



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

MDPH interpretation of "Reasonable Access"

A request has been made to define reasonable access in regard to the ability of an owner to enter an occupied dwelling unit for the purpose of making repairs ordered by the board of health.

The citation referring to reasonable access is 105 CMR 410.810. The interpretation indicated above, is the Department's interpretation of its own regulation. The Department has the authority to interpret its own regulations. Courts regularly defer to the agency's interpretation provided that it is rational. *Boston Police Superior Officers Federation v. City of Boston*, 414 Mass. 458, 608 N.E.2d 1023 (1993); *Town of Northbridge v. Town of Natick*, 394 Mass. 70, 474 N.E.2d 551 (1985)

Given the construction of the regulation, reasonable access cannot mean that the tenant must give access whenever any repair person is available to work. If this were the intent, the regulation would read that the tenant shall provide access at any time it is requested. It does not. It states upon reasonable notice, the tenant shall provide reasonable access, if possible by appointment. The term reasonable access indicates some limitation on the period of time when a tenant is required to permit workers to make repairs. The purpose of this limit is to strike a balance between the owner's ability to get the work done, and the tenant's need for privacy in his/her home. Moreover, the phrase "reasonable notice" indicates the need to assure that the tenant knows in advance when work will be done. The phrase "if possible by appointment" further suggests that an appointment should be set up with the tenant, indicating that s/he has advance knowledge of and has consented to the appointment.

While the definition of reasonable is largely fact driven, the Department interprets it to mean regular business hours (9-5) Monday through Friday, and any other time by mutual consent of the parties. Absent specific factual situations to the contrary, this is presumed to be the norm based on presumptions of normal working hours; however this is not meant to be a rigid definition, but a guideline. In any given situation, where there is an allegation that the request for access was not reasonable or that the denial of access was not reasonable, the Board of Health must review the specific facts including, but not limited to, the nature of the request, the number of requests, and the specific circumstances of the individuals involved, applying the above-mentioned guideline, to determine whether the request for access was reasonable or whether the denial was reasonable.