

RE99R16: Residential Rental - Landlord/Tenant Issues - Part 2

This course is specifically designed in two (2) parts for those real estate brokers and salespersons engaged in the practice of rental brokerage. **Part 2 is geared to assisting licensees assist landlords.** With limited exceptions, the rental of real estate requires any individual/s showing a real property and assisting in a rental to be licensed. Although Mandatory Consumer-Licensee Relationship Disclosure is not a requisite in the rental of a property, brokers and salespersons are usually "agents" and need to maintain heightened awareness of the fiduciary duties to a landlord, tenant or both. However, real estate licensees engaged in rentals are required to employ the written fee disclosure. A significant percentage of complaints received by the Division of Professional Licensure relate to residential rental transactions. As licensees, rental agents must maintain professional competency and understanding of the inherent legal obligations. Equally as important agents should have a thorough understanding of the "public accommodations" under the Fair Housing Laws as well as a comprehensive awareness of Massachusetts's consumer protection regulations.

I. Leases

- A. Written vs. oral
- B. Requirements of a valid lease contract
 - 1. Offer and acceptance
 - 2. Consideration
 - 3. Capacity to contract
 - 4. Legal objective
- C. Term lengths
 - 1. Estate for Years vs. Periodic Tenancy (a/k/a at will)
 - 2. More than one year - Statute of Frauds
 - 3. Seven years or more - Statute of Frauds
 - 4. Ninety-nine year leases
- D. Lease provisions
 - 1. Quiet enjoyment
 - 2. Water metering (M.G.L. c. 186, § 22)
 - 3. Late payment penalties
 - 4. Escalation clauses (e.g., taxes, heat, etc.)
 - 5. Utilities
- E. Lessor access
 - 1. Limitations
 - 2. Who may enter?
 - 3. Purpose of entry
 - 4. Timing (no statutory rule tenant be given 24-hour notice)
 - 5. "Reasonable Notice" (M.G.L. c. 186, §15B)

F. Rent withholding • repair and deduct

G. Unenforceable lease provisions

1. Tenant's waiver of rights
2. Landlord exemption from law
3. Limitation on children
4. Landlord hold harmless
5. Requirement of landlord periodic access
6. Cannot waive habitability
7. Cannot waive necessity of basic services
8. Landlord not transfer utilities without consent

H. Lessor reprisals (M.G.L. c. 186, § 18)

II. **Deposits**

A. Maximum allowed payments at the inception of the lease (M.G.L. c. 186, §15B (1) (b))

1. First month's rent
2. Last month's rent
3. Security deposit
4. Lock/key deposit

B. Illegal deposits, e.g., cleaning deposit, pet deposit, reverse penalties, timing of late fees, etc.

C. Deposit for modifications for disabled

D. Transfer of deposits

1. Upon sale of property
2. Upon termination of tenancy

E. Security deposits

1. Property of tenant
2. Separate account
3. Written receipt required
 - a. Some of the required terms of written receipt
 - b. Provide receipt within 30 days of taking security deposit
 - c. Identify the Massachusetts bank where deposit is held
 - d. Identify bank address, account number and amount of deposit
4. Written statement of condition
5. Available record of security deposit activity
6. Interest required
 - a. Rate of interest
 - b. When interest is due to tenant
7. Procedure and timetable for return of security deposit and accounting

8. Landlord's forfeiture to retain security deposit
9. Application of security deposit funds
 - a. Unpaid rent
 - b. Real estate taxes
 - c. Cost of repairs

- F. Last month's rent
 1. Written receipt required
 - a. Required terms of written receipt
 2. Interest required
 - a. Rate of interest
 - b. When interest is due to tenant

III. Terminating Tenancies, Eviction and Summary Process

- A. Estate at sufferance - actual versus constructive eviction
- B. Termination by agreement / fixed term lease
- C. Terminating tenancies at will / 30-day or rental period
- D. Notices to quit
 1. 14-day notice to quit for non-payment
 2. 7-day notice to quit for other than non-payment
- E. Retaliation / self-help eviction
- F. Summary process
- G. Storing property / abandoned property (M.G.L. c. 271 of the Acts of 2004)
- H. No lockout without court order

IV. Wrongful acts of landlord

- A. Dangerous conditions
 1. Railings
 2. smoke detectors & CO detectors
 3. security lights
 4. snow removal
- B. Failing to reimburse for authorized repairs
- C. Failing to comply with housing codes
- D. Demanding money for real estate taxes
- E. Failure to make agreement clear and simple

- F. Depriving access without court order
 - G. Imposing interest for less than 30 days
 - H. Failing to disclose late payment sanctions
 - I. Interference with quiet enjoyment of tenant
- V. Vacation rentals - two types**
- A. Rentals for 100 days or less for vacation or recreational purposes generally exempt from many of the laws regarding residential rentals (M.G.L. c. 186, § 15B)
 - B. Rentals for 31 days or less for vacation or recreational purposes are generally exempt from lead paint law requirements so long as no chipping or peeling lead paint exists in the dwelling unit and the tenant has received the short-term vacation rental notification.
- VI. Consumer Protection Statute**
- A. Violations of M.G.L. c. 93A and 940 CMR § 3.17
 - B. Written rental agreements must be complete in simple, understandable language
 - C. A violation of MGL c. 186 is also considered a violation of MGL c. 93A
-

Authority

- M.G.L. c. 112, §§ 87PP-87DDD1/2
- 254 CMR §§ 2.00-7.00
- M.G.L. c. 186, § 1-21 (residential rental)
- M.G.L. c. 111, §§ 189A-199B (lead)
- 105 CMR 410 (state sanitary code)

Important Cases for Discussion

- Boston Housing Authority v. Hemingway 363 Mass 184 (1973)
- Berman & Sons, Inc. v. Jefferson 379 Mass 196 (1979)
- Attorney General v. Brown 400 Mass 826 (1987)
- Gnerre v. Massachusetts Commission Against Discrimination 402 Mass 502 (1988)

- Attorney General v. Dime Savings Bank of New York, 413 Mass 284 (1992)
- Cruz Management Company, Inc. v. Thomas 417 Mass 782 (1994)
- Papadopoulos vs. Target 457-Mass 368
- Attorney General vs Brown 400-Mass 826

Suggested Handouts

Information on Get the Lead Out program

Sample paperwork

fee agreement

application

statement of condition

lease

- Landlord Rights and Responsibilities Massachusetts Association of REALTORS® and Massachusetts Office of Consumer Affairs and Business Regulations
- Tenant Rights and Responsibilities Massachusetts Association of REALTORS® and Massachusetts Office of Consumer Affairs and Business Regulations

Legal Tactics:

Tenants Rights in Massachusetts, 6th Edition

Massachusetts Law Reform Institute