MVHP Multi-Family Landlord Presentation

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About Me:

- Bachelor’s Degree in Liberal Arts from UMass Lowell
- Juris Doctorate from Suffolk University Law School
- SJC Rule 3:03 Certified Student Attorney - Accelerator to Practice Clinic at Suffolk University Law
  - 1 year experience in Housing Clinic
- Practicing Attorney since November 2021 with a focus on landlord/tenant law
- Associate Attorney with Eliopoulos & Eliopoulos P.C. in Chelmsford

Disclaimer:

As this is a two-hour webinar, I will be providing an overview of ten high-level topics pertaining to Massachusetts landlord-tenant law. Please note that all information presented today is specific to Massachusetts and may not apply in other states.

Participants are strongly encouraged to consult with an attorney regarding any questions or concerns related to their particular circumstances.

Additionally, Aaron Ginsburg of Community Teamwork will be presenting on Fair Housing laws during tomorrow’s session.

Overview:

- Overview of being a landlord
- Advertising available units
- Occupancy permit requirements
- Lead paint laws and compliance
- Tenant screening and selection
- Rental application process
- Tenant at Will vs. Leases
- Maintenance and record keeping
- Security deposit laws
- Evictions

Overview of Being a Landlord

What does it mean to be a landlord?

- Understanding your legal obligations under state and local housing laws.
- Screening tenants lawfully and effectively, including fair housing compliance.
- Drafting and enforcing a strong, enforceable lease agreement.
- Maintaining the premises in compliance with the Massachusetts sanitary code and local habitability and safety standards.
- Managing rent collection procedures, late fees, and record-keeping.
- Responding to tenant issues, complaints, and maintenance requests in a timely manner.
- Navigating tenant defaults, nonpayment, and breach of lease situations.
- Understanding notice requirements for entry, rent increases, and termination.
- Documenting communications, inspections, and conditions of the premises.
- Knowing when and how to initiate the eviction process, and best practices for avoiding litigation.

Practical Recommendations/Suggestions

- Establish and develop professional relationships early:
  - Property manager
  - Landlord/tenant attorney
  - Tradespersons including but not limited to:
    - Pest control, electrician, plumber, HVAC, locksmith, painter, cleaner
- Maintain a professional, business-focused relationship with tenants by communicating clearly, documenting interactions, and setting consistent expectations
- Join local landlord groups
- Stay up-to-date with changing laws and regulations
- Consult with an attorney with any questions or concerns

Key Takeaways:

NEVER:

- Perform a “self-help” eviction
  - Changing locks, shutting off utilities, or physically removing a tenant or their property
- Enter the premises without notice - except in emergency situations
- Intentionally interfere with tenant’s peaceful use of the premises
- Retaliate against a tenant for requesting repairs or reporting code violations
- Discriminate against tenants based on protected characteristics
- Fail to fix sanitary code violations
- Charge illegal fees

Advertising Available Units

Before You Advertise:

- **Confirm the unit is legally rentable**
  - Ensure the property meets local housing, sanitary, and building code requirements. Some municipalities require a rental certificate, inspection, or registration before advertising.
    - E.g. Lowell requires Rental Unit Inspection Application
- **Verify compliance with lead paint laws**
  - If the unit was built before 1978, determine whether a lead inspection or Letter of Compliance/Interim Control is required
  - (We will cover this more in-depth later in the presentation)
- **Assess habitability and safety issues**
  - Review Massachusetts Sanitary Code checklist and local ordinances
  - Section 8 requires an inspection and being proactive may save you time

Before You Advertise:

- **Update and prepare the lease**
  - Review or revise your lease to ensure it complies with current Massachusetts laws (e.g., security deposit rules, last month's rent handling, required disclosures, and prohibited clauses).
    - It is important to ensure enough time for you or your attorney to prepare and review the lease agreement
- **Establish the rent amount and fees**
  - Determine lawful charges—Massachusetts strictly limits what landlords may collect (e.g., first month's rent, last month's rent, security deposit up to one month, and a key/lock fee only).
  - To determine fair market value of the rent, you may consider checking the HUD website "FY 2026 Final Fair Market Rents Documentation System" https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2026_code/select_Geography.odn or;
    - You, your property manager, and/or realtor may also compare your rental unit to other rental units in the area to determine a fair market value

Before You Advertise, continued

- **Create written screening criteria**
  - Define consistent, non-discriminatory standards for credit, income, rental history, and other factors. This helps ensure Fair Housing compliance.
- **Prepare legally compliant advertising language**
  - Avoid phrases that may violate Massachusetts or federal Fair Housing laws. Ensure marketing materials contain only neutral, factual descriptions.
- **Document the condition of the unit**
  - Conduct a pre-advertising inspection, take date-stamped photos, and complete a condition checklist so you are ready for move-in compliance requirements (especially for security deposits).

Before You Advertise, continued

- **Budget for required repairs or improvements**
  - Make necessary updates before scheduling showings—Massachusetts habitability standards are strictly enforced.
  - Budget for 3-6 month unpaid rent reserve:
    - A prudent landlord should plan for 3-6 months of carrying costs per unit
    - An eviction action can last for several months
- **Confirm local rules on leasing**
  - Some cities (Boston, Cambridge, Somerville, others) have additional requirements such as rental registration, inspections, or certificate renewals.

Common Ways to Advertise

- Online rental platforms (Zillow, Apartments.com, etc.)
- Social media listings (Facebook marketplace, Facebook community groups)
- Property management company websites
- Realtor listings
- Yard signs or window signs
- Local newspaper classifieds
- University or community bulletin boards
- Community organizations (houses of worship, nonprofits, local housing organizations)

Advertising Pitfalls

- Aaron Ginsburg of Community Teamwork will be presenting on Fair Housing laws during tomorrow's session.
- Real Life Applications:
  - Represented tenant in housing clinic that was on section 8 - landlord's advertisement explicitly stated "no section 8 tenants"; the tenant client applied anyways and was denied

Occupancy Permit Requirements

What is an Occupancy Permit?

In Massachusetts, an occupancy permit (also known as a Certificate of Occupancy) is a legal document issued by a local building department that certifies a building is safe and compliant with all building codes, zoning laws, and safety regulations for its intended use.

It is required before a new building can be occupied or used, or when there is a change in the building's use or occupancy classification.

Why is an Occupancy Permit important?

- **To ensure safety**: It verifies that the structure is structurally sound and meets all health and safety standards, such as electrical, plumbing, and fire codes.
- **To prove legal use**: It confirms that the property's use, such as residential, commercial, or mixed-use, is in compliance with local zoning laws.
- **For property transactions**: Obtaining this permit is often a mandatory step before a property can be legally sold, leased, or financed, and without it, transactions can be delayed or voided.
- **To avoid penalties**: It is illegal to occupy a building without a valid occupancy permit matching its current use, which can result in penalties or closure.

Rental Permits:

- In Massachusetts, you generally need a rental permit and an occupancy permit, which is often issued by the local Board of Health after an inspection, to rent out a property.
- Landlords must ensure the property meets state minimum standards for fitness, and tenants must have the property listed on the permit.
- Short-term rentals have separate registration requirements with the state and potentially a local municipality.

Town/City Ordinances

- Be sure to check the town/city requirements
- Lowell requires a Rental Unit Inspection Application
  - Fee $50/unit
  - expiration/nonrenewal may result in $300 fine/unit
- Some towns/cities restrict the number of unrelated individuals who can live in a unit
  - E.g. Lowell restriction is 3 unrelated individuals/unit

City of Lowell
Division of Development Services
375 Merrimack Street, Room 55
Lowell, MA 01852
P: 978.674.4144 F: 978.446.7103

Rental Unit Inspection Application
Fee: $50 Per Unit

Property Address: _____ **Number of Units:** _____

Owner's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No: (____) _____
Email: _____

Agents Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No: (____) _____
Email: _____

Type of Use (select one):
- ❑ Single Family
- ❑ Two Family/Duplex
- ❑ Two-Family/Owner-Occupied
- ❑ Three Family or above (____ Units)
- ❑ Condominium

Office Use Only
Parcel
Insp District
Outstanding
Business ID
License ID
Inspection QTY
Fee $
Check #
Owner CID
Agent CID
❑ Field Sheet

In accordance with the City of Lowell's Code of Ordinances, I acknowledge and certify that:

- Information provided above is accurate;
- Expiration, non-renewal, of the Rental Unit Inspection Certificate may result in a fine of $300 per unit;
- If Unit is Occupied, Owner/Agent has conferred with Tenant and has obtained permission for Inspector to enter Unit and perform Inspection;
- If signed by an Agent, that the Agent has been given authority by the Owner to sign this document
- I understand and agree that no more than 3 unrelated persons may occupy a single unit.

Signed under the pains and penalties of perjury,

Owner/Agent's Signature: _____ Date: _____

Real Life Examples

- Recent jury trial in Northeast Housing Court
  - Landlord in Lowell had illegal 3rd floor unit
  - Jury found that the rent/use and occupancy amounted to $0
  - Tenant was awarded full return of rent for almost 3 years

Lead Paint Law and Requirements

What is lead paint?

In 1978, the United States government banned lead from house paint.

Lead paint can be found in all types of homes built before 1978: single-family and multi-family; homes in cities, suburbs or the countryside; private housing or state or federal public housing.

The older the home, the more likely it is to have lead paint. The older the paint, the higher its lead content is likely to be.

Why is lead paint dangerous?

Lead poisoning is a disease. It is most dangerous for children under six years old. It can cause permanent harm to young children’s brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children’s bodies can slow growth and cause learning and behavior problems.

Young children are more easily and more seriously poisoned than others, but older children and adults can become lead poisoned too.

Lead in the body of a pregnant woman can hurt her baby before birth and cause problems with the pregnancy.

Adults who become lead poisoned can have problems having children, and can have high blood pressure, stomach problems, nerve problems, memory problems and muscle and joint pain.

Strict Liability

In Massachusetts, property owners are strictly liable for lead poisoning injuries in pre-1978 homes with children under six if they fail to comply with the Lead Law. This means the owner is responsible even if they didn't know about the lead hazard or the child's presence.

How do I determine if there’s lead paint?

An owner of a home in Massachusetts built before 1978 must have the home inspected for lead if a child under six years old lives there. (But you should have an inspection regardless). If lead hazards are found, the home must be deleaded or brought under interim control. Only a licensed deleader may do high-risk deleading work, such as removing lead paint or repairing chipping and peeling lead paint. You can get a list of licensed deleaders from the state Department of Labor and Workforce Development.

Deleaders are trained to use safe methods to prepare to work, do the deleading, and clean up. Either a deleader, the owner or someone who works for the owner who is not a licensed deleader can do certain other deleading and interim control work. Owners and workers must have special training to perform the deleading tasks they may do. After the work is done, the lead inspector or risk assessor checks the home. He or she may take dust samples to test for lead, to make sure the home has been properly cleaned up. If everything is fine, he or she gives the owner a Letter of Compliance or Letter of Interim Control. After getting one of these letters, the owner must take care of the home and make sure there is no peeling paint.

Letter of Compliance and Letter of Interim Control

Letter of Compliance:

It is a legal letter under state law that says either that there are no lead paint hazards or that the home has been deleaded. The letter is signed and dated by a licensed lead inspector.

Letter of Interim Control:

It is a legal letter under state law that says work necessary to make the home temporarily safe from serious lead hazards has been done. The letter is signed and dated by a licensed risk assessor. It is good for one year, but can be renewed for another year. The owner must fully delead the home and get a Letter of Compliance before the end of the second year.

Tenant Lead Law Notification

Under Massachusetts and federal law, owners must comply with Tenant Notification requirements when a prospective tenant is about to rent a home built before 1978. This applies whether they have a child under 6 or not. The aim of this requirement is to inform tenants about:

- The danger lead paint poses to children and adults
- Lead poisoning prevention steps
- The requirements of the Lead Law

What Owners Need to Do

To comply with both the state and federal Tenant Notification requirements, the owner must supply the prospective tenant the following documents before entering a rental agreement:

- Two copies of the Tenant Notification and Tenant Certification Form (one for the owner to keep and one for the tenant to keep)
- A copy of the most recent lead inspection or risk assessment report for the rental unit, if one exists
- A copy of any Letter of Compliance or Letter of Interim Control for the rental unit, if it exists
- Owners and tenants can check Lead Safe Homes database to see if there is prior inspection history.

Failure to Comply with Notification

Owners who fail to comply with Tenant Lead Paint Notification requirements are subject to civil penalty under Massachusetts law, and both civil and criminal penalties under federal law.

Tenant Screening and Selection

Disclaimer:

Aaron Ginsburg of Community Teamwork will be presenting on Fair Housing laws during tomorrow’s session.

How Landlords Screen

- **Credit Reports**
  - Landlords use credit reports to predict if tenants can and will pay the rent. Credit reports show how tenants borrow and repay money. They also show how much debt tenants have.
- **Tenant Screening Reports**
  - Landlords can buy tenant screening reports from private companies. These reports can include eviction history, court cases, former addresses, social security number verification, and criminal record searches.
    - You must inform tenant if you deny their rental application on this basis

How Landlords Screen, continued

- **Criminal Record Information**
  - Landlords and property managers can get some information about your criminal record, called "Criminal Offender Record Information" or CORI.
- **Court Information**
  - Massachusetts trial courts make information about court cases available to the public on the Internet.
    - Do your homework - if there is a previous eviction, you should inquire as to the reason for the eviction, whether the tenant won or lost, and whether the parties were able to reach an agreement in that case
    - It is good practice to ask the applicant if they lived at a particular address and about the particular matter, especially if the applicant has a common name
- **Rental History**
  - Landlords may ask you for references from your current and former landlords.
  - It is good practice to ensure that the landlord references are made in writing.

Rental Application Process

Obtaining and Evaluating Landlord References and Credit Reports

- The landlord is allowed to request that any prospective tenant fill out a rental application.
- The landlord cannot ask for any information from the tenant relating to race, color, religious creed, national origin, sex, sexual orientation, marital status, age, ancestry, or handicap, purely and simply because housing cannot be denied for any of these reasons.
- Typically, the landlord will also ask a prospective tenant for references from a prior landlord and, in some cases, will obtain a credit history for the tenant from a company such as Equifax or Experian.
    - Landlords should make all requests for prior landlord references in writing and should follow the same process for each applicant; otherwise, they are opening the door for a claim of discrimination.

Prior Rental History

- Several companies provide information about prior eviction actions that were filed in the courts.
- Both credit and eviction history companies charge fees for these services.
- In both cases, the tenant is entitled to find out from these companies what information they are giving out about the tenant and to whom it is provided; such communication generally has to be between the applicant and the company providing such information.
- In some cases, the agreement between the landlord and the company prohibits disclosure of any information to the applicant.

Eviction Sealing

On May 5, 2025, a new law went into effect that allows tenants in Massachusetts to seal their eviction record. Sealing an eviction record means that the eviction record will not be available to the public and means that tenants may answer “no record” if they have sealed all prior eviction records and are asked about evictions on a housing or credit application.

What happens after an eviction record is sealed?

If the court allows the petition to seal an eviction record, the record as to the petitioner will no longer be visible on MassCourts.org.

A petitioner whose Petition to seal is allowed may answer “no record” to any questions about prior eviction actions when applying for housing or credit.

Public Housing and Federally Subsidized Housing

- Inspections are required for section 8 tenants prior to tenancy and each year thereafter
- Property must comply with the Massachusetts Sanitary Code
- It is illegal to refuse to rent to applicants or refuse to renew a tenancy due to the property's noncompliance with the Massachusetts Sanitary Code and/or due to the inspection requirement

Meeting with Applicants

- A prudent landlord will insist on meeting, in person, every person who will occupy the unit. This meeting should not occur until after all the terms of the tenancy have been negotiated and settled, but it should occur prior to signing a written tenancy agreement and certainly before allowing any person to occupy the rental unit.
- The sole purpose of such a meeting is to prevent impostors or “stand-ins” from leasing on behalf of the real occupants. The landlord should make it clear that the only reason for the meeting is so the landlord can actually see and “meet” the people who are going to be the tenants.
- The landlord must follow through with this purpose—that is, this meeting cannot be used to refuse to rent to prospective tenants, unless the prospective tenants refuse to meet without reasonable justification.
- The timing of such a meeting is crucial. A landlord who insists on meeting the prospective occupants at an earlier stage and then refuses to rent to them is subject to claims of unlawful discrimination if the prospective occupant is a member of a protected class.
- Again, a landlord who wants to use such a procedure should require it of all applicants.

Tenant at Will v. Lease

Lease Agreement (Fixed Term)

Advantages	Disadvantages
Stable rent income and reduced risk of sudden vacancy	Limited flexibility (cannot evict a tenant during the rental period unless they default on payments or break a lease term, unless tenants vacate voluntarily)
Lower turnover costs (painting, cleaning, unpaid rent in-between tenants, etc.)	Cannot increase rent during the lease term
Predictable occupancy and better tenant commitment	Limits selling potential

Lease Agreements includes a fixed term, meaning there is a beginning date and an end date to the tenancy. Lease Agreements are typically for one year.

Self-Extending v. Option to Renew

Self-Extending:

You or your tenant must give the other written notice if you want to terminate the tenancy. If neither you nor your landlord gives the other notice, your lease continues or "extends" automatically for another year. If the original lease was not 1 year, it extends for the same amount of time as the original lease.

Option to Renew:

If tenant wants to stay, they must give you notice in writing. If the tenant chooses not to renew at the end of the lease, the tenant does not have to provide notice.

If tenant chooses to renew, you may enter into a new lease agreement or sign the existing lease again. The new lease can have the same terms as the old lease, or you can change certain terms, such as increasing the rent.

Rental Agreement (Tenant at Will/Month-to-Month)

Advantages	Disadvantages
Maximum flexibility (can increase rent or terminate tenancy with rental period notice in the event you want to sell, renovate, move into the property, rent to a different tenant, etc.)	Tenant can also terminate tenancy with rental period notice
Ideal for transitional situations (if you anticipate selling or renovating the property soon; or if the tenant does not intend on occupying the premises long-term)	Possibility of more turnover costs

Rental Agreements do not have fixed terms, meaning there is a beginning date but no end date because the tenancy is month-to-month.

There is no requirement that the agreement be in writing, but it is highly recommended!!

Required Language:

- Landlord’s name, address, and contact information
- Name of person(s) responsible for maintenance
- Person to whom tenant can give copies of formal notices, complaints or court documents
- If collecting first, last, and/or security deposit, the lease/rental agreement must show the amount paid and must explain the tenant’s rights to the security deposit
- Landlord must provide the tenant with a fully executed copy of the lease agreement within 30 days

Suggested Language

- Prohibitions regarding subletting/assignment of lease
- Provision addressing noise disturbances
- Whether smoking is permitted
- Parking provisions
- Whether animals are allowed - if not, include language regarding reasonable accommodation requests
- Language regarding access for repairs, showing property to prospective mortgagees, tenants, etc., and emergency repairs

Illegal Lease Clauses

- A clause that says the tenant is responsible for making all repairs.
  - (The law requires the landlord to make repairs, except when a tenant breaks something.)
- A clause that says a landlord can use the tenant's security deposit to pay for utilities if the tenant doesn't pay for them.
  - (A security deposit can only be used to pay for damage caused by the tenant or for rent if the tenant moves out owing rent to the landlord.)
- A clause that says the tenant must pay for electricity or gas where the service or bill is in the landlord's name.
  - (A landlord must pay electricity or gas unless there is a meter which separately calculates the tenant's utility use and it is in writing.)
- A clause that says that immediately upon termination of the lease that the tenant must pay all rent due for the remainder of the term of the lease.
  - (While the tenant may have to pay some rent if the landlord or tenant ends the lease before it is over, a landlord also has a duty to find a replacement tenant for the remainder of the lease.)
- Waiver of jury trial

Illegal Lease Clauses Continued

- Late fees to be charged less than 30 days after its due
  - (Landlords cannot charge a late fee until after 30 days of rent being due).
- Discount Clauses
  - (Landlord cannot discount rent if rent is paid on time).
- Improper Tax Escalation Clause
  - (This is a clause that says that if local property taxes go up, you can increase the rent. If written incorrectly, the clause may be illegal and you will not be able to raise rent).
- Requiring repairs to parts of the buildings beyond tenant's apartment
- Language prohibiting tenant from suing the landlord or report violations of sanitary code
- Prohibition of tenants joining tenants' union

Illegal Fees

Common Examples:

- Holding deposits
- Rental fees
- Pet fees (there is a grey area around pet rent)
- Application fees

What is the new law on tenant-paid broker's fees in Massachusetts?

As of August 1, 2025, broker's fees for rental units must be **paid by the person who hired the broker or salesperson**. If the tenant didn't hire a broker or salesperson, they shouldn't be paying their fee. This means that if a landlord chooses to hire a broker or salesperson, they are responsible for paying that broker or salesperson themselves.

A landlord cannot add their broker's or salesperson's fee as a requirement for a tenant to sign a lease. Landlords can require tenants to work with their broker or salesperson so long as the landlord is paying for their fee. But landlords cannot require tenants to pay the landlord's hired broker or salesperson themselves prior to renting a unit.

Additional Contracts

A Housing Assistance Payments (HAP) contract is a legal agreement between a public housing agency (PHA) and a property owner to provide rental subsidies for eligible low-income families through the federal Section 8 program.

The contract outlines the terms, including the number of units subsidized, and a PHA makes monthly payments to the owner to cover the difference between the approved rent and what the tenant pays.

The owner is responsible for maintaining the property to safety and sanitation standards, and the tenant pays their portion of the rent to the owner

Maintenance and Record Keeping

Records at Inception of Tenancy

- Keep copies of the lease agreement/rental agreement and addendums
- Copies of bank information if security deposit and/or last month rent is collected
- Keep copies of photographs from inception of the tenancy
- City/town rent application/certificate, if applicable

Records throughout Tenancy

- Keep written records of any written or oral correspondence between you and tenants
  - Include date, time, parties' present during conversation, and topics of discussion
  - Keep copies of all emails, text messages and letters
- **Keep written records of all rent payments**
  - Create a rent ledger at the inception of the tenancy
  - Update rent ledger when rent is due and when the tenant(s) make payments
  - Update rent ledger when any credits are applied to the rent ledger (e.g. interest on security deposit and/or last month's rent)
- You should have a receipt book in the event tenants pay in cash
  - Keep a receipt for yourself and give the tenants a copy

Records of Security Deposits and Repairs

Landlord must keep security deposit and repair records for all tenants who have moved in or out in the last 2 years. The records must show:

- Detailed description of any damage in an apartment when the landlord took a security deposit;
- When repairs were made; and
- Receipts and cost of any repairs

Anyone interested in renting has the right to see these records during normal office hours. If a landlord refuses to show the tenant the records, the tenant has the right to an immediate refund of the security deposit.

Other Records:

- Keep copies of any written contracts for regular services
  - E.g. pest control, snow removal, HVAC servicing
- Keep copies of all invoices and reports from professionals
  - E.g. pest control or any repairs made to the property
- Keep copies of any and all written complaints
  - E.g. emails, text messages from neighboring tenants

Security Deposit Laws

Security Deposit Overview

- Security Deposit Laws are very technical and very strict
- Failure to comply with the security deposit laws will subject you to liability
- Violations of security deposit are one of the most commonly raised defenses/counterclaims to an eviction action

Landlord Responsibilities

- You must provide the tenant(s) with written receipts
- You must provide the tenant with a statement that describes the condition of the property (Apartment Condition Statement or Statement of Condition)
- You must keep the security deposit in a Massachusetts interest-bearing account separate from your creditors (e.g. an escrow account)
    - You will need the tenant(s) to complete a W9 form in order to open the account
- You must pay interest every year on the security deposit (and last month's rent if kept in the same account)
- You must keep records of the security deposit and repairs
- You must return the security deposit to the tenant at the end of the tenancy if there is no damage and the rent is paid in full
- You must return the security deposit to the tenant if you fail to comply with MA security deposit laws

Written Receipts

- **1st receipt:** You must provide a written receipt once you collect the security deposit from the tenant
- **2nd receipt:** You have 30 days from receipt to put the security deposit in a Massachusetts interest bearing account separate from your creditors and provide a receipt to the tenant stating the bank name, bank address and account number in which the security deposit is being held
- **3rd receipt or statement**: every year, you must provide the tenant with a statement showing the amount of interest owed to the tenant
    - You can either mail the tenant's a check for the amount of interest or deduct it from the tenant's rent

Statement of Condition

- The purpose of the statement is to prevent disputes between you and the tenants when you move out
- You have 10 days from move-in to provide a statement of condition to the tenant
- This statement must list all the existing damage, if any, in the premises, including any common areas
    - If there is no damage, be sure to reflect this in the condition statement
- The tenant(s) has 15 days to return the statement back to you
    - If the tenant does not send back the signed statement of condition, there will be a presumption that the tenant agrees with the statement of condition you provided
    - If the tenant returns the statement of condition to you with photographs and list of issues, you must respond stating whether you agree or disagree
- If there are any sanitary code violations, you should schedule a time to go to the property to make any necessary repairs

Triple Damages

The court may award treble damages (3x the amount of the security deposit), plus attorney’s fees and costs if you fail to:

- Properly deposit a security deposit in a bank account separate from the landlord's funds and protected from creditors;
- Transfer a security deposit to a new owner; or
- Return the security deposit or balance that the tenant has a right to within 30 days of the end of the tenancy

Security Deposit at Termination of Tenancy

Within 30 days of the end of the tenancy, you are required to:

- Complete a Security Deposit Return form and sign under the pains and penalties of perjury
- The security deposit return form should detail an accounting of:
  - The security deposit
  - Interest accrued
  - Any deductions for unpaid rent
  - Any deductions for property damage beyond reasonable wear and tear
    - If deducting for property damage beyond reasonable wear and tear, you must include estimates, invoices, receipts, and photographs
- After any lawful deductions have been made, you must return the difference to the tenant's forwarding address along with a signed copy of the security deposit return form

Real Life Implications

Failure to comply with security deposit law has real life implications:

- Former tenant can sue you for return of security deposit if you fail to comply with MA security deposit law
- Failure to comply with MA security deposit law can negatively impact eviction actions

Evictions

Evictions Overview:

- Notice to Quit
- Determine Venue
- Summons and Complaint
- Filing Eviction Action
- First-Tier Court Event
- Answer & Discovery
- Bench Trial
- Post-Trial Procedures

Notice to Quit

Notice to Quit

There are 3 kinds of evictions in Massachusetts:

- Nonpayment of rent
  - Form to Accompany Residential Notice to Quit **MUST** be served with the Notice to Quit
  - 14 day notice to quit OR rental period notice if the property is covered by the federal CARES Act
    - Federal CARES Act is applicable if: federally backed mortgage AND/OR a section 8 tenant occupies a unit in the same building that the landlord owns
- No cause/no fault
  - Sale of property, renovations, increase rent, etc.
  - Rental period notice, unless otherwise provided in the lease agreement/rental agreement
- For cause
  - Breach of terms of lease agreement/rental agreement
  - Violations of M.G.L. c.139, § 19
  - Rental period notice, unless otherwise provided in the lease agreement/rental agreement

You cannot blend the 3 - you must choose one legal theory only!

**If there is no rental period - the notice to quit will expire 3 months from receipt of the Notice to Quit. Common examples are family/friends who occupy a residential dwelling and do not pay rent regularly. See M.G.L. c 186 § 12.

Notice to Quit - Common Traps for the Weary

- Notice to Quit must include all occupants over the age of 18 - even if they are not on the lease agreement/rental agreement
  - NO MINORS!!
  - Most constables/sheriffs will not levy on an execution for possession (e.g. physically remove tenant(s) and their belongings) if all adult occupants are not named on the execution for possession
- Notice to Quit should include language reserving landlord's right to accept use and occupancy
  - If the Notice to Quit does not include this language and the landlord accepts money, the acceptance of funds from or on behalf of the tenant may be construed as a reinstatement of the tenancy and may void the Notice to Quit
- For tenants at will in nonpayment of rent cases - notice to quit must include language about tenant's cure rights

Notice to Quit - Common Traps for the Weary, Continued

- Boston, Somerville and Cambridge have additional forms that must be served with the Notice to Quit.
- Although not required by law, the Notice to Quit should be served by a constable or sheriff.
    - If the tenant raises a defense that they did not receive the Notice to Quit, the burden of proof is on the landlord to prove service.

IT IS GOOD PRACTICE TO CONSULT WITH AN ATTORNEY PRIOR TO A NOTICE TO QUIT BEING SERVED. A DEFECTIVE NOTICE TO QUIT IS GROUNDS FOR DISMISSAL.

Notice to Quit - Section 8 Tenants

- The Notice to Quit must state the reason for the termination of the tenancy
  - Include specific reference to the Housing Assistance Payments (HAP) Contract
- The housing authority/subsidy provider MUST receive a copy of the Notice to Quit
- Special Addendums must be included with the Notice to Quit
  - Notice of Violence Against Women Act (VAWA); VAWA Certification Form

IT IS GOOD PRACTICE TO CONSULT WITH AN ATTORNEY PRIOR TO A NOTICE TO QUIT BEING SERVED. A DEFECTIVE NOTICE TO QUIT IS GROUNDS FOR DISMISSAL.

Determine Venue

Where to File Eviction Action

There are pros and cons for each venue:

	District Court	Housing Court
Advantages	-Generally more landlord-friendly -Generally quicker court dates due to less court backlog -Some district courts will call eviction actions first	-Judges are more familiar with housing laws -Cheaper Court filing fee & e-filing -Tenant cannot transfer case to another court
Possible Disadvantages	-Rotating Judges (some might not be familiar with housing laws) -Higher Court Filing Fee & In-Person Filing in most district courts -***Tenant(s) may transfer case to housing court, which may cause a significant delay in the eviction action**	-More Tenant Friendly -Possibility of longer wait between court dates due to court backlog -Possibility of tenant(s) retaining counsel which may delay the case

Summons and Complaint

¡Importante! ¡Traducir! Enpötan! Tradwi! Quan Trog! Dich!

IMPORTANT: THIS IS A NOTICE OF A COURT CASE TO EVICT YOU - PLEASE READ CAREFULLY
IMPORTANTE: ESTO ES UN AVISO DE QUE HAY UN CASO PARA DESALOJARLE. LÉALO CON ATENCIÓN.

SUMMARY PROCESS (EVICTION) SUMMONS AND COMPLAINT

MASSACHUSETTS TRIAL COURT

eSUMMONS DOCUMENT ID (For Housing Court Use Only)

DOCKET NO. (court use only)	COURT DEPARTMENT	COURT DIVISION/COUNTY

CASE TYPE (Applicable only to case filed in Boston Municipal Court or District Court)

- ☐ Residential – Nonpayment of Rent *(Affidavit pursuant to G.L. c. 186, §31 required at time of filing)*
- ☐ Residential – Cause Other Than Nonpayment of Rent
- ☐ Residential – No Cause (No Fault)
- ☐ Commercial
- ☐ Foreclosure

To: Defendant(s)/Tenant(s)/Occupant(s): _____
Important: Any individual named must be at least 18 years old.

Address: _____ City/Town: _____ Zip Code: _____

E-Mail Address: _____ Telephone: _____

THIS IS A COMPLAINT TO EVICT YOU. YOU DO NOT NEED TO LEAVE YOUR PREMISES UNTIL ORDERED TO DO SO BY THE COURT. YOU WILL BE SERVED WITH A SEPARATE NOTICE THAT WILL INFORM YOU WHEN AND WHERE YOU MUST APPEAR IN COURT.

You are required to appear in Court to defend against the complaint of:

Plaintiff/Landlord/Lessor/Owner: _____

Address: _____ City/Town: _____ Zip Code: _____

E-Mail Address: _____ Telephone: _____

This complaint states that you occupy the premises at _____, which brings you within the jurisdiction of this Court. The Plaintiff/Landlord/Lessor/Owner is asking the Court to evict you because:

_____

The Plaintiff/Landlord/Lessor/Owner claims unpaid rent or "use and occupancy" (or both) to date in the total amount of: $_____. (If rent or "use and occupancy" (or both) is claimed, Plaintiff/Landlord/Lessor/Owner must complete the "account annexed" below or attach a rent ledger.)

☐ Check here if the Plaintiff/Landlord/Lessor/Owner also claims any rent or "use and occupancy" (or both) that becomes due and is unpaid after the complaint is filed.

ACCOUNT ANNEXED (itemize)

_____ _____

_____ _____

_____ _____

_____
Printed Name of Plaintiff/Landlord/Lessor/Owner or Attorney

_____
Signature of Plaintiff/Landlord/Lessor/Owner or Attorney

_____
Address of Plaintiff/Landlord/Lessor/Owner or Attorney

_____
E-Mail of Plaintiff/Landlord/Lessor/Owner or Attorney

_____ _____
Telephone BBO #

To the Sheriff of our several counties, or their Deputies, or any constable of any City or Town within said Commonwealth, Greetings: We command you to summon the within named defendant(s)/tenant(s)/occupant(s) to appear as herein ordered.
WITNESS:

_____
First Justice or Chief Justice

_____
Clerk Magistrate

Service By: _____

Entry Date: _____
Plaintiff/Landlord/Lessor/Owner MUST Provide Entry Date for Proper Service

Revised 01/2025

¡Importante! ¡Traducir! Enpötan! Tradwi! Quan Trog! Dich!

NOTICE TO ALL PARTIES: If you need a free interpreter or reasonable accommodations, please call the Court Clerk's Office. The Clerk's Office may also be able to provide you with information about available resources or services, such as the Lawyer for the Day Program. For information about emergency help for housing costs, visit: https://www.mass.gov/how-to/apply-for-rafi-emergency-help-for-housing-costs, or call 211 for help.

NOTICE TO PLAINTIFF/LANDLORD/LESSOR/OWNER: The officer must complete the below return of service. Service must be made on each defendant no later than the seventh day and no earlier than the thirtieth day before the Entry Date. In appropriate cases, proper evidence of the Notice to Quit must be provided upon the filing of this Complaint. **A P.O. Box will not be accepted as an address for the Plaintiff.**

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT(S): After this case is filed with the Court, you will be served a separate Notice with information about when and where you must appear in court, and the type of court event that will be conducted. If you do not receive a Notice, please contact the Court Clerk's Office. You (or your attorney) must participate in all Court events to present your defense and any claims. You (or your attorney) must also file a written Answer to this Complaint. An "Answer" is your written response stating the reason(s) why you should not be evicted and may also include claims you have against the plaintiff.

You must file (eFile, deliver or mail) your Answer with the Court Clerk's Office and serve (deliver or mail) a copy to the plaintiff (or plaintiff's attorney) at the address shown in this summons. eFiling can be accessed at http://www.efilema.com. An Answer may not be emailed to the Court. The Court's Notice will also include the deadline by which the Answer must be received by the Court Clerk's Office and received by the plaintiff (or the plaintiff's attorney). **If you do not file and serve an Answer, or if you fail to appear at your Court event, the Court may issue rulings and a judgment against you.**

OFFICER'S RETURN

On _____ I served the within-named defendant(s):

_____

and summonsed him/her/they/them as herein directed, in the following manner (please check off all that apply):

- ☐ in hand to each named defendant(s).
- ☐ leaving it at the last and usual place of abode of each named defendant(s) at the following address: _____.
- ☐ mailed first-class to each named defendant(s) at the following address: _____.

Fees for Service

Service	$ _____
Copy/Attest	$ _____
Travel	$ _____
Use of Car	$ _____
Mailing	$ _____
Total	$ _____

_____
Signature of Officer

_____
Printed Name of Officer

_____
Address of Officer

_____
Telephone Number of Officer

Revised 01/2025

Summons and Complaint

- Court document to be served AFTER the Notice to Quit expires
  - Notice to tenant that landlord is bringing eviction action
- The language on the Summons and Complaint **MUST** match the language in the Notice to Quit
- Service deadline must fall on a Monday
  - The Entry deadline must be the following Monday after the Service deadline
  - If either the service date or entry date fall on a holiday, the date is the next business day
- The Summons and Complaint must be served by a sheriff
  - Unless a 4C motion is filed and allowed with the district or housing court judge before service
- The Summons and Complaint cannot be filed less than 7 days or more than 30 days after service

IT IS GOOD PRACTICE TO CONSULT WITH AN ATTORNEY PRIOR TO A SUMMONS AND COMPLAINT BEING SERVED. A DEFECTIVE NOTICE TO QUIT IS GROUNDS FOR DISMISSAL.

File Eviction Action

Documents Needed and How to File

- Notice to Quit and Return of Service
  - Include any relevant addendums per Notice to Quit section of this presentation
- Summons and Complaint and Return of Service
- For nonpayment of rent cases: Affidavit of Compliance with G.L. c. 186, s. 31
- For housing court: Affidavit of compliance with e-Filing requirements
- How to file:
  - District Court: in-person; all originals are required; $195 court filing fee
  - Housing Court: e-file only; scan and upload originals; $135 court filing fee, but $161.54 with fees

First-Tier Court Event

Notice Requirements

- Once the first-tier event is scheduled by the court, you (or your attorney) will receive Notice of the First-Tier Court Event
- The Notice will include the date, time and location where you must appear
- A copy of the notice **MUST** be served on the tenant(s) no less than 14 days before the court date
- A copy of the notice must be served by a sheriff - unless a 4C motion has been filed and approved by the court
- If the case is being heard in District Court, you will need the original notice with the return of service to file ahead of the first-tier court event
    - (the original notice in district court will have a raised seal)

What to Expect:

District Court	Housing Court
You will provide a status to the judge: ● Prior to the first-tier event, you should prepare a short statement including your name, the property address and what type of eviction is being filed (e.g. nonpayment, no fault/no cause or cause) ● Update the judge whether the parties have had any discussions in attempts of resolving the case (you do not need to share what the parties discussed) ● If the parties cannot reach an agreement, the court will schedule a bench trial or jury trial	You will meet with a housing specialist: ● You (and your attorney), the tenant (and their attorney) will meet with a housing specialist, who is a neutral third party ● Discussions with the housing specialist are confidential ● You and tenant will have the opportunity to present your side of the case in front of the housing specialist, who may assist the parties in reaching a resolution in the case ● If the parties cannot reach an agreement, the court will schedule a bench trial or case management conference

What if the Tenant doesn't show up?!

- The landlord (or their attorney) will need to complete and file a military affidavit and a rule 10 affidavit
- A Military Affidavit is a standardized form used to indicate the military status of the party(ies) to a case
  - You may use the Servicemembers Civil Relief Act Website (https://scra.dmdc.osd.mil/) to determine the military status of the party(ies) that you listed.
- Rule 10 Affidavit is an account annex
  - The balance includes only unpaid rent/use and occupancy charges and does not include court costs or other claims, debts, damages, or expenses
- The court will enter a default judgment, which is an automatic win for the landlord
  - However, the tenant can file a motion to remove the default
  - The court will schedule a court hearing and the tenant must state why they missed court and whether they have any defenses/counterclaims to the eviction
  - The judge will have discretion whether or not to allow the tenant's motion to remove default

Tenant’s Answer & Discovery

The tenant(s) *may* file an answer in an eviction action

- The answer must be filed 3 days before the scheduled first-tier court event
- The tenant(s) can reserve their right to a jury trial in the answer
- If the tenant does not file an answer, they can file a motion for late answer and discovery
    - The court will schedule a motion hearing, but a late answer is almost always allowed
    - The tenant will lose their right to a jury trial if they file a late answer

What is an Answer?

- An Answer is a written document including the tenant's claims against the landlord
- The claims can either be defenses, counterclaims, or both
- A **defense** to an eviction is a claim against the landlord requesting the court dismiss the case
    - An example is a defective notice to quit and/or defective summons and complaint; failure to comply with rules for public and subsidized housing
- A **counterclaim** to an eviction is a claim against the landlord for monetary damages
    - Common examples include but are not limited to: violations of security deposit law, sanitary code violations, retaliation, discrimination, breach of quiet enjoyment
- Several claims can be raised both as defenses and counterclaims

What is Discovery?

- Tenants may ask up to 30 questions (interrogatories) and for document requests
- Landlords have 10 days to respond, unless otherwise agreed to by the parties
- The response must include the question along with the landlord's response
    - All answers must be truthful and accurate - landlord will be signing under pains and penalties of perjury
- Landlords have the right to request discovery as well
    - May be prudent if there are defenses/counterclaims raised in the tenant's answer that the landlord was not aware of
- It is important to respond to the discovery requests in a timely manner - otherwise, the tenant could file a motion to compel and the court may award sanctions for failure to comply
- **It is important to consult with an attorney - an experienced attorney can assist you in answering discovery questions**

Bench Trial

What is a bench trial?

- A bench trial is a trial where the judge is the sole fact-finder, meaning that the judge alone makes a decision on the merits of the case
- The plaintiff/landlord will have the opportunity to present their case to the judge and submit documentation (as long as they are in compliance with the Mass. Rules of Evidence)
- The defendant/tenant has the option to cross-examine the landlord
- The plaintiff/landlord may present witnesses, and the defendant/tenant may cross-examine those witnesses as well
- After the plaintiff/landlord is finished, the defendant/tenant will have the opportunity to do the same

How to Prepare for Trial:

- Make a list of witnesses - a person who will testify on your behalf at trial
  - Talk to the witness(es) in advance - tell them the questions you plan to ask and ensure they have the documents you need; be sure that their answers/documents will help your case
- Gather important documents (trial exhibits)
  - You will need a copy of the notice to quit and return of service, summons and complaint, lease agreement, and rent ledger for nonpayment of rent cases
  - You may consider bringing copies of written correspondence between you and the tenant if it's relevant
- Provide a witness list and copies of your trial exhibits to the tenant in advance and ask them to do the same

Practical Tips

- Dress business casual
- Do not interrupt the tenant or the judge during trial
- Act professionally: do not name-call or yell; do not make faces or roll eyes during the trial
- You may consider watching a bench trial before your court date - court is open to the public

Considerations

- If the tenant raised meritorious counterclaims, the judge/jury may award monetary damages
- If the monetary damages awarded to the tenant exceed your monetary damages (e.g. unpaid rent), the court will award the tenant possession (e.g. they can stay in the property) and the difference of any monetary damages will be awarded to the tenant
- Depending on the nature of the eviction case - you could end up owing the tenant money!!

Post-Trial

After the trial:

- The judge will take the matter under advisement - the judge will not issue a decision the same day
- You will receive a copy of the court's decision
- The court will issue a judgment, which is an official result of a lawsuit in court
- If the judgment is in your favor, the judge will award possession and any monetary damages (e.g. any unpaid rent and court costs)
- There is a 10 day appeal period - the losing party can file an appeal (case will be transferred to appeals court) or motion for reconsideration asking the judge to change his/her mind

After the appeal period:

- If you win the trial, you may request an execution from the court after the 10 day appeal period
- The court will mail you (or your attorney) an execution for possession and monetary damages
- You (or your attorney) will need to deliver the original to a sheriff or constable (if the 4c motion was filed and allowed)
- The constable/sheriff will post a 48 hour notice on the door stating the date and time of move out
- The constable/sheriff will return to the property on the day/time posted and will remove all individuals named on the execution and their belongings
    - ***please note - this process may be very expensive depending on the amount of belongings**

After levy of execution:

- Once the constable/sheriff removes the occupants and their belongings, you may change the locks to the property (**but never before, unless the tenant moves out voluntarily and returns the keys to you**)
- You should take pictures of the premises
- If a security deposit was collected, you must prepare a Security Deposit Return form and send it to the tenant(s) within 30 days
    - You can deduct for unpaid rent or any property damage beyond reasonable wear and tear
    - You must return the difference to the tenant
    - If the security deposit was applied in full to unpaid rent/property damage, you are still required to prepare the security deposit return form
    - You must include any receipts, invoices, estimates, photographs, etc. for any property damage you are deducting from the security deposit
- You must fix any defects in the property that violate MA sanitary code
- You may consider making additional repairs to the property, such as painting, before advertising the property for rent to future tenants

Questions?