

Notes from the MAR Legal Hotline

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Q. What is my responsibility as a homeowner for snow removal?

- A.** All Massachusetts property owners have a duty to use “reasonable care” for the protection of visitors and are legally responsible for the removal of snow and ice from their property. This duty extends to Landlords, who are responsible for snow removal at their rental properties. The sanitary code requires property owners to keep all means of egress free from obstruction. Landlords must maintain all means of egress in a safe, operable condition at all times. This includes keeping all exterior stairways, fire escapes, egress balconies and bridges free of snow and ice. These obligations cannot be negated by any lease provision.

The landlord may only require the tenant to remove snow and ice only when a tenant has an independent means of egress not shared with other tenants, and the requirement is contained in a written lease agreement. Therefore, in situations where there is a single or multi-family home and the occupant has its own exclusive means of egress, be sure to review the lease to determine who is responsible for keeping exclusive means of egress clear of snow. However, placing this responsibility on the tenant may still not absolve the landlord, as the owner of the property, from liability if someone suffers a personal injury on the property due to snow and ice.

Every property owner should take care to do the following: (1) review insurance policies to be sure that there is adequate coverage; (2) determine whether contractors or others hired to remove snow and ice have insurance; and (3) be vigilant when there is newly fallen snow, melting or freezing. If complete clearing is not possible, warning signs may be appropriate. Clients that have specific questions regarding their duty to clear snow should consult their attorney.

Q. Is a landlord required to screen prospective tenants?

- A.** No, Landlords have no affirmative duty requiring them to screen prospective tenants. However, it is in a landlord’s and their other tenants’ best interests to do so. Landlords may be liable for tenant violations of local bylaws and ordinances regarding noise or other disturbances, as well as for damages or injuries to other tenants and neighbors caused by problem tenants. A Landlord may face legal liability if: s/he failed to discharge a duty of care owed to the victim, the harm was reasonably foreseeable, and the negligence was the proximate or legal cause of the victim’s injury.

A best practice is to begin the rental process by having prospective tenants complete a rental application containing basic, non-discriminatory personal information. This form can be found in the MAR Forms Library. Landlords may also choose to complete other screenings such as credit, criminal background, and sex offender registry checks, as well as requesting references from past landlords. A landlord should make sure to get the appropriate consent from a prospective tenant prior to performing any screening.

When all screenings are complete, a landlord must assess each prospective tenant individually. For example, a landlord cannot automatically disqualify all applicants with criminal or sex offender records. If a landlord intends to deny a prospective tenant because of their criminal record, they must provide them with certain information about the denial and an opportunity to correct errors in their record. Prior to undertaking any policy regarding tenant screening, it is advisable that the landlord and/or property manager consult with an attorney to mitigate the risk of liability.

Q. What do I need to know about the new tax on short-term rentals?

A. The new law expands the state's hotel and motel tax to include the short-term rental of homes (condominiums, single family, multifamily, etc.). Massachusetts is one of the last states to adopt this type of tax. The tax applies to all rentals for a period of 31 days or less, regardless of whether the rental is for recreational, personal, or business use. At the insistence of MAR, the new law only applies to short-term rentals, meaning ordinary tenancies, such as an annual lease or a tenancy-at-will, are not covered by this bill.

The short-term rental rate varies by locality and is the total of the following rates:

- State: 5.7%
- Local: up to 6% (Boston 6.5%)
- Cape Cod & Islands: includes additional 2.75% to fund Cape Cod and Islands Water Protection Fund
- A community impact fee of up to 3% may be assessed locally on professionally managed properties (Owners of two or more units in one town).

The law applies to all rental contracts that were signed on or after January 1, 2019 for stays on or after July 1, 2019. We anticipate that the Department of Revenue will issue guidance on how to handle the tax on bookings made on or after January 1, 2019.

Please see <https://www.marealtor.com/members/legal-resources/short-term-rentals> for more information and important documents.

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