

Tenants' Rights in Massachusetts
MCLE Basic Benefits Training Series
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Housing Discrimination

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Introduction

- Overview of Fair Housing
- Common fair housing issues
- What is a Reasonable Accommodation
- Reasonable Accommodation request process
- Overview of the Violence Against Women Act (VAWA)

Fair Housing: Legal Framework

Protect tenants and applicants against discriminatory actions by housing providers

- FOR EXAMPLE: denial of housing, discriminatory eviction, different tenancy terms and conditions

Provide affirmative rights to people with disabilities

- Reasonable accommodation and reasonable modification

Who do the Fair Housing Laws Protect?

Applicants, current tenants, and others are protected from negative housing decisions because of:

- Race
- Color
- National Origin
- Sex (includes gender identity and sexual orientation)
- Disability
- Familial Status (includes lead paint protections)
- Religion
- Gender identity*
- Sexual Orientation*
- Marital Status*
- Age*
- Veterans' status*
- Recipient of public assistance (includes housing subsidies)*

*MA specific protections

Who Has to Follow the Fair Housing Laws?

Any person or entity who could engage in prohibited conduct:

- Property owners
- Housing managers
- Condominium associations
- Real estate agents/brokers
- Lenders
- Cities/towns
- Shelter providers
- Government agencies

Very small landlords are exempted from laws:

- MA law: owner-occupied 2-family home
- Federal law: owner-occupied building with 4 or fewer units

Denial of housing based on race or receipt of public assistance/housing subsidy is never exempt

Discriminatory statements are never exempt

Common Issues

- Failing to accommodate a disability
- Refusing to rent to an applicant or evicting a tenant based on:
 - Receipt of a housing subsidy
 - Familial status (including because of lead paint)
 - Disability
 - Race
- Sex discrimination
 - Evictions due to domestic violence
 - Sexual harassment

Rental Assistance Discrimination

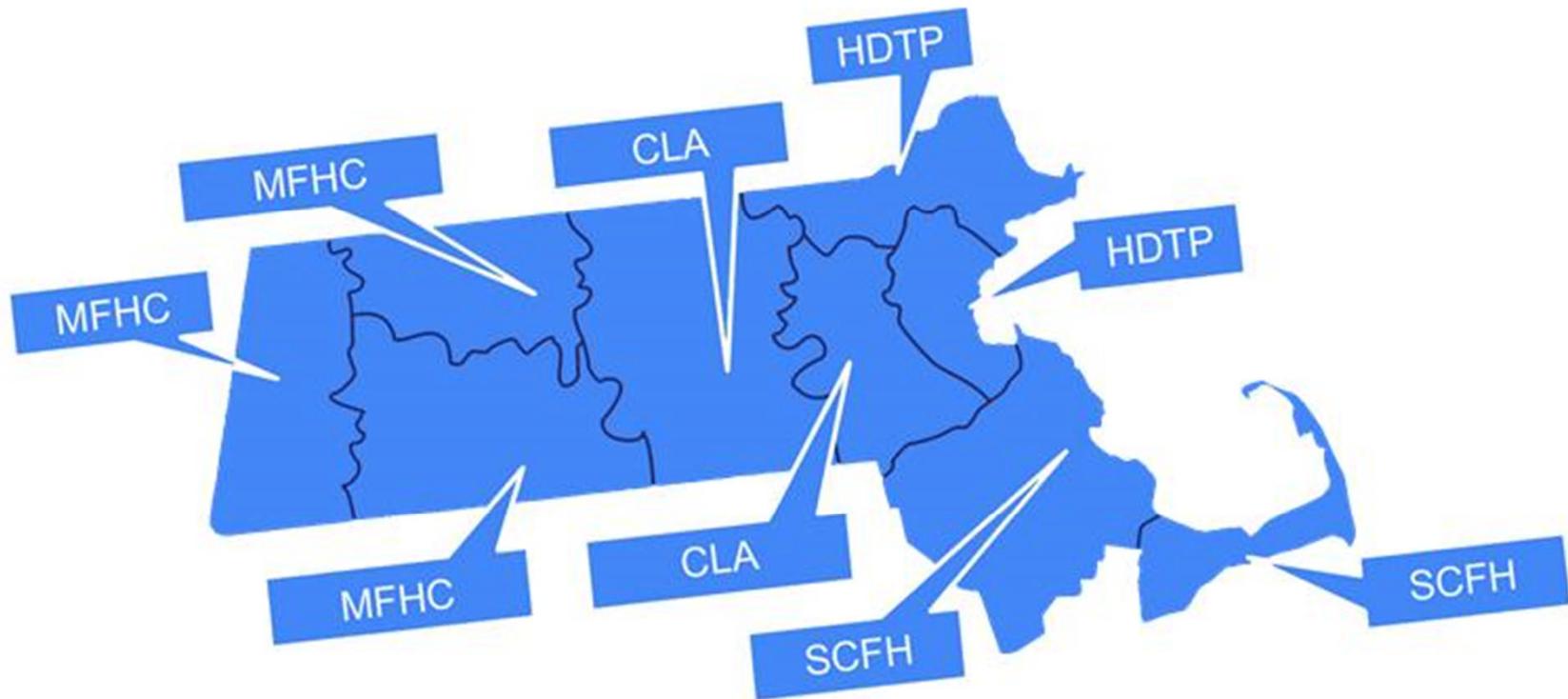
- Discrimination because of housing subsidy (Section 8, MRVP, etc.), refusal to accept RAFT could also be discriminatory
- Very common form of discrimination
- Unlawful to refuse to rent because housing provider:
 - Does not “participate” in Section 8
 - Can’t pass the inspection
 - Doesn’t like how many rules there are
 - Doesn’t accept vouchers from particular housing agency
- Related practices that may be discriminatory:
 - Requiring income must be three times the rent
 - Denying because of low (or no) credit score

Fair Housing Alliance of Massachusetts (FHAM)

- New program run by Massachusetts fair housing agencies: Mass. Fair Housing Project (MFHC), Community Legal Aid (CLA), Suffolk University (HDTP), and SouthCoast Fair Housing (SCFH)
- Goals
 - Increase awareness that voucher discrimination is illegal in Massachusetts
 - Provide legal advice and representation to tenants facing housing discrimination

FHAM Agencies & Service Areas

Contact FHAM at: (508)444-9332



Disability Discrimination

- One of most commonly experienced forms of housing discrimination
- Can look like:
 - Refusals to rent
 - Different terms and conditions because of disability
 - Harassment because of disability
 - Discriminatory evictions
 - Denials of reasonable accommodations or modifications

What is a Reasonable Accommodation

- A change to a housing provider's policies or practices to enable a tenant with a disability (or person associated with that tenant) to use and enjoy their housing on an equal basis to that of people without disabilities
- Common examples:
 - Change in rent date
 - Assistance or service animal
 - Transfer
 - Parking spot
 - Allow tenant to remain in their home after lease violation due to disabilities where reason for violation is addressed (for example, new services in place)

What is a Reasonable Accommodation in Eviction Cases

When tenant request to remain in their home after an alleged lease violation, one big question is: what does a reasonable accommodation look like?

- Dismissal of the case vs. probationary agreement?
- If probationary agreement, what is reasonable for housing provider to require in order for tenant to keep housing?
 - How long?
 - What requirements during probationary period?
Example: direct communication between housing provider and medical providers is probably too much but compliance with treatment plan may not be

What Is a Reasonable Modification?

- A physical change to a unit/building to enable a tenant with a disability (or person associated with that tenant) to use and enjoy their housing on an equal basis to that of people without disabilities
- Common examples:
 - Ramp
 - Widened doors
 - Automatic shut-off stove
 - Blinking doorbell
 - Roll-in shower
- Issue of who pays for the modification = complicated

What Constitutes a Reasonable Accommodation Request

A person makes a request for accommodation whenever she “makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. . . . An individual making a reasonable accommodation request does not need to mention the Act or use the words ‘reasonable accommodation.’”

Bos. Hous. Auth. v. Bridgewater, 452 Mass. 833, 847-48 (2009) (quoting Joint Statement).

Making a Reasonable Accommodation Request

- How is a request made?
 - It must be made by the tenant or someone on their behalf
- The tenant does not need to:
 - Fill out a specific form - BUT best practice is in writing
 - Say “reasonable accommodation” or otherwise use specific words (no “magic words”)
 - Reference the Fair Housing Act
- Tenant DOES often need to provide medical verification

Medical Verification

- A housing provider may request medical verification of the disability/need for accommodation, unless the need for accommodation is “readily apparent,”
- A medical verification letter should:
 - Be on letterhead and signed by the provider
 - Contain a brief statement of who the provider is to the client
 - State the client is impacted by her disabilities & in what ways
 - State the needed accommodation
 - Explain how accommodation will enable client full use & enjoyment of dwelling
- A medical verification letter should not:
 - State a medical diagnosis
 - Invite housing providers to contact medical provider for more information
 - Simply state that the client would be harmed by being made homeless

Sample RA with Medical Verification

Dear [Housing Provider]:

I am a tenant at [ADDRESS]. Because of my disabilities, I need an assistance animal (a dog).

Please make an exception to your “no pets” policy to allow me to have a dog.

Please contact me to let me know your response to this request, including if you need anything further from me.

Sincerely,

Tenant

To Whom It May Concern:

I am [Tenant’s] therapist. Ms. [Tenant] has an anxiety condition that makes it difficult for her to sleep and be around many people. Ms. [Tenant] needs a dog as a companion to enable her to feel safe in her home and in the common areas. Please make an exception to your “no pets” policy to allow Ms. [Tenant] to have a dog.

Sincerely,

Doctor Jones

When to Make a Reasonable Accommodation Request

A request should be made as early as possible but can be requested even at what feels like a late stage

- Can be made in the context of an eviction
 - Before case is filed, in the answer, at trial, even post-trial (although facts will matter)
- Outside context of eviction altogether
 - When applying for an apartment or living in apartment
 - When facing loss of a voucher
 - And in other contexts

Relevant cases

Bos. Hous. Auth. v. Bridgewaters, 452 Mass. 833, 847–48 (2009)

Glendale Assocs. v. Harris, 97 Mass.App.Ct. 454 (2020)

Douglas v. Kriegsfeld Corp., 884 A.2d 1109 (DC 2005)

When Might a Tenant Not Be Entitled to an Accommodation?

- If a tenant does not have a disability
(Note: definition of person with disability excludes “current, illegal use of or addiction to a controlled substance”)
- If a tenant does not provide verification of disability when requested (and the disability is not readily apparent)
- If the request is not related to the disability
- If the request is not “reasonable”:
 - Would impose Undue Financial or Administrative Burden
 - Would result in a Fundamental Alteration
 - Tenant poses a Direct Threat (and no accommodation can eliminate or significantly reduce threat)

Undue Burden & Fundamental Alteration

Undue Burden

- Whether something is an undue financial or administrative burden must be determined on a case-by-case basis
- Housing provider must evaluate various factors: cost of accommodation, financial resources of the provider, benefits to tenant, availability of alternative accommodations

Fundamental Alteration

- A modification that alters essential nature of provider's operations, for example: driving a tenant to store and helping with grocery shopping (see HUD/DOJ Joint Statement - link in resources slide)

Direct Threat

Housing provider may deny Reasonable Accommodation if tenant poses a "direct threat" to the health or safety of other individuals AND the threat cannot be eliminated or significantly reduced by reasonable accommodation

Direct Threat

Determination that tenant poses a direct threat:

- Must be based on an individualized assessment based on reliable, objective evidence
- Must consider three factors:
 - (1) the nature, duration, and severity of the risk of injury;
 - (2) the probability that injury will actually occur; and
 - (3) whether there are any reasonable accommodations that will eliminate the direct threat
- Must consider any intervening treatment
- Cannot be based on fear, speculation or stereotype about a particular disability or people with disabilities in general

The Interactive Process

“Reasonable accommodation contemplates an interactive process between the parties and takes time.”

Glendale Assocs. v. Harris

97 Mass.App.Ct. 454, 463 (2020)

The Interactive Process

- If a housing provider denies a Reasonable Accommodation as unreasonable, they should discuss whether there is an alternative accommodation that would meet the needs of the person with a disability without imposing an undue burden or fundamentally altering the provider's operations
- This is called the "interactive process" or "interactive dialogue"
- If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it

Violence Against Women Act

VAWA creates affirmative rights and protections for

- Survivors of domestic violence, dating violence, sexual assault and stalking regardless of sex, gender identity, or sexual orientation
- Who live in federally funded subsidized housing

Housing Protections for victims of domestic violence, dating violence, sexual assault, and stalking

34 U.S.C. § 12491

HUD regulations on VAWA's housing protections:

24 C.F.R. §§ 5.2001-5.2011

Core VAWA Protections

People protected by VAWA:

- Cannot be denied of admission
- Cannot be denied assistance
- Cannot be terminated from participation in a housing assistance program
- Cannot be evicted from housing

Housing Protections for victims of domestic violence, dating violence, sexual assault, and stalking
34 U.S.C.A. § 12491(b)(1)

Fair Housing Resources

Legal Help	Contact info
Mass. Fair Housing Center	https://www.massfairhousing.org/ (413) 539-9796
Community Legal Aid	https://communitylegal.org/ 855-252-5342
Suffolk University	https://www.suffolk.edu/law/academics-clinics/clinics-experiential-opportunities/housing-discrimination-testing-program 617-884-7568 or 617-305-1649
SouthCoast Fair Housing	http://southcoastfairhousing.org/ (774) 473-9994
FHAM Statewide Hotline	(508)444-9332
Or file a complaint:	
Mass. Comm'n Against Discrimination	https://www.mass.gov/orgs/massachusetts-commission-against-discrimination (617) 994-6000
U.S. Dep't of Hous. & Urb. Development	https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint 1-800-468-0777

Fair Housing Key Legal Citations

Federal law

Federal Fair Housing Act, 42 U.S.C. § 3601, et seq.

www.justice.gov/crt/fair-housing-act-2

Section 504 of the Rehabilitation Act of 1973

dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973

Americans with Disabilities Act, Titles II and III

www.ada.gov/

State law

G.L. c. 151B

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151B>

G.L. c. 111, § 199A

malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section199a