

The Tenant's Helper: A Handbook for Renters

[Sixth edition – September 2006]



**EQUAL HOUSING
OPPORTUNITY**

Office of Strategic Planning & Community Development

50 Evergreen Avenue
Somerville, MA 02145
(617) 625-6600

Joseph A. Curtatone, Mayor

Acknowledgments & Introduction

This booklet is a self-help guide for people with questions about their rights and responsibilities as tenants. It is based on the work found in NO PLACE LIKE HOME: A Self-Help Guide to Tenants' Rights and Responsibilities, published more than a decade ago by the Somerville Community Corporation and the Mayor's Office of Human Services.

This book, since its inception, has been a collaborative effort by the staff of the Mayor's Office of Human Services, the Office of Strategic Planning and Community Development and Cambridge and Somerville Legal Services (CASLS). Judith Hyatt was the Fair Housing Coordinator for the City of Somerville in July 1991 and the principal writer of the first edition of THE TENANT'S HELPER: A Handbook for Renters. Ellen Taylor, Donna Giuliana, and Karen Baratta contributed specialized information on disability issues and the Americans with Disabilities Act of 1990. Phyllis Chambers, Irene Miscavage and Ann Pike commented on the text based on their daily work with people with housing problems. Ralph Hergert did editing and production work, with most actual production done by Kelly Elderd and Melissa Pike.

A second edition was published in 1996, after Susan Hegel, a CASLS staff attorney, reviewed the manuscript, clarifying and updating many items, and in 2000, the third edition was published, after Ellen Shachter, also a CASLS staff attorney, updated the entire manuscript again. The fourth edition (April 2004) incorporated updates and new sections on roommates and tenant rights when a building is sold, all provided by Ellen Shachter. The fifth edition simply updated the affordable rental opportunities in Somerville as well as income limits for housing programs.

This sixth edition primarily includes information on the new water sub-metering law and the eviction storage law, as well as some updating of other information.

None of us create a work such as this out of nothing. The City is grateful to the writers of the other guides and handbooks published by agencies and groups concerned with housing for the people of Somerville (see page 48, *Resource Agencies*). We hope that you will find this handbook helpful. We have tried to answer questions that callers have asked many times as clearly as possible in these few pages. However:

This Handbook is intended for information only and should not be used as a substitute for an attorney!

If you have other questions, call us:
Office of Strategic Planning and Community Development (SPCD) 617-625-6600 ext. 2588
Somerville Fair Housing Commission (617) 625-6600 ext. 2564

Table of Contents

I.	Looking For An Apartment	1
II.	Discrimination -- Fair Housing Laws	3
	<i>Filing a Fair Housing Complaint</i>	8
III.	Housing Rights for Persons with Disabilities	9
	<i>Persons Protected Against Discrimination</i>	9
	<i>Reasonable Accommodation</i>	9
IV.	Types of Tenancies	13
	<i>At Will</i>	13
	<i>Tenancy at Sufferance</i>	13
	<i>Tenancy under a lease</i>	13
	<i>Rooming or Boarding House Tenant</i>	14
	<i>Rights Against Retaliation</i>	14
V.	Types of Tenancy Agreements	16
VI.	Roommate Situations	17
VII.	Financial Matters	21
	<i>Security Deposits</i>	21
	<i>Last Month's Rent</i>	24
VIII.	Habitable Conditions	26
	<i>Lead Paint</i>	28
	<i>What to do if you find a possible code violation</i>	29
	<i>Actions that may be taken by the Tenant if the Violations Persist</i>	30
	<i>Rent Withholding</i>	30
	<i>Repair and Deduct</i>	31
IX.	Rent and Rent Increases	32
X.	Utilities	33
XI.	Entry, Entry Doors and Lockouts	35
XII.	Insurance	36
XIII.	Damages to Apartment	36
XIV.	Evictions	37
	<i>Notice to quit</i>	37
	<i>The Summons and Complaint</i>	37
	<i>The Answer</i>	38
	<i>Discovery Requests</i>	39
	<i>The Eviction Bench Trial</i>	40
	<i>Judgement</i>	41
	<i>Appeal</i>	41
	<i>Execution</i>	42
	<i>Stay of Execution</i>	42
	<i>Eviction</i>	42
XV.	Condominium Conversions	44
XVI.	Tenants' Rights after Sale of a Building	45
	<i>The Effect of a Sale on Tenancy</i>	45
	<i>Rights after Foreclosure</i>	45

APPENDICES

47

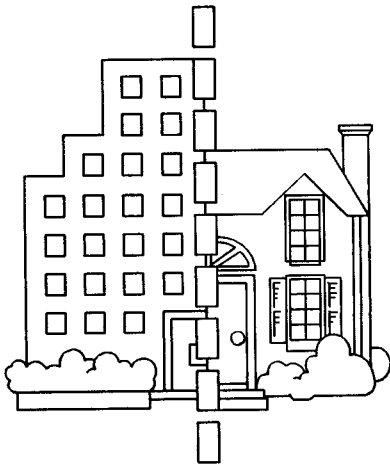
LOCAL RESOURCE AGENCIES..... 48
AFFORDABLE RENTAL HOUSING IN SOMERVILLE..... 50
AFFORDABLE HOUSING SUBSIDY TYPES AND INCOME LIMITS 53
LEGAL REFERENCES / OTHER GUIDEBOOKS/ USEFUL LINKS..... 54
SAMPLE LETTER FOR ALTERNATIVE STORAGE.....55
SAMPLE SUMMARY PROCESS SUMMONS AND COMPLAINT.....57

I. Looking For An Apartment

When looking for an apartment, make sure you:

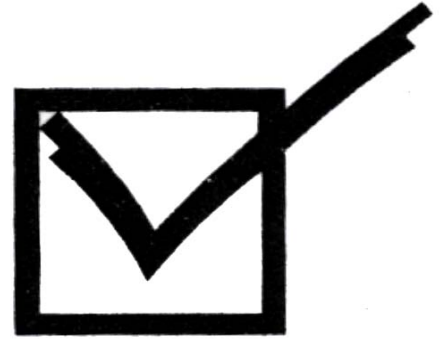
- Figure out how much you can afford to pay for rent and how much for utilities.
- Find out if you are eligible for any public programs like Public Housing, Rental Subsidies, Fuel Assistance, Food Stamps, TAFDC, SSI/SSDI, EAEDC, Unemployment Insurance or reduced rates for utility and telephone service which may enable you to better afford rents in the area.
- Check apartment ads in local and regional newspapers as well as store bulletin boards.
- Use any networks you are part of. If you belong to a religious, school or social group, ask other members if they know of any apartments for rent. Ask your colleagues at work about any possible available apartments.
- Tour neighborhoods looking for "apartment for rent" signs or obvious vacancies.
- Contact real estate agents. A word of caution: most realty firms charge "finders fees" for their services which are frequently equal to one month's rent. Make sure you ask about fees charged before you accept assistance.

Before you sign a lease or agree to take an apartment:



- Be prepared to fill out an application. There are several categories of information about which landlords are *prohibited* from asking a tenant either verbally or on an application form. Refer to Section III for this information.
- Bring rental, credit, and personal references. Also, be prepared to answer income questions and provide the name, phone number, and address of *your* employer.
- Ask the landlord if any utilities are included in the rent. Ask for an estimated cost per month for the utilities not included in the rent. If the landlord does not know the answer, ask which company supplied the services (Nstar, Keyspan, etc.), then call the company directly.
- Make sure you and the landlord write down any repairs that are needed. If a security deposit is requested, make sure that you and your landlord make a written record of what the condition of the apartment was when you moved in. Ask the landlord when he/she intends to make any needed repairs. Obtain a written statement saying what repairs need to be made and when they will be completed. Keep this statement in a safe place even after the repairs have been made. (See also p.21)

- If you find an apartment that you like but are unsure if you will actually take it, you can give the landlord a deposit. The deposit should be in the form of a check, *not in cash*. This will allow the landlord to hold the apartment for a short time. You should also write out an agreement that your deposit will be returned if either the landlord does not accept your application or if you decide not to take the apartment. The written agreement should say if this money is going to be used for part of the first or last month's rent or the security deposit.



Do not put any money down unless you really want the apartment because this money may be difficult to recover!

- Ask the landlord when he/she will choose a tenant. Ask when a good time to call back would be.
- If the owner wants to call you, make sure he/she will be able to reach you. Landlords rarely spend a lot of time trying to track down a potential tenant so you need to take the responsibility of keeping in touch with the landlord.
 - If you are homeless, you may be able to obtain voicemail from the National Student Partnership (located at the Cambridge Multi-Service Center 617-349-6340); Project Connect (617-248-6585) and Bread and Jams (617-441-3831).
- Ask the landlord if he/she will allow you to sublet the apartment if you are unable to remain in the apartment for the agreed upon period of time. Most lease agreements allow for subletting with the landlord's permission. If the agreement does not include a provision allowing subletting or contains a provision that prevents subletting, you may ask the landlord to include a provision (or modify an existing provision) which says "the premises shall not be sublet without the permission of the landlord *which shall not be unreasonably denied*". This means that your landlord would need a good reason to refuse a request to allow subletting. If you sublet the apartment without the permission of the landlord you can be sued for breaking your lease agreement.
- Evaluate the ease of contact and the response record of a non-resident superintendent to "after hours" emergencies.
- Talk with neighbors concerning the reputation of the landlord and/or management company.

II. Discrimination -- Fair Housing Laws

State, federal and local laws ban discrimination in housing against certain categories of people and provide remedies for those who experience discrimination.

A. State Fair Housing Law

In general, under state law (M.G.L. c.151B) it is illegal for any realtor, landlord, owner, lessee, sublessee, assignee or agent of such person to deny you housing on the basis of:

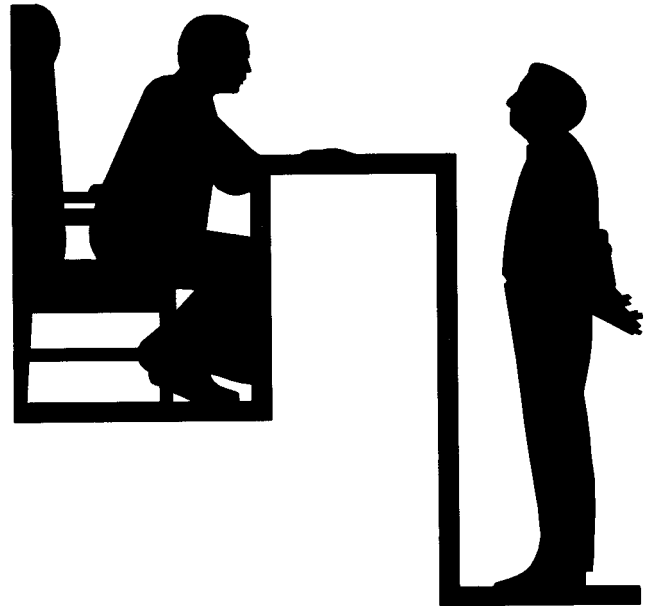
<i>Race</i>	<i>Veteran or member of the armed forces</i>
<i>Color</i>	<i>Welfare Recipient</i>
<i>Religious Creed</i>	<i>Children</i>
<i>National Origin</i>	<i>Blind</i>
<i>Ancestry</i>	<i>Marital Status</i>
<i>Sex (gender)</i>	<i>Sexual Orientation</i>
<i>Age (21-65)</i>	<i>Handicap (mental and physical)</i>
<i>Hearing Impaired</i>	<i>Rental Subsidy</i>

If you have been discriminated against due to any of the factors listed above, you may file a complaint with the Massachusetts Commission Against Discrimination (MCAD). Although it may be a good idea to find an attorney, you do not need an attorney to file a complaint with MCAD. (The Somerville Fair Housing Commission can help you file).

MCAD is empowered to investigate your report. If the person is found to have violated the fair housing laws, he/she may be required to pay you monetary damages. Damages may include such things as expenses incurred in obtaining alternate housing, storage costs and moving costs and damage for emotional distress.

In addition to awarding damages, the MCAD can issue a fine or penalty against the person or entity found to have engaged in a discriminatory practice.

- For the first discriminatory housing practice: the penalty cannot exceed \$10,000.
- For the second discriminatory housing practice: the penalty cannot exceed \$25,000
- For the third discriminatory housing practice: the penalty cannot exceed \$50,000.



The following types of housing are *exempted* from the law (you *cannot* file a discrimination complaint) *in some circumstances**:

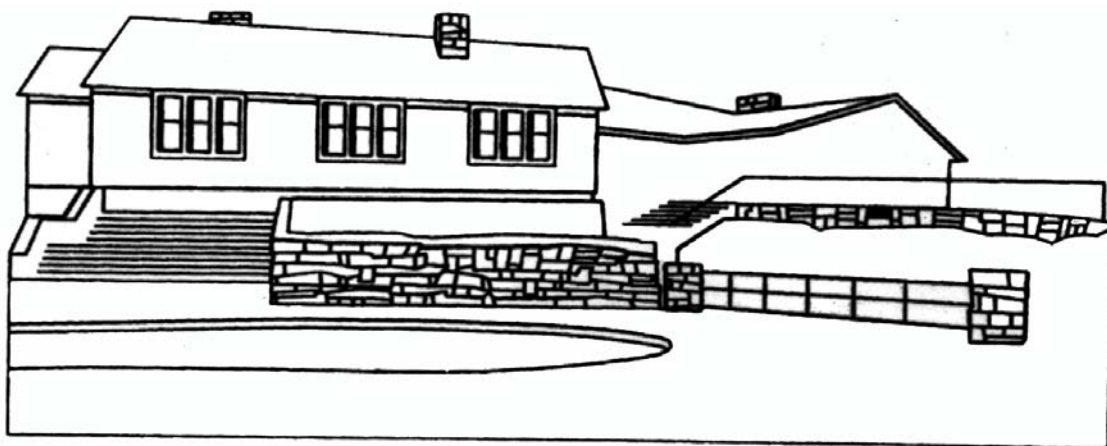
- a unit in an owner-occupied two-family house (unless they used a real estate broker or discriminatory advertising); or,
- a state-aided or federally-aided elderly development (for the purposes of age discrimination only); or,
- an elderly retirement community of 5 acres or more with a minimum age requirement of 55 years (for purposes of age discrimination only); or,
- the temporary rental of the landlord's principle home for one year or less.

****There are no exemptions for discriminating on the basis of receiving public assistance (e.g., TAFDC, Medicaid) or receiving a housing subsidy (e.g. Section 8).***

The Commonwealth of Massachusetts has designated the Massachusetts Commission Against Discrimination (MCAD) as the enforcement agency for state civil rights laws. You can reach them at the phone number listed below.

MCAD

One Ashburton Place - Suite 601
Boston, MA 02108
(617) 994-6000
TTY: 617-994-6196



B. Federal Fair Housing Law

Federal law (Title VIII Of The Federal 1968 Civil Rights Act) also bans the following types of housing discrimination. You can file a housing discrimination complaint with the U.S. Department of Housing and Urban Development (HUD), *as well as with MCAD* in cases involving these types of discrimination.

Race

Color

Religious creed

National origin

Sex

Handicap

Family status [married, children]

Exemptions under federal law There are several situations that are exempted from Title VIII:

- A single-family house sold or rented by the owner but only if done without the use of a real estate broker and without discriminatory advertising (oral or written) and only if certain other conditions are met.
- Rental of rooms or units in owner-occupied dwellings of four units or less.
- Exemptions for familial status include:
 - state and federally owned elderly developments; or,
 - housing intended for and solely occupied by persons 62 years of age or older; or,
 - housing intended for occupancy by at least one person 55 years old or older per unit.
- Exemptions for disabilities include:
 - persons whose tenancy would constitute a direct threat to the health and safety of others; and,
 - persons whose tenancy would result in substantial physical damage to the property of others.

Federal Remedies:

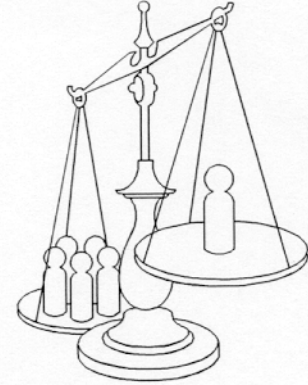
- Injunctive relief (i.e. prevent the apartment from being rented to someone else.)
- Monetary damages (includes: money for pain and suffering and humiliation.)
- Punitive damages (maximum penalties are \$10,000 for the first violation, \$25,000 for the second violation within 5 years and \$50,000 for the third violation within 7 years).

C. Local Fair Housing Law

In addition to filing a complaint with MCAD and/or HUD, you may also file a complaint with the Somerville Fair Housing Commission. The Commission consists of five (5) members appointed by the Mayor and approved by the Board of Aldermen to serve without being paid.

A complaint may be filed with the Somerville Fair Housing Commission for discrimination based on the following:

<i>Race</i>	<i>National Origin</i>
<i>Color</i>	<i>Handicap</i>
<i>Creed</i>	<i>Children</i>
<i>Religion</i>	<i>Marital Status</i>
<i>Sex</i>	<i>Sexual Preference</i>
<i>Military Status</i>	<i>Source of Income</i>
<i>Ancestry</i>	<i>Age</i>



- **Local Law Exemptions** Any housing structures exempted under the state and federal laws are also exempted under the Somerville Fair Housing ordinance. In addition, the following are not violations of the Somerville ordinance:
 - For a religious organization or institution to restrict any of its housing accommodations that are operated as a direct part of religious activities to persons of the denomination involved.
 - For the owner of a housing facility devoted entirely to the housing of individuals of one sex, to restrict occupancy and use on the basis of sex.
 - The operation or establishment of housing facilities designed for the exclusive use of the handicapped or the establishment of programs designed to meet the needs or circumstances of handicapped persons.
 - The operation or establishment of state-aided or federally-aided housing developments for the elderly or self-contained retirement communities constructed expressly for the use by the elderly which are at least 20 acres in size and have a minimum age requirement for residency of at least 55 years.

Remedies

If a person is found to have violated the Somerville Fair Housing Ordinance, the Somerville Fair Housing Commission (617-625-6600 x2564) may:

- recommend that such person cease and desist from illegal activity and take appropriate remedial action; or,
- refer the matter to MCAD and/or HUD and/or the Somerville Human Rights Commission; or,
- refer the matter to an attorney; or,
- refer the matter to the Mayor and the Board of Alderman; or;
- refer the matter to mediation.

Unlawful Housing Practices

Fair housing laws forbid owners, agents, brokers and bankers from discriminating against members of protected classes in any of the following ways. You may file a complaint if someone has denied you housing in any of the following ways:

- Refuses to rent, lease or sell housing.
- Discriminates in the terms, conditions, and/or privileges of housing.
- Makes any inquiry or record of the person seeking to rent, lease or buy housing pertaining to that person being a member of any of the above protected classes.
- Falsely denies that housing is available.
- Blockbusts--causes person(s) to sell or rent by telling them that members of a minority group are moving into the area.
- Discriminates in financing housing (bank, savings and loan, or other business).
- Denies membership or participation in brokerage, multiple listing or other real estate services.
- Interferes, coerces, threatens or intimidates to keep a person from obtaining the full benefits of the Federal Fair Housing Law and/or filing a complaint.
- Discriminates in advertising (both oral statements and written material).

Sometimes the discriminatory action may not seem obvious. For example, a landlord may tell a family with children under the age of six that he/she cannot rent to them because there is lead paint. This is discrimination based on the fact that there is lead paint in the apartment. Every landlord has the duty and responsibility to see that his/her apartment is free from lead paint.

When you look at the apartment ask the landlord if it has been inspected for lead paint. If there is lead paint, it is the responsibility of the landlord to de-lead the apartment and to relocate the occupants while the apartment is being de-leaded (if you already live there). (See the chapter on lead paint for more information).

Please keep in mind it is *illegal* for a landlord, or their agent to ask you either orally or in writing on an application for any information regarding your *protected status*.

Filing a Fair Housing Complaint

If you feel you have been a victim of discrimination you may contact the following agencies.
There are time limits for filing complaints, so contact the appropriate agency quickly.

Somerville Fair Housing Commission

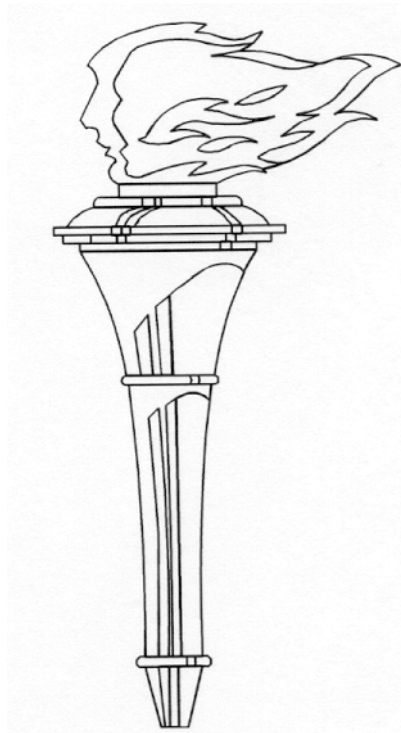
c/o Fair Housing Coordinator
City Hall Annex -50 Evergreen Avenue
Somerville, MA 02145
(617) 625-6600 ext. 2564

Massachusetts Commission Against Discrimination (MCAD)

One Ashburton Place, Suite 601
Boston, MA 02108
(617) 994-6000
TTY: 617-994-6196

HUD

Fair Housing and Equal Opportunity (FHEO)
10 Causeway Street
Boston, MA 02222-1092
Toll Free Fair Housing Complaint Hotline:
1-800-424-8590



III. Housing Rights for Persons with Disabilities

Two laws, one federal and one state, include provisions to protect persons with disabilities from discrimination and provide more equal access to the housing market. As detailed on page 11, the state law provides slightly more protections than the federal law.

Federal Fair Housing Amendments Act of 1988

The Federal Fair Housing Amendments Act of 1988 prohibits discrimination based on disability in the renting or leasing of housing. It prohibits discrimination against both the lessee as well as a disabled person who is not the lessee, but resides in, visits, or uses the housing. The law covers nearly every kind of housing and housing transaction. It also requires landlords to make reasonable accommodation with respect to policies, practices, and services and allows a disabled person to make reasonable architectural modifications to an apartment. This federal law established for the first time in Massachusetts protections that might prevent discriminatory evictions and allow disabled persons more equal access to the housing market.

Types of Housing Covered: The federal law applies to all types of housing, except owner-occupied housing with 4 or fewer units and certain single-family homes.

Persons Protected Against Discrimination

Federal law protects persons with mental and physical disabilities who:

- are substantially limited in a major life activity, such as caring for one's self, walking, seeing, hearing, speaking, breathing, learning, and working; or,
- have had a disability in the past but are no longer impaired; or,
- are treated as having an impairment even though in reality the person may have no disability; or,
- have AIDS.

The federal law does not protect:

- a) persons whose only disability is current illegal use of or addiction to a controlled substance;
- b) persons whose tenancy would result in substantial physical damage to the property of others; or
- c) persons who would be a direct threat to the health or safety of others. In order to establish a "direct threat", there must be objective evidence that is sufficiently recent to be credible. Also, there must be no reasonable accommodation that could eliminate or reduce the risk to health or safety.

Reasonable Accommodation

A major part of the federal law is the requirement that the landlord provide reasonable accommodations in rules, policies, practices, and services to enable a person with a disability

equal opportunity to use and enjoy the housing. For example, a "no pets" policy would have to be modified to accommodate an individual who uses a service animal.

Modifications to Existing Housing Under the federal Fair Housing Law, it is unlawful to refuse a tenant with a disability permission to make reasonable modifications to the premises (e.g. ramps, grab bars) at the tenant's own expense. Prior to granting permission, the landlord may require, where reasonable, that the tenant restore the interior of the premises to the condition that existed before the modification.

Financing of Modifications: In federally funded housing, the reasonable accommodations, including physical modifications, would have to be provided at the landlord's expense. However, in the private sector, the tenant must pay for modifications. While there are several avenues available to the landlord to finance modifications, at this time there are few options to assist tenants in paying for the costs of modifications. *In Somerville, some funding assistance is available for access modifications through the Housing Rehab Department.*

In some cases, it may be possible for a landlord and tenant to work out an agreement where costs may be shared. The tenant might agree to a longer than typical lease, thus giving the landlord the assurance that the property will not be vacant for a longer time. The landlord could also benefit from a federal tax credit for making the property accessible, as well as having greater control over the quality of the work.

Adaptability Requirements for New Construction for Multi-Family Units All apartments in newly constructed buildings with four or more units, built for first time occupancy after March 13, 1991, must be "adaptable" if there is an elevator, but, if there is no elevator, only ground floor units must be "adaptable". "Adaptable" means that the apartment doorways, cabinets and interior spaces are designed so that the apartment can be made accessible at a later time without structural change. For example, reinforcements in bathroom walls would be in place, in the event that someone needs grab bars in the future.

Inquiries: No inquiry may be made as to whether an applicant has a disability or as to the nature or severity of the person's disability. Exceptions include

- a) an inquiry made to determine ability to meet the requirements of ownership or tenancy. For example, since some apartment developments are only available to persons with disabilities, verification of disability would be required. *However, the landlord may not require diagnostic information.*
- b) Inquiries can be made to determine whether the applicant is a current illegal substance abuser or addict of a controlled substance or to determine whether the applicant has been convicted of illegal manufacture or distribution of a controlled substance, but any questions regarding such matters must, if asked at all, be asked of all applicants.

Filing Complaints: Administrative complaints under the Federal Fair Housing Act must be filed with the U.S. Department of Housing and Urban Development within one year after the alleged discrimination or within one year after termination of a continuing practice of discrimination. Complaints may be filed in court within two years of the occurrence or termination of the discriminatory activity.

State Law – the Massachusetts Housing Bill of Rights (Chapter 722)

On January 13, 1990, the Massachusetts Housing Bill of Rights for People with Disabilities was signed into law protecting disabled persons from housing discrimination. Highlights of the law include:

- The right to be free from discrimination in public and private housing, except for owner-occupied, two-family units.
- The right to reasonable accommodations necessary to allow a disabled person full enjoyment of the premises
- Prohibitions against anyone seeking to exclude disabled persons from living in a community.
- Enforcement by the Massachusetts Commission Against Discrimination of these rights, with the option to have the state Attorney General go to court for the complainant, if MCAD finds probable cause.
- A central registry (MassAccess) maintained by the Massachusetts Rehabilitation Commission to match available accessible and adaptable housing with persons who need them.
- Under the state law, where there are 10 or more units or in publicly assisted housing, the landlord may be required to pay for reasonable modifications of the premises.



Comparison of state law with the Federal Fair Housing Act

Although the state law is similar for the most part to the federal law, there are differences in the following areas:

- The state law covers all types of housing, except owner-occupied, two-family units (federal law exempts owner-occupied housing with four or fewer units).
- Under state law, the landlord must pay for and make reasonable modifications in publicly-assisted housing and housing with 10 or more units (under federal law, the tenant must pay, but the landlord cannot refuse permission).
- State law protects groups not covered by federal law (see Section A.3).
- Under state law, all apartments in newly constructed multi-family housing with 3 or more units, ready for first-time occupancy after March 13, 1991, must be "accessible", if there is an elevator. In non-elevator buildings, all ground floor units must be "accessible" (federal law covers multi-family housing with 4 or more units). Also, state law has broader, more stringent accessibility requirements.

Contacts for further information:

ADA Coordinator – City of Somerville

City Hall, Somerville, MA 02143
(617) 625-6600 ext.3310
(617) 666-0001 TDD
(617) 625-2519 FAX

Disability Law Center

11 Beacon St – Suite 925, Boston, MA 02108
(617) 723-8455 voice
(617) 227-9464 TTY
(800) 872-9992 Voice
(800) 381-0577 TTY

Mass ACCESS Housing Registry (*to locate or list accessible rental housing*)

Housing Registry information is available from several agencies including:

- Citizens Housing & Planning Association
(617) 742-0820 voice/TTY
<http://www.massaccesshousingregistry.org/registry/registrymax.nsf/webpages/home?open>
- Boston Center for Independent Living
(617) 338-6665 voice
(617) 338-6662 TTY
- Mass. Rehabilitation Commission
www.state.ma.us/mrc/il/access.htm

Massachusetts Office on Disability

One Ashburton Place, Room 1305
Boston, MA 02108
(617) 727-7440 voice
(800) 322-2020 toll-free voice/TTY

IV. Types of Tenancies

At Will

A tenant-at-will occupies an apartment without a lease signed by the landlord. (M.G.L. c. 183, § 3) and pays rent periodically, usually monthly. A tenant at will may have a written tenancy agreement but usually does not.

Either party, landlord or tenant may terminate his/her tenancy with a *written* Notice of Termination received 30 days or one rental period in advance, whichever is longer, *except where the landlord intends to sell the rental unit as a condominium (see page 44)*. The tenancy must terminate on a rent day. The landlord is currently not required to give a reason for termination. When you give notice, for your own protection, send it certified mail return receipt requested and keep a copy of the notice you sent to your landlord.

If the landlord wants to evict a tenant at will for non-payment of rent, they must serve the tenant with a 14-day notice to quit. The tenant has a right to cure (*and not be evicted*) if he or she pays all rent due within ten days of receipt of the notice to quit so long as the tenant has not received a similar notice to quit within the previous 12 months.

If the landlord wishes to increase the rent, he/she must provide you with written notice received 30 days or one rental period in advance (see section IX). Landlords cannot demand retroactive increases. There is no legal limit on the amount of increase *except where the landlord intends to sell the rental unit as a condominium (see page 44)*. Payment of the increase by the tenant means acceptance of the increase. If you receive a rental increase that you feel is unacceptable and cannot reach an agreement with the landlord, the landlord does have the right to give you a termination notice. Continue to pay your usual rent to prevent eviction for non-payment of rent and protect your credit standing.

If you have had a signed lease for a year and the year ends and there is no new lease, and if you pay and your landlord continues to accept rent for the premises, you will then be considered a *tenant at will*.

Tenancy at Sufferance

This occurs when someone who legally had the right to be in the apartment, no longer does but continues to remain in the apartment. The tenant is still responsible for the payment of rent (called use and occupancy) while he/she remains in the apartment and has the right under M.G.L. c. 111, § 127C and other laws to maintain an action against the landlord for any violations of the state and local health codes.

Tenancy under a lease

The state law (M.G.L. c. 183, § 3) requires that a lease must be in writing and signed by the landlord. It must provide that it is good for a definite time period. A lease is a legally binding document on both the tenant and the landlord once it is signed by both of them. Any provisions included in the lease that violate state and federal laws will not bind either person.

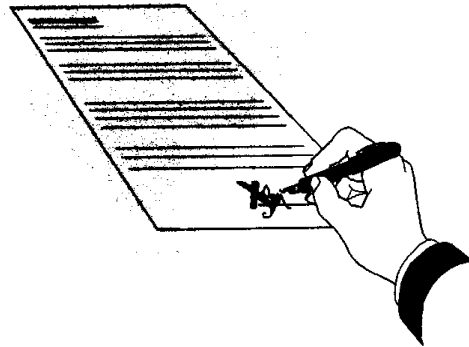
A lease can be terminated only when:

- the lease date expires; *or*,

- a lease provision is violated (i.e., non-payment of rent); *or*,
- by mutual agreement.

Any landlord wishing to evict a tenant with a lease during the term of the lease must state the *specific violations* of the lease on a valid notice of termination of the tenancy (also known as a notice to quit) and go through court eviction proceedings. After a lease expires, a landlord need not serve a tenant with a notice of termination but rather may proceed to court by filing a summary process summons and complaint. See Appendix VI for an example of the Summary Process Summons and Complaint.

If you do not pay the rent while a tenant under lease and your landlord wants to evict you, the landlord must give you a 14-day notice of termination. You have the right to cure the non-payment by paying back rent plus interest and court costs up to the Answer Day of the Summary Process action. *The Answer Date will be listed in the box at the bottom of the summons and complaint.. It is the Monday following the “Entry Date” listed in the top right hand corner of the document”*



The amount of rent charged cannot be increased for the term of the lease, unless the lease contains a tax escalator clause. A tax escalator clause states that a landlord can raise your rent to cover the cost of an increase in property taxes.

Rooming or Boarding House Tenant

If a rooming *or* boarding house tenant has lived in the house for three or more consecutive months, they are considered a *tenant at will* and have all the rights of a tenant at will. Termination notices for this type of tenancy vary depending *on* the length of tenancy:

<u>Length</u>	<u>Notice Required</u>
30 days <i>or</i> less	None
more than 30 days but less than 3 months	7 days
3 months or more	30 days (14 days if for non-payment of rent)

But, regardless of the length of the tenancy, the landlord is only required to give *7 days notice if*:

- the tenant or guests are disorderly or bothersome to other tenants; and
- the tenant pays rent daily or weekly.

Rights Against Retaliation

A landlord can terminate a tenancy or raise the rent *without reason* for the tenant at will, however, this cannot be done in retaliation for the tenant exercising his/her legal rights. If the landlord tries to raise your rent, terminate your tenancy or make any substantial changes in your tenancy within *six months* of when you:

- contact the Board of Health

- complain of suspected health code violations **in writing** to the landlord,
- join a tenants' organization, or
- exercise certain other legal rights,

this action by the landlord will be presumed to be in retaliation for your exercise of your rights as a tenant.

The burden is then placed on the landlord to *prove* that he/she would have taken the same action (i.e. eviction, rent increase, etc.) at the same time and in the same manner even if the tenant hadn't exercised his or her rights. *It is important to note that it is not considered retaliation if your landlord terminates your tenancy or raises the rent because you ORALLY reported bad conditions to him or her.* Put everything in writing to protect your tenancy rights.

Termination vs. Eviction

- Termination is the ending of your tenancy agreement.
- Eviction is the forced removal of the tenant after termination and only a judge can order the eviction of a tenant.

A landlord cannot lock you out or throw you out of your apartment without a court order. See Section XIV for more detailed information.

V. Types of Tenancy Agreements

Generally a tenant has a written or oral tenancy at will agreement or a written lease. State consumer protection regulations [940 CMR 3.17 (3)(b)] require that a landlord must include the following in a written rental agreement:

- The names, addresses and telephone numbers of the owners and any other person who are responsible for the care, maintenance and repair of the property.
- The name, address and telephone number of the person authorized to receive notice of lawsuit on behalf of the owner.
- The amount of the security deposit and disclosure of rights under the Security Deposit Law.

Lease: A lease is a contract and should clarify the rights and responsibilities of both the tenant and the landlord. *You should always read the lease through before signing.* If you have any difficulty understanding parts of the lease you should ask for an explanation.

The landlord must give you a copy of the lease for your own records within *30 days* after it is signed. If the landlord fails to comply, he/she can be fined up to \$300. Please be advised that if the lease has any provision that conflicts with a law or requires the tenant or prospective tenant to waive certain rights, that provision of the lease is *void and unenforceable*.

Types of Leases:

- **Standard fixed-term lease:** usually runs for twelve (12) months and may or may not be renewed when it expires.
- **Self-extending lease:** this lease automatically renews itself if neither the tenant nor the landlord gives *formal* notice that it will be terminated at a date specified in the lease.

Keep in mind that the lease agreement should describe all rental terms, conditions and charges expected for the rental agreement. The landlord cannot add a charge for facilities during the rental period that were at no cost when the lease was signed. Check the lease, before signing it, to make sure all blanks are filled in and that the exact amount of the rent is stated. Write into the lease all *verbal/oral* promises, additional clauses or clarifications made by either the tenant or the landlord. Each change in the lease must be initialed by both the landlord and the tenant. Any agreements regarding parking arrangements, use of basement (for storage), pets (number and type), and the number or names of occupants (including children) should be included in the lease.

VI. Roommate Situations

There are several different types of roommate situations. It is important to try to determine which type of tenancy you have in order to determine your rights.

Types of tenancies created: Roommate situations generally fall into one of three categories:

- 1) a group of co-tenants with one landlord;
- 2) a rooming house or quasi-rooming house where tenants each have separate tenancies at will or separate leases; or
- 3) a primary tenant and one or more sub-tenants .

Distinguishing among these different types of tenants can be difficult and there is often no clear answer as to which type of tenancy exists.

- In some cases there may be a written sub-tenancy agreement between one primary tenant and his or her housemates. In this instance a sub-tenancy is almost always in existence.
- Likewise, there may be separate leases between a property owner and various tenants who may share a common kitchen or bathroom. This generally creates a rooming house or quasi-rooming house situation.
- Last, there may be one lease where all tenants are named on the lease and are jointly and severally liable for rent. Under this circumstance, all tenants are co-tenants with a direct relationship with the owner.

Where there is no clear written agreement between either the owner and one or more roommates or a primary tenant and one or more roommates, categorization is not as easy. The answer will generally be determined by the facts of a particular case.

The following factors are generally looked at in determining the status of roommates:

- A. Does each roommate pay his or her rent directly to the owner or to one tenant who then pays the owner the full amount of the rent? Are rent checks made payable to the owner or to a primary tenant?

If rent is paid to one tenant who then pays the owner and checks are not made out directly to the owner, then a sub-tenancy is generally created. If each person pays rent to the owner directly, then the situation is usually a co-tenancy or rooming house situation.

- B. Did the owner/landlord or other tenants choose the persons to occupy the unit?

If the owner/landlord chooses the unit occupants it is more likely that separate tenancies are created and a rooming house or quasi-rooming house situation exists. If one or more of the existing tenants choose other tenants the situation is more likely to be considered a co-tenancy or sub-let situation.

- C. Are bedrooms each separately locked or are they accessible by all household members?

If bedrooms are individually locked it is more likely that a rooming house situation exists. If all household members have access to all rooms (even if by mutual agreement

they don't enter other bedrooms without permission) it is more likely to be considered a co-tenancy.

D. Are communications from the owner/landlord sent to all tenants or to one primary tenant?

If an owner/ landlord sends all communications to one particular tenant this could be a factor tending to establish one primary tenancy and other subtenancies. Direct communications between housemates and an owner/landlord would tend to establish either co-tenancies or a rooming house situation.

E. To whom do the tenants complain if conditions are in need of repair?

Again, if all complaints are made to one primary tenant this would tend to show a sub-tenancy relationship whereas direct communication with the owner would tend to establish a co-tenancy or rooming house situation.

Situation #1 - Co-tenants/Tenants in Common: In general, co-tenants have equal rights vis-à-vis the property owner. To distinguish co-tenancies from separate tenancies at will, a court would likely look at factors such as the structure of the rent payment (i.e. is it one amount for the entire apartment or different amounts for different rooms); whether the rent is paid together or individually by each tenant directly to the owner/landlord; and who has control over the choice of tenants when a room is vacated.

Rent: Co-tenants are generally "jointly and severally liable" for the full amount of the rent for an apartment or house. This means that each person is responsible for the entire rent and if one tenant doesn't pay his or her share, the remaining tenants will be liable. Thus, if a group of tenants are co-tenants and one tenant leaves, it will be the remaining tenants' responsibility to find a new tenant or otherwise pay the rent.

Conditions and other landlord/tenant laws: All co-tenants have the right to enforce the sanitary code and other laws designed to protect residential tenants against the owner. (Note this is not always true with sub-tenancies).

Eviction of co-tenants: In general a landlord cannot evict one co-tenant without evicting all the tenants. This is because in order to evict pursuant to M.G.L. c. 239, §1 a landlord must have a "superior right of possession" to the premises. Since each co-tenant has the right to possession of the full apartment, the landlord would still not have a right to superior possession of the unit were one tenant to be evicted. If a landlord wants to evict one of several co-tenants (sometimes at the request of remaining tenants) he or she would need to terminate the tenancy of the entire household and then bring a summary process action against all the tenants. The landlord could then offer a new tenancy to the remaining tenants.

Situation #2 - Separate tenancies at will: The basis of a tenancy at will is either an express or an implied agreement between a landlord and a tenant to rent a room (sometimes with common area access) and/or an apartment which is terminable "at the will" of either party (i.e. neither party is tied into a lease for a fixed period). The agreement can be either oral or written as long as there is no definite time period or length of tenancy established (for then it would be a lease). A tenancy at will is generally implied where a tenant lives in a room or apartment, is paying rent to

the landlord and the landlord accepts the rent. This is true whether or not there was any prior agreement between the parties regarding the rental.

Whether several adults who are living together have separate tenancies at will or are co-tenants again is a question of fact. Tenants would most likely be separate tenants at will where

- each pays rent directly to the owner/landlord,
- the owner/landlord recruited and rented to different household members;
- individual tenancies began at different times and
- where rent is paid "per room" as opposed to one price for a whole apartment.

Rent: The advantage of establishing separate tenancies at will is that tenants will not be "jointly and severally liable" for rent. If one tenant doesn't pay the rent, it will be up to the landlord to collect the funds due. In addition, if one tenant leaves it will be the landlord's responsibility to find a replacement tenant (this obviously has pros and cons as remaining tenants may be sharing common space with any new tenants). In addition, if there is only one electric or gas meter or oil burner servicing the entire apartment and rooms are rented separately tenants have a reasonably good argument that the landlord must pay for all utilities at the premises. 105 CMR 410.354 and 410.355.

Conditions and other landlord/tenant laws: All tenants at will have the right to enforce the Sanitary Code and other laws designed to protect tenants against their landlord.

Eviction: A landlord would have a right to evict one tenant at will (who is not a co-tenant) in a summary process action as the landlord would have the superior right of possession as to that tenant's room. If a landlord sought to evict all tenants in a unit he or she would likely need to serve each tenant with a separate notice to quit and bring separate court actions against each tenant. One tenant at will cannot evict another tenant at will with a separate tenancy as neither tenant has the superior right of possession as to the other.

Situation #3 - Sub-tenancies: If a tenant has a written tenancy agreement, that document often has a provision prohibiting the tenant from subletting without the permission of the landlord. Courts have held that a landlord can be unreasonable in refusing to allow a sublet (i.e. the landlord need not have a good business reason and she can just say "no"). For that reason, if you know that you will need to sublet and you are entering into a lease (or a written tenancy at will agreement) you should make sure the lease is modified to give you permission to sublet. A sublet (as opposed to an assignment) occurs when a tenant grants a "lesser tenancy" to a sub-tenant (for example, where a tenant lets to another person the entire apartment for three months out of a twelve-month lease or one bedroom out of an entire apartment for some or all twelve months). If a tenant tries to transfer an entire "contract" or rental agreement to another (the entire property for the entire term of a lease), that is considered an assignment.

A tenant at will generally will not be prohibited from subletting unless restricted from doing so in a written tenancy at will agreement; however, they cannot "assign" their rental responsibilities to another person.

It is not entirely clear when one is a subtenant and when one is a co-tenant in the absence of a written sub-tenancy agreement. Evidence of a subtenancy might exist if:

- the "subtenant" pays rent only to the primary tenant

- the owner does not know the subtenant resides in the apartment
- the owner has little or no contact with the subtenant
- communications regarding rent, conditions and other matters go between the owner and the primary tenant
- the landlord has not expressly or impliedly agreed to a tenancy with this person (i.e. has never accepted rent)

When a subtenancy exists, there is no landlord/tenant relationship created between the owner and a subtenant. The primary tenant in essence acts as landlord to the subtenant.

Rent: When a tenant subleases a portion of his or her apartment to another tenant, the original tenant will still be liable to the owner for the full amount of the rent. If the subtenant does not pay the primary tenant, the primary tenant would need to collect the funds due from the subtenant either in a small claims action or in a summary process action.

Conditions and other claims: In general a subtenant would need to sue a primary tenant and not the property owner for bad conditions, violations of the security deposit law, etc. as the subtenant has no legal relationship with the property owner. It may be argued, however, that for the State Sanitary Code and for M.G.L. c. 186, §14, (which prevents lock outs and breaches of quiet enjoyment), that a tenant could sue the property owner directly. The basis of this argument is that the statutes authorizing these claims refer to landlords and occupants. It could be argued that a subtenant is an occupant (although not a tenant vis-à-vis the landlord) and that a landlord should not be shielded from his or her responsibilities simply because someone happens to be a subtenant.

Evictions: In general, a primary tenant and not the owner would need to initiate a summary process action against a subtenant. If the owner wants to evict a subtenant he or she would need to evict the primary tenant. The owner could add the subtenant's name to any summons and complaint (i.e. primary tenant and Mr. Jones holding under him) but probably is not required to do so. The subtenant has no rights greater than the primary tenant. Therefore, once a primary tenant is evicted, a subtenant will have no further right to occupancy at the premises.

VII. Financial Matters

Pre-payments

M.G.L. c. 186, § 15B states that a landlord is permitted to ask for the following in advance of your moving in:

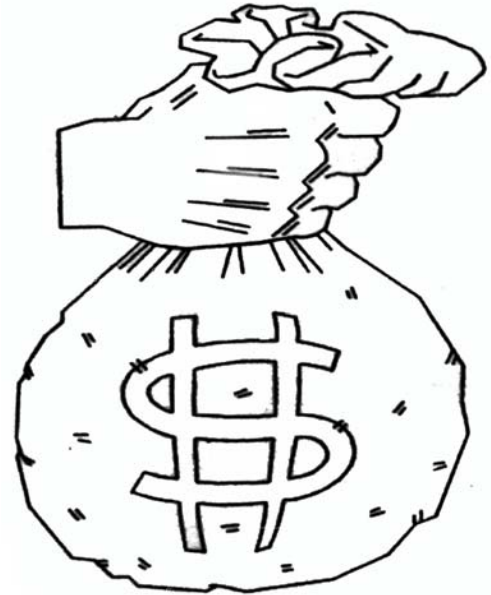
- First month's rent .
- Last month's rent.
- Security deposit (not to exceed first month's rent).
- Purchase and installation cost for a lock and key.

Security Deposits

The reason for a security deposit is to give the landlord some protection against damage done to the apartment. This does not include damage from natural wear and tear. A security deposit can also be used for rent arrearage and in certain cases for unpaid water bills.

If the landlord requires a security deposit, he/she must:

- Provide you with a statement of condition of the apartment--the condition the apartment is in when you move in (including any damages as well as repairs needed). *Be sure to include any sanitary code or building code violations.* This statement should be given to you within 10 days after you move in or when the landlord/agent receives the deposit, whichever is later.



You should read this statement carefully. If you do not agree with any of the contents of the statement, you must return a corrected copy to the landlord within 15 days after you receive the list or 15 days after you move in, whichever is later. A court could view this failure to return the list to mean that it was correct and complete in any lawsuit that you bring to recover your security deposit.

If you do submit a corrected list of damages, the landlord must return it within 15 days of receipt with a clear written response of agreement or disagreement. This signed statement and the original condition statement are the basis upon which future deductions for damage will be made.

If the landlord does not give you a Statement of Condition, you should write your own and send a copy to the landlord or agent.

- You are entitled to a receipt for the security deposit. This receipt must state the following:
 - the amount of the deposit,
 - the date the money is received by the landlord,
 - the address of the apartment,
 - signature of the person receiving the money,

- the name of the person receiving the money and, in the case of an agent, the name of the lessor for whom the agent is receiving the money, and
- the intended use for the money, i.e., say "security deposit" on it.

If the landlord does not give you a receipt then ask for it!

- The landlord must keep the security deposit in a separate interest-bearing bank account that is specially protected against the landlord's creditors (*The landlord does not have to maintain separate accounts for each security deposit.*) This only applies to security deposits received after September 1, 1978. Within 30 days of receiving the security account the landlord must give you a receipt which states the following:
 - the name of the bank where the account is located,
 - the address of the bank,
 - the amount of the deposit, and
 - the bank account number.

If the landlord does not comply with the rules above, you are entitled to an immediate return of your security deposit.

She/he must pay you interest on the security deposit each year on the anniversary date of the tenancy (the day you agreed to start your tenancy). On each anniversary-date, the landlord must give you a statement indicating the amount of interest owed you for your security deposit and/or last month's rent. At the same time the landlord must give you the interest due or notice that you can deduct the interest from the next rental payment.

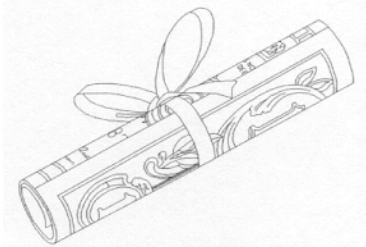
If within 30 days of the anniversary date you do not receive the interest or the notice to deduct, you may deduct the interest from your next rental payment. If your tenancy ends before the anniversary date, you are still entitled to the interest accrued on the *last month's rent*. This is different for the security deposit. If you leave before the anniversary date, you are not entitled to the interest since it must be held a year for the interest to accrue.

Interest on both *security deposits* and *last month's rent* must be paid within 30 days of termination of the tenancy.

Before 7/1/92, the interest rate was 5%. Effective 7/1/92, the interest rate is 5% or the interest rate the landlord receives from the bank, whichever is less.

- If the building is sold or transferred, the landlord must transfer the security deposit to the new owner of the building at the time of the closing.

The new landlord has 45 days from the transfer to notify the tenant(s) in writing that the security deposit has been transferred. In addition, the notice must include the landlord's (or agent's) name, business address and telephone number.



If the former landlord fails to transfer the pre-payments to the new landlord, the former owner is still liable, but the new landlord shall also assume responsibility. If the tenant is still living

in the apartment, the new landlord can satisfy his/her obligation by granting the tenant free rent for a period equivalent to the prepayments made--usually one month's rent.

- The records of the security deposit have to be available for inspection during the normal business hours.
- The security deposit must be returned to you within 30 days of the termination of your tenancy (although certain deductions are permitted).
- The landlord may deduct only the following from the security deposit (M.G.L. c. 186, § 15B):
 - any unpaid rent which has not been withheld or deducted legally; or,
 - any unpaid increase in real estate taxes which the tenant must pay; or,
 - a reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. If the landlord deducts for damages he/she must provide the tenant, within thirty days, an itemized list of damages (sworn under the pains and penalties of perjury). This list must itemize the damages and the repairs necessary to correct them. The landlord must give the tenant written estimates, bills, invoices or receipts indicating the actual cost of repair.
 - Unpaid water charges in certain circumstances on or after March 16, 2005.
- The landlord cannot deduct for repairs to the property that were listed in the Statement of Conditions or in the amendment, unless the landlord can prove that the original conditions were repaired and the new damage was caused by the tenant.
- If the landlord fails to comply with the above, he/she forfeits his/her right to retain any portion of the security deposit for any reason or in any action by a tenant to recover a security deposit to counterclaim for any damage to the premises.
- If the landlord or his/her agent fails to:
 - deposit the security deposit into the required type of bank account
 - transfer such security deposit to his/her successor in interest or
 - return to the tenant the security deposit or balance the tenant is entitled to (less the amount for damages) thirty days after termination of the tenancy,

then, generally the tenant will shall be awarded damages in an amount equal to three times the amount of the security deposit or balance thereof to which the tenant is entitled plus interest, together with court costs and reasonable attorney's fees. (M.G.L. c. 186, § 15B)

- If the landlord:
 - fails to furnish you with an itemized list of damages within 30 days after termination of tenancy if deductions are made for damages; or,

- fails to make the security deposit records available for inspection during office hours; or,
- fails to provide, within 30 days of receipt of the deposit, another receipt with name and location of bank and amount and account number of the deposit; or,
- uses a lease which has provisions that conflict with security deposit law, and attempts to enforce these provisions or attempts to get you to sign a waiver

then you are entitled to the immediate return of your security deposit. The landlord cannot keep your security deposit for any reason, including making deductions for damage.

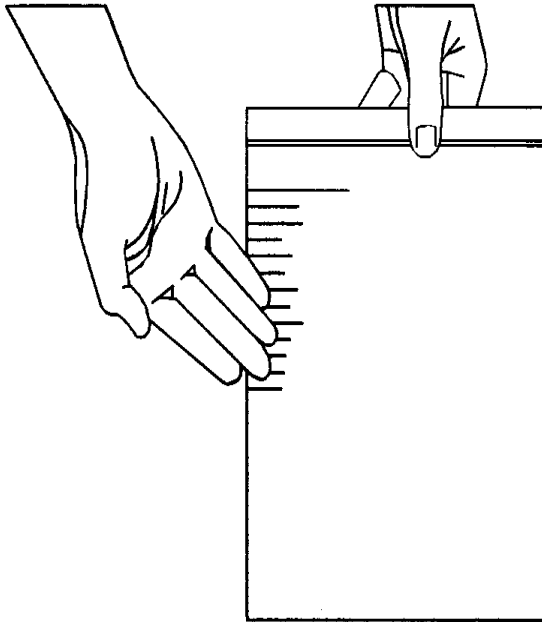
Last Month's Rent

The last month's rent is not the same as the security deposit. If the landlord asks for the last month's rent, he/she must give you a receipt that states:

- the amount of money,
- date of receipt,
- the words "last month's rent"
- the name of person receiving it,
- the name of landlord or agent involved,
- the address of the apartment
- the tenant's right to interest, and
- the tenant's obligation to give the landlord a forwarding address at the end of the tenancy.

Ask the landlord for a receipt if one is not provided.

Interest on last month's rent



- Interest is paid on the last month's rent at the anniversary date. Unlike the security deposit, if you move out before the anniversary date, you are entitled to all the interest that has accrued. Provide the landlord with your forwarding address, so that interest may be sent at the termination of your tenancy. Interest does not accrue for the month for which the last month's rent is used.

- On your anniversary date the landlord is responsible for sending you a statement indicating the amount of interest owed. At this same time, the landlord must send you the interest or a notice to deduct it from the next rent payment. If he/she fails to do this within 30 days, you may calculate the amount and deduct the interest from your next rental payment. **The interest rate is 5% or the rate the landlord receives from the bank, whichever is less.**

See above for what you are entitled to if the landlord fails to comply with the law concerning last month's rent. Before suing, write to your landlord and inform him/her about the laws concerning last month's rent and demand the money due you by a certain date.

VIII. Habitable Conditions

All tenants are entitled to a safe and habitable living environment. Article II of the state sanitary code (105 CMR 410) contains the rules for minimum physical requirements of rental property in the Commonwealth. Copies of the state sanitary code may be purchased from the State House Bookstore, State House, Room 116, Boston MA 02133 (617) 727-2834. The code is also available online at www.gov/eohhs2/docs/dph/regs/105cmr410.pdf. The sanitary code protects the safety and well being of tenants and the general public. Local boards of health are the agencies designated to enforce the sanitary code.

The Code contains the following provisions:

Heating Facilities: The landlord shall provide and maintain in good operating condition the facilities for heating every habitable room and every room containing a toilet, shower or bathtub to such temperature as required (see **Heat** below).

Heat: The landlord shall supply heat in *every habitable room and every room containing a toilet, shower or bathtub* of at least 68 degrees F. between 7:00 a.m. and 11:00 p.m. and at least 64 degrees F. between 11:01 p.m. and 6:59 a.m. every day other than during the period from *June 15th* to *September 15th*. The heating season is *September 15th* through *June 15th*. The temperature shall at no time exceed 78 degrees F. during the heating season.

Exception: Although the landlord must maintain the heating facilities: he or she need not actually pay for the fuel providing the heat if the tenant is required to supply the fuel under a written tenancy agreement.

Hot Water: The landlord shall provide and maintain in good operating condition the facilities capable of heating water. The owner shall also supply the hot water for use at a temperature of not less than 110 degrees F. and in a quantity and pressure sufficient to satisfy the ordinary use of all plumbing fixtures which normally need hot water for their proper use and function.

Exception: Although the landlord must maintain the facilities for heating water, he or she need not actually pay for the fuel providing the heat if the tenant is required to supply fuel for the operation of the facilities under a written tenancy agreement.

Lighting and Electrical Facilities: The landlord shall provide for each habitable room *other than the kitchen:*



- Transparent or translucent glass which admits light from the outdoors which is equal in area to no less than 8 percent of the entire floor area of that room.
- Two separate wall-type convenience outlets or one such outlet and one electric light fixture. The outlets shall be placed in practical locations and shall insofar as practicable, be on different walls and at least 10 feet apart.
- **Light in the kitchen:**

The landlord shall provide:

- one electric light fixture;
- two wall-type convenience outlets located in convenient locations; and
- for each kitchen over 70 square feet, transparent or translucent glass which admits light from the outdoors and which is equal in area to no less than 8 percent of the entire floor area of that kitchen.

- **Light in Passageways, Hallways and Stairways:**



- The landlord shall provide at all times and pay for light in every part of interior passageways, hallways and stairways used or intended for use by the occupants of more than one apartment so that illumination alone or in conjunction with natural lighting shall be at least 3 foot candles, measured at floor level.
- Exception: In an apartment building containing only 3 or fewer apartments, the light fixtures used to illuminate a common hallway may be wired to the electric service serving one apartment on the same floor provided that if the tenant of such apartment is responsible for paying for the electric service to such apartment then:
 - o The rental agreement shall state that the occupant is responsible for paying for light in the common hallway; and,
 - o The landlord shall so notify the occupants of the other apartment(s).

Kitchens

The landlord shall provide suitable space to store, prepare and serve food in a sanitary manner. The landlord shall provide within this space:

- a sink of sufficient size and capacity for washing dishes and kitchen utensils; and,
- a stove and oven in good repair. Exception: where the tenant is required to provide a stove under a written lease agreement; and,
- space and proper facilities for the installation of a refrigerator. *A refrigerator does not have to be provided by the landlord, just the space for it to be placed in the kitchen. However if one is provided by the landlord, the landlord must maintain it free of defects.*

Extermination of Insects, Rodents and Skunks:

The tenant of a dwelling containing *one apartment* shall maintain the unit free from all rodents, skunks, cockroaches and insect infestation and shall be responsible for exterminating them, provided, however, that the landlord shall maintain any screen, fence or other structural element necessary to keep rodents and skunks from entering the dwelling.

The landlord of an apartment building containing *two or more apartments* and/or *the owner of a rooming house* shall maintain it and its premises free from all rodents, skunks, cockroaches and insect infestation and shall be responsible for exterminating them.

Structural elements:

Every landlord must maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of the apartment so that it excludes wind, rain, and snow; is rodent-proof, watertight, and free from chronic dampness, weather tight, in good repair, and in every way fit for use intended. Further, he/she shall maintain every structural element free from holes, cracks, loose plaster, and other defects where such holes, cracks, loose plaster or defect renders the area difficult to keep clean or constitutes an accident hazard or an insect or rodent harborage.

Garbage and Rubbish Storage and Disposal:

The owner of any dwelling that contains three or more dwelling units, the owner of a rooming house, and the occupant of any other dwelling place shall be responsible for providing as many receptacles for the storage of garbage and rubbish as are sufficient to contain the accumulation before final collection or ultimate disposal and shall so locate them to be convenient to the tenant and so that no objectionable odors enter any apartment.

Safe Condition (includes snow removal):

The Owner shall maintain all means of egress at all times in a safe, operable condition. All exterior stairways, fire escapes, egress balconies and bridges shall be kept free from snow and ice.

Lead Paint

The presence of lead paint in an apartment or a house presents a serious health concern for all occupants. The law has recognized that children (especially under the age of 6) are particularly at risk. This is because children often put anything they find in their mouths, including paint chips found on the floor, and will at times chew windowsills.

Children who have high lead levels in their blood often exhibit the following symptoms: lack of appetite, weight loss, abdominal pain, constipation, headaches and leg pains. Some children with lead poisoning may also show unusual behavior like hyperactivity or "bad temper." Lead paint poisoning can, in some cases, lead to death, permanent brain damage or mental retardation.

Landlord Responsibilities regarding Lead Paint

The State Sanitary Code, the Lead Poisoning Prevention & Control Regulations and the Massachusetts General Laws each



detail the responsibilities and liabilities of a landlord/owner in regard to removal of lead paint once detected. Lead paint inspections can only be conducted by individuals or companies certified to conduct lead paint inspections.

The landlord/owner of the apartment is required by law to remove or cover any paint, plaster or other accessible structural material containing dangerous levels of lead or replace the fixture on which the lead is located whenever:

- a child under six years of age resides therein whether or not the premises have been inspected; or,
- the owner receives an order to delead because a child under the age of six resides in the apartment; or a child under the age of six who is lead poisoned has resided in the apartment within the past 12 months.

If the apartment is found to contain lead paint and the landlord/owner fails to remove the paint, he/she can be civilly liable. This means that the landlord will be responsible for all damages. There have been cases where landlords have been ordered to pay damages for health injuries to children.

A landlord/owner who has knowledge of the presence of lead paint must arrange to have it removed from the premises. A family may have to temporarily relocate while the deleading is being conducted. The landlord is responsible for paying reasonable moving expenses and, if the tenant does not have access to free alternative accommodations, he or she must offer and pay the charges of a substitute dwelling unit (e.g., hotel costs) which exceed the rent for the unit the tenant must temporarily vacate for the deleading. A landlord/owner who does not satisfactorily remove or correct the situation, once he/she has been *notified*, can be liable for treble damages--that is three times the amount of the actual damages found.

Deleading is often costly in terms of landlord time and money since it generally can only be done by certified deleadors. (In limited “low-risk” situations, persons who are not certified deleadors can be authorized to perform limited de-leading work.) State income tax credits are available to cover a small portion of the cost and some owners may be eligible for city and state loan programs (see box below).

Some landlords attempt to avoid deleading by trying not to rent to families with children under the age of six. *This is discrimination under the Fair Housing laws.* The landlord may sound sincere about not wanting to injure your child, but by not deleading *the landlord is discriminating against children.* If you encounter this type of situation, you may file a complaint with the Somerville Fair Housing Commission or the Massachusetts Commission Against Discrimination (see Section II – page 3).

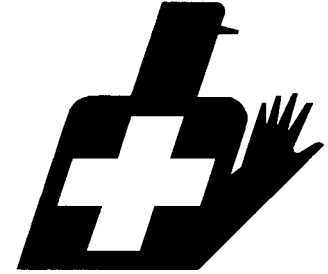
NOTE: No interest, deferred payment or forgivable loans are available from the Somerville Office of Strategic Planning and Community Development for deleading work when either the

What to do if you find a possible code violation

Tell the landlord about the situation. You should write a request that he/she repair it and

keep a copy of the request for your records. You may call, but it is best to put it in writing so that there is a record of your concern. If this does not elicit a satisfactory response from the landlord, there are additional steps you may take.

Ask the local board of health for an inspection. It is against the law for the landlord to retaliate by raising the rent or evicting you for reporting the code violation for at least six months after you inform the authorities. If the landlord tries to evict you within six months after you informed the authorities, the landlord is presumed to be evicting you for a retaliatory reason.



- Make a list for the inspector of all the (possible) code violations you want investigated.
- See that the inspector writes down all the code violations that he/she is able to identify.

Any minor or major violation can be determined to be a "Code One" (a violation that endangers a person's health and well-being). The inspector must supply the tenant with a copy of the report and must specify a time period for the landlord to correct the violations. If the landlord fails to begin the repairs or make arrangements for the repairs in the amount of time specified, he/she could be subject to fines or imprisonment.

Actions that may be taken by the Tenant if the Violations Persist

Rent Withholding

This is a very serious step and should not be done lightly. If you determine that this may be the appropriate action to take, it is in your best interest to obtain legal advice before you actually withhold the rent. The landlord could try to evict you for non-payment of rent.

The Massachusetts Supreme Judicial Court has ruled that when a landlord fails to maintain a dwelling in a habitable condition, a tenant may properly withhold a portion of the rent from the date the landlord has notice of the breach of the warranty of habitability . (M.G.L. c. 239, § 8A).

You must first notify the landlord or his/her agent of the violation of the sanitary code. Then, in order to be able to withhold rent:

- you must be up to date on your rental payments; and,
- the conditions were not caused by you or anyone you control; and,
- the property in question is not a hotel, motel, lodging house or rooming house where you have lived for less than three (3) consecutive months; and,
- the unsanitary conditions should be such that do not require you to vacate the premises. However you can bring an action for a sanitary code violation that may require you to *temporarily* vacate the premises for the purpose of removal or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead paint pursuant to the lead paint statute. (M.G.L. c. 111, § 197).

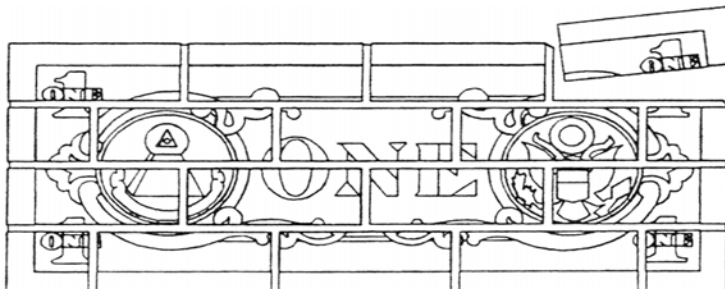
If the violations persist you should inform the landlord - preferably in writing - that you are withholding the rent. *Specify* your reasoning for doing so. Deciding how much rent to withhold is individual to the specific concern of the tenant (i.e. whether you have no heat, lead paint, etc.). You need only to pay the fair amount of the rent given the property's defective condition.

Once the code violations have been repaired you will be required to pay rent again, so *do not spend it*. If the violations have been corrected and the landlord disagrees with the reduced amount of rent you paid for the period of defective conditions, then the landlord may seek to evict you for non-payment of rent. In that event, the court will determine how much rent, if any, is due. Therefore, it is very important that you save the withheld rent or at least have immediate access to this sum. Although not legally required, it is advisable for tenants to deposit the withheld rent in a separate bank account.

Repair and Deduct

This allows a tenant to make repairs in the apartment and deduct up to 4 months future rent in a 12-month period to pay for it. (M.G.L. c. 111, § 127L) This option is available to the tenant only if certain conditions are met:

- The local board of health has certified that the code violation is a *Code One* violation - it may endanger or materially impair the health, safety, or well being of the tenant.
- The landlord receives written notice of the existing violations from the inspecting agency.
- The landlord fails, within five days, to begin repairs him/herself or to contract for outside services and fails within 14 days to substantially complete all necessary repairs. (A landlord may have less than 14 days to complete the repairs if ordered by the court or the local board of health).
- The tenant, household member or guest did not cause the condition.
- The tenant did not unreasonably deny the owner access to the apartment.
- The deduction was not unreasonable under all the circumstances.



If the tenant qualifies under "repair and deduct", the tenant may treat this as the rental agreement being broken and may move as opposed to making the repairs. Please note that if you decide to move you must:

- Pay for the fair value for the period you occupied the apartment.
- Must leave the apartment within a *reasonable* period of time.

Although not required, a tenant who intends to break their lease pursuant to the repair and deduct statute should notify the landlord of his or her intent in writing.

IX. Rent and Rent Increases

Rent:

- Tenants must pay rent when it is due. If you are supposed to pay rent on the first of the month yet find that you usually cannot pay rent until the 5th, work out an agreement with the landlord. If your landlord agrees to this plan, you should get it in writing.
- If you are going to be late one month~ call your landlord and explain the situation. Don't wait for the landlord to contact you!
- The tenant has the responsibility to pay the rent on time. The landlord cannot charge you *any interest or a penalty* until 30 days after the rent is late. (M.G.L. c. 186, §15B). *But* you should be aware that the landlord can begin the eviction process if your rent is only *one day late!*

Rent Increases:

- If the apartment is publicly subsidized, the landlord generally cannot increase the rent without receiving prior approval from the proper housing authority.
- For a tenant with a lease, rent can only be increased when the lease term expires. There is an exception for a lease that has a tax escalator clause. A tax escalator clause states that a landlord can raise your rent to cover the cost of an increase in property taxes.
- Rent for a tenant-at-will can be raised at any time providing the landlord gives you proper legal written notice 30 days or one rental period in advance. The notice terminates the existing tenancy and offers you a new tenancy at an increased rent.
- Landlords cannot demand retroactive increases. ***Payment of the increase by the tenant means acceptance of the increase.***

If you receive a rental increase that you feel is unacceptable, try and negotiate with the landlord. If you do not reach an agreement, the landlord does have the right to give you a termination notice or act on the termination notice if previously given with the rent increase. The landlord can also evict you from the apartment. However, the landlord must follow the procedures for eviction (see page 37).

- ***The rental increase may be any amount the landlord wishes to charge.***
- ***The landlord may increase the rent as often as he/she wishes, provided that proper notice is given each time the rent is increased***

The tenant need not accept a rent increase if she or he does not agree to pay it or is unable to pay it. However, the tenant must be prepared for the possibility that the landlord might initiate an eviction action. In such an eviction action, while a landlord might be able to get possession of the apartment, the landlord should not win money damages for the tenant's failure to pay the higher requested rent if the tenant never agreed to pay it. *Please note that once the higher rent is paid, it is deemed to have been accepted by the tenant.*

X. Utilities

A landlord may require a tenant to pay for *gas and electricity* if the utilities are separately metered for each apartment. For tenancies created or renewed on or after July 1, 1994, a landlord may require a tenant to pay for *oil (for heat and/or hot water)* only if the oil is provided through a separate oil tank serving only that apartment

If you pay for these utilities you should make sure the bills are put in your name and sent to you directly.

Although you may pay the utility service directly, the landlord is responsible for the maintenance of the systems (making sure the burner, wiring system and hot water system are working properly). Improper utility systems are a violation of the State Sanitary Code.

NOTE: If your tenancy began on or after March 16, 2005, your landlord may require you to pay for *water* if the property meets the Massachusetts State Water Submetering Law. In order to charge a tenant for water, a landlord must

- install a water submeter for your apartment;
- install low flow fixtures;
- have a signed written rental agreement that spells out who pays water charges;
- file proper certification of compliance with the Somerville Board of Health; and
- comply with other rules

If you moved into your apartment before March 16, 2005, you should not be charged for water. For more information on the law and its requirements, call the Housing Division at 617-625-6600 or check www.masslegalhelp.org.

Tenants are not responsible for lights (except in limited circumstances – see page 27) or heat in common areas (hallways, stairs etc.).

Shut-Offs: The landlord cannot shut off utilities (heat, light, water) unless there are repairs being made or during an emergency. The landlord who interferes with the furnishing of these services or transfers the responsibility to the tenant without his/her knowledge or consent will be subject to a fine of not more than \$300 or imprisonment for not more than six months. (M.G.L. c.186, § 14). In addition, the landlord could be liable to the tenant for actual or consequential damages or three months rent (whichever is greater), the cost of the action and reasonable attorney fees.



In cases where the landlord's account is about to be shut off for non-payment, state law (M.G.L. c. 164, §124D) and state Department of Telecommunications and Energy regulations require utility companies to notify each affected tenant in writing at least 30 days prior to the scheduled termination. Tenants may also be asked to pay part of the overdue bill to the utility and deduct that payment from their rent.

Tenants with any problems in these areas should call or email the State Department of Telecommunications and Energy (formerly Public Utilities) at: (617) 727-3531 or (800) 392-6066 or <http://www.state.ma.us/dpu/formcons.htm>.

XI. Entry, Entry Doors and Lockouts

Right against unlawful entry: (M.G.L. c. 186, § 15B) A landlord may enter a tenant's apartment under a right of entry clause in a written agreement only for the following reasons:

- to inspect the premises; or,
- to make repairs; or,
- to show the apartment to a prospective tenant, purchaser, mortgagee or agent; or in accordance with a court order; or,
- if the premises appear to have been abandoned; or,
- to inspect the premises to determine the amount of damage to be deducted from the security deposit after notice to terminate has been given, or within the last 30 days of the tenancy.



The landlord should be "reasonable" and try to arrange a mutually convenient time to enter your apartment. If the landlord enters *your* apartment in an unreasonable fashion, (i.e. without your knowledge or at unreasonable times), you should first complain about this practice to your landlord in writing. If this does not prevent continued problems, you can obtain a temporary restraining order at the Somerville District Court (617- 666-8000).

Entry Doors: In a building with 4 or more units, the main entry door must close and lock automatically with a lock, including a lock with an electrically operated striker mechanism, a self-closing door and associated equipment. Each tenant must use a key to enter.

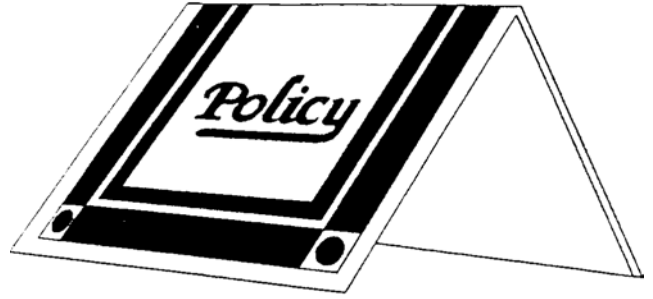
- Every door of the main common entryway and every exterior door into the building, other than the main door mentioned above, shall be equipped with an operating lock.
- Every entry door of the apartment shall be capable of being reasonably secured from unlawful entry (break-ins) and shall be fitted with an operating locking device.
- Every operable exterior window of a building shall be capable of being reasonably secured and shall be properly fitted with an operating locking device.

Lockouts/Removal of Possessions: A landlord cannot lock tenants out of their apartments or threaten to do so. In order to remove a tenant's possessions, a court proceeding must take place, a judgment for possession must enter for the landlord, a valid execution must be issued by a court and a sheriff or constable must serve the tenant with a notice providing the tenant with a minimum of 48 hours notice of the impending levy. The 48 hours does not include weekends or holidays. The means that if you get a 48 notice of levy on Friday at noon, then the constable or sheriff should not be able to evict you before Tuesday at noon. If a landlord illegally evicts a tenant, he/she can be liable for three month's rent, a fine or imprisonment. (M.G.L. c.186, §14).

If you have been illegally locked out, you may go to Somerville District Court and obtain a restraining order, or, you may try and re-enter without a breach of the peace. Forms are available at the Civil Clerk's Office at the Somerville District Court (617- 666-8000).

XII. Insurance

Landlords who own buildings with two or more units are required to carry fire insurance coverage to pay up to \$750.00 toward the actual relocation costs of tenants who are forced to leave their apartments because of fire or fire damage. Relocation costs include hotel room rental, security deposit and last month's rent for a new rental unit (in some cases), clothing replacement, furniture replacement, and other reasonable costs and living expenses as a result of being displaced or damaged by fire.



A landlord's insurance will not cover the contents of your apartment. However you have the option of obtaining renter's insurance on your own. If you purchase renter's insurance you will be responsible for the payments on the premium.

XIII. Damages to Apartment

A tenant is not responsible for "normal wear and tear" on an apartment but may be responsible for any damage caused by accident or negligence.

A tenant cannot make any alterations (including painting) to an apartment without a landlord's prior approval. If you make these changes without permission, the landlord can charge you for damages.

Any deductions from a security deposit to pay for damages must be substantiated by receipts or written estimates for the repairs (see page 23).

XIV. Evictions

If you have a lease the landlord may attempt to evict you if:

- you have not been paying your rent (**Non-payment Eviction**); or,
- you or people under your control have violated terms of your lease, e.g., having pets or subletting without permission (**Other Cause Eviction**).

Notice to quit

- Tenants with a written lease: the landlord must first send you a *Notice to Quit*. The terms of your lease will dictate the notice required.
 - if you are being evicted for non-payment of rent, you must receive a 14-day notice by law, (M.G.L. c. 186, § 11) and
 - for other-cause eviction, notice as specified in the lease, which is typically a 7-day notice except for subsidized tenancies where a 30-day notice is often required.
 - If you receive a 14-day Notice to Quit for non-payment of rent, you may avoid eviction by paying up any rent owed, plus interest and costs of suit, by the date the Answer is due. (M.G.L. c. 186, § 11). It costs \$195 to file a summary process complaint in court. You may be able to avoid paying this \$195 if you pay up all the rent and the costs of the service of the notice to quit (generally under \$40) before the “entry” date listed on the complaint.
- Tenants at Will: Your landlord *does not* have to give you an explanation for terminating your tenancy, but the landlord *does* have to have a reason to evict you. The fact that the landlord has terminated your tenancy-at-will is sufficient reason. In order to evict you for non-payment of rent, the landlord must give you a 14-day notice to quit (M.G.L. c. 186, §12).

You do not have to move out of your apartment after a 7, 14 or 30-day notice. You can only be evicted from the apartment when a judge orders you evicted.

If this is the first time in a 12-month period that you are being evicted for non-payment of rent, you may avoid the eviction by paying up any rent owed within 10 days of receipt of the notice. The notice of a tenant's right to cure must appear on the "Notice to Quit." If the notice does not appear, the tenant has until the date the Answer is due to pay up all rent then due (M.G.L. c. 186, § 12).

(The legal term for eviction is "summary process." The landlord must first terminate the tenancy. If the tenant does not move, then the landlord can go to court for the eviction or "summary process.")

The Summons and Complaint

- After the notice period passes (the 7 or 14 or 30 days as indicated in the "Notice to Quit"), the landlord will have a constable or sheriff deliver to the tenant a summary process summons and complaint. This is an official document and will inform the tenant that court action has begun. You should read this very carefully for it will state **the date the case has been scheduled for court** for the eviction and **the date on which an answer must be filed**.

- Be prepared to defend yourself in court. It would be helpful to consult with an attorney before going to court. *Do not fail to show up on your appointed court date. If you are not present, you will default and automatically lose any defense against eviction.* If your landlord tells you that he/she is not going to pursue the matter further, you should still show up at any scheduled court date to protect your rights.
- If you default on the case (don't show up) and the landlord does show up, then a judgment will be entered against you. The landlord will win and you will have to move. If the landlord does not show up in court, the case will be *dismissed (7)* seven days after the scheduled trial date, *unless* either person (the tenant or landlord) asks for a new trial date within the 7 day period.
- If you show up at court and follow through on filing an answer and the landlord fails to show up, you will win and will not have to move. Importantly, you will receive damages for the counterclaims you have stated in the answer.

The Answer

- This is the written response by the tenant why he/she should not be evicted. This is your opportunity to present your side of the situation. The answer gives you an opportunity to deny you are living in the apartment unlawfully, to state why you should not be evicted from your apartment (your defenses), and any counterclaims you have against the landlord.

Examples of counterclaims include:

- violations of the state sanitary code;
- violations of other laws;
- that this eviction is in retaliation for your filing a complaint with the Board of Health, deducting the cost of utility bills which were the responsibility of the landlord, or that you joined a tenant's organization;
- harassment;
- security deposit violation;
- discrimination

Examples of defenses include:

- improper eviction procedure;
 - you paid all your rent (be sure to bring receipts to court);
 - late welfare or other benefit check. The court must continue the case for at least (7) seven days to give time for the check to arrive. If you pay the landlord the rent during this period, then the court must treat the tenancy as not having been terminated and dismiss the case.
- A printed answer form is available at Somerville District Court. A more complete answer form may be obtained from Cambridge and Somerville Legal Services or the Community Action Agency of Somerville or on line at www.masslegalhelp.org
 - The completed answer form must be received by both the court and the landlord (or his/her attorney, if any) by the Monday before the court date.

Make a copy of the answer that you give to both the landlord and the court, then keep it in a safe place.

Your Right to a Jury Trial

You have the right to decide whether you want your case to go before a judge (known as a “bench trial”) or a jury. In a bench trial, a single judge hears your case and decides it. In a jury trial, a group of your peers - people in the community - listen to your case and decide it together. The judge tells the jury what the law is, and then the jury decides the case based on the facts that have been presented.

When deciding whether to request a jury trial for your eviction case, there is no "right answer". In some cases, you may believe that your peers might be more sympathetic to your situation than a judge (although this is not always true). In addition, requesting a jury trial can give you additional time to try to prepare your eviction case for the court, to settle your case or to try to find a lawyer. On the other hand, requesting a jury trial may require more court appearances (i.e. both a pre-trial and trial date and somewhat longer trials). In addition, if your case actually goes to trial, it may be more difficult to present your story to a jury as opposed to a judge.

If you want your case to go before a jury, you must request a jury trial on or before the answer date. This is usually done by adding a request for a jury trial to your answer. This can be as simple as writing "I hereby request a trial by jury" at the end of your answer form and signing the form. In the event that you request a jury trial, your "trial date" or your "re-scheduled trial date" (see below regarding discovery requests that postpone the trial date for two weeks) will be converted to a pre-trial conference. You must appear at this pre-trial conference and the Judge may try to get you to settle the case. If you are not able to informally resolve your case, you and your landlord will jointly chose a jury trial date that must be approved by the court.

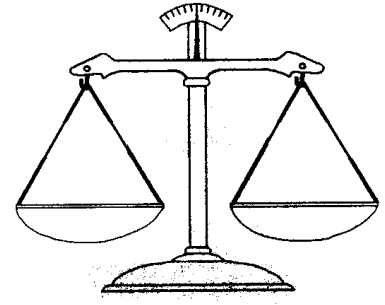
While pre-trial conferences and pre-trial motions are heard at Somerville District Court, jury trials are held in Cambridge at 40 Thorndike Street, Cambridge, 14th Floor (civil juries).

It is always better to have an attorney, if possible, in an eviction case. If you are unable to obtain a lawyer, however, in addition to the advice in this guide, you may want to consult Legal Tactics: Self-Defense for Tenants in Massachusetts which is available for purchase at Massachusetts Continuing Legal Education (MCLE) at 10 Winter Place in Boston, Massachusetts and at some libraries (including the reference desk at Somerville’s main public library). You may also want to contact some of the resource agencies listed on page 48 regarding legal assistance.

Discovery Requests

- All tenants have a right to request "discovery" from their landlords if they have been served with a summary process summons and complaint. This means that you get an opportunity to ask your landlord questions which your landlord must answer under oath. These questions are known as *interrogatories*. In addition, you have a right to request documents from your landlord that relate to the eviction case and/or any counterclaims you may have raised. Such a request would be known as a *request for production of documents*.

- It is important that you request discovery from your landlord. This lets you know, in advance, how your landlord will present his or her case to the court. It will also let you know what documents your landlord plans on submitting to the court. The following explains the procedure for requesting responses to discovery requests.
 - All interrogatories and requests for production of documents must be delivered to the landlord (and/or his or her attorney if she has one) **on or before the answer date**.
 - All interrogatories and requests for production of documents must be filed with the court **on or before the answer date**.
 - You may obtain pro-se discovery forms that will assist you in making your discovery requests. For the most part, all you need to do is check off appropriate questions and requests on these forms. Pro-se discovery forms can be obtained from Cambridge and Somerville Legal Services ("CASLS") and the Community Action Agency of Somerville ("CAAS"). Their phone numbers are listed on page 48. The forms are also available on line at www.masslegalhelp.org.
 - You can only ask questions or seek documents that are relevant to your case. For instance, you probably should not request rent records if the case has nothing to do with non-payment of rent unless you have a specific reason for making the request.
 - If you timely serve and file your discovery requests, your trial date is automatically continued for two weeks. This means that you will not have to appear on the original trial date. Make sure that the court has postponed the trial date so that you do not get defaulted.
 - Your landlord has 10 days from the day he or she receives your discovery requests to provide you with answers. If your landlord fails to timely provide you with the requested answers to discovery you can file a motion to compel and for a continuance. Motion forms are also available through CASLS and CAAS.
 - If your landlord says something different on the witness stand at trial than he or she said in answers to discovery, you can use the prior sworn statements to show that your landlord has made different statements under oath and therefore should not be believed.



The Eviction Bench Trial

- You may want to settle the case out of court. You need to think carefully about what you want and what you think the court will give you. One leverage point in your favor is that an eviction hearing will cost the landlord a lot of time and money that he/she really does not want to spend. If you successfully settle the case, make sure the landlord dismisses the lawsuit in writing, or files with the Court Clerk in charge of summary process a formal agreement of settlement.

- One alternative that can be helpful is mediation. Mediation is an alternative to court that allows the parties of a dispute to resolve their conflict with the aid of a third party. Both the landlord and tenant have an opportunity to work together to come to an agreement and avoid an eviction. In Somerville, you may contact the Mediation Program at the Somerville Community Corporation, CAAS or Just A Start Corporation (see page 48). Sometimes mediators are available in Somerville District Court on your trial date.
- If you do not settle the case, you should do some preparation for the court hearing. Again, a lawyer would be very helpful for this purpose. If you do represent yourself, remember to bring all your papers to court. In addition, you should think ahead about what questions you will ask the landlord. It may be important to have photographs and Board of Health reports of any violations of the sanitary code that exist in your apartment and that you listed in the answer. *If you do have Board of Health reports, get them certified by the City prior to bringing them to court.*
- If you are unable to attend the trial, try and negotiate with your landlord to get the court date changed.
- Remember, it can be scary to go to court, especially if this is your first time. It may make you feel more relaxed to have a friend to accompany you for moral support.

Judgement

In many circumstances, the judge will give you his/her decision after the trial. In some cases, the judge may say that he/she will take the matter "under advisement." In this case, a written decision will be mailed to you. The judgement is usually entered with the Clerk of the Court on the Friday after trial.

In some types of cases, if the damages (amount of money granted from the counterclaims) are less than what the tenant owes in back rent, the tenant has 7 days pay to the landlord the balance, with interest and court costs. In this case, the eviction can be avoided. (M.G.L. c. 239, § 8A.)

Appeal

If you lose the case, you have the right to file an appeal. By doing this, you are asking the Appellate Division of the District Court to review what the judge did in your case to see if it was done correctly. You must file a "Notice of Appeal" within 10 days after the judgement is entered. The notice of appeal must briefly state the reasons for the appeal. In addition to the notice, you will be required to pay an "appeal bond". The bond can be waived if you are unable to pay it (if your income is so low that the money will deprive you and your family of food, clothing etc.) and you have any defense to the eviction that is not frivolous. *The Appellate procedure has many steps and is complicated. If you wish to appeal the trial court decision in your case, it is strongly advised that you seek the assistance of a lawyer as soon as possible to give the lawyer time to review the case prior to the appeal deadline.*

Execution

If you lose the case and do not appeal, the court will issue an Execution for possession and an Execution for rent (if it is found to be due) ten days after the judgement is entered.

You cannot be evicted without the Execution for Possession from the court. This execution can be sent to you either by a Constable or a Sheriff. You must be given at least 48 hours written notice of the date and time when you and your possessions will be physically moved out. *This 48- hour period does not include weekends or legal holidays.* The execution for possession is valid for three months. This means that if your landlord allows you to stay after you receive it, he/she can use it for up to 3 months to forcibly remove you and your possessions from the apartment. If the eviction was for nonpayment of rent; and you pay and the landlord accepts payment of the amount the landlord won in the summary process proceeding; and you have paid and the landlord accepted your rent up to date, then the landlord cannot use this execution and must return it to the court.

The execution for rent (money damages) is valid for twenty (20) years.

Stay of Execution

If you lose the case and you do not appeal, you may apply to the Judge for a stay of execution. This means that if the eviction was not your fault and you have no other place to live, the judge may grant this stay of execution and allow you to remain in the apartment for up to six months. If you are elderly or handicapped, you may be able to stay for up to one year. (M.G.L. c. 239, § 9) If your eviction was because you did not pay the rent, then legally you may not be entitled to a stay of execution - but the court sometimes grants the stay anyway. You should be prepared to pay the rent during any stay and tell the judge that you are prepared to do so. If you owe money, bring it to court if possible if you are requesting a stay.

Eviction

You must move out by the date in the Constable's or Sheriff's notice of levy ("48 hour notice") ("*48 hour notice* "). If you do not move out on your own, the Constable or Sheriff can forcibly remove you and your belongings and then change the locks.

- Your property cannot be put out on the street without your consent. However, it will be put into storage. The Massachusetts Eviction Storage Law, among other protections:
 - Requires that you be told who is storing your property
 - Requires that your property be inventoried before being put into storage
 - Gives you the right to choose where your property is stored if you notify the constable or sheriff in writing at or before the time your property is removed. (A sample letter is attached to this booklet).
 - Gives you one-time access to remove items of personal value free of charge
 - Requires that all fees charged in an eviction storage levy be filed with the Department of Public Safety
- Generally, most storage companies require a landlord to pay three months storage in advance. However, the landlord is entitled to sue you to recover the cost of the eviction (the constable fee, cost of storage and any moving fees).
- Remember, that if your belongings are left in storage for more than six months and you have

not paid the storage fees, the person storing them has the right to sell the items. You are not responsible for paying any rent owed to your landlord in order to reclaim your possessions from storage.

- For more information on the Eviction Storage Law, go to www.MassLegalHelp.org/EvictionStorage or call the Housing Division at 617-625-6600.

XV. Condominium Conversions

Somerville's Condominium Conversion Ordinance (No. 1980-14 & 1985-9) regulates the removal of any rental unit from the market for conversion to condominiums or cooperatives. A landlord cannot remove a unit from the market without first receiving a removal permit from the Condominium Review Board.

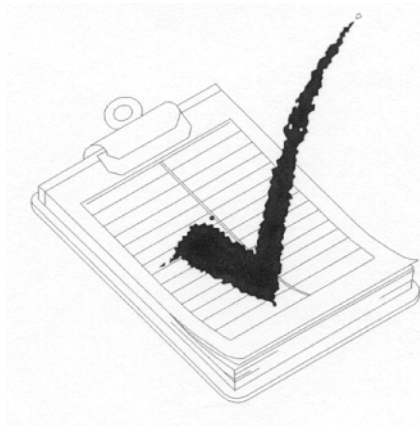
Any owner wishing to convert his/her units to a condominium must follow certain procedures. These procedures are designed to provide tenants with certain protections and rights. They are:

Notice Requirements: A landlord must give the Condominium Review Board and each tenant written notice of their intention to convert at least one year before they file a master deed.

- Owners are required to give elderly, handicapped, and low-income tenants at least two years notice of their intent to convert and recover possession of the unit.

Evictions:

- No tenant can be evicted during the notice period except for:
 - non-payment of rent; or
 - conduct that disturbs other tenants' peaceful enjoyment of the premises and/or
 - other substantial violations of the terms of the tenancy.
- A landlord cannot alter the terms of the tenancy during the notice period.



Moving Expenses: An owner must pay a tenant's actual moving expenses (up to a maximum of \$300 or one month's rent, whichever is higher) as long as the tenant's total household income for the previous year is equal to or less than the qualifying income for Section 8 rental assistance (80% of area median income). See page 53 for 2006 maximum eligible income levels.

Tenant Right to Purchase: Within 30 days after the removal permit has been granted, the owner must give the tenant a written offer to sell the tenant the unit they rent. Tenants have 30 days to respond to the offer.

Note that it is possible that tenants may be entitled to some greater protections under State law. Please consult an attorney regarding this matter.

XVI. Tenants' Rights after Sale of a Building

The Effect of a Sale on Tenancy

In general, a tenant's rights do not change significantly after a building is sold to a new owner. The new owner takes it "subject" to any lease or tenancy at will that exists between the old landlord and tenant. See M.G.L. c.186, §13.

This means that the tenant is required to pay the same rent he or she paid prior to the sale and the new owner is required to comply with all terms of the tenancy and to comply with state and other laws regulating residential tenancies (e.g. the State Sanitary Code).

Rights after Foreclosure

However, where a house is foreclosed on by a bank and subsequently purchased by a third party, the rules are somewhat different and may depend on:

1. whether the tenant is under a lease or a tenant at will;
2. whether the tenancy has a government subsidy; and
3. whether the tenancy was created before or after the mortgage was given to the owner.

Foreclosure - Tenants under private unsubsidized lease *The general rule is that foreclosure of a mortgage will terminate a private (unsubsidized) lease if the lease is entered into after the mortgage has been granted to the owner.* In certain instances, however, based on the particular language of the purchase documents, courts have held that a lease was not automatically terminated by foreclosure. This is the exception rather than the rule and under most circumstances the lease will be deemed terminated after foreclosure. What the courts have differed on, however, is whether, after termination of the lease, the tenant is considered a tenant at will with somewhat greater rights in regards to occupancy or a tenant at sufferance with lesser rights.

A lease is not terminated where the lease was entered into prior to the mortgage. Whether or not a tenant is advantaged or disadvantaged by termination of the lease depends on the particular circumstances. For instance, if the lease is voided, the tenant may not be liable for the full amount of rent under the lease and may attempt to negotiate lesser payments for rent and/or use and occupancy of the apartment. On the other hand if the tenant does not want to move it may be an advantage to have the lease, which guarantees them a tenancy for a set period of time, automatically terminated by a foreclosure.

Where a tenancy has terminated as a result of foreclosure (and therefore a rental period notice to quit is not technically required), a foreclosing bank and/or a new owner must provide the tenant with "reasonable notice" of any impending eviction. For this reason most banks and new owners provide tenants with a *30-day notice* prior to initiating a summary process action although shorter notices may be deemed valid by a court.

Foreclosure - Subsidized Leases: The rules are different with tenants under a Section 8 lease. This is because Section 8 is governed by federal law, which should be deemed to "preempt" (or be more important than) state law. Where a tenancy is subsidized with a Section 8 voucher, the new owner, even after foreclosure, takes subject to the lease and cannot evict the

tenant without "good cause" set forth in the notice to quit and proven at trial. During the first year of a tenant's occupancy of a unit, the owner (new or old) may not cite his own business reason (e.g. wants more rent) as good cause for eviction.

Foreclosure - effect on tenants at will Although at common law, tenancies under lease and otherwise were terminated by foreclosure, the courts now differ as to whether this is the case with modern tenancies. In 1973 M.G.L. c. 186, §13 was amended to provide that tenancies at will are not terminated by a conveyance (sale) or transfer of the property. The courts have differed about whether foreclosure is covered by this statute. Thus, in some cases, tenants at will have retained the same tenancy rights before and after foreclosure (e.g. right to a thirty day termination notice prior to eviction) while in other cases they may be considered tenants at sufferance with a right to reasonable notice but not necessarily a full rental period notice.

Claims by and against a new owner

A new landlord cannot seek to evict a tenant for non-payment of rent or otherwise seek to collect rent from a tenant that was due to the previous owner unless there is a written assignment as to the debt. Likewise a tenant generally may not sue the new landlord for violations of the law (including conditions, retaliation, breach of quiet enjoyment, etc.) committed by a previous landlord prior to sale of the building. This means that in any eviction action a tenant generally may only raise claims against the new owner for bad conditions that existed since the sale of the property. Although the law on this is not clear, it is likely that a court would find that a new owner was deemed to have knowledge of any defects in the building as of the time of purchase. Regardless, new owners will often have actual knowledge of bad conditions from inspection reports or appraisals done in connection with the purchase of the building.

A new owner will, however, be liable for some violations of M.G.L. c. 186, §15B (the "security deposit statute"), including failure to return a security deposit or credit last month's rent *whether or not* he or she actually received the deposit or last month's rent from the previous owner. Note that a foreclosing bank is not liable for violations of the security deposit statute but any subsequent owner purchasing property from the foreclosing bank will be liable for return of the security deposit or credit of a last month's rent *whether or not it was actually received*. A tenant may choose whether he wants to collect his security deposit from the old or new owner.

Eviction - Termination of tenancy after sale (without foreclosure)

If a notice to quit has been served on a tenant by an old owner and a new owner purchases the property prior to expiration of the notice to quit, the notice would be ineffective to terminate the tenancy unless all rights under the notice to quit were expressly assigned to the new owner when the building changed hands. If, however, a "no fault" notice to quit expires prior to sale to a new owner, thereby terminating the original tenancy at will, a new owner need not serve a new notice to quit in order to bring a summary process action but instead may rely upon the old owner's notice to quit.

Where, however, an old owner served a notice to quit for "cause", a purchaser of property most likely may not rely upon the old owner's notice. A notice to quit for "cause" or "fault" most likely may not be assigned to a new owner.

APPENDICES

- I. LOCAL RESOURCE AGENCIES**
- II. AFFORDABLE RENTAL HOUSING IN SOMERVILLE**
- III. AFFORDABLE HOUSING SUBSIDY TYPES AND INCOME LIMITS**
- IV. LEGAL REFERENCES/ OTHER GUIDEBOOKS/ USEFUL LINKS**
- V. SAMPLE LETTER FOR ALTERNATIVE STORAGE**
- VI. SAMPLE SUMMARY PROCESS SUMMONS AND COMPLAINT**

Appendix I:

LOCAL RESOURCE AGENCIES

For Help With:	Types of Assistance	Telephone: (617)
CITY REGULATIONS AND INSPECTIONS		
Board of Health -50 Evergreen Ave, Somerville 02145	<ul style="list-style-type: none"> Housing code inspections 	625-6600 ext. 4300
Inspectional Services - 1 Franey Rd, Somerville 02144	<ul style="list-style-type: none"> Building code inspections, permits 	625-6600 ext. 5600
HOUSING LAW AND EVICTION PREVENTION		
Office of Strategic Planning & Community Development (SPCD) 50 Evergreen Ave, Somerville 02145	<ul style="list-style-type: none"> Tenant-landlord law information Loans for rent arrears, moving costs 	625-6600 ext. 2564
Community Action Agency of Somerville (CAAS) 66-70 Union Square, Somerville 02143	<ul style="list-style-type: none"> Eviction prevention program Help with benefits, arrears 	623-7370
Cambridge & Somerville Legal Services (CASLS) 60 Gore Street, Suite 203, Cambridge 02141	<ul style="list-style-type: none"> Legal information, assistance 	603-2700
Harvard Legal Aid Bureau 23 Everett Street, Cambridge, MA 02138	<ul style="list-style-type: none"> Legal Assistance 	617-495-4408
Just A Start Corporation – Mediation for Results 432 Columbia St, Cambridge 02141	<ul style="list-style-type: none"> Information and mediation for tenants and landlords 	494-0444
Somerville District Court 175 Fellsway, Somerville 02145	<ul style="list-style-type: none"> Evictions Temporary Restraining Orders 	666-8000
FAIR HOUSING/ DISCRIMINATION		
Somerville Fair Housing Commission Somerville Human Rights Commission Somerville Commission for Persons with Disabilities	<ul style="list-style-type: none"> Information on fair housing, human rights and disabilities law Help with filing complaints 	625-6600
Mass. Commission Against Discrimination (MCAD) 1 Ashburton Place–Suite 601, Boston 02108	<ul style="list-style-type: none"> Information on anti-discrimination laws (housing, workplace, etc); help with complaints; mediation, enforcement 	994-6000 TTY: 994-6196
HUD Office of Fair Housing and Equal Opportunity 10 Causeway St, Boston 02222-1092	<ul style="list-style-type: none"> Information on fair housing law Fair housing enforcement 	Complaint Hotline: 1-800-424-8590
Massachusetts Office on Disability 1 Ashburton Place – Rm 1305, Boston 02108	<ul style="list-style-type: none"> Information on disability law Information on resources for people with disabilities 	727-7440 voice/TDD
Disability Law Center 11 Beacon St., Boston 02108		723-8455 voice/TDD
APPLYING FOR HOUSING ASSISTANCE		
Somerville Housing Authority 30 Memorial Road, Somerville 02145	<ul style="list-style-type: none"> Public housing Section 8 rental assistance 	625-1152
Somerville Community Corporation (SCC) 337 Somerville Avenue, 2 nd Floor, Somerville 02143	<ul style="list-style-type: none"> Housing search assistance for homeless and at-risk households 	776-5931
Somerville Homeless Coalition 237A Highland Avenue, Somerville 02143	<ul style="list-style-type: none"> Rental assistance, shelters, permanent housing for homeless and at risk; Help with benefits, services 	623-6111

For Help With:	Types of Assistance	Telephone: (617)
APPLYING FOR HOUSING ASSISTANCE (CONT.)		
Office of Strategic Planning & Community Development (SPCD) 50 Evergreen Ave, Somerville 02145	<ul style="list-style-type: none"> • Housing rehabilitation and lead paint loans and grants; homebuyer training, • List of local subsidized housing 	625-6600 ext. 2560

Appendix II:

AFFORDABLE RENTAL HOUSING IN SOMERVILLE

The rental housing listed below includes apartments set aside for low and moderate-income families and individuals. Most of the housing is currently occupied but it is a good idea to get on the waiting lists, so when an apartment does become available, you have a chance of getting it. Income limits and rents vary depending on the subsidy program used at each development. General information about rents and income limits for the major subsidy programs is on page 53.

A. Privately Owned Affordable Housing (government subsidized or inclusionary)

Development	Unit Type and Total Units		Low/Moderate Income Units	Subsidy Type
B.F. Faulkner Tower 25 Highland Avenue c/o Walnut Hill Tower Assoc. Tel: (617) 628-2119	1 bedroom = 2 bedroom =	110 <u>20</u> 130	130 low/moderate income (all elderly/disabled)	Section 8 PBA
Bow Street 33 c/o Winn Residential Tel: (617) 591-0577	2 bedroom= 3 bedroom= 4 bedroom=	14 2 <u>2</u> 18	16 low/moderate income	HOME
Center House 167 Highland Avenue c/o CASCAP, Inc.. Tel: (617) 492-5559	1 bedroom=	9	7 low income	Section 8 PBA
Clarendon Hill Towers 1366, 1370 & 1374 Broadway c/o Cornerstone Corp. Tel: (617) 625-7150	1 bedroom= 2 bedroom= 3 bedroom=	249 216 <u>36</u> 501	347 low income unrestricted (172 1BR, 142 2BR, 33 3BR) 41 low-income elderly/disabled 112 moderate income	Section 8 PBA Public housing Section 221d3
Cobble Hill Apts. 84 Washington St c/o CMJ Mgmt Co. Tel: (617) 625-8920	1 bedroom= 2 bedroom=	190 <u>34</u> 224	223 low income 186 elderly/disabled (158 1BR, 28 2BR) 37 unrestricted (32 1BR, 5 2BR)	Section 8 PBA
Franklin Street 50 Franklin Street	1 bedroom= 2 bedroom= 3 bedroom=	1 30 11	2 low/moderate units	Inclusionary Zoning
Highland Commons 373 Highland Ave (617) 625-8866	1 bedroom= 2 bedroom= 3 bedroom=	25 24 <u>4</u> 53	5 low/moderate units (2 handicapped)	Inclusionary Zoning
Kent Street Apartments 32-38 Kent Street c/o The Community Builders Tel. (617) 628-0499	studio = 1 bedroom= 2 bedroom= 3 bedroom=	8 12 16 <u>4</u> 40	40 low/moderate income	HOME
Lincoln/Perkins Streets 28-38 Lincoln Street c/o Winn Residential Tel: (617) 591-0577	1 bedroom=	6	6 low income	HOP

Development	Unit Type and Total Units		Low/Moderate Income Units	Subsidy Type
Linden Street Apts 34 Linden Street c/o Winn Residential Tel: (617) 591-0577	1 bedroom= 2 bedroom= 3 bedroom=	1 30 <u>11</u> 42	42 low/moderate income (including 14 for elderly and/or handicapped)	Section 8 PBA HOME
Mt. Pleasant Apts. 70 Perkins Street c/o Peabody Props. Tel: (617) 623-5810	1 bedroom= 2 bedroom=	42 <u>23</u> 65	65 low/moderate income (all elderly/disabled)	Section 8 PBA
Mt. Vernon St. 54, 58, 80 c/o Weld Mgmt Co., Inc. Tel: (617) 367-3434	1 bedroom=	15	15 low/moderate income	Section 8 PBA
Myrtle Street Townhomes 1 Washington Avenue c/o Just-A-Start Corporation Tel: (617) 494-0444	2 bedroom= 3 bedroom=	3 3	2 low/moderate income units	Inclusionary Zoning
Next Step House 303 Medford Street c/o Just-A-Start Corporation Tel: (617) 494-0444	3 bedroom=	6	6 low income units	AHT, CDBG
Pearl Street Park 238 Pearl Street c/o E.P. Management Corp. Tel: (781) 245-1611 or (617) 625-8780	1-bedroom =	86	85 low/moderate income (all elderly/disabled)	Section 8 PBA
Pearl St. 219 – 221 219-221 Pearl St Trust Tel. (781) 395-1600	2 bedroom = 3 bedroom =	1 <u>5</u> 6	6 low income	Section 8 PBA
Sewall Street 10 Somerville Community Corp. c/o Winn Residential Tel: (617) 591-0577	SRO= Studio=	12 2	13 low/moderate income	Section 8 PBA
Somerville Ave 405 Quincy Street 1-3 Quincy Highland Realty Trust Tel: (617) 623-2600	0 bedroom= 1 bedroom= 2 bedroom= 3 bedroom=	4 1 6 <u>3</u> 14	14 low/moderate	HOME
VNA Assisted Living 259 Lowell Street Tel: (617) 776-9800	1 bedroom=	97	73 low/moderate income	HOME
Walnut Street 110 Somerville Community Corp. c/o Winn Residential Tel: (617) 591-0577	1 bedroom= 2 bedroom=	6 <u>6</u> 12	12 low income	Section 8 PBA
Walnut Street 111 c/o Central Street Apts. Tel.: (617) 623-2600	1 bedroom= 2 bedroom=	7 <u>7</u> 14	14 low income	Section 8 PBA

B. Public Housing

The rental housing listed is owned and operated by the Somerville Housing Authority. For information on eligibility and application procedures, contact the Housing Authority (617-625-1152). Information is also available online at the Housing Authority's website: www.sha-web.org.

PUBLIC HOUSING: FAMILY/UNRESTRICTED HOUSING		
Development	Unit Type and Total Units	
Clarendon Hill (State) North Street, Powder House Boulevard, Alewife Brook Parkway 617-666-0425	1 bedroom=	33
	2 bedroom=	150
	3 bedroom=	<u>33</u>
		216
Mystic River (State) Memorial Road	2 bedroom=	96
	3 bedroom=	<u>144</u>
		240
Mystic View (Federal) Memorial Road	1 bedroom =	22
	2 bedroom =	94
	3 bedroom =	71
	4 bedroom =	24
	5 bedroom =	<u>4</u>
		215

PUBLIC HOUSING FOR ELDERLY AND DISABLED ONLY*			
Development	Unit Type and Total Units		Restrictions
Brady Tower (Federal) 252 Medford Street	1 bedroom =	84	Near Elderly= age 50 or above
Bryant Manor (State) 75 Myrtle Street	1 bedroom=	134	Elderly= age 60 or above
Capen Court (State) Off Route 16	1 bedroom =	64	Elderly= age 60 or above
Ciampa Manor (State) 27 College Avenue	1 bedroom =	53	Elderly= age 60 or above
Corbett Apartments (State) 32 and 125 Jaques Street	1 bedroom =	100	Elderly= age 60 or above
Hagan Manor (State) 268 Washington Street	1 bedroom =	11	Elderly = age 60 or above
	2 bedroom =	4	
	3 bedroom =	<u>3</u>	
	(6 congregate)	24	
Highland Gardens (Federal) 114 Highland Avenue	1 bedroom=	42	Near Elderly= age 50 or above
Properzi Manor (State) 13-25 Warren Avenue	1 bedroom=	109	Elderly = age 60 or above 24-hour onsite support services
Weston Manor (Federal) 15 Weston Avenue	1-bedroom =	80	Near Elderly= age 50 or above

- Twenty percent (20%) of federal elderly/disabled units are for non-elderly persons with disabilities as are 13.5% of the State-funded elderly/disabled units.

Appendix III:

AFFORDABLE HOUSING SUBSIDY TYPES AND INCOME LIMITS

Maximum Income Limits: For the low- and moderate-income units, tenant incomes usually cannot exceed certain maximum levels at the time of their initial admission. Different developments have different income limits based on the state or federal subsidy programs they use. The limits are set by the U.S. Department of Housing and Urban Development (HUD) and are usually described as a percentage of the area median household income. The limits generally go up each year.

The most common subsidy programs and their income limits are listed below for guidance but applicants should contact project management directly for detailed information since limits for specific units may vary.

- Public Housing – 30%, 50% or 80% of area median income depending on the unit and development
- Section 8 – usually 50% of area median income (80% of median income in some older developments)
- HOME - 50% of area median for some units, 60% of area median for other units; some projects also have affordable units for households with incomes of up 80% of median.
- Section 221d3 – 95% of area median income
- Zoning – usually 80% of area median (50% of area median for some units)

Unit Availability: Most developments have waiting lists. Some units may be reserved for specific income groups or populations (e.g. accessible units may be reserved for households that need accessibility features or large units may be reserved for larger households). The project contact can provide information on availability.

Rents and Rent Subsidies Some units have “project-based” rent subsidies, usually project-based Section 8 (“Section 8 PBA”). Residents in these units pay 30% of their income for rent. Rents for affordable units in projects that do not have project-based rent subsidies vary depending on the funding program and are below market rates. Tenants can use Section 8 vouchers for private housing units that do not have project-based Section 8 if the unit rent is affordable.

2006 HOUSING PROGRAM INCOME LIMITS

Effective 3/8/2006

(Boston PMSA – FY 2006 Median Family Income \$84,100)

Person in Household	1	2	3	4	5	6	7
50% Median Income	\$29,450	\$33,650	\$37,850	\$42,050	\$45,400	\$48,800	\$52,150
60% Median Income	\$35,340	\$40,380	\$45,420	\$50,460	\$54,480	\$58,560	\$62,580
80% Median Income	\$46,300	\$52,950	\$59,550	\$66,150	\$71,450	\$76,750	\$82,050
95% Median Income	\$55,000	\$62,850	\$70,700	\$78,550	\$84,850	\$91,100	\$97,400

Appendix IV:

LEGAL REFERENCES / OTHER GUIDEBOOKS/ USEFUL LINKS

The Tenant's Commandments:

A Consumer's Guide to Tenants' Rights

Executive Office of Consumer Affairs & Business Regulation
One Ashburton Place
Boston, MA 02108
Consumer Hotline: 617-973-8787
Toll free, Massachusetts only: 888-283-3757

Legal Tactics: Self-Defense for Tenants in Massachusetts

Legal Tactics: Finding Public and Subsidized Housing

Massachusetts Continuing Legal Education
10 Winter Place, Boston, MA 02108
(617) 482-2205

Residential Landlord & Tenant Law - Richard Friedman

27th Annual Practical Skills Program Volume III
Massachusetts Continuing Education, Inc.
10 Winter Place, Boston, MA 02108
(617) 482-2205

Summary Analysis of the Massachusetts Housing Bill of Rights: Practice Memo on the Rights of People with Disabilities

Prepared jointly by:

Disability Law Center
11 Beacon Street Suite 925, Boston, MA 02108
(617) 723-8455

Mass Law Reform Institute
99 Chauncy Street, Boston, MA 02111
(617) 357-0700

The Center for Public Representation
22 Green Street, Northampton, MA 01060
(413) 586-6024

HELPFUL WEBSITES FOR TENANTS AND LANDLORDS

Massachusetts Dept. of Consumer Affairs: Tenant/Landlord Information – links to many publications

<http://www.state.ma.us/consumer/Info/lnldtnt.htm>

Neighborhood Legal Services (Lynn) – includes sample forms, letters, answers to frequently asked questions

<http://www.neighborhoodlaw.org/cat/43>

Massachusetts Trial Courts Law Library – links to many publications and forms

<http://www.lawlib.state.ma.us/landlord.html>

Housing Consumer Education Center at Metropolitan Boston Housing Partnership –online services for landlords and tenants as well as extensive resources

<http://mbhp.org/edcenter/index.html>

(617) 425-6703

Massachusetts legal services site at <http://masslegalhelp.org>

Sample Letter to Give Constable About Where to Bring Your Belongings

If you do not want your belongings stored at a storage facility chosen by the landlord or constable, you need to put this request **in writing**. On the next page is a sample letter that you can give to the landlord or the constable whom the landlord has hired to move your belongings. (To be safe, give the letter to both.) What follows are instructions about how to fill in the letter on the next page.

1. First paragraph

Write your: 1) name, 2) the address of the place you are being evicted from, and 3) the date that the constable is planning to move you out (which you should have received in a notice at least 48 hours in advance).

2. Second paragraph

Write exactly where you want your belongings delivered to. **The alternate location may be anything from a relative's basement to a self-service storage facility**. Write the name of street and the number of the house. Also say whether you want your belongings put on a porch or a landing or in a particular room, and not on the sidewalk. It is important to be very specific.

IMPORTANT: You will be responsible for the payment of any storage charges at your chosen location. You should make sure, in advance, that the business or people at your chosen location are willing to accept your belongings at the time and date that is specified in the 48 hour notice.

3. Third paragraph

Write all phone numbers where the landlord or constable can reach you.

4. Sign the letter and write in the date

The date can be the same date that a constable is coming to move your belongings.

5. Deliver letter

If you can, make a copy of the letter for your records. Hand deliver the original and/or fax it to the landlord or constable (preferably both). You can do that **at** or **before** the removal of your property. It is a good practice to call the constable and/or landlord and tell them you will be delivering this notice.

6. New address optional

You can include your new address after your signature. You do not have to do this.

Notice of Delivery of Tenant's Belongings to Alternate Location

Dear landlord and/or constable,

1. I, _____,
am the tenant at _____,
and am facing eviction on _____.
2. Pursuant to my rights under Massachusetts law,* I am requesting
that you deliver my belongings to the following an **alternate location**:

I understand that if there is any payment due for storage
at this alternate location, I am responsible for it.

3. Please call me at _____ if you have any questions.
You may also reach me at _____.

Signature

Date

New address and phone:

* As amended Massachusetts General Law, Chapter 239, Section 4(a) states: "... the officer **shall store** the property with a warehouse **or other storage facility of the defendant's choosing** if the defendant notifies the officer of his choice in writing **at or before the time of removal of the property.**"

Commonwealth of Massachusetts

SUMMARY PROCESS (EVICTION) SUMMONS AND COMPLAINT

Department

Division

ss

- Residential
Commercial

Docket No. (To be added by clerk's office)

Entry Date:

NOTICE OF A COURT CASE TO EVICT YOU - PLEASE READ IT CAREFULLY
ESTA ES UNA NOTIFICACION DE UN CASO EN CORTE PARA DESALOJARLE - FAVOR DE LEER EL MISMO CON CUIDADO

TO DEFENDANT(S)/TENANT(S)/OCCUPANT(S):

ADDRESS: CITY/TOWN: ZIP:

You are hereby summonsed to appear at a hearing before a Judge of the Court at the time and place listed below:

DAY: DATE: TIME: COURT NAME:

COURT ADDRESS: ROOM:

to defend against the complaint of PLAINTIFF/LANDLORD/OWNER:

of STREET CITY/TOWN: ZIP:

that you occupy the premises at

being within the judicial district of this court, unlawfully and against the right of said Plaintiff/Landlord/Owner

because:

and further, that \$ rent is owed according to the following account:

WITNESS: ACCOUNT ANNEXED (itemize)

First or Chief Justice

Printed Name of Plaintiff or Attorney

Signature of Plaintiff or Attorney

Date of Signature of Plaintiff or Attorney

Address of Plaintiff or Attorney

Telephone Number of Plaintiff or Attorney

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT: At the hearing on you (or your attorney) must appear in person to present your defense. You (or your attorney) must also file a written answer to this complaint. An answer is your response stating the reason(s) why you should not be evicted and may, in residential cases, include any claims you have against the Landlord. (An Answer Form is available in the clerk's office whose telephone number is .) You must file (deliver or mail) the answer with the court clerk and serve (deliver or mail) a copy on the landlord (or landlord's attorney) at the address shown above. The Answer must be received by the court clerk and received by the landlord (or the landlord's attorney) no later than Monday, which is the first Monday after the "entry date" listed above. The entry date is the day by which your landlord must file this complaint with the court clerk.

EMERGENCY INFORMATION

Assistance Available 24 hours per day, 7 days a week

SOMERVILLE POLICE	911
Somerville Police (Non-Emergency)	(617) 625-1600
SOMERVILLE FIRE ALARM	911
SOMERVILLE AMBULANCE	911
SOMERVILLE PUBLIC WORKS	(617) 625-6600 ext 5000
Somerville Hospital	(617) 591-4500
Cambridge Hospital.....	(617) 665-1000
Cambridge-Somerville Resource Guide.....	www.cambridgesomervilleresourceguide.org
AIDS Action Line	1-800-235-2331
American Red Cross Disaster.....	(781) 642-7000
Arson Hotline	1-800-682-9229
Boston Area Rape Crisis Center.....	(617) 492-7273
Child at Risk Hotline.....	1-800-792-5200
Disabled Persons Protection Hotline.....	1-800-426-9009 (V/TTY)
Drug & Alcohol Abuse Hotline.....	1-800-327-5050
Elder Abuse Hotline	1-800-922-2275 (V/TTY)
National Runaway Switchboard.....	1-800-RUNAWAY
Parental Stress Hotline	1-800-632-8188
Pine Street Inn	617-892-9100
Samaritans Suicide Hotline	617-247-0220
RESPOND Domestic Violence Crisis Hotline.....	617-623-5900
Somerville Homeless Coalition.....	(617) 623-6111

Offices of State Agencies

Commission for the Deaf and Hard of Hearing.....	617-740-1600 (voice)
.....	617-740-1700 (TTY)
Commission for the Blind	617-727-5550
Department of Youth Services	617-727-7575
Department of Mental Retardation.....	617-727-5608
Department of Transitional Assistance (<i>Welfare</i>).....	781-286-7801
Department of Mental Health.....	617-626-8000
Department of Social Services	617-748-2000
Office for Refugees and Immigrants	617-727-7888
Office on Disability	617-727-7440
.....	1-800-322-2020 (V/TTY)
Office of Elder Affairs.....	617-727-7750

(These numbers valid as of September 25, 2006)