CHAPTER 1

Creating the Residential Tenancy

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Scope Note

This chapter addresses the creation of a residential tenancy. Included is guidance on obtaining and evaluating references, credit reports, and criminal histories; dealing with discrimination and disability-related issues; preparing a unit for rental; and working with brokers. The chapter also addresses the various aspects of negotiating and drafting the terms of a tenancy and the legal requirements for fees and deposits. Exhibits include a rental application, a reference request, a licensee agreement, a tenancy-at-will, a fixed-term apartment lease, a rent and security deposit receipt, an apartment condition statement, and a security deposit return.

§ 1.1 INTRODUCTION

Whether counseling a client prior to the creation of a residential landlord-tenant relationship or after the relationship has gone bad, it is important to have a firm grasp of the issues at the heart of this relationship. These issues will define the rights and responsibilities of each of the parties. This is equally true whether one is representing the landlord or the tenant because, generally, the rights of the landlord are the responsibilities of the tenant and the rights of the tenant are the responsibilities of the landlord. These issues will reoccur throughout the creation, duration, and termination of the relationship, so the attorney should review them carefully with the client.

Very often an attorney will not hear from a client until after the relationship has gone sour. However, an attorney may be able to perform some preventative maintenance before that happens, mainly by being aware of the client's situation. For example, when representing a prospective buyer of a multiunit dwelling, consider discussing the landlord-tenant relationship with the client before the purchase so that the client will be prepared when it comes time to rent the units.

§ 1.2 TENANT SELECTION AND APPLICATION PROCESS

§ 1.2.1 Obtaining and Evaluating Prior Landlord References and Credit Reports

The landlord is allowed to request that any prospective tenant fill out a rental application. A sample application is included as **Exhibit 1A**. 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. 42 U.S.C. § 3602 et seq.; G.L. c. 151B. The landlord can ask for the names of each prospective occupant, their income, and prior rental history.

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 TRW. A word to the wise: 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. All responses to requests for such references should likewise be in writing. In the request for references, the landlord should ask the prior landlord for the tenant's prior rent-paying history, the tenant's relationship with both the prior landlord and with other tenants, and the reason the tenant is leaving. A sample blank request for prior landlord reference is included as **Exhibit 1B**.

There is an alternative source of information about the tenant's 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 those 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. In addition, the Massachusetts Trial Court has created an online docketing system, open to members of the public, which landlords or their attorneys can check to see if an eviction action has been commenced against the prospective tenant within the time frame applicable to those records. There is no cost for this service. The prudent landlord will print out any relevant information found on this website, keeping a copy of the files and providing a copy to the applicant. In addition, it is a good idea to try to confirm whether the case actually involves the potential applicant, by confirming the prior address or by asking the applicant about the matter.

Judicial Commentary

Practitioners should be aware of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p, and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x. *See* Hon. E. George Daher & Harvey Chopp, *Landlord and Tenant Law* (34 *Massachusetts Practice Series*) § 21:18 (West 3d ed. 2001 & Supp. 2012).

Tenants who are concerned that these reports might contain erroneous or harmful information may want to order copies of their own histories and provide an appropriate statement or explanation. Tenants have the right to obtain copies of credit and tenant reports, free of charge in certain circumstances, and also the right to be told the name of anyone who received a copy of the report within the past twelve months. Armed with this information, a tenant can notify the reporting agency of any dispute as to the completeness or accuracy of any information in the file. In response, the agency must delete the disputed information or conduct a reinvestigation into the disputed information. If the reinvestigation does not resolve the dispute, the tenant has the right to file a written statement setting forth the nature of the dispute, which will be included in the file and in any credit or tenant reports requested in the future. This is significant because it gives the tenant the opportunity to correct any inaccuracies in the report and places landlords on notice of potential problems. While the statement allows a tenant to address issues of inaccuracy or incompleteness, a tenant technically is not supposed to offer extenuating circumstances for not paying a debt, such as illness, temporary unemployment, accident, or mistake. These rights and responsibilities are contained in the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., which has been held to apply to reports prepared by tenant screening agencies. *See Cotto v. Jenney*, 721 F. Supp. 5 (D. Mass. 1989).

The landlord should carefully evaluate the information obtained from the histories and the references. The landlord should not be afraid to allow the tenant to explain problems with the credit or eviction history or the references, since it is possible that the problems were caused by exceptional circumstances or the tenant has overcome them. The landlord should apply rational, objective standards to each and every application to ensure that each applicant is being evaluated on reasonable, nondiscriminatory grounds. It is a good idea for a landlord to formulate, in writing and in advance, reasonable criteria for tenant selection and to maintain such criteria in written form. In fact, if the landlord is participating in a program that involves state or federal rental assistance, including tax credit properties or mortgages insured by federal or state agencies, the landlord might be required to have a written tenant selection plan that has been approved by such agencies.

The prudent landlord will insist upon 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.

§ 1.2.2 Discrimination and Disability Issues in Renting

A landlord cannot refuse to rent a residential unit for any of the following reasons:

- race, color, national origin, ancestry, or religion;
- sex, sexual orientation, or marital status;
- age (except for minors);
- family composition (except for problems with size of unit);
- source of income (for example, public assistance or rent subsidy); or
- military status.

42 U.S.C. § 3602 et seq.; G.L. c. 151B.

Additionally, the landlord cannot refuse to rent a unit because of the prospective tenant's physical or mental disability. In some cases, the landlord may be required to provide a reasonable accommodation to a disabled tenant, such as handicap accessible kitchens and bathrooms or access ramps. What is reasonable? It varies according to the facts, but if the accommodation would be an undue financial hardship or an undue administrative burden for the landlord, it will not be considered reasonable. For a more in-depth discussion of discrimination and reasonable accommodation issues in housing, see chapters 3 and 4 of this book.

The landlord cannot refuse to rent a unit to a tenant because the tenant has children and the premises contain lead paint. *See* G.L. c. 186, § 16; G.L. c. 111, § 197. Instead, the landlord will be required to abate the condition.

§ 1.2.3 Issues with Regard to Applicants to Public Housing and Federally Subsidized Housing

Chapter 14 of this book contains an in-depth discussion regarding the types of programs for applicants for assisted housing, as well as a discussion as to the application process for that housing. It should be kept in mind that private landlords might have to process a request for housing from an applicant who receives the benefit of rental assistance, and the prudent counselor advising any such landlord would do well to become familiar with the requirements for such housing.

The Violence Against Women Act (VAWA) was developed and passed originally in 1994 as a result of extensive grassroots efforts in the early 1990s, with professionals from the victim services field, law enforcement agencies, prosecutors' offices, the courts, and the private bar urging Congress to adopt significant legislation to address domestic violence. Since its original passage, VAWA's focus has expanded to address—in addition to domestic violence—dating violence, sexual assault, and stalking. It funds services to protect adult, teen, and child victims of these crimes, and supports training on these issues, to ensure consistent responses across the country.

In 2008, the U.S. Department of Housing and Urban Development (HUD) promulgated regulations that apply to any development that receives Section 8 funding, including new construction; Section 202 programs with Section 8 assistance; and state agency–financed developments. These regulations impact the behavior of the landlord throughout the process of obtaining, maintaining, and terminating tenancies, so it is important for all employees of the management company to understand what they are required to do under VAWA.

Subsequently, HUD issued a clarification of its regulations to verify that, despite the name of the statute, the law's protections apply equally to men and women. In this notice, dated October 30, 2009, HUD also indicated that managing agents must implement the provisions of the act immediately, if they have not already done so. These regulations have since been updated.

Generally speaking, VAWA (along with the underlying regulations) affords protections in both the application process and the eviction process to certain families or persons applying for or receiving assistance under Section 8, including

- victims of domestic violence,
- victims of dating violence, and
- victims of stalking.

To assist the managing agent in understanding the scope of these protections, the regulations provide a number of definitions, including the following:

> *Dating violence* means violence committed by a person:
> (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
> (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
> (i) The length of the relationship;
> (ii) The type of relationship; and
> (iii) The frequency of interaction between the persons involved in the relationship.
>
> *Domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
> . . . .
> Stalking means:
> (1)(i) To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or
> (ii) To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

> (2) In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to
>
> (i) That person,
>
> (ii) A member of the immediate family of that person, or
>
> (iii) The spouse or intimate partner of that person.

24 C.F.R. § 5.2003.

The regulations explicitly state that a landlord cannot deny any application based on the applicant's status as a victim of domestic violence, dating violence, or stalking if the applicant otherwise meets the qualifications for admission. Tenant selection plans should be updated to incorporate the protections in the VAWA regulations. In addition, managers are encouraged to establish policies that support or assist victims of domestic violence, dating violence, or stalking.

The regulations require that the manager provide all new tenants with a lease addendum that contains the VAWA requirements together with the model lease or occupancy agreement. In addition, if they have not already done so, managers must send existing tenants a letter together with the VAWA lease addendum. In that letter, the manager must explain that the lease addendum contains important information regarding protections for victims of domestic violence, dating violence, or stalking, and state that the tenant can either accept the modifications to the lease by signing the addendum or choose to move, and that any such response is due within thirty days. The lease addendum must be signed by every adult member of the household.

VAWA has been extended several times, most recently in 2013. The act now covers the Section 202 and Section 811 supportive housing programs, Housing Opportunities for Persons with AIDS (HOPWA), HOME Investment Partnerships, homeless programs under the McKinney-Vento Act, and FHA mortgage insurance for Section 221(d)(3) and Section 236 of the National Housing Act. In addition, the Low Income Housing Tax Credit Program and the rural housing assistance programs administered outside of HUD are covered. HUD will develop new verification and confidentiality forms, similar to those already in use, for the newly covered programs.

VAWA 2013 revises VAWA 2005 to do the following:

- Cover victims of sexual assault, i.e., any nonconsensual sexual act proscribed by federal or state law, including when the victim lacks capacity to consent. This inclusion is immediately effective and does not require further rule making.
- Replace the term "immediate family member" with "affiliated individual" to refer to other victims associated with the tenant who are protected under the law.
- Require the owner or public housing agency (PHA), if the lease is bifurcated to remove a tenant or lawful occupant, to provide any remaining occupant with the opportunity to establish eligibility for the covered housing program. If eligibility cannot be established, the owner or PHA must give the occupant a reasonable time to find new housing or establish eligibility under another covered housing program. HUD will issue regulations as to what constitutes a reasonable time.
- Require the victim of domestic violence, dating violence, sexual assault, or stalking to provide the name of the perpetrator only if it is safe to do so and the name is known to the victim.
- Permit use of documents signed by a mental health professional verifying that the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of such actions when the professional believes that the requirements of VAWA 2013 are met. An administrative agency's records are an acceptable form of verification.
- Require HUD, rather than the individual owner or PHA, to develop a standard notification form advising applicants and tenants of their rights under VAWA 2013. This notice is to be provided at the time of granting or denial of admission, as well as with any notice of eviction or termination of assistance. It must be provided in multiple languages, consistent with HUD's Limited English Proficiency guidance under Executive Order No. 13166, 65 Fed. Reg. 50121 (Aug. 10, 2000).
- Require HUD to adopt a model emergency transfer plan for use by PHAs, owners, managers, or other housing providers participating in HUD-covered programs. This would allow victims to transfer to another available and safe dwelling under a covered housing program and incorporate reasonable confidentiality measures. HUD will

also develop policies and procedures for victims of abuse to receive, subject to the availability of tenant protection vouchers, mobile Section 8 assistance.

Where an applicant or tenant establishes an entitlement to protection under VAWA, the landlord is prohibited from evicting the tenant for any reason that is a direct result of the domestic violence. After a tenant notifies the landlord that domestic violence has affected the tenant's ability to pay rent or otherwise caused the tenant to violate the lease terms, covered landlords are to apply VAWA, and if the landlord proceeds with eviction, the tenant is entitled to assert a VAWA defense. In *Boston Housing Authority v. Y.A.*, 482 Mass. 240 (2019), the tenant testified that she missed rent payments because she was in an abusive relationship and her partner took everything from her. The Supreme Judicial Court found that the trial court was obligated to inquire further to determine if the tenant was entitled to VAWA protection and that VAWA could be asserted as a defense to a housing authority's claim of breach of agreement. *Bos. Hous. Auth. v. Y.A.*, 482 Mass. at 246–49.

Note that, under a Massachusetts statute adopted in 2013, there are separate protections for survivors of rape, sexual assault, stalking, and domestic abuse that apply to all rental housing rather than only to federal housing covered by VAWA 2005 and 2013. The state protections, among other things, apply to lock changes and early lease termination. See chapter 10 of this book.

§ 1.2.4 Obtaining and Evaluating Information Under the Criminal Offender Record Information Act

In today's increasingly mobile society, the landlord must take extra steps to ensure that an applicant does not have an unsavory past that might repeat itself at the new address. One way of determining this is to try to find out if the applicant has been convicted of any crimes that might show a propensity to violence or mayhem. Although the trend in the law has been to allow increasing access to the prior records of applicants, caution must be exercised in obtaining, using, and disseminating such information, as each of the laws that provide for access also provide penalties for the misuse of that information.

When the applicant fills out the application, the landlord should have the applicant sign a release allowing the landlord to obtain not only the applicant's credit history and prior landlord references but also any prior court history. Such a release should be in plain, easy-to-read language and inform the applicant that the information obtained will be used in evaluating the application. Because court records regarding pending actions are in fact public records, they are accessible to the public, provided there has been no court order or statute that prohibits their release.

The same agencies that provide checks regarding eviction actions in the records at every Housing, District, and Superior Court also check those courts for records of criminal activity. When an agency encounters such records, it typically notifies both the applicant and the landlord that there is a matter that needs to be resolved. This may indicate that the agency has discovered records of a prior criminal charge. In this notification, the agency will invite the applicant to contact the agency directly to clear up the matter. The reason for this is that sometimes the court records themselves, especially in criminal cases, do not fully reflect the ultimate outcome of a case and the agency has a legitimate concern about potential liability for the improper use of this information.

What these record-checking agencies do not cover are local police records—that is, those complaints lodged that have either not yet reached the court phase or never will reach the court phase, where they would become a matter of public record unless otherwise ordered by the court or required by statute. Of the information a landlord can obtain, this sort is the most problematic. There is a statute, commonly referred to as the Criminal Offender Record Information Systems Act (CORI) (G.L. c. 6, §§ 167–178B) (as amended by 2010 Mass. Acts c. 256, §§ 2–37; most amended provisions effective May 4, 2012), that imposes limitations on the information a police department can produce regarding pending matters. However, the courts have held that if the document contains protected information, the record keeper must delete this information and provide the remaining information requested. Previously, there were limitations on who could ask for this information, but in 1990 the statute was changed to allow the public access to this information for certain periods of time, depending on the gravity of the crime.

Unfortunately there is little consistency between police departments as to the enforcement of these limitations. In some cases police departments will give the landlord the entire report, while in others they will give the landlord the report with the identifying information on the perpetrator blacked out. In most cases they will not give the landlord the information at all unless the landlord has a subpoena to compel them to turn this information over during the landlord's own court action. If the police department seems reluctant to provide this information, the landlord can ask the department to black out the identifying information so that the landlord has at least some of the facts to evaluate.

For units receiving rental assistance through federal or state programs, the tenant selection plan must contain screening criteria that include standards for denying admission to those persons who have engaged in drug-related or criminal activity. In addition, the revised regulations allow the owner of such property to adopt standards that deny admission on the basis of a prior eviction for drug-related criminal activity or on the basis that a household member is subject to a state sex offender lifetime registration requirement. *See* 24 C.F.R. §§ 5.850–.861.

Practice Note

Attorneys who represent such sites should examine the standards set out in the federal regulations as well as the requirements detailed in *Department of Housing and Urban Development, HUD Handbook 4350.3 REV-1: Occupancy Requirements of Subsidized Multifamily Housing Programs* (May 2003) in updating their clients' tenant selection criteria.

If the landlord does obtain this information to evaluate prospective applicants, it should be used with a great deal of caution unless the landlord becomes aware, through checking the court records, that the matter has been put into a court process and there is some type of verifiable outcome. The landlord can incur liability by relying on incorrect or out-of-date information.

In carefully evaluating the information obtained from all these sources, the landlord should consider the following:

- whether the crime alleged or proven against the applicant has any connection with the applicant's ability to abide by the terms of the lease or occupancy agreement (that is, if the activity would reoccur, would there be a threat to the health, safety, or welfare of other residents, their guests, or employees of the management company?);
- the time that has elapsed since the crime was alleged or proven;
- the likelihood of a reoccurrence;
- the age of the offender at the time the crime was committed and whether there has been a reoccurrence of any other types of criminal activity;
- the circumstances surrounding the criminal activity alleged, i.e., if it concerned a domestic dispute and the relationship is no longer in place; and
- whether there was a penalty imposed and, if so, whether the applicant has fully complied with the penalty.

The cautious landlord should allow the prospective applicant to explain what happened, as it is possible that the incident was caused by exceptional circumstances or a past problem that the applicant has now overcome. The landlord can elicit the facts using the criteria listed above to make a fair and reasonable evaluation. To make sure that there is no potential for miscommunication or misunderstanding, any such communication always should be set up and confirmed in writing. This communication will also give the landlord the opportunity to find out if the charges were dismissed and, if so, the circumstances of the dismissal, and thus avoid claims that the landlord relied on outdated or improper information.

With regard to past criminal histories of current residents, if the landlord did not previously check their records, it is difficult and most likely illegal to obtain this information under the CORI, which allows this information to be obtained in connection with an *application* for residency. Additionally, it is highly unlikely that the landlord could use this information as a valid ground for terminating a tenancy. The only way to use such information as a basis for termination is if the crime occurred during the term of the resident's occupancy and relates to the development and its occupants. Again, as with any other information obtained, the wisest course is to allow the resident to explain the circumstances through an informal meeting or conference, as this gives the resident the opportunity to explain and the landlord the ability to evaluate whether there is in fact a connection between the allegations and the welfare of the resident population.

§ 1.2.5 Obtaining and Evaluating Information from Sex Offender Registry Records

On October 1, 1996, the Massachusetts legislature put into effect a law establishing a sex offender registry and requiring that a person convicted of certain sexual offenses register with this agency. G.L. c. 6, § 178C et seq. It has been confirmed in its present incarnation, 1999 Mass. Acts c. 74, § 2, by the Supreme Judicial Court in the case of *Roe v. Attorney General*, 434 Mass. 418 (2001). The fight has now switched from the constitutionality of sex offender registration per se to whether sex offender information can be disseminated using technology such as the Internet.

Since its controversial passage, the law has been amended to change the process for evaluating offenders, but its underlying effect—setting up a registry and requiring persons convicted of certain offenses to register—has not changed. The applicable offenses include the following:

- indecent assault and battery on a child under the age of fourteen,
- indecent assault and battery on a mentally retarded person,
- rape,
- rape of a child under sixteen with force,
- assault with intent to commit rape,
- rape and abuse of a child,
- assault of a child under sixteen with intent to commit rape,
- kidnapping of a child under sixteen,
- open and gross lewdness and lascivious behavior, and
- unnatural and lascivious acts with a child under sixteen.

The registry includes the following information on the offender:

- name and aliases used;
- date and place of birth, sex, race, height, weight, and eye and hair color;
- Social Security number;
- home and work address;
- photographs and set of fingerprints; and
- description of the offense for which the offender was convicted, the city or town where the offense occurred, the date of conviction or adjudication, and the sentence imposed.

The information on the offender is transmitted to the police department not less than thirty days prior to the offender's release from custody. Within two days of release, the offender is required to register in person at the police department in the city or town where the offender resides. Any person who is on probation or parole as of October 1, 1996 is likewise required to register in person, and the information on that offender is transmitted to the police department. (This would include offenders who move into the Commonwealth from another state.) Upon moving, the offender must register with the police department in the new city or town within five days of the change of address or, if staying within the same town, reregister with the police department at least five days prior to moving. All offenders on probation or parole after October 1, 1996 must register at the police department in person. Each offender must appear once a year in person at the police department to verify that the registration file remains true and accurate. This duty expires twenty years from the date of the offender's conviction or release, whichever occurs last, except for persons convicted of more than one offense, in which case the duty lasts for the offender's lifetime.

Any person over the age of eighteen who appears in person at the police department can obtain a report indicating whether an individual identified by name, date of birth, or sufficient personal identifying characteristics is a sex offender, including a listing of the offenses for which the individual was convicted or adjudicated and the dates of such convictions or adjudications. A person can inquire whether any sex offender lives or works within a one-mile radius of a specific residence or business address. The statute requires that the person making the inquiry indicate that the request for information is either for their own personal protection, for the protection of a child under the age of eighteen, or for another person for whom the inquirer has responsibility, care, or custody. It would appear that landlords might fall in the latter two categories.

Each offender is given a risk level, between one and three, depending on the risk of reoffense:

- **Level 1**—a low level of risk;
- **Level 2**—a moderate level of risk, requiring the police to notify organizations in the community that are likely to encounter the offender, including schools, day-care centers, religious and youth organizations, and sports leagues;
- **Level 3**—a high level of risk, requiring that the information be transmitted to the Federal Bureau of Investigation as well as to organizations in the community and individual members of the public likely to encounter the offender.

The information obtained cannot be used to commit a crime or to engage in illegal discrimination against or harassment of an offender, as such misuse in itself will constitute a crime. Because using this information may constitute a crime, the

information should be handled with great caution. This statute intersects with the prohibition contained in other statutes regarding discrimination against applicants. If the landlord has a prospective applicant who is a registered sex offender, the landlord should employ the same evaluation process used for any other prior criminal history under the criteria set forth above. Because of the statute's restrictions on using the sex offender information, the landlord must walk a fine line between the rights of residents and the rights of the offender. This is a relatively new statute and it is not clear where that line should be. An educated guess would seem to indicate that the higher the level of risk assigned to the offender, the stronger the rights of the residents to know. Note, however, that if the offender is classified at Level 3, the police are required to notify the community, which relieves the landlord of any responsibility for notification. In any event, it might be best for the landlord to work with the police, requesting that they provide the appropriate notice to the residents. The stronger the connection between the offense for which the person was convicted and the health, welfare, and safety of members of the community, the more likely it is that the police will take on the responsibility for notification.

The cautious landlord should make sure that the information obtained is the most up-to-date available by communicating with the resident, the police, or the court. It is dangerous to rely on out-of-date information, particularly when there has been no conviction, since it is possible that the charges have been dismissed or dropped. In such a case, the resident could allege that the landlord is trying to harass the resident or has no basis for the action taken. To avoid such liability, the landlord should review the information, make sure the information is current and accurate, and make an objective evaluation of the facts involved. The more effort the landlord expends in doing so, the more likely it is that a court will find any action taken to have been fair and reasonable.

Disseminating sex offender information must be done with utmost care. Regarding Level 3 offenders, the police often use cable television channels and local newspapers to pass out the required information. The question for the landlord is how to distribute this information, regardless of how the landlord has obtained it, whether from the police or through other channels. If, for example, the information is posted on a community bulletin board, it is advisable that it be placed in a way that minimizes the listed person's opportunity to claim that the information is being used for harassment. A cover could be placed on top of the sheet so that anyone seeking the information will have to lift it to read the posted notice. The cover should contain a disclaimer stating that the information inside was provided by the police, that the landlord has no responsibility for errors or omissions contained in the notice, and a warning that the information obtained cannot be used to commit a crime or to engage in illegal discrimination or harassment of an offender because such misuse in itself will constitute a crime. Perhaps the best course of action is to maintain the information in a binder in the office and let the residents know that it may be reviewed on request. The landlord should have each resident so requesting sign a statement acknowledging that the resident is aware that the statute prohibits the use of the information to commit a crime or to engage in illegal discrimination or harassment of an offender.

§ 1.2.6 Preparing the Unit for Rental

When the time comes to rent the unit, the landlord needs to take an honest look at the unit and determine whether it is in compliance with the State Sanitary Code. It is a common misconception that the tenant can agree to accept a unit in bad condition (i.e., the old caveat emptor concept). The law requires that the unit be in good condition at the time it is rented. Counsel should take time to become familiar with the requirements of the State Sanitary Code and thoroughly review them with the client. 105 C.M.R. §§ 400, 410. The requirements may seem complicated and hard to understand, but familiarity with them will be worthwhile because the unit's compliance with those requirements at the inception of the tenancy will limit the amount of damages the tenant will be entitled to for breach of the warranty of habitability. The landlord is well advised that residential landlords and tenants cannot agree to rent a substandard apartment, even for a discounted rate. *See Haddad v. Gonzalez*, 410 Mass. 855 (1991); *Bos. Hous. Auth. v. Hemingway*, 363 Mass. 184 (1973).

Judicial Commentary

The implied warranty of habitability is always part of the bargain. A landlord cannot nullify the warranty.

Ethics Commentary

In preparing a unit for rental, counsel should be familiar with local requirements or associate with counsel who is familiar with such requirements. Mass. R. Prof. C. 1.1. For example, some cities and towns have required preinspection or a certificate of approval whenever there is a vacancy or change in occupancy.

The landlord can request a prerental inspection from the local board of health or inspectional services department. In some cities, including Boston, a local regulation or ordinance requires such an inspection. The inspector will go through the unit, tell the landlord what needs to be repaired, and issue a certificate of compliance when the work is completed. There is a charge for this inspection, but it is one of the cheapest forms of insurance; such a certificate serves as prima facie evidence that the unit was in compliance with the requirements of the State Sanitary Code at the inception of the

tenancy. Each city or town will have a slightly different procedure, and the client should be advised to check with the local board of health or building department about the appropriate procedure.

In 2013, the Boston City Council passed an amendment to the City of Boston Code (CBC 9-1.3) that requires all owners of residential housing units in Boston, including condominium units, to register their housing units with the Inspectional Services Department no later than July 1 of each year, identifying the property by street address and the number of units they own at each address. Exempted from this requirement are units owned or operated by federal, state, or city government and rental units located in dwellings containing six or fewer rental units, one of which is occupied by the owner. All nonexempt units must be inspected once every five years. The owner can request that the Inspectional Services Department conduct the inspection or can engage an "authorized" non–Inspectional Services Department inspector to do so. Annual comprehensive apartment inspections conducted by the Boston Housing Authority leased housing programs, the Metropolitan Boston Housing Partnership leased housing program, or other federal, state, or city inspection programs that are accepted by the Inspectional Services Department may be used to satisfy this requirement. This ordinance also establishes a procedure for identifying and addressing problem properties within the City of Boston.

Judicial Commentary

Many cities and towns require a certificate of occupancy/rental certificate before renting a vacant apartment to a new tenant.

§ 1.2.7 Carbon Monoxide Detectors

In January 2005, Nicole Garofalo died of carbon monoxide poisoning in her Plymouth home after a deadly amount of this gas accumulated because of a blocked vent in the heating system. Such deaths are particularly common during the winter months, when snow creates drifts that block exhaust vents from water heaters and furnaces that burn fossil fuel. During these months, windows and doors are usually kept tightly shut to keep out drafts; however, this also allows lethal amounts of carbon monoxide gas to accumulate in buildings. Because the gas is odorless and colorless, it is difficult to detect. Each year almost 3,000 poisoning cases are reported in Massachusetts. According to the *Journal of the American Medical Association*, carbon monoxide is the leading cause of poisoning deaths in the United States.

Nicole's death galvanized both local and state fire officials to push the legislature for a new law to address such tragedies. The resulting legislation, 2005 Mass. Acts c. 123 (codified in substantial part at G.L. c. 148, § 26F½), was signed into law on November 4, 2005. The law requires the installation of carbon monoxide detectors in residential buildings. These detectors are similar to the smoke detector systems that are required for use in residential settings.

Practice Note

As with other laws that were drafted in haste, there are substantial problems with Nicole's Law, and there are currently efforts to revise it.

According to the most recent information from the Department of Fire Services, the effective dates of compliance are January 1, 2007 for buildings with hardwired equipment and March 31, 2006 for all nonhardwired equipment. The law permits a landlord to request an extension for up to 180 days to equip the building with detectors hardwired into the building's electrical system or if there are more than 500 residential units owned or managed by the same entity; however, any such request must be made before March 31, 2006.

The law affects all dwelling structures that

- are occupied in whole or in part for residential purposes and
- have either enclosed parking or equipment such as boilers, furnaces, and hot water heaters that are powered by fossil fuels such as gas, coal, oil, and wood.

Landlords must inspect, maintain, and replace, if necessary, required carbon monoxide alarms at the beginning of any rental period. For tenants under a lease for a fixed term, this would appear to mean that the landlord can wait until the renewal period of the lease. For tenants-at-will, this would seem to require installation of the detectors by March 31, 2006. (This requirement may be affected by decisions made by the Board of Fire Prevention with regard to the type of system that will be required.) Every affected residential dwelling, building, or structure must be inspected by the fire department upon sale or transfer.

The law permits the Board of Fire Prevention to decide the type of system and installation required. According to the website of the Department of Fire Services, the department is currently drafting regulations that will outline what occupancies need what type of units.

Practice Note

One can anticipate that if the applicable regulations require that a building have a hardwired smoke detector system based on its number of units, the regulations will most likely require that the carbon monoxide detectors be hardwired as well.

As with the law governing smoke detectors, the carbon monoxide law is enforced at the city and town level. The local fire department is required to perform an inspection of the building to confirm that detectors have been properly installed and maintained as a prerequisite to any sale or transfer of the property.

Note, however, that the law also allows the local fire department to adopt regulations permitting more frequent inspections. The law allows for a fee for separate or joint inspection of carbon monoxide and smoke detector systems: $50 for single-family dwellings, $100 for two-family dwellings, $150 for three- to five-family dwellings, and $500 for buildings with six or more units. In addition, the law will be enforced like any other violation of the State Sanitary Code, which may mean that the local fire department can file civil or criminal actions in a court with jurisdiction, seeking either orders or fines from the court for failure to comply.

As the law currently stands, tenants are not liable for the cost of installing or maintaining these systems any more than they are responsible for the cost of installing or maintaining smoke detector systems. Under the terms of most leases or occupancy agreements, however, tenants can be liable for damaging or tampering with these systems.

As noted above, the Massachusetts Department of Public Health is required to adopt and enforce Nicole's Law as part of the State Sanitary Code. In Massachusetts, every person who lives in residential housing has the right to have an apartment free of defects, in compliance with the State Sanitary Code. Prudent owners or managers will be proactive in making sure that each of their units complies with the minimal provisions of the code, including making sure that all building systems are in working condition and setting up inspections on a regular basis to catch problems, as well as implementing and maintaining consistent procedures for correcting those problems. There are three reasons for these steps:

- locating and correcting a problem at an early stage lessens the risk of further damage to the property;
- locating and correcting damages will reduce liability to the tenant for claims arising out of defective conditions in the unit and building; and
- the manager may be prosecuted in a criminal action for failure to make required repairs.

Owners or managers may not be aware that the local fire department has the right, under the State Sanitary Code and the fire code, to bring a criminal action in the Housing and District Courts against any person who manages rental housing for violation of the State Sanitary Code and the fire code, with the possibility for fines and jail sentences. This would include a violation of Nicole's Law.

Obviously, to avoid this situation, prudent owners or managers will take steps to make sure that they comply with this law, including a plan for installing carbon monoxide detectors similar to the plan they adopted when smoke detectors became mandatory. The owner or manager should also adopt a plan of action for maintaining and replacing those detectors, including a system for regular inspections.

In addition, during routine maintenance and annual inspections, the owner or manager should make a practice of checking both the smoke and carbon monoxide detectors to make sure that the tenant or the tenant's guests have not disabled or tampered with them. Any such tampering should be documented and appropriate action taken under the lease or occupancy agreement.

Practice Note

The inspection forms used by the owner or manager should be revised to include a line regarding the condition of the detectors. As always, the form should be signed and dated by the person or persons making the inspection and should have a place for the tenant to sign, acknowledging receipt of a copy. Likewise, the lease should include a provision prohibiting the tenant or any other person under their control from removing and/or tampering with either the carbon monoxide or smoke detector.

With regard to inspections prior to tenancy, it is likely that cities and towns will adopt regulations requiring an inspection of the detectors prior to occupancy. Even aside from such regulations, however, there are good reasons why the detectors should be inspected prior to the tenant moving in.

First, when the unit is rented to the tenant, the owner or manager is representing that the premises are in compliance with the State Sanitary Code. In court, any certificate issued by the fire department will almost certainly defeat any allegation by the tenant that there were problems with the smoke or carbon monoxide detector at the time that the occupancy started. Why is that important? If the condition existed at the inception of the tenancy, the landlord is deemed to have known about it, even in the absence of any actual knowledge. Since damages are calculated from the time that the landlord knew or should have known about the problem, if the condition existed at the beginning of the tenancy, the damages will start to accrue from that date, not the date on which the landlord actually learned about the defective condition.

Second, the owner or manager has a greater likelihood of winning a case against a destructive tenant for damages caused to the unit if the owner or manager can document that the damage was not present when the tenant moved in.

§ 1.2.8 Charging the Tenant for Water Usage

(a) *Overview*

Under a law that took effect in 2005, landlords can in certain circumstances enter into written leases requiring tenants to pay for the cost of water usage exclusively for their apartment if it is measured by a submeter. *See* G.L. c. 186, § 22, *added by* 2004 Mass. Acts c. 417; *see also* 105 C.M.R. § 410.354(D); Memorandum from Paul Halfmann, Assistant Director, Community Sanitation Program, Department of Public Health to Massachusetts Local Boards of Health (May 2, 2005), https://www.mass.gov/doc/memo-submetering-of-water-revisions-to-105-cmr-410000-0/download. This is permitted under the circumstances listed below.

- A licensed plumber has installed a submeter that measures and bills for water going only to the tenant's apartment and has checked (in general and at the inception of the tenancy) to confirm that the submeter is accurate. (Any common area water usage must be separately submetered and cannot be billed to any tenant's apartment. G.L. c. 186, § 22(c). The owner has a duty to maintain the submetering device in proper condition. 105 C.M.R. § 410.351(B).)
- The landlord has caused low-flow, water-conserving faucets, showerheads, and toilets to be installed in the tenant's apartment; these devices must be fully functioning at the beginning of every new tenancy. G.L. c. 186, § 22(c), (e). (Costs for this installation cannot be passed on to the tenant. G.L. c. 186, § 22(b); *see also* 105 C.M.R. §§ 410.020, 410.354(D).)
- The tenancy began after March 16, 2005 and after the submeter and low-flow devices were installed. G.L. c. 186, § 22(d).
- If this is the first time the unit is being submetered, the previous tenant left the apartment voluntarily or was "evicted from the dwelling unit for nonpayment of rent or for breach of lease or noncompliance with a rental agreement," and the new tenant has not "relocated involuntarily from another dwelling unit in the same building or building complex." G.L. c. 186, § 22(d).

The landlord must provide a written certification to the local board of health or inspectional services department confirming that all of the above has been done. G.L. c. 186, § 22(c). The plumbing permit issued by the city or town for a licensed plumber to install fixtures or a submeter must be attached to this certification. The Department of Public Health certification form is available at https://www.mass.gov/files/documents/2016/11/uh/hsg-submeter-form.pdf. Under the attorney general's landlord-tenant regulations, any violation of the water submetering law by the landlord may be a violation of G.L. c. 93A. 940 C.M.R. §§ 3.16(3), 3.17(1)(c)–(d).

A written lease or rental agreement must clearly state that the tenant is responsible for a separate water bill and set forth the billing arrangements in plain language.

(b) *Exemptions*

Tenants in state public housing are not covered by this law and cannot be charged for water measured by a submeter. G.L. c. 186, § 22(s).

If the tenant is renting a single-family house and has the exclusive use of water, the landlord can bill the tenant directly for water usage without having to install a submeter or low-flow conservation devices. However, if the landlord or others have use of water for one or more common areas (for example, for watering the lawn), a submeter must be installed to measure the water used exclusively by the tenant, and all other requirements of the law must be met. G.L. c. 186, § 22(p).

(c) *Billing*

The landlord is responsible for sending the bill for water charges to the tenant. The landlord cannot pass on to the tenant any fees related to submetering, such as fees for taking submeter readings, preparing or collecting bills, or installing, maintaining, or servicing the submeter. G.L. c. 186, § 22(j).

Practice Note

The landlord may contract with a separate company to take water submeter readings and to prepare, send, and collect bills.

The tenant can be billed for water charges as often as the water company bills the landlord; typically this is every three months. If the parties agree, the lease or written rental agreement may provide for monthly billing. If the landlord bills on a monthly basis, payment is due fifteen days after the bill is mailed to the tenant; if the landlord bills less frequently, the bill is due thirty days after it is mailed. G.L. c. 186, § 22(f). If a tenancy begins in the middle of a billing period for water, on the first day of the tenancy the landlord must mail the tenant the submeter reading for the unit as of that day. The tenant can be billed only for water measured on the submeter after this reading. G.L. c. 186, § 22(h). Similarly, if the tenancy ends in the middle of a billing period for water, the landlord must give the tenant the submeter reading as of the final day of the tenancy along with a final bill for water used since the last prior reading of the submeter. G.L. c. 186, § 22(i).

Each bill must clearly state all charges and all other relevant information, including the following:

- the current submeter reading and the date it was done,
- the previous submeter reading and the date it was done,
- the amount of water consumed since the last reading,
- how much the tenant is being charged for each unit of water,
- the total charge, and
- the payment due date.

G.L. c. 186, § 22(f). The cost per unit of water consumption is determined by taking the total amount of any bill or invoice the water company provided to the landlord—including the customer service charge and taxes, but excluding any interest for late payment, penalty fees, or other discretionary assessments or charges—and dividing it by the total amount of water consumption for the entire premises. G.L. c. 186, § 22(g).

(d) *Nonpayment*

The landlord may not terminate water service based on the tenant's failure to pay the water bill. G.L. c. 186, § 22(*l*); 105 C.M.R. § 410.180. However, the landlord may consider the nonpayment to be a material breach of the rental agreement and start eviction proceedings. The tenant is given the right to cure nonpayment of the water bill by payment at any time prior to a court hearing on the eviction. G.L. c. 186, § 22(f). The landlord may also deduct unpaid water bills from the tenant's security deposit when the tenant vacates the apartment. G.L. c. 186, § 22(p).

(e) *Testing the Submeter*

The landlord pays for the cost of testing the submeter. The person testing the submeter—who cannot have any relationship, financial or otherwise, with the landlord—determines the amount of water that was improperly measured by the submeter in the current billing period and any prior billing periods. If the submeter is measuring more water than is being used by the tenant's apartment, the landlord must install a new submeter and pay for the cost of the test. The landlord must then calculate the amount the tenant was overcharged and either reduce the tenant's current bill or give the tenant a refund. However, if the testing stems from a complaint by the tenant, and the submeter is found to be accurate, the tenant can be required to pay for the cost of testing, which may be added to the next water bill if it is not otherwise paid by the tenant. G.L. c. 186, § 22(n). Tenants have a right of access to the submeter to ensure it is operating accurately. 105 C.M.R. § 410.354(E).

(f) *Leaks*

The tenant should request that the landlord repair any water leaks in faucets, showerheads, and toilets, as well as in any pipes or parts of the plumbing. If the landlord does not respond to the request in a timely manner, the tenant has the right to withhold rent or the water bill (or a portion of either) until the repair is completed. The tenant also has the right to make the repair and deduct the cost from rent, provided that the provisions of the repair-and-deduct law (G.L. c. 111, § 127L) are followed. G.L. c. 186, § 22(m). If there is a leak, the law requires the landlord to determine, as accurately as possible, how much water leaked by consulting with a licensed plumber and reviewing billing records. The landlord is then required to reduce the tenant's water bill or give a refund for the overcharge from the date the landlord was notified about the leak. G.L. c. 186, § 22(o).

§ 1.3 WORKING WITH BROKERS

§ 1.3.1 Agreements

In a good economy or a tight rental market, it is not uncommon for landlords or tenants to employ brokers to help them rent apartments. A landlord who contracts with a broker to rent a unit should have a contract in writing. The written contract should explicitly list the steps the broker can and cannot take on behalf of the owner and the terms and conditions under which the landlord or the tenant is responsible for paying the broker a commission for renting the unit. The prudent landlord should not allow the broker to have the final word on approving a tenant because the broker's main interest will be in obtaining the commission, not necessarily in locating a tenant who is willing or able to comply with the requirements of the tenancy.

Ethics Commentary

Many lawyers are real estate brokers, since for a Massachusetts attorney in good standing, getting a broker license is virtually automatic with appropriate bonding. Accordingly, counsel may be tempted to offer brokerage services to an existing client. However, such is usually not in the best interest of the client, and wearing the dual hat is fraught with ethical pitfalls and traps. At a minimum (see below), entering into a listing agreement with a client requires certain written disclosures and consent, an opportunity to consult with independent counsel, and fair terms. *See* Mass. R. Prof. C. 1.8(a); *In re Lake*, 428 Mass. 440, 14 Mass. Att'y Disc. Rep. 418 (1998). For a particularly egregious example of an attorney who benefited himself personally in his role as a real estate broker at the expense of his seller clients, see *In re Lupo*, 447 Mass. 345, 22 Mass. Att'y Disc. Rep. 513 (2006).

In May 2012, the Real Estate Bar Association for Massachusetts (REBA) adopted Ethical Standard No. 4, which basically says that a lawyer may not ethically act as a real estate broker and as an attorney to any party in the same real estate transaction. This standard appears to apply no matter whether the lawyer is representing the seller or the buyer, the transaction is commercial or residential, or the transaction is standard or nonstandard; how sophisticated the parties are; or whether the broker is a seller's broker or a buyer's broker. In other words, informed consent is deemed impossible in all situations. The rationale is that the lawyer's interest in the commission outweighs everything else. The Board of Bar Overseers is not bound by this opinion, and it is unclear whether the Board would deem written consent inadequate in all cases.

§ 1.3.2 Standards

The broker is considered the landlord's agent, the landlord may be bound by representations made by the broker, including such items as whether parking is included with the rental or whether the tenant can use the basement for storage. The landlord should give the broker a written list of the amenities that are included with the unit and require the broker to provide a copy to prospective applicants. In addition, the landlord should review and approve any listing for the unit, whether in a newspaper or over the Internet. The landlord should make sure that the broker is licensed by the Massachusetts Board of Registration of Real Estate Brokers and Salespersons and check that the broker's license is in good standing. Additionally, the landlord should check with the complaint unit of the Board of Registration to learn the broker's complaint history.

§ 1.3.3 Application Fees

The written agreement between the landlord and the broker should detail who is entitled to fees and under what conditions such fees are due and payable. It should be made explicitly clear what fees have been received from the tenant and

for what services they were received. Failure to do so may place the landlord in violation of the State Security Deposit Statute, G.L. c. 186, § 15B.

Management companies should take special note of the fact that unless a member of the company's staff is a licensed broker, it may not be lawful to charge an application fee, including "processing" fees, particularly if such fees are nonrefundable. With regard to the charges for obtaining credit and tenant reports, the prudent landlord will treat such charges as the cost of doing business and will factor them into the rent that is charged for the unit as, again, charging such costs will run afoul of G.L. c. 186, § 15B.

§ 1.4 EVALUATION OF LANDLORD

§ 1.4.1 Obtaining Information from Board of Health or Inspectional Services

A tenant can check with the local board of health or inspectional services department to see if there have been any complaints about the landlord, such as a failure to obtain permits or a failure to fix problems in the unit or building. Such records are open to the public. In some cases the records are not easily accessible due to a lack of indexing on the part of the Board of Health, but generally such records can provide invaluable information about a particular landlord's track record. It is worthwhile to ask whether the inspector assigned to the city, town, or area has any knowledge of the landlord. In addition, at those District and Housing Courts that are computerized, the tenant can go to the clerk's office and see if the landlord has been the subject of claims based on failure to maintain the unit.

Prior to renting an apartment, a tenant should always thoroughly inspect both the interior of the unit and the common areas for bad conditions. Undoubtedly, every apartment will need minor repairs, but tenants should be on the lookout for significant problems that might interfere with the tenancy. A tenant should be encouraged to search for signs of defects that normally might not become apparent until after the tenant has moved in. For example, the tenant should open drawers and cabinets to check for rodent droppings or evidence of vermin infestation. Does the toilet work properly when flushed? Is the water pressure in the faucets and shower adequate or is it a mere trickle? Conditions that are deemed to endanger or impair health or safety are listed in 105 C.M.R. § 410.750; each item so listed, therefore, most likely constitutes a material breach of the warranty of habitability.

§ 1.4.2 Interviewing Former and Current Residents

The prospective tenant can talk to other tenants in the building and ask them about how quickly and completely the landlord responds to problems and whether the landlord deals with tenants fairly and honestly. If the landlord seems annoyed or upset that the applicant wants to talk to other tenants, this is a good sign that there might have been problems in the past. The tenant can find out why the prior tenant left, either by asking the landlord or by asking people in the neighborhood.

§ 1.5 NEGOTIATING AND DRAFTING THE TERMS OF THE TENANCY

§ 1.5.1 Types of Tenancy

There are basically two types of tenancies that are created by an agreement between the landlord and the tenant: under a lease and as a tenant-at-will. (For a discussion of tenancies created by regulation, see chapter 14 of this book.) A tenancy-at-will can be created either in writing or by the actions of the landlord and tenant, such as the landlord or the landlord's agent accepting money from the tenant. The basic elements of contract law are applicable to the creation of a tenancy because what transpires between the parties creates a contract. In other words, both parties have to agree on the essential terms of the contract, including the amount of rent to be charged or paid, the term of the tenancy, and what items are or are not included in the tenancy. Such terms cannot be modified or changed without the consent of both parties. It is a common misconception, particularly among landlords, that the rent can be increased by unilateral action on the landlord's part, such as giving a rent increase notice. It cannot. As with any other type of contract, the tenant must agree to accept the change, either by express agreement or by action consistent with consent, such as paying the increase without protest.

The biggest differences between the two types of tenancies are the following:

- a lease is for a fixed term, usually a year, while a tenancy-at-will is from month to month;

- a lease can be terminated during the term of the lease only for reasons listed in that document, whereas a tenancy-at-will can be terminated without any reason; and
- the rent for a lease is fixed for the term of the lease, except where the lease itself allows for an increase, whereas the landlord can increase the rent for a tenant-at-will upon giving notice one rental period in advance.

It is another common misconception that leases are better for landlords and tenancies-at-will are better for tenants. Which form is better will depend on the needs of each party for stability, predictability, and flexibility, since the terms and conditions of either a lease or a tenancy-at-will can be negotiated between the landlord and the tenant. However, for any unit that receives a subsidy, there must be a lease for at least a one-year period.

One other type of tenancy relationship is a license, but it does not rise to the level of a landlord-tenant relationship. Licensee relationships often arise in the situation of a resident manager or maintenance worker. In such a case, both parties are well advised to have a clearly worded licensee agreement that details not only the work expected of the resident, but also under what conditions the relationship can be terminated. A single justice of the Appeals Court, in *Beacon Park Associates v. Corbett*, No. 96-J-693 (Mass. App. Ct. Oct. 25, 1996) (Laurence, J.), held that where an unambiguous agreement clearly created only a license, not a landlord-tenant relationship, the license could be revoked after termination of the employment relationship and possession regained through injunctive action as the former license holder became a trespasser.

Again, for those units that receive federal or some types of state rental assistance, the regulations allow the resident to request the assistance of a live-in aide. Under the federal regulations, such a person is defined as a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who

- is determined to be essential to the care and well-being of the persons;
- is not obligated for the support of the persons; and
- would not be living in the unit except to provide the necessary supportive services.

The owner, in such a case, is allowed to have the resident sign a lease addendum relating to the presence of the live-in aide. The live-in aide is not, by definition, a tenant—rather, it would seem that such a person would also be a licensee and that the aide's behavior should likewise be governed by an agreement of the parties. A form licensee agreement is included as **Exhibit 1C**.

Finally, there is another type of tenancy, created not by the mutual consent of the parties, but rather by the expiration of the tenancy, either by termination by the landlord or tenant or by expiration of its terms. Such a tenancy is called a tenancy-at-sufferance. A tenant-at-sufferance once had the right to occupy the unit, but the right has since either expired or been terminated. However, the tenant-at-sufferance still has the right to occupy a unit that is in compliance with the State Sanitary Code. *See Hodge v. Klug*, 33 Mass. App. Ct. 746 (1992). Rather than paying rent, which is payable in advance, a tenant-at-sufferance pays use and occupancy, which accrues in arrears on a day-to-day basis. A tenant-at-sufferance at one time had a right to occupy the premises and is not a trespasser.

Ethics Commentary

So as not to assist in illegal conduct, counsel representing a landlord should explain that a tenant-at-sufferance is entitled to due process of law and, in particular, the procedural protections afforded in the summary process statute. A tenant-at-sufferance is not a trespasser, and a landlord may not use self-help or the criminal process in any effort to evict. *See* G.L. c. 266, § 120; G.L. c. 184, § 18; G.L. c. 186, § 14; *Hodge v. Klug*, 33 Mass. App. Ct. 746 (1992).

§ 1.5.2 Terms of the Tenancy

All leases, and some tenancy-at-will agreements, are in writing. To be valid, a lease must contain the amount of rent due and the date on which the tenancy ends, although some leases may be self-extending at the end of a fixed term and still be valid. These are the minimum requirements. The attorney general's regulations at 940 C.M.R. § 3.17(3)(b) state that it is an unfair and deceptive practice for a written rental agreement to fail to contain the following information (stated fully and conspicuously, in simple and readily understandable language):

- the name, addresses, and telephone numbers of the owner and any other person who is responsible for maintaining the property;

- the name, address, and telephone number of the person authorized to receive notices and to accept service of process; and
- the amount of the security deposit, if any, and the landlord's legal obligations in connection with the security deposit.

If the parties wish to enter into a tenancy-at-will, the terms of the parties' agreement should be reduced to writing to eliminate any later confusion. There are many different types of leases, some of which can be purchased at a legal stationery store, including the ones prepared by the Greater Boston Real Estate Board or Rental Housing Association. A sample written tenancy-at-will agreement and a sample lease from this organization are included as **Exhibits 1D** and **1E**. However, care must be used in drafting or adapting any lease to make sure it does not contain any clauses that are illegal or do not clearly state the agreement between the landlord and the tenant. In this age of technology, there are many versions of leases accessible to landlords; some of these documents, however, contain terms that violate the requirements of Massachusetts law and regulations. Every promise, every compromise, and every representation made by either party should be written down and signed by both parties and copies given to every party within thirty days of signing. *See* G.L. c. 186, § 15D.

Beginning September 1, 1995, all new tenants must receive a tenant lead law notification as well as copies of any lead inspection report or risk assessment report, letter of compliance, or letter of interim control. G.L. c. 111, § 197A(d). For tenancies in existence as of that date, landlords were required to give such notice on or before December 1, 1996. For new tenancies created after that date, the landlord must give copies of the required documents to the tenant upon the creation of the tenancy.

(a) *Length of Tenancy*

A lease is for a fixed term, which can be a period of months, a year, or a number of years. The beginning and end of such a fixed term should be clearly and unambiguously stated in the document. One form that should be viewed with a great deal of caution is the self-extending lease, which provides that the tenancy will go on ad infinitum, unless the landlord takes certain specified actions to either terminate the tenancy or not renew it. Such forms usually contain very strict limitations on the landlord's ability to end the tenancy and generally should be avoided.

Tenancies-at-will are not for fixed terms, but continue until either the landlord or the tenant terminates the tenancy, either by formal notification or by action. The required termination period is determined by the frequency of rental payments—that is, if the rent is payable every month, then either the landlord or the tenant can terminate the relationship by giving a thirty-day notice. If the tenant pays rent on a less frequent basis—for example, once every six months—then the termination period will be equal to that period. *See* G.L. c. 186, § 12.

(b) *Due Date of Rent*

The written lease or rental agreement should specify on what date the rent is due. In most cases the rent will be due on the first of the month, although there is nothing to prevent the parties from agreeing to a different date. The due date can be established by the practice of the parties, so that if, at the inception of the tenancy, the landlord accepted rent from the tenant without protest or reservation on a date other than the first, the tenant can argue that the due date is the day of the month the landlord accepted the rent. In drafting, the scrivener should make sure that the due date is clear and that if, for whatever reason, the landlord does accept monies on a date other than the specified due date, this payment is noted as being accepted for a limited period, without affecting the due date.

(c) *Prohibited Lease Terms*

The attorney general's regulations, 940 C.M.R. § 3.17, declare the following agreements as unfair and deceptive practices if contained in a tenancy agreement:

- an agreement that makes the tenant responsible for making all repairs (although it is permissible to make the tenant responsible for the cost of repairs caused by negligence or intentional acts beyond normal wear and tear);
- an agreement that the tenant will not contest any lawsuit brought by the landlord;
- an agreement that the tenant will pay a penalty for paying rent late, unless the late payment is in excess of thirty days after the due date, *see also* G.L. c. 186, § 15B; the Appeals Court, in a recent case of first impression, *Commonwealth v. Chatham Development Co.*, 49 Mass. App. Ct. 525 (2000), held that a requirement that the tenant be responsible for paying the costs of the service of a notice to quit violates the provisions of this part of the statute; it is also arguable that an agreement to reduce rent upon prompt payment might constitute such an unlawful penalty;

- an agreement that the landlord may enter the unit for reasons other than to repair, to inspect, to show the apartment to prospective tenants, under a court order, or to confirm that the unit is abandoned, *see also* G.L. c. 186, § 15B;
- an agreement that the landlord may seize or hold property of the tenant or evict the tenant without process of law;
- an agreement by the tenant that the landlord is not liable for negligent or intentional acts causing harm to the tenant or for breach of contract; and
- an agreement by the tenant to waive the right to a jury trial or to appeal a court decision (applicable to subsidized units).

These clauses are illegal and, at a minimum, unenforceable. Their presence may provide the basis for a claim that the entire lease is void.

Judicial Commentary

Under the Consumer Protection Act, an act or practice is deceptive if it possesses a tendency to deceive. An illegal clause can subject the landlord to the penalties of G.L. c. 93A. *But cf. Lord v. Commercial Union Ins. Co.*, 60 Mass. App. Ct. 309, 321–22 (2004) (plaintiff must show actual injury or loss in order to be eligible for attorney fees under G.L. c. 93A). Though the Supreme Judicial Court criticized *Lord* in *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 401–02 (2004), it seems to have adopted this viewpoint in *Hershenow v. Enterprise Rent-A-Car Co. of Boston*, 445 Mass. 790, 798–01 (2006). *But see also Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 629–31 (2008) (finding that economic loss associated with purchasing a defective product may constitute an actual injury or loss for purposes of Chapter 93A).

(d) *Utilities*

Prior to the creation of the tenancy, the landlord and tenant should discuss the issue of utilities, including responsibility for paying the cost of heat, fuel to heat the hot water, gas, or electricity for the unit. Under the State Sanitary Code, the tenant's agreement to pay for utilities must be included in the written lease and the utilities must be separately metered, not only for each unit, but also separately from the common area utilities. *See* 105 C.M.R. §§ 410.190, 410.201, 410.354. Until recently the controlling case in this area was *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987), which held that even though the tenant had orally agreed to pay for the utilities, failure to include this agreement in a "written letting agreement" was a violation of the State Sanitary Code and therefore gave rise to a claim under G.L. c. 93A. Consequently, the landlord was required to reimburse the tenant for the cost of the utilities. However, in *Poncz v. Loftin*, 34 Mass. App. Ct. 909 (1993), the Appeals Court held that failure to reduce the oral agreement to writing, standing alone, did not constitute a breach of the warranty of habitability. As a result, the tenant would be entitled to only minimal damages under G.L. c. 93A unless the tenant could show one of the following:

- the landlord failed to provide adequate heating facilities,
- the arrangement had a negative impact on the use and enjoyment of the premises,
- the tenant objected to the arrangement during the term of the tenancy,
- the rent plus the utilities exceeded the fair rental value of the premises, or
- there was a meter violation.

Still, counsel should advise clients to make sure that the agreement is reduced to writing and that the unit is separately metered.

(e) *Restrictions on Tenant Behavior*

In addition to the negotiated terms set out above, the landlord should explicitly spell out in the agreement the parties' position on each of the following subjects.

Pets

Are pets allowed? If so, what type (e.g., cats, dogs, reptiles, fish) and how many? Under what circumstances must the tenant get rid of the pet? Can the pet be replaced? Keep in mind that the ability to restrict pets may be limited by laws relating to discrimination or local regulation, including the Boston regulation, commonly referred to as the "Good Boy" ordinance, which allows elderly residents in certain types of housing to keep pets. In addition, for developments that receive federal rental assistance and are for the elderly and disabled residents, the owner may not prohibit the resident from

having common household pets, although the owner may adopt reasonable regulations regarding the ownership of such pets. *See* 24 C.F.R. § 5, subpt. C.

In 2012, the General Court passed a new animal control law (2012 Mass. Acts c. 193), which went into effect on November 1, 2012. The law changed statutes regulating the appointment and training of animal control officers, dog licensing, commercial sales of dogs and cats, vaccinations, owner responsibilities, definitions, the establishment of the Homeless Animal Prevention and Care Fund, and tax exemptions for donations to the fund. One of the laws changed was G.L. c. 140, § 157, which provides authority and procedures for cities and towns to establish a hearing authority to evaluate complaints regarding dogs in that city or town, and further provides that any person may file a complaint with the hearing authority alleging that a particular dog is a nuisance dog or a dangerous dog.

The following definitions found in G.L. c. 140, § 136A apply to Section 157:

- "hearing authority"—the selectmen of a town, mayor of a city, the officer in charge of the animal commission, the chief or commissioner of a police department, the chief or commissioner's designee or the person charged with the responsibility of handling dog complaints in a town or city;
- "dangerous dog"—a dog that either
  - without justification, attacks a person or domestic animal causing physical injury or death; or
  - behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal;
- "nuisance dog"—a dog that
  - by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity;
  - by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or
  - has threatened or attacked livestock, a domestic animal, or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

G.L. c. 140, § 136A. Section 157 states that no dog shall be deemed dangerous

- solely based on growling or barking or solely growling and barking;
- based on the breed of the dog; or
- if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to certain circumstances, including the following:
  - the dog was protecting or defending itself, its offspring, another domestic animal, or a person from attack or assault;
  - the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of the dog;
  - the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring, or otherwise provoking the dog; or
  - at the time of the attack or threat, the person or animal that was attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure.

G.L. c. 140, § 157.

Also, some cities or towns, such as Boston, have adopted regulations or ordinances that restrict the ownership of certain types of dog breeds, such as pit bull terriers, including requiring public notification of the presence of any such dog on the premises.

Attorneys representing landlords should also be aware of the holding in *Nutt v. Florio*, 75 Mass. App. Ct. 482 (2009). In *Nutt*, a negligence action for personal injuries sustained by a minor plaintiff who was bitten by a pit bull terrier, the Appeals Court held that the trial court erred in granting summary judgment in favor of the defendants, who were the landlords of the property on which the owner of the dog lived, where there were genuine issues of material fact, proper for resolution by the jury, as to whether the dog had dangerous propensities and whether the defendants knew or reasonably

should have known of them. In reaching this conclusion, the court took note of an earlier criminal case in which the Supreme Judicial Court noted that pit bulls are "commonly known to be aggressive." *Nutt v. Florio*, 75 Mass. App. Ct. at 487 (citing *Commonwealth v. Santiago*, 452 Mass. 573, 577–78 (2008)).

In addition, for those owners or managers who have buildings or units that participate in federal and some state rental assistance programs, the tenant may request, as a reasonable accommodation, to maintain either a service animal—an animal specifically trained to perform a specific function, such as a dog to assist a visually impaired person or someone who suffers from seizures—or an assistance animal, which does not have any specific training but is needed to alleviate some type of disability. It is important to understand that such animals are not considered pets under those programs and are not subject to standard pet policy or regulations, so the owner and/or the manager must adopt a policy that applies solely to service and assistance animals and contains provisions dealing with the behavior of these animals.

Visitors and Subletting

Who is allowed to live in the unit? Can people be added to the lease? How long can a "visit" last? Does the landlord have to agree to adding or deleting people on the lease? Can the tenant sublet the apartment to someone else and, if so, what restrictions apply to this rerental? If the unit is rerented, is the tenant still responsible for the unit during the rest of the lease? Under the terms of most contracts between owners and state or federal agencies providing rental assistance, subletting is prohibited in subsidized units.

Amenities

Is parking or access to a garage included? Does the tenant have the right to use the backyard, porch, storage area, basement, or attic? Are there any restrictions or limitations placed on the use of these areas? Are there any charges for the use of a parking space?

Restrictions on Use of Unit

Can the unit be used partially as an office or as a store? Can the tenant store items in the hallway? How is trash handled? Are there any limitations on noise or music? What is the tenant's responsibility for the conduct of guests, family members, invitees, or household members in the unit, in the common areas, or on the grounds?

Costs of Enforcement of Agreement

Will the tenant be obligated to pay the costs incurred by the landlord, including attorney fees, in the event the landlord reasonably incurs such costs in obtaining compliance with the agreement or in terminating the tenancy due to some default by the tenant? Unless there is a written agreement signed by the tenant, attorney fees are not usually recoverable from the tenant in the event of a default. However, G.L. c. 186, § 20 imposes an implied covenant by a landlord to pay the legal fees actually incurred by a prevailing tenant if the tenant has a written obligation to pay the fees of a prevailing landlord.

§ 1.6 FEES AND DEPOSITS

Under the law, the landlord can request only first month's rent, last month's rent, the cost of a new lock, and a security deposit. The first and last month's rent and security deposit cannot each exceed the amount of the initial rent charged. The landlord cannot ask the tenant to pay any other monies or deposits, although a tenant may be required to pay a broker's fee if a licensed broker was involved in locating the unit.

One of the largest pitfalls facing most landlords is the handling of the security deposit and last month's rent. The asking for, keeping, and returning of these funds is probably one of the most regulated aspects of the landlord-tenant relationship. Any misstep, innocent or not, under the statutory requirements regarding the handling of the security deposit will automatically result in penalties, including an award of three times the amount of the deposit plus attorney fees and costs incurred by the tenant. The penalties are not quite as large for mishandling the last month's rent and, likewise, the restrictions on the handling are less severe.

In *Hermida v. Archstone*, Docket No. 10-12083-WGY (Young, J.), the U.S. District Court addressed the topic of amenity fees, in particular, whether a one-time charge for the use of a gym on a development was a violation of G.L. c. 186, § 15B. The court found that such a fee would violate the statute, as a landlord could legally demand only first month rent, last month rent, security deposit, and the cost of the installation of a lock and key at the inception of tenancy,

rejecting the landlord's argument that because the total of the amounts charged did not exceed the total amount of the allowed amounts, accepting the amenity fees was not a violation. However, as noted by the court in that decision, it was not relying on any controlling precedent in Massachusetts law for its interpretation of the statute, because there is none.

The following is an overview of the requirements for handling each of these funds, but it is strongly recommended that the requirements of G.L. c. 186, § 15B be referred to whenever there is a question as to how these funds are to be held.

Judicial Commentary

Because of the complexity of G.L. c. 186, § 15B, some landlords avoid taking a security deposit and just ask for the last month's rent. This practice denies a landlord the full protection the law affords. Instead, before taking a security deposit, a lessor can use the security deposit law as a checklist to ensure compliance.

§ 1.6.1 Receipt and Holding of the Security Deposit

The following steps must be followed when a landlord receives and holds a security deposit.

- At the time of receiving, give the tenant a signed receipt stating
  - the amount of the deposit and what it is for;
  - the name of the person receiving it (if an agent receives, then also the name of the landlord or owner);
  - the date on which it was received; and
  - a description of the premises.

  A sample rent and security deposit receipt is included as **Exhibit 1F**.
- After the money is deposited, within thirty days the landlord must give the tenant a receipt that must state
  - the name and address of the bank where the money is located; and
  - the amount held and account number.
- At either the time of receiving or within ten days after the tenancy begins, give the tenant a "statement of condition," signed by the landlord, which must contain
  - a comprehensive list of all damages then existing (including violations of any housing or building codes); and
  - the following statement in twelve-point boldface type at the top of the first page:

    > This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within fifteen days after you receive this list or within fifteen days after you move in, whichever is later. If you do not return this list, within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit.

  A sample statement of condition is included as **Exhibit 1G**.
- Return a copy of any separate list of damages submitted by the tenant within fifteen days with either a signed agreement or disagreement with the list.
- Hold the money in a
  - separate
  - interest bearing account
  - located in a bank in the Commonwealth of Massachusetts
  - that is not subject to claims by the landlord's creditors
  - and can be transferred to a subsequent owner.

- And, if the deposit is held for more than one year, pay the tenant interest on the deposit at either 5 percent or at the same rate as that paid by the bank, if it is less than 5 percent, together with a receipt identical to that described above. The interest is payable each year on the anniversary date of the tenancy.

Practice Note

Of note to landlords who transact business with multistate banks is the case of *Taylor v. Burke*, 69 Mass. App. Ct. 77 (2007), where the Appeals Court found that a security deposit must be retained in a Massachusetts branch of a bank.

§ 1.6.2 Receipt and Holding of Last Month's Rent

In receiving and holding the last month's rent, the landlord must follow the procedure set out below.

- Give a receipt, which must state
  - the amount received;
  - the date received;
  - what it is intended for (i.e., last month's rent);
  - the name of the person receiving (if an agent, then also name of landlord or owner);
  - a description of the premises;
  - the fact that the tenant is entitled to interest; and
  - the fact that the tenant should provide a forwarding address at the termination of tenancy.

  A sample rent and security deposit receipt is included as **Exhibit 1F**.
- Pay the tenant interest at the end of each year, at a rate of 5 percent or at the same rate as that paid by the bank, if it is less than 5 percent (excluding interest accrued during the last month of the tenancy).

These monies do not have to be held in any special account, nor does the landlord have to give either a statement of condition or a receipt telling the location of these funds. Failure to comply with the interest payment provisions carries a penalty of three times the unpaid interest, with attorney fees and costs.

§ 1.6.3 Returning the Security Deposit

As tricky as holding the deposit is, returning it also can be full of difficulties. Landlords naturally tend to think that the security deposit can be used to cover any cost involved with the tenant, including the cost of eviction. However, the reality is far different. A security deposit can be used only to reimburse the landlord for unpaid rent, unpaid tax increases (but only if part of the lease), or for a "reasonable amount necessary to repair any damage" caused by the tenant or the tenant's family or guests, except for reasonable wear and tear. Within thirty days of the termination of the tenancy, the landlord must either return the deposit in full or, if any monies are being kept by the landlord, a statement must be sent to the tenant, including a complete, itemized list of deductions. If the deductions relate to damages and not unpaid rent, both the items and the cost of repairs must be listed, together with written documentation of the actual or estimated cost of repairs, such as work orders, contractors' bills or bids, and paid invoices. The landlord must sign this statement under the pains and penalties of perjury. A sample security deposit return form is included as **Exhibit 1H**. The penalty for violating this part of the statute is treble damages plus attorney fees.

If the landlord fails to comply with even one seemingly minor part of the law, the statute states that a penalty may be imposed, ranging from the return of the security deposit to treble damages and attorney fees. For many years, landlords who failed to comply with the statute but returned the security deposit were protected from further liability by the holding of the Appeals Court in *Castenholz v. Caira*, 21 Mass. App. Ct. 758 (1986). However, in *Taylor v. Beaudry*, 75 Mass. App. Ct. 411 (2009), the Appeals Court severely limited that protection. In that case the court found that even though a security deposit was eventually returned to the tenant prior to the tenant filing suit, it did not occur within thirty days of the tenant vacating, triggering treble damage liability. The court distinguished *Castenholz*, noting that the violation in the earlier case—failure to properly deposit the funds—was not associated with any time limit. The court held that where the landlord violated a provision that clearly included both a time limit and a penalty, the landlord would not be afforded extra time to comply to avoid penalties. The Supreme Judicial Court's decision in *Phillips v. Equity Residential Management, LLC*, 478 Mass. 251 (2017), made it clear that a violation of the itemized list requirements of G.L. c. 186, § 15B(4) does not trigger the treble damages provision of the statute and also addressed the issue of whether

trebling should be applied to the full balance of the security deposit or to the amount that has not been lawfully retained by the owner. See chapter 11 of this book for a more in-depth discussion regarding possible claims arising out of the receipt, holding, and return of security deposits.

Practice Note

Beaudry also includes a discussion of whether the trebling should be applied to the full balance of the security deposit or to the amount that had not been lawfully retained by the landlord.

If the violation does not concern a provision containing a time limitation, the landlord should still be able to avoid liability under the *Castenholz* reasoning by promptly returning the deposit. Such a return should be promptly upon demand, including the filing of a counterclaim in an eviction action. *See Jenkins v. Warringer* (Northeast Housing Ct. Oct. 11, 2007) (Kerman, J.) (returning security deposit within twenty days, the time allotted for responding to counterclaim would be considered a valid return to avoid further liability under security deposit statute). As painful as it will be for a client to give back the deposit, the pain would be even more intense if the client had to write out a check for three times that amount (not to mention attorney fees, which can make even three times the security deposit seem minor). For a cautionary case involving a seasoned landlord and a refusal to timely refund the security deposit, see *Spagnolo v. Mishara & Jarjojo Corp.*, No. 04-CV-332 (Boston Housing Ct. Jan. 31, 2006) (Pierce, C.J.).

Practice Note

Security deposits are heavily regulated, whereas amounts held for the last month's rent have fewer restrictions. The best way to distinguish between the two is to think of the security deposit as the tenant's money, which the landlord is holding in a fiduciary duty to the tenant. This means that the landlord will be held to a higher standard. By contrast, the last month's rent is considered the landlord's money, which means that the landlord will be able to hold it in the same fashion as other assets. Additionally, there is also an inherent ambiguity in the statute, as it is not clear whether the amount that could be used to offset such charges would include interest accrued upon the security deposit. Given the usually minimal amount of such interest, the prudent landlord will avoid litigation under the statute and return the interest.

EXHIBIT 1A—Rental Application

DATE

NAME OF APPLICANT HOME PHONE

INITIAL IF OVER 18 YEARS OF AGE

PRESENT ADDRESS

DATES OF CURRENT OCCUPANCY: FROM TO

CITY STATE

AUTOMOBILE: MAKE/YEAR/REG. STATE & NO

SOCIAL SECURITY #

PRESENT LANDLORD

COMPLETE ADDRESS PHONE NUMBER

FORMER LANDLORD

COMPLETE ADDRESS PHONE NUMBER

OCCUPANCY FROM TO

CURRENT EMPLOYER

COMPLETE ADDRESS PHONE NUMBER

OCCUPATION/SOURCE OF INCOME TYPE OF BUSINESS

SALARY LENGTH OF EMPLOYMENT

FORMER EMPLOYER

COMPLETE ADDRESS PHONE NUMBER

LENGTH OF EMPLOYMENT

PERSONAL REFERENCE (NAME)

COMPLETE ADDRESS | PHONE NUMBER

IN CASE OF EMERGENCY NOTIFY (NAME)

COMPLETE ADDRESS | PHONE NUMBER

CREDIT REFERENCE

COMPLETE ADDRESS | PHONE NUMBER

BANK–CHECKING ACCOUNT | BRANCH ADDRESS

ACCOUNT NUMBER

BANK–SAVINGS ACCOUNT | BRANCH ADDRESS

ACCOUNT NUMBER

NAMES OF ALL CO-TENANTS
(EACH ADULT MUST FILE A SEPARATE APPLICATION)

To Be Completed by Owner

ADDRESS: _____

CITY: _____

TOTAL NO. OF OCCUPANTS: _____

NUMBER OF ADULTS: _____

NUMBER OF CHILDREN: _____

NUMBER OF PETS: _____

Base Rent per Month $ _____
(Subject to escalation as set forth in lease)

Other Monthly Charges: _____ (e.g., parking, etc.)

Key/Lock _____

Last Month's Rent _____

Security Deposit _____

_____ _____
OCCUPANCY DATE RENT BEGINS

Deposit on Account _____

Balance Due upon Acceptance _____

TERM OF LEASE _____
FROM (DATE) TO (DATE)

Base rent and other monthly charges are due and payable on the first of each month in advance.

Pursuant to Massachusetts law, the Owner shall not make any inquiry concerning the race, religious creed, color, national origin, sex, sexual orientation, age (except if a minor), ancestry or marital status of the applicant, or concerning the fact that the applicant is a veteran or a member of the armed forces or is handicapped. The applicant authorizes the Owner and/or Renting Agency to obtain cause to be prepared a consumer credit report relating to the applicant.

The Owner is not responsible for the loss of personal belongings caused by fire, theft, smoke, water or otherwise, unless caused by their negligence. The undersigned warrants and represents that all statements herein are true and agrees to execute upon presentation a housing lease or Tenancy-at-Will Agreement in the usual form, a copy of which the applicant has received or has had occasion to examine, which lease or agreement may be terminated by the Lessor if any statement herein is not accepted by the owner. This application and deposit are taken subject to previous applications.

THIS APPLICATION MUST BE ACTED UPON BY THE OWNER ON OR BEFORE

The renting agent, if any, is an independent contractor and has no authority to make any representation concerning the premises; the renting agent is only authorized to show the apartment for rent and to assist in the screening of rental applicants.

Renting Agent _____

Signature _____

EXHIBIT 1B—Request for Prior Landlord Reference

I give permission to _____ to request the following information concerning my desirability as a tenant.

DATE: _____ _____

Applicant's Signature

To Whom it May Concern:

Your present/previous tenant _____ has applied for an apartment at _____.

We would appreciate your answering the following questions and returning this letter to us as soon as possible.

1. Number of people in family? _____
2. Number of bedrooms? _____
3. How long was the applicant your tenant? _____
4. Did the applicant have a lease and did the applicant stay for the full term? _____
5. What was the applicant's monthly rent? _____
6. Did the rent include utilities? _____

   If so, which ones? _____
7. Did the applicant pay his/her rent on time? _____
8. Did you ever receive complaints from other tenants regarding the applicant or members of the applicant's family? _____
9. Would you recommend the applicant as a tenant? _____

Comments:

_____

_____

_____

Landlord's or Landlord's Agent's Signature

Phone Number: _____

Thank you for your cooperation.

Sincerely yours,

EXHIBIT 1C—Licensee Agreement

In consideration of the mutual undertakings contained herein, the adequacy and receipt of which is hereby acknowledged, OWNER/managing agents for OWNER (hereinafter "OWNER") hereby agrees that LICENSEE (hereinafter "Licensee") may occupy the premises at STREET ADDRESS, UNIT, CITY, Massachusetts ("the premises"), which are the subject of an Occupancy Agreement for Judgment executed by and between OWNER and OCCUPANT (hereinafter referred to as "Occupant" or "Resident"), subject to the terms and conditions set forth below:

1. The Licensee may reside in the premises as the personal care attendant for the Occupant, provided, however, that if the Occupant is absent from the premises for a time in excess of seventy-two (72) hours, Licensee shall not reside upon the premises during that time. No other persons shall be permitted to reside upon the premises or to occupy the premises. It is hereby acknowledged and agreed by the parties that this agreement does not constitute a letting of the premises to the Licensee. Licensee shall maintain a primary residence at another location other than the premises and shall receive all mail at such other location, not the premises.

2. (a) Licensee's right to occupy the premises shall exist so long as the Licensee complies with the terms of this Agreement and with the requirements of any other agreement by and between Owner and Occupant. Upon breach of either this Agreement or such other agreement, Licensee agrees to vacate the premises within five (5) days of notice of such revocation.

   (b) Further, Licensee's right to occupy the premises shall terminate immediately upon Occupant's death or vacating the premises, including removal by the Occupant to a nursing home or other medical facility for a period in excess of two (2) months. In the event of such termination, Licensee shall vacate within twenty-four (24) hours after receiving notice of such termination from Owner.

3. Licensee agrees to abide by the following restrictions:

   (a) to live in a peaceful manner, respecting the rights of other persons in the building to privacy, security, and peaceful enjoyment;

   (b) to maintain the premises in a clean condition and all property belonging to the premises in good order and condition, reasonable wear and tear excepted;

   (c) not to paint, decorate or otherwise embellish and/or change nor make any additions or alterations to the premises;

   (d) not to maintain pets or animals in the premises;

   (e) not to install any water beds, washing machines, dryers, compactors, television or other outside aerials or any other appliance or equipment;

   (f) not to store or place in or on windowsills, balconies, common areas or the exterior of the building any rubbish, trash, articles or substances;

   (g) not to create or allow to be created by household members, family members, relatives, invitees, visitors or guests any unlawful, noisy, or otherwise offensive use of the premises; not to commit any disturbance or nuisance, public or private; not to obstruct free use of the common areas; not to create any substantial interference with the rights, comforts, safety or enjoyment of other persons in the building and/or development grounds.

4. During the use and occupancy period the Licensee shall commit no waste upon and shall cause no damage to the premises, and upon vacating same shall leave the premises in broom clean condition, including, but not limited to, the removal of all of the Licensee's personal possessions.

5. Should the Licensee be in violation of this Agreement and shall fail to vacate the premises on or before five (5) days from the date of the receipt of the notice of such violation as set forth in Paragraph 2(a) above or shall fail to vacate within twenty four (24) hours after receipt of notice of termination as set forth in Paragraph 2(b) above, Owner shall have the right to immediately eject the Licensee from the premises by instituting a summary process action. In addition, Licensee shall be liable to Owner for any damages caused to the premises and for all costs if the Owner seeks legal recourse to eject the Licensee, including reasonable attorney's fees.

6. Written notice from Owner to the Licensee shall be deemed to have been properly given if mailed by registered or certified mail, postage prepaid, return receipt requested, to the Licensee at the premises or if delivered or left in or on any part thereof, provided that if delivered or left, a copy be mailed, first class mail, postage prepaid, addressed to the Licensee at the premises.

7. The Occupant specifically confirms his/her full responsibility for the conduct of the Licensee, and recognizes that the Licensee's failure to comply with the responsibilities imposed by the lease may cause the lease to be terminated or may otherwise subject the Occupant to damages and penalties.

8. Nothing herein shall be interpreted as or to establish a landlord-tenant relationship between the parties and it is expressly understood that this is not a lease or any other instrument that creates a tenancy. Nothing in this Agreement shall be construed as affording to the Licensee anything other than a right to occupy the premises in accordance with the terms and conditions of this Agreement.

WITNESS OUR HANDS AND SEALS THIS _____ DAY OF _____, _____.

_____
OWNER

_____
LICENSEE

EXHIBIT 1D—Tenancy-at-Will

This form has been made available through the courtesy of the Greater Boston Real Estate Board and is protected by the copyright laws.

GREATER BOSTON REAL ESTATE BOARD

TENANCY AT WILL

Date: _____

LANDLORD *(Name, Address, City, State, Phone Number)*: _____

rents and the TENANT: _____

hires the PREMISES at: _____

consisting of _____

at a RENT of $_____ per_____ payable on the _____ day of each _____

in advance, the rental period commencing on _____

Landlord rents to tenant the premises at the specified rent from rental period to rental period. This tenancy may be terminated by a written notice given by either party to the other before the first day of any rental period and shall be effective on the last day of that rental period, or thirty days after such notice has been given, whichever is longer; provided, however, that in the event of any breach by Tenant of this agreement, Landlord shall be entitled to pursue any and all remedies provided or recognized by applicable law. This tenancy shall be under the following conditions:

1. CARE OF PREMISES – The Tenant shall not paint, decorate or otherwise embellish and/or change and shall not make nor suffer any additions or alterations to be made in or to the premises without the prior written consent of the Landlord, nor make nor suffer any strip or waste, nor suffer the heat or water to be wasted, and at termination shall deliver up the premises and all property belonging to the Landlord in good, clean and tenantable order and condition, reasonable wear and tear excepted. No washing machine, air-conditioning unit, space heater, clothes dryer, television or other aerials, or other like equipment shall be installed without the prior written consent of the Landlord. No waterbeds shall be permitted in the premises.

2. MAINTENANCE – For maintenance, if other than Landlord contact:

Name:_____ Address/City/Sate:_____ Phone #:_____

3. CLEANLINESS – Tenant shall maintain the premises in a clean condition and shall not sweep, throw, or dispose of nor permit to be swept, thrown, or disposed of, from said premises nor from any doors, windows, balconies, porches or other parts of said building, any dirt, waste, rubbish, or other substance or article into any other parts of said building or the land adjacent thereto, except in proper receptacles and except in accordance with the rules of the Landlord.

4. DISTURBANCE, ILLEGAL USE – Neither the Tenant nor his family, friends, relatives, invitees, visitors, agents or servants shall make or suffer any unlawful, noisy or otherwise offensive use of the premises, nor commit or permit any nuisance to exist thereon, nor cause damage to the premises, nor create any substantial interference with the rights, comfort, safety or enjoyment of the Landlord or other occupants of the same or any other apartment, nor make any use whatsoever thereof than as and for a private residence. No signs or other articles shall be hung or shaken from or affixed to the windows, doors, porches, balconies or exterior walls or placed upon the exterior windowsills without the Landlord's prior written consent in each instance.

5. COMMON AREAS – No receptacles, vehicles, baby carriages or other articles of obstructions shall be placed in the halls or other common areas or passageways.

6. HEAT AND OTHER UTILITIES - The Tenant shall pay, as they become due, all bills for electricity and other utilities, whether they are used for furnishing heat or other purposes, that are furnished to the premises and presently separately metered, as well as for fuel oil kept in a seperate tank which serves only the premises. The Landlord agrees to furnish reasonably hot and cold water and reasonable heat during regular heating season (except to the extent supplied through utilities metered to the premises or fuel oil kept in a seperate tank as stated above), but the failure of the Landlord to provide any of the foregoing items to any specific degree, quantity, quality or character due to any causes beyond the reasonable control of the Landlord, such as accident, restriction by City, State or Federal regulations, or during necessary repairs to the apparatus shall not (subject to applicable law) form a basis of any claim for damages against the Landlord. If legally permitted, utility meters may consist of submeters installed to allocate charges incurred by the Landlord. **Payment by the Tenant for water and sewer service is subject to the provisions of the attached Water and Sewer Submetering Addendum.** *This section governs utility payments. Be sure to discuss with the Landlord those payments which will be required of you for this apartment.*

7. KEY AND LOCKS – Landlord shall, within a reasonable period of time following receipt of notice from Tenant of such condition, repair or replace any defective exterior locks. Locks shall not be changed, altered, or replaced nor shall new locks be added by Tenant without written permission of Landlord. Any locks so permitted to be installed shall become the property of Landlord and shall not be removed by Tenant. Tenant shall promptly give duplicate key to any such changed, altered, replaced or new lock to the Landlord.

8. LOSS OR DAMAGE – Tenant agrees to indemnify and save Landlord harmless from all liability, loss or damage arising from any nuisance made or suffered on the premises by Tenant, his family, friends, relatives, invitees, visitors, agents, or servants or from any carelessness, neglect, or improper conduct of any such persons. Subject to the provisions of applicable law, Landlord shall not be liable for damage to or loss of property of any kind while on the premises or in any storage space in the building nor for any personal injury, unless caused by negligence of Landlord.

9. PARKING – Parking on the premises of Landlord is prohibited unless written consent is given by Landlord.

10. PETS – No dogs or other animals, birds, or pets shall be kept in or upon the premises without Landlord's written consent; and consent so given may be revoked at any time.

11. PLUMBING - **Water** closets, disposals, and waste pipes shall not be used for any other purposes than those for which they were constructed, nor shall any sweepings, rubbish, rags, or any other improper articles be thrown into same.

12. REPAIRS – Tenant shall at all times keep and maintain the premises and all equipment and fixtures therein or used therewith repaired, whole and of the same kind, quality, and description and in such good repair, order and condition as at the commencement of occupancy, or as may be put in thereafter, reasonable wear and tear and damage by unavoidable casualty only excepted. Landlord and Tenant agree to comply with any responsibility which either may have under applicable law to perform repairs upon the premises. If Tenant fails within a reasonable time to make such repairs, then and in any such event, Landlord may (but shall not be obligated to) make such repairs and Tenant shall reimburse Landlord for the reasonable cost of such repairs in full, upon demand.

13. RIGHT OF ENTRY - The Landlord may enter upon the leased premises in case of emergency, to make repairs thereto, to inspect the premises, or to show the premises to prospective tenants, purchasers, or mortgagees. The Landlord may also enter upon the said premises if same appear to have been abandoned by the Tenant or as otherwise permitted by law.

14. OCCUPANCY OF PREMISES – Tenant shall not assign or underlet any part or the whole of the premises, nor shall permit the premises to be occupied for a period longer than a temporary visit by anyone except the individuals specifically named in the first paragraph of this tenancy, their spouses, and any children born to them hereafter, without first obtaining on each occasion the assent in writing of Landlord.

15. NOTICES – Written notice from the Landlord to the Tenant shall be deemed to have been properly given if mailed by registered or certified mail, postage prepaid, return receipt requested to the Tenant at the address of the premises, or if delivered or left in or on any part thereof, provided that if so mailed, the receipt has been signed, or if so delivered or left, that such notice has been delivered to or left with, the Tenant or anyone expressly or impliedly authorized to receive messages for the Tenant, or by any adult who resides with the Tenant in the premises. Written notice from the Tenant to the Landlord shall be deemed to have been properly given if mailed by registered or certified mail, postage prepaid, return receipt requested, to the Landlord at his address set forth in the first paragraph of this agreement, unless the Landlord shall have notified the Tenant of a change of the Landlord's address, in which case such notice shall be so sent to such changed address of the Landlord, provided that the receipt has been signed by the Landlord or anyone expressly or impliedly authorized to receive messages for the Landlord. *Notwithstanding the foregoing, notice by either party to the other shall be deemed adequate if given in any other manner authorized by law.*

16. TRUSTEE – In the event that the Landlord is a trustee or a partnership, no such trustee nor any beneficiary nor any shareholder of said trust and no partner, General or Limited, or such partnership shall be personally liable to anyone under any term, condition, covenant, obligation, or agreement expressed herein or implied hereunder or for any claim of damage or cause at law or in equity arising out of the occupancy of said premises, the use or the maintenance of said building or its approaches and equipment.

17. COPY OF AGREEMENT – Landlord shall deliver a copy of the agreement, duly executed by Landlord or his authorizing agent, to Tenant within thirty (30) days after a copy hereof, duly executed by Tenant, has been delivered to Landlord.

18. REPRISALS PROHIBITED – Landlord acknowledges that provisions of applicable law forbid a landlord from threatening to take or taking reprisals against any tenant for seeking to assert his legal rights.

19. ATTACHED FORMS - The forms, if any, attached hereto are incorporated herein by reference.

20. ADDITIONAL PROVISIONS –

TENANT – Subject to applicable law, the Landlord will provide insurance for up to $750 in benefits to cover the actual costs of relocation of the Tenant if displaced by fire or damage resulting from fire.

IN WITNESS WHEREOF, the said parties hereunto and to another instrument of like tenor, have set their hands and seals on the day and year first above written.

Landlord:_____

Tenant:_____

Tenant:_____

EXHIBIT 1E—Standard Form Apartment Lease

This form has been made available through the courtesy of the Greater Boston Real Estate Board and is protected by the copyright laws.

GREATER BOSTON REAL ESTATE BOARD

STANDARD FORM APARTMENT LEASE (SIMPLIFIED FIXED TERM)

Date:_____

This is a Lease of Apartment No. _____, Located in a Building Numbered _____ in _____, Massachusetts _____. The Landlord is _____ _____ whose address is _____ and whose telephone number is _____. The Tenant is _____.

The term of this lease is _____, beginning on _____, and ending on _____, although it is possible that the term may end sooner as explained later in the Lease. Landlord and Tenant agree that each of them has various rights and duties, and that this Lease is subject to certain conditions, as follows:

*FOR MAINTENANCE THE TENANT SHOULD CONTACT:

_____ _____
(Name) (Telephone)

_____ _____
(Street Address) (City, State, Zip)

*To be filled in only where maintenance is performed by Managing Agent.

TENANT:
This section governs rent payments. In some cases, rent payments may increase during the lease term. Please be sure that you carefully read and understand this section. Please initial here when you are certain that you understand and agree with this section.

_____

_____

This section governs utility payments. Be sure to discuss with the Landlord those payments which will be required of you for this Apartment

1. RENT: (a): On or before the first day of every month, in advance, the Tenant must pay the monthly rent, which is $_____.

(b) The Landlord is required to pay real estate taxes on the Landlord's property, which includes the Building as well as the land on which it is located. Real estate taxes are assessed on a fiscal year basis, and each fiscal year begins on July 1 and ends on the following June 30. The most recent tax bill received by the Landlord was for the fiscal year ending June 30_____, but real estate taxes may be higher in later fiscal years. If this happens, the Tenant will be required to pay _____% of the increase. This payment, which is considered additional rent, will be prorated if this Lease is not in effect throughout the entire fiscal year in which the tax increase occurs. The Landlord will notify the Tenant of any tax increase, and will explain how the Tenant's share is to be paid. The Tenant's share of any tax increase must always be in proportion to the relationship between (1) the apartment and (2) the whole of the real estate being taxed, namely the Building and the land on which it is located. If the Landlord obtains an abatement or refund of the real estate tax levied on the whole of the real estate, a proportionate share of the abatement or refund, less reasonable attorney's fees, if any, must be refunded to the Tenant.

2. HEAT AND UTILITIES: Landlord will furnish all required heat, hot water, fuel oil and utilities to the Apartment, with the following exceptions. First, the Tenant must make all service arrangements and pay all bills for telephone as well as ❒ gas, ❒ electricity and ❒ water and sewer service, if checked. Gas or electricity should be checked only if the Tenant's usage is measured by a separate meter which has already been installed, in which case it will also be the Tenant's responsibility to make all necessary service arrangements. Water and sewer service should be checked only if (a) the Tenant's usage is measured by a separate meter or submeter which has already been installed and (b) a Water and Sewer Submetering Addendum has been signed by both the Landlord and the Tenant. Second, if the following box ❒ is checked, the tenant must make all necessary service arrangements and pay all bills for fuel oil, which is provided through a separate oil tank and used to supply heat and/or hot water only to the Apartment. The Tenant must make sure that no fuel oil or utility service furnished by the Landlord is wasted.

3. ALTERATIONS AND INSTALLATIONS: The Tenant is permitted to arrange furniture in the Apartment as the Tenant wishes. However, at no time can the Tenant paint, decorate, make holes in, or attach things to any of the floors, walls, ceilings, doors, or equipment in the Apartment or elsewhere in the Building. No washing machine, air-conditioning unit, space heater, clothes dryer, antenna, or similar type of equipment can be installed or operated without the Landlord's permission. Waterbeds are likewise prohibited.

4. CLEANLINESS: The Tenant must keep the Apartment in a clean and sanitary condition, free of garbage, rubbish, and other filth. The Tenant is responsible for properly placing all garbage and rubbish in containers provided by the Landlord.

5. DELAYS: It is possible that the Landlord may not be able to let the Tenant move into the Apartment when scheduled. If this happens, and if the Landlord is not to blame, the Tenant will not owe any rent for the period up to the time when the Landlord lets the Tenant move in, and the Tenant will have no claim against the Landlord. If delay continues for more than thirty (30) days, either party may terminate the lease by notifying the other party seven (7) days in advance. If the reason for the delay is the fact that the Apartment is still occupied by someone else, the Landlord may try to evict the occupant on behalf of the Tenant.

6. ACCESS: In order to get to and from the Apartment, the Tenant will be using passageways, stairways, and hallways in and around the Building. These areas cannot be used for any other purpose, not even for the temporary storage of such things as baby carriages and bicycles outside the Apartment. If any deliveries are made to the Apartment, the Tenant must make sure that the job is finished as quickly as possible without blocking anyone else's ability to enter the building or another apartment.

7. PARKING: No parking is allowed on the Landlord's property without the Landlord's permission.

8. ANIMALS: No dogs, cats, birds or other animals may be kept in the Apartment or allowed anywhere else in the building or on the Landlord's property without the Landlord's permission. The Landlord may decide, even after giving permission, that a particular animal may not be allowed to stay. If the animal belongs to the Tenant, the Tenant must, immediately upon notice from the Landlord, arrange to have the animal removed.

9. CONSIDERATION FOR OTHERS: Everyone living in the Building must be a good and considerate neighbor who understands and respects the fact that other persons should not be bothered by noise or other disturbances. A loud party is one example of something which the Tenant must avoid. Another example is playing a television, radio, or record player with the volume turned up too high. Musical instruments should only be played at times when others in the Building won't be annoyed. Of course, the Apartment can be used only as a residence, and no business activity of any nature may take place. It is also important to maintain the good appearance of the Building, and the Tenant must never place any object on an outside windowsill or hang, shake or attach anything, including signs, from or on windows, exterior walls or outside the Apartment without the Landlord's permission.

10. REPAIR AND MAINTENANCE: Both the Landlord and the Tenant have responsibility for the repair and maintenance of the Apartment. If the Landlord permits the Tenant to install the Tenant's own equipment, such as refrigerators, washing machines and dryers, dishwashers, stoves, garbage grinders, and electrical fixtures, the Tenant must properly install and maintain the equipment and make all necessary repairs. The Tenant is also required to keep all toilets, wash basins, sinks, showers, bathtubs, stoves, refrigerators and dishwashers in a clean and sanitary condition. The Tenant must exercise reasonable care to make sure that these facilities are properly used and operated. In general, the Tenant will always be responsible for any defects resulting in abnormal conduct by the Tenant. Whenever the Tenant uses the Apartment or any other part of the Building, the Tenant must exercise reasonable care to avoid damage to floors, walls, doors, windows, ceiling, roof, staircases, porches, chimneys, or other structural parts of the Building. As long as the Tenant complies with all of these duties, the Landlord will make all required repairs at the Landlord's expense to make sure that the Apartment is livable and fit for human habitation. If the Tenant wishes to request maintenance, the Tenant should contact the Landlord unless a managing agent is named at the beginning of this agreement.

11. ENTRY BY LANDLORD: Whenever permitted by law, the Landlord will be entitled to enter the Apartment even though the term of the Lease has not yet ended. Entry is permitted if the Landlord wants to inspect the Apartment or make repairs, or if the Landlord wants to show the Apartment to other persons who may be interested in buying the property, making a mortgage loan to the Landlord, or renting the Apartment after the Tenant has moved out. The Landlord can also enter the Apartment if it appears to have been abandoned by the Tenant or if the Landlord obtains an appropriate court order. Future laws may authorize entry for other reasons as well. If the Landlord ever notices that the Tenant is not properly maintaining the Apartment or is otherwise failing to comply with the Tenant's obligations under this Lease, the Landlord has the right to correct the problem and charge the Tenant for any reasonable costs which the Landlord incurs in doing so. The Tenant must then promptly reimburse the Landlord for these costs.

12. LOCKS AND KEYS: The Landlord must maintain any required locks on the main entry door of the Building as well as every entry door and exterior window of the Apartment. The Tenant may not change or replace any lock or add any new locks unless the landlord gives permission. Whenever a lock is changed or replaces, or a new lock is added, a duplicate key must promptly be given to the landlord.

13. OCCUPANCY, TRANSFER AND SUBLEASES The Apartment may be occupied only by the Tenant, the husband or wife of the Tenant, any children now living with the Tenant, or any children born to the Tenant after this Lease is signed. In addition, the Tenant cannot transfer any rights under this Lease to any other person, nor can the Tenant sublease the Apartment or any part of it to any other person. Although the Tenant is allowed to have guests and other temporary visitors, the Tenant must in all cases abide by the provisions of this paragraph unless the Tenant has received permission to the contrary from the Landlord.

14. PENALTIES: The Landlord will never be subject to any penalties (above and beyond reimbursement for actual loss suffered by the Tenant) solely because the Landlord is unable to provide a service or fulfill any other obligation normally required under this Lease as a result of any restrictions imposed by any governmental body, or any interruptions caused by making necessary repairs, or any natural cause beyond the control of the Landlord. A good example of this would be if the Landlord could not keep the Apartment adequately heated because of fuel restrictions imposed by the government.

15. CASUALTY AND EMINENT DOMAIN: If a substantial part of the Apartment or Building is damaged by fire or other casualty, or taken by eminent domain, the Landlord my terminate this Lease within thirty (30) days after the event by giving notification to the Tenant fifteen (15) days in advance. If the casualty or taking makes the Apartment substantially unsuitable for human habitation, rent will be equitably adjusted, and if the Apartment is not restored to a condition substantially suitable for human habitation within thirty (30) days following the casualty or taking, the Tenant may terminate this Lease within thirty (30) days thereafter by notification to the Landlord fifteen (15) days in advance. In the case of taking, the Tenant may make a claim against the responsible governmental body in order to collect damages for any personal property taken from the Tenant and also to obtain funds for moving to a new residence. All other eminent domain damages and awards will belong to the Landlord. In the case of a fire or other casualty, the Tenant must look to its own insurance company if the Tenant's personal property is damaged.

16. RULES AND REGULATIONS: In order to help carry out the provisions of this Lease, the Landlord may from time to time issue rules and regulations for the benefit, safety, comfort and convenience of all occupants of the Building or for the Landlord's convenience in operating the Building. Such rules and regulations may deal with matters such as safety, cleanliness, care, and orderly conduct, both in the Apartment and the rest of the Building. The Tenant must comply with these rules and regulations just as if they were a part of this Lease.

17. TENANT'S RESPONSIBILITY: The Tenant is responsible for the conduct of any and all family members, friends, relatives, delivery personnel, guests and to other persons who are invited or allowed by the Tenant to be on the Landlord's property. The Tenant must make sure that these persons conduct themselves properly and do not violate any provisions of this Lease. Whenever the Landlord has to pay any expense, or suffers any other loss, because of anything done by the Tenant or any other person mentioned in this paragraph, the Tenant must promptly provide full reimbursement.

18. EARLY TERMINATION: If the Tenant does not comply with any obligation imposed on the Tenant under this Lease, or if the Tenant admits being or is declared to be bankrupt or insolvent, or if the Tenant appears to have abandoned the Apartment, the Landlord may terminate the Lease by notification to the Tenant. The termination will become effective seven (7) days after the notice is given, except where the Tenant has failed to pay rent, in which case the termination will become effective fourteen (14) days after the notice is given.

19. MOVING OUT: Whenever this Lease terminates, the Tenant must immediately make sure that all occupants move out of the Apartment and take all of their personal property with them. The Tenant must deliver all keys to the Landlord and must leave behind all property belonging to the Landlord. The Apartment and all facilities in the Apartment must be clean and sanitary and must be in a condition which conforms to the Tenant's repair and maintenance responsibilities under this Lease.

20. EVICTION: If the Tenant fails to comply with Paragraph 19, the Landlord will be entitled to start a suit in court to have the Tenant evicted. If this happens, and the Landlord is successful, a sheriff or constable will be able to forcibly remove all persons and personal property from the apartment. The Landlord will have no responsibility for the official actions of the sheriff or constable.

21. DAMAGES: If this Lease terminates because of a default of the Tenant, the Tenant must immediately pay to the Landlord the difference between (1) all rent which would have been payable throughout the rest of the Lease term if the termination had not occurred and (2) any lessor amount of rent which the Landlord may reasonably expect to receive from another Tenant during the same period. If the Landlord's actual rent income from the apartment during this period, after deducting any brokerage commission or other reasonable cost which has to be paid in order to find a new Tenant and prepare the Apartment for the new Tenant, is less than originally expected, the damages payable by the Tenant will be increased accordingly, so long as the Landlord has made a reasonable attempt to find a suitable new Tenant. The Landlord may take advantage of any other remedy which is authorized by law, and may combine any and all available remedies in order to make sure that the Landlord is fully compensated for the Tenant's default.

22. NOTICES: Whenever this Lease requires or allows notices to be given by either party to the other, the notice must be in writing. If the notice is from the Landlord to the Tenant, the notice will be assumed to have been given if sent by certified or registered mail to the apartment, or the notice may be given by leaving it at the apartment with the Tenant or any responsible person living with the Tenant in the Apartment. If the notice is from the Tenant to the Landlord, the notice will be assumed to have been given if sent by certified or registered mail to the address of the Landlord as stated at the beginning of this agreement, or to any other address if notice of the new address has been given to the Tenant. The parties may also use any other method of giving notice which is permitted by law. Whenever notice is sent by mail, the party giving the notice must pay all necessary postage and must mail the notice early enough to make sure that it will be received when due.

23. PERMISSIONS AND INVALIDITY: The mere fact that one party has allowed the other to violate this Lease on a particular occasion does not mean that any future violation will also be allowed. The Landlord will never be assumed to have given permission to the Tenant under the terms of this Lease, or to have relieved the Tenant from any of the Tenant's obligations, unless the Landlord has made his intention clear in advance and in writing. If any provision of this Lease is declared to be invalid on a particular occasion, the Lease will still be in effect to the fullest extent permitted by law.

24. PERSONAL LIABILITY: If the Landlord is a partnership or the trustee of a trust, no individual trustee, beneficiary, shareholder or partner will be personally responsible to pay money damages for failure to comply with any of the obligations of the Landlord but the Tenant will have rights against any of the assets owned in the name of the trust or partnership.

25. REPRISALS: The Landlord is forbidden from threatening to take or taking reprisals against the Tenant in certain cases where the Tenant is properly attempting to assert the Tenant's legal rights.

26. COPY OF LEASE: If the Landlord has orally agreed to sign this Lease, the Landlord must do so and deliver a signed copy to the Tenant within thirty (30) days after the landlord receives a copy signed by the Tenant.

27. ATTACHED FORMS: If any forms (such as Rent Receipt, Rent and Security Deposit Receipt or Apartment Condition Statement) are attached to this Lease, they are to be considered a part of the Lease for all purposes.

28. LEGAL EFFECT: Although this agreement has attempted to express the rights and duties of the parties in simple language understandable to a layman, the Tenant understands that this Lease will be treated as a formal legal instrument under seal and will be binding on all persons having any future dealings with the Landlord's property. If more than one copy is signed, all copies will be equally effective. If more than one person is named as the Tenant, the Landlord may hold any such person legally responsible for all of the obligations of the Tenant under this Lease.

29. ADDITIONAL PROVISIONS:

LANDLORD: _____

LANDLORD: _____

TENANT: _____

TENANT: _____

TENANT: _____

TENANT: _____

TENANT: SUBJECT TO APPLICABLE LAW, THE LANDLORD WILL PROVIDE INSURANCE FOR UP TO $750 IN BENEFITS TO COVER THE ACTUAL COSTS OF RELOCATION OF THE TENANT IF DISPLACED BY FIRE OR DAMAGE RESULTING FROM FIRE.

TENANT: MAKE SURE TO RECEIVE A SIGNED COPY OF THIS LEASE.

GUARANTY

Because the Landlord is agreeing to sign this Lease, the person signing below (the "Guarantor") will be legally responsible for all of the obligations of the Tenant under this Lease. Whenever the Landlord would be entitled to take action against the Tenant, the Landlord may take the same action against the Guarantor, even though the Guarantor did not have notice that the Tenant was in default. The Guarantor waives all rights under law (technically known as "suretyship defenses") which otherwise permits the Guarantor to avoid or reduce his or her liability to the Landlord. This Guaranty will have the same legal effect as the Lease (see Paragraph 28).

GUARANTOR: _____

_____

EXHIBIT 1F—Rent and Security Deposit Receipt

DATE: _____

TO: _____

RE: _____

Tenant	Unit
Address	Address
City / Zip Code	City / Zip Code

We hereby acknowledge receipt of your check #_____ in the total amount of $_____ to be applied as follows:

1. First Month's Rent _____/_____/_____ $_____

2. Last Month's Rent $_____

3. Purchase or Installation cost for key and lock $_____

4. Security Deposit (see attached condition form) $_____

SECURITY DEPOSIT

A. The Landlord acknowledges receipt from the Tenant of $_____ (an amount not to exceed one month's rent) to be held by the Landlord during the term hereof, or any extension or renewal, as a security deposit pursuant to the terms hereof; it being understood that this is not to be considered prepaid rent, nor shall damages be limited to the amount of the security deposit.

B. The Landlord acknowledges that, subject to damages prescribed by law, he/she shall, within thirty (30) days after the termination of this lease or upon the Tenant's vacating the premises completely together with all his/her goods and possessions, whichever shall last occur, return the security deposit or any balance remaining, any interest due thereon, if due, after deducting:

   (1) any unpaid rent which has not been validly withheld or deducted pursuant to the provisions of any law;

   (2) any unpaid increase in real estate taxes which the Tenant is obligated to pay pursuant to a tax escalation clause which conforms to the requirements of G.L. c. 186, § 15C; and

   (3) A reasonable amount necessary to repair any damages caused to the premises by the Tenant or by any person under the Tenant's control or on the premises with the Tenant's consent, reasonable wear and tear excluded. In the case of such damage, the Landlord shall provide the Tenant within thirty days with an itemized list of damages, sworn to by the Landlord or his/her agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct it, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof.

C. The Landlord must submit to the Tenant a separate written statement of the present condition of the premises, as required by law. If the Tenant disagrees with the Landlord's statement of condition, the Tenant must attach a separate list of any damage existing in the premises and return the statement to the Landlord. No amount shall be deducted from the security deposit for any damage which was listed in the statement of condition or in any separate list submitted by the Tenant and approved by the Landlord or the Landlord's agent, unless the Landlord subsequently repaired or caused to be repaired said damage and can prove that the renewed damage was unrelated to the prior damage and was caused by the Tenant or by any person under the Tenant's control or on the premises with the Tenant's consent.

D. If the Landlord transfers the premises, the Landlord must transfer the security deposit or any balance thereof, and any accrued interest, to the Landlord's successor in interest for the benefit of the Tenant.

As required by law, the security deposit is presently or will be held in the following separate interest bearing account:

_____ at _____

(Acct. Number) (Bank)

_____ _____ _____

Address City Zip Code

If the security deposit is held for one year or longer from the commencement of the tenancy, the Tenant shall be entitled to interest on the amount of the security deposit at the rate of 5 percent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held, payable at the end of each year of the tenancy.

LAST MONTH'S RENT

Pursuant to applicable law, the Tenant is entitled to interest on last month's rent paid in advance at the rate of 5 percent per year, or other such lesser amount of interest as has been received from the bank where the last month's rent has been held, from the first day of tenancy, payable at the end of each year of tenancy and prorated upon termination. Interest shall not accrue for the last month for which rent was paid in advance. The Tenant should provide the Landlord with a forwarding address at the termination of the tenancy, indicating where such interest may be given or sent.

Date Received _____/_____/_____

Authorized Signature:

_____

Landlord/Agent

_____	_____
Landlord	Agent
_____	_____
Address	Address
_____ _____	_____ _____
City Zip Code	City Zip Code
_____	_____
Phone	Phone

EXHIBIT 1G—Apartment Condition Statement

This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within 15 days after you receive this list or within 15 days after you move in, whichever is later. If you do not return this list, within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit.

TO: _____ (Tenant)

_____ (Address)

_____ (City) _____ (Zip Code)

RE: _____ (Unit)

_____ (Address)

_____ (City) _____ (Zip Code)

We have examined the premises and have found the present condition to be as follows:

_____

_____

Date Received ___/___/___

Authorized Signature: _____ (Landlord/Lessor/Agent)

_____ (Landlord/Lessor)

_____ (Address)

_____ (City) _____ (Zip Code)

_____ (Phone)

_____ (Agent)

_____ (Address)

_____ (City) _____ (Zip Code)

_____ (Phone)

AGREED AND ASSENTED TO:

_____ (Tenant)

___/___/___ (Date)

EXHIBIT 1H—Security Deposit Return Form

DATE: _____

NAME: _____

ADDRESS: _____

RE: Security Deposit Information for: _____
(Tenant Name)

_____
(Apartment Address)

Dear _____:

We have inspected the apartment which you have recently vacated and have found it:

_____ Clean and without damage. We appreciate your consideration and extend our thanks.

_____ With the damages listed on the attached sheet for which you are charged. (Attach invoices, receipts or contractor bills or estimates for repairs.)

As a result of the inspection (check one):

_____ We are enclosing a check for the balance due to you as calculated below.

_____ We are billing you as calculated below.

CALCULATION:

1. Security Deposit received **$** _____
2. Interest Earned since (+) $ _____
3. Less Damage Deducted (see attached sheet) (–) $ _____
4. Less Rent owed from _____ to _____ (–) $ _____
5. Less Unpaid Tax Increases (–) $ _____
6. Amount of (check one)
   a. _____ Security Deposit Returned (Check Number _____) $ _____
   b. _____ Security Deposit Returned to Department of Public Welfare $ _____
   c. _____ Amount due and payable $ _____

Please send check to:

_____

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.