Tenant Screening, Selection and Lease Negotiation
under Fair Housing Laws Fact Sheet

1. What is fair housing?
   Fair housing is a set of principles and laws which mandate equal access and opportunity in housing. Fair housing covers all housing-related activities, from search and application to amenities, management policies, terms and conditions plus termination of tenancy. Fair housing covers persons who are members of a protected class which are designated as groups of persons and their families that historically have experienced discrimination. In Massachusetts, those classes are race, religion, national origin, gender, disability, familial status, marital status, sexual orientation, public assistance (including rental vouchers), genetic information, and military status.

2. Who must follow fair housing laws?
   Property owners, developers, condo associations, and homeowner associations are covered parties under fair housing laws. Their employees, such as property managers, clerical staff, maintenance workers and all others are responsible for performing their duties in a manner consistent with fair housing. Attorneys and real estate agents must act and advise their clients in a compliant manner. Other residents in the building or development can be held responsible under fair housing laws and regulations if their behavior is considered to be discriminatory. Developers, architects and contractors can be held liable under the accessible design and construction fair housing mandates for units built for persons with disabilities and their families.

3. Is advertising covered under fair housing?
   Yes, advertising must be done in a manner that provides equal opportunity and access to all protected class members. Advertisements that appear in newspapers, newsletters, broadcast media, rental listing services, or on the Internet should not have language that discourages or prevents applications from protected class members. Using statements such as “No Sec. 8”, “Not Sec. 8 approved”, “No small children”, “not deeded” or “near church/synagogue/ mosque/temple” can be interpreted as fair housing violations.

4. How does fair housing affect the tenant screening and selection?
   The use of screening criteria that discourages or prevents protected class members from being evaluated equally as prospective tenants could be a fair housing violation. For example, asking for references from an applicant because of their immigration status but not asking for references from other applicants would be discriminatory.

5. What are acceptable screening practices under fair housing?
   All applicants, regardless of protected class status, must be screened using identical criteria. It is acceptable to use standard questions that are asked of all applicants. Allowable questions would be the identification of head of household, past tenant history, income level (but not the source of income), etc. You are allowed to do credit checks, CORI and request references under fair housing as long as you are using the same practices and using them in the same manner for protected class
members as for other applicants.

6. **Are there things that a property owner should not be asking when doing tenant screening?**
   Yes, property owners should not be asking if the applicant has a disability or the nature or severity of disability, race, ethnicity, national origin, sexual orientation, religion, the age of the applicants’ children, marital status, if they receive government benefit assistance, or their military status.

7. **What standards of tenant selection are allowable under Fair Housing?**
   Tenants must be selected on their ability to fulfill the terms of successful tenancy. That would include their ability to pay rent which could be demonstrated through their proof of income and credit history. The applicant’s past history with respect to housekeeping, relations with other residents, and cooperation with property owners can be indicated through references from their past property owners, employers and clergy. All of these are acceptable under Fair Housing as long as they are applied to all applicants and in the same manner. All information gathered through the screening and selection process must be handled in a sensitive and confidential manner.

   It is important to remember that you can not deny an applicant because they have a rental voucher such as Sec. 8 or MRVP. Also a family with a child under the age of 6 or a pregnant woman can not be denied the right to apply for housing because there is lead in the unit and/or common areas. Both of these practices are violations under fair housing laws.

8. **How does fair housing affect the lease negotiation process?**
   The same process and flexibility must be granted to all applicants and residents in determination of the terms and conditions of the lease. Higher standards of tenancy can not be imposed on protected class members. For example, a lease policy on restricted use of common areas could not be imposed only on families with children but must be applied to all tenants equally. Also, a higher or additional security deposit can not be levied against persons with disabilities because of concerns regarding anticipated damage to the unit due to wheelchair usage.

9. **Can requests for fair housing reasonable accommodations and modifications be part of the screening process?**
   Reasonable accommodations and reasonable modifications are not allowable as tenant screening criteria. Applicants who have disabilities must be screened using the same criteria that are applied to nondisabled applicants.

10. **Are there resources that provide additional information on fair housing?**
    - Dept. Of Justice: [www.usdoj.gov/ctt/housing/fairhousing](http://www.usdoj.gov/ctt/housing/fairhousing)
    - Fair Housing Accessibility FIRST: [www.fairhousingfirst.org](http://www.fairhousingfirst.org)
    - MA Commission Against Discrimination: [www.mass.gov/mcad](http://www.mass.gov/mcad)
    - MA Attorney General’s Office: [www.mass.gov/ago](http://www.mass.gov/ago)

11. **Does MBHP provide assistance to property owners on fair housing?**
    You can contact the MBHP Fair Housing Manager at (617) 425-6681 for technical assistance.

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