

# Short Term Residential Vacation Rental – RE109R20

Objective: This class will define the role of the broker and agent for short term vacation rentals and explore the federal and state responsibilities to the consumer.

## 1. Real Estate Licensing Requirements

- a. License Law
- b. Salespersons' definition
- c. Broker definition
- d. Non-Licensed staff responsibilities
  - a. Non-licensed staff may only act in a supportive administrative role. They must avoid activities that bring them into contact with clients and customers such as showing listings, giving information about listings and prices on the phone, writing leases, writing contracts, etc.

## 2. Definition of Short-Term Rental

- a. All occupied properties that are not a hotel, motel, lodging house or bed and breakfast where at least one room is rented out by an operator
- b. It does not include tenancies at will or month to month leases
- c. A short term rental is under 31 consecutive calendar days

## 3. Important Time Frames

- a. Stays under 31 days are subject to the new State Rental Tax law
  - a. Stays over 32 days are not subject State Rental Tax law
- b. Tenancies over 31 days are subject to the Full Lead Paint Law
- c. Stays under 31 days are subject to the Short-Term Vacation Rental Lead Paint Law and Disclosure form
  - a. Short Term Vacation or Recreational Rental Exemption Form (Lead Paint)
- d. Stays under 100 days are not subject to the security deposit laws

## 4. Disclosures

- a. Agency Disclosure Forms not applicable for short term rentals in Massachusetts
- b. Fee Disclosure Form required for Short Term Rentals
- c. Fees for Service
  - i. No real estate broker shall charge any fee to a prospective tenant unless a tenancy is created, or in those cases where no tenancy in real property is created unless the prospective tenant has agreed in writing to pay such a fee

## 5. Advertising for Rentals

- a. Broker may not advertise in any way that is false or misleading
- b. Blind advertising not permitted
- c. All advertising must state that the advertiser is a Broker and not a private party. All advertisements must state Brokers name and business address
- d. Salespersons are not allowed to advertise on their own

- e. Regulation CMR 254 7 - Any advertisement concerning the availability of an apartment shall disclose in print no smaller than that for the apartment itself that "The apartment advertised may no longer be available for rental" - also applies to short term rentals.

## **6. Fair Housing**

- a. All Federal and State fair housing rules apply to Short Term Rentals.
- b. HUD administers the Federal Fair Housing Law
- c. Race, color, religion, sex, sexual orientation, children, national origin, genetic information, ancestry, marital status, veteran or member of armed services, public assistance recipient, age, handicap, and gender identity are all protected classes in Massachusetts
- d. Accommodations must be made for handicapped individuals

## **7. Disclosure of Interest in a Property**

- a. A real estate broker or salesperson may not, directly or indirectly, buy or rent property in which they have an interest in or which they have listed without first fully disclosing their interest in writing and must be acknowledged by the other side

## **8. Rental Contracts**

- a. Massachusetts allows for both written and oral contracts
- b. The sale of real estate requires a written contract to be enforceable
- c. Leases for more than one year must be in writing to satisfy the statute of frauds
- d. Leases for seven years or longer must be written, acknowledged, and recorded or their validity will be restricted to the original landlord
- e. Short term rental leases should be in writing and should address:
  - a. Names, full addresses, full legal address of the property, contact information, terms of lease, utilities, start date, and termination date, smoking policy, etc.
  - b. It must address security deposits, insurance, and the occupancy tax rate and all other fees
- f. Short Term Vacation Rental Landlord Contracts should define all responsibilities of landlord and Broker and define all terms under which the property can be advertised and conform with the company's lease. All landlords must supply a lead paint form fully executed yearly, calendars for availability, insurance information, rental tax rates, permission for photos, access to property, etc.
- g. Service animals vs. emotional support animals

## **9. Short Term Rental Tax**

- a. Room Occupancy Excise Tax M.G.L.830 Chapter 64G.1.1 as of December 2018
- b. Applicable to all rentals on properties for more than 14 days in any calendar year
- c. All operators and intermediaries must register and pay tax. No intermediary can demand that the operator pay the tax if the intermediary collects the rent and tax.
- d. The total amount of rent is subject to tax as well as any and all operational charges such as insurance, linen fees, cleaning fees, booking fees, etc.
- e. Security deposits are exempt from the tax
- f. If rent is less than \$15 a day, there is no tax due
- g. All Properties in Mass must be registered, even if no tax is due.

- h. Tax rate is 5.7% PLUS:
  - a. Local option excise 0-6.5%
  - b. Convention Center Finance 2.75% - Boston, Worcester, Cambridge, Springfield, West Springfield, Chicopee
  - c. Cape Cod and Islands Water Protection Fund
  - d. Community impact fee 0-3%
- i. This new legislation requires operators to have \$1 million in liability coverage on each property.
- j. Real Estate Agents can provide mandated insurance
  - a. This means that licensees who provide services online, (or via phone application or similar electronic processes) that allow short-term rental operators to list their property and collect rent, and allow a person to make a reservation will be able to provide the operator the \$1 million in liability insurance required by statute
  - b. Under the old regulations, only online service providers such as AirBnB, Expedia, HomeAway, or VRBO could provide this insurance.

#### **10. Permitting**

- a. Check with local towns - Health and Building Department all must be ascertained by agent and owner

#### **11. Lead Paint**

- a. All properties built prior to 1978 are subject to the Lead Paint Law.
- b. Lead Paint Law Short Term Vacation rental disclosure must be signed and filled in by owner prior to presentation to tenant. The tenant must receive disclosure form prior to signing lease.
- c. Short Term Vacation or Recreational Rental Exemption Form
  - a. Yearly inspection must be completed every 12 months
  - b. Check with local municipality for town regulations

#### **12. Escrow and Rental Accounts**

- a. All landlord and tenant funds must be in a separate fiduciary account
- b. Can be interest bearing, however, the interest must be accounted for in writing from both parties
- c. All accounting must be available to Division of Professional Licensure for 3 years

#### **Suggested Handouts:**

- MAR Short-term Rental Lease
- Short Term Vacation or Recreational Rental Exemption Form (Lead Paint)
- Room Occupancy frequently asked questions from mass.gov (<https://www.mass.gov/info-details/room-occupancy-frequently-asked-questions>)
- MAR Addendum Regarding Prohibiting Smoking and Prohibiting Marijuana
- MAR Broker's Rental Fee Disclosure Form