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Attorney General Advisory:
All Tenants Have a Right to Be Free from Harassment and Intimidation

The Office of the Attorney General of Massachusetts issues this advisory to remind landlords and other housing providers that all tenants have a right to be free from harassment and intimidation.

State and federal laws prohibit landlords and other housing providers from discriminating against current or prospective tenants based on race, color, gender, sexual orientation, gender identity, age, religion, disability, receipt of public assistance, familial or marital status, ancestry, national origin, genetic information, or veteran or active military status. *See* M.G.L. c. 151B, § 4 (Massachusetts Antidiscrimination Law); 42 U.S.C. 3601 *et seq.* (Fair Housing Act).

Harassment is a form of unlawful discrimination and includes both hostile environment harassment and quid pro quo harassment.

- **Hostile environment harassment.** Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive to interfere with a person's ability to buy, rent, or use and enjoy housing (including related facilities and services).
- **Quid pro quo harassment.** Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition of a person's ability to buy, rent, or use and enjoy housing (including related facilities and services).

Both state and federal law also prohibit retaliation against current or prospective tenants who report violations of the law or otherwise assert their rights. Discrimination and retaliation are illegal regardless of a tenant's immigration status.¹

¹ Although state and federal housing laws do not specifically prohibit discrimination based on citizenship or immigration status, they do prohibit discrimination based on national origin. Such discrimination includes different treatment based on a person's ancestry, ethnicity, birthplace, culture, or language. Screening current or prospective tenants for citizenship and immigration status, or treating them differently on that basis, may violate the prohibition on national origin discrimination. In addition, 42 U.S.C. § 1981 ("Section 1981") has been interpreted by a number of courts to prohibit discrimination based on alienage with respect to the right to make and enforce contracts. *See e.g., Sagana v. Tenorio* 384

State law further prohibits any person from using threats, intimidation, or coercion to interfere with the secured rights of any other person. *See* M.G.L. c. 12, §§ 11H-J (Massachusetts Civil Rights Act).² Secured rights include the right to quiet enjoyment of housing and the right to legal process.

Together, these state and federal laws make each of the following practices unlawful:

- Refusing to rent to a prospective tenant based on the tenant's (or his or her family member's) race, color, religion, ancestry, national origin, disability, or other protected characteristic.
- Steering prospective tenants away from particular properties or rental units based on their familial or marital status, receipt of public assistance, or other protected characteristic.
- Asking current or prospective tenants to provide different forms or amounts of identification, documentation, or personal information based on their race, color, religion, ancestry, national origin, or other protected characteristic.
- Demanding sexual favors in exchange for the provision of housing-related benefits or services, or threatening to evict a tenant if the tenant does not give in to sexual advances.
- Applying different terms or conditions—including different amounts of rent or different access to services—to tenants based on their protected characteristic(s).
- The use of offensive jokes, comments, or slurs when addressing current or prospective tenants.
- Threatening to report tenants to immigration authorities in order to coerce or pressure tenants (or their family members) to refrain from exercising any of their rights under the law, including coercing or pressuring tenants:
 - To move out or pay higher rent;
 - To submit to sexual harassment (or any other kind of harassment);
 - Not to report violations of sanitary or health codes, including the presence of lead paint hazards;
 - Not to report other discrimination or harassment; or
 - To give up any of their rights to challenge or otherwise defend themselves in eviction proceedings.

F.3d 731 (9th Cir. 2004); *Anderson v. Conboy*, 156 F.3d 167 (2d Cir. 1998); *Duane v. Geico*, 37 F.3d 1036 (4th Cir. 1994).

² State law also prohibits unfair and deceptive business practices. *See* M.G.L. c. 93A, § 2. In some cases, discrimination, harassment, and/or intimidation in the course of doing business will qualify as an unfair or deceptive business practice.

In addition, it is unlawful for landlords or other housing providers to allow harassment or intimidation by one tenant against another tenant.

**** Importantly, landlords and other housing providers who are owed rent, or whose tenants violate valid property rules or lease terms, have adequate remedies available to them under the law, including eviction proceedings in housing court. Landlords may not circumvent these processes by threatening tenants with physical harm or by threatening to report tenants or their family members to immigration authorities. ****

A failure by housing providers—including property owners, managers, and real estate agents—to comply with these laws may result in significant legal liability.

If you have questions or need further assistance, or to file a complaint of discrimination, contact the Civil Rights Division of the Attorney General's Office at (617) 963-2917 or <https://www.mass.gov/how-to/file-a-consumer-complaint>.

Dated: April 11, 2018