

reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. A landlord may condition permission for a modification on the tenant providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workperson-like manner and that any required building permits will be obtained.

In rental housing of ten units or more, landlords must make and pay for reasonable modifications to existing units, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises. Modifications will not be considered reasonable if the cost or construction would impose an undue hardship upon the landlord.¹⁴

Landlords must also make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.¹⁵

For example: *What constitutes a reasonable accommodation is considered on a case by case basis. A Massachusetts court found that removing a rear porch, affixing a wheelchair ramp to a rear door, widening the door frame, and converting a window into a door with a wheelchair ramp are all reasonable accommodations, as long as the tenant pays for them and restores the property to the original condition upon vacating the premises.¹⁶ Another court found an elderly tenant's request to move to a vacant first floor unit, in the same building in which she currently lived, to be an appropriate accommodation for her medical condition that made climbing the stairs to her fourth floor unit next to impossible.¹⁷*

SELECTING A TENANT WITHOUT VIOLATING THE FAIR HOUSING LAWS

The fair housing laws do not require a landlord to rent a unit to a person just because that person is in a protected class. Rather, the law provides that landlords have the right to legally refuse a prospective tenant a unit based on legitimate considerations so long as those considerations are real and are evenly applied to all applicants. Examples of legitimate criteria include income, credit, and prior housing record. Furthermore, a landlord has the right to exclude a person based on factors that do not relate to inclusion in a protected class.

For example: *A landlord may legally refuse to rent a unit to a tenant who smokes or a tenant with pets (except pets required by disabled persons) because the law does not protect persons in these categories. A recent housing court decision allowed the landlord to evict two tenants because of the nuisance that their heavy smoking presented to the other tenants.¹⁸*

Before placing an advertisement to rent a unit or otherwise offering a unit for rent, and before showing the unit, the landlord should determine the criteria by which a qualified tenant will be chosen. The following are legal criteria which can lawfully be used by landlords to screen tenants:

- Does the tenant have sufficient income to afford the unit?
- Does the tenant have a good credit history?
- Does the tenant have a good history of paying rent in past housing?
- Has the tenant ever been evicted from housing? If so, why?
- Has the tenant ever intentionally damaged a unit he/she was renting?

Although religion is a protected class, the protection is only for tenants. A landlord cannot refuse to rent to someone in a protected class if the applicant's behavior offends the landlord's religion.¹⁹

For example: *An unmarried or a homosexual couple cannot be denied an apartment on the basis that their actions are against the landlord's religion.*

While there are no required tenant selection criteria for private landlords, public housing landlords must comply with specific criteria in selecting tenants.²⁰ It is safe to assume that these criteria would provide a private landlord with legitimate, objective criteria upon which to base his/her tenant selection process.

Program regulations provide that an applicant may be disqualified from public housing for the following reasons:

1. The applicant or a household member has disturbed a neighbor or neighbors in a prior residence by behavior, which if repeated, would substantially interfere with the rights of other tenants to peaceful enjoyment of their units.
2. The applicant or a household member has caused damage or destruction of property at a prior residence, which if repeated, would have a material adverse effect on the housing development or any unit in such development.

3. The applicant or a household member has displayed living habits or poor housekeeping at a prior residence, which if repeated, would pose a substantial threat to the health or safety of the tenant or other tenants or would adversely affect the decent, safe, and sanitary condition of all or part of the housing.
4. The applicant or a household member has a history of failure to meet material lease terms, which if repeated, would be detrimental to the health, safety, security, or peaceful enjoyment of other tenants.
5. The applicant or a household member in the past has engaged in criminal activity, which if repeated, would interfere with or threaten the rights of other tenants to be secure in their persons or in their property or with the rights of other tenants to the peaceful enjoyment of their units and the common areas of the housing development.
6. The applicant or a household member who will be assuming part of the rent obligation has a history of non-payment of rent.
7. The applicant or a household member has failed to provide information reasonably necessary for the Local Housing Authority (LHA) to process the applicant's application.
8. The applicant or a household member has misrepresented or falsified any information required to be submitted as part of the applicant's application, and the applicant fails to establish that the misrepresentation or falsification was unintentional.
9. The applicant or a household member is a current illegal user of one or more controlled substances.²¹ A person's illegal use of a controlled substance within the preceding twelve months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances.

MINOR TENANTS

When considering renting to a minor, the landlord must weigh the possibilities that the minor may rescind the rental agreement and be exempt from liability (See Chapter 5) or that the landlord may be accused of illegal discrimination if the tenant is

denied rental because of age. Although the Massachusetts Fair Housing Act does not protect minors, federal age discrimination laws may offer some degree of protection.²² Emancipated minors, legally independent because their guardians cannot supply them with necessities, may be protected under the federal discrimination laws and public housing regulations, especially if they are seeking public housing.

PAST TENANT HISTORY

Past tenant history is one of the most important factors a landlord should consider in screening potential tenants. The landlord should request past tenant history from former and/or present landlords with a written request for information. Unfortunately, the landlord has no way of knowing the truthfulness of the respondent.



See Landlord Verification form at the end of this Chapter.



The landlord should keep in mind the possibility that a present landlord may want to get rid of a tenant and may therefore give a favorable review of the tenant's past history. Former landlords are generally a better source of information in that the tenant has already vacated their property and therefore, should have no reason to mislead anyone.

PAST EVICTION RECORDS

Landlords who want information regarding the past eviction record of an applicant have access to court records. Since the court records are public information, the landlord need not obtain the applicant's authorization to proceed. The difficulty in obtaining this information relates to the lack of a centralized database which would allow a landlord to easily access the information. Therefore, the landlord would have to search the court records in both District Court and Housing Court, as both have jurisdiction in eviction cases. Furthermore, there are five Housing Courts and several District Courts across the Commonwealth in which a tenant may have been a party to an eviction action. Needless to say, obtaining this information may prove too time consuming if the tenant has lived in different areas in several units over time. There are tenant screening companies which will provide this information to landlords for a fee.

CREDIT REPORTS

Landlords seeking information regarding the credit record of an applicant have access to credit reporting agencies which will provide this information to landlords for a fee. The written authorization of the applicant is required.

CRIMINAL OFFENDER RECORD INFORMATION (CORI)

The fair housing laws do not preclude a landlord from refusing to rent to a tenant because of a criminal history. Landlords who want information regarding the criminal record of an applicant can obtain such information through the Criminal History Systems Board.²³ Since the criminal conviction records are public information, the landlord need not obtain the applicant's authorization to proceed. A landlord must make a written request by mail to the Board including the tenant's name, date of birth, social security number if known, and any additional data that may be required to positively identify the individual. The request must be accompanied by a fee of \$30.00 for each name. The response will be returned by mail to the landlord.

The response will inform the landlord of whether the person has been convicted of any crime and sentenced to any term of incarceration, or whether the person has been convicted of a crime punishable by a term of five years or more, regardless of the sentence imposed, as long as:

- the person is currently incarcerated, or sentenced to and actively on probation supervision; or
- the person is currently under parole supervision; or
- having been convicted of a misdemeanor, the person has been released from all custody and/or supervision for not more than one year; or
- having been convicted of a felony, the person has been released from all custody and/or supervision for not more than two years; or
- having been sentenced to the custody of the Department of Correction, the person has finally been discharged, either having been denied a release on parole or having been returned to custody as a parole violator, for not more than three years.²⁴

A landlord only has access to a publicly accessible CORI, which does not contain an individual's full criminal history. The publicly accessible version contains only recent information. The individual involved, the courts, and legal officials have access to an individual's full criminal record report. However, an applicant cannot be asked by a landlord to request a full CORI in order to share it with the landlord.

CORI laws are going through a great deal of reform. The Massachusetts Legislature currently has a number of pending bills dealing with CORI laws. Therefore, a landlord should check his/her rights regarding the use of CORI information when finding a tenant.

To save the expense of a CORI check on each applicant for housing, a landlord may consider using this screening criteria only after a tenant has been selected for tenancy based on all the other criteria.

SEXUAL OFFENDERS REGISTRY

Landlords who want information regarding an applicant's sexual offender record can obtain such information free of charge through the Sexual Offenders Registry.²⁵ Under this system, each offender is assigned a risk level between one and three. Level 1 indicates a low risk, level 2 indicates a moderate risk, and level 3 indicates a high risk. Information about a sex offender is available to the public only if he/she has a duty to register and he/she has been finally classified by the Board as a level 2 or a level 3 offender.

To make an inquiry, the landlord must make a written request to the Sex Offender Registry Board or appear in person at the local police department and request a report which indicates whether an individual identified by name, date of birth, or sufficient personal identifying characteristics, is a sex offender, including a listing of the offenses for which he/she was convicted or adjudicated and the dates of such convictions or adjudications. A landlord can also search level 3 sex offenders on the Sex Offender Registry Board's website. (See <http://www.mass.gov/sorb/community.htm>) Name, current address, physical description, and arrest history of high risk offenders is among the information now available to the public through the internet.²⁶

The Sex Offender Act provides that the landlord must indicate that the information obtained through the search is either for his/her own personal protection, for the protection of a child under the age of eighteen, or another person for whom the inquirer has

responsibility, care, or custody.²⁷ The landlord need not obtain the applicant's authorization to proceed.

While the information obtained may not be used to engage in illegal discrimination or harassment of an offender, it is arguable that it can be used as a screening tool for housing. Although the courts have not yet resolved the issue, some states have made their regulations more clear than those in Massachusetts. We can look to these states to get an idea of how the courts will likely treat these issues in Massachusetts.

For example: *In California, rental property owners must make certain disclosures to tenants regarding the existence of the registered sex offender's database. The fact that an individual is listed in the database does not necessarily give the owner the right to deny housing to or evict him/her based on that alone. However, the California legislature did provide some exceptions. The Penal Code allows discrimination by a person who is acting to protect a person at risk. An owner may deny a prospective tenant's application or evict a tenant who is a registered sex offender and who poses a direct threat to the health and safety of other residents.*

In Massachusetts as well, it is clear that a landlord has the duty to protect tenants from other tenants whose behavior would interfere with or threaten the rights of other tenants to be secure in their persons or in their property or with the rights of other tenants to the peaceful enjoyment of their units and the common areas. The federal Fair Housing Act states that a landlord is not required to rent to an applicant who would jeopardize the safety of other tenants so long as the landlord assesses the potential danger based on credible and substantiated references.²⁸ Therefore, a landlord can ask whether the applicant is a registered level 2 or 3 sex offender on the rental application, and can verify the conviction through the internet or the local police station. Landlords who find themselves faced with the dilemma of needing to protect other tenants, while preventing an allegation of discrimination brought by a registered sex offender, should consult legal counsel.

EQUAL APPLICATION OF SCREENING CRITERIA

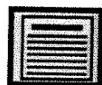
While it is legal to inquire into a prospective tenant's past as it relates to housing, it is illegal to inquire only of a person in a protected class. This is discriminatory because the person in the protected

class is being treated differently than those who are not in a protected class.



Once the criteria for selecting a tenant has been determined, it is very important that the criteria be applied evenly to each and every applicant for the unit.

In order to guarantee that all applicants are being treated equally, it is wise to use an application form for each applicant for a unit.



See Rental Application form at the end of this Chapter.

The application will guarantee that all applicants are being asked for the same information from which a landlord will choose a qualified tenant. The application also has a consent form authorizing the landlord to check into the tenant's income, employment, credit, and past tenant history.

Remember, it is illegal to ask an applicant or record information concerning protected class status except in cases of children and public assistance/rental assistance.²⁹ With regard to asking for information relating to children, a landlord needs to know whether children under six will be residing on the property for lead paint compliance reasons. With regard to public assistance and rental assistance, a landlord has a legitimate need to know that a tenant has adequate income or other resources to afford the rent. The fact that a landlord can inquire about children and public assistance/rental assistance does not change the landlord's duty to treat persons in those protected classes fairly and non-discriminatory.

The landlord should base any decision only on the legal criteria which he/she has set for tenancy. In the event that a tenant suspects that he/she has been denied a unit for discriminatory reasons, the completed application will create a written record from which the landlord may demonstrate the legitimate, non-discriminatory reasons that the tenant was not offered a particular unit.

Keep any applications and other documents gathered to determine tenancy for at least four years, because this is the time a potential plaintiff has to file a claim against a landlord for discrimination. If the landlord is notified of a claim, the landlord should notify an attorney at once. Housing discrimination is a serious matter with grave consequences for landlords who violate the laws.

SUMMARY OF FEDERAL AND STATE FAIR HOUSING LAWS

LAW	PROTECTED CLASSES	PROHIBITED PRACTICES	MAJOR EXEMPTIONS	ENFORCEMENT MECHANISMS/ REMEDIES
Civil Rights Act of 1866 42 U.S.C. §1982	Race	All discriminatory practices prohibited.	There are no exemptions; all properties are covered, including commercial properties.	File civil action in U.S. District Court; statute of limitations is that which is most closely analogous to state law, may be as much as three (3) years. The Court may award compensatory damages, punitive damages, equitable relief, and attorneys' fees and costs.
Federal Fair Housing Act Title VIII of the Civil Rights Act of 1968, as amended 42 U.S.C. §3601	Race Color National Origin Sex Religion Handicap Familial Status	Refusal to sell or rent; discrimination in terms, conditions, or privileges of sale or rental; false representation of availability; discriminatory advertising; blockbusting; steering; unequal treatment; failure to show all available properties; discrimination in brokerage services; discrimination in mortgage lending; and interfering with, coercing, threatening, or intimidating in the exercise of rights under the Act. Regarding handicap: Also, refusal to permit, at the handicapped person's expense, reasonable modification of existing premises; and failure to design and construct certain multi-family dwellings intended for first occupancy after 3/13/91 so as to be handicapped-accessible.	Single-family houses sold or rented by owner only if without use of broker and without discriminatory advertising, provided owner owns no more than three (3) houses. Rooms/units in owner-occupied dwellings of four (4) units or less. Additional exemptions that apply to familial status discrimination only: • State or federally-aided elderly developments. • Housing intended for and solely occupied by persons 62 years or older. • Housing intended and operated for occupancy by at least one person 55 years or older per unit. Additional exemptions that apply to handicap discrimination only: • Persons whose tenancy would constitute a direct threat to the health or safety of others. • Persons whose tenancy would result in substantial physical damage to the property.	File complaint with U.S. Department of Housing & Urban Development (HUD) within one (1) year, which can result in either a hearing before an Administrative Law Judge (ALJ), or a civil action in U.S. District Court. Or, file civil action directly in U.S. District or State Court. The ALJ may award actual damages, injunctive relief, and attorneys' fees and costs, in addition to ordering civil penalties of up to \$10,000 for the first violation; \$25,000 for the second, within five (5) years; and \$50,000 for the third, within seven (7) years. Actual damages, punitive damages (no cap), injunctive relief, and attorneys' fees and costs are available in a civil action.
Massachusetts Fair Housing Act G.L. c.151B, §1 (Cont'd on next page)	Race Color National Origin Ancestry Sex Religious Creed Children	Refusal to sell or rent; discrimination in terms, conditions, or privileges of sale or rental; false representation of availability; discriminatory advertising; blockbusting; sexual harassment of tenants; retaliation because a person exercises a protected right; and except in cases of children or public assistance reciprocity, inquiring about or recording protected class status. Regarding children: Also, refusal to rent to families with children because of the presence of lead paint in the unit (G.L. c.111, §199A).	Two-family owner-occupied dwellings, except public assistance/rental assistance, without the use of a broker and without discriminatory advertising. Additional exemptions that apply to age discrimination only: • State or federally-aided developments; • Elderly retirement communities of 10 acres or more with a minimum age of 55 years.	File complaint with Massachusetts Commission Against Discrimination (MCAD) within six (6) months of act. If probable cause is found, parties may elect to remove case to Superior Court. The Commission may award actual damages, injunctive relief, and attorneys' fees and costs, in addition to ordering civil penalties of up to \$10,000 for the first violation; \$25,000 for the second, within five (5) years; (Cont'd on next page)

LAW	PROTECTED CLASSES	PROHIBITED PRACTICES	MAJOR EXEMPTIONS	ENFORCEMENT MECHANISMS/ REMEDIES
Massachusetts Fair Housing Act - c. 151B, §101	Age (excluding minors) Marital Status Veteran Status/ Armed Services Status Public Assistance/ Rental Assistance Sexual Orientation	Regarding handicap: Also, refusal to permit, at the handicapped person's expense, reasonable modification of existing premises; however, in the case of publicly assisted housing of ten units or more and contiguously located housing of ten units or more, reasonable modification shall be at the expense of the owner; and failure to design and construct certain multi-family dwellings intended for first occupancy after 3/13/91 so as to be handicapped accessible.	Additional exemptions that apply to children discrimination only: • Dwellings of 3 units or less, one of which is occupied by an elderly or infirm person for whom children would be a hardship. • Temporary renting of one's principal residence for one year or less. These exemptions do not apply to persons whose business includes engaging in residential real estate-related transactions.	and \$50,000 for the third, within seven (7) years. Actual damages, punitive damages (no cap), injunctive relief, and attorneys' fees and costs are available in a civil action. For licensed real estate brokers and salespersons, a final determination of discrimination results in a sixty (60) day license suspension for the first determination; a second such determination within a two (2) year period results in a ninety (90) day license suspension (G.L. c.112, §87AAA).
Massachusetts Equal Rights Act - c. 93, §102	Sex Race Color Creed National Origin Handicap Age	All discriminatory practices prohibited. Effective for acts or practices occurring after August 1, 1989.	There may be an exemption for two-family owner-occupied dwellings; all other properties are covered, including commercial properties.	File civil action in Superior Court, statute of limitations may be as much as three (3) years. Damages include injunctive relief, actual damages, punitive damages, attorneys' fees and costs.
Massachusetts Civil Rights Act - c. 12 §11H	All Persons	Interference or attempted interference with the rights secured by State and Federal Constitutions or laws by threats, intimidation, or coercion.	There are no exemptions.	Civil action filed by aggrieved party or attorney general in Superior Court. The court may award injunctive relief and other equitable relief, compensatory damages, and attorneys' fees and costs.
Massachusetts Rights for Elderly and Handicapped Persons Act G.L. c. 93, §103	Handicap Age	All discriminatory practices prohibited. Effective for acts or practices occurring after November 1, 1990.	There are no exemptions.	Civil action filed by aggrieved party or attorney general in Superior Court. The court may award injunctive relief and other equitable relief, compensatory damages, and attorneys' fees and costs.

MASSACHUSETTS ASSOCIATION OF REALTORS®

The Fair Housing Laws are complex. If you do not understand them, consult an attorney. REALTORS® please contact the Massachusetts Association of REALTORS®

FINDING A TENANT TO RENT YOUR PROPERTY

Finding a good tenant is one of the most important steps in the process of becoming a successful landlord. Good tenants generally pay their rent, maintain the property in good repair, and move out when they are supposed to without court intervention. Finding a good tenant is hard work. The landlord must take several steps before beginning the process:

1. The landlord should review the State Sanitary Code to ensure that the property is ready for rental.



See Chapter 2, Preparing Your Property for Rent, and Appendix

2. The landlord should determine the maximum number of people who may occupy the unit and each bedroom according to the square footage of the unit and each bedroom.



See Chapter 2, Preparing Your Property for Rent

3. The landlord should determine the amount of money he/she will charge for the unit based on the current market rate for similar units in the area as well as the expenses to maintain the property. The U.S. Department of Housing and Urban Development releases annual data pertaining to the fair market rents in each area of Massachusetts. This information can be found at www.huduser.org/datasets/fmr.html.
4. The landlord should determine the rules that will apply to anyone who might live in the apartment, such as whether smoking or pets will be allowed, whether a security deposit and/or last month's rent will be collected, whether the tenant or the landlord will be responsible for utilities, and whether the landlord wants a tenant at will or a lessee.

Once the landlord has completed these steps, he/she is ready to find a tenant.

HIRING A PROFESSIONAL VERSUS DOING IT YOURSELF

A knowledgeable landlord can find a good tenant without the assistance of a professional real estate agent. Tenant screening companies can provide landlords with information on tenants including criminal history, prior evictions, and credit reports to assist the landlord in finding a qualified tenant. The landlord must, however, understand the laws relating to fair housing.

If a landlord does not have the time or energy to educate himself/herself on the laws, he/she should not hesitate to contact an agent to provide the service. Agents have varying fee arrangements. While some may charge the landlord for locating a tenant, others may charge the tenant for locating an apartment or split their fee between the landlord and tenant. In any case, the landlord should be clear on the agent's fee arrangement in advance and agree to it in writing.

In Massachusetts, real estate agents who rent property on behalf of a landlord for a fee are required to be licensed by the Commonwealth.¹ In order to be licensed, the agent must pass an exam to become a licensed salesperson and then may take a further exam to become a licensed broker.² Salespersons and brokers are required to complete twelve hours of continuing education requirements every two years in order to keep their licenses.

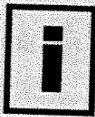
Of the approximately 74,000 licensed salespersons and brokers in Massachusetts, only about 21,000 are Realtors. A Realtor is a member of a professional trade association called the National Association of Realtors. In order to become a member, the person must be a licensed salesperson or broker and must subscribe to a Code of Professional Ethics. This Code of Ethics requires the Realtor to ascribe to a high level of professionalism in his/her dealings with clients. Therefore, it is probably preferable to deal with a Realtor, who is likely to be better informed and more professional than a non-Realtor. Furthermore, if one chooses to hire an agent to rent his/her property, the agent's credentials and professional affiliations should be checked to ensure that he/she has the appropriate knowledge and experience to do the job competently.



It is possible for the landlord to be responsible to a potential tenant if the agent acts outside of the law.³

FAIR HOUSING LAWS

The fair housing laws were enacted to guarantee fair housing for all people. The laws protect people from discrimination based on their inclusion in a particular class. The federal law is Title VIII of the Civil Rights Act of 1968.⁴ It is known as The Fair Housing Act. The Fair Housing Act was amended by the Fair Housing Amendments Act of 1988.



Under federal law, persons in the following classes are protected against discrimination in housing:

- race
- color
- national origin
- sex
- religion
- handicap
- familial status

This means that discrimination in housing is prohibited when it is based on a person's inclusion in one of these protected classes.

The types of behavior on the part of a landlord or agent which are prohibited are:

- refusing to rent an available unit;
- representing that a unit is unavailable when it is available;
- using discriminatory advertising; and
- offering different terms or conditions to persons in protected classes.

There are exemptions from this law including:

- renting a single family house without an agent and without discriminatory advertising;
- renting units in owner occupied buildings of four families or less; and
- renting units in certain housing for the elderly may be exempt from familial discrimination.

Certain exemptions exist relating to handicap discrimination, including the following:

- 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.



There are no exemptions from the law relating to discrimination based on race.

There are also other federal laws which prohibit discrimination in housing and may apply in various cases.⁵

If a landlord or agent discriminates in violation of the law, a judge may award the tenant damages, injunctive relief, civil penalties, and attorney's fees.

The state law which prohibits discrimination in housing is known as Massachusetts General Law, Chapter 151B.⁶ This law is similar to the federal fair housing law but includes more protected classes and has narrower exemptions.



Under state law, persons in the following classes are protected against discrimination in housing:

- race
- color
- national origin
- ancestry
- sex
- religion
- children
- handicap
- sexual preference
- age
- marital status
- veteran history
- genetic information
- public assistance/
rental assistance

This means that discrimination in housing is prohibited when it is based on a person's inclusion in one of these protected classes.

The types of behavior on the part of a landlord or agent that are prohibited are:

- refusing to rent an available unit;
- representing that a unit is unavailable when it is available;
- using discriminatory advertising;
- offering different terms or conditions to persons in protected classes;
- sexually harassing tenants;
- refusing to reasonably accommodate the needs of the physically or mentally disabled;

- asking or recording information concerning protected class status except in cases of children and public assistance/rental assistance;
- refusing to rent to families with children; and
- retaliating because a person exercises any right under Chapter 151B.

There are exemptions to this law including:

- renting units in owner occupied two family buildings except on the basis of public assistance or rental assistance;
- renting units in certain housing for the elderly with a minimum age requirement of 55 years may be exempt from age discrimination;
- renting units in buildings containing three units or less where an elderly or infirm person lives, thereby constituting a hardship, are exempt from discrimination against families with children; and
- renting one's own principal residence temporarily is exempt from discrimination against families with children.



There are no exemptions from the law relating to discrimination based on race.

If the landlord allows current residents to select new tenants to fill vacancies in a unit, the landlord has a responsibility to ensure that non-discriminatory means of selection are being used.⁷ Likewise, if the landlord allows a family member or neighbor to screen and select tenants for a property, the landlord bears the same responsibility.⁸ In such situations, the tenant, family member, or neighbor is acting as an agent of the landlord and the landlord will be liable to any potential tenant that has been discriminated against in violation of the Fair Housing Laws.⁹

For example: In 2001, a rejected tenant brought suit against a landlord under the Federal Fair Housing Act, Civil Rights Act, and Massachusetts Fair Housing Act, alleging that the landlord was liable for discrimination by an existing tenant who rejected her application. The landlord owned a six bedroom residential property which was rented to six unrelated individuals who each occupied a bedroom and shared the common areas. The tenants would publicize vacancies when they arose and select new tenants to fill those vacancies, subject to the

approval of the landlord. When one of the tenants rejected plaintiff's application due to her race, the landlord was sued and the court found that it was possible to hold the landlord liable due to the agency relationship that was created between the landlord and current tenants when the tenants acted to fill the vacancy on the landlord's behalf.¹⁰

If a landlord or agent discriminates in violation of the law, a judge may award damages, injunctive relief, and attorney's fees, and may suspend the license of a broker or salesperson.

There are other state laws which prohibit discrimination in housing and may apply in various cases.¹¹ There may also be local laws which prohibit discrimination in housing.¹²

The chart at the end of this chapter identifies the various laws that relate to housing discrimination. Printed with the permission of the Massachusetts Association of Realtors.

REASONABLE MODIFICATION AND REASONABLE ACCOMMODATION



It is discriminatory for a landlord to refuse to reasonably accommodate the needs of a physically or mentally handicapped tenant.

A handicap is described as a physical or mental impairment which substantially limits one or more major life activities; having a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance.

In rental housing of less than ten units, landlords must allow tenants, at their own expense, to make reasonable modifications to existing units, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises.¹³ The landlord may, where it is reasonable to do so, condition permission for a modification on the tenant agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a