Fair Housing for Rental Property Owners and Managers

Compiled and Written by
The Staff of the Massachusetts Fair Housing Center

Third edition, revised and expanded

Massachusetts Fair Housing Center
57 Suffolk Street
Holyoke, MA 01040
Voice/TTY: (413) 539-9796
(800) 675-7309 Fax: (413) 533-9978
Email: info@massfairhousing.org
Web: www.massfairhousing.org

NOTES

This booklet is intended to provide a general overview of the fair housing laws as they apply to property managers and is not intended as a substitute for legal advice.

©2009 by the Massachusetts Fair Housing Center

Table of Contents

Introduction 2
Fair Housing Laws 3
Federal Fair Housing Laws 4
Massachusetts Fair Housing Laws 5
Lead Paint 6
Occupancy Standards 7
Americans with Disabilities 8
Advertising 10
Frequently Asked Questions 10

Appendix: Fair Housing Laws ~ A Summary 13

Resources 14

Introduction

The Massachusetts Fair Housing Center (MFHC) is a private non-profit housing organization serving the population of central and western Massachusetts. MFHC offers fair housing education and enforcement to Hampden, Hampshire, Franklin, Berkshire, and Worcester Counties. The Massachusetts Fair Housing Center works to enforce state and federal fair housing laws as well as provide education to housing providers, tenants, homebuyers, and others involved with housing in the region.

The Massachusetts Fair Housing Center offers the following services:

- Fair housing education and outreach to the general public, housing providers, real estate brokers, tenants, homebuyers, and others involved in the housing market;
- Advice and counseling to individuals who believe they have been subjected to unlawful discrimination;
- Investigation of housing discrimination complaints;
- Pursuit of legal remedies for discriminatory housing practices; and
- Research and publication on local and regional fair housing issues.

Fair Housing Laws

Although rental property owners are permitted to screen tenants to make sure they qualify for a rental unit, the screening process must be in compliance with state and federal laws. These laws, dating to the Civil Rights Act of 1866, are designed to ensure equal access to housing opportunities for everyone.

In almost all instances it is against the law to deny anyone housing based on:

- Color
- Sex
- National Origin
- Religion
- Presence of children in the household
- Disability

Further, under Massachusetts law it is illegal to discriminate based on:

- Marital Status
- Age
- Sexual Orientation
- Military or Veteran Status
- Ancestry
- Public Assistance
- Housing subsidies or rental assistance

Under Vermont law it is illegal to discriminate based on all of the above and Gender Identity.

Under New Hampshire law it is illegal to discriminate based on Age, Marital Status and Sexual Orientation.

Under Rhode Island Law it is illegal to discriminate based on, Marital Status, Sex, Sexual Orientation, Gender Identity or Expression, Age (18+), or Status as a Victim of Domestic Violence.

It is illegal to refuse to rent or sell property for any of these reasons, to discriminate in the terms or conditions of a rental or sale, to discriminate in mortgage lending or other related practices, or to otherwise make housing unavailable. Property owners must make reasonable accommodations for persons with mental or physical disabilities. It is also illegal, **without exception**, to advertise in a discriminatory manner.

Federal and Massachusetts Fair Housing Laws:

Some of the provisions under the state and federal fair housing laws are subtle and subject to interpretation by the U.S. Department of Housing and Urban Development Administrative Law Judges[1] or the Courts. Therefore, if a housing provider has any questions about the law as it applies to a particular situation, he or she should contact the Massachusetts Fair Housing Center or consult a private attorney.

Federal Fair Housing Laws

The Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) prohibits discrimination on the basis of **race, color, creed, religion, national origin, or sex**. People who fall into these categories are members of "protected classes." The law prohibits all parties associated with the rental and sale of real estate from making decisions solely on the basis of these classes. There are some exemptions to this law. However, there is no exemption for race; under no circumstances can a housing provider deny housing to perspective tenants based solely on the race of the applicant.

The Federal Fair Housing Amendments Act of 1988[2] further defined and expanded the number of protected classes under the Federal Fair Housing Act by adding protection for people with **disabilities** and **families with children**. As the number of protected classes increased, so did the exemptions from the law. For example, owner-occupied two-family homes are exempt from this law and owners may choose to not rent to a person with a disability or a family with children. However, it is important to note that while it may be legal for an owner of a two-family owner-occupied home to choose not rent to the disabled or to families with children it is illegal to advertise this limitation,(or in the case of children because of the presence of lead paint). In addition, if that same owner chooses to use the services of a third party (i.e. rental agent) to find prospective tenants the exemption from the law is also lost. The exemption belongs solely to the owner of the unit.

---

[1]A court or administrative law judge may interpret anti-discrimination laws protection through written decisions, called "case." The two administrative agencies responsible for enforcement of the fair housing laws in Massachusetts are the Department of Housing and Urban Development (HUD), and the Massachusetts Commission Against Discrimination (MCAD).

[2]Federal Fair Housing Act, (Title VIII of the Civil Rights Act of 1968) as amended, 42 U.S.C. 3601

Massachusetts Fair Housing Law

In addition to prohibiting discrimination based upon the federal laws above, Massachusetts Fair Housing Law prohibits discrimination based on **marital status, sexual orientation, military or veteran status, blindness, age, ancestry, hearing impairment, or possession of a seeing-eye or hearing-ear dog**.[3] The owner-occupied two-family exemption extends to the protected categories above. However, the same laws apply to discriminatory advertising or the use of a rental agent or other third party.

Additionally, the law prohibits discrimination against individuals or families **receiving public assistance or rental subsidies, or because of any of the requirements of these programs**. There is no exemption to this section of the Massachusetts Fair Housing Law.

Furthermore, Massachusetts law requires that whenever a property containing dangerous levels of lead undergoes a change in ownership and as a result, a child under the age of six will become or continue to be a resident, the new owner has 90 days to delead the premises.[4]

You or your agent are required to give the Massachusetts Lead Law Notification form to tenants regarding the dangers of lead paint, and the requirement to remove lead paint where children under the age of six (6) intend to reside. www.mass.gov

Massachusetts Lead Paint Law

Whenever a child under 6 resides or will reside in a unit with lead paint, owner must abate or contain lead paint. M.G.L. ch. 111 §197(a)

At change of ownership, if a child under 6 resides or will reside therein, new owner shall have 90 days to abate or contain lead paint. Id.

---

[3]Massachusetts Fair Housing Act, G.L. Chapter 151B, 1

[4]The Massachusetts Lead Paint Law can be found at Chapter 111, 189ff. The requirements of this law are complex and strict. If the premises to be sold or bought contain lead paint, it is best to consult with an attorney who understands the requirements of the law before taking any action to list, buy, or sell that property.

Intersection of Fair Housing and Lead Paint Laws

A. Lead paint law makes it an unlawful practice for purposes of ch. 151B to refuse to rent or deny housing to families with young children because of the presence of lead paint. M.G.L. ch. 111 §199A(a).

B. Refusing to rent to families with children does not constitute compliance with lead paint law. M.G.L. ch. 111 §199A(b).

C. Refusing to renew the lease of or evicting families with children does not constitute compliance with lead paint law. M.G.L. ch. 111 §199A(c).

D. No exemption for two-family owner occupied units if refusal of family with children is because of presence of lead paint.

E. No exemption for two-family owner occupied units if lead paint is the reason, if discriminatory statements are made, if advertising is discriminatory, or if real estate broker is used.

MASSACHUSETTS OCCUPANCY STANDARDS

105 C.M.R. §410.400 **Minimum Square Footage**

(A) Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable rooms.

(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant.

AMERICANS WITH DISABILITIES ACT
42 U.S.C. §12181

The federal Americans with Disabilities Act (ADA), passed in 1990, provides a series of protections for disabled individuals. The Act includes required handicapped accessibility in new multi-family construction and in public buildings. Below is a partial summary of the ADA as it concerns residential housing and intersects with federal and state fair housing laws.

Definition of Disability

A person having a physical or mental impairment that substantially limits one or more life activities; a record of such an impairment; or being regarded as having such an impairment.

Illegal Use of Drugs

The term "individual with a disability" does not include an individual who is *currently* engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

Persons NOT Excluded from Coverage

Nothing in the above statement shall be construed to exclude as an individual with a disability an individual who:

Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

Is erroneously regarded as engaging in such use, but is not engaging in such use.

Conduct Which Is Unlawful

It shall be unlawful to subject an individual to a denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations by an entity.

It shall be discriminatory to offer an individual on the basis of such disability an opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals;

It shall be discriminatory to provide an individual, on the basis of such disability, a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as those provided to others.

Cannot impose or apply eligibility criteria that screens out or tends to screen out an individual with a disability.

Cannot fail to make reasonable modifications in policies practices or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

Cannot fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

Cannot fail to remove architectural barriers and communication barriers that are structural in nature, in existing facilities where such removal is readily achievable.

Affirmative Conduct Required

Federal and state fair housing regulations require an affirmative duty upon landlords to reasonably accommodate the needs of disabled persons. What constitutes a "reasonable accommodation" is not always clear, however, in short it may include allowing a waiver or change to the rules, policies, practices, or services in order to provide a person with physical or mental disability equal opportunity to use and occupy the premises. They should not cause undue or financial or administrative burden. For example, allowing a service animal when there is a no pet policy or changing the location of a designated parking space closer to the unit of a person with a disability would be considered a "reasonable accommodation."

Must design and construct facilities for first occupancy later than 30 months after July 26, 1990 (January 1, 1992) that are readily accessible to and

usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of this section.

With respect to a facility or part thereof that is altered in a manner that affects or could affect the usability of the facility, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to or usable by individuals with disabilities.

Discriminatory Advertising:

Any written statement in a newspaper or other publication; or any oral statement that indicates preferences or limitations for certain people is illegal. That includes any advertisement or brochure that is created by the owner of the property or someone working on their behalf. Even if a property is exempt from the fair housing law the owner must adhere to the advertising law. For example, an owner occupied two-family home is legally allowed to reject applicants with children. However, if that owner placed an advertisement in the local paper stating, "no kids," they are in violation of the law. Housing advertisements should describe the unit not the people who should or should not apply.

Frequently Asked Questions:

Who must follow fair housing laws?

Anyone associated with the provision of housing including property owners, developers, condo associations, homeowner associations, and their employees or representatives are responsible for performing their duties in a manner consistent with state and federal fair housing laws. In addition, other occupants in the building, development or neighborhood may be held liable under fair housing laws and regulations if their behavior is considered to be discriminatory. Developers, architects and contractors may be held liable under the accessible design and construction fair housing mandates in the development and construction of housing for first occupancy after March 13, 1991.

How do I choose the best possible tenant for my unit without violating the fair housing laws?

You have the right to seek out the best possible tenant for your rental unit(s). The easiest way to avoid violating the fair housing act is to simply choose the most qualified candidate. As a landlord you should be concerned with the candidate's ability to pay, maintain your property and respect the quiet enjoyment of other tenants and neighbors.

What if I determine that an applicant wouldn't be a good tenant, but they have a disability or children? Do I have to rent to them anyway to avoid violating the law?

No, you have the right to choose the best possible tenant for your rental units. As long as the criteria used to determine that the applicant wouldn't be a good tenant is based on legitimate non-discriminatory facts a landlord does not have to take any applicant.

What if my units have lead paint? Do I still have to rent to families with small children?

Yes, the presence of lead paint cannot be used as a reason to deny a family with children access to housing. If there is the presence of hazardous lead paint in a unit that may be occupied by a child under the age of 6 the laws requires that the lead paint is abated.

What if I have three units available and only two are deleaded can I just show families with children the two deleaded apartments?

No, limiting a prospective tenant's option of available units based on their membership in a protected category is considered steering.

What if I cannot afford to delead the unit?

There are a number of resources available to landlords to assist in the financial cost of lead paint abatement. For more information on financial assistance for lead paint abatement contact: The Childhood Lead Poisoning Prevention Program (CLPPP) at (800) 532-9571 or The Massachusetts Housing Finance Agency at 617-854-1000 or www.masshousing.com (click on Home Ownership)

How many people can I let share the same bedroom?

The number of people allowed to occupy a unit is based on the Massachusetts Occupancy Standards which are determined by the square footage of the unit. - See Occupancy Standards.

Do I have to build a ramp or make other modifications to my units if someone in a wheelchair wants to live there?

No, if you have less than 10 units of multiple- dwelling or contiguously-located housing. The tenant must pay for modifications, but the owner cannot unreasonably refuse permission for the tenant to do so. Apartment buildings with three or more units constructed for first occupancy after March 13, 1991 must provide adaptable units on the first floor.

Because of the complexity of the laws concerning discriminatory practices, it is advisable to contact an attorney, the Massachusetts Commission Against Discrimination or The Massachusetts Fair Housing Center if you are unsure of what actions are required in a particular situation. www.massfairhousing.org

Do I have to rent to someone who has negative information on their CORI?

No, criminal activity is not covered under the fair housing act. However, if a person's activities were directly related to a disability they may be entitled to a reasonable accommodation.

Can I be held responsible if a newspaper accepts an ad that is considered discriminatory?

Yes, you and the newspaper would both be liable if a discriminatory ad is placed.

Can a person file a housing complaint even if they do not complete an application or make an offer to rent?

Yes, a person seeking housing may file a complaint even if they have not been shown the property, or completed an application.

Do I have to rent to someone with a housing voucher?

Yes, as long as they meet all other rental requirements and the voucher covers the cost of the rent.

Fair Housing Laws: A Summary

Type of Discrimination	Federal or Mass Law	Exemptions [5]	Remedy
Race & National Origin (covered by the Civil Rights Act of 1866)	Federal: §1982	None	Court
Race, Color, National Origin, Sex, Religion (Fair Housing Act)	Federal: 42 U.S.C. §3604 State M.G.L. c.154B, §4	Federal: Owner occupied buildings, 4 units or less. State: Owner occupied buildings, 2 units or less.	Court HUD6 MCAD7
Familial Status or Children	Federal: 42 U.S.C. §3604 State M.G.L. c.154B, §4 (11)	Same as above, plus elderly housing or three family buildings where one unit is occupied by an elderly or infirm person for whom children would be a hardship; or the temporary renting of one's primary residence.	Same as above.
Handicap Federal	42 U.S.C. §3604	Owner occupied bldgs, 4 units or less	HUD, Court
	29 U.S.C. §794	All housing <u>not</u> receiving federal money	Court
Handicap State	M.G.L. c. 151B, 4 (7A)	Owner occupied buildings, 2 units or less.	MCAD State Court
	M.G.L. c. 93, §101	None	
Marital Status, Sexual Orientation, Age (except minors), Veteran Status	State Only	Two unit owner occupied building	MCAD State Court
Public Assistance or Housing Subsidies	State Only	None	MCAD State Court

- It is illegal to refuse to rent or sell property for any of these reasons, to discriminate in the terms or conditions of a rental or sale (for example, to charge a different amount) to discriminate in mortgage lending or other related practices, or to otherwise make housing unavailable.
- All persons involved in any real estate transaction must make reasonable accommodations for persons with mental or physical handicaps
- It is illegal, without exception, to advertise in a discriminatory manner.

[5]The exemptions to these laws are complicated, and properties which are listed as exempt under fair housing laws may be covered by other civil rights laws, such as the Massachusetts Civil Rights Act. Also, the exemptions do not apply to discrimination in advertising or discrimination by brokers or persons engaging in the business of residential real estate related transactions.

Massachusetts Fair Housing Resources

Massachusetts Fair Housing Center
57 Suffolk Street
Holyoke, MA 01040
(800)-675-7309 or (413)-539-9796
www.massfairhousing.org

Fair Housing Center of Greater Boston
59 Temple Place #1105
Boston, MA 02111
(617)-399-0491
www.bostonfairhousing.org

MA Commission Against Discrimination
One Ashburton Place
Boston, MA 02108
(617)-994-6000
TTY: (617)-492-0235

HUD FHEO Region I
Thomas P. O'Neill, Jr. Federal Bldg
10 Causeway Street
Boston, MA 02222-1092
(617)-994-8300
TTY(617)-565-5453

Worcester Fair Housing Partnership
405 Main Street
Worcester, MA 01608
(508)-752-3718
TTY: (800)-649-3718

Boston Fair Housing Commission
1 City Hall Plaza, Room 966
Boston, MA 02220
(617)-635-4408
www.cityofboston.gov/civilrights

Other Resources

Childhood Lead Poisoning Prevention Program
250 Washington Street
Boston, MA 02108
(800)-532-9571
www.mass.gov/dph/clppp

Massachusetts Rental Housing Association
P.O. Box 2935
Worcester, MA 01613
(877)-863-9665 www.massrha.com

Disability Law Center
32 Industrial Drive East
Northampton, Massachusetts, 01060
(413) 584-6337 / (800) 222-5619
(413) 582-6919 TTY

Vermont: www.vtlegalaid.org
New Hampshire: www.nhla.org
Rhode Island: info@housingnetworkri.org
Connecticut: www.ctfairhousing.org

[6]United States Department of Housing and Urban Development
[7]Massachusetts Commission Against Discrimination

Massachusetts Fair Housing Center
57 Suffolk Street, 4th Floor
Holyoke, MA 01040
Voice/TTY (413) 539-9796
(800) 675-7309 Fax (413) 533-9978
info@massfairhousing.org
Additional offices in Pittsfield and Leominster

The printing of this Handbook was made possible by funding from the

Department of Housing and Urban Development

The City of Leominster- Community Development Department

Massachusetts Bar Foundation

EQUAL HOUSING OPPORTUNITY

® GCRI 263-c