting for the record.

As a tenant, you are not responsible for ordinary wear and tear to the apartment. But exactly what constitutes reasonable wear and tear is often a matter of opinion. The best protection for you is to document carefully the apartment condition, take care of the apartment while you occupy it, and again document carefully the condition of the apartment when you leave.

For more details on how to do this, see *Moving Tips for Tenants* on our Website.

21. Landlord Entering the Unit

It comes as a surprise to many people, but legally, even a rented home is your castle, and the landlord does not have an unlimited right of access. Once you have rented an apartment, it belongs to you for the duration of your tenancy. The landlord has no right to enter your private home without permission. Unless the rental agreement specifies otherwise (most do), the landlord doesn't even have a right to a key.

Originally, in an agricultural society, the law expected the landlord to rent the property to you and then leave you alone. It gave the landlord no right of access, but also no responsibility for repairs. The modern urban tenancy, especially in a multi-unit building with many building-wide

systems, has forced the law to change. The landlord now has an obligation to make repairs and gets a right of access in order to do so. But that does not supersede your rights to privacy and to "quiet enjoyment" of the premises.

One of the most common landlord-tenant disputes involves access for making repairs. The State Sanitary Code requires you to allow the landlord "reasonable access" at "reasonable times" to repair code violations. What is "reasonable" is the subject of frequent disputes. You may insist on giving the landlord access only by appointment, but you must be reasonable about scheduling appointments. To give an extreme example, since the landlord usually must schedule tradespeople during their normal working day, it is not reasonable for you to insist that the plumber can only come in on Sunday evening.

Plumbers, carpenters, painters, and other tradespeople sometimes seem to live in a completely different time zone. If they fail to keep appointments, make sure you document that fact by a letter or e-mail to the landlord and keep a copy. Some landlords use lack of access as an excuse. Be sure to keep appointments yourself and keep a good written record of your efforts to allow the landlord access to your apartment to make the repairs you want made.

In a genuine emergency, the landlord may enter your apartment without prior notice in order to deal with the emergency. A fire, a flood, or a burst pipe is an emergency. The sudden availability of a carpenter is not.

Housing courts can often be helpful in mediating disputes over access. Your position at all times should be to cooperate reasonably with the landlord's need for access and to document your cooperation with careful record-keeping. If necessary, with a particularly difficult landlord, a witness who can observe and later testify about the landlord's conduct, can be valuable.

You should insist that the landlord or his/her representative be with repair people at all times when they are in your apartment in your absence. It is not unknown for tradespeople to use a tenant's good bath towel as a cleaning rag, steal property, or make long-distance telephone calls from a tenant's phone.

Many leases give the landlord certain entry rights. Under Massachusetts General Laws, ch.186, §15B, a rental agreement may only provide for the following rights to access:

- to inspect the premises;

- to make repairs;

- to show the premises to a prospective tenant, purchaser, mortgagee, or its agent.

The landlord may also enter the premises in accordance with a court order or if you appear to have abandoned the premises.

If your lease allows the landlord to enter for any other reason, that provision is illegal and void. The landlord's right to inspect the premises or to show them to a prospective purchaser does not mean that s/he can do it every day twice a day. You can limit inspections to reasonable frequency. Unless the lease provides that you must give your landlord a key to your apartment, s/he has no right to one. The fact that a lease allows the landlord a right to enter for certain purposes does not mean that the landlord may enter your private residence at any time without appointment.

The right of the landlord to enter if you appear to have abandoned the premises sometimes causes a problem at the time of moving out. You may have moved out most of your furniture and intend to return to pick up the last few things and clean up the apartment before turning in the keys. But the landlord may jump the gun and come in ahead of you, remove your remaining property, and try to charge you for the "mess" you left. To avoid this, be clear with your landlord about your plans to vacate, and do it in writing.

We once saw a case where the tenant came back from vacation and found someone else living in his apartment and his furniture stored in the cellar. He wasn't behind on the rent, but he had been away for awhile, and the landlord somehow concluded that he had abandoned the apartment. If you are going away, it may be a good idea to inform the landlord of your plans, preferably in writing. If you are away for an extended time, don't pay the rent, and don't respond to the landlord's inquiries, a court may find the landlord justified in concluding that you have abandoned the apartment.

22. Apartment Under Construction

It is an unfortunate scenario and a lawsuit waiting to happen. You rent an apartment that isn't ready yet. The landlord is renovating, but rents it to you and promises that it will be ready by your move-in date. But the landlord has been working at a leisurely pace, in their spare time. By your move-in date, the apartment isn't ready yet. It isn't even close.

You have several options. Perhaps you can arrange with the landlord of your old place to stay longer. This may or may not be possible, depending on whether that landlord had

someone else ready to move in. You may have to be out of your old place and unable to postpone the move.

So maybe you arrange to stay temporarily with a friend or with your parents. And the months drag on, with the apartment promised but still not ready. And you've paid first, last, and security and can't easily rent another apartment.

Or maybe you can't make temporary arrangements anywhere else, so you move into an apartment that isn't ready. You pile up your things in boxes and camp out, waiting for the job to be done. And, week after week, the apartment isn't finished. Workers come and go, often without warning, to complete work. Or maybe nothing happens, the work isn't getting done, and meanwhile there is no stove, the heat isn't working, and there is no completion date in sight.

Your best option is usually to cancel the lease, not move in, and demand a refund. The landlord may balk at that, but if you can find the money, you should just find another apartment and take the landlord of the unfinished place to court.

By law a landlord owes you "quiet enjoyment" of your apartment. That means the ability to enjoy all the amenities that come with the apartment, including the privacy of your home without a constant parade of workers coming in to finish work that should have been done before you moved in. The best way to deal with this situation is to see it coming and avoid it altogether. The landlord may be friendly and believable (some of the nicest-seeming landlords may also be too laid-back to get work done on time). If the apartment doesn't look like it will be ready by the time you are going to move in, it probably won't be.

23. Retaliation

By law, your landlord cannot try to evict you, raise the rent, or change the terms of your tenancy because you have complained of conditions to the landlord in writing or to any government agency or because you have organized or joined a tenants' union or engaged in certain other protected activities.

Any act of raising the rent, attempting eviction (except for non-payment), or making any change in any of the terms of the tenancy within six months after you have done any of those things is **presumed** to be a retaliation. That means that in any court proceeding, the burden will be on the **landlord** to prove that s/he is not retaliating against you.

In order to defeat a retaliation claim, your landlord must convince the court, with “clear and convincing evidence,” that s/he is acting out of non-retaliatory motives and took the action for reasons independent of whatever you did and that s/he would have done the same thing at the same time even if you hadn't done those things. If the landlord waits until six months after your protected actions, retaliation may still be found, but then it is your burden to prove it.

If your landlord is found to be retaliating against you, s/he will not be able to evict you, and you may be awarded damages from the landlord of from one to three months' rent plus your attorney's fees.

Your landlord also cannot willfully deprive you of heat, hot water, gas, electricity, lights, water, or refrigeration service. Nor can your landlord lock you out or remove you from your apartment without going through the proper court procedure. You can ask the court to issue a restraining order, you can file a criminal complaint against the landlord, or you can sue him for money damages and attorneys fees.

All of this means that it is often to your advantage to complain about code violations in writing **before** the landlord gets around to giving you a notice of an eviction or a rent increase. Some people try to claim retaliation when they didn't complain about the violations until **after** they got the notice from the landlord. It doesn't work. The court won't find that the landlord was retaliating against you for something you hadn't done yet!

24. Consumer Protection Law

Chapter 93A of the Massachusetts General Laws is commonly called the "Consumer Protection Law." Like the Federal Trade Commission Act on which it is based and similar "baby FTC" laws in other states, it prohibits the use of any unfair and deceptive acts and practices in the conduct of any trade or business.

Renting housing is generally considered to be a trade or business, and the Massachusetts Attorney General has issued regulations which define unfair and deceptive acts or practices in rental housing. Among the things that constitute an unfair practice is if the landlord fails to disclose to you, as a tenant or prospective tenant, any fact the disclosure of which **may** have influenced you not to enter into the transaction. Also listed as an unfair practice is any violation of any law meant to protect consumers and any act which is oppressive or otherwise unconscionable in any respect. A copy of the consumer protection regulations is available at the State Book Store, in the State House. It is also available online at <http://www.mass.gov/courts/docs/lawlib/900-999cmr/40cmr3.pdf> .

If your landlord is the owner-occupant of a two-family or three-family house and owns no other rental property, s/he is not considered to be engaged in a trade or business and is not subject to this act.

25. Types of Tenancies

There are three types of tenancies in Massachusetts. They are: a tenancy for a fixed term, a tenancy at will, and a tenancy by regulation.

Fixed-term tenancy. A tenancy for a fixed term must be created by a written lease, signed by both the landlord and the tenant. A lease, in its simplest form, is a contract that you will rent the apartment from the landlord and the landlord will rent it to you, for a fixed term at a fixed rent. In order for a lease to be valid, it must be in writing and must indicate the date on which it ends. The term is usually for one year, although any other term is possible. It should also state the amount of the rent and what the rent includes. The lease binds both parties. The landlord cannot raise the rent or change what the rent includes during the term of the lease unless the lease itself provides for it. You cannot leave during the term of the lease without legal complications.

Self-extending Lease. Some leases are "self-extending." A self-extending lease is a term lease which automatically extends itself from year to year unless one of the parties gives notice to the other by the deadline specified in the lease, to terminate the lease at the end of its current term. It is as binding as any other lease. Unless you or your landlord give notice terminating the lease, it will keep extending itself, every year, at the same rent. For example, a self-extending lease with a term which runs from September through August may provide that it will extend unless you or your landlord give notice to the other by 1 July. If the notice is not actually **received** by that date, the lease will extend itself for another year. This is only an example. Your lease may provide for a different expiration or notice date.

If you have a self-extending lease, be careful that the deadlines are filled in correctly in the blank spaces and be sure to give notice so that it will be **received** by the proper deadline when you want to move out. Otherwise, the lease may self-extend for another year when you didn't intend it. The landlord can also fall into this trap. Once the lease has self-extended, the landlord can no longer raise the rent over the amount specified in the lease.

Escalator Clauses. Whether and how the landlord can raise your rent during the term of the lease depends on what the lease says. Most leases tend to run from September through August. Your lease will continue in effect until it expires according to its terms. Your landlord

cannot raise your rent before the current lease expires unless the lease itself contains a special provision which allows it. Such a special provision is called an "escalator" clause.

The most common kind of escalator clause is a tax escalator clause. A tax escalator clause assumes that your landlord has set the initial rent with the current real estate taxes in mind. It provides that if the real estate taxes on the property increase in the future over and above the current amount, you will pay some portion of the increase as additional rent. The RHA form, which is the one most commonly used in the Boston area, provides that you must pay the amount when your landlord demands it.

The landlord must fill in the tax clause properly in the lease form. The exact percentage must be filled in, in figures, and it must be proportional to the percentage that your apartment bears to the whole property. If your apartment is one-third of the building, your landlord cannot require you to pay one half the tax increase. Some landlords just fill in the word "proportionate" in the percent space in the form. The law does not permit this. An escalator clause which does not have an exact percentage filled in is invalid and can be ignored.

If your lease contains a valid tax escalator clause, your landlord may increase your rent to cover the tax increase. You have a right to see the tax bills for the property and to check the landlord's calculation. If the landlord won't provide them to you, you can get the figures from the assessor's office in your city or town hall. This information is frequently available online at the city or town's website.

The RHA form, which is the one most commonly used in the Boston area, provides that you must pay the amount when the landlord demands it. If you cannot afford to make the escalator payment in one lump sum when the landlord demands it, you should discuss this with your landlord as soon as possible. If you have been a good tenant, your landlord may be willing to accept a payment arrangement.

The tax clause must also provide that if the landlord gets a tax abatement, s/he will pass that abatement on to the tenant according to the same percentage. The current RHA lease forms comply with this requirement.

Another kind of escalator clause is a fuel escalator clause, which permits your landlord to recoup increases in the cost of heating fuel. These clauses first began to appear during the energy crisis of the 1970s, then fell into disuse when that crisis ended. In more recent times, when fuel costs have increased again, this type of clause has appeared again in some leases.

One more escalator clause that used to be common in residential leases was the "rent control escalator." Although some old lease forms still contain a rent control escalator clause, the abolition of rent control in the 1990s made this clause obsolete.

The RHA form lease contains a space in the margin where you are asked to initial the rent clauses signifying that you understand and accept them. If this is not done, the lease will be ambiguous as to whether both parties accepted the escalator clauses as part of the contract. You then could argue (and a court might agree) that the escalator clauses were not part of the contract.

This is a special case of a more general rule of construing documents. Whenever a document is ambiguous, the courts will resolve the ambiguity against the interests of the person who prepared the document. Since the landlord or its agent prepares the lease, any ambiguity created by the landlord's lack of care will be construed against the landlord's interests.

The law requires that your landlord must give you a copy of the lease, signed by the landlord, within 30 days after you sign it. The same goes for a written tenancy at will agreement. If the landlord fails to return the lease within the time specified, you may be considered a tenant at will. The law also provides a criminal fine of \$300.00, though this is hardly ever enforced. Failure to return a signed copy of a lease may also constitute a violation of the Consumer Protection Law.

Tenancy at will. A tenancy at will in Massachusetts is what, in other states, is called a month-to-month tenancy. A tenancy at will may be in writing, but it is often an oral agreement. With a tenancy at will, either party may terminate the tenancy by giving the other a notice one rental period or 30 days in advance, whichever is longer. A notice to terminate a tenancy at will must be written in a certain way, or it is not effective. It must specify the date on which the tenancy terminates, and it must state that date correctly. A notice to terminate a tenancy at will is commonly called a "30-day notice," but this is a misnomer. It would be clearer if we called it a "rent-period notice," since isn't just any 30 days. The notice must terminate the tenancy **on a rent day**. It is not effective unless it states the date when the tenancy is to terminate and states it correctly.

For example, if the rent is payable on the first of every month, the notice must terminate the tenancy on the first. You cannot send the landlord a letter on the 15th of this month terminating your tenancy on the 15th of next month. You can only terminate the tenancy on the **first** of the month. On the other hand, if the rent is payable on the 15th of each month, then you must send a notice terminating the tenancy on the 15th.

The notice must be **received** one full rental period and at least 30 days in advance in order to be effective. This means that tenants who pay rent by the week are entitled to at least 30 days notice of termination. **Note:** Since February does not have 30 days, a notice intended to terminate a tenancy at the end of February is not valid unless it is received several days before the end of January.

A common form of termination notice reads something like "I hereby terminate your tenancy as of the end of that month of your tenancy which begins next after you receive this notice." This legal formula usually covers most of the complications of these rules.

To raise the rent if you are a tenant at will, your landlord must give you a proper notice terminating your tenancy and offering you a new tenancy at the new amount. If you agree, that will form a new contract at the new rent. Landlords who don't know the legal requirements often try to raise a tenant's rent with a notice which is not legally sufficient. A notice in the form "As of 1 October 2015, your new rent will be \$xxx" is not sufficient.

If you receive a notice like that, your old tenancy continues in effect, and you are legally entitled to continue paying the old rent. If the landlord tries to evict you for non-payment of rent, you should go to court and tell the judge that you think the notice is invalid. The judge should deny the landlord's eviction claim.

Now suppose your rent is due every month on the 15th, and you get a notice which says, "Your tenancy is hereby terminated as of the first of January. If you desire to remain a tenant, your new rent will be \$1000." Remember, a notice terminating a tenancy at will must expire on a rent day. So, if your rent is due on the 15th of each month, your landlord can only give you a notice terminating your tenancy on the 15th. To be valid, you must **receive** the notice no later than the 15th of the previous month. Since your rent is not due on the first, a notice which claims to terminate your tenancy on the first does not terminate your tenancy at all.

Here is an example of a valid notice which a landlord may send to terminate your tenancy and ask you for a rent increase. Assume that your rent is due on the first of the month and you actually receive the following notice from your landlord on 30 November 2015:

I am terminating your tenancy as of the end of that month of your tenancy which begins next after your receipt of this notice. If you wish to remain in the apartment, I hereby offer you a new tenancy at a monthly rent of \$1000 per month, starting 1 January 2016.

This is a valid notice to terminate your tenancy on 1 January 2016. Now you must decide how to respond. For some options, see the chapter on Rent Increases.

Tenancy by Regulation. When a lease expires, the tenant often stays on as a tenant at will. A tenant who has a Section 8 or similar subsidy instead becomes a “tenant by regulation” when the lease expires and remains subject to the terms of the subsidy program.

License. A license differs from a tenancy in that a licensee does not have an exclusive right of possession. Depending on the nature of the agreement, a housemate may be a licensee. A licensee is also usually free to leave at a moment’s notice and often pays rent on a day-by-day basis as in the case of a hotel guest.

Rooming Houses. At one time rooming house tenants hardly ever had written rental agreements. Now written agreements have become more common. If you have one, you have the rights stated in the agreement. If not, and you have lived in a rooming house for three months or more, you have all the rights of a tenant at will. Although a notice of one rent period is necessary to terminate a tenancy at will, the law also requires a minimum notice period of 30 days. A notice on 17 December cannot terminate a tenancy on 31 December, even if you pay rent weekly.

If you have lived in a rooming house for 30 days or more, you are entitled to at least 7 days notice to vacate. If you have been there for less than 30 days, there is no specific notice requirement. Your other rights are less clear. You probably have the right to a court hearing before eviction, at least if you have been there for 30 days. The best thing is to insist that you have the right to a court hearing and force the landlord to go to court. When the situation is ambiguous, you should assert your rights under the interpretation that most favors you. Your landlord will do likewise, and the court will decide.

26. Breaking Leases

A lease is a contract which binds you to rent the apartment from the landlord and the landlord to rent the apartment to you for the term specified. But circumstances change, and when this happens, you may want to break the lease.

If there are serious code violations or other breaches on the landlord's part, you may be legally entitled to break the lease. If there are no such problems, you are responsible for the rent for the balance of the lease term, but this responsibility is qualified by a number of considerations, both legal and practical.

First of all, the landlord cannot sit with an empty apartment for the rest of the lease term and look to you to pay. The landlord must make reasonable efforts to find a substitute tenant. The legal term for this is “mitigating damages.” If the landlord finds a substitute tenant or tries to find one and fails, they are entitled to sue you for their losses. If, in a down market, the landlord tried but couldn't get as much rent as you were paying, they can sue you for the difference for the balance of the lease. If the apartment was vacant for a month or two before a new tenant took over, the landlord can sue you for the lost rent. They can also sue you for the cost of re-renting, such as a real estate broker's fee or the cost of advertising.

Some landlords try to charge a fee called an “Administrative Fee” or a “Substitution Fee” or some other name for substituting a tenant. If it is designed to compensate the landlord's actual costs of substituting a tenant, it is probably legal, but if it is an arbitrary amount, higher than any reasonable costs, a court may find it to be a “fee for no services” and illegal.

You may want to try to find a substitute tenant yourself. If the lease so provides, the landlord is entitled to screen tenants and determine to whom to rent. But if the landlord unreasonably turns down someone you found, a court may find that they have failed to mitigate damages.

In an inflationary rental market, the landlord may try to re-rent the apartment for a higher rent than you were paying. If they can get a higher rent, they are entitled to do so. But if the landlord over-estimated the market and can't rent the apartment at the higher asking rent, you can refuse to pay the lost rent for the months the apartment was vacant because the landlord “got greedy.” Should the landlord succeed in re-renting the apartment at a higher rent, the additional rent the landlord receives, for the remaining months of your lease, will offset any losses that they might otherwise be able to collect from you.

The landlord is not entitled to collect double rent for the apartment. If, say, you have paid rent through the end of March, and the landlord re-rents the apartment for the first of March, you are entitled to get back your March rent payment from the landlord. If you move to someplace nearby and can do so, it is a good idea to check on the apartment to see when new people have moved in.

27. Domestic Violence

Under a new law, if you or another member of your household is a victim of domestic violence, you can get out of your lease and move. You must send your landlord a notice that you are terminating your tenancy because a member of the household is a victim of domestic violence, rape, sexual assault, or

stalking, including the name of the perpetrator, if you know it. You may then move out within three months of giving the notice. If you wait more than three months, the notice will be void.

If you are breaking a lease because of recent or ongoing domestic violence, rape, sexual assault, or stalking, the landlord may request that you provide proof to show that a protective order or third-party verification is in effect or was obtained within the prior three months, or that you are reasonably in fear of imminent serious physical harm. The landlord is required to keep the documentation and the information contained in it confidential and not provide or allow access to the documentation in any way to any other person or agency, unless the victim provides written authorization for release of the information, or unless required by court order, government regulation, or government audit requirements.

If you leave belongings behind when you move out, you must indicate to the landlord in writing what is to be done with your belongings, otherwise the landlord may treat your belongings as abandoned and dispose of them.

If you move out and other housemates stay, the landlord's rights with respect to those who stay are unaffected.

If the threat of domestic violence, rape, sexual assault, or stalking is posed by a person who is a tenant, co-tenant, or household member, the landlord may change the locks and deny the alleged perpetrator a key, upon receiving a request to do so. The request must be accompanied by the documentation referred to above. If the landlord fails to change locks within two business days after receiving a request, you may change the locks without the landlord's permission. If the rental agreement requires that the landlord retain a key to the premises, and if you change the locks, you must make a good faith effort to provide a new key to the landlord within two business days of the lock change.

A landlord cannot refuse to enter into a rental agreement, and a housing subsidy provider cannot deny assistance, based on your having terminated a rental agreement or based upon an applicant's having requested a lock change under this law.

For further details, see our document "Tenants and Domestic Violence" on our website.

28. Rent Increases

Most tenants and landlords think that a landlord can raise the rent any time by decree. But a tenancy is a contract. Changing the rent requires the agreement of both parties. How that happens depends on whether or not you have a lease. Many notices sent by landlords attempting to raise the rent are legally invalid.

Notice requirements depend on the type of tenancy, and the landlord must give the notice required by the type of tenancy you have. If you have a term lease, The landlord cannot raise the rent until the current term of the lease expires, except to invoke a valid escalator clause. In order to invoke an escalator clause, the landlord must give you notice in the time and manner required by the lease clause.

If you have a fixed-term lease which is expiring, the landlord is not legally required to give you any notice. But since most leases are renewed annually, and most landlords and tenants expect that to be the case, landlords often give notice anyway if they don't want to renew the lease.

While you the landlord doesn't legally have to give you notice of a fixed-term lease expiring, unless the lease provides otherwise, you don't have to give the landlord notice either. You can simply leave on the last day of your lease. Usually you will want to give some notice in advance, if only to let the landlord know that you are using your last month's rent or the address to which the landlord should return your security deposit. Even if these reasons don't apply, it is a good idea to give the landlord some notice of your intentions. As we discuss elsewhere, keeping your landlord informed of your moving plans may prevent a misunderstanding where the landlord may come in before you're finished moving and throw out things that you intended to return for. If you intend to stay beyond the expiration of your lease, there is even more reason to discuss this with your landlord. You don't want to have a new tenant suddenly show up expecting to move into your apartment. Discussing an expiring lease in advance may not be the law, but it is a good practical idea.

When you receive a notice of a rent increase from your landlord, you have several options.

First, if it is a legally invalid notice, you can ignore it. This will probably result in a fight with your landlord and, perhaps, a court case. If the notice was clearly invalid, you should win in court, but the landlord will probably start again with a new notice, and eventually send you a valid notice.

Or, if you have gotten along well with your landlord and are happy with the apartment, and you think the increase is reasonable, you can agree to the increase and pay it, whether or not the notice was valid. This will establish a new tenancy at the new rent.

Another option is to try to negotiate with your landlord. As we've said, rent is established by contract, not decree. If you want to negotiate, take a day and go apartment-hunting. Look around and see what kind of apartments are available out there and at what price. If you find that the landlord's price is reasonable for the market, you may want to stay and pay the rent if you can afford it.

If you think you may have code violations in your apartment, consider having a housing code inspection. Code violations may impede your landlord from evicting you, give you claims for money damages against your landlord, and can be a helpful bargaining chip when you negotiate. See the chapter "Reporting Code Violations" for more information.

If you find another apartment which you like better or can afford better, even taking into account the cost and bother of moving, you may want to move. If you find a better apartment for a price similar to what your landlord is asking, you may want to negotiate with your landlord and try to stay where you are at a lower rent. Or perhaps you can get the landlord to fix up your apartment in return for a rent increase. It's entirely up to your landlord what s/he is willing to do. If you can't come to an agreement with your landlord, you will eventually have to move.

Still another option is to stay right where you are and keep paying the old rent. You do not become legally obligated to pay the new rent unless you agree to pay it. The landlord now must make a decision. If the landlord accepts your rent checks without reserving his or her rights in writing, that may be considered a waiver of the termination notice and creation of a new tenancy at the old rent.

On the other hand, the landlord may hold your rent check to the end of the month and send you a letter accepting the money only for "use and occupation," and perhaps make a notation to that effect on the back of the rent check or in a separate letter. In that case, s/he may start an eviction action against you in the local district court (or in housing court, if you live in a location where a housing court has jurisdiction). But so long as you have paid the old rent, this will not be an eviction for non-payment. This is an important distinction because when an eviction is based on a termination of tenancy which is not for non-payment of rent and is not otherwise your fault, the court can give you time to find another apartment. See the chapter on Evictions for more information.

Usually, you do not have to pay a rent increase if you have not agreed to pay it. When your tenancy expires or has been terminated, you are called a "tenant at sufferance" until a new tenancy is established. As a tenant at sufferance, your obligation is to pay the "fair value" of the use and occupation of the apartment. Almost always, the most recent rent that you contracted to pay is the best evidence of the fair value of the apartment. If the apartment is in bad condition, the fair value may actually be less. Thus it is unlikely that you will have to pay a rent increase that you haven't agreed to pay. Occasionally, however, your landlord may try to prove to the court that the fair value of your apartment is something higher than the rent that you last agreed to pay. It is rare for a court to accept such proof, but it does occasionally happen.

29. Condominium Units

There are special problems when you rent a condominium unit. The law makes your landlord responsible for providing heat, hot water, and other services. But in a condominium, these services may be controlled by the unit owners association. The association has to deal with the landlord as the unit owner, but they also must deal with you as the person who occupies the premises.

Some condo associations, in times of high fuel costs, have been known to keep the heat below the legal temperature limits in order to save money. But your landlord is still responsible to provide you sufficient heat as defined by law, and you can withhold rent if the heat is insufficient.

In general, any building-wide service is the responsibility of the condo association. Conditions within the apartment are more likely to be controlled by the landlord. This can be more complicated than it seems, and it may vary from one condominium to another. In some condos, the condition of the radiators and windows are the responsibility of the association, in others the individual unit owner. If the local code enforcement agency finds code violations which may be under the purview of the condo association, you should ask them to cite both the landlord and the association. Although they should do so, some local code enforcement agencies may not do so without pressure.

If the landlord doesn't pay condo fees, the condo association can legally require you to pay rent directly to the association, to be applied toward condo fees. The law prohibits the landlord from taking any reprisal against you for doing so.

Most condominiums have rules which apply to all residents, including tenants. The landlord should provide a copy of those rules, since the rental agreement will probably require that you abide by them. If the landlord doesn't provide a copy, you should ask for a copy from the Trustees or the building management.

30. Condominium Conversions

Your rights if you live in a building undergoing a conversion to condominiums or cooperatives are governed by special legislation called Chapter 527 of the Acts of 1983. It applies to nearly all residential condominium and cooperative conversions. It does not apply to buildings containing fewer than four residential units unless the building is part of a housing development with two or more adjacent, adjoining, or contiguous buildings under common ownership, used in whole or in part for residential purposes, and containing four or more units.

Notice. When your landlord is going to convert a property, s/he must give to each tenant a notice of intent to convert. The notice must state in clear and conspicuous language:

- that the landlord has filed a master deed at a registry of deeds whose location is stated in the notice or has filed cooperative articles of organization with the State Secretary's office;
- that any tenant residing there on the date the notice of intent is given shall have a period of time stated in the notice, counted from the date the tenant receives the notice, before the tenant will have to vacate;
- that any tenant residing there on the date the notice is given shall have a period of time stated in the notice to purchase the unit on terms and conditions which are substantially the same as or more favorable than those which the landlord will extend to the public generally for 90 days following the expiration of the tenant's right to purchase;
- a statement of the other rights and obligations described below.

If the landlord intends to sell or offer for sale units in only part of the development within the first year after s/he has formed the intent to convert, the landlord must give to each tenant in any unit which s/he doesn't intend to sell or offer for sale within the year, a notice

informing the tenant of the date when the landlord reasonably expects to offer or sell the unit. Thereafter, the landlord must give you the notice of intent to convert as above.

Eviction Restrictions. The landlord cannot bring any action seeking a “condominium or cooperative eviction” during the “notice period,” which is one year after you receive the notice. If the housing unit is occupied in whole or in part by a handicapped tenant or is occupied by a tenant who is 62 years of age or older or a low or moderate income tenant, the notice period is two years. You have the burden of proving your entitlement to the extended notice period. If there is a rental agreement in force, the notice period does not expire before the rental agreement expires under its own terms.

A “condominium or cooperative eviction” is defined as an eviction by the landlord or by a purchaser or prospective purchaser in order to facilitate the sale of the unit as a condominium or cooperative unit. An eviction is presumed to be a “condominium or cooperative eviction” if the landlord has formed the intent to convert. The law contains extensive provisions for determining when the landlord has “formed the intent to convert.” An eviction for non-payment of rent or other violation of a rental agreement is not a “condominium or cooperative eviction,” and you can still be evicted for those reasons.

A “low or moderate income tenant” is defined as a person or group of persons residing in the same unit where the total income of all residents for the twelve months immediately preceding the date of the notice is less than 80% of the median income for the area as promulgated by the U. S. Department of Housing and Urban Development.

Rent Increase Limits. During the notice period, the landlord cannot increase the rent more than the percentage increase of the Cost of Living Index, and in any event no more than 10% per year, except that the landlord may collect payments under a valid tax escalator clause. The landlord must extend the rental agreement until the end of the notice period or the 90-day right to purchase period, whichever is later. Except for a permitted rent increase, the landlord cannot change the terms of the rental agreement during the notice period.

Right to Purchase. With the notice of intent to convert, the landlord must give you the right to purchase the unit on terms and conditions which are substantially the same as or more favorable than those which the landlord will extend to the public generally for the 90 days after the expiration of your right to purchase. You may exercise your right to purchase by executing a purchase and sale agreement within 90 days after the date you receive a copy of the purchase and sale agreement properly executed by the landlord.

Relocation Benefits. The landlord must pay to any tenant who does not purchase the unit or another unit in the same development the actual documented cost of moving, up to \$750.00 per housing unit. If the unit is occupied by a tenant who is entitled to an extended notice period, the maximum benefit is \$1000.00 per housing unit. The payment is due within ten days after you vacate the unit. To be eligible for these benefits, you must have paid all rent and must voluntarily vacate the unit on or before the last day of the notice period.

Relocation Assistance. The landlord must assist elderly, handicapped, and low or moderate income tenants in finding comparable rental housing within the same city or town, which rents for no more than the rent which you were paying when you received the notice of intent to convert. If the landlord fails to find such substitute housing for you, the notice period is extended until the landlord find such comparable rental housing, or two additional years, whichever comes first.

Subsequent Tenants. If the tenant who is entitled to notice of intent to convert vacates before the first sale and transfer of the unit, and the landlord seeks to re-rent the unit, s/he must give to each prospective tenant a written notice, prior to the inception of the tenancy, informing them that the unit is a condominium unit and, if applicable, that it is currently being offered for sale or will be offered for sale within ninety days of the inception of the tenancy.

Violations. Violations of the act or any local ordinance or bylaw adopted under its authority are punishable by a fine of not less than \$1000.00 or by imprisonment of not less than 60 days. Each unit converted in violation of the act constitutes a separate offense. A violation does not affect the validity of a conveyance to a purchaser for value who has no knowledge of the violation. The District, Superior, and Housing Courts may issue orders to restrain violations.

Local Legislation. A city or town may adopt provisions different from these by a 2/3 vote of the local legislative body and, in a city, the approval of the mayor. If you are facing a conversion, you may wish to check with your city or town clerk to see if there is any local legislation governing condo conversions.

31. Mortgage Foreclosures

When your landlord fails to make mortgage payments, the lender may foreclose. After the initial foreclosure filing, the mortgage lender (called the "mortgagee") sells the property in

a public auction. Often the mortgagee or some other bank is the highest bidder and buys the property. Mortgagees or other banks may want to get everyone out of the property before trying to re-sell it, but that is no longer possible.

When the mortgage is foreclosed, you are obligated to pay rent to the mortgagee or subsequent owner in the same amount as before, but only when they notify you to pay them rent. No one can demand rent from you that you paid to your old landlord before you were notified of the change in ownership. A foreclosing owner who disagrees with the amount you pay may bring a claim in court to claim that the amount is unreasonable and asking the court to set a new use and occupancy rate.

As your new landlord, the mortgagee has the same obligations to maintain the building and services as any other owner. If utilities or other services are shut off, you should contact the local code enforcement agency as for any other landlord.

Under a recently-enacted law, a tenant in a foreclosed property can only be evicted either (a) for “just cause” or (b) because the property has been sold, with an executed and binding purchase and sale agreement, with a bona fide third party to purchase the property from the foreclosing owner. Just cause is defined as any one of the following:

- (a) you have failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified you in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid;
- (b) you have materially violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and have failed to cure the violation within 30 days after receiving written notice of the violation from the foreclosing owner;
- (c) you are committing a nuisance in the unit, are permitting a nuisance to exist in the unit, are causing substantial damage to the unit or are creating a substantial interference with the quiet enjoyment of other occupants;
- (d) you are using or permitting the unit to be used for any illegal purpose;
- (e) You, having had a written bona fide lease or other rental agreement which terminated, on or after August 10, 2010, have refused, after

written request or demand by the foreclosing owner, to execute a written extension or renewal of the agreement for a another term of the same duration and in terms that are not inconsistent with this law;

- (f) You have refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee.

The foreclosing mortgagee must go through the same court process as any other landlord to evict you (see the chapter on Evictions). As in other evictions, the judge can give you time to find a place and move. The mortgagee or its attorney may try to offer you money to move quickly. This is sometimes called “cash for keys.” They may try to tell you that you have no choice. You do have a choice. You can say no and make them take you to court. If they have sold the building with the obligation to deliver it free of tenants, that is their problem. **Only a court can order you to move.**

If you have a rent subsidy, let the agency handling the subsidy know about the change, so that they can stop paying the old owner. The subsidy may give you additional rights in case of an eviction.

For further information, see “Being a Tenant in a Foreclosed Property” on our website.

32. Evictions

Tenants often receive eviction notices. Sometimes the landlord must send a notice terminating your tenancy in order to raise the rent legally. Sometimes the landlord simply wants to harass. Whatever the case, you are entitled to a hearing. A landlord cannot lock you out of your apartment, or even set foot in it without your permission. If s/he tries, the police may be able to help you. You can also get a restraining order against your landlord in the local Housing Court, District Court, or Superior Court. **Only a judge can order you to move.** Until then, you have the right to remain in your apartment, almost always continuing to pay the same rent. If the eviction is not legally your fault, the court can give you time to find another place and move.

While your landlord cannot retaliate against you (see the chapter on Retaliation), a landlord may otherwise evict a tenant at will or a tenant whose lease has expired for any reason whatever or for no reason at all, so long as it isn't for an illegal reason. Examples of an illegal reason are retaliation or discrimination.

Before the landlord can go to court, s/he usually has to send you a written Notice to Quit. This is the official way of terminating a tenancy. Depending on the type of notice, it may order you to "quit and deliver up" your apartment in seven, fourteen, or thirty days or some other period. You do not really have to move in the time stated in the notice, but the landlord must wait until that time has run out before starting court proceedings.

Non-Payment of Rent. If the eviction is for non-payment, the notice will tell you to vacate in at least 14 days. If you are a tenant at will, the notice should also tell you that if you haven't received a notice to quit for nonpayment of rent within the past twelve months, you may avoid eviction by paying all rent due within ten days. If the notice does not say that, you may reinstate your tenancy by paying all rent due up until the day the answer is due in a court action for eviction. If you have a lease, you can always reinstate your tenancy by paying all rent due, with interest and costs of suit, up until the answer is due in a court action for eviction. Pay by certified mail, return receipt requested, or in person with a witness present. Ask the court clerk's office to help you figure the interest and costs of suit. If the landlord refuses this payment, you're covered so long as you can prove that you "tendered" (tried to pay) it.

Other Kinds of Eviction. If the eviction is for some reason other than non-payment of rent, a tenant at will is entitled to a Notice to Quit at least one full rental payment period in advance, or 30 days, whichever is greater, and the notice must terminate your tenancy on a rent day. For example, if your rent is due every Saturday, you must receive the notice 30 days before a Saturday on which rent is due. If your rent is due on the first of every month, you must receive the notice by the first of the previous month, except for February. Since there are fewer than 30 days in February, you must receive that notice in late January, 30 days before the first of March. A Notice to Quit is not effective until it is **received**.

If your landlord sent you a proper termination notice in order to raise your rent, that notice is sufficient if you haven't paid the new rent and the landlord has reserved his/her rights as described in the chapter on Rent Increases.

If you had a lease which has just expired, your tenancy is already terminated, and no other notice is legally necessary unless the lease provides otherwise. But if the landlord has

accepted rent from you since the lease expired, without reserving rights, s/he will probably have created a new tenancy at will. If you are evicted for violating some provision in the lease, the lease will state how much notice you must be given. Most leases in the Boston area provide for a seven-day notice for violation of the lease.

Court Action. In Massachusetts, a legal action to evict is called a "summary process" action. After the time specified in the Notice to Quit has expired, you will get a Summary Process Summons from the District Court or Housing Court (a summary process action may also be brought in Superior Court, but it is rarely done). It will tell you the date of the trial and the date by which you must serve a written answer on the landlord. If you want to contest the eviction in court, it is best to have a lawyer. If you are proceeding without a lawyer, you should file an answer with the court clerk and serve it on the landlord or the landlord's lawyer so that it is **received** by the deadline stated in the summons. Courts usually have forms for you to file an answer.

If the eviction action is brought for non-payment of rent or for any reason which is not your fault, you may bring counterclaims against your landlord, seeking damages for any claims which arise out of the property or rental. It is common for tenants to bring claims for code violations, quiet enjoyment, retaliation, consumer protection violations, and the like.

You can also file "discovery" by the same deadline stated above. This will automatically postpone the trial date by two weeks. Discovery is a legal request for information about the landlord's case. It can take the form of written questions ("interrogatories"), requests for the landlord to produce documents, or requests for the landlord to admit certain facts. The landlord must respond to the your discovery within ten days of the day s/he receives it. Court rules also allow the landlord to send discovery to you.

Jury trials are available in Housing Court, Superior Court, all District Courts, and all Boston Municipal Court divisions. You must claim a jury trial, if you want one, no later than the date the answer is due. Otherwise, you will lose your right to a jury trial, and the trial will be before a judge sitting without a jury. It is no longer possible (as it once was) to appeal a summary process case after judgment from District Court or Boston Municipal Court to Superior Court for a new trial.

If you are contesting the eviction, or if you just want time to move, every person named in the summons must go to court on the trial date. Any person who you does not go to court will lose the case by default, unless that person is represented by a lawyer. You can represent yourself in court, but you cannot represent anyone else in your household unless you are a lawyer. One house-mate cannot represent another house-mate, nor can an adult

child represent an elderly parent or a wife represent a husband. Representing someone other than yourself in court is practicing law, and only a licensed attorney is allowed to practice law.

At trial, your landlord must prove his or her case with hard evidence. You must do likewise with your counterclaims. This is done with documents, records, and witnesses. That's why we keep talking about keeping a paper trail. But documents can only go so far. Our system of justice requires the testimony of live witnesses. A written statement from a witness is not admissible in court – not even if it's notarized. The other side must have the opportunity to cross-examine the witness, and the court must be able to observe the witness in order to assess the witness's credibility. This cannot be done with a written statement.

After trial, the judge will usually take the matter under advisement. That means that you or your attorney will receive the decision in the mail. This can take anywhere from a few days to many months, depending on the complexity of the case. If the eviction is for non-payment of rent or for some other reason which is your fault (violation of lease provisions, unsanitary conditions, noise, etc.), a physical eviction can take place as soon as twelve days after the Court makes its decision.

Unless you live in a rooming house and have lived there for less than three months, or the eviction is for non-payment of rent or for some other reason which is your fault, the court can give you time to move. If you have not agreed to pay a rent increase, but have continued to pay rent at the old rate, the eviction is **not** for non-payment. And the fact that you have not agreed to pay the increase does **not** make the eviction your fault. That is why it is important that you do **not** stop paying rent, but continue to pay the old rent during any eviction proceeding, unless you are withholding rent because of housing code violations.

Ordinarily, the court can give you up to six months to find another apartment. If you are 60 years of age or older or are handicapped (be prepared to prove this with documentation), the court can give you up to twelve months. This is in the discretion of the judge. Most judges prefer to give you a couple of months at a time, so that you won't wait until the last month to look for a new place. So long as the six months or twelve months hasn't been used up yet, you can go back to court and ask for more time. If you have children in school, the court may give a stay until the end of the school year. Since most apartments are available in September, some judges, when within striking distance, will give until the first of September.

Be sure to go back to the court a couple of weeks **before** the time expires. Give the landlord or his/her lawyer advance notice when you are going back to court for an extension. Be prepared to show ads that you have answered and other tangible evidence of your

searching for another apartment. Remember that you cannot get more than six months altogether (or twelve months altogether if you are over 60 or handicapped.).

Settlement. Negotiating with your landlord can save you the expense and stress of a trial and a forcible eviction. In Housing Court, there are Housing Specialists on staff, and in some District Courts, there are mediators from various agencies to meet with parties and help them reach settlement. It never hurts to talk with people, but remember that you always have the right to have your case heard by a judge.

In a tight housing market, you need several months to find another apartment. Knowing this, the court will usually not force you to leave more quickly, but knowing how much time you have can be helpful. If you are a low-income tenant, the cost of moving can be as great an obstacle as finding an apartment. Since the landlord will have to pay more for a forcible eviction, they may be willing to pay for your moving costs. If you have made counterclaims, try to get the landlord to pay you something or forgive unpaid rent for your most meritorious counterclaims. Be realistic about your counterclaims. Courts do not award large sums of money to tenants with minor apartment conditions or technical infractions.

CAUTION: If you settle things with your landlord before you go to court, make sure the settlement is in writing and is filed with the court. Go to the court hearing even if you have settled beforehand, to make sure that the landlord keeps his word. Some landlords have been known to "settle" with a tenant, then go to court, not tell the court about the settlement, and win the case by default when the tenant doesn't show up. Also, make sure that any time to move that you negotiate with your landlord will be more than enough time for you to find a place and move, since it is very difficult to get an extension of time beyond the date that you have agreed to in a document filed with the court.

Since court dockets are now available on line, an eviction judgment may become known to prospective future landlords and may impede your ability to find another apartment, now or in the future. For this reason, it is increasingly common for a settlement agreement to provide that the case will be dismissed and any eviction judgment will be vacated after you have moved out.

The Execution. After your landlord has received a judgment for possession, the appeal period and any stays allowed you have expired, the court issues a document called an "execution for possession." The landlord gives the execution to a constable or deputy sheriff, who comes with a mover to move you out. The constable or deputy sheriff is required to give you forty-eight hours notice in advance of the day they will come to move you out. Many

courts say that the forty-eight hours cannot be Friday to Monday, but must be over two business days.

The notice will tell you the name, address, and telephone number of the officer and the name, address, and telephone number of the warehouse to be used and other information concerning the warehouse where your possessions will be stored. The officer will select the warehouse, which must be a licensed public warehouse. You have the right to notify the officer of a warehouse or other storage facility of your own choosing in writing at or before the time the property is removed from the apartment, and the officer is required to take the property to the facility of your choice. This can include your new apartment or the home of a friend or relative.

The actual moveout cannot take place between 5 PM and 9 AM or on Saturday, Sunday, or a legal holiday. Sometimes you can go to court during that time and get more time. The officer is required to file with the court and provide to you a receipt containing a description of the goods removed. At least seven days after your property has been removed, you are entitled to a warehouse receipt listing your possessions in storage and informing you of your rights.

Once your possessions are stored in a warehouse, you are entitled to access your stored property once, without charge or payment of storage fees, to inspect the property or to remove items having primarily personal or sentimental value, including such things as photographs, passports, documents, and funeral urns. You may reclaim your property at any time upon payment of all storage fees owed. The warehouse cannot require you to release it from liability as a condition of release of your property. After six months, the warehouse is entitled to sell your possessions at auction to pay for the storage fees. You may buy back individual items at the auction.

The landlord will pay for the cost of removing your property to the place of storage, and is entitled to seek reimbursement from you for the costs and fees.

If you bring the rent up-to-date by paying the landlord the amount of the money judgment in full, plus any additional payments for use and occupancy that have accrued since the judgment, you again become a lawful tenant. In that case, the landlord cannot use the execution for possession and must return it to the court. If you bring the rent current before the execution issues, be sure that your landlord notifies the court, so that no execution will issue. Your landlord cannot continue to evict you if s/he accepts full payment of the rent. But at that point, the landlord may refuse to accept full payment of the back rent. If s/he does

that, s/he may still try to enforce the judgment through collection process. Be sure to get a receipt for any money you pay your landlord to bring the rent up-to-date.

33. Housing Courts

In the early 1970s, Massachusetts began to recognize that landlord-tenant law was a specialized area which required a specialized court. The Boston Housing Court was established in 1972, followed the next year by the Hampden County Housing Court. Other Housing Courts have been created since then for other parts of the state, and the Hampden County Housing Court has been expanded to cover all four counties of Western Massachusetts. But as of yet, not all parts of the state are covered by a Housing Court. Legislation to do that was pending at this writing.

The Boston Housing Court covers the city of Boston. At this writing the Northeast Housing Court covers all of Essex County and the Middlesex County cities and towns of Acton, Ayer, Billerica, Boxborough, Carlisle, Chelmsford, Concord, Dracut, Dunstable, Groton, Littleton, Lowell, Maynard, Pepperell, Shirley, Stow, Tewksbury, Tyngsborough, and Westford. The Southeast Housing Court covers all of Bristol and Plymouth Counties. The Worcester County Housing Court covers all of Worcester County and the towns of Ashby, Bellingham, Hudson, Marlborough, Townsend, and the Devens area in Norfolk and Middlesex Counties. The Western Massachusetts Housing Court covers all of Hampden, Hampshire, Franklin, and Berkshire Counties. Anywhere else in Massachusetts, the case must go to District or Superior Court.

Note that Cambridge, Somerville, and Brookline are not covered by a Housing Court. Note also that there are some border areas, especially near Commonwealth Avenue in Brighton which have Brookline postal addresses and phone numbers but are actually in Boston and are covered by the Boston Housing Court.

If your apartment is within the jurisdiction of a Housing Court, and you are sued for eviction in any other court, you can transfer the action to Housing Court by filing a simple form which is available from the Housing Court. This allows you to buy some time and make sure that the judge who hears your case will be familiar with housing law.

34. Resources

The book *Legal Tactics: Self-Defense for Tenants* is a far more extensive handbook for tenants in Massachusetts. It is available from Massachusetts Continuing Legal Education, Inc., <http://www.mcle.org/product/catalog/code/2100349B03>, 1.800.966.6253.

Some Other Resources:

Boston Inspectional Services:	617.635.5322
http://www.cityofboston.gov/isd/	
Brookline Health Department:	617.730.2306
http://brooklinema.gov/446/Health-Department	
Cambridge Inspectional Services:	617.349.6100
http://www.cambridgema.gov/inspection	
Somerville Health Department:	617.625.6600
http://somervillema.gov/departments/health	
Boston Consumer Affairs Division	617.635-3834
http://www.cityofboston.gov/consumeraffairs/consumeraffairs.asp	
Boston Rental Housing Center	617.635.4200
www.cityofboston.gov/rentalhousing	
Mass. Commission Against Discrimination	617.994.6000
www.mass.gov/mcad	
Mass. Consumer Protection Division	617.727.8400
http://www.mass.gov/ago/bureaus/public-protection-and-advocacy/the-consumer-protection-division/	
State Sanitary Code	
http://www.mass.gov/courts/docs/lawlib/104-105cmr/105cmr410.pdf	
Childhood Lead Poisoning Prevention Program	
http://www.mass.gov/dph/clppp	
Metropolitan Boston Housing Partnership	617-859-0400 or 800-272-0990
www.mbhp.org	
Greater Boston Legal Services	617-371-1234
www.gbls.org	800-323-3205 (toll-free)
Harvard Legal Aid Bureau (Cambridge)	617.495.4408
http://www.harvardlegalaid.org/	
Cambridge/Somerville Legal Services	617.603.2700
http://www.gbls.org/cambridge-somerville-legal-services	

Boston College Legal Assistance (Waltham) 781.893.4793
<https://lawyers.justia.com/legalservice/boston-college-legal-assistance-bureau-13701>

Boston Bar Association Volunteer Lawyers Project 617.423.0648
<http://www.vlpnet.org/>

Housing Works
<http://www.housingworks.net/>

Childhood Lead Poisoning Prevention Program
<http://www.mass.gov/dph/clppp>

Metropolitan Boston Housing Partnership 617-859-0400 or 800-272-0990
www.mbhp.org
