

# **City of Brockton's** *Landlord* *Training Program*

Keeping Illegal Activity Out of  
Rental Property



Sponsored by:

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# LANDLORD TRAINING PROGRAM

## KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY

# *NATIONAL PROGRAM MANUAL*

A practical guide for landlords and property managers

A community-oriented property management approach

Third edition, first printing

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**Based on the Landlord Training Program manual  
originally developed for the City of Portland, Oregon  
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*Parts of this document provide broad descriptions of legal procedure. However, no part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with federal, state, and local law governing a particular jurisdiction. If you need legal advice, seek the services of a competent attorney. Also, laws change. Information that is accurate at the time of printing may be rendered obsolete by the passage of new laws or revised judicial interpretations of existing law.*

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We acknowledge considerable assistance from the Drugs & Vice Division, Portland Police Bureau; Hazardous Materials Team, Portland Fire Bureau; Housing Authority of Portland; Multi-Family Housing Council of Oregon; Multnomah County Legal Aid; and the Oregon Apartment Association.

This national version of the manual has been greatly enhanced by suggestions collected from a range of property managers and law enforcement agencies across the country. We should particularly mention that the Tucson, Arizona Police Department provided in-depth suggestions that improved the chapter on *Preparing the Property*. Also, the City of Milwaukee, Wisconsin, Department of Building Inspection has, through dedicated efforts to develop a *Landlord Training Program* in Milwaukee, provided a valuable opportunity to test and improve many of the concepts described in this manual. The City of San Bernardino, California has also tested and developed new sections that appear for the first time in this second edition of the national manual.

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## FOREWORD

Chronic drug dealing and other illegal activity can reduce a neighborhood to a mere shell of the healthy community it once was. In our frustration, we often look only to the police or “the system” for solutions and forget that neighbors and landlords have tremendous power over the basic health of a community.

To be sure, both city government and police have a critical responsibility, but we as citizens — landlords, tenants, and homeowners — remain the foundation that makes it all work.

Citizens decide which problems require action. Typically, a city responds only after citizens recognize and report illegal activity. When a problem arises, one of the first and most important decisions is made by the affected homeowners, tenants, and landlords: ignore it, run from it, or do something about it. Each of us plays a different role. Each bears a responsibility to keep a community strong.

The most effective way to deal with drug activity on rental property is through a coordinated effort with police, landlords, and neighbors. Efforts are underway that encourage neighbors to take on more of their responsibility for preventing crime on their blocks. Efforts are underway to improve the way police address problems with drug activity in residential neighborhoods. What *you* can do is learn how to keep illegal activity off your property and make a commitment to removing or stopping it the moment it occurs.

The intention of this manual is to help you do just that — to help honest tenants rent from responsible landlords, while preventing those involved in illegal activity from abusing rental housing and the neighborhoods in which they stand.

We know that, in the past, abuses of the system have come from both sides. We also know that most landlords want to be fair and that most tenants are good people. Responsible property management and ownership begins with the idea that it will benefit all of us. If the information given herein is used responsibly, all of us — tenants, landlords, and owner-occupants — will enjoy safer, more stable neighborhoods.

## POINTS TO CONSIDER

### KNOW YOUR LOCAL LANDLORD/TENANT LAW

In this manual, we cannot address the specifics of the landlord/tenant law in every state. It would take 50 different manuals to do so, because every state's law is different. While federal fair housing law applies nationwide, most laws that regulate rental relationships are local. Even among the many states that have adopted a version of the Uniform Residential Landlord and Tenant Act, differences remain. A few examples:

- Some states allow local communities to establish rent control laws. Others do not.
- In some states, a landlord may evict a tenant without cause while in others only for-cause or “just cause” evictions are allowed.
- In each state the options, causes, notices, and procedures for enforcing landlord/tenant law and lease requirements vary.
- The length of time involved in regaining legal possession of a rental unit varies significantly from state to state.
- “Case law” also varies — even when two states’ laws appear similar, they may have a history of being interpreted differently by the courts in the two jurisdictions.
- Some local communities have civil rights laws that go beyond the classes defined in federal fair housing law (race, color, religion, sex, handicap, national origin, familial status). For example, some localities prohibit discrimination on the basis of marital status, sexual orientation, or source of income. Some jurisdictions limit the degree to which one may discriminate against those who have been convicted of a crime.

However, despite the differences, the philosophy behind the law in each state is often very similar — landlord/tenant laws define a balance between the rights of rental owners to control, protect, and benefit from their investments and the rights of tenants to control, protect, and enjoy their private homes. Unfortunately, the balancing act results in some dissatisfaction on both sides. Scratch the surface in most states and you will quickly find those who believe the local laws are “stacked against the landlord” and others who believe with equal fervor that the law is unfair to tenants.

What we have also found — on both sides — is a surprising level of misinformation. We have repeatedly heard landlords tell us that the law “ties their hands” in ways that it does not, and tenants express fear about powers that landlords do not actually have. It may surprise the lay person to know that we have also spoken with attorneys who are mistaken about the content of the law. Given this experience, our suggestion is this: do not necessarily believe the “folk law” you hear, and do not assume that every legal expert is one. If you need legal assistance, find an attorney who specializes in landlord/tenant issues and get a copy of your local landlord/tenant statutes and read them.

Remember that your best chance for a fair application of landlord/tenant law comes with a complete knowledge of it.

## **COSTS AND BENEFITS**

*Community-oriented property management is also good business.*

Landlords and property managers who apply the active property management principles presented in this manual, and in the accompanying training, have consistently seen improvements in the quality of their rental business. Applying the information presented in this training can result in significant benefits to each of the three interest groups in a residential neighborhood: Whole communities can become safer, residents can enjoy better housing, and landlords can enjoy greater business success. Here's how it works:

### **Costs of Drug Activity in Rentals**

When drug criminals operate out of rental property, neighborhoods suffer and landlords pay a high price. That price may include:

1. Declines in property values — particularly when the activity begins affecting the reputation of the neighborhood.
2. Property damage arising from abuse, retaliation, or neglect.
3. Toxic contamination and/or fire resulting from manufacturing or grow operations.
4. Civil penalties, including loss of property use for up to one year, and property damage resulting from police raids.
5. Loss of rent during the eviction and repair periods.
6. The fear and frustration of dealing with dangerous tenants.
7. Increased resentment and anger between neighbors and property managers.

### **Benefits of Active Management**

Active management can prevent much of the rental-based drug crime occurring today. Developing an active management style requires a commitment to establishing a new approach. Landlords and managers interviewed for this program, who have made the switch to more active management, consistently report these rewards:

1. A stable, more satisfied tenant base.
2. Increased demand for rental units — particularly for multi-family units that have a reputation for active management.
3. Lower maintenance and repair costs.
4. Improved property values.
5. Improved personal safety for tenants, landlords, and managers.
6. Peace of mind from spending more time on routine management and less on crisis control.
7. Appreciative neighbors.



# PREPARING THE PROPERTY

*Make the environment part of the solution.*

## ADVICE WE WERE GIVEN:

“Drug people don’t like to be seen. They can set up anywhere, but the farther they are from the manager’s office, or the more hidden the house is from view, the better they like it.” — Police officer.

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## THE BASICS

Make sure the aesthetic and physical nature of the property is attractive to honest renters and unattractive to dishonest ones.

## KEEP THE PROPERTY UP TO HABITABILITY STANDARDS

Maintaining housing standards is important to the public welfare and it protects against neighborhood decay. In addition, a substandard rental unit is more likely to attract drug criminals — it announces to potential criminals that the landlord’s standards are low and that inappropriate tenant behavior is likely to be overlooked.

Also, eviction of a knowledgeable problem tenant from a poorly maintained unit can be both time consuming and expensive. Landlord/tenant laws generally protect tenants from retaliation if the tenant complains that the landlord has not complied with minimum housing standards. If a landlord attempts to evict a problem tenant from a substandard unit, a court may be confronted with having to weigh the behavior of a problem tenant against that of a problem landlord. So in effect, landlords who fail to meet their responsibilities under the law may find that they have compromised their rights under the law as well.

Before renting your property, make sure it meets applicable local maintenance code, the habitability requirements of your local landlord/tenant law, and — if you rent to Section 8 tenants — the U.S. Department of Housing and Urban Development (HUD) standards for “decent, safe, and sanitary” housing. While many of the basic elements of these requirements will overlap, they won’t entirely, so you will need to check all three sources to make sure you are in compliance. For a general discussion of basic requirements, see the chapter on *Ongoing Management*. For the specific code that impacts your area, review applicable state and local law.

## “CPTED” DEFINED

Crime Prevention Through Environmental Design, known as CPTED (pronounced “*Sep Ted*”), is a field of knowledge developed in response to research demonstrating that the architecture of some buildings deters crime while that of others encourages it. These concepts were originally designed to help reduce crime *to* a property (e.g., a burglar breaking in). They are now known also to help prevent crime *from* a property (e.g. drug dealing, drug manufacturing, illegal gang activity).

Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don’t feel comfortable. Basic steps include making it difficult to break in, closing off likely escape routes, and making sure public areas can be easily observed by nearby people as they go about their normal activity. The four basic elements of CPTED:<sup>1</sup>

- **Natural Surveillance.** The ability to look into and out of your property. Crime is less likely to happen if criminals feel they will be observed. Examples: Keep shrubs trimmed, so they don’t block the view of windows or porches. Install glass peepholes so children and adults can see who is at the door *before* they open it. Prune tree branches that hang below six feet. Install low-energy-usage outdoor lighting along the paths. Install motion-activated lights in private areas such as driveways. Keep drapes or blinds open during the day; leave porch lights on at night.
- **Access Control.** Controlling entry and exit. Crime is less likely to happen if the criminal feels it will be hard to get in or that escape routes are blocked. Examples range from something as simple as a locked door to a 24-hour guard station or remote-activated gate. Applies to individual apartments too: deadbolt locks, security pins in windows and sliding-glass doors. In high rise apartments, the “buzzer” for opening the front door from inside an apartment is an access control device.
- **Territoriality.** Making a psychological impression that someone cares about the property and will engage in its defense. Conveying territoriality is accomplished by posting signs, general cleanliness, high maintenance standards, and residents who politely question strangers. Signs that tell visitors to “report to the manager,” define rules of conduct, warn against trespassing, or merely announce neighborhood boundaries are all part of asserting territoriality. In other examples, cleaning off graffiti the very next day or painting a mural on a blank wall both send a message that minor crime won’t be overlooked.
- **Activity Support.** Increasing the presence of law-abiding citizens can decrease the opportunities for criminals. Neighborhood features that are not used for legitimate activities are magnets for illegal activities. Organizing events or improving public services in parks and school yards, holding outdoor gatherings on hot summer nights, and accommodating bicycles, joggers, and fitness walkers are all examples.

How these concepts are best applied in a given property depends on many factors, including the existing landscaping, building architecture, availability of resident managers, management practices, presence of security personnel, desires of law abiding residents, and more.

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<sup>1</sup> Although research on CPTED goes back decades, the description given here is based on information provided by the Tucson, Arizona Police Department’s “Safe By Design” program.

## KEEP THE PROPERTY VISIBLE, CONTROL ACCESS

The following are some recommended “first steps” for making “CPTED” changes to rental property. Taken alone, few of the following elements will have a significant impact. Taken together, they will stop some operators from wanting to move into the property, and will make it easier for neighbors (or surveillance teams) to observe and document illegal activity should it start up. Initial steps include:

- **Use lighting to its best advantage.** Install photosensitive lighting over all entrances. Buyers, sellers, and manufacturers of illegal drugs don’t like to be seen. At minimum, the front door, back door, and other outside entrance points should be equipped with energy-efficient flood lighting that is either motion or light sensitive — made to go on for a few minutes when a person approaches or to go on at sunset and stay on till dawn. Backyards and other areas should also be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into windows — either yours or the next-door neighbor’s. Be sure applicants understand that the lighting is part of the cost of renting — that it must be left on.

In apartment complexes make sure that all walkways, activity areas, and parking lots are well lit, especially along the property perimeter. Covered parking areas should have lighting installed under the canopy. All fixtures should be of vandal-resistant design. Landscape planning should take into account how future plant growth will impact lighting patterns.

- **Make sure fences can be seen through.** If you install fencing, chain link or wrought iron types are best, because they limit access without also offering a place to hide. Wood fencing can also be used effectively, provided wide gaps are left between the boards. In some cases you might also consider a lower fence height — for example, four feet high instead of six. Consider replacing, or modifying, wood fences that have minimal gaps between boards. Keep hedges trimmed low.
- **Keep bushes around windows and doorways well trimmed.** Bushes should not impair the view of entrances and windows. Tree branches should also be trimmed up from the ground so as to discourage the possibility of a person hiding.
- **Post the address clearly.** Only the drug operator will benefit if the address is difficult to read from the street. When address numbers are faded, hidden by shrubs, not illuminated at night, or simply falling off, neighbors will have one more hurdle to cross before reporting activity and police will have more difficulty finding the unit when called.

Large apartment complexes should have a permanent map of the complex, including a “you are here” point of reference, at each driveway entrance. These maps should be clearly visible in all weather and well lit. If the complex consists of multiple buildings, make sure building numbers can be read easily from any adjacent parking area, both day and night. Also, make sure that rental units are numbered in a logical and consistent manner to make it possible for officers to locate the unit as rapidly as possible if called to it.

- **Control traffic flow and access.** In larger complexes, control access points to deter pedestrian passersby from entering the property. Then do the same for automobile traffic. People involved in drug activity prefer “drive through” parking lots — those with multiple exits. Consider blocking some parking exits, adding fencing, and rerouting traffic so all automobile *and* foot traffic, coming and going, must pass the same point — within view of the manager’s office.

If more control is needed, issue parking permits to tenants. Post signs forbidding cars without permits to use the lot. Towing companies that specialize in this type of business can provide you with signs, usually for a nominal setup fee. Depending on the availability of street parking for guests, either deny guest

parking altogether or limit it to specific spaces. Be consistent in having violators towed away. Remember, it is *your* parking lot, not a public one.

- **Before building, design for a strong sense of community.** Each of the other steps described in this section should be integrated into building plans to help design a safer rental unit from the start. In addition, for apartment complexes in particular, building plans should include design elements that will help foster a sense of community. Recreational areas and other community facilities can help encourage neighbors to become acquainted. Building layouts should nurture more personalized, neighborhood environments over those that may reinforce feelings of isolation and separation from the community.

## KEEP IT LOOKING CARED FOR

Housing that looks cared for will not only attract good tenants — it will also *discourage* many who are involved in illegal activity. Changes that help communicate “safe, quiet, and clean” may further protect the premises from those who want a place where chronic problem activity might be tolerated. While these approaches are useful in any type of rental, because of the day-to-day control that apartment owners have over the common areas of their property, the following approaches can make a particularly strong difference in multi-family complexes:

- **Remove graffiti fast.** Graffiti may be the random work of a juvenile delinquent, or the work of a gang member marking territory. Regardless, it serves as an invitation for more problems and it can demoralize and intimidate a neighborhood. If you believe graffiti may be gang related, call the police. Then remove it or paint it over. Remove it again if it reappears — do not let it become an eyesore.
- **Repair vandalism.** As with graffiti, an important part of discouraging vandalism is to repair the problem fast. If the vandalism appears to be directed against you or your tenants, the police should be advised immediately and additional approaches discussed to addressing the situation.
- **Keep the exterior looking clean and fresh.** Fresh paint, well-tended garden strips, and litter-free grounds help communicate that the property is maintained by someone who cares about what happens there.

## GRAFFITI PREVENTION AND REMOVAL

The Brockton Police Department has a graffiti removal program. Interested property owners should call the Brockton Police at (508)941-0200 for more information.

For ongoing clean-up and graffiti removal efforts in Brockton, the MainSpring House’s *Work Express* program can be hired at a nominal fee. For more information, please call Tom Washington at (508) 587-5441, extension206

# APPLICANT SCREENING

*“An ounce of prevention...”*

## COMPLAINTS WE HAVE HEARD:<sup>1</sup>

“People say you should screen your tenants. You can’t. The applicants lie about their previous landlord — they give you a fake address and the phone number of their brother. You call up the brother, he plays along and you never discover they were evicted at the last two houses they rented.”

“I thought I was calling the previous landlord and it was the applicant’s parents — and the parents played along. It ended up in eviction, some months later.”

“We can’t screen tenants worth anything. If you don’t do it right, you could be sued for discrimination. So you check to see if they have income and that’s it.”

## ADVICE WE WERE GIVEN:

“I went to a meeting for landlords about these issues. I was surprised — most people in the room couldn’t understand why they were getting bad tenants. They just couldn’t see that there are ways to keep that from happening.”

“Most landlords, even some ‘pros,’ are still practicing the old way of doing things — they take a social security number, make one phone call, and rent to the person. Then they wonder where the problems are coming from. Well the old methods don’t work anymore.”

“I’ve just quit relying on character judgment. For managing rental property, it doesn’t work. I have a set application process, written down. Applicants must meet all the criteria. If they do, I rent to them. If they don’t, I don’t. It is simple, legal, and fair. At this point, every one of my properties has good people in it.”

“Many landlords are frightened of the fair housing laws. Some believe they can’t screen at all. If landlords establish a fair screening procedure and follow it equally for each applicant, they will have a very strong case against discrimination lawsuits.”

“When I call previous landlords to verify an applicant’s record, most are surprised to get a screening call from another landlord — apparently it happens too rarely.”

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## THE BASICS

Attract honest tenants, while discouraging dishonest applicants from applying. Have a backup system to help discover if a dishonest person has applied. Use a process that is legal, simple, and fair.

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<sup>1</sup> Unless noted, quotes are from landlords or professional property managers. Note that some “complaints” contain inaccurate or incomplete assumptions about legal rights or procedure.

## OVERVIEW

There are two ways to screen out potentially troublesome tenants:

1. **Encourage self-screening.** Set up situations that discourage those who are dishonest from applying. Every drug dealer who chooses not to apply is one more you don't have to investigate.
2. **Uncover past behavior.** More often than not, a thorough background check will reveal poor references, an inconsistent credit rating, or falsehoods recorded on the application.

The goal is to weed out applicants planning illegal behavior as early as possible. It will save you time, money, and all the entanglements of getting into a legal contract with people who may damage your property and harm the neighborhood.

For the following steps to be most effective, it is just as important that applicants actually read and understand the rules and the process as it is that you implement the process in the first place. Implementing elements of the following suggestions may help protect yourself legally. Making sure that an applicant knows your commitment to the process may help prevent problems before they have a chance to grow.

Also, a word of caution: If you are looking for a one-step solution, you won't find it here. There are no "magic" phone numbers you can call to get perfect information about applicants and their backgrounds. Effective property management requires adopting an approach and attitude that will discourage illegal behavior, while encouraging the stabilization, and then growth, of your honest tenant base. What makes the following process so effective is not any one step, but the cumulative value of the approach.

## APPLICANT SCREENING, CIVIL RIGHTS, AND FAIR HOUSING

Landlords are sometimes confused over how much right they have to turn down applicants. A few even believe that civil rights laws require them to accept virtually *any* applicant. This is not the case.

Civil rights laws are designed to protect the way applicants are screened and to make sure that all qualified applicants feel equally invited to apply. Federal fair housing guidelines prohibit discrimination based on race, color, religion, sex, handicap, national origin, or familial status (presence of children). Many state and local governments add more categories — marital status, sexual orientation, source of income, or participation in a government subsidy program are common examples. The purpose of these laws is to prevent discrimination on the basis of a person's membership in a protected class. Nothing in the law forbids you from setting fair screening guidelines and applying them equally to all applicants.

Keep in mind that *every* person belongs to these various classes — each of us can be defined in terms of our race, color, sex, national origin, familial status, handicapped status, etc. So *any* time you deny an applicant, you have, in a sense, denied someone who belongs to a protected class. The question is whether or not you treat applicants or tenants adversely *because* of the class to which they belong. If the criteria you set are blind to class issues, and you apply them consistently, you may turn down applicants who do not measure up.

The key lies in making sure your process is fair — that it neither directly nor indirectly discriminates on the basis of one of the federally defined classes or other classes that may also be protected in your community.

To comply, you should design a fair process *and* apply it consistently and equally to all applicants. The following examples are consistent with federal fair housing guidelines:

- You may have a rule that requires all applicants to show a photo I.D.,<sup>1</sup> and you could turn down applicants who cannot produce a photo I.D. The practice becomes illegal when you apply the rule inconsistently — requiring I.D. from people of one class but not from those of another.
- You could give a document to all applicants that outlines rules of the unit and warns against selling drugs on the property. The practice becomes illegal when you hand it to applicants of one class, but not of another. Should you develop such a document, also make sure the wording used does not discourage members of a protected class from applying.
- You could refuse to rent to anyone who lies to you during the application process or provides false information on the application. This is both legal and highly appropriate.
- You could require all applicants who say they intend to park an automobile on your property to show current car registration, proof of insurance, and a valid driver's license along with their completed rental application. You could deny tenancy to those who wish to have a car on the property without showing such documentation. Of course, if the person does not plan to keep a car, the requirement would be waived.

There is nothing illegal about setting fair criteria and holding all applicants to the same standards. By the consistent use of such guidelines you can retain full and appropriate control over who lives in your rental units and who does not.

Finally, as you study the letter of the law, keep its spirit in mind as well. The sooner we remove the types of discrimination that weaken our communities, the sooner we can build a stronger, more equitable society.

## **WRITTEN TENANT CRITERIA: WHAT TO POST**

Many of the attorneys and legislative authorities interviewed for this program recommend developing written rental criteria and posting a copy of those criteria in your rental office. If you do not have a rental office that all applicants visit, they suggest attaching a copy of the criteria to *every* application you give out.

If you are going to use written criteria, remember to have applicants read the document. Posting information alone is of limited prevention value unless applicants know it is there.

The following is intended as a “generic” example of information a manager might post and direct each applicant to read. The intent is to encourage every honest tenant to apply, while providing dishonest applicants with an early incentive to seek housing elsewhere. Every drug dealer who doesn't apply is one more you don't have to deal with.

By itself this information will scare off only a few people involved in illegal activity. Most have heard tough talk before. Many expect landlords to be too interested in collecting rent to care about applicant screening. It is important to follow through in word and action — continually reinforce the point that you

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<sup>1</sup> In those states where “age” is specifically defined as a protected class in rental housing, a landlord may need to exercise particular care in asking for a photo I.D. — which will typically show date of birth — to ensure that the process is done in a manner consistent with local law.

enjoy helping honest tenants find good housing by carefully screening all applicants, and *then actually screen them*.

While we have attempted to make sure the following section adheres to the goals of national fair housing guidelines, there may be criteria listed that do not meet the requirements of some state or local civil rights laws. Further, complying with federal and local civil rights laws involves much more than the language used in the applicant screening process. If you are not familiar with your fair housing responsibilities, seek information from a local rental housing association or from an attorney who specializes in the subject.

Also, the following is only an example intended to show various types of rules that might be set. You should adjust the criteria as appropriate for your own needs. Whatever criteria you set, have them reviewed by an attorney familiar with current landlord/tenant issues before you post them.

## ***Introduction***

Here it is important to “set the tone” for your applicants — make sure that good applicants want to apply and that bad applicants may begin to think twice. Here’s one approach:

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other renters in this area [apartment complex] are being screened with equal care, and as a result, there may be a reduced risk of illegal activity occurring in the area.

Please review our list of criteria. If you feel you meet the criteria, please apply.

Please note that we provide equal housing opportunity: *we do not discriminate on the basis of race, color, religion, sex, handicap, national origin, or familial status* [add other protected classes, as required by state and local law].

## ***Screening Criteria***

✓ **A complete application.** One for each adult (18 years of age or older). If a line isn’t filled in, or the omission explained satisfactorily, we will return it to you.

This criterion helps to make sure that every application has enough information for you to make an informed decision. One of the simpler methods for hiding one’s financial history is to “forget” to fill in one’s social security number or date of birth on the application form. Without a name, social security number, and date of birth, credit checks cannot be run. To the person contemplating illegal activity, this requirement will communicate a very basic message — that you will actually screen your applicants. That message alone will turn away some.

This rule also allows you to receive an application from *each* roommate and not just the one with the good rental history. People involved in illegal activity may have friends and roommates who still have clean credit or a good rental history. The obvious approach for such people is to have the person with the good rental history apply and then follow that person into the unit. You have a right to know who is planning to live in the unit, so require an application and verify the information for each person.

✓ **Rental history verifiable from unbiased sources.** If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous



landlords, we will require: a qualified co-signer on your rental agreement (qualified co-signers must meet all applicant screening criteria) or an additional security deposit of X amount.

It is your responsibility to provide us with the information necessary to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history.

If you owned — rather than rented — your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.

Variations of this rule have been used by many landlords to address the issue of renting to those who do not have a rental history or those who say “I last rented from my mother (or father, aunt, or uncle).” This makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior — while loyal relatives may *say* a relation is reliable, they might think twice about co-signing if they know that isn’t true.

If requiring a co-signer seems unwieldy for your type of rentals, you may want to offer a different option: require additional pre-paid rent or security deposit from people who don’t have a verifiable rental history.

✓ **Sufficient income/resources.** If the combination of your monthly personal debt, utility costs, and rent payments will exceed X% of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement (or an additional deposit of X amount). If the combination exceeds X+Y% of your monthly income, your application will be denied.

We must be able to verify independently the amount and stability of your income. (For example: through pay stubs, employer/source contact, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.) For Section 8 applicants, the amount of assistance will be considered part of your monthly income for purposes of figuring the proportion.

You can, and should, verify self-employment. Drug dealers may describe themselves as self-employed on the assumption that you will have to take their word as verification. Some will be unprepared to supply tax returns, a copy of a business license, or other verification.

It may also be appropriate to remove income requirements for Section 8 applicants since your local Public Housing Agency (PHA) will have already determined the amount of subsidy based on ability to pay. Also, in some areas of the country it may not be legal to screen a subsidized tenant on the basis of amount of income. Note also that some landlords include a condition for those applicants who do not have a regular monthly income, but do have substantial savings on which to draw. Landlords who set such guidelines often define a minimum cash net worth (described as a multiple of the monthly rent) for people in this category.

✓ **Two pieces of I.D. must be shown.** We require a photo I.D. (a driver’s license or other government issued photo identification card) and a second piece of I.D. as well. Present with completed application.

This is a simple and effective rule. Note that the second piece of identification does not have to be very “official” — generally, a credit card, student ID card, or many other types of cards will do. The issue is that a person who carries false identification may not have *two* pieces of false I.D. with the same name on it. Also, *especially if you are in a state or local jurisdiction where “age” is specifically defined as a protected class in rental housing*, it will be important to verify your procedure for reviewing photo I.D. with an experienced landlord-tenant attorney prior to implementing this policy.

✓ **Section 8 information access.** Section 8 applicants must sign a consent form allowing the local Public Housing Agency to verify information from your file regarding your rental history.

New HUD guidelines permit Public Housing Agencies to allow the landlord to verify certain types of information in the applicant’s Section 8 file. Check with your local PHA to find out how the guidelines are applied in your area.

✓ **False information is grounds for denial.** You will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.

If your applicants are not honest with you, you may turn them down. It's that simple.

✓ **Criminal convictions for certain types of crimes will result in denial of your application.** You will be denied rental if, in the last X years, you have had a conviction for any type of crime that would be considered a serious threat to real property or to other residents' peaceful enjoyment of the premises, including the manufacture or distribution of controlled substances.

This criterion is more controversial than it may seem, because people who have completed their prison terms need a place to live. In some states people who have been convicted of a crime — and served their time — are granted limited protected class status. Check local laws for an approach that will be appropriate. Also, don't use this requirement as a crutch — many drug dealers haven't yet been convicted of a crime. In addition, few people who are planning to use a rental for illegal activity, whether or not they have a criminal record, will have a verifiable, clean rental history. If you are performing the other recommended screening steps conscientiously, this criterion will often be unnecessary.

✓ **Certain court judgments against you may result in denial of your application.** If, in the last X years, you have been through a court ordered eviction, or had any judgment against you for financial delinquency, your application will be denied. This restriction may be waived if there is no more than one instance, the circumstances can be justified, *and* you provide a qualified co-signer on your rental agreement.

Although, in most cases, you may turn down applicants who have been through a recent court-ordered eviction, we recommend maintaining flexibility for some instances. After all, some evictions are not deserved. It also seems inherently more fair to give people who have made a single mistake the chance to improve.

✓ **Poor credit record (overdue accounts) may result in denial of your application.** Occasional credit records showing payments within \_\_\_ to \_\_\_ days past due will be acceptable, provided you can justify the circumstances. Records showing payments past \_\_\_ days are not acceptable.

If you are renting property, you are effectively making a loan of the use of your property to your tenant. Banks don't loan money to people with poor credit. You don't have to loan the use of your property either. Note that the numbers of days listed here are just one example. The limits you set may be different.

You may also want to have exceptions for specific types of bills. For example, you might wish to allow exceptions if the only unpaid bills are for medical expenses. However, regardless of what other exceptions you define, remember that it is a very poor idea to accept tenants who have a history of not paying previous landlords — if they didn't pay the last landlord, they may not pay you either.

✓ **Poor references from previous landlords may result in denial of your application.** You will be turned down if previous landlords report significant complaint levels of noncompliance activity such as: repeated disturbance of the neighbors' peace; reports of prostitution, drug dealing, or drug manufacturing; damage to the property beyond normal wear; reports of violence or threats to landlords or neighbors; allowing persons not on the lease to reside on the premises; failure to give proper notice when vacating the property.

Also, you will be turned down if a previous landlord would be disinclined to rent to you again for any reason pertaining to lease violating behavior of yourself, your pets, or others allowed on the property during your tenancy.

Check your local laws for the behaviors you can list in this type of requirement. The example above uses a combination of violations of one state's landlord/tenant law and the rental agreement requirements of the landlord doing the screening.

✓ **There is a \$X earnest deposit, conditionally refundable.** If you are accepted, the deposit will be applied to your security deposit. If you withdraw your application after we have incurred screening expenses, we will not refund your deposit. In all other cases, the deposit will be refunded.

This is another policy that may not be legal in all states. For those who can use it, the key is to assure that every applicant who does apply is committed to renting the unit. That way the landlord doesn't waste time and money screening those who are not planning to rent. Also, this requirement may discourage some people involved in illegal activity from applying. See the discussion on page 13 for more on this topic.

✓ **We will accept the first qualified applicant.**

In the interests of ensuring that you meet the requirements of fair housing law, this is the best policy to set. Take applications in order, noting the date and time on each one. Start with the first application. If that applicant meets your requirements, go no further — offer the unit to the first applicant. This is the fairest policy you can set, and it helps make sure that you do not introduce inappropriate reasons for discriminating when choosing between two different, qualified applicants.

## ***Rental Agreement***

Some landlords post a copy of the rental agreement next to their screening requirements. Others offer a copy to all who wish to review it. The key is to make sure that each applicant is aware of the importance you place on the rental agreement. In addition, you may want to set a procedure to ensure that every applicant is aware of key elements of the agreements that limit a tenant's ability to allow others to move onto the property without the landlord's permission. One approach:

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental unit or complex. A complete copy of our rental agreement is available for anyone who would like to review it. In particular, in addition to other important requirements, please note that your rental agreement will:

- Require that you prevent all household members, guests, and visitors from engaging in any lease violating behavior.
- Forbid you and any member of your household, or your guests, from engaging in illegal drug use, sale, manufacture, distribution, or other criminal activity on or near the property.
- Limit your ability to allow guests to stay for long periods without the advance permission of the landlord.
- Provide that serious or repeated violations of the lease requirements on these items, or any other item addressed by the rental agreement, will result in termination of your rental agreement.

Please read the entire rental agreement carefully, as we take each part of the agreement seriously. The agreement has been written to help us prevent illegal activity from disturbing the peace of our rental units and to help make sure that our tenants are given the best housing we can provide.

## **Other Forms and Procedures**

At this point, you may want to post information, as applicable, about waiting list policies, security deposits, prepaid rent, pet deposits, check in/check out forms, smoke detector compliance, and other issues relating to rental of the unit.

## **REGARDING “BORDERLINE” APPLICANTS**

The preceding criteria include a number of examples where exceptions are made in borderline cases if the applicant can provide a co-signer. Alternately, some flexibility can also be introduced by setting rules that require borderline applicants to provide larger deposits or more prepaid rent. Introducing such flexibility to your application process can make sure, for example, that you do not turn down good applicants who have a single, justifiable problem on their credit report. Use of such borderline conditions can result in a more fair process for your applicants as well. As with all aspects of managing rental housing, apply your policies for borderline applicants consistently regardless of the protected class of the applicant.

## **APPLICATION INFORMATION: WHAT TO INCLUDE**

The best approach is to avoid reinvention of the wheel — contact a local legal publishing company, a rental housing association, or your own attorney for copies of appropriate forms. Whether you are using application forms or rental agreements, make sure you have forms that were designed specifically for the laws that govern your area and are up-to-date with any recent changes.

1. These requirements, and others, will be on many standard forms:
  - Full name, including middle.
  - Date of birth (Check local law for regulations that may impact the legality of a landlord asking for date of birth on an application).
  - Driver’s license/I.D. number, and state.
  - Social security number (you’ll need it for the credit check).
  - Name, date of birth, and relation of all people who are going to occupy the premises.
  - Name, address, and phone number of past two landlords.
  - Income/employment history for the past year. Income/salary, contact/supervisor’s name, phone number, address. If self-employed, ask for copy of business license, tax returns, bank records, or client references.
  - Additional income — it is only necessary to list income that the applicant wants included for qualification.
  - Credit and loan references. Auto payments, department stores, credit cards, other loans.
  - Bank references. Bank name, account number, address, phone number.
  - AS APPROPRIATE: Name and phone number of a relative to call in case of emergency; information about pets and deposit rules; other information required for application.

2. The following question is *not* typically on standard forms, but could be added. *If you are going to use it, make sure you include it on all application forms and not just some of them.*
- “In the last X years, have you, or any other person named on this application, been convicted for dealing or manufacturing illegal drugs?” (You could also ask about other types of crime that would constitute a threat to the health, safety, or welfare of other tenants or neighbors — burglary, robbery, sexual assault, and child molestation are common examples.)

Of course, if they *do* have a conviction, they may lie about it. However, if you discover they have lied, you have appropriate grounds for denying the application or, with the right provision in your lease, terminating the tenancy. Also, it is one more warning to dishonest tenants that you are serious in your resolve.

## ABOUT FEES AND “APPLICATION DEPOSITS”

In some states, landlords charge an application fee to defray the cost of screening. Others require an earnest money deposit at the time of application to make sure the applicant is serious about renting the unit. While policies vary, most stipulate that if the applicant is accepted, but chooses not to rent the apartment, the fee or deposit will not be refunded. The value of charging a fee or collecting a deposit with the application is preventive:

- **Fees and deposits can promote “self-screening.”** People who are planning illegal activity may recognize your charging a fee as further indication of your commitment to screen carefully. Further, such a policy can discourage those who plan on filling out multiple applications, waiting to set up a drug operation with whichever landlord accepts them first.
- **Fees and deposits can save time.** You will spend less time screening people who then decide not to rent from you. Also, with a financial commitment involved, an applicant might take an extra few minutes to make sure every line on the application is filled in completely and accurately — making your verification process that much easier. Your best investment of the time you save? Spend it screening each applicant more thoroughly.

Charging an earnest money deposit, or an application fee, is not for everyone. In addition, because of the potential for abuse, local landlord/tenant laws often regulate policies associated with deposits and fees, so check your local law to assure the policy you set is acceptable. Unless regulated differently in your area, we suggest the following approach as a fair “earnest fee” policy:

1. **Keep it reasonable.** For example, charge enough to cover the direct out-of-pocket costs of screening a single applicant, but not more (e.g., the cost of a credit check or the amount you pay a screening company). Remember, the major value in charging an application fee or collecting a deposit is to make sure the applicant is committed to renting the unit — the fee won’t necessarily cover all costs you incur to screen applicants.
2. **Keep it fair.** Return fees or deposits to all honest applicants who were not given the opportunity to rent the unit. Return the money even if you incurred some screening costs on those applicants. If honest applicants are required to pay a fee even when they are not offered an apartment, the cost of just *finding* housing can become prohibitive.

For more information about fee and deposit policies — as well as guidance on appropriate forms to use — contact a local property management association or an experienced landlord/tenant attorney. For those who are running multi-family units, you may also wish to consult those same sources about a related issue — how to implement a fair waiting list policy for qualified applicants who are willing to wait for an available unit.

## HOW TO VERIFY INFORMATION

Many landlords are *surprised* to receive calls from other landlords inquiring about the quality of a past tenant. Apparently it doesn't happen often enough. As one landlord put it, "you can spend \$100 in time and money up front or be stuck with thousands later." As another put it, "99% of these problems can be avoided through effective screening. There is no better investment you can make."

As you review the following list, keep in mind that you will not have to do every step for each applicant, but the basics, written in **bold** letters, should be done every time. *If you implement no other recommendations in this manual, implement these:*

1. **Compare the I.D. to the information given.** Make sure the photo I.D. matches the applicant and the information matches that given on the application form. If the picture, address, and numbers don't match the application information, find out why — you may have cause to turn down the application. Unless obvious inconsistencies can be explained and verified to your satisfaction, you don't have to rent to the applicant.
  2. **Have a credit report run and analyzed.** A credit report will provide independent verification of much of the application material. You can find out about past addresses, court ordered evictions, credit worthiness, past due bills, and other information. The reports are not foolproof, but they provide a good start. Here are your options:
    - **Join a credit bureau directly.** If you are managing a number of units and are likely to be screening multiple applicants every month, you may find it cost-effective to join a credit bureau directly and spend the time to learn how to interpret their reports. While this is an option, note that even some very large management companies go through associations or contract with applicant screening firms to gain the benefit of their outside expertise.
- Or:**
- **Have a third party pull the report and offer interpretation.** If you are not screening a sufficient volume of applicants, or would like assistance in interpreting the reports, contact an applicant screening firm or local rental housing association for assistance. Services vary from organization to organization and you should shop for the organization that best meets your needs. At one end of the spectrum are organizations that handle the entire applicant screening process for you. At the other end of the spectrum are organizations that simply pull the reports and mail you a copy. There are many variations in between.
3. **Independently identify previous landlords.** The most important calls you make are to the previous landlords. The best indicator of a tenant's future behavior is his or her past behavior. To begin, verify that the applicant has given you accurate information:
    - **Verify the past address through the credit check.** If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the tenant *actually lived there*.

- **Verify ownership of the property through the tax rolls.** A call to the county tax assessor will give you the name and address of the owner of the property that the applicant previously rented. (Title companies and real estate brokers typically have ready access to this information as well.) If the name matches the one provided by the applicant, you have the *actual landlord*.

If the name on the application doesn't match with tax rolls, it could still be legitimate — sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord responsibilities. But most of these possibilities can be verified. If nothing else, a landlord who is not listed as an owner on the tax rolls should be familiar with the name of person who *is* listed — so ask when you call.

- **If possible, cross check the ex-landlords' phone numbers out of the phone book.** This will uncover the possibility of an applicant giving the right name, but a different phone number (e.g., of a friend who will pretend to be the ex-landlord and vouch for the applicant). If the owner's number is unlisted, you will have difficulty verifying the accuracy of the number provided on the application. The local phone company may be willing to give you the name of the person who uses the number on the application, although in most cases they won't.

Now you have verified the landlord's name, address, and perhaps even phone number. If the applicant gave you information that was intentionally false, deny the application. If the information matches, call the previous landlords.

Remember, if the applicant is currently renting somewhere else, the present landlord may have an interest in moving the tenant out and may be less inclined to speak honestly. In such an instance, your best ally is the landlord before that — the one who is no longer involved with the tenant. *Be sure you locate and talk to a past landlord with no current interest in the applicant.*

4. **Have a prepared list of questions that you ask each previous landlord.** Applicant verification forms — generally available through rental housing associations or through legal publishing companies — give a good indication of the basic questions to ask. You may wish to add other questions that pertain to your screening criteria. In particular, many landlords we spoke with use this question: *“If given the opportunity, would you rent to this person again?”*

Also, if you suspect the person is not the actual landlord, ask about various facts listed on the application that a landlord should know — the address or unit number previously rented, the zip code of the property, the amount of rent paid. If the person is unsure, discourage requests to call you back — offer to stay on the line while the information is looked up.

5. **Get co-signers if necessary.** If the applicant meets one of your defined “borderline” criteria — such as having rented from a relative previously — and you have posted the appropriate rule, require that a co-signer apply with the applicant. Verify the credit and background of the co-signer just as you would a rental applicant. To ensure the legal strength of the co-signing agreement, you may wish to have your attorney draw up a document you can use for such purposes.
6. **For Section 8 renters, hand deliver a written request for information to your local Public Housing Agency.** This process is dependent on your local Public Housing Agency's procedures and thus will not be available in all areas. In a nutshell, once you have a signed release from the applicant, you may be able to verify information on the application with that contained in the Public Housing Agency's files.

7. **Verify income sources.** Call employers and other contacts using phone numbers from the directory. If an applicant is self-employed, get copies of bank statements, tax returns, business licenses, or a list of client references. *Don't cut corners here:* many drug distributors wear pagers, have cellular phones, and generally appear quite successful, but they cannot verify their income with tax returns, bank statements, or references from established clients.
  
8. **Consider checking for criminal convictions.** The process for obtaining criminal background information will vary by state, but you typically will have the right to obtain such information. Outcomes of court proceedings are generally public record and as such can be obtained through the local court system. Note, however, that many law enforcement agencies may not be able to disclose information about criminal background. If your local police tell you they cannot release information, this doesn't necessarily mean the information is unavailable. It may only mean that the information is not available through that channel. Again, you may need to go directly to court records to obtain the information you need. There may also be private tenant screening firms in your area that will do criminal background searches for you.  
  
Your chances for getting verifiable information are best if you have the applicant's name, date of birth, social security number, and current address.  
  
One cautionary note: many attorneys advise that conviction — but not *arrest* — may be used as a basis for rejecting an applicant. Patterns of arrest have proved to be discriminatory against protected classes and, as such, would be inappropriate to use as a screening criterion.  
  
Finally, resist the urge to rely too heavily on this screening technique — there are many drug criminals who have not yet been convicted of a crime.
  
9. **Verify all other information according to your screening criteria.** Remember, before you call employers, banks, or other numbers listed on the application, verify the numbers through your local phone book or long distance directory assistance.

## A NOTE ABOUT HIRING EMPLOYEES

Many rental property owners hire employees to assist with tenant screening, routine maintenance, and other tasks. It is critical that resident managers and other “agents” of the landlord be screened even more thoroughly than applicants for tenancy. In general, when an employee breaks the law while on duty, both the employee and the employer can be held responsible by the party that is harmed by the action. When the employee violates an element of rental housing law, the liability you will hold for employee misbehavior should be reason enough for extra screening efforts.

One screening tool that you will want to seriously consider for job applicants is a criminal conviction check, even if you don't check criminal backgrounds on prospective renters. Once property managers are hired, make certain they are trained in effective applicant screening, along with the warning signs of dishonest applicants. Also, be sure they understand, and follow, the requirements of fair housing laws.

## HOW TO TURN DOWN AN APPLICANT

In general, if you have posted fair rental criteria and you screen *all* applicants against those criteria, you may safely reject an applicant who does not meet your guidelines. Opinions vary regarding the amount of information that is required to be given to an applicant who is denied a rental unit. (Note: if you are managing public housing or publicly subsidized units, your disclosure requirements may be greater than the



ones described here.) We recommend, at the minimum, following the guidelines defined by the federal government in the Fair Credit Reporting Act for denial of credit. Check to see if your local jurisdiction requires additional disclosure.

The following is intended as a general overview of how it works for two different types of applicant rejections. See the law itself for an exact description:<sup>1</sup>

- **If the rejection is based on information, in whole or in part, from non-paid sources** (the word of a previous landlord, for example): While you are not required to disclose immediately your reason for rejecting applicants in these situations, you *are* required to advise applicants of their right to submit, within 60 days, a written request for that information and their right to a response from you, within a reasonable period of time, disclosing the nature of the information upon which the adverse decision was made.

Sample wording: “Based on a check of information you provided in your application, you do not meet our posted rental criteria. If you have questions about this decision, you may submit a request in writing to (your name and address) within 60 days, and we will explain the basis for the decision within a reasonable period of time.”

Of course, if you receive such a request, then report the nature of the information upon which the adverse decision was based. Again, if your screening criteria are free of illegal discrimination and you have applied your criteria consistently, then you may safely reject applicants who do not measure up.

*Note this small additional requirement if the rejection is based on information from a person who is your “affiliate”* (e.g. a co-worker or co-owner): The process is identical to that described above, except that the required response time is specifically stated: 30 days or less from the date the landlord receives the rejected applicant’s written request.

Of course, when possible, keep it simple. For example, if you are turning down an applicant simply because you accepted an earlier applicant, just say so. Or, if one look at the application indicates that the person doesn’t have nearly enough income to rent the unit, don’t make the applicant wait a week to find out — again, just say so.

- **If the rejection is based, in whole or in part, on information from a credit report, screening company, or other organization that you pay to provide screening information:** Because of the potential for abuse of, or misinformation in, credit reports, the Fair Credit Reporting Act requires that very specific information be provided to applicants who are rejected based on information obtained from a “consumer reporting agency.” While the information may be provided orally, it is a good idea to give written notification just to make sure you are in full compliance with the Act. The following is only intended as a brief orientation. The screening company or other consumer reporting agency you work with should be able to answer your questions and provide you with a simple, written form to help ensure you are in full compliance with the Act.

In situations where adverse decisions are based, in whole or in part, on information from a consumer credit report, a landlord is *required* to provide the rejected applicant all of the following information:

- ✓ Notice of the rejection. Sample wording: “Based on information we have received from your credit report (or other paid source) you do not meet our written rental criteria and we have therefore chosen to deny your application for tenancy.”
- ✓ The name, address and telephone number (including a toll-free number if the agency is one that keeps nationwide consumer files) of the consumer reporting agency used that furnished the information.

<sup>1</sup> For more information, contact the Federal Trade Commission by phone at (202)326-3128, or by mail at: 6th Street & Pennsylvania Ave., NW, Washington, DC 20580. A full copy of the text of the FCRA can be obtained over the Internet at <http://www.ftc.gov>.

- ✓ That the consumer reporting agency did not make the decision to reject the applicant and therefore it is likely that they will not be able to explain the reason for the adverse decision.
- ✓ That the applicant has the right to contact the consumer reporting agency within 60 days to receive a free copy of their report.
- ✓ That the applicant has the right to dispute the accuracy or fairness of information in a consumer report furnished by the consumer reporting agency.

(Note: Have applicants get a copy of their consumer report directly from the credit reporting agency, rather than, for example, providing the applicant with a photo-copy of the report you received.)

Again, in the interests of proving you have met disclosure requirements, you may want to hand out an information sheet with the disclosure process described and appropriate addresses provided. Contact a local property management association for more details, and again, check your local law for additional disclosure requirements.

## OTHER SCREENING TIPS AND WARNING SIGNS

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the chapter on *Warning Signs of Drug Activity*.

- **Consider using an “application interview.”** Some landlords have started conducting a brief oral interview, often at the same time they accept the written application. Landlords who use this approach find it has these advantages: First, applicants don’t know which questions are coming, so it is harder to make up a story — something that shouldn’t bother an honest applicant, but may uncover a dishonest one. Second, the landlord has the opportunity to watch responses and take mental notes of answers that seem suspicious. For example, honest applicants usually know their current phone number or middle name without having to look it up.

The interview involves, at minimum, making sure the applicant can repeat basic information requested on the application form without reading it. For example, the landlord might ask the applicant to verify his or her full name, current phone number, current address, and other pieces of information that most honest applicants will be familiar with without having to look up.

As with all policies you set, if you decide to do application interviews, you should include a commitment to making reasonable accommodations for those who cannot comply due to status in a protected class — e.g., a handicap that causes a speech problem, or possibly language skills associated with a particular national origin.

If you choose not to use an interview approach, at minimum observe the way the application is filled out. Applicants may not remember the address of the apartment they were in two years ago, but they should know where they live now, or just came from. Generally, honest applicants can remember their last address, the name of their current landlord, and other typically “top-of-mind” facts about their life.

- **Consider a policy requiring applications to be filled in on site.** Some property managers require all application forms to be filled in on the premises — an applicant may keep a copy of their form only after it has been filled in, signed, and a copy left with the landlord or manager. Applicants who are unsure of some information should fill in what they can, and come back to fill in the rest. Such a policy should not be a barrier to honest applicants — in most cases, they would have to return to bring back the signed

application anyway. However, the policy can dampen the ability of dishonest applicants to work up a story.

Assuming you have communicated your commitment to keeping illegal activity off your property, such a rule may also allow dishonest or dangerous applicants to exit with minimal confrontation — without an application in hand they are less likely to pursue making up a story and, once off the premises, they may simply choose not to return.

Again, if you use such a policy, make sure it includes making reasonable accommodation for people whose particular handicap, or other protected characteristic, would otherwise result in the policy being a barrier to application.

- **Watch for gross inconsistencies.** When an applicant arrives in a brand new, luxury sports car and fills out an application that indicates income of \$1,000 a month, something isn't right. There are no prohibitions against asking about the inconsistency or even choosing to deny the applicant because the style of living is grossly inconsistent with the stated income. You may also deny the applicant for other reasons that common sense would dictate are clearly suspicious (credit reports can also reveal such oddities — for example if the applicant is paying out much more per month to service credit card debts than the applicant is taking in as income, something isn't right). Many don't realize it, but unless such a decision would cause a disproportionate rejection of a protected class (e.g., race, color, religion, and others) the law allows room to make such judgment calls.

While you may not discriminate on the basis of race, color, religion, sex, handicap, national origin, familial status (the presence of children), as well as other classifications that may be added by your state or local jurisdiction, you *may* discriminate on the basis of many other factors, *provided the effect is not a disproportionate denial of a protected class*. If you deny the applicant for such a reason, record your evidence and the reason for your decision. Be careful when making decisions in this area, but don't assume your hands are tied. The law is written to prevent discrimination against protected classes. You are not required to look the other way when gross inconsistencies are apparent.

- **Be aware that people involved in illegal activity may use “fronts” to gain access to your property.** You may rent to someone who has an acceptable rental history and no record of illegal activity, yet once that person moves in, boyfriends, girlfriends, or other acquaintances or family members move in and begin dealing drugs and generating other crime or nuisances. In some cases, the people you thought you rented to don't move in at all — after using their good references to rent the unit, they give the key to drug dealers, for a fee. *Across the nation, it is the permission given by tenants to guests and others who have not signed the rental agreement that causes the greatest degradation in the quality of life in rental housing communities — both public and private.*

Warning applicants that they will be held accountable for their guests, and then enforcing such a requirement with your tenants, is a cornerstone of protecting your property and the surrounding neighborhood. Make sure your tenants know that they must control their guests, and if they cannot, they should ask for help quickly. Further, most rental agreements specify that only people named on the agreement are allowed to use the unit as their residence. Make sure such a stipulation is in your rental agreement and point it out to all applicants, and emphasize that having another person move in requires submitting that person's application and allowing you to check references before permission is granted.

If you make it clear you are enforcing these rules only to prevent illegal activity, you may scare away potential drug dealers, but keep good renters feeling more protected. You may further calm concerns of good renters if you assure them that you will not raise the rent because an additional person moves in. For more about this issue, see *Rental Agreements*, beginning on page 23.

- **Watch out for Friday afternoon applicants who say they must move in that very weekend.** Drug dealers know that you may not be able to check references until Monday, by which point they will already be in the rental unit. Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. Could it cost you some rent in the short run? Yes. Will it save you money in the long run? *Absolutely.* Ask any landlord who has dealt with a drug problem in a rental unit. It is worth avoiding. (Some landlords allow weekend applicants to move in if they can independently verify their story. But you are better off waiting until you can verify the entire application.)

- **Observe the way applicants look at the unit.** Do they check out each room? Do they ask about other costs, such as heating, garbage service, and others? Do they mentally visualize where the furniture will go, which room the children will sleep in, or how they'll make best use of the kitchen layout? Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning an honest living care about their home and often show it in the way they look at the unit. Some who rent for illegal operations forget to pretend they have the same interest.

Also, if the applicant shows little interest in any of the property *except* the electrical service, take note — both meth labs and marijuana grow operations can include rewiring efforts.

- **Consider alternate advertising methods for your property.** Houses that are within a few miles of colleges or business parks may be desirable housing for students or professionals. Some landlords have found success in posting advertising at such locations, thus targeting people who already have a credible connection with the community.

If you are going to consider such an approach, keep in mind that fair housing guidelines apply in all aspects of managing rental housing, including advertising selection. Advertising through community colleges only may be acceptable, because such colleges typically enroll a broad cross-section of the community. But, for example, it would be inappropriate to advertise exclusively through a church newsletter or through the newsletter of a private club whose membership is not representative of the greater community. Such approaches could set up patterns of inappropriate discrimination. Either expand your media selection or change it altogether to make sure you are reaching a fair cross-section of the public.

- **Consider driving by the tenant's current residence.** Some property managers consider this step a required part of *every* application they verify. A visual inspection of applicants' current residences may tell you a lot about what kind of tenants they will be. Be sure you are familiar with drug warning signs before you look at previous residences.

- **Announce your approach in your advertising.** Some landlords have found it useful to add a line in their advertisements announcing that they do careful tenant screening or that they run credit checks. The result can be fewer dishonest applicants choosing to apply in the first place. Select your wording with care — you don't want to use phrasing that in your community might be interpreted as "code" for telling a protected class that they need not apply. Again, it is important to make sure that the opportunity to apply for your units — and to rent them if qualified — is open to all people regardless of race, color, religion, sex, handicap, national origin, familial status, and any other classifications that may be granted civil rights law protection in your jurisdiction.

## REQUESTS FOR ANOTHER PERSON'S MASSACHUSETTS CRIMINAL RECORD

Criminal Offender Record Information (CORI) can be requested by the Criminal History Systems Board's CORI Unit, (617) 660-4640.

While it is unlawful to request or require a person to provide a copy of his or her own criminal record or criminal offender record information (CORI) without the Criminal History Systems Board's prior approval, certain types of CORI, may be requested from this agency, provided certain conditions are met.

It is lawful to request the Criminal History Systems Board to provide a copy of another person's publicly accessible adult conviction record. For the adult conviction record to be "publicly accessible" the person whose record is requested must have been convicted of a crime punishable by a sentence of five years or more, or has been convicted of any crime and sentenced to any term of imprisonment, and at the time of the request:

1. Is serving a sentence of probation or incarceration, or is under the custody of the parole board; or
2. Having been convicted of a misdemeanor, has been released from all custody or supervision not more than one year; or
3. Having been convicted of a felony, has been released from all custody or supervision for not more than two years; or
4. Having been sentenced to the custody of the department of correction, has finally been discharged therefrom, either having been denied release on parole or having been returned to penal custody for violating parole for not more than three years.

The enclosed form marked Request for Publicly Accessible CORI should be used relative to such requests.

**REQUEST FOR PUBLICLY ACCESSIBLE MASSACHUSETTS CORI**

It is lawful to request this agency to provide a copy of another person’s publicly accessible adult conviction record. For the adult conviction record to be “publicly accessible” the person whose record is requested must have been convicted of a crime punishable by a sentence of five years or more, or has been convicted of any crime and sentenced to any term of imprisonment, and at the time of the request:

1. is serving a sentence of probation or incarceration, or is under the custody of the parole board; or
2. having been convicted of a misdemeanor, has been released from all custody or supervision not more than one year; or
3. having been convicted felony, has been released from all custody or supervision for not more than two years; or
4. having been sentenced to the custody of the department of correction, has finally been discharged therefrom, either having been denied release on parole or having been returned to penal custody for violating parole for not more than three years.

*Directions: Please fill this request form out as completely as possible. The more information you are able to provide, the more easily this agency will be able to process your request. A **non-refundable processing fee of \$30.00 is charged for each record requested and must be included with your request(s)**. There will be no exceptions made to this rule. Only checks or money orders made payable to the Commonwealth of Massachusetts will be accepted. A self-addressed, stamped envelope must also be enclosed with your request(s). Walk in requests or faxed requests will not be accepted. Requests will be processed in the order in which they are received. Mail all requests to: the Criminal History Systems Board, 200 Arlington Street, Suite 2200, Chelsea, MA 02150, ATTN: CORI Unit.*

All requests must be typed. Requests containing any illegible identifying information will be returned. If you are making more than one request, please copy this form and fill in the requested identifying information accordingly.

1.			
	Last name	First name	Middle initial
	Maiden name	Alias	
	Date of Birth (MM/DD/YY)	Social Security Number (requested but not required)	
2.			
	Last name	First name	Middle initial
	Maiden name	Alias	
	Date of Birth (MM/DD/YY)	Social Security Number (requested but not required)	

# RENTAL AGREEMENTS

*Get it in writing.*

ADVICE WE WERE GIVEN:

“We’ve solved a lot of problems by using the right paperwork at the beginning of the rental term — it improves our legal position and it lets the tenant know we are serious from the start.”

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## THE BASICS

Minimize misunderstandings between you and your tenant, thus building a basis for clean and fair problem resolution down the road.

## USE A CURRENT RENTAL AGREEMENT

Many property managers continue to use the same rental agreements they started with years ago. Federal and state law can change yearly, and case law is in constant evolution. By using an outdated rental agreement, a landlord may be giving up important rights. If a problem tenant chooses to fight in court, an outdated rental agreement could cost the landlord the case.

Sources for up-to-date rental agreements will vary by state. In many areas property management associations provide rental forms and consider it their job to make sure they are consistent with current law. Local legal document publishing companies may also be good sources for effective rental agreements. Be sure, however, that you are buying a form that is developed for the laws of your state — “generic” rental agreements sold nationwide will not work as well as more tailored agreements.

## MONTH-TO-MONTH, OR LONG-TERM LEASE?

Laws regulating the enforcement of lease terms vary significantly by state. In many states a landlord can use a month-to-month rental agreement that allows either party to terminate the tenancy *without* specifying a cause on short notice — 30 days in many cases. In some jurisdictions the “no-cause” notice is not an option, in which case — from the landlord’s perspective — every tenant has a long-term lease.

The key is to recognize the effect of the agreement you use on the landlord’s power to evict. In addition, while the maximum power to evict is gained by using a month-to-month rental agreement whenever it is legal to do so, such an arrangement may not be the best in every situation. Market factors, as well as the expectations of local landlords and tenants, will also play a role in determining the best approach.

Regardless of the type of agreement used, keep in mind that no tenant is protected from a landlord's enforcement action if the tenant violates local landlord/tenant laws or does not comply with a legal provision of the rental agreement. If tenants are in violation of the law, or are not in compliance with the lease, a landlord may serve notices that require the behavior to be corrected or the tenant to move out.

Also, remember that while the terms of your rental agreement are important, even the best rental agreement is not as valuable as effective applicant screening. The most important part of any rental agreement is the character of the people who sign it. No amount of legal documentation can replace the value of finding good tenants.

## ELEMENTS TO EMPHASIZE

Inspect the rental agreement you use to see if it has language addressing the following provisions. If they are not in the rental agreement, consider adding them. To gain the most prevention value, you will need to point out the provisions to your tenant and communicate that you take your rental agreement seriously. Note that this list is not at all comprehensive — it only represents elements that are occasionally overlooked, and are particularly important for preventing and/or terminating drug-related tenancies.

1. **Subleasing is not permitted.** The state statutes we have examined do not regulate subletting, but do allow the landlord to do so. If your state's laws follow the same pattern, this means that *unless* your rental agreement specifies otherwise, your tenants have the right to sublet to whomsoever they please. Make it clear that the tenant cannot assign or transfer the rental agreement and may not sublet the dwelling. If you like, add this exception: unless the sublease candidate submits to the landlord a complete application and passes all screening criteria.

You must maintain control over your property — too often the people who run the drug operation are not the people who rented the unit. This provision will not stop all efforts to sublease, but it may prevent some and it will put you in a stronger position if you have to deal with a problem subtenant.

2. **Only those people listed on the rental agreement are permitted to occupy the premises.** If the tenant wants another adult to move in, that person *must* submit a completed application and pass the screening criteria for rental history. The method, and ability, to enforce this type of rule will, again, vary from state to state.<sup>1</sup> For example, you may need to define the difference between a “guest” and a “resident.” Since tenants are typically well within their rights to have guests stay with them for short periods of time, it is generally inappropriate for landlords to set rules that attempt to prevent the occasional overnight guest. However, it *is* appropriate for landlords to place limits on the ability of the tenant to have other adults establish their residence at the rental without permission.

Check with a local property management association or your own legal advisor before setting this criterion. Assuring your tenant that you will take this clause seriously may curb illegal behavior by others. Having the stipulation spelled out in the rental agreement will put you in a better legal position should that become necessary.

3. **No drug activity.** Make it clear that the tenant must not allow the distribution, sale, manufacture, or usage of controlled substances on the premises. You could also add various other types of crimes —

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<sup>1</sup> New York State law, for example, gives tenants broad permission to move in a number of additional people — certain relatives and other “occupants” — regardless of restrictions in a rental agreement.



such as prostitution or other felony level criminal behavior on the premises. It's already illegal, but spelling it out in the rental agreement can make it easier to serve eviction notices for the problem.

4. **The tenants are responsible for conduct on the property.** Tenants should understand that they will be held responsible for the conduct of themselves, their children, and all others on the premises under their control. Generally speaking, landlord/tenant laws are designed to allow the tenant the same “my home is my castle” right to privacy as that enjoyed by any owner-occupant. However, with the right to private enjoyment of the “castle” comes the responsibility to control what goes on there. Most landlord/tenant laws address this issue, but spelling it out in the rental agreement may help as well.

For people who plan to “front” for illegal activity, this underscores the point that they will be given as little room as possible to protect themselves by claiming that acquaintances, and not themselves, were involved in the activity.

Wording on this provision should be done with care — you may not go so far as to hold victims responsible for the behavior of people who abused or intimidated them into silence.

5. **The tenant will not unduly disturb the neighbors.** Make it clear that the tenant will be responsible for making sure that all persons on the premises conduct themselves in a manner that will not interfere with the neighbors' peace. The issue here is not the occasional loud party. The issue is prevention of chronic nuisance behavior that can severely impact a neighborhood if the behavior is left unchecked. Generally, landlord/tenant laws set minimum behavior requirements for tenants, so in many states, a landlord could enforce this type of requirement even if a written rental agreement has not been used.

What does disturbing the neighbors have to do with drug crimes? It doesn't necessarily. But we know that managers who attend to their own obligations and require tenants to meet theirs are far more effective in preventing drug activity than those who look the other way as complaints of noncompliance roll in. It is almost *never* the case that a drug criminal's first observed, evictable offense is the dealing or manufacturing of narcotics.

## LEASE ADDENDUM FORBIDDING ILLEGAL ACTIVITY

Many rental owners have begun to attach an addendum to their rental agreements spelling out specific crimes under state and local law that will be considered violations of the lease. A version of such an addendum is typically provided at the trainings that accompany this manual. Before using such an addendum, have your attorney review it.

While the behaviors proscribed in such addenda are generally already against the law, spelling them out as prohibited in the lease may allow you additional legal choices should you have to evict tenants for allowing or conducting criminal behavior. Even more important, announcing your commitment to maintaining safe housing through the use of such a lease addendum can be a valuable tool to discourage those planning criminal activity from moving in.

## PRE-MOVE-IN INSPECTION

Prior to signing the rental agreement, walk through the property with the tenant and make a visual inspection together. Some landlords use check in/check out forms developed for the purpose, others take photographs which are then signed by both parties, and still others make a pre-move-in video tape with the tenant. Regardless of the approach, agree on what repairs need to be done. Write down the agreement and

have both parties sign it. Make any agreed-upon repairs and document that those have been completed as well. Give copies to your tenant and keep signed and dated copies in your files.

Now, should your tenants damage the property, you have a way to prove it happened after they took possession of the unit. (Note: This also protects *tenants* — the pre-move-in inspection can prevent a bad landlord from trying to hold a tenant responsible for problems that predated the tenancy.)

The pre-move-in inspection can reduce the likelihood of some tenants causing damage to the premises. It can also protect you against the rare case of a tenant who may attempt to block a legitimate eviction attempt by damaging the premises and then claiming that the damage was preexisting. Note also that in some states, a documented pre-move-in inspection is *required* in order for the landlord to be able claim any part of the security deposit to pay for damages or other costs beyond normal wear and tear that are typically covered by security deposits when the tenant moves out. *For more information about security deposits and first and last month's rent, please refer to Addendum A.*

## **RESIDENT'S HANDBOOK**

Many apartment managers, as well as some single-family housing managers, provide a resident's handbook that spells out rules specific to the property being rented. Landlord/tenant laws typically place restrictions on what types of rules can be added, but generally property managers have found success with development of guidelines that restrict excessive noise levels, define behavior for common areas of the premises, and spell out rules for use of unique facilities such as pools or common laundry areas.

In general, managers of apartments may set additional rules for those common areas that are, in effect, "occupied" by management, not tenants. For example, as the "occupant" of the common areas of an apartment complex, a manager may be able to ask police to remove visitors who are engaged in fights or other intimidating behavior taking place in the courtyard of the complex. In this instance, as in others, managers may exercise more direct, immediate control over problems in the common areas of the property than they can over problems occurring on or inside the specific, privately rented property.

## **KEY PICKUP**

As a final prevention step, some landlords require that only a person listed on the written rental agreement may pick up the keys. This is one more step in ensuring that you are giving possession of the property to the people on the agreement and not to someone else.

# ONGOING MANAGEMENT

*What to do to keep the relationship working.*

## COMPLAINTS WE HAVE HEARD:

“The tenant moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal tenants, even though they never signed a lease.”

## ADVICE WE WERE GIVEN:

“You need to follow one basic rule — you have to *actively* manage your property. The only landlords who go to court are the ones who don’t actively manage their property.”

“For most property managers the experience is one of putting out brush fires all day long. If property managers can take a more proactive approach to the process, they can build an ever improving set of renters, avoid a lot of legal hassles, and have fewer brush fires during the day.”

“If your training teaches landlords nothing else, teach them that the neighbors in an area are not their enemies.”

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## THE BASICS

Maintain the integrity of a good tenant/landlord relationship. Strengthen communications between the landlord, tenants, and neighbors. Help build a sense of community.

## DON'T BEND YOUR RULES

A key to ongoing management of your property is demonstrating your commitment to your rental agreement and to landlord/tenant law compliance. Once you set your rules, enforce them. Make sure you meet *your* responsibilities, and make sure you hold your tenants accountable for meeting theirs. By the time most drug problems are positively identified, there is a long history of evictable behavior that the landlord ignored.

- **When aware of a serious breach, take action *before* accepting the next rent payment.** If a landlord accepts rent while knowing that the tenant is breaking a rule, but the landlord has not acted to correct the behavior, the landlord could lose the right to serve notices for the behavior. Landlord/tenant laws generally consider acceptance of rent equal to acceptance of lease violating behaviors about which the landlord has not objected. Further, regardless of the characteristics of your local law, it doesn’t pay to teach your tenants that they are allowed to break the rules. So, at minimum, as soon as you discover violations of local landlord/tenant laws or of your rental agreement, give tenants written notice that they are required to correct the problem. *Then* accept the rent.

- **If someone other than the tenant tries to pay the rent, get an explanation.** Also, note on the receipt that the payment is for your original tenants only. Otherwise, by depositing the money, you may be accepting new tenants or new rental agreement terms.
- **If a person not on the lease may be living in the rental, pursue the issue immediately.** If you take no action to correct the behavior, and you accept rent knowing the tenant has allowed others to move in, you may have accepted the others as tenants as well. So either require the illegal subtenants to fill in a rental application and apply, or serve the appropriate notice that would require your original tenant to remove the subtenants under threat of eviction if the action is not taken.
- **Fix habitability and code violations at the property quickly.** Maintaining habitable housing for tenants is the most important of a landlord's responsibilities. In addition, as discussed earlier, failure to maintain a unit could compromise a landlord's eviction rights. Tenants may be able to use a "retaliation" defense when a landlord attempts to evict after a tenant has complained that the rental is substandard.
- **When a tenant doesn't pay rent, address the problem.** Some landlords have let problem tenants stay in a unit, not just weeks after the rent was overdue, but *months*. While flexibility is important in making any relationship work, be careful about being too flexible. There is a big difference between being willing to receive rent late during a single month and letting your renters stay endlessly without paying. In general, nonpayment notices (directing the tenant to pay or vacate) are some of the faster eviction notices that a landlord can serve.
- **If neighbors call to complain of problems, pursue the issue.** Although it does happen, few neighbors call landlords about minor problems. If you get a call from a neighbor, find out more about the problem, and take appropriate action. If there are misunderstandings, clear them up. If there are serious problems with your tenants, correct them. The chapter on *Crisis Resolution* gives additional information about steps to take if a neighbor calls to complain.

**Bottom line:** If you respect the integrity of your own rules, the tenant will too. If you let things slide, the situation can muddy fast. It may mean more work up front, but once the tenant is used to your management style, you will be less likely to be caught by surprises.

## RESPONSIBILITIES DEFINED

For a legal description of the responsibilities of landlords and tenants, review your local landlord/tenant law, local maintenance codes, and the requirements of the Section 8 program if it applies to your units. Also — to state the obvious — if you haven't already, check your rental agreement. Rental agreements typically spell out various responsibilities of both the landlord and the tenant. The following is an overview of the typical responsibilities of both parties.

## LANDLORDS

A landlord's responsibilities typically fall into three areas: the condition of the premises as delivered to the tenant, the obligation to maintain the unit once it is occupied, and the obligation to respect the rights of the tenant. A landlord's responsibilities generally include:

- **Prior to move-in, provide the tenant with a clean, sanitary, and safe rental unit.** This typically means the unit should be cleaned, garbage and debris from previous tenants removed, pest control problems addressed as appropriate, the various systems (plumbing, electrical, heating) working appropriately, the unit adequately weatherproofed, the structural integrity of the unit maintained (e.g., no rotting steps), fire safety issues addressed (e.g., smoke detectors installed and access to secondary exits assured), working locks installed, and any other potential safety hazards addressed. *Refer to Addendum B for highlights of Chapter II of the State Sanitary Code and a summary of standards.*
- **After move-in, make sure the unit remains “habitable.”** For occupied units, landlords generally are responsible for all major repairs and are granted both the power and the responsibility to make sure that tenants are doing their part to maintain the habitability of the unit. For example, while the law and the rental agreement may both require that the tenant do sufficient basic housekeeping to keep the unit free of sanitation problems, if the tenant is not doing so, it is generally up to the landlord to require the tenant to correct the problem — typically serving a type of notice that would require the tenant to remove the garbage or vacate the premises.
- **Respect the tenant’s right to private enjoyment of the premises.** It has been a basic characteristic of landlord/tenant relationships for hundreds of years that once the tenant begins renting property, the tenant has the right to be left alone. With some specific exceptions for such activities as serving notices, conducting maintenance inspections, doing agreed-upon repairs, or showing the unit for sale, the landlord must respect the tenant’s right to private enjoyment of the unit in much the same way that an owner-occupant’s right to privacy must be respected. In those areas where a landlord does have a right to access, the landlord must generally follow a carefully spelled out notification process prior to entering the rented property.
- **Avoid retaliation against a tenant.** Generally, a landlord may not retaliate against a tenant who is legitimately attempting to cause the landlord to meet his/her responsibilities. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a tenant asking a landlord to repair a worn out furnace, fix a rotting step, or take other actions that fall within the landlord’s responsibility under the law.
- **Avoid illegal discrimination.** Nationwide, landlords may not discriminate on the basis of a tenant’s (or applicant’s) race, color, religion, sex, handicap, national origin, or familial status. Your state and local laws may include additional protected classes. This means that you may not use such class distinctions to screen applicants or to treat tenants differently once you enter into a rental agreement. For more information about the application of civil rights laws, see the chapter on *Applicant Screening*.
- **Enforce the terms of the rental agreement and landlord/tenant law.** While both the rental agreement and the law will identify various required behaviors of tenants, in general it is up to the landlord to make sure the tenant complies. If the tenant is not in compliance, the law generally gives landlords the power to serve various types of “cure” and “no-cure” notices to correct the behavior or require the tenant to move out. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem tenants. (Of course, if your problem tenants are involved in criminal behavior for which there is enough evidence to make an arrest, the police may be able to arrest the tenant and have that person serve jail time. However, while arrest may remove the

tenant from the property, you may still need to serve an eviction notice to regain possession of the property. See the chapter on *The Role of the Police* for more information.)

## TENANTS

A tenant's responsibilities are generally to assure that no harm is done to the unit and to pay the rent. A tenant's responsibilities generally include:

- **Do basic housekeeping, comply with the rental agreement, and avoid harming the unit.** In addition to complying with rental agreement provisions, tenants are typically required to use the premises in a reasonable manner, cause no damage to the unit beyond normal wear and tear, keep the premises free of accumulations of garbage and other waste, and do sufficient housekeeping to avoid safety and sanitation hazards. Some landlord/tenant laws also spell out a requirement that tenants be good neighbors — that tenants and their guests may not disturb the neighbors' peace. Also, from a civil standpoint, tenants are generally considered responsible for the behavior of others they invite onto the premises. For example, tenants typically cannot defend a landlord's eviction action by claiming that all alleged violations were committed by friends who visited on a regular basis.
- **Pay rent.** Landlords have the right to receive rent for the use of their property and tenants have an obligation to pay it. Exceptions exist only in those circumstances where landlord/tenant laws allow tenants to withhold rent when a landlord refuses to meet the *landlord's* responsibilities. For example, if a landlord refuses to fix a broken furnace, the tenant may have the right to withhold rent until the repairs are done. In such a circumstance the tenant may also be able to collect other fines or financial penalties from the landlord as well.
- **Enforce the terms of the rental agreement and landlord/tenant law.** Just as it is up to landlords to make sure that tenants comply with the rental agreement and landlord/tenant law, tenants generally hold the primary responsibility for making sure their *landlords* comply. Tenants have various powers to abate rent and/or take other action to cause a landlord to comply. For some problems, specific agencies can assist in enforcing the law — problems associated with building code violations and fair housing issues are two examples. However, the enforcing agencies often do not get involved unless they are first notified by the tenant. Therefore, chief among the powers generally granted to a tenant is protection from the landlord's retaliation should the tenant attempt to assert a right defined in the law.

## PROPERTY INSPECTIONS

A cornerstone of active management is the regular inspection. Unless you inspect, you can't be sure you are meeting your responsibility to provide safe and habitable housing. In addition, maintaining habitable property protects your rights as well. If a bad tenant can also claim that you are not meeting your responsibilities, you may have difficulty succeeding with an eviction. Conversely, if it is clear you make every effort to meet your responsibilities (and you document it), a tenant will be less inclined to fight an honest eviction effort.

While the purpose of a maintenance inspection is to care for the unit and ensure its habitability, regular inspections will also deter some types of illegal activity. For example, if tenants know that the landlord actively manages the property, they aren't likely to start making illegal modifications to the rental in order to set up a marijuana grow operation. Further, inspections can help catch problems associated with illegal activity before they get out of hand. For example, it is common for drug dealers to cause damage to a rental unit that is way beyond "normal wear and tear" — a problem that could be observed, documented, and addressed through the process of a regular inspection program. Though early discovery of such damage is a possibility, the more frequent impact of an inspection program on illegal activity is basic prevention. Illegal activity is less likely to happen at property where the landlord has a reputation for concerned, active management.

The key to successful property inspection is avoiding the adversarial position sometimes associated with landlord/tenant situations. An inspection program done properly should be *welcomed* by your honest tenants. Steps include:

- 1. Set an inspection schedule and follow it.** At minimum, every six months. It is a rare home that doesn't need at least some maintenance or repair work at least twice a year.
- 2. Use the inspection/notice procedures defined by local law.** Generally, landlords have the right to do maintenance inspections of rental property if the tenant is given proper notice. However, each state sets its own limits on the conditions under which a landlord may enter an occupied rental. If the inspection is routine, keep the approach friendly. Perhaps call the tenant in advance and then follow up by serving the inspection notice by the methods defined in local law. To help address all maintenance needs efficiently, ask tenants to take note of any concerns they have in advance of the inspection date. Again, when done appropriately, good tenants should appreciate your attention and concern for maintaining the unit.
- 3. Find and address code and habitability problems.** When you inspect the property, check for maintenance problems and handle any routine maintenance, such as replacing furnace or air conditioning filters or putting fresh batteries in a smoke detector. Discuss with the tenants any concerns they have. Make agreements to remedy problems. Then repair what needs to be fixed.

## UTILITIES

There are some instances when the shutting down of utilities is a symptom of drug activity — as dealers or heavy users get more involved in their drugs, paying bills can become less important.

Remember: If your lease stipulates that the tenant is responsible for utility bills, and the tenant stops paying for those services, you have grounds for serving a for-cause eviction notice requiring that tenants get back

into compliance with the lease terms or vacate the premises. This may be particularly important to do if shutting off the utility would result in the unit no longer meeting habitability standards.

## **KEEP A PAPER TRAIL**

It is difficult to prove the existence of a verbal agreement in court, particularly if the opposing side denies that the agreement took place. The type of tenant who is involved in illegal activity *and* would choose to fight you in court will know that. So keep a record of your agreements and provide copies to the tenant. Just having tenants know that you keep records may be enough to motivate them to stay out of court. You will need to retain documentation that shows your good-faith efforts to keep the property habitable and shows any changing agreements with a tenant — dated and signed by both parties.

## **TRADE PHONE NUMBERS WITH NEIGHBORS**

Landlords of single-family residential housing sometimes don't hear of dangerous or damaging activity on their property until neighbors have written to the mayor, or the police have served a search warrant. Quite often the situation could have been prevented if the landlord and area neighbors had established a better communications link.

Find neighbors who seem responsible, concerned, and reliable. Trade phone numbers and ask them to advise you of serious concerns. You'll know you have found the right neighbors when you find people who seem relieved to meet you and happy to discover you are willing to work on problems. Conversely, if neighbors seek you out, work with them and solicit their help in the same way.

Note that landlords and neighbors tend to assume their relationship will be adversarial. Disarm any such assumptions and get on with cooperating. If you both want the neighborhood to remain healthy and thriving, you *are* on the same side and have nothing to gain by fighting each other.



# APARTMENT WATCH/ PROMOTING COMMUNITY

*How to turn an apartment complex into a community*

## COMPLAINTS WE HAVE HEARD:

“We already have an ‘apartment watch.’ The tenants get together and watch the manager to see if I screw up!”

## ADVICE WE WERE GIVEN:

“*Please* teach landlords that their good tenants can help.”

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## THE BASICS

Good landlords and good tenants must learn to work together for the common goal of a safe community.

## BENEFITS

In multi-family units, unless your tenants report suspicious behavior, you may not find out about drug activity until the problem becomes extreme. Some people — tenants and homeowners alike — are frightened to report illegal activity until they discover the “strength in numbers” of joining a community watch organization. Whether you call your efforts “apartment watch,” “community pride,” or “resident retention programs,” the goal is the same: transforming an apartment complex into a community.

Organizing a community is more than just encouraging tenants to act as “eyes and ears.” In the absence of a sense of community, the isolation that residents feel can lead to apathy, withdrawal, anger — even hostility — toward the community around them. Organizing efforts can lead to profound changes: as apartment residents get to know each other and the manager, a sense of community — of belonging — develops, and neighbors and tenants are more willing to do what it takes to keep a neighborhood healthy.

Complexes that enjoy a sense of community often have more stable tenancies and lower crime problems than comparable complexes that are not organized. Managers who have initiated such efforts note these benefits:

- Lower turnover, leading to considerable savings.
- Less damage to property and lower repair bills.
- Reduced crime.
- A safer, more relaxed atmosphere for the tenants.
- A positive reputation for the complex, leading to higher quality applicants and, over time, increased property values.

## KEY ELEMENTS

The key to effective cooperative community building is to have the property manager take the lead and make sure the efforts are ongoing. Community organizing that is run entirely by tenants may have less long-term stability, simply because it is the nature of rental housing that tenant turnover will occur and key organizers will move on. For this reason, having the manager keep the program going is an important part of a successful program. Further, if management waits until the tenants are so fed up that they organize themselves, the relationship may be soured from the start. If management takes a proactive role in helping tenants pull together for mutual benefit, the opportunity for a positive working relationship is great. Tips include:

1. **Clean house.** If you have tenants who are involved in drug activity, illegal gang activity, or other dangerous criminal behavior, resolve the issue before inviting tenants to a building-wide meeting. Your good tenants may be frightened to attend a meeting where they know bad tenants might show up. In addition, they may question your motivation if you appear to encourage them to meet with people involved in illegal activity. So before you organize, you will need to evict problem tenants and make sure that improved applicant screening procedures are in place. Until then, rely on informal communications with good tenants to help identify and address concerns.
2. **Make community activities a management priority.** Budget for the expenses and consider promotion of such activity a criterion for management evaluation. It is not an afterthought. It is not something that resident managers should “get around to” if there is time. Unless managers make community organizing a priority, it will not get done.
3. **Hold meetings/events quarterly.** Don’t expect major results from the first meeting, but do expect to see significant differences by the time the third or fourth is held.
4. **Meet in the common areas if possible.** While small meetings can be held in the manager’s office, a vacant unit, or — should a tenant volunteer — in a tenant’s apartment, more people will feel comfortable participating if they can meet on “neutral” territory. Also, if you can hold events in courtyards or other outdoor locations, you may have more room to structure special events for children in the same area.
5. **At each event, encourage people to meet each other.** Regardless of other specific plans for meetings, take basic steps that encourage people to meet each other. Simple steps done faithfully can make a big difference over time. At each event:
  - **Use name tags.** This simple step is important in helping to break down the walls of unfamiliarity for newcomers.
  - **Begin any formal meeting by having people introduce themselves by name.**
  - **Allow time at each event for people to socialize.** Make sure that some of this time happens after the meeting agenda is underway. Once the event is underway, participants will have the shared experience of the meeting with which to start a conversation.
  - **Offer refreshments.** Whether it is as simple as coffee and pastries or as involved as a potluck or a summer barbecue, free food can attract many to a meeting who might not otherwise have attended.
  - **Include activities for children and teenagers, as well as for adults.** Getting children involved in games and other events will provide a positive experience for the children and help encourage parents to meet each other. Also, like adults, when children and teenagers get to know their resident manager better, they are more likely to share information. This is important because

teenagers, in particular, may have information about a community problem of which the adults are unaware.

6. **Hold “theme” events and special meetings as appropriate.** There is a balance between holding a purely social event and a meeting for the purpose of addressing an agenda. The balance at each meeting can vary, but it is important to provide some of both. At least one of the meetings held each year should be primarily for the purpose of celebration — a holiday party in the winter or a “know your neighbor” barbecue in the summer. Others can offer a time for socializing and a time for covering an agenda. Meeting agendas can be as varied as the types of apartments and people who populate them. In general meetings should:

- **Respond to issues that are a direct concern to a number of tenants.** If there are immediate concerns, such issues should take priority over other potential agenda items. If tenants are concerned about gang violence in the neighborhood, less pressing topics may seem irrelevant.
- **Provide new information about the local community.** This could take any number of forms. You might invite merchants from the area, fire fighters, police officers, members of neighborhood associations or other community groups, social workers, employment counselors, or any number of other people who could share useful information with tenants.

Also, remember the importance of keeping meeting agendas on track, interesting, and focused on tangible, measurable outcomes. If tenants feel that meetings rarely address the published agenda, interest will shrink quickly.

7. **Nurture a sense of shared responsibility.** While it is important for management to continue providing support for the community-building process, it should not be a one-way street. Leadership in the complex should be nurtured, and volunteers recruited at each meeting to assist with the next meeting, program, or event. The more residents experience the community-building process as a joint effort of management and residents, the more they will appreciate it. Promoting a sense of shared responsibility can be accomplished in many ways. Here are just a few tips:

- **Ask for volunteers to serve on a “tenants’ council.”** The council could meet informally once a month to discuss issues of concern in the complex and to plan the upcoming community-wide events. Don’t be discouraged if only one or two people get involved initially. With success, more will join.
- **Whenever possible, have tenants set the meeting agendas.** Whether it is through a tenant council or simply by collecting suggestions at community events, make sure tenants know they play a key role in defining the direction of community-building efforts.
- **Give tenants a chance to comment on plans for the property.** Even the simplest issues can be turned into opportunities for community building. For example, if a fence is going to be built or replaced, before going ahead with the work, discuss the plans at a meeting and allow tenants to air concerns or suggestions. You may hear some new ideas that can make the end result more attractive. In those situations where you cannot act on a suggestion, you have the opportunity to explain your reasons to your tenants, and at least have them experience a level of participation that they did not previously have. Along similar lines, by listening to tenant concerns, you may discover that a relatively simple adjustment in policy can result in a significant increase in overall tenant satisfaction.

8. **Pick projects that can succeed.** Don’t promise more than you can deliver. Make sure that easily implemented changes are done promptly so that tenants can see the results. While it is important to take on the larger goals as well (such as getting rid of drug activity in the rest of the neighborhood), short-term results are needed to help tenants see that change is possible.

- 9. Develop a communications system.** This can be as elaborate as quarterly or monthly newsletters, complete with updates from management, articles from tenants, advertisements from local merchants, and referrals to local social service agencies. Or it may be as simple as use of a centrally located bulletin board where community announcements are posted. Whatever the process, the key lies in making sure that your tenants are aware of the information source and that they find it useful enough to actually read it.
- 10. Implement basic crime prevention measures.** In addition to the general community- building techniques described, various traditional crime watch techniques can also be implemented. Apartment watch training should be provided to your involved tenants prior to getting underway. Contact a crime prevention officer in your area for more details. Crime prevention specialists can help facilitate the first apartment watch meeting and discuss the practices of local law enforcement. Examples include:
- **Make sure tenants have the manager’s phone number readily accessible, and that they know to call if they suspect illegal activity.** Of course, tenants should call 9-1-1 immediately if they witness a crime in progress or any life-threatening, emergency situation. They should also contact police non-emergency services to discuss illegal activity that is not immediate in nature. Encourage tenants to contact the manager *after* they have contacted 9-1-1, in the case of immediate and life-threatening situations, as well as to contact management any other time they suspect illegal activity in the complex. The sooner your tenants advise you of a problem, the more opportunity you have to solve it before the situation gets out of hand.
  - **Encourage tenants to develop a list of phone numbers for each other.** By sharing phone numbers, tenants will be able to contact each other with concerns, as well as organize reporting of crime problems by multiple tenants. Note that sharing phone numbers among tenants should be done on a voluntary basis only — those who do not want to participate should not be required to do so.
  - **Distribute a list of local resources.** The resource list should include numbers for police, fire, and medical emergency services (9-1-1 in most areas) as well as hotlines for local crime prevention, substance abuse problems, domestic violence problems, employment assistance, and any number of other services and organizations that may be able to assist your tenants.
  - **Purchase a property engraver for each complex.** Encourage tenants to engrave their driver’s license number on items of value — video recorders, cameras, televisions, etc. Then post notices of the fact that tenants in the complex have marked their property for identification purposes. Burglars would rather steal property that can’t be traced.
  - **Apply “crime prevention through environmental design” changes.** If tenants cannot *see* the problem, they cannot report it. The chapter on *Preparing the Property* covers environmental design approaches in detail. Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don’t want to be. Make it difficult to break in, close off escape routes, and make sure accessible areas can be easily observed by people throughout the complex.
- 11. Encourage nearby neighbors and apartment complexes to get involved.** Solving the whole problem may require encouraging similar steps in adjacent apartment complexes or making sure neighbors in nearby single-family homes also get involved. As a starting point, invite area neighbors to at least some of the community events held at the complex each year.

# WARNING SIGNS OF DRUG ACTIVITY

*The sooner it is recognized, the faster it can be stopped.*

## COMPLAINTS WE HAVE HEARD:

“The neighbors tell me my tenants are dealing drugs. But I drove by *three* different times and didn’t see a thing.”

## ADVICE WE WERE GIVEN:

“You’ve got to give up being naive. We could stop a lot more of it if more people knew what to look for.” — Narcotics detective

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## THE DRUGS

While many illegal drugs are sold on the street today, the following are most common:

1. **Cocaine and Crack.** Cocaine is a stimulant. Nicknames include coke, nose candy, blow, snow, and a variety of others. At one time cocaine was quite expensive and generally out of reach for people of low incomes. Today, the price has dropped to the point that it can be purchased by all economic levels. Cocaine in its powder form is usually taken nasally (“snorted”). Less frequently, it is injected.

“Crack,” a derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as “rock.” Crack is manufactured from cocaine and baking soda. The process requires does not produce any of the toxic waste problems associated with methamphetamine production. Because crack delivers a “high” using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes. Crack is typically smoked in small glass pipes.

Powdered cocaine has the look and consistency of baking soda and is often sold in small, folded paper packets. Crack has the look of a small piece of old, dried soap. Crack is often sold in tiny “Ziploc” bags, little glass vials, balloons, or even as is — with no container at all.

In general, signs of cocaine usage are not necessarily apparent to observers. Combinations of the following are possible: regular late-night activity (e.g., after midnight on weeknights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine).

Powdered cocaine usage crosses all social and economic levels. Crack usage is so far associated with lower income levels. While Los Angeles style gangs (Bloods and Crips) have made crack popular, other groups and individuals have begun manufacturing and selling the drug as well.

2. **Methamphetamine.** Methamphetamine is a stimulant. Nicknames include: meth, crank, speed, crystal, STP, and others. Until the price of cocaine began dropping, meth was known as “the poor man’s cocaine.” Meth is usually ingested, snorted, or injected. A new, more dangerous form of methamphetamine, “crystal meth” or “ice,” can be smoked. So far, the feared rise in ice usage has not been observed.

“Pharmaceutical” grade meth is a dry, white crystalline powder. While some methamphetamine sold on the street is white, much of it is yellowish, or even brown, and is sometimes of the consistency of damp powdered sugar. The drug has a strong medicinal smell. It is often sold in tiny, sealable plastic bags.

Hard-core meth addicts get very little sleep and they look it. Chronic users and “cooks” — those who manufacture the drug — may have open sores on their skin, bad teeth, and generally appear unclean. Paranoid behaviors combined with regular late-night activity are potential indicators. Occasional users may not show obvious signs.

Cooks tend to be lower-income and may have an unpleasant urine smell about them. While many types of individuals are involved in meth production, the activity is particularly common among some “outlaw” motorcycle gangs.

*Because of the toxic waste dangers associated with methamphetamine production, we have included additional information on dealing with methamphetamine labs in a separate chapter.*

- 3. Tar Heroin.** Fundamentally, heroin is a powerful pain killer — both emotionally and physically. Nicknames include brown sugar, Mexican tar, chiva, horse, smack, “H,” and various others. Heroin is typically injected.

Tar heroin has the look of creosote off a telephone pole, or instant coffee melted with only a few drops of water. The drug has a strong vinegar smell. It is typically sold in small amounts, wrapped in tinfoil or plastic. Paraphernalia that might be observed include hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and blackened cotton balls.

When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. While heroin began as a drug of the wealthy, it has become a drug for those who have little income or are unemployed. Heroin addicts don’t care about very much but their next “fix” — and their clothes and demeanor reflect it. When they are not high, addicts can become quite aggressive. As with most needle users, you will rarely see a heroin user wearing a short-sleeved shirt.

- 4. Marijuana.** Marijuana is also known as grass, weed, reefer, joint, “J,” Mary Jane, cannabis, and many others. Marijuana is smoked from a pipe or a rolled cigarette, and typically produces a “mellow” high. However, the type and power of the high varies significantly with the strength and strain of the drug.

The marijuana grown today is far more powerful than the drug that became popular in the late ‘60s and early ‘70s. Growers have developed more sophisticated ways to control growth of the plants and cause high output of the resin that contains THC — the ingredient that gives marijuana its potency. Today’s marijuana is often grown indoors to gain greater control over the crop and to prevent detection — by competitors, animals, or law enforcement. It takes 90 to 180 days to bring the crops from seed to harvest.

Users generally appear disconnected and non-aggressive. The user’s eyes may also appear bloodshot or dilated. Usage of marijuana crosses all social and economic levels.

Marijuana is generally sold in plastic bags, or rolled in cigarette paper. The smell of the smoke has been described as a “musky” cigarette smoke.

## WARNING SIGNS IN RESIDENTIAL PROPERTY

The following list describes signs of drug activity that either you or neighbors may observe. As the list will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.

Note also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.

This list is primarily targeted to tenant activity. For information on signs of dishonest *applicants*, see the chapter on *Applicant Screening*.

### DEALING

Dealers sell to the end user — so they typically sell small quantities to many purchasers. Dealing locations are like convenience stores — there is high customer traffic with each customer buying a small amount.

*Neighbors may observe:*

- **Heavy traffic.** Cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical, increasing on weekends or late at night, or minimal for a few weeks and then intense for a period of a few days — particularly pay days.
- **Exchanges of money.** Cash and packets traded through windows, mail slots, or under doorways.
- **Lack of familiarity.** Visitors appear to be acquaintances rather than friends.
- **People bring “valuables” into the unit.** Visitors regularly bring televisions, bikes, VCRs, cameras — and leave empty-handed.
- **Odd car behavior.** Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits. Visitors may also park around a corner or a few blocks away and approach on foot.
- **“Lookouts.”** Frequently these will be younger people who tend to hang around the rental during heavy traffic hours.
- **Regular activity at extremely late hours.** For example, frequent commotion between midnight and 4:00 in the morning on weeknights. (Both cocaine and methamphetamine are stimulants — users tend to stay up at night.)
- **Various obvious signs.** This may include people exchanging small packets for cash, people using drugs while sitting in their cars, syringes left in common areas or on neighboring property, or other paraphernalia lying about.

*Landlords may observe:*

- **Failure to meet responsibilities.** Failure to pay utility bills or rent, failure to maintain the unit in appropriate condition, general damage to the property. Some dealers smoke or inject much of their

profits — as they get more involved in the drugs, they are more likely to ignore bills, maintenance, and housekeeping.

## ***DISTRIBUTION***

Distributors are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the “wholesale” component, while dealers are the “retail” component. If the distributors are not taking the drugs themselves, they can be difficult to identify. A combination of the following indicators may be significant:

- **Expensive vehicles.** Particularly when owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved — so they might drive a \$50,000 car while renting a \$20,000 unit.
- **Pagers and cellular phones.** Particularly when used by people who have no visible means of support.
- **A tendency to make frequent late-night trips.** Many people work swing shifts or have other legitimate reasons to come and go at late hours. However, if you are seeing a number of other signs along with frequent late-night trips, this could be an indicator.
- **Secretive loading of vehicles.** Trucks, trailers, or cars being loaded and unloaded late at night in a hurried, clandestine manner. “Load and distribution houses” (most likely to be found in border states) are essentially repackaging locations and involve moving large quantities of drugs.

## ***MARIJUANA GROW OPERATIONS***

Grow operations are hard to identify from the street. They are more likely to be found in single-family residential units than in apartments. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below.

*Neighbors may observe:*

- **Electrical wiring that has been tampered with.** For example, evidence of residents tampering with wiring and hooking directly into power lines.
- **Powerful lights on all night in the attic or basement.** Growers will be using powerful lights to speed the development of the plants.

*Landlords may observe:*

- **A sudden jump in utility bills.** Grow operations require strong lighting.
- **A surprisingly high humidity level in the unit.** Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe peeling paint or mildewed wallboard or carpet.
- **Rewiring efforts or bypassed circuitry.** Again, grow operations require a lot of electricity — some use 1,000-watt bulbs that require 220-volt circuits. The extra circuitry generally exceeds the power rating for the rental and can burn out the wiring — resulting in fires in some cases, or often the need to rewire before you can rent the property again.



- **Various obvious signs.** For example, basements or attics filled with plants, lights, and highly reflective material (e.g., tinfoil) to speed growing.

## **METH LABS**

Once a meth “cook” has collected the chemicals and set up the equipment, it doesn’t take long to make the drugs — about 12 hours for one batch. Clandestine labs have been set up in all manner of living quarters, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that offer extra privacy. In rural settings it’s barns or houses well away from other residences. In urban settings it might be houses with plenty of trees and shrubs blocking the views, or apartment or hotel units that are well away from the easy view of management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

*Neighbors may observe:*

- **Strong ammonia smell.** Very similar to cat box odor (amalgam process of methamphetamine production).
- **Other odd chemical odors.** The smell of other chemicals or solvents not typically associated with residential housing.
- **Chemical containers.** Chemical drums or other chemical containers with their labels painted over.
- **Smoke breaks.** *If* other suspicious signs are present, individuals leaving the premises just long enough to smoke a cigarette may also be an indicator. Ether is used in meth production. Ether is highly explosive. Methamphetamine “cooks” get away from it before lighting up.

*Landlords may observe:*

- **Strong unpleasant/chemical odors.** A particularly strong cat box/ammonia smell within the rental may indicate usage of the amalgam process for methamphetamine production. The odor of ether, chloroform, or other solvents may also be present.
- **Chemistry equipment.** The presence of flasks, beakers, and rubber tubing consistent with high school chemistry classes. Very few people practice chemistry as a hobby — if you see such articles, don’t take it lightly.
- **A maroon-colored residue on aluminum sashes or other aluminum materials in the unit.** The ephedrine process of methamphetamine production is a more expensive process, but it does not give off the telltale ammonia/cat box odor. However the hydroiodic acid involved *does* eat metals and, in particular, leaves a maroon residue on aluminum.
- **Bottles or jugs used extensively for secondary purposes.** For example, milk jugs and screw-top beer bottles full of mysterious liquids.
- **Discarded chemistry equipment.** Garbage containing broken flasks, beakers, tubing, or other chemical paraphernalia.

**Note:** *If you have reason to believe there is a meth lab on your property, leave immediately, wash your face and hands, and call the narcotics division of your local law enforcement agency to report what you know. If*

*you have reason to believe your exposure has been extensive, contact your doctor — some of the chemicals involved are highly toxic. For more information about meth labs, see the chapter on clandestine drug labs.*

## **GENERAL**

The following may apply to dealing, distribution, or manufacturing.

*Neighbors may observe:*

- **Expensive vehicles.** Regular visits by people in extremely expensive cars to renters who appear to be significantly impoverished.
- **Dramatic drops in activity after police are called.** If activity stops after police have been called, but before they arrive, this may indicate usage of a radio scanner, monitoring police bands.
- **Unusually strong fortification of the unit.** Blacked-out windows, window bars, extra deadbolts, surprising amounts spent on alarm systems. Note that grow operators and meth “cooks,” in particular, often emphasize fortifications — extra locks and thorough window coverings are typical.
- **Frequent late-night motorcycle or bicycle trips.** This would only be a significant sign if the trips are made from a location where other indicators of drug activity are also observed.
- **Firearms.** Particularly assault weapons and those that have been modified for concealment, such as sawed-off shotguns.

*Landlords may observe:*

- **A willingness to pay rent months in advance, particularly in cash.** If an applicant offers you six months’ rent in advance, resist the urge to accept, and require the person to go through the application process. By accepting the cash without checking, you might have more money in the short run, but your rental may suffer damage, and you may also damage the livability of the neighborhood and the value of your long-term investment.
- **A tendency to pay in cash combined with a lack of visible means of support.** Some honest people simply don’t like writing checks, so cash payments by themselves certainly don’t indicate illegal activity. However, if other signs are also noted, and there are large amounts of cash with no apparent source of income, get suspicious.
- **Unusual fortification of individual rooms.** For example, deadbolts or alarms on interior doors.
- **Willingness to install expensive exterior fortifications.** If your tenants offer to pay surprisingly high dollar amounts to install window bars and other exterior fortifications, they may be interested in more than prevention of the average burglary.
- **Presence of any obvious evidence.** Bags of white powder, syringes, marijuana plants, etc. Also note that very small plastic bags — the type that jewelry or beads are sometimes kept in — are not generally used in quantities by most people. The presence of such bags, combined with other factors, should cause suspicion.

- **Unusually sophisticated weigh scales.** The average home might have a food scale or a letter scale — perhaps accurate to an ounce. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated — accurate to gram weights and smaller. (Of course, there are legitimate reasons to have such scales as well, so don't consider a scale by itself, as an indicator.)
- **Large amounts of tinfoil, baking soda, or electrical cords.** Tinfoil is used in grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations.

## IF YOU DISCOVER A CLANDESTINE LAB...

### COMPLAINTS WE HAVE HEARD:

“There was a time when I didn’t even know what a ‘precursor chemical’ was. Now I know all about methamphetamine labs. So far it has cost me more than \$10,000 to deal with one property with a meth lab on it. And we’re still not done.”

### ADVICE WE WERE GIVEN:

“Some of the acids used in meth production don’t have any ‘long term’ effects — it’s all immediate. They damage your lungs if you breathe the vapors and they’ll burn your skin on contact.” — Narcotics detective

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*Because methamphetamine labs represent a potential health hazard far greater than other types of drug activity, we have included this section to advise you on how to deal with the problem. This information is intended to help you through the initial period, immediately after discovering a meth lab on your property. For information about warning signs of methamphetamine labs and other drug activity, see the previous chapter on the Warning Signs of Drug Activity.*

## THE DANGER: TOXIC CHEMICALS IN UNPREDICTABLE SITUATIONS

There is very little that is consistent, standard, or predictable about the safety level of a methamphetamine lab. The only thing we can say for sure is that you will be better off if you leave the premises immediately. Consider:

- **Cleanliness is usually a low priority.** “Cooks” rarely pay attention to keeping the site clean or keeping dangerous chemicals away from household items. The chemicals are rarely stored in original containers — often you will see plastic milk jugs, or screw-top beer bottles, containing unknown liquids. It is all too common to find bottles of lethal chemicals sitting open on the same table with the cook’s bowl of breakfast cereal, or even next to a baby’s bottle or play toys.
- **Toxic dump sites are common.** As the glass cooking vessels become brittle with usage, they must be discarded. It is common to find small dump sites of contaminated broken glass, needles, and other paraphernalia on the grounds surrounding a meth lab, or even in a spare room.
- **The chemicals present vary from lab to lab.** While some chemicals can be found in any meth lab, others will vary. “Recipes” for cooking meth get handed around and each one has variations. So we cannot say with any certainty which combination of chemicals you will find in a lab you run across.
- **“Booby traps” are a possibility.** Other meth users and dealers may have an interest in stealing the product from a cook. Also, as drug usage increases, so does paranoia. Some cooks set booby traps to protect their product. A trap could be as innocent as a trip wire that sounds an alarm, or as lethal as a wire that pulls the trigger of a shotgun or causes the release of deadly chemical gases.

- **The risk of explosion and fire is high.** Ether, commonly used in some drug labs, is highly explosive. Its vapor can be ignited by the spark of a light switch. Under some conditions, a bottle could explode just by jarring it. Meth lab fires are generally the result of an ether explosion — the result can be instant destruction of the room, with the remainder of the structure in flames.
- **Health effects are unpredictable.** Before the law enforcement community learned of the dangers of meth labs, they walked into them without protective clothing and breathing apparatus. The results varied — in some cases officers experienced no ill effects, while in others they developed “mild” symptoms such as intense headaches. However, in other cases, officers experienced burned lung tissue from breathing toxic vapors, burns on the skin from coming into contact with various chemicals, and other more severe reactions.
- **Many toxic chemicals are involved.** The list of chemicals that have been found in methamphetamine labs is a long one. Some are standard household items, like baking soda. Others are extremely toxic or volatile like hydroiodic acid (it eats through metals), benzene (carcinogenic), ether (highly explosive), or even hydrogen cyanide (also used in gas chambers). For still others, like phenylacetic acid and phenyl-2-propanone, while some adverse health effects have been observed, little is known about the long-term consequences of exposure.

## WHAT TO DO IF YOU FIND A LAB

1. **Leave.** Because you will not know which chemicals are present, whether or not the place is booby-trapped, or how clean the operation is, *don't stay around to figure it out*. Do not open any containers. Do not turn on, turn off, or unplug anything. Do not touch anything, much less put your hand where you cannot see what it is touching — among other hazards, by groping inside a drawer or a box, you could be stabbed by the sharp end of a hypodermic needle.

Also, if you are not sure you have discovered a clandestine lab, but think you may have, don't stay to investigate. Make a mental note of what has made you suspicious and get out.

2. **Check your health and wash up.** As soon as possible after leaving the premises, wash your face and hands and check your physical symptoms. If you have concerns about symptoms you are experiencing, call your doctor, contact an emergency room, or call a poison control center for advice.

Even if you feel no adverse effects, as soon as is reasonably possible, change your clothes and take a shower. Whether or not you can smell them, the chemical dusts and vapors of an active meth lab can cling to your clothing the same way that cigarette smoke does. (In most cases, normal laundry cleaning — not dry cleaning — will decontaminate your clothes.)

3. **Alert your local police.** Contact the narcotics unit of your local law enforcement agency. (After hours, call your police emergency number, 9-1-1 in most areas.) If you are unsure of whom to call, contact your police services through their non-emergency numbers listed in your phone book. Because of the dangers associated with clandestine lab activity, such reports often receive priority and are investigated quickly. Typically, the law enforcement agency will coordinate with the local fire department's hazardous materials team.

- 4. Arrange for cleanup.** Before you can rent the property again, you will need to decontaminate it. Cleanup procedures are evolving and regulations on cleanup vary significantly from state to state. Start by getting any appropriate information from the law enforcement and hazardous materials officials who dealt with your unit. Ask for suggestions on whom to contact in your area — generally county or state health officials will need to be involved and will have information on methods for decontamination.

Also, if there are remaining issues to be addressed with your tenants, do so. However, when a meth lab is discovered, your tenants will typically have either already left or will no longer have any interest in possessing the unit, so while there may be other issues to resolve, physical removal of tenants is usually not one of them.

Depending on the level of contamination present, cleanup may be as simple as a thorough cleaning of all surfaces and removal of absorbent materials (e.g., stuffed furniture and rugs), or as complex as replacing flooring or drywall. On very rare occasions demolition of the entire structure may be required. Again, contact your local health officials for details.

Because of the range of chemicals involved, and the differing levels of contamination possible, we cannot accurately predict the length of time involved to get a contaminated property back into use.

## “YES, BUT...”

*“If lab sites are so toxic, how can meth lab “cooks” live there?”*

The short answer is: because they are willing to accept the risks of the toxic effects of the chemicals around them. Meth cooks are often addicted to the drug and are often under its influence during the cooking process. This makes them less aware and more tolerant of the environment, as well as more careless with the chemicals they use and more dangerous to those around them.

Meth cooks are frequently recognized by such signs as rotting teeth, open sores on the skin, and a variety of other health problems. Some of the chemicals may cause cancer — what often isn’t known is how much exposure it takes, and how long after exposure the cancer may begin. Essentially, meth cooks have volunteered for an uncontrolled experiment on the long-term health effects of the chemicals involved.

Also, there are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire officials to discover the presence of a lab — while fighting the fire, they discover the evidence of drug lab activity.

Finally, *you* face a different set of risks in a meth lab than do the cooks. The cooks know which compounds they are storing in the unmarked containers. They know where the more dangerous chemicals are located and how volatile their makeshift setup is likely to be. When you enter the premises, you have none of this information, and without it you face a much greater risk.

# CRISIS RESOLUTION

*Stop the problem before it gets worse.*

## COMPLAINTS WE HAVE HEARD:<sup>1</sup>

“The problem is these landlord/tenant laws don’t give us any room. The tenants have all the rights and we have hardly any. Our hands are tied.”

“The system works primarily for the tenant — for-cause evictions are very difficult to do. The judges bend over backward to help the tenant.”

## ADVICE WE WERE GIVEN:

“Serving eviction papers on drug house tenants is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers than for a lot of it afterwards.”

“Tell them to read a current copy of the landlord/tenant law. Too many landlords haven’t looked at it in years.”

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## THE BASICS

Address problems — quickly and fairly — as soon as they come up. Know how to respond if a neighbor calls with a complaint. If eviction is required, do it efficiently. If you don’t know, ask a skilled attorney.

## DON’T WAIT — ACT IMMEDIATELY

Effective property management includes early recognition of noncompliance and immediate response. Don’t wait for rumors of drug activity and don’t wait for official action against you or the property (e.g., warning letters, fines, closure, or forfeiture). *Prevention* is the most effective way to deal with rental-based drug activity. Many drug operators have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, dishonest tenants will learn that they can’t take advantage of you or your property.

The following are three of the more common reasons why landlords put off taking action, as well as some reasons why you may want to act anyway:

- **Fear of the legal process.** Many landlords don’t take swift action because they are intimidated by the legal process. However, the penalty for indecision can be high — if you do not act, and then accept rent while knowing that a tenant is in noncompliance, you may compromise your ability to take any future

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<sup>1</sup> Note that some “complaints” contain inaccurate or incomplete assumptions about legal rights or procedure.

action about the problem. Your position is strongest if you consistently apply the law whenever tenants are not in compliance with the rental agreement or your landlord/tenant laws. Your position is weakened whenever you look the other way.

- **Fear of damage to the rental.** Some landlords don't act for fear the tenant will damage the rental. Unfortunately, such inaction generally makes the situation worse. Problem tenants may see your inaction as a sign of acceptance. You will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged rental anyway — if they are the type who would damage a rental, sooner or later they will.
- **Misplaced belief in one's tenants.** While developing this manual, we heard this story, and similar ones, with considerable frequency: “The people *renting* the property aren't dealing the drugs. We haven't had any problems with them. The drug dealers are their friends who often stay at the property. So what do we do? The tenants aren't making trouble — it's these other people.” Ask yourself: Did your “innocent” tenants contact you or the police when the drug activity first occurred? Or did they acknowledge the truth only after you received phone calls from upset neighbors or a warning from the police? (Also: Is your “innocent” tenant breaking your rental agreement by having long-term guests or subtenants?)

To be sure, tenants can be victimized by friends or relations — for those tenants who seek you out and ask for assistance, help as best you can. But be careful of stories you hear from tenants who don't admit to problems until after you have received complaints from neighbors or police. The sooner tenants who “front” for others realize they will be held responsible, the sooner they may choose to stop assisting in the crime.

## IF YOU DON'T KNOW, DON'T GUESS

If you are not familiar with the process for eviction, contact a skilled landlord/tenant attorney *before* you begin. By paying for a small amount of legal advice up front, many landlords have saved themselves from having to pay for a lot of legal help further down the road. The law may look simple to apply, but as any landlord — or tenant — who has lost in eviction court can attest, it is more complicated than it seems.

## IF A NEIGHBOR CALLS WITH A COMPLAINT

If a neighbor calls to report drug activity — or any other type of dangerous or illegal activity — at your rental, take these steps:

1. **With the initial call, stay objective and ask for details.** Don't be defensive and, equally, don't jump to conclusions. Your goal is to get as much information as you can from the neighbor about what has been observed. You also want to avoid setting up an adversarial relationship — if it *is* illegal drug activity, you need to know about it.

Also, make a commitment that you will not reveal the caller's name to the tenant without permission (unless subpoenaed to do so). In the past, some landlords — perhaps believing that neighbor reports were exaggerated — have treated dangerous situations too casually and told criminals the names of



neighbors who called to complain. If the neighbors *have* exaggerated, you do no harm by protecting their names. If they haven't, you could put them in real danger by revealing too much.

Ask the caller for:

- **A detailed description of what has been observed.**
- **A letter documenting what has been observed, sent to you and to your local law enforcement agency's narcotics division.** If you have Section 8 tenants, have a copy sent to the local Public Housing Agency also.
- **Name, address, and phone number, if willing to give it.** If neighbors don't know you, they may be unwilling to give you their names on the first call. This is one reason why we recommend you meet neighbors and trade phone numbers before a crisis occurs. Consider: If the only thing neighbors know about you is that you have rented to a drug dealer, they will have reason to be cautious when they call.
- **Names of other citizens you can call who could verify the complaint, or ask that they encourage other neighbors to contact you.** You will need more evidence than the phone call of a single neighbor to take meaningful action. Explaining this need may help further encourage the neighbor to ask others to call. Also, having multiple complaints can help protect the caller by taking the focus off of a single complainant as the "cause" of the drug dealer being discovered.

A single call from one neighbor doesn't necessarily mean your tenants are doing anything illegal. However, a single call *is* justification to pursue the matter further.

2. **Find out more.** Go to other sources for additional information and assistance. Your goal is to collect enough information to verify any problems at the rental, and then to take appropriate action.
  - **Get in touch with other neighbors.** Even if your tenant is running a high-volume dealing operation, it is likely that some neighbors will suspect nothing — many citizens are unobservant or give their neighbors a wide benefit of the doubt. However, while some neighbors may be unaware of the scope of the problem, it is also likely that others will have a lot to tell you.
  - **Contact the police.** Get in touch with a district officer for your area and contact the narcotics division of your local law enforcement agency. Determine what, if anything, they have on record that can be revealed (see separate chapter on *The Role of the Police* for details).
  - **Call a crime prevention specialist.** Many communities have police officers assigned to crime prevention work. Others hire civilians to perform the task. Start by calling your local law enforcement agency and asking for information about neighborhood crime prevention assistance. Reports from neighbors may have been called into local crime prevention staff. Crime prevention staff may also have additional information that can help you address the situation effectively.
  - **If you feel comfortable doing it, consider a property maintenance inspection.** Again, few tenants involved in serious illegal activity are model renters. Discovery of maintenance violations may provide sufficient basis for serving eviction notices without having to pursue the more difficult route of developing a civil level of proof that dangerous criminal behavior has occurred.
3. **Once you've identified the problem, address it.** If you discover that your tenant is innocent, contact the neighbor who called and do your best to clear up the matter. If you discover no drug activity but strong examples of disturbing the neighbors' peace or other violations, don't let the problem continue

— serve the appropriate notices. Likewise, if you become confident your property is being used for drug activity or other dangerous behavior, take action. Advise the police narcotics division of your findings and your plan. The following are examples of options you might pursue. The specifics will be dependent on your local laws:

- **If the evidence allows it, serve an eviction notice for alleged drug activity.** The type of notice will depend on your local law. For drug dealing and manufacturing many jurisdictions allow a very fast notice, such as an “immediate,” “24-hour,” or “3-day no cure” eviction. (Such notices do not actually force eviction on such short notice — rather, they “terminate” the rental agreement on short notice, which allows the landlord to start the process for seeking a court-ordered eviction that much more quickly.)

Keep in mind that, if your tenant wishes to fight in court, you will need to establish a civil — not criminal — level of proof that drug activity has occurred. This is a lower level of proof than local law enforcement would need to get a conviction. Nevertheless, allegations of drug activity or other dangerous activity should be made with care. Given the seriousness of the charge, always contact an attorney before proceeding with this option.

Note that frequently, if the tenants are involved in illegal activity, they move out quickly rather than fight the eviction — it won’t help their drug operation to appear in court. One exception is Section 8 tenants who, for reasons unrelated to the drug activity, may be more inclined to resist eviction (as described in the chapter on *The Section 8 Program*).

Note also that your failure to act if you have grounds for serving such a notice may also put you at risk. If your tenants act on a threat, or continue to carry out extreme behaviors that endanger the community, you could face legal action by harmed neighbors or by the local government for not taking action once you had knowledge of the problem.

- **If you have the option, consider a “no-cause” or “nonrenewal” notice.** In some rental situations, such as month-to-month rentals or at the expiration of a lease term, you may be able to evict without giving a cause. This is not an option in every jurisdiction, but if it is in yours it can be a legal, less adversarial way to solve the problem.
- **Consider serving notice for other apparent causes.** “Cause” in this case could be disturbance of the neighbors’ peace, nonpayment of rent, or any other significant issue of noncompliance with the rental agreement or your landlord/tenant law that you have discovered since cashing the last rent check. Again, if you have drug activity, an inspection will likely reveal a failure to maintain the property as provided in the rental agreement, additional people living in the unit, and/or other noncompliant behavior. Note that notices served for many types of noncompliant behavior are “curable” — that is, if the tenant can fix the problem in a legally defined period of time, the tenant will be allowed to stay in the unit.
- **Consider mutual agreement to dissolve the lease.** A frequently overlooked method. Essentially, if both you and your tenant can agree that the tenant will move by a specific date, you may not need to pursue the court-ordered eviction process at all. In some instances this can be beneficial to both parties. Write the tenant a letter discussing the problem and offering whatever supporting evidence seems appropriate. Recommend dissolving the terms of the lease, thus allowing the tenant to search for other housing without going through the confrontation of a court-ordered eviction. Let Section 8 renters know that a mutual agreement to dissolve the lease does not threaten program eligibility.

Make sure the letter is evenhanded — present evidence, not accusations. Make no claims that you cannot support. *Have the letter reviewed by an attorney familiar with landlord/tenant law.* Done properly, this can be a useful way to dissolve a problem to both your tenant’s and your own

satisfaction without dealing with the court process. Done improperly this will cause more problems than it will solve. Don't try this option without doing your homework first.

Again, if illegal activity *is* occurring, most tenants will take the opportunity to move on.

Finally, if you evict someone for drug activity, *share the information*. Landlords who are screening tenants down the road may not find out about it unless the information is documented. If it is a Section 8 renter, make sure the local Public Housing Agency has a letter from you on file. Also, contact the screening company or credit reporting service you use and advise them of the circumstances — they may also be able to keep track of the information.

## HOW TO SERVE NOTICE

When an eviction notice is served, quite often the tenant moves out and the procedure is complete. However, in those cases where a tenant requests a trial, the details of the eviction process will be analyzed. As one landlord puts it: “90% of the cases lost are not lost on the bottom-line issues, but on technicalities.” Another points out: “Even if you have police testimony that the tenants are dealing drugs, you *still* have to serve the notice correctly.”

Eviction options include a legal process that you must follow. In addition, the process may also be affected by the provisions of your rental agreement or Section 8 contract. Begin by reading your rental contracts and landlord/tenant law — one of the best tools you can develop is a comfortable, working knowledge of the law. In any eviction, take the following steps:

1. **Start with the right form.** When available, use forms already developed for each eviction option. Forms that have been written and reviewed for consistency with state law can generally be purchased through property management associations or legal documents publishing companies. In some states, the form may be written right in the statute. You can, of course, have your attorney generate the appropriate notices as well.
2. **Fill it in correctly.** If it is a for-cause notice, you must cite the specific breach of landlord/tenant law or section of the rental agreement that the tenant has violated. In addition, briefly describe the tenant's noncompliant behavior. You will need to have the correct timing of the notice recorded. There will be other elements to include. For example, if it is a Section 8 rental, you may need to note that a copy of the notice is being delivered to the local Public Housing Agency.
3. **Time it accurately.** Issues of timing vary significantly by state. Overall, it should be noted that cases can be lost because a landlord did not extend the notice period to allow for delivery time, did not allow sufficient time for a tenant to remedy a problem, or did not accurately note the timing of the process on the notice itself. Check landlord/tenant law, your rental agreement, and your Section 8 contract (if applicable) to make sure you are timing the notice properly.
4. **Serve it properly.** Again, check the law and your contracts to make sure the process is correct. Generally, placing the notice directly into the hands of a tenant whose name is on the rental agreement is allowable in any jurisdiction. Other types of legal delivery vary. In some areas all mailed notices must be by certified mail. In other areas only standard first class mail may be used and a certified mail notice would be considered illegal. So don't guess. Read the law, check with your attorney, and proceed from there.

- 5. Don't guess — get help.** As mentioned earlier, unless you are comfortable with the process, consult with an attorney *who is well experienced in landlord/tenant law* before you serve an eviction notice. If you have drug activity on your property, you already have a major problem. Now is not the time to cut corners in order to save money. Using the correct legal process could save you thousands in damages, penalties, and legal fees down the road.

## LEVELS OF EVIDENCE

An eviction trial is a civil proceeding. This means that civil levels of proof are typically all that are required to succeed. For example, in eviction court landlords have established a strong proof of drug activity in a rental by providing the following:

- Credible testimony of neighbors who have observed related behavior (such as that described in the chapter on *Warning Signs of Drug Activity*).
- Their own testimony about additional signs that may have been observed on inspection of a unit.
- The subpoenaed testimony of a police officer who has made an undercover buy from a tenant or arrested a tenant for possession of drugs.

From a *criminal* standpoint, this level of proof would generally not be enough for the police to get a search warrant. But it can well be enough to prove suspicion of chronic drug activity for a civil court. Of course, the actual level of proof required in your jurisdiction will be determined by a combination of local law, court precedents, the presiding judge, and the “trier of fact” — either a judge or jury — who hears the case. (For more on the issues of criminal versus civil law, see the following chapter on *The Role of the Police*.)

## THE COURT PROCESS

The popular belief is that a “termination” notice is sufficient to force a tenant to move out by the date specified on the notice. In fact, the notice is just the first step. Technically, the landlord’s first notice to vacate means that, should the tenant not move out by the date specified, then the landlord may file suit to regain possession of the property. While many tenants will move out before the initial notice expires, if the tenants do not, the landlord will need to start a legal action with the local courts to regain possession of the property.

In cases where a tenant wishes to resist eviction, the tenant will be allowed to remain on the premises, until a landlord has received a court judgment against the tenant. Then, if forced physical removal of the tenant is required, it will be done by a local law enforcement official — most commonly a sheriff or marshal. The actual procedure varies significantly by jurisdiction, as does the length of time required.

Perhaps the most compelling point we can make about the entire eviction process — from service of notice to arguing in court — is this: *Eviction is an expensive, time-consuming way to “screen” tenants.* You will save much heartache and considerable expense if you screen your tenants carefully *before* you rent to them, instead of discovering their drawbacks after you are already committed.

## IF YOU HAVE A PROBLEM WITH NEIGHBORING PROPERTY

When chronic problem activity is present in a neighborhood, every affected citizen makes a conscious or unconscious choice about what kind of action to take. The choices are to move away, to do nothing and hope the problem will go away, or to take action to stop the problem. Doing nothing or moving away usually means the problem will remain and grow larger — somebody, someday will have to cope with it. Taking action, especially when it involves many neighbors working together, can both solve the problem and create a needed sense of community.

Many neighbors are under the impression that solutions to crime are the exclusive responsibility of the police and the justice system — that there isn't much an individual citizen can do. Actually, there is a lot that citizens can do, even must do, in order to ensure they live in a safe and healthy neighborhood. Getting more involved in your neighborhood isn't just a good idea — it is how our system of law and civic life was designed, and the only way it can really work. With that in mind, the following is a list of proven community organizing techniques to help you begin.

1. **Find others concerned about the problem and enlist their help.** As you consider the steps described below, keep in mind that multiple neighbors following the same course of action will magnify the credibility and effectiveness of each step. In particular, several neighbors calling a government agency separately about the same problem will usually raise the seriousness of the problem in the eyes of the agency. Involvement of multiple neighbors also increases safety for everyone. People involved in illegal activity might target for revenge one neighbor they perceive as causing them problems, but are less likely to try to identify and harass multiple people.
2. **Make sure police are informed in detail.** It doesn't matter how many police we have if people don't call and tell them where the crime is. Even if you have had the experience of calling without getting the results you expect, keep calling. As you also follow other recommendations of this section, keep working with police throughout the process.

Of course, establishing a connection with a particular officer who works the area regularly is often a key to success. Other strategies include:

- **Report incidents when they occur.** Call 9-1-1 if it is an emergency or call police narcotics detectives, gang units, and other special enforcement units as appropriate. You may need to do some research to find out which part of what agency deals with a particular type of problem.
  - **Keep activity logs or diaries** about the address when disturbances are frequent, and encourage neighbors to do the same. Share copies of these logs with an officer, in person if possible.
  - **Encourage civil abatement action.** When speaking with enforcement officials, be aware that, in addition to criminal investigation, police often have the option of using civil law to help solve a problem — such as fining the owner or closing property that is associated with illegal drug activity.
3. **Consider direct contact with the property owner.** Many activists contact the owner directly and ask for help in solving the problem. While police officers may do this for you, it is also an option available to any citizen directly. Understand that there may be a risk to your personal safety in contacting some irresponsible owners, so be sure to plan your approach carefully. In general, try a friendly, cooperative approach first — it usually works. If it doesn't, then move on to more adversarial tactics. Here are some tips for the friendly approach:
    - **Use tax records to find the owner.** Local property tax assessment records generally will identify who owns the property.
    - **Contact the owner.** It is amazing how often this simple step is never taken. Discuss the problem and ask for assistance with stopping it.

- **Suggest this training.** If the property is a rental, consider delivering a copy of this manual and encourage the owner to attend a Landlord Training Program in your area.
  - **Describe events.** Provide the owner with specific descriptions of events: Answer the questions who, what, where, when and how about each event.
  - **Give police references.** Give the property owner the names of officers who have been called to the address. (Names of specific officers are far more useful than general statements like “The police have been out frequently.”)
  - **Help locate criminal records if appropriate.** Learn how to access criminal background information, or how the property owner can. For example, if an occupant has a criminal record in your county, the local court house should have records.
  - **Share activity logs.** Give copies of activity logs to the landlord, if it appears the landlord will use them to support lease enforcement actions.
- 4. Enlist the help of others.** If it becomes apparent that the problem will not get resolved without more effort, it may be time for more aggressive action. This may take a higher level of organization and structure for the neighborhood. Here are some approaches to apply more pressure:
- **Remind others to call.** After any action you take, call several other neighbors and ask them to consider doing the same thing, whether it is reporting an incident to police, calling the landlord, or speaking to a local official. *Do not* ask neighbors to call and repeat your report. *Do* ask neighbors to make an independent assessment of the problem you have observed and, if they also consider it a problem, to report it as well.
  - **Call the Public Housing Authority.** If the residents are receiving public housing assistance, contact the local Housing Authority and report the problems observed.
  - **Call code inspection.** Call your local building maintenance code enforcement department to report maintenance code violations. Maintenance codes address exterior building structure and appearance, interior structure and appearance, as well as nuisances in yards such as animals, abandoned cars, trash, and neglect. Most properties with problem residents will have many violations of maintenance codes as well.
  - **Consider calling the mortgage holder.** Sometimes the holder of the mortgage on a property can take action if the property is not in compliance with local law. Generally, if a financial institution is holding a mortgage on real property, the name of the institution will be listed on the title records, kept by the county.
  - **Write letters.** Citizens have the power to write letters to anyone — mayors, council members, chiefs of police, building inspectors, and many others. Your written documentation can add credibility and legitimacy to a problem that may not have received as much attention as it required. The first letters should be to those in a position to take direct action — a police officer, code inspector or other person tasked with addressing problems like the one you are working on. Don’t write letters to managerial or political authorities until you have given the “chain of command” a chance to work. Do write letters to such authorities if it becomes apparent that the help your neighborhood needs is not forthcoming. When necessary, follow up calls or letters with personal appointments.
- 5. Two strategies of last resort.** Generally, these activities should be undertaken only by a well-organized group, and only when consistent, diligent work with police, neighbors, and city officials has made little or no progress.
- **Consider getting the media involved.** After making a concerted effort to get results through other means, discussing the problem with the media can be a way to focus more attention — and

sometimes resources — on a problem. However, going to the media with your complaint before communicating clearly to the accountable organization can be counterproductive — it can cause justifiable resentment in public officials who feel “blind sided” by the media attention on an issue about which they had no prior warning. Also, be aware that if the problem is associated with criminal drug or gang activity, attracting media attention that results in your being the featured interview subject can put you in a position where your personal safety is more at risk.

- **Start legal action against the property owner.** Citizens harmed by a nuisance property can also pursue lawsuits directly. In the final analysis, even the most negligent property owners will take action when they are made to understand fully that it will cost more money to ignore the problem than it will to stop it. The legal options for this type of approach vary substantially by jurisdiction. In general, this is not an easy process to pursue and should be considered only as a last resort. Again, the vast majority of neighborhood problems can be solved without having to go through the time and expense of legal action.

## THE ROLE OF THE POLICE

*Building an effective partnership.*

### COMPLAINTS WE HAVE HEARD:

“The problem is the police won’t get rid of these people when we call. We’ve had dealers operating in one unit for four months. The other tenants are constantly kept up by the activity — even as late as 2:00 or 3:00 in the morning on weeknights.”

“I called police about one of my properties. They wouldn’t even confirm that anyone suspected activity at the place. A month later they raided the house. Now I’m stuck with repair bills from the raid. If they had just told me what they knew, I could have done something.”

### ADVICE WE WERE GIVEN:

“In almost every case, when the police raid a drug house, there is a history of compliance violations *unrelated to the drug activity* for which an active landlord would have evicted the tenant.”  
— Narcotics detective

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## THE BASICS

Know how to work with the system to ensure rapid problem resolution. Have a working knowledge of how your local law enforcement agency deals with drug problems in residential neighborhoods.

## DEFINING THE ROLES: LANDLORDS AND POLICE

It is a common misconception that law enforcement agencies can evict tenants involved in illegal activity. In fact, only the landlord has the authority to evict; the police don’t. The police may arrest people for *criminal* activity. But arrest, by itself, has no bearing on a tenant’s right to possess your property.

Eviction, on the other hand, is a *civil* process. The landlord sues the tenant for possession of the property. Note the differences in level of proof required: Victory in civil court requires “a preponderance of evidence” — the scales must tip, even slightly, in your favor. Criminal conviction requires proof “beyond a reasonable doubt” — a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to *evict* your tenants, but the police do not have enough evidence to *arrest* them. Further, even if the police arrest your tenants, and a court convicts them, you still must evict them through a separate process — or, upon release, they have the right to return to and occupy your property.

Many landlords are surprised to discover the degree of power they have to close drug rentals and eliminate their threat to the neighborhood. As one police captain put it, “Even our ultimate action against a drug operation in a rental — the raid and arrest of the people inside — will not solve a landlord’s problem, because the tenants retain a legal right to occupy the property. *It’s still the tenants’ home* until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail



long.” It’s surprising, but the person with the most power to stop the impact of an individual “drug house” operation in a neighborhood is the property owner — the landlord. Ultimately, the landlord can remove all tenants in a unit. The police can’t.

The only time law enforcement may get involved in eviction is to enforce the *outcome* of your civil proceeding. For example, when a court issues a judgment requiring a tenant to move out and the tenant refuses, the landlord can go to the sheriff (or other appropriate law enforcement agency) and request that the tenant be physically removed. But until that point, law enforcement cannot get directly involved in the eviction process. However, the police may be able to provide information or other support appropriate to the situation — such as testifying at the trial, providing records of search warrant results, or standing by while you serve notice.

Again, criminal arrest and civil eviction are unrelated — the only connection being the possibility of subpoenaing an arresting officer or using conviction records as evidence in an eviction trial. No matter how serious a crime your tenants have committed, eviction remains your responsibility.

## WHAT TO EXPECT

Police officers are paid, and trained, to deal with dangerous criminal situations. They are experts in enforcing criminal law. They are not authorities in civil law. As such, if you have tenants involved in illegal activity, while you should inform the police, do not make the common but inaccurate assumption that you can “turn the matter over to the authorities” and they will “take it from there.” Because landlord/tenant laws are enforced only by the parties in the relationship, when it comes to removal of a tenant, landlords *are* the “authorities.” With that in mind, you will get best results from the police by providing any information you can for their criminal investigation, while requesting any supporting evidence you can use for your civil proceeding.

In order to get the best cooperation, remember the rule of working with any bureaucracy: *The best results can be achieved by working one-on-one with the same contact.* Further, while this rule applies to working with any bureaucracy, it is especially important for working with a law enforcement agency where, if police personnel share information with the wrong people, they could ruin an investigation or even endanger the life of an officer. If an officer doesn’t know you, the officer may be hesitant to give you information about suspected activity at your rental.

Your best approach, therefore, is to make an appointment to speak with a narcotics officer in person or to call your local precinct and arrange to speak directly with an officer who patrols the district where your rental is located. There can be a huge difference between the type of information available through a single, anonymous phone call and the amount of assistance possible if you arrange an in-person meeting.

The type of assistance possible will vary with the situation — from advice about what to look for on your property, to documentation and testimony in your eviction proceeding. But remember that it is not the obligation of the police to collect information necessary for you to evict problem tenants. While you can get valuable assistance from the police, don’t wait for the police to develop an entire criminal case before taking action. If neighbors are complaining that you have drug activity or other dangerous situations in your rental, investigate the problem and resolve it as quickly as possible (see the previous chapter on *Crisis Resolution*). Do *not* assume that the situation at your unit must be under control simply because the police have yet to serve a search warrant at the property.

## **CLOSURE AND FORFEITURE**

Versions of laws are on the books nationwide that allow such actions as heavy fines against owners who allow drug manufacturing or sale on their property, closure of such property for specified time periods, or even forfeiture of such property when the owner's complicity with the crime can be established. In Brockton, landlords are notified by the Plymouth County District Attorney's Office when drugs have been seized on property owned by them. To view a sample of Brockton's landlord notification letter, please see *Addendum C*.

While it is valuable for you to be aware of the specific laws that affect your area, it is a characteristic of most that they are rarely used on properties that are actively managed. If you are screening your tenants with care, enforcing your rental agreements, and in apartments, encouraging a sense of healthy community among your good tenants, it is unlikely that such laws will ever be used against you or your property.

*For addition information, consult MA General Law 94C-47(5)A-7 in Addendum D.*

## THE SECTION 8 PROGRAM

### ADVICE WE WERE GIVEN:

“Few landlords realize it, but you can screen a subsidized applicant the same way you screen any applicant. Most don’t screen subsidized applicants for rental history — either because they don’t know they can, or because they are too excited about the guaranteed rent check.”

“For landlords the message is simple. Bottom line, if you screen your tenants, Section 8 is a very good program.” — A Section 8 Program Director

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*The term “Section 8” refers to a number of federal subsidy programs that allow people of limited means to rent housing. The tenant pays a portion of the rent, while the federal government pays the rest. The Section 8 program is under the control of the U.S. Department of Housing and Urban Development (HUD) and administered locally by Public Housing Agencies (PHAs).*

### THE BASICS

Understand the legal and practical differences between publicly subsidized and private renting. Have the same success rate as can be expected with private rentals.

### SOME BENEFITS

The most important benefit of participating in the Section 8 program is that, if done responsibly, it helps the entire community. Those landlords who meet their responsibilities and require Section 8 tenants to do the same provide a valuable service — by renting decent housing to good citizens who otherwise could not afford it. In addition to the satisfaction of serving the public good, landlords can enjoy additional direct benefits for their business:

- 1. Reliable rent.** A large portion of the rent, and sometimes all of it, is guaranteed by the federal government. So, once the paperwork is processed, you’ll get the subsidy portion on time, every month. Also, assuming you screen your applicants responsibly, your tenants should be able to pay *their* portion on time since the amount is predetermined to be within their means.
- 2. “Fair Market Rent.”** HUD and local Public Housing Agencies work to ensure that subsidized rents do not exceed comparable private rentals in the area. For landlords who are not aware that higher rents are more typical, it may be a pleasant surprise to discover the room to raise your rates. Those who are charging rates comparable to other nearby rentals will receive similar amounts under Section 8. Those who attempt to “lead” the market in price may suffer somewhat.

## SOME MISCONCEPTIONS

*Public Housing Agencies prescreen their participants along the same guidelines that a landlord should use.*

**False.** The PHA screens primarily for program eligibility (essentially income level). It is up to the landlord to screen tenants — make sure they can pay the remainder of the rent, check their rental record through previous landlords, and run all other checks the same way you would with a private renter. You are not only legally permitted to, you are *expected to*. Screening applicants, subsidized or not, is both your right and your responsibility: you are entitled to turn down Section 8 applicants who do not meet your screening criteria and accept those who do. Even guaranteed rent is not worth it, if drug-dealing tenants move in.

As one program manager put it, “For landlords the message is simple. Bottom line, if you screen your tenants, Section 8 is a very good program.”

*Landlords who rent to Section 8 tenants must use the Public Housing Agency’s model lease.*

**False.** New HUD guidelines, developed in 1995, are designed to make it easier for the landlord to use the same lease that is used for nonsubsidized tenants. However, the landlord will be required to use an approved lease addendum, provided by the local housing agency, which adds to and/or modifies some of the conditions of the lease that the landlord typically uses with nonsubsidized tenants.

Note also that the lease addendum and model leases provided by Public Housing Agencies are written to match HUD’s requirements and won’t necessarily include all provisions you are accustomed to using. It is therefore important to be aware of differences between the conditions of your Section 8 lease and/or lease addendum and the conditions under which you typically rent to non-subsidized tenants.

*Tenants on Section 8 cannot be evicted.*

**False.** This misconception arises primarily from confusion about the types of notices that can be served on a subsidized tenant. While it is true that, during the first year, a Section 8 lease will forbid the use of “no-cause” or “non-renewal” notices, in general, all “for-cause” notices still apply. So, for example, if a tenant is violating the terms of the lease or damaging the property, a landlord can serve the applicable for-cause notice defined in the local landlord/tenant law. New HUD regulations now permit landlords in many areas to use a lease that will permit “no-cause” terminations after the first year. Check with your local Public Housing Agencies to see whether such an approach is available to you.

Section 8 participants are bound by the same state and local landlord/tenant laws that govern non-subsidized rental relationships. In theory, the only difference should be the wording of the lease. However, there *are* instances when evictions can be more complicated with Section 8 tenants. Your best approach, as with any eviction, is to speak with an experienced landlord/tenant attorney before starting the process.

*If you evict tenants for drug activity, the local Public Housing Agency will simply let the same people rent again elsewhere.*

**False.** New HUD guidelines allow local PHAs to terminate assistance to tenants involved in the manufacture, sale, distribution, possession, or use of illegal drugs. The same guidelines also apply to tenants involved in violent criminal activity. Also, new guidelines introduced in 1995 give local PHAs expanded options for terminating program participation for such problems as repeated and serious lease violations.

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## SUMMARY

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A landlord's responsibilities generally fall into three categories: the condition of the premises as delivered to the tenant, the obligation to maintain the unit once it is occupied, and the obligation to respect the rights of the tenant. A landlord's responsibilities generally include:

- Providing the tenant with a clean, sanitary, and safe rental unit. This typically means the unit should be cleaned, garbage and debris from previous tenants removed, pest control problems addressed as needed, the various systems (plumbing, electrical, heating) maintained, the unit adequately weatherproofed, the structural integrity of the unit maintained, fire safety issues addressed, working locks installed, and any other potential safety hazards addressed.
- After move-in, make sure the unit remains habitable. For occupied units, landlords generally are responsible for all major repairs and are granted both the power and the responsibility to make sure that tenants are doing their part to maintain the habitability of the unit. For example, while the law and the rental agreement may both require that the tenant do sufficient basic housekeeping to keep the unit free of sanitation problems, if the tenant is not doing so, it is generally up to the landlord to require the tenant to correct the problem, i.e., serving a notice requiring the tenant to remove garbage or vacate the premises.
- Respect the tenant's right to private enjoyment of the premises. It has been a basic characteristic of landlord/tenant relationships for hundreds of years that once the tenant begins renting property, the tenant has the right to be left alone. With some specific exceptions for such activities as serving notices, conducting maintenance inspections, doing agree-upon repairs, or showing the unit for sale, the landlord must respect the tenant's right to private enjoyment of the unit in much the same way that an owner-occupant's right to privacy must be respected. In those areas where a landlord does have a right to access, the landlord must generally follow a carefully spelled out notification process prior to entering the rented property.
- Avoid retaliation against a tenant. Generally, a landlord may not retaliate against a tenant who is legitimately attempting to cause the landlord to meet his/her responsibilities. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a tenant asking a landlord to repair a worn out furnace, fix a rotting step, or take other actions that fall within the landlord's responsibility under the law.
- Avoid illegal discrimination. Nationwide, landlords may not discriminate on the basis of a tenant's (or applicant's) race, color, religion, sex, handicap, national origin, or familial status. Your state and local laws may include additional protected classes. This means that you may not use such class distinctions to screen applicants or to treat tenants differently once you enter into a rental agreement. For more information, refer to the Applicant Screening section of this manual.
- Enforce the terms of the rental agreement and landlord/tenant law. While both the rental agreement and the law will identify various required behaviors of tenants, in general it is up to the landlord to make sure the tenant complies. If the tenant is not in compliance, the law generally gives landlords the power to serve various types of "cure" and "no cure" notices to correct the behavior or require the tenant to move out. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem tenants. Of course, if your problem tenants are involved in criminal behavior for which there is enough evidence to make an arrest, you may still need to serve an eviction notice to regain possession of the property.

- Keep good records. Like any business, the efficient operation of residential property requires good record keeping. It is strongly urged that you keep detailed records of all aspects of the tenancy. In addition to the extensive records required of you if you take a security deposit, you should keep records of all contacts and complaints by tenants, with dates and notes regarding conversations; contacts with repairmen, health department inspections, invoices, paid repair and stock bills, and similar information. Massachusetts tenants have many rights and remedies. Frequently, good records mean the difference between winning and losing your case in court or avoiding court altogether.

Here is a brief rundown of additional important rules you should set for yourself:

1. When aware of a serious breach, take action *before* accepting the next rent payment.
2. If someone other than the tenant tries to pay the rent, get an explanation.
3. If a person not on the lease seems to live in the rental, pursue the issue immediately.
4. Fix habitability and code violations on the property quickly.
5. When a tenant doesn't pay rent, address the problem.
6. If neighbors call to complain of problems, pursue the issue.

## MASSACHUSETTS GENERAL LAWS

### CHAPTER 139. COMMON NUISANCES.

*Chapter 139: Section 19. Voiding of lease of tenant using premises for common nuisance.*

Section 19. If a tenant or occupant of a building or tenement, under a lawful title, uses such premises or any part thereof for the purposes of prostitution, assignation, lewdness, illegal gaming, or the illegal keeping or sale of alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, or the housing of a premises which is licensed under section twelve of said chapter one hundred and thirty-eight and on or in such premises alcoholic beverages are habitually served to persons who are intoxicated or alcoholic beverages are served to persons whom the operators of said premises know or have reason to know will operate a motor vehicle under the influence of intoxicating liquor in violation of subdivision (1) of section twenty-four of chapter ninety, or the illegal keeping, sale or manufacture of controlled substances, as defined in section one of chapter ninety-four C, or the illegal keeping of a weapon in violation of section ten of chapter two hundred and sixty-nine, or possession or use of an explosive or incendiary device or other violations of section one hundred and one, one hundred and two, one hundred and two A or one hundred and two B of chapter two hundred and sixty-six or, if a tenant or household member of a housing authority or federal or state assisted housing commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against the person of an employee of the housing authority or of state or federally assisted housing or against any person while such person is legally present on the premises of a housing authority or on the premises of federal or state assisted housing, such use or conduct shall, at the election of the lessor or owner, annul and make void the lease or other title under which such tenant or occupant holds possession and, without any act of the lessor or owner shall cause the right of possession to revert and vest in him, and the lessor or owner may seek an order requiring the tenant to vacate the premises or may avail himself of the remedy provided in chapter two hundred and thirty-nine. If the lessor or owner is entitled to relief pursuant to this section, such lessor or owner may seek declaratory judgment of his rights hereunder in the district, superior or housing court, which may grant appropriate equitable relief, including both preliminary and permanent injunctions, including a preliminary injunction granting the lessor or owner possession of the premises, and in connection therewith may order issuance of an execution for possession of any such premises to be levied upon forthwith. No such injunction shall be issued except after notice has been given to the tenant and a hearing has been held with opportunity for the tenant to confront and cross-examine witnesses and to present any legal or equitable defense. A housing authority or provider of state or federally assisted housing shall not avail itself of the remedies contained herein except after notice, hearing, and decision on the merits by the court. An appeal from equitable relief granted by a district court pursuant to this section shall be to the appeals court in the same manner as if relief had been granted by the superior court.

### CHAPTER 139. COMMON NUISANCES.

*Chapter 139: Section 20. Aiding or permitting nuisance.*

Section 20. Whoever knowingly lets premises owned by him, or under his control, for the purposes of prostitution, assignation, lewdness, illegal gaming, or the illegal keeping or sale of alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, or the housing of a premises which is licensed under section twelve of said chapter one hundred and thirty-eight and on or in such premises alcoholic beverages are habitually served to persons who are intoxicated or alcoholic beverages are served to persons whom the operators of said premises know or have reason to know will operate a motor vehicle under the influence of intoxicating liquor in violation of subdivision (1) of section twenty-four of chapter ninety or the illegal keeping, sale or manufacture of controlled substances, as defined in section one of chapter ninety-four C, or knowingly permits such premises, while under his control, to be used for such purposes, or after due notice of any such use omits to take all reasonable measures to eject there from the

persons occupying the same as soon as it can lawfully be done, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than three months nor more than one year, or both.

## **SAMPLE NOTICE TO QUIT**

Date

Tenant's address

Re: Lease effective (insert date here) for Property located at (insert address here)

Dear Tenant's Name and all Occupants:

The purpose of this letter is to notify you that due to your default of the lease, your right to possession of the Leased Premises has been terminated.

You have violated the lease in that you have breached paragraphs (insert the paragraph numbers here that have been violated). You have violated the lease in that (state here all the things that the tenant and/or the occupants have done that are a breach of the lease. State everything clearly and with specific examples. If you don't state it here, you won't be able to mention it in court.)

Due to your default of the lease, the lease will be terminated on (state a specific date here. Make sure the termination date is at least ten days from the date the tenants receives this notice, not including the day of receipt.) You are expected to leave the Leased Premises in a clean and rentable condition. You will be held responsible for any damages done to the Leased Premises. In the event that you remain in the Leased Premises on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time you may present a defense. In any such suit, the landlord may seek recovery of any damages done to the Leased Premises.

You have ten days within which to discuss the proposed termination of your tenancy with the owner or management of the Leased Premises.

All money paid by you hereafter will be accepted solely for the use and occupancy of the Leased Premises and is received with a reservation of rights under this notice to quit and any eviction proceedings based thereon. No tenancy is intended to be created by the acceptance of any such monies. Nothing contained herein shall constitute an election or waiver of any rights or remedies which the landlord has. It is the landlord's intention to preserve all rights and remedies available to the landlord pursuant to the lease or by law. Additionally, any delay or postponement in taking any action shall not constitute a waiver of the landlord's right to take such action at any time. Nothing contained herein shall constitute a waiver of any other default that may currently or hereafter exist.

In order to avoid the expense and aggravation that litigation entails, you should comply with the demand herein by vacating the Leased Premises in a timely fashion. In accordance with federal law, I am sending this notice directly to you by hand delivery and first class mail.

Very truly yours,

**Important!** Keep in mind that Federal Law requires that a notice of this type must be sent by first class mail AND served on any adult person answering the door at the Leased Premises for Section 8 tenants. If no one answers the door, place it under or through the door or affix it to the door.



# RESOURCES

“The only thing necessary for the triumph of evil is for good people to do nothing.”  
— Edmund Burke

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Because many of the key resources available to landlords and property managers vary by city, county, and state, it is impractical to provide a resource list in a national manual. Therefore, the following are examples of the types of resources you may wish to use as you pursue your property management goals and suggestions for how to locate them.

## PROPERTY MANAGEMENT ASSOCIATIONS

Typically listed under *Associations* in local phone directories.

The service and type of support offered by each organization varies. Examples of services include: rental forms, continuing education, attorney referrals, answering landlord/tenant questions, legislative lobbying, running credit checks, monthly meetings to discuss topics of interests, and various other services. The level of service and ability to advise varies as well.

## TENANT SCREENING SERVICES

Your local phone directory may list a variety of *Credit Reporting Agencies* under that category, some of which regularly work with landlords. In most directories, you will also find listings of companies that can help you with tenant screening under the heading of *Property Management*.

While credit reports are standard, other services vary, and may include: providing records of courthouse eviction proceedings; tracking landlord complaints on problem tenants; search of public records for judgments, tax liens, or lawsuits; criminal background checks; employment verification; verification of address; and reference checking with the present and previous landlords. Your best bet is to contact a few different companies, interview them about their level of service (and fees), and check *their* references and reputations with other landlords.

## CRIME PREVENTION/APARTMENT WATCH

For help in setting up an apartment watch in your complex, contact a crime prevention specialist at your local law enforcement agency (typically listed in the “government” section of local phone directories) and find out what types of assistance are available.

## COMMUNITY-BASED ORGANIZATIONS

Methods of locating such organizations will vary. Begin by contacting your city or county's local agencies for citizen participation or community development. These types of non-profit organizations are generally involved in various community-building projects, from rehabilitating housing, to organizing neighbors, to providing a range of referral and support assistance for people in the area. Staff at some community-based organizations may be able to provide more in-depth information about specific neighborhood concerns than can citywide agencies.

## SECTION 8 RENT ASSISTANCE PROGRAM

Contact the Public Housing Agency in your area for answers to questions regarding the Section 8 program.

## LAWS AND ORDINANCES

These are generally available through your local public library. State laws are also available through your state legislature's information service. Contact your local county and city governments for applicable ordinances.

## SELECTED AREA RESOURCES

### **ABCD, Inc**

Action for Boston Community Development Inc.  
178 Tremont Street, Boston MA 02111  
(617) 357-6000  
[www.bostonabcd.org](http://www.bostonabcd.org)

Provides information on tenant/landlord right and responsibilities.

### **Attorney General's Office**

One Ashburton Place  
Boston, MA 02108  
(617) 727-2200  
[www.ago.state.ma.us/](http://www.ago.state.ma.us/)

Serves as the people's lawyer, charged with protecting the "public interest".

### **Brockton Housing Authority**

45 Goddard Road  
Brockton, MA 02302  
(508) 588-6880  
[www.brocktonmass.com/bha/](http://www.brocktonmass.com/bha/)

The purpose is to manage, develop and deliver affordable housing opportunities leading to the revitalization of Brockton's neighborhoods.

**Bureau of Environmental Health Assessment**

56 Roland Street, Suite 100  
Boston, MA 02129  
(617) 284-8400  
[www.state.ma.us/dph/](http://www.state.ma.us/dph/)

Performs screening tests for lead poisoning and inspection services.

**Criminal History Systems Board**

200 Arlington Street  
Chelsea, MA 02150  
[www.state.ma.us/chsb](http://www.state.ma.us/chsb)

Responsible for maintaining the Commonwealth's criminal justice information system, maintaining firearms licensing and transaction records, disseminating Massachusetts criminal offender record information, and giving assistance to those individuals or families that may be victims of crime.

**Department of Neighborhood Development**

26 Court Street  
Boston, MA 02108  
(617) 635-3880  
[www.ci.boston.ma.us/dnd/](http://www.ci.boston.ma.us/dnd/)

Offers financial and technical assistance to low and moderate-income landlords and developers of multiunit dwellings.

**Division of Housing and Community Development**

One Congress Street  
10<sup>th</sup> Floor  
Boston, MA 02114  
(617) 727-7147  
[www.state.ma.us/dhcd/](http://www.state.ma.us/dhcd/)

Administers nonprofit Regional Housing Authorities throughout the state. Division of Consumer Affairs provides information and referrals about tenant and landlord rights.

**Department of Public Health**

Childhood Lead Poisoning Prevention Program  
Lead Paint Removal  
250 Washington Street  
Boston, MA 02108  
(617) 284-8400 (Toll) 800-532-9571  
[www.state.ma.us/dph/](http://www.state.ma.us/dph/)

Serving all the people of the Commonwealth, particularly the under served, and promoting health families, healthy communities and health environments.

**Housing and Urban Development (HUD)**

10 Causeway Street  
Boston, MA 02222  
(617) 565-5126  
[www.hud.gov/](http://www.hud.gov/)

Provides federal subsidies for rental housing. Will sent out a list of HUD subsidized units throughout the state.

**Massachusetts Commission Against Discrimination (MCAD)**

One Ashburton Place  
Sixth Floor, Rm. 601  
Boston, MA 02108  
(617) 994-6000  
[www.state.ma.us/mcad/](http://www.state.ma.us/mcad/)

To ensure equality of opportunity by enforcing the Commonwealth's anti-discrimination laws.

**Massachusetts Coalition for the Homeless**

288 A Street  
Boston, MA 02210  
(617) 737-3508  
[www.mahomeless.org/](http://www.mahomeless.org/)

Provides information and referral on resources for homeless people. Also provides furniture (by referral) for former homeless people moving into housing.

**Massachusetts Housing and Finance Agency (MHFA)**

One Beacon Street, 29<sup>th</sup> Floor  
Boston, MA 02108  
(617) 854-1000  
[www.masshousing.com/](http://www.masshousing.com/)

A state agency that provides funding for multifamily housing, low-interest mortgage loans for qualified buyers.

**Massachusetts Bar Association Lawyer Referral**

20 West Street  
Boston, MA 02111  
(617) 654-0400 (Toll) 800-392-6164  
[www.massbar.org/](http://www.massbar.org/)

Serving the legal profession and the public by promoting the administration of justice, legal education, professional excellence, diversity and unity in the legal profession and the respect for the law.

**Plymouth County District Attorney's Office**

32 Belmont Street  
Brockton, MA 02301  
(508) 584-8120  
[www.mass.gov/da/plymouth](http://www.mass.gov/da/plymouth)

Provide information regarding landlord/tenant law.

## Websites

City of Brockton

[www.brockton.ma.us/](http://www.brockton.ma.us/)

Brockton Housing Authority

[www.brocktonmass.com/bha/](http://www.brocktonmass.com/bha/)

Brockton Police Department

[www.brocktonpolice.com/](http://www.brocktonpolice.com/)

Consumer Affairs & Business Regulation

[www.state.ma.us/consumer/](http://www.state.ma.us/consumer/)

Housing Information and Resources

[www.neighborhoodlaw.org/cat/43](http://www.neighborhoodlaw.org/cat/43)

How to be a Landlord: Evictions

[www.gis.net/~groucho/landlord.html#29](http://www.gis.net/~groucho/landlord.html#29)

Housing Consumer Education Center

[www.masshousinginfo.org](http://www.masshousinginfo.org)

Legal Advocacy & Resource Center

[www.larcma.org/pages/430158/](http://www.larcma.org/pages/430158/)

Massachusetts Trial Court

[www.state.ma.us/courts/](http://www.state.ma.us/courts/)

## CITY OF BROCKTON - HELPFUL PHONE NUMBERS

Animal Control	(508)580-7835
Assessors Office	(508)580-7194
Bay State Gas Company	(508)1-800-322-3223
Brockton Help Line	(508)584-4357
Brockton Housing Authority	(508)588-6880
Brockton Housing Court	(508)583-7627
Building Department	(508)580-7150
City Clerk	(508)580-7114
Council on Aging	(508)580-7811
Emergency Only	911
Fire Department	(508)588-2323
Health Department	(508)580-7175
License Commission	(508)580-7805
Main Library	(508)580-7890
Mass. Electric Company	(508)1-800-322-3223
Mayor's Office	(508)580-7123
Plumbing, Gas Inspection	(508)580-7145
Police Department	(508)941-0200
Public Works Department	(508)580-7135
Verizon	(508)1-800-870-9999

Veteran's Services	(508)580-7850
Water Department	(508)580-7143
Wiring Inspector	(508)580-7146

**TENANT SCREENING SERVICE**

Credit Link Corporation	(800) 446-1421
Data Base America	(800) 551-1533
Tenant Credit Report	(800) 999-5603
The Info Center	(800) 462-3033

**ADDENDUM A**  
**MASSACHUSETTS SECURITY DEPOSITS AND FIRST AND LAST MONTH'S RENT**

A last month's rent is a prepayment made at the beginning of the tenancy to the landlord to be applied to the last month of the tenancy. There is no requirement for you to escrow the money in a separate interest-bearing account. A receipt must be given at the time the last month's rent is taken indicating the amount, date of receipt, a notation identifying the money as a last month's rent, the name of the person receiving the money or for whom the money is being received, the description of the premises for which the last month's rent is taken, a statement indicating the tenant's entitlement to yearly interest at the rate of 5 percent or such lesser amount as the landlord actually receives if the landlord chooses to escrow the money, and a statement telling the tenant to provide a forwarding address by the end of the tenancy to which the interest may be sent. Upon increase of the rent, you may require the tenant to increase his or her last month's rent to the current rent level.

**1. Payment of Interest On Last Month's Rent:** Interest must be paid to the tenant either on the anniversary date of the tenancy or on a pro-rata basis, if the tenancy ends before one year, for all months except the last month of the tenancy. On the anniversary date of the tenancy, the landlord must send a statement as to the amount of interest due with payment of that interest or a statement indicating that the tenant may deduct the appropriate amount from the next rental payment. If you have not sent either of the above to the tenant by the anniversary date of the tenancy, the tenant may lawfully deduct the prescribed amount of interest from the next rental payment. This deduction is not a breach of the tenancy agreement allowing eviction. If you do not pay the interest within 30 days after the end of the tenancy, or the removal of the tenant from the premises, you will be exposed to liability of three times the interest due, plus court costs and attorney's fees.

**2. Transfer of Last Month's Rent to New Landlord:** Upon the sale, foreclosure or other transfer of the building, the landlord must transfer the last month's rent to the new landlord with accrued interest. The new landlord must give the tenant written notice of the transfer within 45 days of receipt. If the former owner fails to make the proper transfer, s/he is still liable to the tenant, but so is the new landlord in the amount of the last month's rent. The new landlord can discharge their duty to the tenant, by allowing the tenant to live free for a period covered by the last month's rent.

**3. Security Deposit:** A security deposit is money, paid by the tenant to you, and held in a separate interest-bearing escrow account to indemnify you against losses due to the tenant's failure to pay rent, failure to pay appropriate tax escalators, or if the tenant damages the premises. Because this deposit belongs to the tenant until properly applied by you, you must:

**Hold** the deposit in an interest-bearing Massachusetts bank separate from your own money;

**Give** a receipt to the tenant within 30 days of taking the deposit, identifying the bank, address, account number, and the amount of the deposit held; and

**Pay** 5% interest or any lesser amount of interest actually received from the bank where the deposit is held, if the tenant resides on the premises for at least one year. Said payment is to be made on the anniversary date of the tenancy.

**4. Payment of Interest on Security Deposit:** On the anniversary date of the tenancy, you must send the tenant a statement of the interest owed with a check for the interest, or you must notify the tenant that s/he may deduct it from the next rental payment. If within 30 days of the anniversary date of the tenancy you have failed to pay the interest, the tenant may lawfully deduct it from the next rent payment. Upon termination of the tenancy, you must forward the interest due to the tenant within 30 days.

**5. Statement of Conditions:** Either upon receipt of the deposit or within ten (10) days thereafter, you must provide the tenant with a Statement of Conditions that is signed by you or your agent and contains a comprehensive list of all then-existing damage to the unit. The notice must inform the tenant that s/he must sign the list within fifteen (15) days of receipt or move-in, if it is correct. You must further inform the tenant that failure to re-submit the list may allow a court to view the tenant's failure to sign as

agreement to the completeness of the landlord's proposed Statement of Conditions. You then have fifteen (15) days to sign off on the tenant's list of damages or to send a clear statement of disagreement to the tenant. Although there are forms available for these purposes, it is recommended that an attorney or other real estate professional be consulted when taking a security deposit.

**6. Deductions from Security Deposit:** Upon termination of the tenancy, you must return the security deposit or balance thereof within thirty (30) days of the tenant vacating the apartment. You may only deduct for the following items:

- Unpaid rent not lawfully withheld;
- Unpaid increases in real estate taxes the tenant is bound to pay pursuant to a valid tax escalator clause in the lease; and
- Any reasonable amount necessary to repair damage caused by the tenant or their pets or guests.

If you deduct for damages, you must provide the tenant with a statement sworn to under the pains and penalties of perjury listing the damages for which you are deducting along with documentation showing the actual or estimated costs of these repairs such as bills, receipts, or invoices. You may not deduct for damages set out in the respective Statements of Conditions unless you made repairs to them subsequent to the start of the tenancy and they were again damaged by the tenant or persons within the tenant's control.

If damages exceed the security deposit, you are free to sue for those as well. The normal wear and tear in an apartment is not a deductible item of damage.

### **Transfer of security deposit to new landlord**

**1. Notice from new owner:** Within forty-five (45) days of the transfer, the new owner must notify the tenant that the security deposit has been transferred and that s/he is holding it for the benefit of the tenant. The notice must be written and must contain the new owner's name, business address, business telephone number, and the same information for any agent.

**2. Penalties for failure to properly handle security deposit:** If you do the following, the tenant is entitled to the immediate return of the security deposit:

- Fail to make the security deposit records available to the tenant during business hours;
- Fail within thirty (30) days of taking a security deposit to give the tenant a receipt with the name, address of the bank where the money is held, and account number of the bank in the amount of the deposit;
- Make deductions for damages without submitting the proper documentation described above; or
- Use a lease with provisions that conflict with the security deposit law and you attempt to enforce this lease or attempt to make the tenant waive his or her rights.

If you do the following, the tenant is entitled to the immediate return of the security deposit and treble damages, court costs and attorney's fees:

- Fail to place the security deposit into a Massachusetts interest-bearing bank account separate from your own;
- Fail to return the security deposit or balance thereof within thirty (30) days after termination of the tenancy; or



- Fail to transfer the security deposit to the new landlord.

A new landlord has the same transfer responsibilities as stated above for last month's rent.

**3. Continuing liability of former owner:** The former owner and agent remain liable under the treble damages provision of the Statute for retention and accounting, until either:

- A. The security deposit has been transferred and the tenant has been given the above-written notice;  
or
- B. The security deposit has been returned to the tenant.

The new owner has full liability for treble damages, even if the former owner fails to transfer the security deposit and fails to give the proper notice described immediately above.

It is recommended that if you choose to take a security deposit, you consult an attorney or other real estate professional before doing so, because the penalties for failing to properly handle the tenant's money are severe.

## MISCELLANEOUS LANDLORD RIGHTS

**1. The right to prompt payment:** You have the right to receive the rent on the first of each month unless the parties otherwise agree. There is no grace period in Massachusetts and therefore if the tenant does not pay on the first of the month, you may begin an eviction by sending a notice to quit.

**2. The right to compliance of tenancy agreement:** You have the right to have the tenant abide by the terms of the tenancy, whether it is oral or written. If the tenant breaches the terms of the tenancy, for example by having unauthorized sub-tenants, pets, smokers, or other prohibited uses such as raising pigeons in the apartment, you have the right to terminate the tenancy and to move to evict.

**3. Increasing rent:** You may increase the rent in any amount you believe the market will bear for a non-subsidized unit or for a unit that does not fall under the few remaining restrictions of rent control pertaining to mobile homes, under the following circumstances.

- Under a tenancy at will, you must end the tenancy and notify the tenant of the rent increase at least a full rental period in advance, but not less than 30 days in advance of the effective date of the increase.
- You may only increase the rent of a tenant under a lease after the lease term expires, unless the lease states otherwise. Typically, the lease will state notice deadlines for renewal which should be observed when seeking a rent increase of a tenant under lease. Rent increases can be complicated. The advice of an attorney should be sought before attempting it. Doing it incorrectly could lead to costly, time-consuming and needless problems or litigation with your tenant.

**4. Late payment penalty:** You may not charge a late fee or penalty for rent paid past the due date unless it is paid 30 days or more past the due date. A reverse penalty to encourage early payment is also illegal. For instance, where you promised to reduce the rent by 10 percent if the rent is paid within the first five days of the month, this is an illegal provision. However, because there is no "grace period," you may begin eviction if the rent is only one day late.

**5. Utilities:** You may require tenants to pay their own electricity and gas bills. But, if you do not put this obligation in a written tenancy agreement, you may later be charged with paying past utility bills, if the tenant refuses to pay, despite having verbally agreed to pay them.

**6. The right to enter the apartment:** A landlord may generally enter the apartment at reasonable times and upon reasonable notice for the following reasons:

- to show the apartment to prospective tenants, purchasers, lenders or their agents
- to inspect the premises
- to make repairs
- to inspect within 30 days of the end of the tenancy to determine damages to be deducted from the security deposit
- if the premises appear to be abandoned
- pursuant to court order

## **ADDENDUM B**

### **HIGHLIGHTS OF CHAPTER II OF THE MASSACHUSETTS SANITARY CODE**

The Massachusetts Department of Public Health establishes regulations detailing the standards that must be maintained by the occupants and owners of housing. These regulations protect the health, safety, and well-being of Massachusetts citizens and are found in Chapter II of the State Sanitary Code (105 CMR 410.000) entitled Minimum Standards of Fitness for Human Habitation.

The standards apply to every owner-occupied or rented dwelling, dwelling unit, mobile dwelling unit or rooming house unit in Massachusetts which is used for living, sleeping, cooking, and eating. Dwelling unit shall also mean a condominium unit. These regulations have the force of law. Local boards of health have the primary responsibility for their enforcement.

This publication summarizes those regulations in Chapter II that pertain to essential living needs and describe enforcement procedures. Following each summary is a citation to the regulation number used in the Sanitary Code.

For complete information, review Chapter II of the State Sanitary Code and check with your local board of health.

## **SUMMARY OF STANDARDS**

### **Kitchen Facilities**

A kitchen must contain a kitchen sink, space and proper facilities for the installation of a refrigerator and, unless otherwise stated in the lease, a stove and oven in good repair. These facilities must be free from defects which make them difficult to clean, or which create an accident hazard.

### **Bathroom Facilities**

Bathroom facilities must include a toilet with a toilet seat and a bathtub or shower. These must be situated in a room which allows a person privacy, which is fitted with a door capable of being closed and which is not used for the purpose of living, eating, sleeping, or cooking. In addition, a washbasin other than the kitchen sink must be located either in the room containing the toilet or near the entrance to that room.

### **Water Supply**

The owner must provide (i.e. supply and pay for) water in a sufficient quantity and pressure so that the occupant's ordinary needs are met. The water must come from the public water supply system or a source approved by the local board of health.

### **Hot Water Facilities**

Facilities for the heating of water must be provided (i.e. supplied and paid for) and kept in good working order by the owner. The owner must supply hot water in sufficient quantity and pressure to satisfy the normal use of all plumbing fixtures which generally require hot water to function properly. The temperature of the hot water is neither to exceed 130 degrees Fahrenheit (54 degrees Celsius) nor fall below 110 degrees Fahrenheit (43 Celsius). Under certain leases, an occupant may be required to provide the fuel for the heating of the water.

### **Heating Facilities**

The owner must provide (i.e. supply and pay for) and keep in good working order the facilities capable of heating every habitable room and every room containing bathroom facilities.

Between September 15 and June 15, these rooms must be heated to a temperature of not less than 68 degrees Fahrenheit (20 C) between 7:00 a.m. and 11:00 p.m. and 64 degrees (17 C) between 11:01 p.m. and 6:59 a.m. unless the occupant has agreed to supply the fuel under a written lease.

The temperature may not exceed 78 degrees during the heating season. The number of days per year during which heat must be provided may be increased or decreased through a variance granted locally by the board of health.

### **Provision for Oil**

The owner must provide the oil used for heating and/or hot water in each unit unless the oil is provided to the tenant in a separate oil tank, such arrangement having been made through a written lease. This only applies to tenancies created after 7/1/94.

### **Lighting and Electrical Facilities**

Every room other than the kitchen must be equipped with a minimum of two separate wall-type convenience outlets.

Every room containing a toilet, bathtub, or shower must be equipped with a minimum of one electric light fixture.

Electric light fixtures with switches must be located such that every laundry, pantry, foyer, hallway, stairway, closet, storage space, cellar, porch, exterior stairway and passageway are adequately lit for safe and reasonable use by the occupants.

The owner shall provide appropriate bulbs in all required light fixtures located in common areas.

The owner of a dwelling containing more than one dwelling unit shall provide and pay for light at all times for interior passageways, hallways, and stairways intended for use by the occupants. In a dwelling with three or fewer dwelling units the light fixtures used to illuminate a common hallway may be wired to the electric service of a dwelling unit on the same floor and the occupant may be responsible for paying for such service if it is part of a rental agreement.

No wiring shall lie under any floor cover nor shall it extend through a doorway, window or any other opening.

### **Metering of Electricity and Gas**

The owner shall provide and pay for the electricity and gas used in each dwelling unit unless each dwelling unit has a separate meter and a rental agreement provides for payment by the occupant. Nevertheless, the owner is responsible for maintenance of any wiring or piping for electricity or gas.

### **Installation and Maintenance of Facilities**

The owner must adhere to accepted procedures and standards such as the state plumbing and electrical codes when installing plumbing, heating, and electric facilities and appliances and must maintain them free from leaks and obstructions.

The occupant must adhere to accepted procedures and codes when installing washers, dryers, dishwashers, disposals, refrigerators, stoves, and electrical fixtures and maintain them free from leaks and obstructions.

The occupant of a dwelling is responsible for maintaining all toilets, washbasins, sinks, showers, bathtubs, stoves, refrigerators, and dishwashers in a clean and sanitary fashion. The occupant is also responsible for using these facilities and appliances properly and with care.

### **Asbestos Material used as Insulation or Covering**

The owner shall maintain all asbestos material which is used as insulation or covering on a pipe, boiler, or furnace in good repair and free of defects such as holes, cracks, tears, or looseness which may allow the release of asbestos dust or powdered, crumbled, pulverized asbestos material. The owner must correct any

violations either by repairing or removing the asbestos material in accordance with detailed procedures outlined in the regulations.

### **Smoke Detectors**

The owner of a dwelling that is required by law to be equipped with smoke detectors must maintain them in compliance with regulations of the State Board of Fire Prevention. If a violation of these regulations is observed during an inspection of a dwelling, the board of health must notify the proper fire official.

### **Exits**

Exits must be located in every dwelling unit and rooming unit so that safe passage is assured all occupants in accordance with the Massachusetts State Building Code.

Owners are responsible for maintaining common exits free from obstructions. Occupants are responsible for the maintenance of exits intended for their exclusive use.

The owner of a dwelling is responsible for maintaining all means of egress in a safe, operable condition at all times. In addition, the owner shall keep all exterior stairways, fire escapes, egress balconies, and bridges free of ice and snow.

### **Maintenance of Structural Elements**

The owner is responsible for insuring that the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimney, and other structural elements of a dwelling do not admit rain or snow and that they are rodent-proof, watertight, in good repair, and fit for the intended use. The owner must also keep the structural elements free from holes, cracks, loose plaster, or other defects where such defects make the dwelling difficult to clean or may cause an accident or constitute an insect or rodent haven.

- Windows and exterior doors must be watertight.
- No lead paint may be used in painting any surface on the premises.
- A safe handrail must be provided for every stairway used for or intended for use by the occupants.
- The occupant must take reasonable care in the use of floors, walls, doors, windows, ceilings, roof, staircases, porches, and chimneys.

### **Insects, Rodents, and Skunks**

In a dwelling with one dwelling unit, the occupant is responsible for exterminating all rodents, cockroaches, skunks, and insect infestation and maintaining the unit free of these, provided, however, that the owner shall maintain any screen, fence, or other structural element needed to keep rodents and skunks from entering the dwelling; in a dwelling consisting of two or more units or in a rooming house the owner is responsible.

The owner is responsible for providing screens for certain windows and doors on the first four floors of a building.

### **Garbage and Rubbish Storage and Disposal**

The owner of a dwelling containing three or more units, the owner of a rooming house and the occupant of any other dwelling shall be responsible for providing receptacles in sufficient number for the storage of rubbish and garbage. These receptacles must be located so that odors do not enter the dwelling. Garbage or mixed rubbish and garbage shall be stored in rodent-proof, watertight, covered containers. Plastic bags will not be considered sufficient.

An occupant exclusively occupying or using any part of the dwelling is responsible for maintaining it free from garbage and filth.

The owner of any dwelling must keep any part of the dwelling which is used in common by all occupants free from garbage and filth.

### **Security**

All dwellings must be secured against unlawful entry.

Entry doors to the dwelling and the dwelling unit and every opening exterior window of a dwelling must be secured against unlawful entry and fitted with a functioning locking device.

The main entry door of a dwelling with three or more dwelling units must be equipped to close and lock automatically. Every door of the main common entryway and every exterior door leading into the dwelling other than the door of the main common entryway, which is equipped as described above, must be equipped with an operating lock.

The owner of a dwelling is required to post a notice which is constructed of durable material and which is not smaller than 20 square inches in size listing the owner's name, address, and telephone number if he/she does not live in the dwelling or have a manager living in the dwelling. If the owner is a realty trust or partnership, the name, address, and telephone number of the managing trustee or partner must be posted. If the owner is a corporation, the name, address, and telephone number of the president of the corporation shall be posted.

### **Summaries of Enforcement Procedures**

The determination of whether a violation exists is not decided by either the owner or the occupant; this is the responsibility of the local board of health.

### **Access for Repairs and Alterations**

Upon reasonable notice by the owner, if possible by appointment, the occupant must allow the owner or the owner's representative access to the dwelling so that repairs or alterations may be made which bring the dwelling into compliance with Chapter II of the Sanitary Code.

### **Inspection and Investigations**

Upon receipt of an oral, written, or telephone request, the board of health is required to inspect a dwelling, dwelling unit, or rooming unit for possible violations of Chapter II. All interior inspections shall be done in the company of the occupant or the occupant's representative.

The board of health must conduct a complete inspection if requested to do so.

The board of health shall attempt to initiate and complete an investigation at a time mutually satisfactory to both the local board of health and the occupant within a time frame dependent upon the nature of the violation but not exceeding five days.

Each board of health must use an inspection form which lists, but is not limited to, the following:

- Inspector's name
- Inspection date and time
- Location of inspection
- Date and time of additional inspections
- Description of violation
- Specific references to violated regulations of Chapter II, by-laws, or ordinances
- Investigator's statement if the violations appear to endanger the safety or health and well-being of the occupants

- Statement: “This inspection report is signed and certified under the pains and penalties of perjury”, followed by the signature of the inspector.

This inspection report form must include a brief summary of the legal remedies available to the occupant of the affected premises.

At the termination of the inspection the occupant or his/her representative must receive a written report of the violations noted during the inspection. The need for an additional inspection by a specialized inspector shall be noted on the report.

### **Timetable for Compliance**

An effort to correct any violations of Chapter II of the Sanitary Code must be made within a specific time period which is dependent upon the nature of the violation. Consult either Chapter II of the Sanitary Code or your local sanitary code inspector for specific requirements.

All affected tenants shall receive written copies of all inspection reports and orders sent to the owner.

The board of health may order a dwelling, dwelling unit or rooming house or any portion of such unit condemned and vacated if, as a result of an inspection pursuant to Regulation 410.820, it is determined that the unit or any portion of it is unfit for human habitation. The steps to be followed by the board of health are outlined in Regulation 410.831.

### **Hearing**

Owners and/or occupants are entitled to file a written petition for a hearing before the local board of health if:

1. They have been served an order pursuant to any regulation in Chapter II of the Sanitary Code by the board of health. Their petition must be filed within seven days after the day the order was served.
2. They believe that the board of health or any inspector has failed to follow the provisions of inspection, to cite violations claimed to exist, to certify that a violation may endanger or materially impair the health or safety and well-being of the occupants or to issue an order as required by Regulation 410.830. The petition must be filed within 30 days of the initial request for an inspection.
3. Affected parties, owners, and occupants shall be informed of the hearing and of their right to inspect the files of the board of health.
4. The hearing must begin within 30 days of the date the order was served and, in certain instances, must begin within less than 30 days.
5. Within seven days after the hearing has concluded, the board of health shall inform the petitioner in writing whether the board has decided to sustain, modify, or withdraw the order.

### **Appeal**

The final decision of the board of health may be appealed to the appropriate Massachusetts court.

## **ADDENDUM C**

### **SAMPLE LANDLORD NOTIFICATION LETTER**

(Date)

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

RE:

Dear Property Owners:

You are hereby notified that the \_\_\_\_\_ seized a quantity of \_\_\_\_\_ on \_\_\_\_\_ at the location noted above for which, according to the City of Brockton Assessor's Office, you are the record owner.

Please note that the provisions of Massachusetts General Law, Chapter 139, §19, authorize the owner or lessor of property to void the lease of a tenant or occupant who uses the premises for the illegal keeping, sale or manufacture of controlled substances. This law permits you to evict such a tenant or occupant at an expedited hearing at the Southeast Housing Court. The police officers that seized the drug contraband will be available to testify at any eviction hearing held at the Southeast Housing Court.

It is important for you to realize that landlords who continue to allow tenants who have been violating the drug laws to remain as tenants in their buildings, without attempting to evict them, face the possibility of civil action as well as criminal prosecution. Under present law, a landlord who knowingly ignores a tenant's drug activity or who receives notice of the activity but fails to take reasonable measures to evict the tenant may face the possibility of criminal prosecution under G.L. Chapter 139, §20.

In addition, the Commonwealth may either seek an injunction to close down the property pursuant to G.L. Chapter 139, §16A or initiate forfeiture of the property pursuant to G.L. Chapter 94C, §47. Copies of the relevant laws are included for your reference.

Inaction on your part can have serious ramifications, especially where injunction, forfeiture, and criminal prosecution are potential consequences.

Regardless of what action you elect to pursue, it is the intention of this office to do whatever is necessary to stop any and all drug activity at the property in question.

Listed below are the details of the seizure of drugs from your property.

Tenant/Occupant:  
Date of Incident:  
Drug Seized:  
Analysis Number:  
Investigating Officer:

Police incident reports, required for Housing Court proceedings are enclosed for your reference.

Please contact \_\_\_\_\_ of the \_\_\_\_\_ at (508) \_\_\_\_\_ within ten (10) days of receipt of this notice to advise of your intended action or to seek further assistance.



We welcome your participation in helping to make the city of Brockton a drug-free community.

Sincerely yours,

TIMOTHY J. CRUZ  
District Attorney

PAUL F. STUDENSKI  
Chief  
Brockton Police Department

Enclosures

## **ADDENDUM D**

### **GENERAL LAWS OF MASSACHUSETTS**

#### **CHAPTER 94C. CONTROLLED SUBSTANCES ACT**

##### **Chapter 94C: Section 47 Forfeiture of property**

Section 47. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, dispensing, distribution of or possession with intent to manufacture, dispense or distribute, a controlled substance in violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(4) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(6) All drug paraphernalia.

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J or forty.

(8) All property which is used, or intended for use, as a container for property described in subparagraph (1) or (2).

(9) No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph (7) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance or real property was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.

(4) No conveyance or real property used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching

funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(f) (1) During the pendency of the proceedings the court may issue at the request of the commonwealth *ex parte* any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(2) There shall be created within the division of capital asset management and maintenance an office of seized property management to which a district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought. The office of seized property management shall be authorized to preserve and manage such property in a reasonable fashion and to dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and to enter into contracts to preserve, manage and dispose of such property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney established pursuant to subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(h) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town where the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district where the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition

is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.