

USEFUL CONTACTS

Information and Referral Services

First Call for Help	(413) 582-4237 (800) 339-7779
Amherst Planning Department http://www.town.amherst.ma.us/departments/planning	(413) 256-4040
Commuter Services Housing Resource Center http://www.cshrc.org	(413) 545-0865

UMass Programs for Students and Community

Commuter Services and Housing Resource Center http://www.cshrc.org	(413) 545-0865
HomeSharing (rent in exchange for services)	(413) 545-1810
UMass Student Legal Services Office (UMass students only) email: slso@stuaf.umass.edu	(413) 545-1995
Pioneer Valley Oil Co-op	(413) 545-0865

Mediation Programs and Court Related Services

District Attorney's Office	(413) 586-9225
Hadley District Court (serves eastern Hampshire county, including Amherst, Belchertown and Pelham)	(413) 587-2634
Northampton District Court (serves western Hampshire county, including Northampton)	(413) 584-7400
Greenfield District Court (serves Franklin county, including Sunderland, Leverett and Shutesbury)	(413) 774-5533
Housing Court, Western Division	(413) 748-7838 or (866) 474-2687
The Mediation and Training Collaborative Commuter Services and Housing Resource Center http://www.cshrc.org	(413) 774-7469 (413) 545-0865

Discrimination Complaints

Massachusetts Commission Against Discrimination	(413) 739-2145
Amherst Civil Rights Review Commission	(413) 256-4079
UMass Student Legal Services Offices (UMass students only) email: slso@stuaf.umass.edu	(413) 545-1995
Housing Discrimination Project of Western Massachusetts	(413) 539-9796 (800) 675-7309

Emergency Shelter and Homeless Assistance

Grove Street Inn	(413) 586-6001
Grace House	(413) 253-5155
Hampshire Community Action Commission www.hcac.org	(413) 582-4237 (800) 339-7779
Jessie's House	(413) 586-8212

Fuel/Energy Assistance Programs

Center for Ecological Technology	(413) 586-7350
Hampshire Community Action Commission www.hcac.org	(413) 582-4237 (800) 339-7779

MassSave (800) 632-8300
 Pioneer Valley Oil Co-op (413) 545-0865
 Alliance Energy (800) 696-8009

Social Services

Amherst Survival Center (413) 549-3968
 Casa Latina (413) 586-1569
 Hampshire Community Action Commission (413) 582-4230
www.hcac.org (800) 339-7779

Legal Services

Massachusetts Justice Project (800) 639-1209
 (information, advice and referral –
 initial contact for Western Mass. Legal Services)
 Western Massachusetts Legal Services www.wmls.org (413) 584-4034
 Disability Law Center (disability law) www.dlc-ma.org (413) 584-6337
 (800) 872-9992
 Housing Discrimination Project (413) 539-9796
 (discrimination law) email: hdp@the-spa.com (800) 675-7309
 UMass Student Legal Services (UMass students only) (413) 545-1995
 Massachusetts Bar Association www.massbar.org (866) 627-7577
 Lawyer Referral Service email: lrs@massbar.org

Physically Handicapped/Challenged Services

Stavros, Inc. www.stavros.org (413) 256-0473
 (800) 804-1899
 Disability Access Advisory Committee (413) 256-4079

Landlord-Tenant Associations

Pioneer Valley Housing (landlord) Association (413) 549-0145

Subsidized and Low-Cost Housing Programs

Amherst Housing Authority Elder Programs (413) 256-0206
 Family Programs (413) 256-8128
 HomeSharing (rent in exchange for services) (413) 545-1810
 Hampshire/Hampden Housing Partnership (HAP) (800) 332-9667
 (also offers landlord-tenant counseling)

Town Offices, Committees and Services

Assessor's Office (413) 256-4024
 Civil Rights Review Commission (413) 256-4079
 Human Rights Director (413) 256-4079
 Housing Partnership/Fair Housing Committee (413) 256-4040
 Inspection Services (413) 256-4030
 Planning Board (413) 256-4040
 Planning Department (*Housing Planner*) (413) 256-4040
 Public Works (413) 256-4050
 Refuse and Recycling Collection (413) 256-4049
 Select Board (413) 256-4001
 Tax Collector (413) 256-4020
 Town Manager (413) 256-4004
 Zoning Permits (413) 256-4032

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FOREWORD

This guide is published under the auspices of the Town of Amherst Housing Partnership/Fair Housing Committee and the Commuter Services and Housing Resource Center at the University of Massachusetts Amherst. It is intended for distribution, without charge, to landlords and tenants to contribute to a better understanding between them. By being informed on mutual rights and responsibilities, they may be able to avoid conflicts and improve their overall relationship.

This guide is NOT intended to be an official or infallible legal text, and its users should bear in mind these cautions. This 2004 edition has been updated and revised in order to keep it current with Massachusetts state laws and regulations and local by-laws applicable to the town of Amherst governing landlord-tenant relations, and including town by-laws related to noise and alcohol. Due to limitations of space, much of the legal material in the guide has been edited and summarized. The editing process is not perfect and the laws and regulations upon which this guide is based are subject to change. We urge you, before you rely too heavily on any particular information in this guide, to check with an attorney or with the various town, community, and UMass Amherst programs described in this guide and listed in the table of contents.

Model forms for the collection and return of security deposits and last month's rent in advance payments are provided for your use in the back of this booklet.

As a final note, civic participation by tenants is vital to the life of the town. Any tenant interested in joining a town committee should contact the Town Manager's Office (256-4005) for more information and activity forms.

Town of Amherst, Massachusetts Housing Policy

Whereas, the Town of Amherst values its diverse cultural community, and acknowledges that to sustain it now and into the future requires preserving the existing stock of housing and promoting future development of a broad range of safe, accessible, affordable housing for our community:

To this end, Amherst shall:

- Actively support initiatives designed to preserve, develop, and/or replenish its affordable housing inventory;
- Actively promote access to housing for all persons, regardless of race, color, creed, national origin, sexual orientation, physical capabilities, marital or social-economic status;
- Commit resources to educating the public on all housing conditions, current housing laws and regulations, and enforce housing laws and protections within the community.

Adopted October 21, 2002 by the Amherst Select Board

I. LANDLORD/TENANT RELATIONS: THE BASICS

A. Types of Tenancies

There are five distinct rental situations, each with its own particular conditions and legal guidelines. It is important for every landlord and tenant to understand the terms of his or her tenancy in order to avoid confusion and possible legal complications.

Q. What is a tenancy?

A. A tenancy is a legal relationship in which the right to exclusive occupancy and use of property (an apartment or house) is transferred from one party ("Landlord" or "Lessor") to another or others ("Tenant" or "Lessee"). In any tenancy relationship, there are numerous rights and responsibilities created between the parties. There are also several types of tenancies, including under a lease, at will, and assignment or sublet.

Q. What is a lease?

A. A lease is a signed written agreement that creates a tenancy for a specific period of time. This lease period is fixed unless some provision of the lease or other law is violated, which may allow for the termination of the tenancy before the end date stated in the lease. Some leases contain provisions that state that they can be renewed under certain circumstances (e.g., advance notice required if tenant wishes to renew), so read your lease carefully.

Most tenancies in the Amherst area are under leases, although tenancies at will do exist (typically with landlords who own or manage few rental units).

Q. Are all written tenancy agreements leases?

A. No. A tenancy at will can be written or oral. The difference is that there is a defined beginning and ending date in a lease; a tenancy at will has no definite ending date. *A lease must be in writing*, or the agreement is considered to be a tenancy at will.

Q. What is a tenancy at will?

A. A tenancy at will is a relationship created by a tenancy agreement which is ongoing and has no defined ending date. The tenancy is self-renewing from one rental period to another, unless and until it is legally terminated. A landlord and tenant may agree to the terms of this type of tenancy either orally or in writing. The rental period usually runs from month to month, but again, the term agreed to can be longer or shorter. If any change is made to the tenancy (e.g., increase in rent), a new tenancy is created, either by agreement or by notice of termination of the current tenancy and an offer to create a new one.

Although most tenancies at will are oral, it is advisable for practical reasons to have the agreement in written form, so that both parties clearly understand what they have agreed to.

Q. What are the advantages of each?

A. A tenancy at will offers both parties flexibility, particularly because either party can terminate it by giving a proper written notice of termination, with or without a reason.

With a lease, in a sense both parties have more security. The tenancy period is defined, which can be of benefit for both the landlord and tenant. Without a mutual agreement between them, neither party can terminate the tenancy early unless there is a substantial violation of the lease or other law by the other.

Q. What is an assignment? What is a sublet?

A. A *sublet* occurs when a tenant transfers part or all of his/her tenancy rights to another for any portion of the period covered by the lease, but not through the end of the lease.

An *assignment* occurs when a tenant transfers his/her tenancy rights to another for the remainder of the lease period. In this area, many transfers called sublets are actually assignments, because they cover the entire remainder of the lease period.

There is a major difference in the two. Under a sublease, the subtenant has use of the premises, but the original tenant remains ultimately responsible to the landlord for rent and other obligations, and there is no legal landlord-tenant relationship between the landlord and the "sublessee." Under an assignment, there is a landlord-tenant relationship between the landlord and the "assignee," although the original "tenant/assignor" is still a party to the relationship. For both, it is important for the original tenant and the sublessee or assignee to have an agreement regarding rent and damages.

Most leases in this area have provisions that require the landlord's written consent to sublet or assign the lease. If the lease is silent on this, a tenant is free to assign or sublet the lease.

All sublet or assignment agreements must be in writing.

There is no subletting or assigning of tenancies at will. They are terminated by notice or agreement, and the new tenant becomes a regular tenant at will.

Q. What is a sabbatical rental?

A. A sabbatical rental involves someone offering their home for rent for a limited period of time while they are out of town (usually for a year or less). Those residents planning to rent their homes while on "sabbatical" should remember that they are landlords bound by all relevant laws and regulations.

Q. Are there special considerations that should be taken into account for a sabbatical rental?

A. In addition to the usual terms of a lease agreement, both parties should consider and agree in writing upon the following:

1. **Furnishings:** State in detail storage or maintenance requirements for furnishings, appliances, antiques, supplies, tools, books, collections, etc. Details must be explicit and should be incorporated into a statement of condition (see Appendix F).

2. The owner should carefully consider the unique features of the house and leave precise written instructions for any idiosyncrasy. For instance, how does a particular window open? How does the disposal work? Dishwasher? Does the stove have a pilot light? Does the house have fuses? How does one get into the basement or attic? Anything else? Attach written instructions to the agreement and if possible, give the tenant a "hands-on" introduction to the house.

3. The owner must leave a telephone number where he/she can be contacted in emergencies, or designate a local person who can be relied upon to make informed decisions.

Finally, several property management firms provide sabbatical management for a fee.

Q. Are there special rules for renting individual rooms?

A. Yes. Often landlords or owners rent out a room to someone, often with privileges to use kitchens and other common areas. These are also covered by the State Sanitary Code's provisions regarding required facilities and maintenance obligations. One important provision to note is that electricity, natural gas or heating oil should be provided by the owner unless there are separate meters or oil tanks for the individual rooms rented.

There are special legal provisions for renting out individual rooms to four or more unrelated occupants. For example, owners must obtain a permit from the Town to operate such a rooming or lodging house. If a tenancy agreement is not created at the beginning of occupancy, the occupant becomes a tenant at will after three months regardless of the lack of such an agreement. In such a case (with no lease or rental agreement), no notice of termination is required in the first 30 days, and seven days' notice of termination is required between 30 days and three months of occupancy. However, the owner must still use the legal eviction process to remove an occupant at any time. See Mass. General Laws Chapter 140, section 22 and Chapter 186, Section 17.

Q. What is a tenant at sufferance?

A. A "tenant at sufferance" is a legal term for someone whose tenancy has expired or been terminated, but he/she is still occupying the rental premises. He/she is no longer a "tenant," but is not a trespasser and can only be removed by an eviction order after a summary process action in court.

B. General Lease Terms

Tenants and landlords should read their leases carefully, and make sure they understand their terms and conditions. Illegal and unenforceable clauses should not be included in a lease. Landlords are required to give their tenants a signed copy of the lease at the beginning of the tenancy.

Q. What should be in a lease?

A. The following *must* be in a lease:

- The rented premises or unit must be included (address, description of the premises).
- The landlord (name, address, and telephone number) and tenant(s) must be identified.
- A contact for responding to problems such as repairs or to receive notices should be included if it is not the landlord.
- The term of the tenancy (beginning and ending dates).
- The amount of rent, when rent is due, and to whom it should be paid.
- Who is responsible for paying for utilities and other services.
- If a security deposit is required, language concerning the amount of the deposit and the procedures for its return or retention must be included.

The following *should* be in a lease:

- Provisions concerning use of storage space, basements, attics, and common areas.
- Other obligations of the parties concerning any aspect of the tenancy such as parking, snow removal, lawn care, and other matters. Generally, if it's not in the lease or other written agreement, it isn't binding or enforceable.

Q. What lease provisions are illegal?

There are several provisions that *cannot* be legally included in a lease, such as:

Waiver of the landlord's obligation to maintain and repair the rented premises (i.e., implied warranty of habitability or state housing codes). For example, landlords must supply and pay for water and sewer service, and electricity or fuel for heat and hot water unless the meter or oil tank serves only the tenant's premises, and there is a written agreement or it is in the lease. The landlord's legal responsibilities for maintenance and repair cannot be waived or transferred to the tenant.

Waiver of the provisions of many other landlord-tenant laws, such as the security deposit law and anti-discrimination laws.

Waiver of the legal requirements for notice, or eviction through proper legal action in court (see below).

Waiver of the landlord's liability for damages resulting from his/her negligence or wrongful conduct.

Late rent payment penalties, unless the rent is at least 30 days late.

An illegal lease clause is unenforceable, even if the tenant agrees to and signs it, and a landlord can face legal penalties for including such clauses. However, in most cases the rest of the lease is valid and enforceable.

Q. What if my rent is late? What can the landlord do?

A. The rent due date should be spelled out in the lease or rental agreement. A landlord cannot impose late fees if rent is *less* than thirty days overdue. However, a landlord can commence eviction proceedings *before* the thirty-day period ends. For more information, see "Eviction" below.

C. Advance Payments: Security Deposits and Last Month's Rent

Q. Besides rent, what can a landlord charge the tenant before the tenant moves in?

A. A landlord is legally permitted to charge a tenant for the following items before the tenant moves in, and no others: (1) first month's rent; (2) last month's rent (no greater than the first month's rent); (3) security deposit rent (no greater than the first month's rent); and (4) the cost of purchasing and installing a new lock and key. No other advance payments are allowed by law.

Q: How must a landlord handle security deposits?

A. The landlord must give the tenant a dated receipt for the security deposit. Security deposits must be placed and held in a bank account beyond the reach of creditors, and the name, location of the bank and account number must be given to the tenant in writing within thirty days. Failure to take these steps

allows the tenant to demand return of the security deposit. If it is not so returned, the tenant is entitled to collect *three times* the amount of the security deposit from the landlord.

Q. What's a Statement of Condition? Why is it important?

A. The often-overlooked Statement of Condition is a key document. By law, if a landlord requires a security deposit, he/she must give the tenant a written statement of conditions of the premises within ten days after the tenancy begins. The tenant should read the document over carefully, inspecting the premises and noting any discrepancies. The tenant must return the Statement of Condition, with any changes/disagreements noted, to the landlord no later than 15 days from the date it is received. It is a good idea for both parties to take pictures of the premises.

If the Statement shows that repairs are necessary, the landlord and tenant can agree on a time line for repair and attach the written time line to the Statement.

The Statement of Condition is a useful tool that protects both landlords and tenants. It provides a benchmark measurement of the conditions at the premises. It can clarify misunderstandings about repairs, and it prevents the misuse of security deposit funds. Both parties should retain a copy of the Statement for their records.

Q. How much interest is owed to the tenant on the security deposit? Last month's rent?

A. Security deposits must be put in an interest-bearing account. The interest earned on the deposit, or 5 percent (whichever is less), must be paid to the tenant each year or at the end of the tenancy if the deposit is held 12 months or longer.

The last month's rent does not have to be deposited in an account. However, the tenant is entitled to interest in the amount of 5 percent or whatever interest was paid by the bank where the last month's rent was held, for however long it was held before it is applied to the last month's payment of rent. Unlike the security deposit, there is no 12-month minimum period for interest to be owed on the last month's rent.

Q. When can the landlord make deductions from a security deposit?

A. At the end of the tenancy the landlord may only make deductions from the security deposit for three reasons: (1) unpaid rent not validly withheld, (2) repair of damage to the premises beyond "reasonable wear and tear" and (3) unpaid increases in property taxes owed by the tenant during the tenancy, *if* the lease so provides. No other deductions from security deposits are permitted by law.

If a landlord deducts for damages, he or she must give the tenant an itemized list of the damage, signed under the pains and penalties of perjury, along with written evidence of the repair cost (e.g., estimates, contractor bills, etc.), *within thirty days of the end of the tenancy*. The costs of repairing normal wear and tear, routine cleaning, painting and refitting are *not* lawful deductions.

The remainder of the security deposit (or all of it, if there are no deductions) plus interest, along with the itemized statement of deductions made and evidence of repair costs, must be returned to the tenant *within thirty days of the end of the tenancy*. If these requirements are not fully met, a tenant can sue for

three times the amount of the security deposit that is owed them, plus interest, court costs and attorney's fees.

Landlords are required by law to retain security deposit information records for at least two years following the termination of a tenancy. Be aware, however, that a tenant can bring a claim for violation of the security deposit law within four years of the date of any alleged violation.

D. Living Conditions: Maintenance and Repairs

Responsibility for most maintenance, repair, and provision of basic facilities and services are specified in state regulations, and landlords and tenants should familiarize themselves with these requirements.

Q. What laws regulate the condition and maintenance of rental housing?

A. Under guidelines set forth under Chapter II, the State Sanitary Code, minimum standards for human habitation have been established for Massachusetts. Enforcement for Chapter II is the responsibility of the Amherst Board of Health (other towns have similar inspection programs). Both landlords and tenants should become familiar with the Sanitary Code and with the provisions for its enforcement (Massachusetts General Laws Chapter 111, Section 127 A-N; 105 Code of Mass. Regulations 400-410). See the summary of important code provisions in Appendix B.

Complete copies of the Sanitary Code are available by request at the Amherst Board of Health and at the University of Massachusetts Amherst in the Student Legal Services Office and the Commuter Services and Housing Resource Center (www.cshrc.org).

Q. How should a tenant raise concerns about needed maintenance and repairs?

A. *Talk to the landlord.* Many problems can be addressed quickly and amicably if tenant and landlord communicate with each other. Note: The Code requires that a nonresident landlord must post a sign in a conspicuous place containing the name, address, and phone number of a responsible and available person who can receive and act upon tenant complaints. This information should also appear in a lease or written rental agreement.

Put concerns and requests in writing. If a landlord does not respond to oral requests promptly, it is best for tenants to put them in writing, and to keep a copy of all such correspondence. It provides a record of knowledge of problems, and gives the tenant more legal protection.

Call for an inspection. Should either landlord or tenant suspect a violation of the Sanitary Code, he/she may notify the Amherst Inspection Services Department. The health inspector will inspect the premises promptly. Inspection requests may cover either a specific complaint or the entire premises upon the tenant's request. If the inspector finds that a violation of the code exists, the problem must be corrected within a specified period of time depending on the nature of the violation. The inspector is also required to return to the property to certify that necessary repairs have been completed.

For more information and/or inspection requests, call the Amherst Board of Health at the Bangs Community Center (256-4077). UMass students residing in family housing units should contact the Environmental Health and Safety Office at the university (545-2682).

Q. Can a landlord evict a tenant or raise the rent because the tenant has complained about needed repairs or maintenance?

A. A landlord may not take any form of punitive action against a tenant for requesting an inspection. If a landlord attempts to evict a tenant or refuses to renew a lease without a substantial reason, or to raise the rent, within 6 months of a tenant *having complained about suspected violations in writing or having contacted inspectors* (as well as certain other protected activities), the law contains a presumption that such acts are retaliatory, which gives the tenant a defense to eviction and a minimum damage claim of one to three months' rent, plus attorney's fees.

Q. Can a tenant take other legal steps to have needed maintenance and repairs done?

A. Yes. These steps include:

1. Rent Withholding

A tenant may, without making repairs, withhold rent when the property is in violation of the Sanitary Code and the violation may endanger the health and safety of those occupying the premises. Among the conditions that must be met in order to pursue this course of action are the following:

- The conditions must be serious enough to potentially endanger health or safety;
- The landlord knows, or should know of their existence before the tenant stops paying rent;
- The premises are not in a hotel or motel, or a rooming or lodging house occupied less than 3 months;
- The conditions can be repaired without the tenants having to vacate the premises.

Given that the tenant must prove these facts, it is strongly advised that, before withholding rent, the tenant:

- Notify the landlord in writing of the defective conditions, and/or have the Board of Health issue an inspection;
- Notify the landlord in writing that the tenant is withholding rent because of these conditions.

2. Repair and Deduct

If a landlord fails to begin repairs within 5 days of receipt of an inspection report from health inspectors, or complete repairs with 14 days of receipt of the report, the tenant may deduct up to four months' rent to pay for repairs necessitated by violations of the Sanitary Code where such violations endanger the health, safety, or well-being of the residents of the property. Instead of having repairs made, the law also allows the tenant to treat the tenancy as terminated and move out within a reasonable time period if these requirements are met. Since the requirements for exercising these rights are somewhat technical, *tenants should get proper legal advice before acting under this law.* (See Massachusetts General Law Chapter 111, Section 127L.)

3. Vacating the Premises

If conditions are bad enough to make the premises legally "uninhabitable," the tenant may choose to leave. This is known as "constructive eviction." Again, if the landlord fails to make substantially complete repairs of serious violations within the time period ordered by the Board of Health, the tenant, rather than "repair and deduct," may choose to treat the tenancy

as over and leave within a reasonable period of time. Again, *seek legal advice before taking such action.*

WARNING

Improper or unjustified use of these procedures can result in eviction or suit for damages. Before initiating repair and deduct, rent withholding procedures or rate abatement, it is imperative that tenants seek legal counsel.

Q. Can a landlord be held legally responsible for failure to maintain and repair rental housing?

A. A landlord who fails to perform needed repairs or maintenance for serious code violations after notice is in violation of the “implied warranty of habitability.” A tenant may be entitled to an abatement of the rent (reduction based upon the nature and seriousness of the violations), from the time the landlord knows or should know of the violations until they are corrected.

Also, a landlord is liable for any injuries that result from failure to repair a defect. The landlord must correct unsafe conditions in the tenant’s premises within a reasonable time after notification by the tenant. The landlord is likewise responsible for repairing unsafe conditions in parts of the premises not under the tenant’s control, with or without notification by the tenant. Failure to repair such unsafe conditions within a reasonable time leaves the landlord liable to be sued for damages if anyone is injured as a result of landlord negligence.

Obviously, if tenants or landlords are involved in such a situation or dispute, they need to consult with legal counsel.

E. Evictions

Evictions (the involuntary removal of tenants from rental premises) in Massachusetts may only be done in accordance with state law and court procedures. The following questions and answers are intended to outline the process and some of the remedies, but the information contained here is by no means to be taken as a substitute for legal advice. Landlords and tenants should get information and/or advice from an attorney or other competent and qualified person or agency whenever they face a potential eviction situation.

Q. What is a legal “eviction”?

A. The legal eviction process in court is formally called “Summary Process,” and it is the only legal way to have a tenant removed from rented premises. This is legally referred to as giving possession to the landlord, or having the landlord recover possession. Both landlord and tenant should remember that an eviction requires a series of formal legal proceedings and can only be carried out with a court order. Because eviction is such a serious matter, it is especially important to have legal advice and assistance.

Q. What is the legal basis for an eviction?

A. Before a landlord can begin the eviction process in court, the tenancy in question has to be “terminated.” This can be as simple as a lease term ending, but it is often after a valid notice of termination given to the tenant has expired, or upon a serious violation of the lease by the tenant.

However, a tenant cannot be required to leave until and unless there is a final judgment for possession and eviction order ("execution for possession"), which must be enforced by the proper authorities according to the provisions of the law. There are serious civil and criminal penalties for attempting to remove a tenant without a court eviction order.

Q. How is a tenancy terminated for nonpayment of rent?

A. When the rent is overdue, the landlord may send a Notice to Quit (see sample at end of this booklet). A proper Notice to Quit simply states the amount of rent for what period is in arrears and that the tenant has 14 days to vacate the premises, after which time the landlord will take appropriate legal action.

Q. Can a tenant pay the rent owed and avoid eviction?

A. If it is a tenancy at will, the notice may also advise the tenant of his/her "right to cure," that is, the ability to take action to stop the eviction by paying all rent due within 10 days. If the notice contains this provision, the tenant may only do this once in any 12-month period.

If the Notice to Quit does not contain a "right to cure" clause, or if there is a lease in effect, the tenant can avoid eviction by paying all rent owed, plus court costs, by the day the Answer is due in court in the landlord's eviction action (the Answer day and the trial day are indicated on the court Summons served on the tenant). The tenant can avoid paying court costs by paying the rent owed prior to the beginning of a Summary Process case. This can be done more than once during the tenancy.

Q. How is a tenancy at will terminated when nonpayment of rent is not the issue?

A. A landlord may terminate a tenancy at will for reasons other than nonpayment of rent without specifying a particular reason. The tenant must receive a written notice of termination in writing at least one full rental period (minimum 30 days) in advance of proposed termination. If, for instance, monthly rent is due on the first of the month and the landlord wants to terminate the tenancy at the end of May, notice must be received by the tenant on or before May 1; notice received on May 2 or thereafter can only terminate a tenancy at the end of June. The notice *must* be clear concerning the date that the tenancy is being terminated.

If a landlord accepts rent unconditionally at the end of the 30-day period following notice of termination, it creates a completely new tenancy, voiding the notice. But if the landlord accepts payment and endorses the payment "for use and occupancy only," or otherwise makes it clear that a new tenancy is not being created, he/she may still proceed with steps for eviction.

Q. How is a leased tenancy terminated?

A. A leased tenancy can be considered terminated if the tenant has committed a serious violation of the lease (i.e., unauthorized pets, excessive noise, damage to property caused by the tenants) and the landlord is not required to deliver a written notice of termination (unless the lease requires one). The tenant may simply receive the Summary Process Complaint and Summons notifying him/her of the court hearing. The Summary Process Complaint will set forth the alleged violation that is the basis for the eviction.

Q. Which courts handle eviction cases?

A. The landlord can now begin the case in District Court or Housing Court, and either party can have a case brought in District Court transferred to Housing Court by filing a Notice of Transfer prior to the trial date. The Housing Court is based in Springfield, but it has sessions in Northampton (Hampshire county cases) on Mondays and Greenfield (Franklin county cases) on Fridays.

There are several differences in the courts that are beyond the scope of this booklet. Generally, Housing Court judges tend to be more experienced with the laws on eviction, and they have broader powers to issue restraining orders and injunctions. Housing Court mediators are also "housing specialists," who often conduct inspections or investigations if the judge orders them, or make referrals to appropriate agencies and services. In addition to eviction cases, the Housing Court handles code enforcement proceedings, and small claims and other litigation involving housing laws.

Q. How is an eviction case brought to court?

A. After the tenancy has been terminated (by notice of termination or otherwise), the landlord can have the tenant served with a formal Summary Process Summons and Complaint. This Summons notifies the tenant to appear at a hearing in District Court or Housing Court on a specific date which will be at least 17 days after the tenant receives it, and could be as much as 40 days later.

The tenant (defendant) may provide a written Answer to the reasons for eviction alleged in the complaint by what is known as the "Answer day," which is the Monday before the hearing date. The written Answer must be filed in court and a copy given to the landlord or his/her attorney by the Answer date. Failure to answer the Complaint by the specified Answer day could seriously affect the defendant's case when the hearing is held.

The tenant is also allowed to file and serve "discovery" (written requests for information relevant to the case to be supplied by the landlord) by the Answer date, which postpones the hearing for two weeks.

Q. Can a tenant raise defenses and claims against the landlord in court?

A. In addition to disproving the landlord's allegations, the law and court rules allow for a tenant to raise certain defenses, such as inadequate notice or improper service of a summons. Other "affirmative defenses" include validly withholding rent (see p. 11), or reprisal for certain protected activities (see p. 11). If the tenancy was terminated for non-payment of rent, or through no fault of the tenant, the tenant may raise any claim (called a "counterclaim") arising out of the tenancy at issue. Counterclaims might include: damages for substandard conditions, security deposit law violations, illegal landlord conduct, discrimination or reprisal.

Q. What happens in court on the trial date?

A. It is important to appear in court on the trial date, as your absence will result in a default judgment against you (tenant) or dismissal of the case (landlord).

Many cases are resolved by settlement before trial, whether by the parties directly or with the involvement of a mediator. These settlements are put into written form and filed in court.

At the trial, the burden to prove a valid termination of the tenancy by proper notice or a substantial violation of the lease by appropriate evidence is on the

landlord, and the tenant will have an opportunity to challenge the allegations and the landlord's evidence and present evidence in his/her defense.

If the tenant has raised an affirmative defense and/or counterclaims, he/she will then have the opportunity to prove the facts which support them by appropriate evidence. The landlord will then have an opportunity to contest the tenant's evidence by questioning and rebuttal evidence.

Q. What does the court do after the trial?

A. As stated above, during the hearing both the landlord and tenant can present their respective sides of the dispute through witness testimony and other evidence. The judge will decide the case, usually by the following day.

The decision ("judgment") will state who is entitled to possession (i.e., can the tenant stay or must he/she leave?), and any rent that is owed to the landlord. If the landlord does not prove that the tenant is at "fault" justifying eviction, and the tenant proves a valid counterclaim, it will constitute a defense to eviction if the damages awarded are greater than any rent owed, or if the tenant pays to the court the difference between what he/she owes the landlord and what he/she won on the counterclaim, plus court costs, within seven days of entry of judgment.

Again, if you have any questions regarding court procedures, time limits, possible defenses, or any other aspect of the eviction process, *seek legal advice* as soon as possible.

Q. Can the court give a tenant more time to move if the landlord wins the case?

A. If a tenancy has been terminated without fault of the tenant, the court has the discretion to delay the eviction ("stay the execution") and give the tenant time to move for up to six months (one year if the tenant is elderly or disabled). The tenant must continue to pay rent.

Q. Can the landlord or tenant appeal the case?

A. If a landlord or tenant loses his/her case in court, and has a valid claim or defense, he/she can appeal the case within 10 days of entry of the judgment. He/she should file a Notice of Appeal, and will be required to post an appeal bond unless the court determines that he/she cannot afford one. No eviction order will be issued until the expiration of the appeal period. Because of the technical nature of appeals, it is particularly important to seek legal advice or representation in such a situation.

Q. How are actual evictions done?

A. If the judge finds for the landlord and grants "possession" after any appeals, the tenant can be forcibly removed from the premises. The landlord must hire a deputy sheriff to perform the eviction, and the tenant is entitled to a minimum of 48 hours written notice before an eviction can actually take place. Landlords risk lawsuit and possible criminal penalties by trying to use any form of force themselves to have the tenant leave.

If the tenant's property remains in the premises after actual eviction, the landlord must have it moved into storage, where it must be held at least six months unless the tenant pays the moving and storage costs and retrieves the property.

II. A SUMMARY OF DO'S AND DON'TS FOR LANDLORDS AND TENANTS

1. As part of their rights to "exclusive possession" and "quiet enjoyment," tenants have a right to privacy. The landlord may enter the premises in emergencies, to show the premises near the end of the tenancy, and to make reasonable, announced inspections and repairs to the property. Landlords should not make unannounced visits or inspections except in the case of actual emergencies. A landlord should generally have the tenant's permission to enter because a violation of the right to privacy may result in civil liability for minimum damages of three months' rent (Massachusetts General Laws Chapter 186, Sections 14 and 15F). The tenant must, in turn, be reasonable about permitting entry at mutually convenient times. Landlords must provide reasonable notice for entry (24 hours minimum is suggested) except in cases of genuine emergency.
2. Tenants should read their lease carefully and make sure they understand it. Landlords are required to explain it to the tenants, and if tenants have any doubts or questions about any particular clause, they should seek competent advice.
3. Tenants cannot be required to pay for fuel for heat or hot water unless there is a written agreement to that effect. Tenants cannot be required to pay for electricity, natural gas or heating oil unless the rental premises are served by a separate meter that measures the electricity or gas consumption, or a separate oil tank, for those premises only (State Sanitary Code).
4. Landlords should have a written pet policy and tenants should know the terms of their tenancy agreement concerning pets. While a lease usually states clearly the rules concerning pets, a tenancy at will may be vague concerning this matter.
5. Landlords and tenants should conserve gas, water, electricity and other utilities whenever possible and in compliance with regulations set by the State Sanitary Code.
6. Tenants, as a safety precaution, may want to be protected against loss by purchasing renter's insurance. Except in cases of clear landlord negligence, tenants may be liable for personal damages resulting from an accident or theft.
7. Tenants should avoid letting the rent fall into arrears. If a tenant anticipates being unable to pay the full rent on time, he/she should consult with the landlord to try to work out an agreement for delayed payment; avoiding the landlord usually only makes the problem worse. Repeated nonpayment of rent leaves tenants vulnerable to possible eviction or non-renewal of the tenancy.
8. Tenants must give adequate notice of their intent to terminate a tenancy. If the tenant has a tenancy at will, he/she is required to give one full rental period's notice in writing (minimum 30 days, see "Eviction" above). Skipping out or failing to give proper notice may render the tenant liable for rent and other losses.
9. All agreements between individual tenants in a household (or between the tenant and sublessees or assignees) should be clear, in writing, and in accordance with the landlord's requirements for notification and/or approval of changes of tenants. In unrelated households, the departure of one or more residents can leave the others liable for extra shares of rent. A good idea is to have a housemate contract drawn up which specifies every household member's financial responsibility concerning the tenancy.
10. Tenants and landlords should make every effort to *get everything in writing and keep copies*. Should a dispute arise about the terms of the tenancy, the

condition of the apartment or house, any special arrangement with the landlord, or mutual agreements with fellow tenants, it is important to have written records as evidence. Oral agreements are seldom of much value in court, and in some cases are void and unenforceable.

11. Tenant unions are legal in Massachusetts. Their members are afforded certain limited protections (Massachusetts General Laws, Chapter 186, Section 18). Landlords may recognize, bargain with, and/or enter into agreements with tenant unions, although by law they have no obligation to do so, but they cannot retaliate against a tenant for forming or participating in a tenants' union.

12. If a rental property is sold during the duration of the tenancy, the new property owners must honor the tenancy unless the lease clearly states that it is terminated with the sale and purchase.

13. Water, sewer, and rubbish collection is the responsibility of the owner of the property. Payment of water and sewer should be made to the Town of Amherst Collector's Office. Payment of refuse and recycling collection is made directly to the contracted waste hauler. Note: Rubbish and recycling collection may be assigned to the tenant by the landlord in one-family and two-family homes. One "Town of Amherst" Vehicle Tag is provided to each household for the use of the Town of Amherst Sanitary Landfill and Recycling Center. Contact the Recycling Office (256-4049) for more information.

14. Landlords are required to obey regulations promulgated by the State Sanitary and Building Codes. It is a violation of Massachusetts law for a landlord to fail to disclose to a prospective tenant the existence of any condition amounting to a violation of law within the residence about which the landlord knew or should have known.

15. Landlords are encouraged to have on-site managers and/or a 24-hour answering service. At the very least, it is the landlord's responsibility to ensure that the name, address, and phone number of a responsible and available person is clearly posted in the unit or building.

16. Landlords are liable to tenants for injuries sustained due to the landlord's negligence, and landlords cannot avoid liability by disclaimer or tenant waivers (Massachusetts General Laws, Chapter 186, Section 15).

17. Landlords should notify tenants at will, preferably in writing, of any rent increase at least a full rental period (minimum thirty days) before such an increase is to go into effect, exactly as if terminating the tenancy without cause and starting a new one at increased rent.

18. Landlords must warn car owners personally or by signs before towing cars. They must call the police and report 1) where the car was towed, 2) the address of the property, 3) name of the landlord, 4) name of the towing company, 5) location of the storage lot, and 6) registration number of the vehicle. Failure to comply may make the landlord liable for all costs (Massachusetts General Laws Chapter 226, Section 120D).

19. Landlords must not attempt to forcibly evict any tenant, but must use the judicial process or face heavy fines and even jail. It is especially important to avoid taking other actions against tenants short of eviction such as failing to furnish utilities, locking them out, or affecting the tenants' "peaceful and quiet enjoyment of the premises." There are heavy penalties for such actions, which are clearly set forth in Massachusetts General Laws Chapter 186, Section 15F. All landlords and tenants should have access to either an attorney or housing professional on whom they can regularly rely and who knows the lease and general business practice.

20. Smoke detectors do save lives. State law requires their installation and their continued operation to be the responsibility of the landlord in buildings of six or more residential units. Questions concerning fire regulations should be directed to the town of Amherst Fire Department, North Pleasant St. (256-4080). Substantial fines may be levied per day against landlords for noncompliance.

III. HOUSING INFORMATION AND PROGRAMS

A. Rental Registration in Amherst

The Amherst Board of Health has adopted regulations regarding the registration of rental properties in the town, which became effectively July 1, 2003. Virtually all rental premises in the town, including rooms in private homes, must be registered with the town on a prescribed form by September 1, 2003 or upon a change in ownership or management of the premises. A fee of \$10 per unit must be paid, and notification information for maintenance and emergencies must be posted in a common area of the premises. Failure to register can result in a monthly fine. For further information, contact the Amherst Board of Health (256-4077).

B. Housing Discrimination Law and Grievance Procedures

It is unlawful to deny a person or family access to housing on the basis of race, sex/gender, creed, color, national origin, religion, marital status, sexual orientation, ancestry, age, presence or absence of children, disability or blindness, or the fact that the applicant receives public assistance or rental subsidy. It is lawful, however, for a landlord to ask a prospective tenant for credit and other references. In addition, a landlord who rents rooms or apartments in a two- or three-family unit where one unit is occupied by an elderly or infirm individual for whom the presence of children would constitute a hardship may be exempt from the provisions of state law regarding discrimination against families with children.

If you believe you have been unfairly refused housing in the Town of Amherst, you may call: the Massachusetts Commission Against Discrimination in Springfield (413) 739-2145), the Commuter Services and Housing Resource Center (545-0865), the Housing Discrimination Project (800-675-8309 or 539-9796), the UMass Student Legal Services Office (545-1995), or the Massachusetts Justice Project (800-639-1209).

C. Housing Subsidy Programs

The Amherst Housing Authority administers housing subsidy programs for persons and families with low or moderate incomes, for the elderly, and for handicapped persons. According to the bylaws of the Authority, it can only subsidize persons within the confines of the Town of Amherst. This means that while a person does not have to live within the town to apply for the subsidy, subsidies can only be granted to sites within Amherst. There is a substantial waiting list for housing subsidies, but interested persons are encouraged to apply. For further information contact the Amherst Housing Authority (256-8128). In addition, the Housing Allowance Program of Springfield (1-800-332-9667) provides limited subsidies for Amherst residents. See Appendix D for a list of subsidized units in the Town.

D. Tenants with Disabilities

In Western Massachusetts, the Stavros Center for Independent Living provides services and information to promote independent living for persons with disabilities. For further information contact the Stavros Center (256-0473).

If you have a disability, some additional information may be helpful to you in finding an accessible housing unit or adapting an existing one to meet your personal living needs. The Stavros Center is a resource for individuals seeking advocacy to obtain housing or information about available accessible housing. The Center also provides technical assistance to the public and private sector regarding accessibility and adaptability.

Further housing information for people with disabilities may be obtained through the Amherst Housing Authority.

E. Energy Conservation, Fuel Assistance, and Low-Cost Fuel

Fuel assistance is provided to all income-eligible households, subject to availability of funds. Franklin Community Action Commission, (413) 773-3421, serves tenants and homeowners who need fuel assistance in Hampshire County.

The Center for Ecological Technology (CET) is a non-profit, independent, energy and resource conservation organization located in Northampton. CET provides a full range of energy conservation services including a reduced-interest loan program for multi-family building (5 units or more) and free energy audits for renter-occupied apartments and houses. Call 586-4236.

The Hampshire Community Action Commission (HCAC) administers two weatherization programs and a low-income fuel-assistance program for tenants and homeowners. Fuel assistance is provided to all income-eligible households "subject to the availability of funds." The first weatherization program provides caulking, weather-stripping and other low-cost energy-saving materials plus installation training free to those who meet fuel-assistance income eligibility guidelines. The second program provides and installs major energy conservation improvements (attic or wall insulation, storm windows, etc.) free of charge. For weatherization programs, call 582-4236

The Mass Save program offers low-cost (\$10 or free to low-income families) energy audits to households in one- to four-unit buildings, including the installation of weatherization materials worth \$25. Households must be customers of either Western Massachusetts Electric Company (WMECO) or Berkshire Gas. Remember that any improvement tenants wish to make in response to a Mass Save audit must be done with the knowledge and permission of the landlord. For more information, call 1-800-632-8300.

The Pioneer Valley Oil Cooperative (PVOC) is a reduced-cost fuel service co-sponsored by CSHRC and the Center for Ecological Technology. The PVOC gives tenants, landlords, and homeowners the opportunity to purchase home heating oil below the prevailing dealer rate. The PVOC operates 12 months of the year with a variety of payment plans, service contracts and 24-hour emergency service. To make arrangements for membership, call CSHRC (545-0865) or CET (586-7350).

Alliance Energy, a consumer-owned energy cooperative, expects to launch a renewable electricity product. They can be reached by telephone: (800) 696-8009.

IV. SUMMARY OF RELEVANT STATE AND LOCAL LEGISLATION

A. Regulations Governing the Presence of Open Containers and Alcohol-Related Offenses

Alcohol-related offenses are common among students. Violations concerning alcohol are actively pursued by the police, and may be strictly enforced by the courts. At the same time, students remain unclear as to the contents and consequences of the laws. These factors impair the quality of student relationships with the town and leave many students with damaging criminal records every year.

1. It is a crime for a person over 21 years of age to purchase alcohol for a minor. Do not let a minor carry alcohol in your presence at any time. Purchasing alcohol for a minor is a crime, punishable by a fine of up to \$1,000, or six months in prison, or both (Massachusetts General Laws, chapter 138, section 34).

2. Possession of alcohol: If you are under 21 years of age, it is illegal to carry alcohol. You may be stopped by a police officer if you are carrying alcohol which is visible to the eye, or if the officer has probable cause to believe that a package you are carrying contains alcoholic beverages. An officer may stop you while you are walking from your car to your dorm, or in the lobby of your dorm. If you are caught possessing alcohol, the officer will confiscate the alcohol, and then either arrest you or give you a summons to appear at a hearing. The results of this hearing could be the filing of criminal charges. Violators are subject to a fine of up to \$50 (Mass. Gen. Laws c.138, s.34c).

3. Transporting Alcohol: If you are under 21 years of age, it is a crime to operate a motor vehicle containing alcoholic beverages, with the only exception being the accompaniment of a parent or legal guardian. Remember, even if a person of legal drinking age is also in your car or even holding the alcohol in his or her lap (and that person is not your parent or legal guardian) you, as the driver, may be held responsible and can be charged with transporting alcohol. If you are caught unloading alcohol from your vehicle or a person of legal drinking age is caught doing the same, and if you are the operator of the vehicle, you may be charged with transporting alcohol. Violators are subject to a fine of up to \$50 (Mass. Gen. Laws c.138, s.34c).

Remember: Even a \$50 fine is a *conviction*, and will leave you with a criminal record.

B. Keg Licensing Bylaw (Article II of the Bylaws of the Town of Amherst)

PURPOSE: To protect the health, safety and welfare of its inhabitants the Town of Amherst regulates the possession of kegs containing malt beverages, and the dispensing of malt beverages from kegs.

REQUIREMENT OF LICENSE FOR KEG POSSESSION: The Select Board of the Town of Amherst is authorized to issue keg licenses for the possession and dispensing of malt beverages in kegs within the Town of Amherst. A keg license shall be required for the possession of a keg containing malt beverage, and for the dispensing of a malt beverage from a keg, at any place other than a licensed establishment or a licensed activity.

PROHIBITION: Within the Town of Amherst, it shall be unlawful for any persons other than a licensee of a licensed establishment or activity to sell or dispense a

malt beverage from a keg, or to otherwise possess a keg, unless a person has been issued a valid keg license.

PENALTIES: Any person who violates this bylaw shall be fined in the amount of \$200 for a first offense and \$300 for a second or subsequent offense.

Restrictions on Short-Term Keg Licenses:

1. Licensee must be 21 years of age or older.
2. The term of the license shall be determined by the Police Chief.
3. Only the licensed number of kegs shall be kept on the premises.
4. License must be available for inspection at all times.

Procedures for Obtaining a Keg License:

1. License applications may be picked up between the hours of 7am and 3pm at the Town of Amherst Police Station.
2. When the applicant returns the completed license application to the Amherst Police Department, he or she must ask the officer in charge to schedule an appointment with the Chief of Police.
3. When the application is returned and an appointment is scheduled with the Chief, the department will conduct a background check on the applicant.
4. On the basis of the background check, the Police Chief may deny applications if: 1) the applicant has been arrested previously, or 2) the location for the keg has a record of having violated the terms of the Town's noise and keg bylaws.
5. The decision to approve or reject an application will be made by the Chief or his designee, and that information will be revealed to the applicant during the scheduled appointment with the Chief.
6. Final approval on the granting of the license requires the signature of the Town Manager.

The keg application procedure usually takes a minimum of 3-5 days to complete. Any questions on the bylaw should be directed to the Office of the Chief of Police (256-4011).

C. Guidelines for Gatherings and Parties

Host's Responsibilities

- Do not allow persons under 21 or intoxicated or disorderly persons to drink liquor at your party. Doing so may result in serious financial liability.
- Reduce noise level by keeping the party indoors, with windows and doors shut.
- Place trash containers around the area to prevent littering
- Keep an ear open for the phone and sound level. If neighbors call to complain, but are unable to speak directly with the host, they usually make the next call to the police.
- Periodically, monitor the noise level outside and try to keep your guests from gathering too close to the neighbors' windows.
- Cars parked in, or blocking driveways of other homes, businesses, etc. will be ticketed and/or towed upon complaint.
- After the party and at a decent hour, clean up the litter and contact your neighbors to thank them for their cooperation. If a problem arose, try to resolve it with the neighbor immediately so as to avoid ongoing disputes.
- If you're having an outside party, inform your neighbors. Provide them with

your name, phone number and a polite request to be called if the party becomes too loud.

- Police are not usually invited guests. An appearance by an officer means either a warning or a citation on the first visit. Although cooperation with the police does not guarantee that you will receive just a warning, lack of polite, sober cooperation will definitely assure you of the citation.

Guest's Responsibilities

- Do not drink alcoholic beverages when going to or from a party. Drinking alcoholic beverages outdoors in a public place is prohibited by local law.
- When arriving or departing, keep the conversation to a minimum.
- If you answer the phone while at a party, contact the host or determine if the caller is lodging a complaint. If you fail to do either, the next 'caller' will be a police officer.
- Respect the property, both personal and real, i.e., the boundary lines, of the host and his/her neighbors. Many neighbors complain of noise, litter, and vandalism.
- Do not treat the outdoors as your personal toilet! Most neighbors take serious offense at this behavior, and quickly notify the authorities. Arrests can be made for indecent exposure or disorderly conduct.

Statutes

1. Crimes against chastity, morality, decency and good behavior.

M.G.L. C.272E53 — Penalties for certain offenses.

"A person who is behaving or speaking in an offensive and disorderly way, and/or accosting persons of the opposite sex, and/or disturbing the peace, in either a public place or from within their own home, and/or guilty of indecent exposure may be punished by imprisonment for up to six months, or by a fine of up to two hundred dollars (\$200.00), or by both a fine and imprisonment."

2. Public Safety and Good Order

M.G.L. C.138E39 — Sale, delivery or furnishing alcoholic beverages to persons under twenty-one years of age; employment of persons under eighteen years of age.

"...whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under twenty-one years of age, whether for his own use or for the use of his parent or any other person...or who procures any such beverages or alcohol for a person under twenty-one years of age shall be punished by a fine not more than two thousand dollars or by imprisonment of not more than six months, or both."

M.G.L. C.138E34C — Persons under twenty-one years of age; operation of motor vehicles containing alcoholic beverages.

"Whoever, being under twenty-one years of age and unaccompanied by his parent or legal guardian, knowingly transports or carries on his person any alcohol or alcoholic beverages shall be punished by a fine of not more than fifty dollars (\$50.00); provided, however, that this section shall not apply to any person between the ages of eighteen and twenty-one who knowingly transports or carries on his person alcohol or alcoholic beverages in the course of his employment. A police officer may arrest without a warrant any person who violates this section. A conviction of this section shall be reported

to the registrar of motor vehicles by the court if, at the time of the violation, the defendant was operating a motor vehicle upon a public way or a way to which the public had a right of access as a invitee or licensees, and the registrar may suspend the individual's license for up to three months."

D. Prohibition of Open Containers of Alcohol

Article II of the Bylaws of the Town of Amherst states:

"No person shall consume any alcoholic beverage nor possess or transport any open can, bottle or other container containing any alcoholic beverage outdoors on any Town street, sidewalk, way, and public property including but not limited to parking lots, parks, school playgrounds, recreation areas or conservation areas. Violation of this section shall be punishable by a fine of \$50 for each offense."

E. Unlawful Noise

Article II of the Bylaws of the Town of Amherst states:

"It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose or the health or safety of others within the Town of Amherst. The following acts are declared to be loud, disturbing, injurious, unnecessary and unlawful noises in violation of this section, but this enumeration shall not be exclusive, namely:

A. Radio, Phonograph, Musical Instruments and Television. The playing of any radio, phonograph, television set, amplified musical instruments, loudspeakers, tape recorder, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital or other type of residence, or in any office or of any persons in the vicinity.

B. Shouting and Whistling. Yelling, shouting, hooting, whistling, singing or the making of any other loud noises on the public streets, between the hours of 11:00 p.m. and 7:00 a.m., or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital or other type of residence, or in any office or of any persons in the vicinity.

C. Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.

D. Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.

§2. — *Exemptions.* None of the terms or prohibitions of the previous section shall apply or be enforced against:

- a) Emergency Vehicles. Any police or fire vehicle while engaged in necessary emergency business.
- b) Highway and Utility Maintenance and Construction. Necessary evacuation bridges, streets, or highways, or any public utility installation by or on

behalf of the Town, or any public utility or agency of the State of Massachusetts.

c) Public Address. The reasonable use of amplifiers or loud speakers for public addresses which are non-commercial in nature.

d) Noise caused by agricultural, farm-related, or forestry-related activities as defined by M.G.L. Chapter 128, Section 1A, as amended from time to time, including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.

§3. — *Penalties*

Any person or persons found violating the provisions of Section 1 of this bylaw shall be punished by a fine of not less than one hundred dollars (\$100.00). The second violation of this bylaw within 12 months after the last violation shall be punished by a fine of not less than two hundred dollars (\$200.00). Subsequent violations within 12 months after the last violation shall be punished by a fine of not less than three hundred dollars (\$300.00). Each such act which either continues or is repeated more than one-half (1/2) hour after issuance of a written notice of violation of this bylaw shall be a separate offense and shall be prosecuted as a separate offense. If the violation occurs on the premises of rental property which has a non-resident owner, then the owner must also be notified in writing that the violation has occurred.

§4. — *Other Remedies*

A. If the person or persons responsible for an activity which violates Section 1 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

B. If the person or persons responsible for an activity which violates Section 1 can be determined, any person or persons who violate Section 1 of this bylaw may be arrested without a warrant, provided that the violation occurs in the presence or view of any officer authorized to serve criminal process.

F. Regulations Governing Refuse Collection and Recycling

The Town of Amherst has at-the-house collection of household refuse for anyone living in a one-, two-, three- or four-unit residential dwelling. Landlords are responsible for the fee payment to the town. However, the State Sanitary Code permits the owners of one- and two-unit rental properties to bill the tenants directly for refuse collection. The tenants of these units may be responsible under the terms of their lease for the full cost of this service. For tenants in apartment complexes or buildings with three or more units, refuse collection is paid for by the landlord.

The Town of Amherst Board of Health Regulations require recycling of the following materials: Mixed paper (including corrugated cardboard, newspaper/inserts, white and colored office paper, computer paper, magazines/catalogs, brown paper bags, boxboard) and Mixed Containers (glass bottles/jars, all colors and sizes, aluminum, tin/steel cans and lids, all plastic bottles, jars, tubs, and plastic microwave trays and containers, milk and juice cartons and boxes).

A recycling chart is available from the Public Works Office at 586 S. Pleasant Street.

All residents of Amherst are also eligible for coupons good for disposal of one car load or small pickup load of bulky refuse such as a stove or tire at the town landfill. Questions about the refuse collection options, coupons, fees and recycling should be addressed to the Solid Waste/Recycling Office (256-4049), Public Works Office (256-4050) or the Town Manager's Office (256-4004).

G. Bed and Breakfasts

The Town has additional regulations governing bed and breakfast establishments. Questions regarding these regulations should be directed to the Inspection Services Department (256-4030).

If you have any questions in general regarding Town regulations, please direct them to the Town Manager's Office (256-4004) for either advice or proper referral.

V. APPENDICES

APPENDIX A: SUMMARY OF MASSACHUSETTS GENERAL LAWS

The following *extracts* from some of the laws governing the landlord-tenant relationship are for *general reference only* and are no substitute for consulting an attorney or housing/consumer office for detailed advice.

CHAPTER 93A

Chapter 93A is the Massachusetts Consumer Protection Act. It includes specific regulations (940 Code of Massachusetts Regulations/CMR/Section 3.17) which address the landlord-tenant relationship. Tenants who believe they have been victims of unfair or deceptive practices may challenge those practices using Chapter 93A.

Tenants who wish to bring a claim using Chapter 93A should do so in a "demand letter" after consulting an attorney or the Hampshire County Consumer Protection Agency (586-1597). Such a demand letter should be addressed to the landlord in question, describe violations of local, state, and/or federal laws and/or regulations, and demand that the landlord act responsively to the complaint within thirty days or face legal action in the nearest District Court in the amount of \$25 per violation or actual damages, whichever is the greater. Refusal to be responsive to certain claims made under Chapter 93A may subject a landlord to court claims for treble damages.

CHAPTER 111

SECTION 127L. If a building is in violation of any health or safety regulation to an extent that may endanger or materially impair the health, safety, or well-being of the occupants, and if the landlord has proper written notice of such defect from an appropriate authority, the landlord must begin or contract to repair the defect within five days of receiving such notice and substantially correct the defect within fourteen days unless a shorter time has been ordered by the court or the appropriate authority. If the landlord fails to do so, the tenants may have the repairs made and pay for them or pay reduced rent and vacate the premises within a reasonable time. If tenants pay for the repairs, they may withhold up to four months' rent per twelve month period. Tenants may combine with other tenants in a unit or complex in making the repairs and computing the four months' rent so long as all the tenants involved were affected by the defect. The tenant, in turn, must permit the landlord access to make repairs and may not deduct an excessive or unreasonable amount from the rent. (The criteria for unreasonableness shall include, but are not limited to, the alternatives available to the tenant at the time the violation was first reported, the urgency of the need to repair, and the quality and cost of the work done.) The tenant may not invoke this section if he or she caused the defect. The landlord cannot require the tenant to make the repairs, but both parties may agree to that course of action.

Any waiver of this section in a lease or other rental agreement shall be void.

CHAPTER 186

SECTION 11. In leased tenancies a landlord may begin eviction proceedings if rent is not paid after a fourteen-day Notice to Quit has expired. However, after such proceedings are begun the tenant may stop the proceedings by paying all rent then due, with interest and legal fees. If the failure to pay rent resulted from delay caused by a governmental agency in the delivery of a subsidy or

rental payment, and if the appropriate agency pays all rent, interest, and legal fees within seven days, the court will not continue with the eviction.

SECTION 12. Tenancies at will may be terminated for any reason by either landlord or tenant by written notice of thirty days or one full rental period, whichever is longer. In cases of nonpayment of rent, the landlord may begin eviction proceedings after a fourteen-day Notice to Quit has expired. If the tenant has not received a similar notice within the previous twelve months, he/she may stop the proceeding by paying all rent then due within ten days of receiving the notice. If failure to pay rent resulted from delay caused by a governmental agency in the delivery of a subsidy or rental payment, and if the appropriate agency pays all rent, interest, and legal fees within seven days, the court will not continue with the eviction.

SECTION 14. A landlord may be criminally liable for a fine of not less than \$25 or more than \$300 or imprisonment of up to six months, and civilly liable for up to three months of rent plus attorney's fees, if he/she:

- intentionally fails to supply heat, hot water, gas, electricity or other utilities or services
- when required by law or lease to do so (except in cases of interruption of services caused by necessary repairs or by causes beyond the landlord's control);
- transfers utility accounts to tenant's name without informing the tenant;
- intentionally interferes with the tenant's quiet enjoyment of the premises;
- attempts to evict a tenant without judicial process.

Any waiver to the contrary in a lease or rental agreement shall be void.

SECTION 15B. 1) A landlord may enter the tenant's premises to make repairs or to inspect the premises for damages during the last thirty days of tenancy or after either party has given notice of termination. A landlord may also enter in accordance with a court order or in the event that the premises appear to have been abandoned. At or before the commencement of a tenancy, the landlord may require payment of the first and last month's rent, a security deposit equal to one month's rent, and the cost of purchase and installation of a key and lock. The tenant shall not be required to pay any interest or penalties on unpaid rent until the rent is thirty days overdue. The security deposit continues to be the property of the tenant and shall not be co-mingled with the landlord's assets, nor shall it be subject to claims by the landlord's creditors.

2) The landlord shall give the tenant a written receipt for any security deposit or last month's rent received. Upon receipt of the security deposit or within ten days of the commencement of the tenancy, the landlord shall furnish to the tenant a separate signed written statement of the present condition of the premises, including a list of any damages or violation of the Sanitary Code then existing. If the tenant submits a separate list of damages to the landlord, the landlord must, within fifteen days, return either a signed statement of agreement or a clear statement of disagreement.

3) Any security deposit received shall be deposited in a separate, interest-bearing bank account beyond the claim of the landlord's creditors. Within thirty days of paying the deposit the tenant shall receive a receipt indicating the name and location of the bank and the account number. The landlord shall pay interest on the security deposit at the rate of either 5 per cent per year or the bank's prevailing interest rate, beginning with the first day of tenancy. The interest shall be payable at the end of each year, or in the event that the tenancy termi-

nates before the anniversary date of the tenancy, the landlord shall pay all interest accrued within thirty days of termination. At the end of each year of tenancy the landlord shall send the tenant the interest accrued or a notification that the tenant may deduct the interest from the following month's rent. If the tenant receives no such notice or payment after thirty days of the end of each year's tenancy, he or she may deduct the interest from the next month's rent.

4) Within thirty days of the termination of the tenancy, the landlord must return the security deposit and interest due, deducting only for unpaid rent, unpaid increase in real estate taxes (only where tenant's rental agreement contained tax escalator clause), or a reasonable amount to repair any damages caused by the tenant, reasonable wear and tear excluded. In the event of any deduction for damages, the landlord must submit within thirty days an itemized and detailed list of damages, along with written evidence to verify the costs of repairs. No amount shall be deducted to repair damages already listed in the statement of condition agreed upon at the beginning of the tenancy.

SECTION 18. Any landlord or agent thereof who threatens or takes reprisals against any tenant for joining or organizing a tenant union, or for complaining to appropriate authorities of actual or alleged violations of health codes, building codes or other laws and regulations relating to residential housing shall be liable to the tenant for not less than one month's rent nor more than three months' rent or the actual damages to the tenant, whichever is greater, including reasonable attorney's fee. Any attempted eviction (except for nonpayment of rent), rent increase, or other change in the terms of the tenancy within six months of the tenant's complaint or tenant union activity shall constitute a presumption of reprisal, rebuttable by the landlord.

SECTION 19. If a tenant or appropriate authority gives the landlord written notice of a defect in the premises not caused by the tenant or tenant's invitees, and if the landlord does not take reasonable care to correct the defect, the landlord shall be liable for any injury resulting from the failure to repair the defect. Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

APPENDIX B: SUMMARY OF KEY STATE SANITARY CODE VIOLATIONS

The following excerpts are for general reference only. It is important to check the Sanitary Code for exact wording and more complete details. Should you have questions about the use and interpretation of the code, consult the Amherst Health Department, an attorney, or other housing agencies offering landlord-tenant information services.

KITCHEN: Reg. 410.00; 410.300; 410.251

The owner shall provide a kitchen sink, stove and oven in good repair (except where occupant is required to do so under the terms of the lease), and space facilities for the installation of a refrigerator.

BATHROOM: Reg. 410.50; 410.180-190; 410.252

The owner shall provide toilet, wash basin, one electric fixture, and bath or shower facilities in room not used for living, sleeping, cooking or eating, and which affords privacy to the person within and has a door capable of being closed.

The owner shall provide facilities for heating hot water and shall supply hot water (110 degrees F minimum, 130 degrees F maximum) unless the occupant is

required by lease agreement to provide fuel for operating hot water facilities.

WATER AND SEWER CHARGES: Reg. 410.180; 410.000; 410.310

The State Sanitary Code Regulations cite the requirements of the owner to provide for water supply and a sanitary drainage system. It is the opinion of the Department that concurrent with the owner's need to supply water is the requirement that the owner also pay for it.

HEATING FACILITIES: Reg. 410.200-201

The owner shall provide heating facilities in good working order, and shall provide heat in every habitable room to temperature of at least 68 degrees Fahrenheit between 7:00 A.M. and 11:00 P.M. and at least 64 degrees Fahrenheit between 11:01 P.M. and 6:59 A.M. every day except during the period from June 15 to September 15, both inclusive (unless the occupant is required to provide fuel for operating heating facilities under a written agreement).

LIGHTING AND ELECTRICAL FACILITIES: Reg. 410.250; 410.253-254; 410.255

For each habitable room other than a kitchen the owner shall provide two wall outlets or one outlet and one electrical light fixture; each habitable room shall also have window glass which is equal to an area of at least 8% of the entire floor space of that room.

For each kitchen the owner shall provide one electric light fixture and two convenience outlets; each kitchen of over 70 square feet shall have window glass equal to an area of at least 8% of the floor space.

The owner shall provide the facilities to light all hallways and common areas, and, except for a three- or fewer unit dwelling where otherwise agreed to in writing, he/she shall provide the bulbs and electricity to light such areas.

INSTALLATION AND MAINTENANCE OF FACILITIES

Reg. 410.350-352

The owner shall maintain in good working order all facilities not installed by occupant.

ASBESTOS MATERIAL USED AS INSULATION OR COVERING ON PIPES, BOILERS, OR FURNACES

Reg. 410.353

Asbestos insulation or covering material must be maintained intact so as not to allow release of asbestos dust from holes, cracks, etc. Defective asbestos insulation or covering must be repaired or removed by methods outlined in Code subject to the approval of the Board of Health.

SECURITY

Reg. 410.480

Every dwelling and dwelling unit shall be capable of being reasonably secured against unlawful entry and shall be fitted with an operating locking service.

Reg. 410.480

If there are more than three dwelling units per building, the main entry door shall be equipped with an automatic locking device unless a variance has been granted.

SMOKE DETECTORS

Reg. 410.482

During any inspection it conducts, the Board of Health must take note of whether smoke detectors required by law are in place, and must notify the Fire Depart-

ment if they are not. The Fire Department is the final authority as to compliance with all smoke detector requirements.

STRUCTURAL ELEMENTS

Reg. 410.500-501

Each owner shall maintain a rodent-proof, water-tight, weather-tight apartment to tenants. The apartment should be free from chronic dampness. The owner shall maintain the interior structure free from holes, cracks, loose plaster or other defects which render the area difficult to keep clean or which constitute an accident hazard or insect or rodent harborage.

Windowpanes must be maintained in an unbroken condition and weather-tight. All openable, exterior windows must have an operable locking device.

INSECT, RODENT AND SKUNK CONTROL

Reg. 410.550; 410.533

The owner of a dwelling containing two or more dwelling units shall maintain it and its premises free from all rodents, skunks, cockroaches, and insect infestation and shall be responsible for exterminating them.

When the dwelling consists of only one dwelling unit (e.g., a single-family house), the tenant shall be responsible for extermination.

The owner shall provide screens for all window and doorways opening directly to the outside. Window screens and screen doors shall be tight fitting so as to prevent the entrance of insects and rodents.

RUBBISH AND GARBAGE STORAGE AND DISPOSAL

Reg. 410.600; 410.602

The owner of any dwelling that contains three or more dwelling units, the owner of any rooming house, and the occupant of any other dwelling place shall be responsible for providing adequate garbage receptacles and for providing for some means of final collection or disposal of the garbage.

CURTAILMENT OF SERVICE

Reg. 410.620

No owner or occupant shall cause any required services, facility, equipment or utility to be shut off or removed from an occupied dwelling unit except for necessary repairs or during emergencies. The occupant shall have reasonable notice of anticipated curtailment of service.

REQUEST FOR INSPECTION

Reg. 410.820-822

The Health Department shall conduct inspections upon request regardless of whether the person requesting the inspection has previously notified the owner of the conditions within the dwelling. All interior inspections shall be conducted while the occupant is present unless the occupant makes other arrangements.

DWELLINGS NOT IN COMPLIANCE; ORDERS; SERVICE AND CONTENT

Reg. 410.830-833

If a building does not comply with the provision of the State Sanitary Code Article II, the owner shall be required to make a good faith effort to correct the violation within a specified period of time.

If a building is judged unfit for human habitation, it may be condemned by the Board of Health.

An order is sent to the person who is responsible for the violation.

The order shall include a statement of the violation and the way to remedy it. The person to whom the order is directed will be given a reasonable time for repair and will be informed of the right to request a hearing.

HEARING

Reg. 410.850-855

The tenant or the landlord may request a hearing before the Board of Health no later than 7 days after the order was served. There shall be a hearing no later than 30 days after unless the person asking for the hearing requests an extension.

APPEAL

Reg. 410.860

If the final decision of the Board is unsatisfactory, the tenant or the landlord may appeal it in any court of competent jurisdiction, as provided by the laws of Massachusetts.

LEAD POISONING PREVENTION AND CONTROL ACT

Households with children under the age of 6 are at risk from lead poisoning and are protected by the law. Persons wishing to know more information about the Act's specific requirements should call the Amherst Inspection Services Department (256-4077). It is illegal for owners/agents to deny rental housing to families with children based on the presence of lead paint in the unit.

APPENDIX C: MEDIATION PROGRAMS

Programs for conflict/dispute resolution are available, in many cases free-of-charge, to renters, owners and roommates. When the parties involved in a dispute agree to enter mediation, a session will be scheduled at a time convenient to all parties. The mediators, sometimes in teams of two, listen to all points of view and discuss possible solutions with the parties. When a resolution is reached the parties sign an agreement stating the settlement terms; each party is given a copy of the agreement. Mediation gives people an opportunity to talk about issues fully and directly, and to reach an agreement on their own. Programs are available through the University of Massachusetts Commuter Services and Housing Resource Center (545-0865) and the Mediation and Training Collaborative (774-7469).

When landlord-tenant disputes cannot be settled by mediation or mutual agreement, there is usually the remedy of legal action. Most claims arising out of the landlord-tenant relationship can be resolved by the simplified procedure of Small Claims in the appropriate District Court or the Western Housing Court. Mediation is also provided in these courts prior to trial.

APPENDIX D: SUBSIDIZED APARTMENT COMPLEXES IN AMHERST

*denotes complexes owned and operated by the Amherst Housing Authority

The Amherst Housing Authority (AHA) administers low and moderate income housing at several sites listed below. Complete information on subsidized housing programs and services is available by calling the Amherst Housing Authority (256-8128).

* **Ann Whalen Apartments**, 33 Kellogg Ave. Housing for the elderly. Thirty one-bedroom units; four units are adapted for wheelchair use.

* **Chestnut Court**, East Pleasant St. Housing for the elderly. Thirty one-bedroom units; two units are adapted for wheelchair use.

* **Jean Elder House**, 9 Chestnut St. Congregate housing for the elderly for 23 residents.

* **John Nutting Apartments**, Chestnut Court. Congregate housing for the disabled for 16 residents.

* **Watson Farm**, 639 Main St. Federally subsidized family housing in 3 one-bedroom units, 4 two-bedroom units, 4 three-bedroom units and 4 four-bedroom units.

Clark House, Lessey St., 256-0141. A privately owned housing complex with low-, moderately-, and market-priced apartments. Eighty units for the elderly, 19 units for families, and 5 barrier-free apartments for the handicapped.

Puffton Village IV, North Pleasant St., 549-0145. A federally subsidized housing complex for low- and moderate-income families and individuals; one-, two-, and three-bedroom apartments.

Rolling Green Apartments, Route 9. A privately owned housing complex with low-, moderately-, and market-priced apartments; one-, two-, and three-bedroom apartments available.

Village Park Apartments, East Pleasant St., 549-0099. A HUD 236 federally subsidized complex for low- and moderate-income families, elders, and individuals; one-, two-, and three-bedroom apartments.

There are also several low- to moderate-income housing units scattered throughout the town. Call the Amherst Housing Authority or the Housing Allowance Program (1-800-332-9667) for more information.

APPENDIX E: LOW-COST/NO-COST HOUSING (WORK FOR RENT)

Homesharing, 428 Student Union, UMass. 545-4466. Homesharing is a program that matches low- and moderate-income tenants and students who wish to exchange part-time services (companionship, elder care, child care, grocery shopping, etc.) for room and/or board in homes scattered throughout Hampshire County. By appointment only.

APPENDIX F: STATEMENT OF CONDITION OF PREMISES

as required by Ch. 186, Section 15B, Massachusetts General Laws

TO THE TENANT:

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

(Include inventory of all appliances, furniture, carpeting, screens and storm windows and doors, plumbing fixtures. State condition of walls, ceilings, floors, windows, doors).

signature of landlord/agent/sublettor and date

signature of tenant/subleasee and date

APPENDIX G: SAMPLE NOTICE TO QUIT [NON-PAYMENT OF RENT]

To: *(name, address, date)*

Your rent being in arrears, you are hereby notified to quit and deliver up in fourteen days from receipt of this notice the premises now held by you as a tenant, namely: *(address)*. The acceptance of any payment of rent by the Landlord hereafter shall be accepted under protest and without waiving his/her rights under this eviction notice. According to Massachusetts General Laws, Chapter 186, Section 12. "If you have not received a notice to quit for nonpayment of rent within the last twelve months, you have a right to prevent termination of your tenancy by paying or tendering to your landlord, your landlord's attorney or the person to whom you customarily pay your rent the full amount of rent due within ten days after your receipt of this notice."

Amount of rent due: \$ _____

Rental period for which due: from _____ to _____

DO NOT FAIL, or I shall take due course of law to eject you from the same.

(Landlord/Agent)

APPENDIX H: MODEL RECEIPTS

MODEL RECEIPT FOR ACCOUNTING OF TENANT'S SECURITY DEPOSIT

Tenants must be furnished with this information within 30 days after tenancy begins:

Today's date _____

Dear _____

Massachusetts General Laws, Chapter 186, Section 15B, requires me to give you a receipt with information regarding the status of your security deposit.

Your security deposit for the amount of \$ _____ (not to exceed the amount of one month's rent) has been deposited in an escrow account in a Massachusetts bank.

Bank Name _____

Bank Address _____

The account number: _____

