

A Guide for Occupants: Enforcement of the Massachusetts Housing Code

In Massachusetts the Local Health Authority (LHA) has primary enforcement of the Housing Code, 105 CMR 410.000. Complaints regarding housing violations must be addressed to the LHA, which may be the board of health, health department, or inspectional services department. The LHA is responsible for conducting inspections, issuing orders to correct, and enforcement to ensure violations are corrected.

The role of the Massachusetts Department of Public Health's Community Sanitation Program (CSP) is to provide regulatory interpretations, training, and general information to local health and the general public.

The CSP receives numerous complaints each year regarding an occupant's dissatisfaction with the action, or inaction, of their local health authority. CSP does not have regulatory authority over local health or the authority to mediate differences between:

- Owner and occupant
- Local health and occupant
- Local health and owner
- Occupants of separate units

On occasion CSP may conduct a housing inspection at the request of local health for training purposes and not to assume authority.

The references to court action below refer to the preference of using the Housing Court. Housing Courts were established specifically to address housing matters and their main goal is to achieve compliance with the regulations rather than prosecute offending parties; however they may conduct trials if necessary. If Housing Court is not available in the occupant's county, then Superior Court is preferred over District Court.

Occupants have the right to due process provided by the housing regulations. Below is a summary of the procedures that the occupant should follow in seeking resolution to their complaint.

410.010(C): Scope

"Nothing contained herein shall be construed to limit or otherwise restrict any person from seeking judicial relief in a court of competent jurisdiction notwithstanding any hearing, proceeding or other administrative remedy set forth in 105 CMR 410.000."

An occupant has the right to pursue a remedy in court regardless of any current action being taken in regards to their complaint.

410.850: Right to a Hearing

If an occupant has requested an inspection, they have the right to request a hearing with local health if:

- The LHA does not conduct an inspection.
- The LHA does not issue an inspection report.
- The LHA fails to note violations during the inspection.
- The LHA does not issue an order to correct for the violations found.

An occupant who wants to request a hearing due to any of the above reasons must file a petition requesting the hearing within 30 days.

The petition requesting a hearing must be sent to the appropriate person:

For a community with a board of health and health agent, the request should be addressed to the chairperson of the board.

For a community with a health department and health director, contact the health director for the appropriate contact as they may have a hearing officer (possibly the health director) rather than a panel or board.

For a community with an inspectional services department/division, contact the commissioner of inspectional services for the appropriate contact.

The community's website will provide information regarding the local health authority and contact information. CSP does not have this information. Regardless of the format described above, the occupant has the right to a hearing if filed within 30 days.

410.851: Hearing Notice

The occupant must receive a notice providing the date, time, and location of the hearing and that the occupant has the right to review the file kept by the local health authority.

410.852: Time for Hearing

The hearing shall be held no more than 14 days after the petition is filed for an occupant citing one or more of the criteria listed in 410.850 above.

410.853: Hearing Procedures

During the hearing, the occupant will have the opportunity to be heard in order to present their case.

410.854: Final Decision & 410.855: Official Hearing Record

The final decision must be in writing and shall be kept by the town clerk or LHA as public record.

410.860: Appeal of Final Decisions

If an occupant is not satisfied with the final decision of the LHA, they have the right to appeal in court. As previously mentioned, Housing Court or Superior Court are preferred.

Remember: the Massachusetts Department of Public Health does not have authority over the LHA.

Occupants are encouraged to use the regulatory procedures outlined above. For additional information occupants should contact their local legal services organization.

Resources:

Massachusetts Department of Public Health, www.mass.gov/dph

Bureau of Environmental Health,

<http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/>

Community Sanitation Program, www.mass.gov/dph/dcs

Massachusetts General Laws, <https://malegislature.gov/Laws/GeneralLaws/Search>

Code of Massachusetts Regulations, <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/>

Massachusetts Trial Court, <http://www.mass.gov/courts/courtsandjudges/courts/index.html>

Housing Regulations, <http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/comm-sanitation/housing.html>