KEEP YOUR HOUSING!

A Guide to Help Massachusetts Tenants with Mental Health Issues Maintain Their Housing

by

Northeastern University School of Law
Legal Skills in Social Context Social Justice Program

- and -

Mental Health Legal Advisors Committee

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The Mental Health Legal Advisors Committee

The Mental Health Legal Advisors Committee (MHLAC) helps children and adults with mental health and other disabilities protect their rights and obtain appropriate services. We are an independent state agency of the Supreme Judicial Court that can provide advice and direct legal representation to our clients on a wide range of legal issues including access to services, custody and visitation matters, guardianship, insurance issues, education, housing, and rights in the hospital setting. In addition to providing direct representation, we also hold trainings for advocates and clinicians, interpret and analyze legislation, and produce publications and brochures on legal matters pertinent to mental disabilities.

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INTRODUCTION

This guide is designed to help tenants understand their housing rights and responsibilities, so that they are able to maintain their housing. This guide does not cover the topics of accessing housing or defending against eviction (although it does offer some limited advice with respect to eviction defense). These topics have been written about elsewhere extensively (see "Published Resources" at p.38).

This guide may also be useful for individuals working with people with mental health disabilities, such as case managers, mental health providers, family members, and other advocates.

When using this guide, one need not read the entire document front to back. Instead, the guide is divided into discrete chapters that can be understood separately. These chapters, described briefly here, are outlined in further detail in the Table of Contents that follows.

This guide begins with a discussion of simple steps you can take to maintain your housing. It then describes how one can seek a reasonable accommodation to respond to a housing problem. The guide also discusses how reasonable accommodations can be used in the context of an eviction proceeding. The guide then addresses additional rights and responsibilities of tenants who live in certain federally funded housing programs: Shelter Plus Care, Supported Housing, and Safe Havens. Finally, this guide provides a short introduction to the eviction process and provides information about going to court for an eviction proceeding. At the end of the guide, there are contacts, published resources, and a glossary of terms.

This guide should not be used to take the place of legal advice from a lawyer or other competent professionals. If you have a legal problem or need more information about an individual situation, you should not rely solely on the information provided here. Instead, you should seek the advice of a lawyer or other professional.

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Chapter 1: Simple Steps to Keep Your Housing

A. Address problems immediately

If you are having a problem with your housing situation, it is important to address it as soon as possible, before you are faced with eviction. Finding new housing is usually more difficult than taking steps to stay in your current housing.

B. Seek help

When you are having trouble with your housing situation, seek help right away. Don't wait until deadlines are upon you. People who can help you with housing issues include: family members; mental health service providers; housing support staff and other housing program administrators; housing authority staff; a guardian, representative payee or conservator; and state agency staff such as a Department of Mental Health (DMH) case manager or a DMH area housing person. You can also seek legal advice and assistance from a number of agencies listed at the end of this guide.

C. Be organized

Take these steps to be organized:

- Have all your documents relating to your housing available;
- Write down the first and last names of who you talk to;
- Write down the dates of all contacts, including conversation, letters and meetings.

D. Be aware of typical problems that tenants face

<u>Nonpayment of rent</u>

You may risk losing your housing for non-payment of rent. Non-payment of rent is one of the most difficult problems for a tenant to defend against, so budget carefully. If you're running into trouble with money, get help immediately! Social service agencies and church groups may be available to provide emergency funds to rent.

- If you have a housing subsidy, such as Section 8, you must recertify with the housing authority every year. Recertification is the housing authority's annual examination of your household income and certain deductions and exclusions you are eligible for in order to determine your rent. If you do not recertify, your rent may increase beyond your ability to pay. Therefore, don't let your recertification deadline pass. Recertification is tedious but necessary.
- While some aspects of the recertification process will be the same from one housing situation to another, the details will vary. It is important to learn what the recertification requirements are for your particular landlord.
- In addition to the annual requirement, your housing authority may require you to report income increases during the year whenever they happen, between regular recertifications.
- If your income decreases during the year, you should report that change so your rent can be lowered.
- If you receive Social Security benefits, including SSI, one way to avoid eviction due to nonpayment of rent is to request that the Social Security Administration appoint a "representative payee" to receive your checks and pay your bills, including your rent.
- If you do not receive Social Security benefits, you can arrange with a friend or family member to pay your rent.
- If you owe past rent, you could speak with your landlord or property manager about making small monthly payments toward your debt. There are some programs that may help families and disabled tenants pay back rent: the Toolbox program, run by Division of Transitional Assistance, and the Residential Assistance Families Transition (RAFT) program, run by the Massachusetts Department of Housing and Community Development and administered by the regional non-profits throughout the state.
- If you are a DMH client, ask your DMH case manager to arrange for you to receive financial skills training. You can also request that gaining financial skills be added as a goal on your DMH Individual Service Plan (ISP) if it is not already listed there.
- Some public housing authorities allow "direct deduction" or "auto-pay,"

whereby rent can electronically be taken out of the bank account each month. For some tenants, this arrangement makes it easier to ensure timely rent payments. Ask your housing authority or your landlord if you would like to set up this form of direct payment.

- If you are having difficulty paying your rent on time and you receive Transitional Aid to Families with Dependent Children (TAFDC), you might also consider requesting that the Department of Transitional Assistance (DTA) pay your rent for you. Depending on the DTA office, this arrangement is called "vendor payments" or "protective payments." To set up such a payment plan, contact your DTA case worker.

Problems with a neighbor

You may risk losing your housing if you have ongoing, serious problems with a neighbor. If you have such a problem, talk with your service provider or support person, if one is available. Ask him or her to help you talk with your landlord to try to reach a compromise. If you believe that the problem is caused by your disability, you could ask your landlord for a reasonable accommodation, discussed below.

Posing a health or safety risk to yourself or others

You may risk losing your housing if you pose a risk to the health and safety of you or others. The landlord might allege a violation of your lease or of the State Sanitary Code. Such a risk may be the result of failing to keep your apartment clean or accumulating too much stuff (known as "hoarding"). If you have such a problem, talk to the landlord to try to arrive at a solution. If you believe that the problem is caused by your disability, you could ask your landlord for a reasonable accommodation, discussed below.

Causing property damage to the building

You may risk losing your housing if you damage your building or interfere with other tenants' rights to use the property. If you have such a problem, talk to the landlord to try to arrive at a solution. If you think that your actions were the result of your disability, you should request a reasonable accommodation, discussed below.

Letting people who are not on the lease move in

You may risk losing your housing if you let individuals who are not on the lease move into your apartment. For tenants living in public or subsidized housing, there may be limits on how long a guest can stay overnight at your apartment. (In addition, a housing authority will require you to pay more rent if they become aware of previously unreported household members who have income.) Know the rules regarding overnight guests that apply to you. The rules are different for federal and state public or subsidized housing.[1] There is an additional rule limiting the number of occupants based on the square footage in the apartment; that rule is found in the State Housing Code, also known as the State Sanitary Code.[2]

You may need to have an aide live with you to help you manage your disability. You must ask the housing authority for permission to have an aide. To qualify as a live-in aide, the person who will be assisting you must be essential to your care and well being and be sleeping overnight, staying, or living in the unit in order to provide necessary support services.[3]

E. Be aware of how to combat bad conditions in your apartment

If your landlord has substantially failed to keep your apartment clean, safe, and in good repair (in accordance with the State Housing Code), and he is threatening you with an eviction, you can file a claim against your landlord in your local housing court before he starts an eviction proceeding. If the violations of the conditions are serious enough, you are better off raising the claim yourself, rather than bringing it in as a defense.

Chapter 2: Seeking a Reasonable Accommodation in Order to Address a Housing Program

A. What is a reasonable accommodation?

"Reasonable accommodation" is a legal concept that provides an individual with a disability some protections when he or she has problems (because of his or her disability) complying with her lease or tenancy rules or requirements. At any point, a tenant may request a reasonable accommodation to address a problem that has developed in his or her housing and allow the tenant to remain in the housing. A tenant may also request an accommodation during the eviction process. A landlord must accommodate your disability if the accommodation is reasonable, that is, if it is not unduly burdensome.[4] If your requested accomodation is not reasonable, the landlord does not have to make the accomodation.

To get a reasonable accommodation, you must demonstrate that you have a disability or that others perceive you to have a disability. A disability is defined as any mental or physical impairment that substantially limits one or more major life activities.[5] If others believe you to be mentally disabled and treat you as if you are, you are also protected against disability discrimination. If you receive SSI, EAEDC, or SSDI, you already have a disability determination that provides proof of a disability. But even if you have been denied disability benefits, you may still qualify as having a mental disability in your housing situation.

Tip:
If you believe that you have a mental disability, have a mental health provider document your disability in writing.

There is no requirement of reasonable accommodation for a current illegal substance abuser or, usually, for someone who the landlord can prove is dangerous to others.

To accommodate a disability, the tenant may ask that the landlord make physical changes in the housing or that the landlord bend the rules. Once a tenant requests a reasonable accommodation, a landlord may either agree to provide it or respond that the request is unreasonable and refuse to make the change.

If your landlord refuses to grant an accommodation, you must show that an accommodation is necessary for you to have an equal opportunity to enjoy and use your housing. You also must show that your landlord refused to make the accommodation.[6] A landlord may not refuse an accommodation request that is reasonable and that will allow you, the disabled tenant, full enjoyment of your home.[7] The concept of "reasonable accommodation" is relatively new and the law is constantly developing. For this reason, it is not always clear what is reasonable. You are not limited to a set list of accommodations when making your request..

Ask for the accommodation that you think will best help you. If you are not sure whether you are entitled to a particular accommodation, request it anyway. Just because a certain accommodation has not been granted before doesn't mean that it should not be granted for you.

B. When may landlords refuse to grant a request for an accommodation?

Landlords may refuse to grant tenants' accommodations in certain situations.

Fundamental alteration or undue burden

A landlord may refuse to grant an accommodation if it is unreasonable. An accommodation is considered reasonable unless it constitutes a "fundamental alteration" to the property or would cost the landlord too much (cause an "undue financial [or] administrative burden").[8] A fundamental alteration is interpreted as a significant modification, elimination of or addition to a landlord's property or tenancy rules. In determining whether an accommodation is reasonable, a court may consider the accommodation's "functional and administrative aspects," as well as its costs.[9] The reasonableness of an accommodation is fact-specific and subject to a case-by-case determination.[10]

Direct threat

A landlord may also refuse to grant an accommodation when an individual's "tenancy would constitute a direct threat to the health and safety of other individuals or ... would result in substantial physical damage to the property of others."[11] Therefore, if there is no reasonable expectation that an accommodation will protect other residents from the direct threat posed by the tenant, an accommodation will not be required.

There is no clear-cut way to determine what kinds of behavior will ultimately constitute a "direct threat." Courts require particularized proof of dangerous behavior based on objective evidence before the "direct threat" exemption can be used.[12] One court found that one tenant's nudity in front of residents, failure to close a security door, verbal attacks on others, and placement of misogynistic signs in his window all amounted to directly threatening behavior.[13]

C. Examples of reasonable accommodations

Accommodation to allow an animal in a home

An accommodation to a tenant who needs to keep an animal in the apartment to help cope with a disability might be an exemption to a "no pet" rule. In state public housing, if you need an animal for a disability-related reason, you do not need permission from the housing authority to keep it in your apartment, as long as you keep it in a safe and sanitary manner.[14] A federal housing provider cannot use a "no pet" policy to prevent you from keeping an animal if it "may be necessary" to give you an equal opportunity to enjoy your home.[15] A landlord in private housing has to waive the "no pet" policy and allow the animal as a reasonable accommodation unless the landlord is an owner with no more than four units and lives in the building or house that is being rented.[16] You will have to demonstrate your need for the animal, preferably with letters from a mental health provider.[17]

Accommodation to address a sensitivity to noise

An accommodation for a tenant whose disability makes him or her sensitive to noise might include modifications to your apartment, such as soundproofing, carpeting, ceiling panels or doorsills.

Accommodation to address noisy behavior due to disability

An accommodation for a tenant who disrupts others with noisy behavior due to a disability might be to install soundproofing or to move the tenant to a unit without many neighbors.

An Accommodation to address hoarding or other unsanitary conditions

An accommodation for a tenant who has a hoarding problem might be to forebear an eviction and allow for the tenant to verify that his/her clutter behavior is associated with his/her mental disability. Once it is verified that the behavior is associated with a disability, it may be possible to request that the landlord or housing provider make extra storage facilities (space) available on the premises.[18]

Similarly, an accommodation for a tenant who cannot keep his apartment clean might be to stop eviction proceedings if the tenant or the tenant's care providers are able to get home housekeeping assistance. You should speak with your clinicians, housing support staff, case manager or other providers for help in finding and paying for this service.[19] Such assistance may be available through agencies such as the Massachusetts Rehabilitation Commission, and MassHealth. You could also consider getting a personal care attendant,[20] or an elder service agency (if you are over age 60). You could also consider paying out of pocket for a cleaning service.

Accommodation to address destruction of property

An accommodation for a tenant who has a history of destroying building property might be that the landlord will agree to allow the tenant to remain in the apartment if he agrees to seek treatment to address these behaviors.

Chapter 3: Procedure for Obtaining Reasonable Accommodations

A. How do I ask my landlord for a reasonable accommodation?

You must request the accommodation from your landlord. If you do not ask for an accommodation, the landlord does not have to provide it. Although you have the right to request a reasonable accommodation by speaking with your landlord, it is better to request one in writing, by letter or on a specific form or application. Be sure to date your letter and keep a copy. You may have someone else request a reasonable accommodation on your behalf.

After your first communication, your housing management should inform you if they prefer that you use a particular form. A sample request letter is included in this guide.

The landlord may require you to provide a letter from your mental health provider describing your disability and your need for the accommodation.[21] You do not need to disclose the details of the disability or provide a detailed medical history. Your mental health provider or a non-medical disability service provider should only give your landlord the documentation necessary to explain why you need a reasonable accommodation. This information must be kept confidential by your landlord and only shared if it relates to the completion of your reasonable accommodation request.

Your landlord should respond to your request in a reasonable amount of time, and should give you an idea of this time period upon your request.

B. If I live in public or subsidized housing, how do I request an accommodation?

If you live in public or federally subsidized housing, your landlord or property manager can give you information about requesting a reasonable accommodation. If you live in public housing, your landlord is the housing authority. If you live in privately owned subsidized housing, your landlord should help you or put you in contact with the housing authority that pays your subsidy. All requests should be made in writing, and you should keep a copy of your written request.

If I live in private housing, how do I request a reasonable accommodation?

You also have the right to a reasonable accommodation in private housing, unless your apartment is in a two-family building and your landlord lives in the other apartment.[22] You may still request a reasonable accommodation when you live in an owner-occupied two family, but your landlord does not legally have to consider your request.

State law protects your right to a reasonable accommodation if your landlord does not live in your building, or if your building has three or more rental units.[23] Federal law protects your right to a reasonable accommodation if your landlord does not live in your building or if your building has four or more units.[24] If your housing qualifies under these laws, you should ask your landlord for a reasonable accommodation in the way described on page 9 of this guide. The sample letter can help you draft a letter to give to your landlord in person or by mail. The failure of your landlord to act within a reasonable amount of time may be considered a refusal to consider your request.[25]

Tip:
Ask a person you trust to help you fill out forms, write letters, and track the progress of your request. It is a good idea for both you and the person helping you to keep copies of these papers in a safe place.

Chapter 4: Sample Letter to Request a Reasonable Accommodation

REQUEST FOR REASONABLE ACCOMMODATION,[26]
NAME: _____
ADDRESS: _____
PHONE: _____

Examples of information that may need to be included in your letter:
I am a person with a disability as defined by one or more of the following: ***A physical or mental impairment that substantially limits one or more life activities; or a record of having such an impairment; or is regarded as having such an impairment.***
**If I am not the person with a disability, the following member of my household has a disability as defined above:
Name: _____
Relationship to you (e.g. child, parent):
_____

As a result of this disability, I am requesting the following reasonable accommodation for my household:

A change in my apartment/unit or other part of the housing development.
Specifically:
_____

A change in the following rule, policy/procedure or voucher policy.
Specifically:
_____

Other:
_____

This request for reasonable accommodation is necessary so that I can:
_____

I will verify that I have or someone in my household has a disability and we have the need for the reasonable accommodation I have requested. In order to verify this information, I will upon request provide documentation from a physician, psychiatrist, licensed psychologist, licensed nurse practitioner, licensed social worker, rehabilitation professional, or non-medical service agency whose function is to provide services to the disabled, or other expert in the field of: _____.

Name:_____
Title of professional or expert:
_____
Agency/Clinic/Facility:
_____
Address: _____
Telephone: _____
Fax: _____

This information must be kept completely confidential and used solely to make a determination on my reasonable accommodation request.
Please reply as promptly as possible regarding a determination of this request. I may be in telephone contact to follow up on this request.

Thank you,
Signed: _____
[Head of household or authorized representative]**
Date: _____
Witness: _____
Date: _____

**If on behalf of a minor child, please indicate whether you are the parent or guardian. Where the individual with the disability is over 18 and is not the head of household, s/he should sign the authorization for verification.

Chapter 5: Paying for Reasonable Accommodations & Modifications

A. How do I determine who pays for a modification?

Depending on the type of building you live in, your landlord may or may not be required to pay for the modification. In public and subsidized housing, or in private buildings with 10 or more apartments, the landlord is required to pay for modifications (physical changes) that cost money, unless the modification presents an undue hardship for the landlord.[27] In private buildings with fewer than 10 apartments, landlords are not required to pay.[28] Even if the landlord is not required to pay, he or she must still allow you to make reasonable modifications if you can pay for them yourself.[29]

If you live in a publicly assisted building or a private complex with 10 or more units, the housing provider cannot make you pay extra fees or provide more deposit money as a condition of receiving a reasonable accommodation.

B. If I receive rental assistance through Section 8, do I have to pay for my reasonable modification?

If you receive rental assistance such as Section 8 Housing Choice Voucher Program (HCVP), the Massachusetts Rental Voucher Program (MRVP), or the Alternative Housing Voucher Program (AHVP), you do live in publicly-assisted housing. In public or subsidized housing and in buildings with 10 or more apartments, the landlord must pay for reasonable physical modifications.[30]

C. If I live in a private apartment complex with fewer than ten units, do I have to pay for a reasonable modification?

Probably. Although the landlord is not required to pay for the modification, you should still ask the landlord to cover some or all of the cost. You also can try to make arrangements to pay over time. In this situation, the landlord may require an agreement to restore the apartment when you move out.[31] However, you do not have to remove modifications that do not interfere with the next tenant's ability to enjoy the unit.[32]

MassHousing in Boston or your local independent living center may be able to provide financial assistance to tenants in need of funding for reasonable modifications.

Chapter 6: Reasonable Accommodation & Eviction

A. Can asking my landlord for a reasonable accommodation help me avoid eviction?

Oftentimes, yes. A landlord may not be able to evict you for a behavior caused by your disability, even if he or she could evict a tenant without a disability for the same reason.[33] An exception exists if your building has one or two rental units and your landlord lives in the building.[34] Therefore, asking for a reasonable accommodation can be an extra level of protection. However, if a judge in an eviction case determines that the requested accommodation is unreasonable, then the judge may still issue the eviction order.

B. Can a reasonable accommodation request suspend my eviction process?

Yes. Until a landlord has investigated whether a reasonable accommodation can help your situation, he or she usually cannot evict you.[35]

Even if your landlord has legitimate reasons for evicting you, requesting a reasonable accommodation can help you delay and/or avoid eviction by engaging in a process to determine whether, with an accommodation, you could stay in your home. This is what lawyers call using an "affirmative defense," that is, admitting the allegations against you but offering legitimate reasons to excuse eviction.[36]

C. Is it too late to ask for a reasonable accommodation if my landlord threatens eviction or serves me with a Notice to Quit?

No. If you are threatened with eviction or served with a notice that the landlord intends to terminate the tenancy, called a Notice to Quit, and haven't already asked for a reasonable accommodation, now is the time to ask for one. The sooner in the eviction process you make an accommodation request, the better. If you wait until you get to court to make such a request, judges are not likely to look favorably on such a defense.[37] All landlords must comply with procedural standards if they want to evict you. If you don't ask for a reasonable accommodation during this process, you risk losing your opportunity to do so.

D. Can my landlord still evict me even if I make a request for a reasonable accommodation?

Your landlord may evict you if you are currently using or selling illegal drugs.[38] You may lose your eviction case if your landlord can show that your reasonable accommodation request would cause an "undue burden."

E. What should I do if my request for a reasonable accommodation is denied?

If you have requested a reasonable accommodation and the landlord has refused to make the change, you can file a complaint.

The U.S. Department of Housing and Urban Development (HUD) enforces reasonable accommodation claims and helps ensure that you are not a victim of discrimination. You can file a complaint with HUD through the local or national HUD office by phone or in writing. You have one year from the date of the landlord's refusal to file a complaint with HUD. However, you have only 180 days to file a Section 504 or Americans with Disabilities Act (ADA) claim with HUD.[39]

You also can file with a state or local fair housing or human rights agency, such as the Massachusetts Commission Against Discrimination (MCAD). You have one year from the date of the landlord's refusal to file a claim with MCAD.[40]

Tenants also have the right to file a complaint in federal district court under the Fair Housing Amendment Act. You have two years from the date of the refusal to file such a complaint.[41]

Chapter 7: Additional Rights & Responsibilities of Tenants Who Live in Certain Federally Funded Housing Programs

In 1987, Congress created a number of federal housing programs, known as McKinney-Vento programs, to help homeless individuals with disabilities to learn to live independently. This guide discusses three of these programs, all of which serve people with mental illness: the Shelter Plus Care program, the Supportive Housing program, and the Safe Havens program. These programs give participants special rights and responsibilities, which are spelled out in federal law, regulations and HUD guidelines. This section describes those rights and responsibilities.

A. Shelter Plus Care program

What is Shelter Plus Care?

Shelter Plus Care is a program of the federal government to assist homeless individuals with disabilities to obtain and keep housing. The program does this by funding both your housing and support services designed to help you to remain in that residence. The rights and responsibilities of participants in the Shelter Plus Care program are described in federal statute,[42] federal regulation,[43] and in a booklet published by HUD, the federal housing agency.[44] By understanding your special responsibilities as a tenant in this program, you can better avoid potential termination and eviction.

Tip:
You may live in Shelter Plus Care housing, but not be aware that you are part of this program. If you are not sure, ask your landlord or service providers for paperwork to determine if you are a program participant.

Must I accept support services if I participate in Shelter Plus Care?

Yes, a participant in Shelter Plus Care may be required to agree to accept "supportive services provided through the program" as a condition of participation.[45] This requirement should be included in the tenant's occupancy agreement.[46] Programs can seek to terminate individuals from the program (and thereby seek to remove them from their housing) if they fail to meet this requirement.[47] Thus, Shelter Plus Care is an unusual kind of housing in that housing is conditioned on accepting services, typically clinical or therapeutic in nature.

What are supportive services?

The definition of "supportive services" is not very specific.[48] A wide range of activities may be considered supportive services. For example, *any* of the following — medication compliance, remaining drug free, or continued engagement in services — constitute evidence of progress.

What steps should I take if the program says I am not participating adequately in supportive services?

If your program says that you are not participating adequately in supportive services, work with the program to identify services that are appropriate for and acceptable to you. Explain to your program why the services you have already been offered are not acceptable. Try to accept as many services as you believe are appropriate. Ask the program to consider other activities, such as volunteer work and educational or employment pursuits, as supportive services. You can point out that these activities help you maintain your mental health.

What steps should I take if the program tells me they intend to terminate me?

The program may only pursue termination if they have provided you with written notice.[49] This notice must include a clear statement of the reasons for termination.[50] If you have not received written notice, you should tell the program that you are entitled to written notice.

If you have received written notice, you have additional rights. You are entitled (if you make a timely request) to a review of the decision, in which the participant is

given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision.[51] You are also entitled to prompt written notice of the final decision.[52]

What arguments can I make for my participation in supportive services?

There are protections in the law for participants faced with termination. These are some of the arguments that you can make based on those protections.

- You can argue that the activities you are pursuing are "supportive services" because they help you maintain your mental health.
- You can argue that the federal regulation makes clear that termination should be reserved for the worse case situations.[53] Thus, a participant can argue that his or her situation does not require such a drastic response as termination.
- You should review whether the services the program offered to you were individualized and appropriate. HUD requires programs to tailor services to the individual needs of participants. HUD requires that programs develop and then regularly revise each participant's individual service plan. Programs should first develop a short-term service plan during the intake process and later develop a more detailed service plan.[54] If the services offered to you are the same as those offered to other participants, it suggests that they may not be individualized. They may not be right for you. Instead of terminating you, the program should offer you appropriate services.
- You can argue that the Shelter Plus Care program is particularly designed for difficult-to-serve clients. HUD states that Shelter Plus Care should be an individualized, flexible and forgiving program.[55] HUD favors keeping tenants in their housing over termination whenever possible. You can remind your program that HUD encourages programs to keep even difficult-to-serve clients.[56]
- You can argue that instead of termination, a reasonable accommodation should be granted to help you maintain your mental health.
- You can argue that HUD also states that, given the difficult-to-serve population that the Shelter Plus Care program targets, the level of progress may vary by individual and that even small achievements should be taken as signs of success.[57]

Do I have any additional rights during the termination process?

In addition to the rights described above, if you have a lease, you also have the right to summary process prior to an eviction. You may also have a right to the special process provided by the Community Residence Tenancy Law discussed below.[58] In addition, if you are a DMH client, you may be able to challenge termination as a proposed modification to your DMH treatment plan.[59]

B. The Supported Housing program

What is the Supported Housing program?

The Supported Housing program is a program of the federal government that has, as one of its goals, to assist homeless individuals with disabilities to gain and sustain housing.[60] An agency providing residential services must, to the extent practicable, also provide supportive services to the participants.[61] The rights and responsibilities of participants in the Supported Housing program are described in federal statute,[62] federal regulation,[63] and in a HUD publication.[64]

Tip:
You may live in housing funded by the Supported Housing program, but not be aware that you are part of this program. If you are not sure, ask your landlord or service providers for paperwork to determine if you are a program participant.

In what situation may a Supported Housing program terminate me?

Unlike the Shelter Plus Care program, participants with disabilities in the Supported Housing Program don't have to accept supportive services as a condition of remaining in that housing.[65] Nonetheless, a program may terminate you from the Supported Housing Program if you violate program requirements.[66] However, termination should be reserved for the worse case situations.[67]

What steps should I take if the Supported Housing program tells me they intend to terminate me?

The program may only pursue termination if they have provided you with written notice.[68] This notice must include a clear statement of the reasons for termination.[69] If you have not received written notice, you should tell the program that you are entitled to written notice.

If you have received written notice, you have additional rights. You are entitled (if you make a timely request) to a review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision.[70] You are also entitled to prompt written notice of the final decision.[71]

As a defense to termination, you can request a reasonable accommodation for your disability.

Do I have any additional rights during the termination process?

In addition to the rights described above, if you have a lease, you also have the right to summary process prior to an eviction. Further, you may have a right to the special process provided by the community residence tenancy law discussed below.[72] In addition, if you are a DMH client, you may be able to challenge termination as a proposed modification to your DMH treatment plan.[73]

C. The Safe Havens program

What is the Safe Havens program?

The Safe Havens Program provides temporary housing, basic needs (such as food and clothing), and other supports to hard-to-reach homeless individuals with severe mental illness who are on the street and haven't participated in other types of housing – either because they have been unwilling or unable to do so. The goal of the program is to transition participants to permanent housing. A description of the Safe Havens Program can be found in statute[74] and in a HUD publication.[75]

Tip:
You may living in Safe Havens housing, but not be aware that you are part of this program. If you are not sure, ask your housing providers for paperwork to determine if you are a participant.

What special features must a Safe Havens residence have?

To receive Safe Haven funding, a residence must have special features, including the following:

- Program provides 24-hour residence for an unspecified duration.
- Program provides private or semi-private accommodations.
- Participants have access to needed services, but are not required to use them.[76]

What are my housing rights in a Safe Havens residence?

If you are having problems with complying with program requirements as a Safe Havens resident, you have certain rights. The program must carefully craft "an appropriate response when learning of an infraction of a moderate to serious nature."[77] If you have a pattern of rules violations, the program must begin "with the least intrusive, yet safe, intervention and [become] more stringent as the pattern continues."[78]

In what situation may a Safe Havens program terminate me?

Unlike the Shelter Plus Care program, participants in the Safe Havens Program don't have to accept services as a condition of remaining in that housing.[79] However, you may be terminated from a Safe Havens program if you endanger "the safety, welfare, or health of other residents," or if you repeatedly violate a condition of occupancy contained in the rules for the safe haven program.[80] Note that the violation of an occupancy condition must be repeated in order to warrant termination.

What rights do I have if a Safe Havens program tells me they intend to terminate me?

A Safe Havens residence must comply with the termination process described in the section above on Supported Housing Programs.[81] As a participant, you may have additional rights during the termination process if you pay rent. Some Safe Havens do not charge rent, while others charge one third of a resident's income and/or a nominal program service fee.[82] HUD states that your tenancy rights may be greater if you pay rent.[83] However, HUD does not explain when and in what way your rights may be greater if you pay rent. Further, because most existing Safe Havens do not explicitly incorporate tenant rights,[84] you may face difficulty asserting these rights even if you do pay rent. Seek legal assistance at this point.

Chapter 8: Introduction to the Eviction Process

A. What do I do if I am facing eviction?

You should take the following steps:

- Get legal help as soon as possible.
- If you have a lease agreement, a document that details the terms of your tenancy, locate a copy and become familiar with its terms. (If you live in private housing, you may be a tenant at will and not have a lease agreement.)
- Know what type of tenancy you have. Your rights during the eviction process may vary depending on your type of tenancy[85] and whether you live in public or private housing.
- Appear at all scheduled court dates. You do not have to move out without a judge's order,[86] but if you remain in your home, you must appear at your court dates.[87]
- If you have a housing subsidy and are being evicted for cause by a landlord, you are at serious risk of having your subsidy terminated (if you lose the eviction), through a subsidy termination hearing at the Housing Authority. Therefore, it is important to take the defense of your eviction seriously. Also, pay careful attention to any documents you are asked to sign when you agree to vacate your apartment.
- Keep a copy of your lease and a journal of everything that happens during this process, and keep it in a safe place. If you should have to go to court, having copies of documents and a dated journal of events will help your case.

B. What is the difference between an eviction for fault and an eviction for no cause?

There are two types of evictions, fault and no cause. Your Notice to Quit will often state explicitly whether your eviction is for fault or not. The reasons given for your eviction will help you tell.

- In a **fault** eviction, the landlord must present evidence of failure to pay rent or misconduct by the tenant or a household member that violates the lease. To fight the eviction, you must disprove the landlord's allegations in court. For example, if the landlord says that he is evicting you for being too loud, he must prove that you were loud. You would then try to present evidence that you were not loud.
- In a **no-cause** eviction, the landlord does not need a reason to evict a tenant. A landlord cannot evict a tenant with a lease for no cause during the term of the lease.

Tip:

You cannot lose your subsidy (like a Section 8) in a no fault eviction case, because there is no claim by the landlord that you have violated your lease. However, you may lose your subsidy if the court says that you have seriously violated your lease. It is important to defend your case if you have a subsidy at stake.

C. What can't a landlord evict me for?

To protect yourself against an improper eviction, it is important for you to know what a landlord cannot evict you for:

- A landlord cannot evict you for having a mental disability. In Massachusetts, it is illegal for your landlord to evict you on the basis of your race, color, religion, national origin, sex, or sexual orientation.[88]
- A landlord cannot evict you for receiving a rent subsidy or welfare payment.[89] Of course, you must still pay your rent.
- A landlord cannot evict you for being an alcoholic. A person suffering from alcoholism cannot be evicted solely on that basis, unless behavior associated with alcohol use violates the terms of your lease. You are protected under both state and federal anti-discrimination laws if you are substantially limited in one or more major life activities as a result of your alcoholism.[90] However, under federal law you will not be protected against discrimination if your alcoholism would constitute a direct threat to the health or safety of other tenants.[91]
- A landlord cannot evict you simply for being addicted to illegal drugs, but you may be evicted for possession, sale, or manufacturing of illegal drugs. The landlord may use summary process or nuisance law to evict you.[92] See below for more information.
- A landlord should not be able to evict you if you withhold your rent to force your landlord's compliance with state and federal laws, such as Housing Code requirements. The Housing Code, also known as the State Sanitary Code, prohibits such problems as crumbling ceilings, holes in walls, leaky plumbing, and lack of utilities. (For an easy-to-use checklist that tells you what the minimum legal requirements for rental housing are under the State Sanitary Code, see http://www.masslegalhelp.org/cat/1822.) You should be very clear there is a provable violation and first notify the landlord, preferably in writing (and keep a copy). Once your landlord complies with the law, you may owe some portion or all of your rent. For this reason,

be sure to set aside your full withheld rent until the court decides how much you owe.

- A landlord cannot evict you simply because you requested a reasonable accommodation or modification for your disability.

Tips:

If you haven't recertified for Section 8, you may still have time to recertify before your landlord can evict you. You should receive a failure to recertify notice and a pre-termination notice before your landlord may start the eviction process.

If you are being evicted for refusal to recertify, but have become able to pay full market rent, you should obtain the assistance of an attorney because certain circumstances may create the requirement of recertification.

D. Can I be evicted for drug or alcohol abuse?

If you are a tenant in subsidized housing, you can be evicted and lose housing assistance if you currently use illegal drugs or if your habitual alcohol use causes you to fail to meet your tenancy obligations. For example, a landlord could pursue eviction should you fail to pay rent or threaten your neighbors.[93]

- For the purposes of public or private subsidized housing, neither current addiction to drugs nor current abuse of alcohol counts as a mental disability.[94] However, addiction to alcohol or illegal drugs does fall under the general category of a disability, so long as any actual use of illegal drugs has ceased.[95] In addition, enrollment in a drug rehabilitation program can be evidence of a disability, as long as you have discontinued illegal drug use.[96]

- If you have used illegal drugs in the past but no longer do so, you can still gain the protection of anti-discrimination statutes. In order to secure housing assistance, you must show that:
  1. You are not currently using illegal drugs; <u>and</u>
  2. You are engaged in or have successfully completed a supervised rehabilitation program.[97]

- The standard for what qualifies as "current" use of illegal drugs depends on your housing situation. If you are living in state public housing, you are presumed to be a current user if you have taken illegal drugs in the past 12 months, unless you can make a "convincing showing" otherwise.[98] However, if your housing has been provided through a substance abuse treatment program, your current drug use cannot be grounds for eviction. If you are living in federal subsidized housing, you are considered to be a current user if "illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."[99]
- The definition of "illegal drug use" includes not only use, but also any illegal drug related activity, such as the manufacture of illegal drugs or the possession of illegal drugs with the intent to distribute.[100]

E. Can I be evicted for other behavior?

Certain behaviors may be grounds for eviction. If a tenant is allegedly engaging in dangerous behavior that poses an immediate threat to the health or safety of others, he or she may be brought to court without getting a notice to quit first.[101] Subsidized housing providers may try to use this expedited process when drug activity is occurring in the unit.[102] In these cases, the provider may ask for an immediate hearing on a request for an injunction to get the tenant out immediately without going through summary process.[103] The tenant will still be given the chance for a court hearing.

F. What are my rights regarding eviction if I live in private housing?

If you live in private housing and you have a lease agreement, you signed a lease to rent a particular apartment for a specified period of time. If you don't have a copy of your lease and you live in private housing, ask your landlord for a copy of your lease. Under this tenancy, the landlord cannot attempt to evict you before the end of your lease, unless he can prove you have violated your lease agreement.[104] You cannot be evicted unless you are not paying rent, you are in violation of your lease, or you are engaging in illegal behavior.[105]

If you live in private housing and you do not have a lease agreement, you are a Tenant at Will. You have rented an apartment without a lease, but you pay rent periodically (typically monthly).[106] The agreement for the tenancy-at-will may be either written or verbal.[107] Either you or your landlord may terminate this arrangement at any time by giving written notice to the other party 30 days, or one full rental period, in advance, whichever is longer.[108] Your landlord does not need a reason for the termination.

G. What are my rights regarding eviction if I live in public housing?

You have the following additional rights in public housing:

- To end your lease, the housing authority must have "good cause." Your lease will state the terms by which your tenancy can be terminated.

- Federal law allows a housing authority to terminate a public housing tenancy if you commit a serious or repeated violation of the lease.[109]

Tip:

If you have lost or misplaced your lease and you live in public housing, then you may request a copy of your lease agreement either from the management office of your housing complex or your housing authority office.

- If a housing authority seeks to evict you from public housing, you usually have a right to a grievance hearing, a process to resolve disputes without having to go to court.[110] The authority must have a written grievance procedure detailing this process. Your rights may also be outlined in your lease. Depending on the reason for your eviction, you may be able to use this procedure to oppose the eviction. The housing authority must notify you of your rights regarding this procedure in writing, and must include the deadline by which you must file a grievance.[111]

Tip:

The grievance processes for state and federal public housing are similar, but there are some important differences. To find out exactly what steps you need to take, review your procedure and your lease.

H. What are my rights if I live in DMH-affiliated community residence?

If you live in a community residence that is operated by, contracted by, or licensed by DMH, a Massachusetts statute called the Community Residence Tenancy Law protects you from eviction by requiring that landlords follow a process prior to removing a person from the residence.[112] Typically, the Community Residence Tenancy Law's new hearing process has been applied to situations of individuals living in DMH-licensed group homes. The process states that:

- The housing provider must give DMH and the occupant written notice of the proposed eviction including the reasons and facts. The occupant has a right to a hearing and representation, as well as the right to review his/her file.[113]
- If the occupant requests a hearing, DMH must conduct a hearing four to fourteen days after DMH receives notice (unless a later date is agreed upon). Each side may present evidence, examine adverse evidence, and examine witnesses.[114]
- The provider must prove either that the occupant violated an important provision of the written occupancy agreement or is likely, despite reasonable accommodations, to impair the emotional or physical well being of other occupants, staff, or neighbors. Violations of house rules not rising to the above levels are not grounds for eviction.[115]
- The occupant and provider have the right to appeal to the Superior Court and find an attorney to handle the appeal.[116]
- If the occupant loses and would otherwise be homeless, DMH must assist the client to find alternative housing in the least restrictive setting that is appropriate and available.[117]

I. Might I have an additional right to summary process if I live in a DMH-affiliated community residence?

Some residents of these types of housing also are entitled to summary process, the formal name for the eviction procedure in Massachusetts.[118] You are entitled to summary process if you:

- are a housing occupant who is a client in a program of residential care and services;
- receive, from the program, care and services in a housing unit equipped with a kitchen and bathroom; <u>and</u>
- occupy the unit either alone or with your family, as defined in the regulations of the department.[119]

J. What happens after my Notice to Quit expires?

After the expiration date on the Notice to Quit, which will vary depending on the type of Notice you received, the landlord can begin a proceeding called a "Summary Process Action." The landlord may now send you a Summons and Complaint, which is one form that tells you what day to appear in court. Your court date will be at least two weeks (and usually more) from the day you were sent this form. The Summons and Complaint will restate the reason for the eviction

and how much, if any, rent your landlord says you owe.

The Summons must be delivered to you by a sheriff or a constable who is authorized by law to serve court papers. The Summons also will give you the date by which your Answer, a written response to the Complaint, must be filed at the courthouse.[120]

When you receive a Summons and Complaint, the hearing date will always be on a Thursday. The Monday before that Thursday is the deadline for filing an Answer and Discovery request. There are a number of eviction court forms that you can find online at http://www.masslegalhelp.org/cat/1822 to assist you in this process. Among other information about the eviction process, this website has the following forms: Answer, Discovery Requests, Transfer Form, Motion to Remove Default Judgment, Appeal Forms, Motion for Stay, and Affidavit of Indigency (if you cannot afford court costs).

Tip:
You may raise claims of your own against the landlord, such as failure to make repairs or handle your security deposit correctly. If you win on your claims and you owe no rent, you win the case. Or, if the landlord did something wrong in the papers, such as having you served with the complaint before the Notice to Quit ran out, you may ask to have the case dismissed.

Chapter 9: Going to Court for an Eviction Proceeding

A. What should I do if I get notice of a court date?

If you have received notice about a court date, you should try to find a lawyer. If you cannot obtain a lawyer, find someone you trust to go with you to court for advocacy help or for the company. Even if you cannot find anyone to go with you, be sure to go to court on the scheduled dates or you will be defaulted and lose your case. If your case is set in District or Superior Court, you should immediately file for a transfer to the nearby housing court (see below for the information.)

B. Which courts hear housing cases?

There are two kinds of courts in Massachusetts that review housing cases. One is called Housing Court, which specializes in matters related to landlord-tenant disputes. Not every jurisdiction or area has a Housing Court. The other courts are called District Court and Superior Court, which are general courts that hear all kinds of matters, and therefore their judges have no particular expertise in housing law.

C. May I transfer my case to a housing court?

You have the right to transfer your case from District or Superior Court to Housing Court in any community that has one. There are Housing Courts in Boston and the counties of Worcester, Hampden, Hampshire, Franklin, Berkshire, Essex, Bristol and Plymouth. To transfer your case, go to the Civil Clerk's Office at the District or Superior Court at least two days before your hearing and file a Transfer Form. You can also find this form online at http://www.masslegalhelp.org/cat/1822. Fill out the form, turn it in, keep one copy, and send a copy to your landlord (or the landlord's attorney). Your hearing will be postponed until it is rescheduled in Housing Court.

It is a good idea to transfer your case to Housing Court. First, Housing Courts are more familiar with the eviction process and the rights of tenants. Second, many Housing Courts in Massachusetts have a program called the Tenancy Preservation Program (TPP) to provide clinical expertise to the court to resolve lease violations.

D. How can the Tenancy Preservation Program help me?

TPP clinicians work with individuals and families where a disability is present. Clinicians assess whether the reasons for the eviction are related to a disability and they identify the services needed and develop a treatment plan to maintain a tenancy. The staff also guides tenants through the court proceedings and help craft solutions to avoid eviction. If eviction cannot be avoided, TPP often can help tenants find new housing.

Individuals may be referred to TPP at several points during the eviction process. First, individuals may be referred, prior to court involvement, at the notice to quit and summary process complaint stage. Usually a housing provider or advocate makes the referral at that stage. Second, when the tenant goes to housing court for trial, the court staff may refer the tenant. Third, courts may refer tenants who are on the verge of physical eviction (after receiving a 48-hour notice from the sheriff's office). If the tenant goes to court to stop the process, the court could ask TPP to become involved at this late stage.[121]

CONTACTS

State Agencies

Department of Mental Health (DMH)
Central Office
25 Staniford Street
Boston, MA 02114
617-626-8000; TTY: 617-727-9842

Central Massachusetts Area
Worcester State Hospital, 305 Belmont Street
Worcester, MA 01604
508-368-3838; TTY: 508-752-0127

Metro Boston Area
85 East Newton Street
Boston, MA 02118
617-626-9200; TTY: 617-626-9257

Metro Suburban Area
Westborough State Hospital
P.O. Box 288 - Lyman Street
Westborough, MA 01581
508-616-3500; TTY: 508-616-3533

Northeast Massachusetts Area
P.O. Box 387
Tewksbury, MA 01876-0387
978-863-5000; TTY: 978-640-1193

Southeastern Massachusetts Area
165 Quincy Street
Brockton, MA 02302
508-897-2000; TTY: 508-897-2224

Western Massachusetts Area
P.O. Box 389
Northampton, MA 01061-0389
413-587-6200; TTY: 413-586-6592

DMH offers mental health services to individuals across Massachusetts who have been found to meet eligibility criteria. For example, DMH offers training in financial skills as part of an individual service plan. Additionally, the DMH homeless outreach program (617-626-8810) sends a team out to do site work with homeless mentally ill persons in Boston. See www.mass.gov/dmh.

Bureau of Substance Abuse Services, Department of Public Health (DPH)
250 Washington Street, 3rd Floor, Boston, MA 02108
Massachusetts Substance Abuse Information and Education help line:
1-800-327-5050
www.mass.gov/dph/bsas/bsas.htm
The Bureau of Substance Abuse Services oversees the substance abuse prevention and treatment services in the Commonwealth. Responsibilities include: licensing programs and counselors; providing access to treatment for the indigent and uninsured; developing and implementing policies and programs; and tracking substance abuse trends in the state.

Housing Discrimination Agencies

MassHousing or the Massachusetts Housing Finance Agency (MHFA)
One Beacon Street, Boston, MA 02108
617-854-1000
www.masshousing.com
Can provide financial assistance to tenants in need of reasonable accommodation funding. MassHousing provides low interest loans and technical assistance to home and rental owners to make their residences accessible. MassHousing also sponsors Mass Access, an online registry of affordable accessible housing. The number for Mass Access is 617-742-0820.

Massachusetts Department of Housing & Community Development (DHCD)
Room 1804, 100 Cambridge Street, Boston, MA 02202
617-727-7765
www.mass.gov/dhcd
DHCD can assist you in requesting a reasonable accommodation and pursuing a complaint of discrimination. The DHCD Heat Line (1-800-632-8175) provides funds to help low income people with heating costs.
See http://www.mass.gov/dhcd.

Tenancy Preservation Program (TPP)
TPP is a resource available to housing court judges in Massachusetts. TPP now covers many areas of the state. For information on teh web, see www.masshousing.com and click the "business partners" tab and then click "special initiatives" in the left box. Contact information is also below:

Berkshire County: 413-443-7138, ext. 11
Boston: 617-371-3000
Hampden, Hampshire & Franklin Counties: 413-233-5321
Northeast: 781-388-6291
Southeast: 508-427-6448, ext. 15
Worcester County: 508-860-1057

Massachusetts Commission Against Discrimination (MCAD)
1 Ashburton Place, Room 601
Boston, MA 02108
617-994-6000
TTY: 617-994-9196
www.mass.gov/mcad
MCAD is a state agency that accepts and investigates complaints of disability discrimination. You may contact MCAD if your landlord denies your request for a reasonable accommodation and you think you may have been discriminated against.

Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000
1-800-669-9777
TTY: 1-800-927-9275
www.hud.gov
Local Office:
10 Causeway Street, 3rd Floor
Boston, MA 02222-1092
617-994-8200
Fax: 617-565-6558
TTY: 617-565-5453

HUD is the federal housing agency. It offers information on your rights and responsibilities under federal law, as well as details on federal renting assistance, vouchers, and veteran programs. HUD's Office of Fair Housing and Equal Opportunity investigates complaints of disability discrimination. You may file a complaint with the Office of Fair Housing and Equal Opportunity by phone or in writing if your landlord denies your request for a reasonable accommodation and you think you may have been discriminated against. A complaint form is available on the HUD web site at www.hud.gov/complaints/housediscrim.cfm and clicking on online form.

National Resource and Training Center on Homelessness and Mental Illness
7500 Old Georgetown Road, 9th Floor, Bethesda, MD 20814
1-800-444-7415
www.nrchmi.samhsa.gov
A resource center that refers people to their local services, and provides information on successful programs that link mental health and housing services.

Legal Services Agencies

Legal Advocacy & Resource Hotline (LARC)
197 Friend Street, Boston, MA 02114
617-603-1700
1-800-342-LAWS
www.larcma.org
Intake hours: 9:00 a.m. -3:00 p.m. Mon., Tues., Thurs., Fri., and 9:00 a.m.- 12:30 p.m. Wed.
LARC provides telephone information and advice, pro se assistance and referrals on civil law issues including housing, domestic relations, employment, consumer, debt, public benefits, health, trust and estates and bankruptcy issues. LARC also provides intake and referral services for Greater Boston Legal Services, Cambridge/Somerville Legal Services, and the Volunteer Lawyers Project and will refer to other legal services offices depending on location.

Disability Law Center (DLC)
11 Beacon Street, Suite 925
Boston, MA 02108
617-723-8455 or 800-872-9992
www.dlc-ma.org
DLC is a non-profit agency charged by the federal government with protecting the rights of individuals with mental and physical disabilities.

Mental Health Legal Advisors Committee
399 Washington Street, 4th floor
Boston, MA 02108
617-338-2345 or 800-342-9092
www.mass.gov/mhlac
MHLAC is a state agency charged with advocating for and advising on the legal rights of individuals with mental illness.

Housing Discrimination Project
57 Suffolk Street, Holyoke, MA 01040
800-675-7309 or 413-539-9796
email: hdp@the-spa.com
The Housing Discrimination Project is a private non-profit fair housing organization serving western MA that: enforces civil rights laws in housing; educates tenants, landlords and community groups in fair housing practices; and assists people who have experienced discrimination in housing. They refer evictions to the Massachusetts Justice Project. They do not handle evictions.

Legal Assistance Corporation of Central Mass. (LACCM)
405 Main Street
Worcester, MA 01608
508-752-3718
www.laccm.org
LACCM is a legal services agency that has a fair housing testing and enforcement project.

Consumer Organizations

Massachusetts Independent Living Centers
Independent Living Centers are consumer controlled, community based services and advocacy organization that provide independent living services to people with all types of disabilities. Independent Living Centers provide help to secure consumer civil rights, increase access to and opportunities for housing, transportation, personal care, and participation in education, employment, and various community activities. A list of the Massachusetts Independent Living Centers can be found at http://www.masilc.org/docs/addresses.html.

Clubhouse Housing Support Programs
Clubhouse Housing Support Programs, funded by DMH, provide housing support services to clubhouse members. (Clubhouses are non-profit agencies located across the state that serve people in need of mental health services through the provision of a range of services). Individuals who are not already members of a clubhouse can pursue membership after completing the Clubhouse Housing Support Program intake process. The Clubhouse Housing Support Project is currently operating in six of the state's clubhouses, each located in a different part of the state: Baybridge in Hyannis (508-778-4234), Center Club in Boston (617-788-1000), Elm Brook Place in Bedford (781-687-9270), Lighthouse in Springfield (413-736-8974), Point After Club in Lawrence (978-681-7753) and Westwinds in Fitchburg (978-345-1581). More information about these and other Massachusetts clubhouses is available at http://www.maclub.org. More information about the Clubhouse Housing Support Programs in available at http://www.maclub.org/sub/housing.html.

M-POWER
98 Magazine Street
Roxbury, MA 02119
617-442-4111 or 877-769-7693
www.m-power.org
A mental health advocacy group available for general housing support.

Massachusetts Consumer-Operated Projects and Activities (COPA)
www.m-power.org/massachusetts_copa_survey
This website provides a list, by region of the state, of consumer-operated projects. While many are not specifically related to housing, they may nonetheless be sources of support to people with mental health disabilities.

PUBLISHED RESOURCES

Eviction: A Step-by-Step Guide to Advocating for Yourself During the Eviction Process (Massachusetts Coalition for the Homeless 2003). Available at http://www.mahomeless.org/publications/publications.html or by calling the Mass. Coalition for the Homeless at 781-595-7570.

Eviction Court Forms, Massachusetts Legal Help.
Available at http://www.masslegalhelp.org/cat/2024.

Eviction Time Line (Volunteer Lawyers Project 2004).
Available at http://www.vlpnet.org/eviction_time_line.

Understanding Your Lease in Public Housing: A Know Your Rights Guide for Public Housing Tenants in Massachusetts (Massachusetts Law Reform Institute 2004).
Available at http://www.masslegalhelp.org/docs/Leases2005.pdf.

Getting in and Staying in: Common Problems of Disability Discrimination, by Henry Korman (Cambridge and Somerville Legal Services). Available at http://www.vlpnet.org.

A Handbook on Reasonable Accommodation in Housing, by Rob Fields (Fair Housing Project of Neighborhood Legal Services 2004).
Available at http://www.vlpnet.org/
handbook_on_reasonable_accommodation_for_the_disabled_in_housing

Legal Tactics: Finding Public and Suzsidized Housing, eds. Annette R. Duke & Amy Cooperman (Massachusetts Law Reform Institute 2004).
Available at http://www.masslegalhelp.org/cat/239 or by calling Massachusetts Continuing Legal Education at 1-800-966-6253.

Legal Tactics: Tenant's Rights in Massachusetts: Private Housing, ed. Annette R. Duke (Massachusetts Law Reform Institute 2003).
Available at http://www.masslegalhelp.org/cat/1943 or by calling Massachusetts Continuing Legal Education at 1-800-966-6253.

Understanding Your Lease in Public Housing: A Know Your Rights Guide for Public Housing Tenants in Massachusetts (Massachusetts Law Reform Institute 2004).
Available at http://www.masslegalhelp.org/docs/Leases2005.pdf

GLOSSARY

Complaint: The first document the plaintiff files in administrative and court proceedings court stating legal claims against a defendant. Rules surrounding this filing are complicated, so it is helpful to consult with an attorney or other legal resource. Courts charge a filing fee, which can be waived.

Department of Mental Health (DMH): The state agency that provides services to persons with serious mental illness who have applied and been found eligible for services.

Eviction: A process through which a landlord seeks to remove a tenant who has allegedly breached the terms of a lease or rental agreement. For tenants without leases, landlords can bring eviction cases even if the tenant has not done anything wrong. In Massachusetts, only a judge can evict a tenant. Also referred to as **Summary Process**.

Department of Housing and Urban Development (HUD): Federal agency that oversees federal housing administration and provides funding for subsidized housing programs.

Lease: A written agreement between a landlord and tenant permitting the tenant to use a property for a specified amount of time. The terms of a lease usually describe the premises, outline payment information, state penalties for late payments, and may include pet limitations, utility requirements and other tenant liabilities and responsibilities.

Notice to Quit: A written notice from your landlord informing you of the date your tenancy will terminate. You need not leave by the date specified. Only a judge can decide if and when you have to move out. The Notice to Quit is simply the first procedural step in the eviction. In almost all cases, a tenant in Massachusetts must receive a Notice to Quit before an eviction case is filed in court. In rare cases, when the landlord thinks that the rental unit is being used for illegal drug or other criminal activity, a tenant may not get a Notice to Quit, but will still be given the chance for a court hearing before an eviction.

Reasonable Accommodation: Changes a landlord may be required to provide you in order to accommodate your disability. These can include physical changes (called "reasonable modifications") or changes in the terms of your lease.

Representative Payee: A person designated to receive and manage another's Social Security payments. This person is responsible for making sure you have funds for daily expenses. Extra money will be put into savings for you.

Section 8: A program that provides rental assistance to low-income households by directly paying rent to landlords through local public housing authorities. Section 8 payments make up the difference between rent and about 40% of household adjusted gross income. The formal name for the program is the Housing Choice Voucher Program.

Section 8 Recertification: Annual reexamination by the housing authority of the household income and certain deductions and exclusions that you are eligible for in order to calculate rent. If you have a change in income or deductions, your rent will change so that you pay the same percentage of your income for rent. During recertification, recipients must report, among other information, changes in income or family composition.

ENDNOTES

[1] Massachusetts Law Reform Institute, *Understanding Your Lease in Public Housing: A Know Your Rights Guide for Public Housing Tenants in Massachusetts*, <http://www.neighborhoodlaw.org/docs/Leases2005.pdf>at 22-23 (last visited Oct. 18, 2005). This publication has additional information on having guests in public housing.

[2] 760 C.M.R. § 6.06(3)(c).

[3] 24 C.F.R § 982.316; 760 C.M.R § 6.03. For more information on your rights and obligations regarding live in aides, see Massachusetts Law Reform Institute, *supra* note 3.

[4] 42 U.S.C. § 3604(f)(3)(B) [Fair Housing Amendments Act of 1988]; G.L. c. 151B, § 4(7A).

[6] 42 U.S.C. § 12101(2)(A); see also definition of "handicap" in G.L. c. 151B, § 1(17).

[6] *See generally* Southeastern Cnty. Coll. v. Davis, 442 U.S. 397, 412-413 (1979) ("Thus, situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory.").

[7] 42 U.S.C. § 3604(f)(3)(B).

[8] Groner v. Golden Gate Gardens Apts., 250 F.3d 1039, 1044 (2001), *citing* Smith & Lee Assocs., Inc. v. City of Taylor, 102 F.3d 781, 795 (6th Cir. 1996).

[9] Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597, 604 (4th Cir. 1997).

[10] United States v. California Mobile Home Park Mgmt. Co., 29 F.3d 1413, 1418 (9th Cir. 1994).

[11] 42 U.S.C. § 3604(f)(9).

[12] H.R. REP. NO. 711, 100th Cong., 2d Sess. 18, 29, *reprinted* in 1988 U.S. CODE CONG. ADMIN. NEWS 2173.

[13] Arnold Murray Construction, LLC v. Hicks, 621 N.W.2d 171, 173 (S.D. 2001).

[14] 760 C.M.R. §6.03.

[15] 24 C.F.R. § 100.204(b); U.S. Department of Housing and Urban Development, *Public Housing Occupancy Guidebook, § 16.1* (June 2003), available at <http://www.nhlp.org/html/pubhsg/phguidebook.pdf> (last visited Oct. 18, 2005).

[16] HUD, *Fair Housing – it's Your Right*, available at http://www.hud.gov/offices/fheo/FHLaws yourrights.cfm.

[17] *See, e.g.*, 24 C.F.R. §§ 5.303 (a)(1)(ii), (iii) (federal housing).

[18] Rob Fields, *A Handbook on Reasonable Accommodation in Housing* (The Fair Housing Project of Neighborhood Legal Services 2004), available at <http://www.vlpnet.org/handbook_on_reasonable_accommodation_for_the_disabled_in_housing>

(last visited Nov. 1, 2005).

[19] *See* Douglas v. Kriegsfeld Corp, 2005 WL 2600210 (D.C. 2005).

[20] For Personal Care Worker eligibility criteria, see 130 C.M.R. §403.423.

[21] Bazelon Center for Mental Health Law, *Fair Housing Information Sheet #6: Right to Emotional Support Animals in "No Pet" Housing*, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html> (last visited Oct. 17, 2005).

[22] G.L. c. 151B, § 4(7)(c).

[23] Fields, *supra* n. 19.

[24] 42 U.S.C. § 3604(f)(7)(A).

[25] The Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf> at 11 (last visited May 17, 2005).

[26] The sample form was adapted from the Boston Housing Authority, Request Form Alternative Format, *available at* <http://www.bostonhousing.org/pdfs/OCC2003_RA_request.pdf>

[27] G.L. c. 151B, § 4(7A)(1), (3).

[28] G.L. c. 151B, § 4(7A)(1), (3).

[29] 24 C.F.R. § 100.203(a); G.L. c. 151B, § 4(7A)(1).

[30] *See* G.L. c. 151B, §4(7A)(3). Examples of reasonable accommodations include, making housing accessible to mobility-impaired, hearing-impaired and sight-impaired persons, widening a doorway, installing a grab bar, and installing a door-bell that flashes.

[31] G.L. c. 151B, § 4(7A)(1); 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203(a).

[32] 24 C.F.R. § 100.203(c).

[33] 42 U.S.C. § 3604(f)(1) [Fair Housing Amendments Act of 1988]; G.L. c. 151B.

[34] G.L. c. 151B §4(7).

[35] 42 U.S.C. § 3604(f)(1) [Fair Housing Amendments Act of 1988]; G.L. c. 151B.

[36] Bazelon Center for Mental Health, Fair Housing Information Sheet # 4: Using Reasonable Accommodations to Prevent Eviction, <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet4.html> (last visited Oct. 17, 2005).

[37] Andover Housing Authority v. Shkolnik, 820 N.E.2d 815 (Mass. 2005).

[38] 42 U.S.C. § 3602(h).

[39] 24 C.F.R. §§ 8.56(c)(3),

[40] MCAD, Frequently Asked Questions, available at <http://www.mass.gov/mcad/faq2.html#filing> (last visited Oct. 26, 2005).

[41] 42 U.S.C. § 3613(1)(a).

[42] 42 U.S.C. §§ 11403 – 11407.

[43] 24 C.F.R. § 582.

[44] HUD, *Enhancing Shelter Plus Care Operations Booklet* (Feb. 2001), available at <http://www.hud.gov/offices/cpd/homeless/library/spc/shelterplusguide.pdf> (last visited Oct. 20, 2005).

[45] 24 C.F.R. § 582.315(b). Importantly, the statute's attention to the requirement of supportive services imposes the obligation on the grant recipient, not the tenant; the grantee must "assure the adequate provision of supportive services to the participants in the program." 42 U.S.C. § 11403e(3).

[46] *See* 24 C.F.R. § 582.315(b).

[47] 24 C.F.R. § 582.320(a) (The program "may terminate assistance to a participant who violates program requirements or conditions of occupancy"). Importantly, this provision gives the program discretion as to whether or not to pursue termination; there is no obligation to do so. *See also* 42 U.S.C. § 11403f(a) ("If an eligible individual who receives assistance under this part violates program requirements, the recipient may terminate assistance in accordance with the process established pursuant to subsection (b) of this section").

[48] "Supportive services" is defined as assistance that: (A) addresses the special needs of eligible persons; and (B) provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health services, substance and alcohol abuse services, child care services, case management services, counseling supervision, education, job training, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care shall not qualify as a supportive service.
42 U.S.C. §11403g(12).

[49]24 C.F.R. § 582.320(b).

[50] 24 C.F.R. § 582.320(b).

[51] 24 C.F.R. § 582.320(b); *see also* 42 U.S.C. § 11403f(b) ("In terminating assistance under this section, the recipient shall provide a formal process that recognizes the rights of individuals receiving such assistance to due process of law").

[52] 24 C.F.R. § 582.320(b).

[53] HUD, Enhancing Shelter Plus Care Operations Booklet (Feb. 2001) at 4.2: Ensuring Participant Retention through Appropriate Services.

[54] 24 C.F.R. § 582.320(a) (Recipients must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination, so that a participant's assistance is termianted only in the *most severe cases* (emphasis added)).

[55] HUD, *Enhancing Shelter Plus Care Operations Booklet* (Feb. 2001), available at <http://www.hud.gov/offices/cpd/homeless/library/spc/shelterplusguide.pdf> (last visited Oct. 20, 2005).

[56]*HUD, Enhancing Shelter Plus Care Operations Booklet (Feb. 2001)* at § 4: Participant Outreach and Retention Strategies.

[57] *HUD, Enhancing Shelter Plus Care Operations Booklet (Feb. 2001)* at § 5.2: Documenting Client Progress ("Among this very difficult-to-serve population, even the most basic tasks can be a measure of progress and should be viewed as a positive outcome of the program. For many clients, examples of progress include taking medication regularly, remaining drug-free, or continued engagement in services. These should be documented as progress for individual clients.")
[58] G.L. c. 186, § 17A.
[59] 104 C.M.R. § 29.15(2).
[60] 24 C.F.R. § 583.1(b)(2).
[61] 42 U.S.C. § 11385(a).
[62] 42 U.S.C. § 11381 – 11389.
[63] 24 C.F.R. § 583.
[64] HUD, *Supportive Housing Program Desk Guide*, available at http://www.hud.gov/offices/cpd/homeless/library/shp/shpdeskguide/index.cfm. (last visited Oct. 20, 2005).
[65] In fact, the program allows service providers to offer supportive services to homeless persons who are not even residing in program-supported housing. 42 U.S.C. § 11385(d); 24 C.F.R. § 583.1(b)(4).
[66] 42 U.S.C. 11386(j); 24 C.F.R. § 583.300(i).
[67] 24 C.F.R. § 583.300(i) ("Recipients should terminate assistance only in *the most severe cases.*" (Emphasis added))
[68] 24 CFR § 583.300(i).
[69] 24 CFR § 583.300(i).
[70] 24 CFR § 583.300(i).
[71] 24 CFR § 583.300(i).
[72] G.L. c. 186, § 17A.
[73] 104 C.M.R. § 29.15(2).
[74] 42 U.S.C. §§ 11391-11399. While HUD drafted proposed Safe Havens Program rules, they never promulgated them in final form. *See* Supportive Housing Program Proposed Rules, 69 Fed. Reg. 43488 (2004) (to be codified at 24 C.F.R. pt. 583).
[75] HUD, *In from the Cold - Safe Havens for Homeless People*, available at <http://www.hud.gov/offices/cpd/homeless/library/havens/index.cfm> (last visited Oct. 20, 2005).
[76] HUD, Overview of the Supportive Housing Program: Program Components, "Safe Haven Design," <http://www.hud.gov/offices/cpd/homeless/library/shp/understandingshp/components.cfm.> (last visited Nov. 11, 2005).

[77] HUD, Overview of the Supportive Housing Program: Program Components, "Safe Haven Design," available at <http://www.hud.gov/offices/cpd/homeless/library/shp/understandingshp/components.cfm. (last visited Oct. 20, 2005).
[78] HUD, Overview of the Supportive Housing Program: Program Components, "Safe Haven Design," available at <http://www.hud.gov/offices/cpd/homeless/library/shp/understandingshp/components.cfm. (last visited Oct. 20, 2005).
[79] 42 U.S.C. 11394(d)(7) (programs may not require participation in low-demand services and referrals as health care, mental health, substance abuse, and other supportive services and referrals for services in a non-coercive manner").
[80] 42 U.S.C. 11396.
[81] HUD, Overview of the Supportive Housing Program: Program Components, "Safe Haven Design," available at <http://www.hud.gov/offices/cpd/homeless/library/shp/understandingshp/components.cfm.> (last visited Oct. 20, 2005); *see also* Proposed Rules for Supportive Housing Program, 69 Fed. Reg. 43488 (2004), (to be codified at 24 C.F.R. §583.3; 24 C.F.R. §583.325).
[82] HUD, Overview of the Supportive Housing Program: Program Components, "Rights to dignity and respect," available at <http://www.hud.gov/offices/cpd/homeless/library/havens/ch6.pdf.> (last visited Oct. 20, 2005).
[83] HUD, Overview of the Supportive Housing Program: Program Components, "Rights to dignity and respect, "available at <http://www.hud.gov/offices/cpd/homeless/library/havens/ch6.pdf.> (last visited Oct. 20, 2005).
[84] HUD, Overview of the Supportive Housing Program: Program Components, "Rights to dignity and respect," available at <http://www.hud.gov/offices/cpd/homeless/library/havens/ch6.pdf.> (last visited Oct. 20, 2005); Moreover, HUD's proposed rules states that programs need not create a landlord-tenant relationship with residents. See Proposed Rules for Supportive Housing Program, 69 Fed. Reg. 43488 (2004) (to be codified at 24 C.F.R. §583.325(a)).
[85] Jeff Purcell, *What Kind ofTenancy Do You Have?* <http://www.masslegalhelp.org/docs/04.Tenancy-FINAL.pdf> (last visited Oct. 17, 2005).
[86] Office of Massachusetts Attorney General, *The Attorney General's Guide to Tenant's Rights*, available at <http://www.ago.state.ma.us/sp.cfm?pageid=1637> (last visited Nov. 3, 2005).
[87] Massachusetts Coalition For the Homeless, *A Step-By-Step Guide to Advocating For Yourself During the Eviction Process*, <http://www.mahomeless.org/publications/publications.html > at 7 (last visited Oct. 17, 2005).

[88] G.L. c. 151B § 4. Under federal law, 42 U.S.C. §3604, it illegal to discriminate on the basis of race, color, religion, sex, familial status, or national origin.
[89] G.L. c. 151B § 4(10)..
[90] G.L. c. 151B, § 1 (17); 24 C.F.R. §100.201(a)(2).
[91] 24 C.F.R. § 8.3.
[92] G.L. c. 139, § 19.
[93] 24 C.F.R. §982.553(a)(2)(ii)(A)(3).
[94] 24 C.F.R. § 8.3.
[95] *24 C.F.R.* § *8.3*; G.L. c. 151B, § 1(17).
[96] United States v. Southern Management Corp., 955 F.2d 914, 922 (4th Cir. 1992).
[97] 29 U.S.C. §§ 706(8)(B), 706(8)(C)(I), 706(8)(C)(ii)(II).
[98] 760 C.M.R. § 5.08(1)(k).
[99] 24 C.F.R. § 9.103(2).
[100] 24 C.F.R. § 982.553(a)(1).
[101] G.L. c. 139, § 19.
[102] G.L. c. 139, § 19.
[103] G.L. c. 139, § 19.
[104] Massachusetts Bar Association, *Real Estate: Rights and Duties of Landlords & Tenants,*
< http://www.massbar.org/lawhelp/legal_info/?sw=3121&full_id=190> (last visited Oct. 17, 2005).
[105] Massachusetts Bar Association, *Real Estate: Rights and Duties of Landlords & Tenants,*
< http://www.massbar.org/lawhelp/legal_info/?sw=3121&full_id=190> (last visited Oct. 17, 2005).
[106] The Massachusetts Court System, *Frequently Asked Questions*, available at <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/housingquestions.html> (last visited Nov. 3, 2005).
[107] The Massachusetts Court System, *Frequently Asked Questions*, available at <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/housingquestions.html> (last visited Nov. 3, 2005).
[108] The Massachusetts Court System, *Frequently Asked Questions*, available at <http://www.mass.gov/courts/courtsandjudges/courts/housingcourt/housingquestions.html> (last visited Nov. 3, 2005).
[109] 24 C.F.R. § 966.4(f)(12)(iii); Massachusetts Law Reform Institute, *supra* n.4.
[110] For more information, see Massachusetts Law Reform Institute, *Using your Public Housing Grievance Process* available at <http://www.masslegalhelp.org/docs/Grievance_Public_Housing5.pdf> (last updated Apr. 16, 2004).

If you are being evicted for particular types of behavior, the public housing authority may, in some cases, deny you a Grievance Hearing. State and federal rules about who has a right to a Grievance Hearing when facing an eviction are different and both can be complicated. 760 C.M.R. § 6.06(7)(a), 760 C.M.R. § 6.06(7)(b)1-8, and G.L. c. 151B, § 32 (7). Even if a lease and grievance procedure say that a tenant has grievance rights in these kinds of cases, tenants do not because state law eliminated any rights that they may have had under the lease and grievance procedure. 24 C.F.R. §§ 966.4(1)(3)(v), 966.51(a)(2)(i);
24 C.F.R. §§ 966.4(l)(3)(v), 966.51(a)(2).

[111] For federal public housing, see 24 C.F.R. § 966.4(e)(8). For state public housing, see 760 C.M.R.§ 6.06(4)(j).

[112] Chapter 237 of the Acts of 2002.

[113] G.L. c. 186, § 17A (c)(2).

[114] G.L. c. 186, § 17A (c)(3).

[115] G.L. c. 186, § 17A (c)(4).

[116] G.L. c. 186, § 17A (c)(5).

[117] G.L. c. 186, § 17A (c)(7).

[118] G.L. c. 186, § 17A (a).

[119] G.L. c. 186, § 17A (a).

[120] Office of the Attorney General, The Attorney General's Guide to Tenant's Rights,
< http://www.ago.state.ma.us/filelibrary/Consumertenants.html> (last visited Oct. 17, 2005).

[121] Ann Anderson, *The Tenancy Preservation Program Operations Manual*,
< http://www.masshousing.com/imageserver/BusinessPartners/TPP_Manual.pdf> at 11 (last visited Oct. 17, 2005).

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