

Housing Code

REPRESENTING
YOURSELF
IN AN
EVICTION CASE

In Massachusetts, you can use the **State Sanitary Code**, also known as the **Housing Code**, to defend against an eviction. This is because a tenant's duty to pay rent is based on the landlord's duty to keep the apartment in good condition. The Housing Code tells you what is meant by "good condition."

If you can prove to a judge that you now have or have had bad conditions in your home and that the landlord had knowledge of these conditions, the judge may not order you to move and might require that you pay only some of the rent the landlord claims you owe. Or, the judge may order that the landlord pay you money for having lived under such bad conditions.

The **Housing Code Checklist** in this booklet will help you protect your rights and prepare your case.

HOW TO USE THE HOUSING CODE CHECKLIST

Call for a Code Inspection

Everyone in Massachusetts has a right to a **code inspection** by your town or city **Board of Health** or **Housing Inspection Department**. Call your local Housing Inspection Department or Board of Health and ask for an inspection of your home as soon as possible **before** your trial date. (If you can't find the telephone number, call City or Town Hall and ask for the code inspector's or health inspector's office.)

Fill Out the Housing Code Checklist

Before the inspector comes to your apartment, check off the violations in your home on the Housing Code Checklist in this booklet. Write in the lefthand column the approximate date that the landlord or someone working for your landlord knew about each violation. If the problem existed **when you moved in** or **when a new landlord bought your building**, write down this date. The law assumes the landlord knew of the violations as of these dates.

If you have access to a camera, take photos of the conditions in your house.

When the inspector comes to your apartment, show the inspector the problems. Make sure that the inspector writes down on the code report everything that is on your checklist. An inspector is required by law to write down all violations.

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Get a Copy of the Code Report

The inspector must give you a copy of the code report before leaving your house and must sign and certify the report (swear it is a true copy). Make sure you get a copy of the code report before the inspector leaves your apartment. A few days later, you should receive another copy of the report and repair order in the mail stating that the landlord has been notified of the code violations and must fix them within a certain time.

To use the mailed report in your court case, you must bring it to the code office for certification by the inspector who came to your home. If you are unable to have the code report certified, bring it to court anyway and ask the judge to look at it.

Use the Code Report in Your Case

Bring your certified copy of the inspector's code report to court on the trial date.

When it is your turn to present your case:

- ✓ Start by describing the most serious problems in your home. Use the Housing Code Checklist in this booklet to help you. Remember: Tell the judge how long these problems existed and when the landlord knew or should have known about them.
- ✓ Show photos of the bad conditions to the judge.
- ✓ Show your copy of the code report to the judge.
- ✓ Tell the judge what hardships the bad conditions caused you and your family. For example, if the heat was bad and windows were loose and drafty, tell the judge if your children caught cold or if you had to sleep in the kitchen close to the stove to stay warm. If your stove was broken and you couldn't cook, tell the judge if you had to spend extra money to buy cooked food or eat out. Let the judge know if you or your family had to miss school or work or lost sleep.

Housing Code Checklist

Conditions That May Endanger or Materially Impair Your Health or Safety

Under the state sanitary code, the following violations are considered conditions that may "materially endanger" the health of you and your family. *(You can find these in the Massachusetts Code at 105 C.M.R. §410.750)* If you or the local board of health has notified your landlord of these violations, you may legally withhold all or a portion of your rent.

Date landlord knew about violation	Check if violation exists	Sanitary Code Section
_____	<input type="checkbox"/> No heat.	410.201
_____	<input type="checkbox"/> Improper venting of space or water heater.	410.202
_____	<input type="checkbox"/> No electricity or gas.	410.354
_____	<input type="checkbox"/> No or inadequate electrical facilities or lighting in common areas.	410.250, 253A,B, 254
_____	<input type="checkbox"/> Shut-off and/or failure to restore electricity, gas, or water.	410.750(C), 410.180
_____	<input type="checkbox"/> No safe water supply.	410.180
_____	<input type="checkbox"/> No working toilet or sewage disposal system.	410.450, 300
_____	<input type="checkbox"/> Inadequate exits, including the obstruction of any exit, passageway, or common area through which you exit in emergencies.	410.450-452
_____	<input type="checkbox"/> No or inadequate locks for entry doors.	410.480D
_____	<input type="checkbox"/> Accumulation of garbage or filth that may provide food or shelter for rodents, insects or other pests; or that may contribute to accidents or disease.	410.600, 601
_____	<input type="checkbox"/> Presence of lead paint accessible to a child under age six.	G.L. c. 111, §190-199
_____	<input type="checkbox"/> Roof, foundation, or other structural defects that may expose the occupant to fire, burns, shock, accident, or other dangers.	410.500

_____	<input type="checkbox"/> Improperly installed or maintained electrical, plumbing, heating, or gas-burning facilities that expose the occupant to fire, burns, shock, accident, or other dangers.	410.351
_____	<input type="checkbox"/> No or insufficient hot or cold water (including quantity pressure, and temperature) for a period of 24 hours or longer.	410.180, 190
_____	<input type="checkbox"/> No smoke detector in good working order.	410.482
_____	<input type="checkbox"/> Any defect in asbestos material that may result in the release of dust.	410.353
_____	<input type="checkbox"/> Any other violation of the sanitary code that the inspector finds to be a danger to health and safety.	410.750(P)

Conditions That Must Be Fixed Within 5 Days

If any of the following violations exist in your apartment, they must be fixed within 5 days after the landlord is notified of them. If your landlord does not fix them, they become conditions that "materially endanger" your health and safety and you may withhold all or a portion of your rent.

_____	<input type="checkbox"/> Kitchen sink, oven, or stove not of sufficient size or not in good working condition.	410.100
_____	<input type="checkbox"/> Sink, tub, or shower in the bathroom not in good working condition.	410.150
_____	<input type="checkbox"/> No or unsafe handrails or protective railings on porches, roofs, stairways, or other similar places.	410.503
_____	<input type="checkbox"/> Any defect in electrical, plumbing or heating system that violates "generally accepted standards" but does not create an immediate hazard.	410.75(O)(3)
_____	<input type="checkbox"/> Cockroach, insect, or rodent infestation.	410.550
_____	<input type="checkbox"/> Improper venting of space or water heater.	410.202

Conditions That Must Be Fixed Within 30 Days

Your landlord must repair or provide the items and services listed below within 30 days of being notified that there is a problem. If these problems are not fixed, they become conditions that "materially endanger" the health and safety of you and your family and you may withhold all or a portion of your rent.

Kitchen

- | | | |
|-------|---|---------------------|
| _____ | <input type="checkbox"/> Sink must be large enough to wash dishes, get hot and cold water, and have proper drainage. | 410.100,
410.350 |
| _____ | <input type="checkbox"/> A stove and oven must be provided in good working condition (unless written agreement requires tenant to provide these). | 410.100 |
| _____ | <input type="checkbox"/> All sinks, owner-installed refrigerators and stoves, and gas- and oil-burning equipment must be kept in good working condition. | 410.351 |
| _____ | <input type="checkbox"/> At least one working light fixture and two wall outlets must be provided. | 410.251 |
| _____ | <input type="checkbox"/> Floors must be smooth, non-corrosive, and waterproof. Carpeting and wooden floors are permitted as long as the carpeting has a nonabsorbent and water-repellent backing and wooden floors have a water-resistant finish and no cracks. | 410.504 |
| _____ | <input type="checkbox"/> Must have space and proper facilities for the installation of a refrigerator. | 410.00 |

Bathroom

- | | | |
|-------|---|---------------|
| _____ | <input type="checkbox"/> One toilet, free from defects, must be provided in a room not used for living, sleeping, cooking or eating. | 410.150(A)(1) |
| _____ | <input type="checkbox"/> One wash basin, free from defects, must be provided. | 410.150(A)(2) |
| _____ | <input type="checkbox"/> One shower or bathtub, free from defects, must be provided in a room not used for living, sleeping, cooking or eating. | 410.150(A)(3) |

_____	<input type="checkbox"/> Each room that contains a toilet, bathtub or shower must have a closable door.	410.150(A)(4)
_____	<input type="checkbox"/> One electric light fixture, in good repair, must be provided.	410.252
_____	<input type="checkbox"/> Adequate ventilation (see section below) must be provided.	410.280
_____	<input type="checkbox"/> Floor and walls, to the height of four feet, must be constructed of nonabsorbent, easily cleanable material.	410.504

Water

_____	<input type="checkbox"/> There must be enough water, with adequate pressure, to meet your ordinary needs.	410.180
_____	<input type="checkbox"/> There must be enough hot water at a temperature between 110 and 120 degrees, with adequate pressure, for your ordinary use, unless a written lease requires you to provide it.	410.190
_____	<input type="checkbox"/> The water heater must be vented to a chimney or duct leading outdoors (unless the heater is electrical). Old-fashioned open-flame water heaters are illegal.	410.202
_____	<input type="checkbox"/> The toilet, wash basin, kitchen sink, shower, and/or bathtub must be properly connected to the drain line.	410.350
_____	<input type="checkbox"/> The landlord must provide and pay for water and may bill a tenant for water and sewer only if the tenant moved into the apartment on or after March 16, 2005 and if the landlord has:	G. L. c 186, §14, and 410.180
	1. Installed and is maintaining a water submeter that measures water going only to your unit;	
	2. Installed low-flow water conservation devices on all showers, faucets, and toilets in your unit;	
	3. Described in detail in a written rental agreement the water billing arrangements between you and the landlord (because the landlord is the “customer” and responsible for paying the water company, which in most cases is a local municipality); and	

4. Filed a certificate with the local board of health or agency responsible for enforcing the State Sanitary Code that your unit is in compliance with the law. (The Department of Public Health requires landlords to give you a copy of the certificate with your written rental agreement prior to occupancy.)

- _____ A landlord must also allow you access to any water submeters that affect your unit so that, if you need to, you can have the accuracy of the submeter checked. 410.354(E)

For more information about the water submeter law, go on-line to: www.MassLegalHelp.org/NewWaterLaw.

Heat

From September 16 to June 14, the landlord must provide facilities to heat every room (including bathrooms) to at least:

- _____ 68 degrees Fahrenheit between 7 a.m. and 11 p.m. 410.200-201
- _____ 64 degrees Fahrenheit between 11 p.m. and 7 a.m. 410.200-201
- _____ Heating equipment must be provided and maintained in good working order. 410.351
- _____ Space heaters must be vented to a chimney or vent leading outdoors (unless the heater is electrical). 410.202
- _____ The landlord must provide and pay for heat unless there is a written agreement requiring tenant to pay for heat. 410.201
- _____ The temperature must not exceed 78 degrees at any time during the heating season. 410.201

Ventilation and Light

- _____ Every room must have either windows, skylights, floors, or transoms in the exterior wall or roof that can easily be opened to measure a minimum area of 4% of the floor area of that room; OR adequate mechanical ventilation systems. 410.280

- _____ Each room (except a kitchen smaller than 70 square feet, or a bathroom) must have transparent or translucent glass that admits light from the outdoors and which is equal in area to no less than 8% of the floor area of that room. Glass obstructed by an outside structure less than 3 feet away does not count toward meeting this requirement. 410.250(A), 410.257
- _____ In larger buildings (10 or more units) there must be an emergency lighting system in the halls and at exits. 410.483

Electricity, Wiring, and Gas

- _____ The landlord must provide and pay for electricity and gas unless the tenant's apartment is individually metered and there is a written rental agreement requiring the tenant to pay. 410.354
- _____ Electrical service must provide sufficient amperage to meet the reasonable needs of the occupant. 410.255
- _____ For each room other than the kitchen and bathroom, either two separate electrical outlets or one electric light fixture and one wall outlet must be provided. 410.250

Electric light fixtures must be located so that light will be available for the safe and reasonable use of:

- _____ Laundry rooms. 410.253(A)
- _____ Pantry. 410.253(A)
- _____ Hallways, stairways, foyer, or community corridor. 410.253(A)
- _____ Closet or storage space. 410.253(A)
- _____ Cellar. 410.253(A)
- _____ Porch. 410.253(A)
- _____ Exterior stairway. 410.253(A)

Sufficient lighting must be provided in all parts of the house, including:

- _____ Interior passageways. 410.254
- _____ Hallways. 410.254
- _____ Stairways. 410.254
- _____ Wiring must not pass under rugs or other floor coverings, or through doorways. 410.256
- _____ Temporary wiring may not be used (but extension cords to portable appliances or fixtures are OK). 410.256
- _____ Buildings with 10 or more units must have an auxiliary emergency lighting system independent of the conventional system. G.L. c. 143, §21D

Safety

- _____ There must be at least 2 exits from each apartment, more if necessary for "safe passage of all people." 410.450
- _____ Exits for more than one unit must be kept free from obstruction. 410.451
- _____ All exits shall be safe, operable, and kept free of ice and snow. 410.452
- _____ Fire extinguishers must be properly located as required by the local fire chief. 527 C.M.R. §10.02
- _____ There must be locks on all operable exterior windows and entry doors. 410.480D,E

Buildings with more than three apartments must have:

- _____ A main front door that closes and locks automatically. 410.480C
- _____ Locks on all other entry doors in common areas. 410.480B
- _____ Buildings over 70 feet high must have an automatic sprinkler system (Building Code). G.L. c. 148, §26A

_____	<input type="checkbox"/> Landlords must maintain all pipes, oil- and gas-burning equipment, and electrical equipment so that it is free from leaks, obstructions, and other defects.	410.351
_____	<input type="checkbox"/> Buildings with 10 or more units must have lighted signs indicating both a primary and a secondary means of exit by diagram.	G.L. c. 143, §21D
_____	<input type="checkbox"/> Most buildings must be equipped with smoke detectors in good working order.	410.482

Structural Maintenance

_____	<input type="checkbox"/> The landlord must maintain the property "in good repair and in every way fit for the use intended."	
_____	<input type="checkbox"/> Foundations must be weathertight, insectproof, and rodentproof.	410.500
_____	<input type="checkbox"/> Floors must be free of holes, cracks, loose mortar or other defects.	410.500
_____	<input type="checkbox"/> Interior walls must be free of holes, cracks, and loose plaster, and must be cleanable and weathertight.	410.500
_____	<input type="checkbox"/> Exterior walls must be free of holes, cracks, warping, loose or rotting boards, or other hazardous conditions.	410.500
_____	<input type="checkbox"/> Ceilings must be free of holes, cracks, and loose plaster, and must be cleanable and weathertight.	410.500
_____	<input type="checkbox"/> Doors and windows must be weathertight.	410.501
_____	<input type="checkbox"/> Roof must be free from holes and cracks, and must be weathertight.	410.500
_____	<input type="checkbox"/> Chimneys and other structural elements must be in good repair.	410.500
_____	<input type="checkbox"/> Staircases must be stable with a handrail or bannister if the stairs rise 30 inches or higher.	510.500, 503

- _____ Handrailings must be at least 3 feet high and are required on every porch, balcony or roof over 30 inches above the ground and used by tenants. 410.503
- _____ Every dwelling unit must have at least 150 square feet for the first occupant and 100 square feet for each additional occupant. 410.400(A)

General Maintenance

- _____ The landlord must maintain common areas in a clean and sanitary condition. 410.602(D)
- _____ Apartment must be kept weathertight and in good repair. 410.500, 501
- _____ An absentee landlord must (unless a manager/agent lives in the building) keep a sign at least 20 square inches inside the building giving the name, address, and phone number of the landlord or his/her agent. 410.481
- _____ A landlord may not turn off or interfere with a tenant's water, hot water, heat, light, power, gas, or telephone service, except as necessary for repairs (for which landlord may temporarily shut off utilities if tenant is given "reasonable notice." 410.620
- _____ In buildings with three or more units, there must be one Federal Postal mailbox per apartment, and it must be kept locked and maintained in good repair. Fed. Postal Regs. A(1)a, E(1, 2, 4)
- _____ Screens are required on all doors and windows that open to the outside. 410.551
- _____ Exterior stairways must be kept free of snow and ice. 410.452

The following equipment and facilities must be maintained so that they are properly installed and free of leaks, obstructions, and other defects:

- _____ Water-heating facilities, gas pipes, heating equipment, and water pipes. 410.351

- _____ Landlord-installed equipment, including stoves, ovens, dishwashers, clothes-washing machines, dryers, refrigerators and garbage grinders. 410.351
- _____ Catch-basins, vents, drains, and all other similar fixtures supplied by the landlord. 410.351
- _____ Connections to the water, sewer, and gas lines, and to the subsurface sewage disposal system, if any. 410.351
- _____ All electrical fixtures, outlets, and wiring. 410.351
- _____ All heating and ventilation equipment. 410.351

Rats and Roaches

- _____ No rats or roaches or other insects are allowed in the apartment or building. The landlord must exterminate them when they are found in common areas or in any individual apartment. 410.550

Garbage

- _____ In buildings with three or more units, the landlord must provide enough watertight garbage cans with tightly fitting covers "to contain the accumulation before the final collection." 410.600

Lead Paint

- _____ No lead paint may be used inside apartments. 410.502
- _____ Existing lead paint must be removed or covered by the landlord if you have a child under the age of six. This must be done up to a height of five feet from the floor level. Repainting with a non-lead paint is not good enough. G.L. c. 111, §197