

NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

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Q. Is requiring a full year's worth of rent legal?

A. No, prepaid rent is a violation of the Massachusetts security deposit statute, Massachusetts General Laws Chapter 186, Section 15B. The statute prohibits a lessor from requiring a tenant to pay any amount in excess of:

1. First month's rent;
2. Last month's rent at the same rate as first month's rent;
3. Security deposit equal to first month's rent; and
4. The cost to change the lock and key.

While the question often arises in the context of a prospective tenant offering to pay rent in advance, these situations would likely still be a violation of the statute. Generally, a prospective tenant may feel the need to make such an offer to a lessor in order to secure a property they would not otherwise be approved for. Although the landlord may not be making the request for pre-paid rent, the end result is the same.

To stay within the parameters of the law, Massachusetts landlords should never accept rent in advance, regardless of whether the tenant offers, or the landlord demands it.

Q. I am trying to downsize my filing cabinets – what records am I required to maintain?

A. Many of the “core documents” to a real estate transaction have retention requirements codified in regulations:

Agency Disclosure: 254 CMR 3.00 requires brokers to retain the Massachusetts Mandatory Licensee-Consumer Relationship Disclosure, as well as Consent to Dual Agency Disclosures and Designated Agency Disclosures for a period of three (3) years from the date of the notice.

Escrow records: 254 CMR 3.10(b) requires brokers to maintain records of all funds held in their escrow accounts. Such records should include the date the money was received, the source of the funds, the date the funds were deposited, check number, the date of

withdrawal, and “other pertinent information concerning the transaction ... and to whom the money belongs.” Copies of checks deposited into and withdrawn from the escrow account should be maintained for three (3) years from the date of issuance.

Lead Paint: 24 CFR § 35.175 requires brokers to retain the Lead Paint Form for three (3) years. HUD recommends maintaining lead paint notification and disclosure forms, as well as inspection, remediation and, maintenance records indefinitely due to the liability associated with lead paint.

Rental Documents: 254 CMR 7.00 (2) requires the following items to be retained for a period of three (3) years: the Tenant Fee Disclosure, from the date on which the notice was provided; “all rental listings and written documents that demonstrate the availability of an apartment at the time it is advertised for rental” from the date on which the apartment was rented; and “a copy of any check, money order and written cash receipt for any fees, deposits or payments made by a prospective tenant or actual tenant” from the date of issuance.

Regardless of the specific retention requirements noted above, it is a good idea to keep all transaction documents for seven (7) years. This includes, but is not limited to: listing agreements, buyer representation agreements, purchase contracts, and communications with the client(s) and other broker(s). The statute of limitations for most contract actions is six (6) years, so it is important to retain documents for at least this long to protect your interests in any potential lawsuit. Certain documents, such as corporate records, partnership agreements, audit reports, general ledgers, tax returns and deeds should be kept permanently. In most cases, it is acceptable to store these documents electronically, as long as you are safely and securely backing up all of your data. Brokerages should work with an attorney and/or accountant to develop and maintain a record retention policy for their office(s).

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