

Housing Discrimination

Massachusetts

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CONTENTS

- *Housing Discrimination – Massachusetts*, by Gay & Lesbian Advocates & Defenders, revised November 2002.
- *Resources for People Experiencing Discrimination or Other Problems in Housing - Massachusetts*, by Gay & Lesbian Advocates & Defenders, August 2003.

*** This publication contains legal information, not legal advice. ***
For legal advice about a specific situation you must consult an attorney.



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Housing Discrimination – Massachusetts

HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION OR HIV STATUS

Introduction

Living in a place that is comfortable and safe is important to everyone. Because people want their housing situation to be a source of security, it can be particularly stressful and difficult to experience problems with a neighbor or a landlord, or in the process of trying to obtain housing.

You may experience a variety of bad circumstances related to your housing. For example, you may not get along with your neighbors, or you and your neighbors may have different expectations about community standards (regarding noise, public conduct, etc.). Or you may have a landlord who is unpleasant, or unresponsive to maintenance requests, or who unfairly moves to evict you for reasons ranging from the personal to the financial. These situations are not the main subject of this publication, but the attached resource list contains social service and legal assistance organizations that may be able to serve as a resource for these problems.

And then there is discrimination. Discrimination is bad treatment because of a characteristic -- such as sexual orientation or HIV status -- that is protected under the law. Proving discrimination requires showing that you were treated differently *because of* your sexual orientation or HIV status and not exclusively for some other reason.

Massachusetts Discrimination Law

Massachusetts anti-discrimination law (M.G.L. chapter 151B) makes it illegal to discriminate in housing on the basis of sexual orientation and/or HIV status. Exemptions are made in the law for owner-occupied buildings with only two units. This law should also protect people from discrimination based on a perception of their sexual orientation or HIV status or based on their association (business, familial or personal relationship) with an individual with HIV.

Identifying Discrimination

Discrimination in housing can take a variety of forms, including:

- ❖ refusal to sell or rent a property based on sexual orientation or HIV status,
- ❖ eviction from an apartment based on sexual orientation or HIV status,
- ❖ being treated differently from other tenants or prospective tenants because you are known or suspected to be gay or lesbian or to have HIV,
- ❖ harassment because you are known or suspected to be gay or lesbian or to have HIV.

For example, if a landlord has established general policies (e.g. a standard application process, or policies about noise or visitors in the building), but only applies those policies to selective people based on their sexual orientation or HIV status, that may rise to the level of discrimination. Or if the landlord generally takes action to address harassment against other tenants, but fails or refuses to take action when the tenant is gay or lesbian or has HIV, this may also be considered discrimination.

A Note About Harassment

Many people experience harassment in their housing situation, including verbal slurs, intimidating physical aggression, or other forms of hostility based on their sexual orientation or HIV status. Sometimes the harasser is another tenant; sometimes it is the landlord or building management. The anti-discrimination law also covers harassment of tenants by landlords or building management. If the harasser is someone other than the landlord, it is important to report the harassment to the landlord in writing. Ask him or her to look into the matter. Many landlords feel it is wise to investigate complaints about harassment in order to ensure the safety of their tenants, and a landlord risks a discrimination claim if he or she investigates some complaints but not others. Also, it is important to remember that harassment can sometimes rise to the level of criminal conduct and, as such, may have other remedies (see below).

Taking Legal Action Against Discrimination

People who feel that they have been discriminated against in housing because of their sexual orientation or their HIV status have the right to file complaints with the Massachusetts Commission Against Discrimination (MCAD). MCAD is the state agency that hears cases of discrimination. If it finds that discrimination has taken place, it has the power to order landlords or building management to compensate people for their mistreatment. Compensation can include any expense incurred by the complainant (the person who filed the complaint) in obtaining alternative housing, moving and storage expenses incurred as a result of the discrimination, emotional distress damages, and any attorney's fees the complainant may have incurred. A recent MCAD case awarded over \$20,000 to two tenants who proved that they were harassed by their building management because of their sexual orientation. Also, if a tenant who claims to have been refused housing because of her sexual orientation or HIV status files a complaint with the MCAD before the apartment is rented, the Commission may order an injunction that would prevent the landlord from renting to another tenant while the case is being decided.

You don't need an attorney to file a discrimination complaint. You simply go to the Commission to meet with a staff person and tell your story, and the interviewer will use the facts you discuss to draft a formal written complaint. (The Commission is open Monday through Thursday, 8:45am – 3:00pm; see attached resource list for contact information). Complaints of discrimination arising after November 5, 2002 must be filed within 300 days after the act of discrimination. (Claims arising prior to November 5, 2002 must be filed within 6 months). This deadline is firm, and if you miss the deadline you will most likely lose the right to pursue a discrimination complaint. Discrimination complaints can also be pursued in court, but claims must initially be filed with the MCAD. People who feel they have been discriminated against should take care to keep all written records related to the discrimination, such as leases, letters from real estate agents, notices, telephone messages, and correspondence with the landlord, or records of vandalism and criminal complaints in the case of harassment.

While the MCAD process is a way of pursuing a legal remedy for discrimination, it is not intended as a means of resolving evictions or other landlord/tenant conflicts. For assistance with these issues, please refer to the attached resource list. In addition to general resources, there are a variety of organizations statewide which provide particular assistance to people with HIV in terms of advocacy, housing search assistance, and rental assistance.

HIV Discrimination in Housing under Federal Law

In addition to rights under Massachusetts law, the Fair Housing Act is a federal law that protects people with HIV from housing discrimination. Under this law, a lawsuit can be filed in court or the person can file a complaint with the United States Department of Housing and Urban Development. This law also protects anyone who has "associated" with a person with HIV, such as a friend, spouse, lover, or roommate of a person with HIV.

Discrimination in Public Housing

Tenants in public housing benefit from the same anti-discrimination laws that apply to all other housing. However, public housing systems may have their own policies and procedures regarding what to do when you have experienced harassment. It is important to find out what the policies are so you can follow the appropriate internal procedure even as you are filing a legal claim elsewhere. Also, cases of discrimination in public housing may give rise to additional legal claims because the government is the responsible party.

Alternative Options for Dealing with Housing Problems

Depending on your situation, you might choose to handle housing problems in different ways. We have described above various legal responses to housing discrimination. If, however, you do not wish to take legal action against your landlord, you might consider other ways of resolving the conflict, such as following an internal grievance procedure if you live in a public housing situation, or seeking professional help to mediate the conflict between you and your landlord. Some mediation resources can be found in the attached resource list. Ultimately, deciding how to respond to discrimination is a personal choice you must make. Some individuals decide not to pursue a lawsuit or other grievance against a landlord, because of economic necessity or because of the personal repercussions of making a complaint. This may mean either staying in your apartment and handling the circumstances as best you can or moving out without challenging the discrimination. If you take one of these roads, you might seek support from family, friends, or a social service agency.

Sometimes harassment rises to the level of unlawful criminal conduct and you may wish to contact the police to secure your safety. In handling harassment, it is extremely important to create a paper trail demonstrating the extent of the problem. Make sure to carefully document the harassment and make sure that if you file a police report it includes any bias indicators, such as hate language. For more information about securing your safety, or to speak with someone who can provide you with some support, please call the Violence Recovery Program (VRP) at Fenway Community Health Center at (800) 834-3242.

*** It is important to remember that legal complaints about discrimination must be filed shortly after the discriminatory acts – within 300 days for claims arising after November 5, 2002, and within 6 months for claims arising prior to that date – so that you do not lose the opportunity to take legal action if you so choose.

PRIVACY – A SPECIAL CONSIDERATION FOR PEOPLE WITH HIV

The Privacy Rights of People with HIV in Housing

Massachusetts privacy law prohibits disclosure of highly personal or intimate facts about an individual, which will almost certainly include a person's HIV status or AIDS diagnosis where a person has not shared such information or has been very selective in its disclosure (M.G.L. ch. 214, §1B). For example, in the public housing context, a landlord who learns from a housing application that a particular tenant is HIV-positive is prohibited from disclosing that information to other tenants. The law does not necessarily apply to non-business relationships, such as personal relationships or neighbor relationships.

An exception to the law exists when there is a legitimate business reason for the disclosure. However, a disclosure by a landlord will rarely, if ever, meet this standard. But, of course, each case must be assessed individually. In analyzing whether there has been a violation of the law, courts will determine whether there is any legitimate interest in the disclosure of a person's HIV status and then balance that interest against the nature and degree of the intrusion into privacy. The extent of the disclosure and the harm an individual has suffered as a result will also be factors in this balancing test.

The Constitutional Right to Privacy

Many courts have found that a person has a constitutional privacy right to the nondisclosure of HIV status. The constitutional right to privacy can only be asserted when the person disclosing the information is a state or government actor (such as public Housing Authority staff and management). Courts will balance the nature of the intrusion into a person's privacy against the weight to be given the government's legitimate reason for a policy or practice that results in the disclosure.



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Massachusetts Housing Resources

DISCRIMINATION & HARASSMENT

Violence Recovery Program (VRP) <ul style="list-style-type: none">• Fenway Community Health Center program that provides support and advocacy for victims of harassment or violence.	800-834-3242
Fair Housing Center of Greater Boston <ul style="list-style-type: none">• Private fair housing organization that investigates complaints of illegal discrimination and promotes equal housing opportunities throughout Greater Boston.	617-399-0491
Boston Fair Housing Commission <ul style="list-style-type: none">• City agency responsible for hearing and investigating discrimination complaints in the Metro Boston Area. Works in conjunction with state and federal authorities.	617-635-4408
Massachusetts Commission Against Discrimination (MCAD) <ul style="list-style-type: none">• State agency responsible for hearing and investigating discrimination complaints throughout the Commonwealth. Works in conjunction with city and federal authorities.	Boston: 617-994-6170 Springfield: 413-739-2145
Housing Discrimination Project <ul style="list-style-type: none">• Information, advocacy and legal referrals for victims of discrimination in Western MA. Will provide selective representation on housing complaints at MCAD.	413-539-9796; 800-675-7309

GENERAL ADVOCACY/EVICTIONS

Massachusetts Legal Assistance Corp • <i>Umbrella organization that can direct people to legal services statewide.</i>	617-367-8544 www.mlac.org
Legal Advocacy & Resource Center (LARC) • <i>Hotline that provides information and referrals to low-income tenants. Serves as intake screening line for Greater Boston Legal Services.</i>	617-742-9179; 800-342-LAWS
Greater Boston Legal Services (GBLS) • <i>Housing Unit offers legal assistance to individuals and families who are homeless or at risk of becoming homeless; help gaining access to emergency shelter and long-term affordable housing.</i>	617-371-1234
City Life/Vida Urbana • <i>Assistance with housing problems including homelessness, overcrowding, substandard conditions, eviction and unaffordable rent increase.</i>	617-524-3541
Action for Boston Community Development (ABCD) • <i>Housing counseling, eviction prevention assistance, landlord/tenant mediation; housing search assistance; rental assistance.</i>	617-357-6000 x6647
Tenant Advocacy Project (Harvard Law School) • <i>General landlord-tenant advice; representation of public housing tenants at informal conferences, private conferences, and grievance panel hearings.</i>	617-495-4394
Lawyers Clearinghouse on Affordable Housing and Homelessness • <i>Project of the Boston Bar Association and Massachusetts Bar Association--provides pro-bono representation and assistance to homeless adults through the Pine Street Inn and St. Francis House..</i>	617-723-0885
Volunteer Lawyers Project • <i>Will handle evictions for both landlord and tenant at 'notice to quit' stage.</i>	617-423-0648
Western Massachusetts Volunteer Lawyers Service (Massachusetts Justice Project) • <i>Assistance with landlord/tenant disputes in Western MA.</i>	413-533-2660
Department of Housing and Community Development • <i>Provides mediation for low-income tenants and landlords.</i>	617-727-7765
Office of Consumer Affairs & Business Regulation • <i>MA Tenant Rights Handbook</i>	617-727-7780; www.magnet.state.ma.us/consumer/Pubs/tenant.htm

HOUSING ASSISTANCE FOR PEOPLE WITH HIV

HIV Housing Advocacy Information Line <i>• Provides referrals to local HIV housing advocates by region.</i>	617-450-1440
Legal Services Center of Jamaica Plain – AIDS Law Clinic <i>• Provides a variety of legal services on a reduced fee basis to people living with HIV.</i>	617-522-3003
Mass Access <i>• Registry of accessible housing for people with disabilities -- catalogs accessible housing in Massachusetts and connects prospective tenants to available units via Independent Living Centers statewide.</i>	617-742-0820 TTY: 742-0820
Proyecto Búsqueda (Latino Health Institute) <i>• Housing search program for Spanish-speaking individuals and families with HIV.</i>	617-350-6900 x192
Proyecto Opciones (Latino Health Institute) <i>• Scattered site rental assistance program for Spanish-speaking homeless individuals and families living with HIV.</i>	617-350-6900 x173
Center for Community Health, Education & Research (CCHER/HAP) <i>• Housing search assistance in Greater Boston for Haitian individuals and families living with HIV/AIDS.</i> <i>• The Lakay Project offers confidential housing in private subsidized Boston-area apartments for eligible homeless Haitian individuals and families living with HIV/AIDS.</i>	617-265-0628
Cambridge Cares About AIDS <i>• Emergency transitional housing for sober homeless HIV+ individuals.</i> <i>• Single Room Occupancy for low-income symptomatic HIV+ individuals.</i>	617-661-3040
SPAN, Inc. <i>• Transitional housing and housing search assistance for sober HIV+ ex-offenders.</i> <i>• Housing readiness preparation for ex-offenders.</i> <i>• Statewide service.</i>	617-423-0750
Tri-City Community Action Program <i>• Assists people with HIV in stabilizing current living situations, applying for subsidized housing, benefits counseling, finding appropriate housing.</i> <i>• Serves Malden, Everett, Medford, Melrose, Wakefield.</i>	781-322-4125
Homelessness Prevention Project (AIDS Action Committee) <i>• Short-term financial assistance for individuals and families in order to maintain financial obligations determined by a lease or mortgage contract.</i> <i>• Provides rental assistance for up to, but not exceeding, 21 weeks per household in one year. Assistance paying back rent, mortgage payments, future rent payments or a combination of these.</i> <i>• Statewide; Do not have to be AAC client.</i>	800-235-2331

AIDS Action Committee

617-437-6200

- *Assists AIDS Action clients with finding housing, figuring out which programs clients qualify for, providing transitional and emergency financial assistance.*

Metro Housing Assistance Program

800-272-0990;
or contact any
local Housing
Authority

- *Administers Section 8 certificates to low income/disabled people.*
- *If granted, tenant pays 30% of his/her income; remainder paid by the Assistance Program.*