

Help! My Tenant Wants to Use My Rental for Their Business

Somerville Ends Eviction Moratorium; Sets Rules for Tenancy Rights Notifications

### Returning to In-Person Events: Headwinds and New Formats

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#### LETTER FROM THE EXECUTIVE DIRECTOR

### **Session End**

Our Letter from the Executive Director for August 2022 recaps a very busy July: The 192<sup>nd</sup> legislative session closed, PayPal blocked free rent payments and we contributed to three news stories.



July looks almost frenetic in retrospect, despite MassLandlords reducing our event frequency for the

summer. The 192<sup>nd</sup> legislative session drew to a close, bringing with it a flurry of policy activity. We also were active participants in the payments and water heating industries. Numerous member services were improved.

Massachusetts operates on a two-year session, which at time of writing was scheduled to end in July. This means all bills proposed January 2021 either passed into law or failed. Several newsworthy political events took place.

<u>Chapter 107 of the Session Acts of 2022</u> permanently extended the requirement to give a <u>state form</u> to a renter during a nonpayment eviction. MassLandlords' proposal for <u>civil asset forfeiture reform</u> was engrossed by the senate in a floor vote of 31 to 9. We also testified at the Boston <u>Rent Stabilization Advisory Committee</u> owners session. The Boston RSAC will be filing a home rule petition to have local rent control in the 193<sup>rd</sup> legislative session. We will strongly oppose it.

PayPal announced that they would <u>begin blocking</u> rent payments from renters using the "send money to a friend" option. This effectively mandates the 3% PayPal fee. We have expected this for a long time. RentHelper, a spin-off from MassLandlords that took outside investment, details PayPal's changes.

Zero-emissions water heating got a boost when we met with Rheem, who, along with A.O. Smith and Bradford White, provides hybrid heat pump water heaters. We shared member feedback about the difficulty of finding plumbers ready to recommend hybrid systems. All plumbers are familiar with gas, but few realize how much better the hybrids are in every respect (cost, emissions, reliability). Rheem outlined several actions they would take, including website upgrades, to make it easier for MassLandlords members to find ready plumbers.

Member services at MassLandlords.net received lots of small boosts. We cycled our <u>Home Depot savings program</u> phone number. We released a video on our <u>Certification explainer</u> to share with renters. We also published a <u>welcome video on our Spanish language</u> site. This site may soon be unmothballed to begin taking memberships. Finally, business updates will switch to a recorded video format. A page to watch these will be forthcoming.

We were grateful to share the landlord perspective via two media appearances and one background interview last month. WBUR asked us about rental assistance and high rents. GBH also wanted to know what can be done about high rents via their "<u>priced out</u>" series. And WCVB took background about the FBI's advisory against craigslist scams.

MassLandlords is an enormously valuable service to owners, managers and service providers of rental housing. Please join as a member, become a property rights supporter or increase your level of support.

Sincerely, Douglas Quattrochi Executive Director MassLandlords, Inc. Point your camera app here to read more online.



### Help! My Tenant Wants to Use My Rental for Their Business

By Kimberly Rau, MassLandlords Inc.

### Your tenant wants to sell something from their rental, run a daycare, start growing plants. Should you let them?

#### A survey has shown that

one in three Americans have some form of side hustle, that is, an extra source of income in addition to their full-time job (or jobs). For some, this means participating in our growing gig economy: picking up groceries for Instacart or takeout for DoorDash, driving for Uber or Lyft, or freelancing in any number of industries.

Side hustles aside, a growing number of Americans are working from home. Some offices went fully remote during the pandemic and stayed that way (or haven't fully moved back in-office yet). Other people left their office jobs and found full-time remote work. Many of these jobs only require a strong internet connection and a good computer (or, in the case of Lyft and the like, willingness to put some extra wear and tear on your vehicle).

But what happens when your tenant wants to use their home as their business headquarters for something that may cause more wear and tear on the unit, or invite additional people into the home? Is this legal, and, if so, do you have to allow it? *Should* you allow your tenant to use their rental home for their business?

In this article, we'll look at the requirements you and your tenant may face if they open a home business out of their rental, as well as examine the pros and cons of different types of popular home businesses. There's no one-size-fits-all answer to this question, but with a little guidance, you and your tenant should be able to come to an understanding.

### QUESTION 1: IS OPERATING A HOME BUSINESS LEGAL?

If the business itself is legal, it's usually considered lawful for someone to operate a home business, whether they own or rent their home.

For instance, Massachusetts requires any home daycare to be licensed, regardless of size. If your tenant is new to the state, they may be unaware of this, as some other states allow daycares to be unlicensed as long as the number of children stays under a certain number. In Massachusetts, there are also limits to the number of children (including the provider's own) that can be in the daycare.

There may be local laws in effect as well. Even in states where marijuana use is legal for recreational purposes, grow operations may be still be illegal. Make sure you understand the laws before approving anything.

However, that doesn't mean that home businesses can or should be a free-for-all. Your municipality may have its own regulations preventing your tenant from opening shop. An ordinance filed at the end of 2021 seeks to expand Boston's "cottage food" law, which would make it easier for bakers to sell "low risk" foods from their home kitchens. And even if you can open a home business from a zoning perspective, there are still hurdles to clear.

#### QUESTION 2: AM I ZONED FOR A HOME BUSINESS?

Some cities and towns have their own rules for home business operations, even

if there are no restrictions on a state or federal level.

For instance, if your tenant wants to get a bunch of chickens and start selling fresh eggs from home and at farmers markets, your city may have something to say about livestock on lots of certain sizes (and many municipalities ban farm animals altogether). Cambridge says "<u>no chickens allowed</u>," but Boston, along with many other Massachusetts cities and towns – doesn't limit the number of chickens you may have. Natick limits

> America is the land of free enterprise, but that doesn't mean you necessarily want your property used for just any home business. Image License: cc by SA 4.0 MassLandlords Inc.

the number of chickens based on your license or permit; Holyoke doesn't require a permit at all. Salem doesn't require a permit or limit the number of chickens you can keep. It also allows roosters.

Other zoning restrictions may prohibit commercial operations entirely, or restrict street parking, making some businesses entirely untenable (you can't start a palm-reading business in the suburbs if no one can park near the place). Still other local laws may regulate signage and advertising in residential zones, or state that car mechanics may not operate out of a residential garage.

In these cases, opening a home business may require a zoning variance (or may be out of the question altogether). You and your renter would need to decide the best course of action going forward. On a very local level, some condominium complexes may also have rules against home businesses. If you own a condo that you're renting out, your bylaws may prohibit any kind of commercial endeavor.

### QUESTION 3: WHAT TYPE OF HOME BUSINESS IS IT?

Let's say that your municipality allows for home businesses (or at least the type of home business your renter wants to start), and it's lawful on a state and federal level. With that step out of the way, it's time to drill down and find out exactly what is going to be happening on your property.

Find out what type of business they want to open, and what the inventory and space needs for it are. Someone selling crafts on Etsy is probably going to be fine. If your tenant wants to refinish furniture and sell it on Facebook Marketplace, that's a much bigger space commitment (and a messier, smellier one) than a tenant who wants to buy small antiques and resell them on eBay. A nail salon is going to create a permeating smell of acetone, especially if the rental is not fitted with proper ventilation for such an exercise. You may or may not have the ability to accommodate what your tenant wants to do.



Next, determine whether this is a single-person operation, and whether there will be any customers on property. Will people be stopping by to pick up goods? Will they be staying on the property for longer periods of time to take a class? Will there be children on premises all day for a daycare (and if so, <u>are you lead-compliant</u>)? Where will people park?

If your tenant wants to open a laundromat or wash-and-fold service, or start growing succulents to sell online, you will need to make sure you have <u>separately metered water</u>. Selling food may require certain licenses and inspections.

Next, find out the proposed hours of operation. Your renter may be planning to only work on the weekends, or they may be imagining teaching cooking classes at 11 o'clock at night. Will there be zero anticipated traffic to the home, or will people be dropping off their children at 5 a.m.?

Question 4: What Happens if Something Goes Wrong?

This is probably the biggest concern you as a landlord should have about your tenant opening a home business in your rental property. Your homeowner's insurance is not likely to cover you if something happens to the house because of business operations (your tenant's cupcake operation causes a fire, a distillery blows up), or if someone gets injured while visiting your tenant's business.

Your tenant's renter's insurance will also not cover business-related injuries. Any business where customers are actually visiting the property to pick up goods introduces new liability. This increases even more if the business patrons are staying on-property to receive services (think personal trainers, hair stylists or therapists).

You may also need to be concerned about environmental issues (runoff from solvents or other chemicals). Remediation for these problems can be costly, and not likely to be covered under run of the mill insurance if the damage comes from using a residence as a place of business.

In other words, basic homeowner's or renter's insurance won't cut it for most in-home small business ventures. You, your tenant or both of you may need to pay extra insurance premiums to ensure everyone is safe in the rental. If your renter takes out a business owner's policy, they may be able to list you as a "named insured" party as well. This covers you, and lets the insurance company know a third-party interest is involved in the policy. Then, if something happens to the property as a result of the home business, you won't have to worry about expensive repairs falling in your lap.

### QUESTION 5: WHAT WILL THE NEIGHBORS THINK?

When agreeing to a home-based business, it's not just liability, extra traffic to your rental or wear and tear that you have to worry about. You also have to think about the quiet enjoyment that your property abutters or tenants in the same building are entitled to. Is your furniture restorer going to be running power tools night and day? Will there be cars constantly parked up and down the street? Is everyone going to appreciate the dulcet tones of new brass instrument players having lessons at all hours? What about a car wash or auto repair/detailing business?

Remember, just because it's legal doesn't mean it's going to go over well. Even if your municipality allows chickens and roosters, did you know roosters don't just crow in the mornings? They crow whenever they feel like it, and many feel like it an awful lot. Legal or not, that may not go over well with the neighbors if your rental is on a small plot, or if you rent a multifamily.

Finally, if you have a multi-family rental unit, make sure your entrepreneurial tenant is compliant with the lease while running their business. If you have a clause that says "no window decorations," then your tenant who couldn't put up their son's high school graduation banner may take umbrage with your other renter's business sign hanging up. If you have rules about not working on the car in the driveway, and someone starts offering oil changes, there may be confusion or complaints. Make sure everyone is on the same page.

### QUESTION 6: WHAT IF MY TENANT OPENS A HOME BUSINESS EVEN AFTER I SAY NO?

If your tenant ignores your decision (or just doesn't ask) and your lease specifically prohibits using the rental as a business, you're off to a good start. You can reference the lease violation and tell your renter that if they do not stop running their business, you will terminate the tenancy for cause. (No, legally you do not have to give your tenants a warning first, but it's always better to try communication before choosing a nuclear option, especially if these are otherwise good renters.)

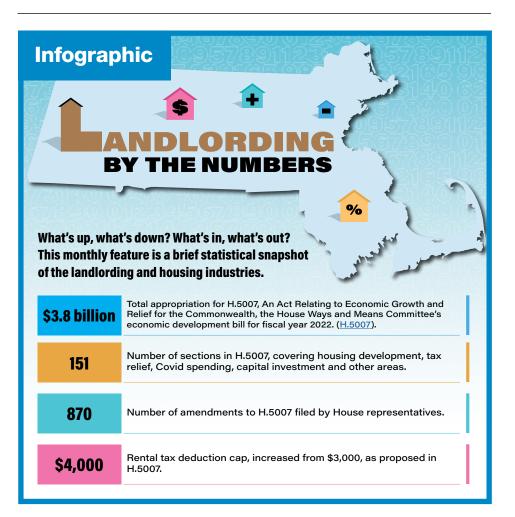
Otherwise, it's better if you aren't in this position to begin with. If your tenant approaches you with a business idea, you may have to say no right away. It may simply be impossible to allow. But there's also the chance that you may be able to come to a compromise that makes everyone happy. ("You can teach music lessons, but not before or after the lease's quiet hours" or "Before I okay this cupcake business, I need you to do the legwork to get the permits.")

### **CONCLUSION**

There are a lot of drawbacks to allowing a home business to operate out of a residence, but it doesn't have to be all bad. Before making a knee-jerk decision, talk to your tenants and have a realistic discussion about expectations and limitations. You may still have to say no, but it will be an informed decision.

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### **Returning to In-Person Events: Headwinds and New Formats**

By Douglas Quattrochi, Executive Director

MassLandlords in-person events will resume in different formats fall 2022. We will experiment to find new and economically sustainable routines.

Many members, especially members who have been in business with us a long time, are eagerly looking forward to a return to in-person <u>networking and training events</u>. Landlord groups around Massachusetts have been meeting in-person for decades, but the pandemic disrupted and perhaps permanently changed this tradition. This article will detail the problems we're seeing and the experiments we will be conducting starting fall 2022. As you know, MassLandlords is governed by a <u>Board of Directors</u> of five volunteers, one elected each year, and a team of roughly 20 full- and part-time staff. We are meeting regularly about in-person events. We also listen to our 2,400 members like you.

As we look toward returning to in-person, we first want to assure devotees of the Zoom format that we will also continue Zoom events. Zoom events are very popular and effective. Between when the pandemic began in March 2020 and the time of this article, July 20, 2022, we have counted 6,073 virtual event attendees (many of these are of course repeat attendees). This is an incredible engagement metric, and roughly 16% more total engagement than if we



MassLandlords and chapters have a decades-long tradition of meeting in-person. We are working on economically sustainable ways to return, to still meet our educational objectives and to sustain our "no sales pitch" guarantee. Copyright MassLandlords.

had not had a pandemic. Zoom opens doors and schedules.

But we know networking opportunities are poor on Zoom. Also, we know many of you prefer the in-person format for many other reasons, including social support. Meeting with a room full of other landlords is the best assurance that we're not crazy! It's a tough, lonely business sometimes.

At our Zoom <u>business updates</u>, we have been discussing the return to in-person events. We have lost venues during the pandemic:

- Our Newton venue was lost just prior to the pandemic due to a manager closing their office. That manager wanted to continue hosting us, but a non-member landlord neglected maintenance and tenant relations on the floors above, causing flooding in the office.
- Our Cambridge venue became unsupportable. They want to charge \$300 per hour now for a five-hour booking. That location only attracted 20 attendees.
- Northern Worcester lost their technical high school as a venue due to public health concerns for the children there. This leads us to expect that we will not be approved to return to the technical high school in central Worcester, either.
- Pittsfield's restaurant venue has confessed they've lost money on us for years and were hosting us mainly just out of respect. The Berkshire County landlords had a model where food is optional for attendees, making it very hard for a restaurant to operate.

Greater Springfield is actually the best positioned to host an in-person event first. This region has many remaining and willing restaurants and venues. But Greater Springfield is waiting for a statewide event plan.

The logistics team that enabled Greater Springfield and other directly managed events can't, under the old work arrangement, be brought back for that one region alone. They'd be looking at a 75% workload reduction on what was already only approximately 10 hours a week. A monthly eight-hour Springfield drive, setup and tear-down would interfere with the first/second shift primary jobs they have or would have. That means we could be asking them to take their wellness or vacation time to work for us. This makes this role more expensive to staff than before. And many landlords can't easily get to Greater Springfield.

Add to this the following headwinds:

- Food costs have doubled ticket prices in all regions; or else food quality and quantity must decrease.
- Event planning and emceeing was an unpaid role: I personally volunteered about 60 hours a month attending events statewide pre-pandemic. Given my current management responsibilities, I can't go back to that without hurting the organization in other ways.

• Experiments done in other regions produced in-person attendance numbers that were one-third of pre-pandemic levels. Those events would lose money unless someone regularly donated time or food month after month.

We have had experiments in Southbridge, Marlborough, Waltham and Fitchburg. The attendance has been good enough for volunteer organizations, but not scalable or staffable by MassLandlords directly.

### PLANS TO EXPERIMENT WITH LARGER AND SMALLER FORMATS

We have plans to experiment with a larger conference format and a small dinner format.

The larger conference format may look like pre-pandemic events in Springfield, Worcester, Waltham and Cambridge, except at a frequency that would draw enough attendees to make them economically sustainable long-term.

The smaller dinner format would scale statewide without on-site staff. This would be a one-table, reservations-required dinner meeting with a host or expert. There would be no slides. It would be like the old Board of Advisors meeting, for those of us familiar with that format. We can't be sure if either event format will be successful. We have educational objectives and economic constraints. But we know in-person events matter and we are working to return to them.

Full details will be forthcoming. The first events announced will be experiments, though, so please keep in mind we will have to work at this.

If you have suggestions for event models that would be educational and sustainable, please email us at <u>hello@masslandlords.net</u>. We are particularly interested in hearing about your experience with ticketed events run by other staffed organizations. Any venue recommendations must be fully accessible to our many members with disabilities. Absent your suggestions, we will continue on the plan that our team and Board of Directors are creating.

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### ARTICLE YOU MAY HAVE MISSED

### Trespasser or Tenant? Superior Court Case Helps Define the Difference

Imagine you are accused of being a trespasser in your own home, the home you've lived in for more than eight years. You're hauled into court as a defendant facing the prospect of being ordered to vacate your longtime residence within days.

The full article can be found at: MassLandlords.net/blog



The City has launched a program to support landlords who rent to Boston households moving out of homelessness.

The program provides landlords with signing bonuses, holding fees, and other incentives. It also offers access to prospective tenants – with rental subsidies and a dedicated housing support provider – who are ready to sign leases.

Contact New Lease for Homeless Families to gain access to this opportunity.



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NEIGHBORHOOD DEVELOPMENT

### Somerville Ends Eviction Moratorium; Sets Rules for Tenancy Rights Notifications

By Kimberly Rau, MassLandlords Inc.

### Amendments to the city's Housing Stability Notification Act go into effect July 13, 2022; eviction moratorium ends June 30.

A press release issued by the city of Somerville in June announced that its Covid-19 eviction moratorium would end on June 30, 2022. The city also announced that amendments to its Housing Stability Notification Act (HSNA) would require landlords to provide their tenants notice of their housing rights and resources at the start of their tenancy.

### TENANTS TO BE PROVIDED NOTICE OF RIGHTS AND HOUSING RESOURCES

The <u>original HSNA</u> went into effect Dec. 26, 2019. The act required landlords and foreclosing landlords to provide their tenants a housing rights and resources document when serving an eviction notice. The amendments to the HSNA, which go into effect July 13, 2022, require that a separate notice of tenant rights and resources be given to renters at the start of their tenancy.

This act applies to all tenancies, regardless of length or type, and stipulates that the notice must be hand-delivered or sent by certified mail and email. A press release from the city of Somerville notes that the notice "must be provided in the tenant's primary language, if known, if the language is Spanish, Portuguese, Haitian Creole, or Nepali." This notice, with the aforementioned translations, will be available by July 13 on the city's Office of Housing Stability website.

The current notice of tenant rights and housing resources is available on the OHS site. It includes contact information for help with rental assistance and moving costs, as well as legal help and advocacy contacts. It also has a detailed breakdown of a tenant's rights during the eviction process.

### **EVICTION MORATORIUM TO END JUNE 30**

The statewide ban on evictions for nonpayment of rent expired in October 2020, but some municipalities held on to their moratoriums for much longer. Malden ended its ban on evictions on Feb. 28, 2022, and Boston lifted its eviction moratorium in March. Now Somerville, the last city to have an eviction moratorium in Massachusetts, ended its ban on the last day of June. "Until then, the physical removal of Somerville residents



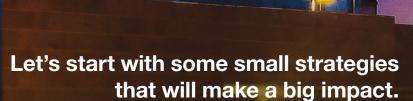
The city of Somerville ended its eviction moratorium on June 30, 2022, and amended its Housing Stability Notification Act effective July 13. License: cc by Wikimedia Commons

is prohibited in most cases, even if a court gives permission to evict," read the June 2022 press release from the city.

In November 2021, a housing court judge ruled that <u>Boston's eviction moratorium</u> was unlawful, as it was in excess of the city's authority. Though Malden and Somerville had similar moratoriums in place at the time, they were never formally litigated against.

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These programs are funded by the energy-efficiency charge on all customers' gas and electric bills, in New York and Massachusetts per state regulatory guidance.

### The Power of Chapter 93A: An Airbnb Case Study Crossing State and National Borders

By Douglas Quattrochi

A case study showing how a renter used Massachusetts General Law Chapter 93A to obtain a large settlement from Airbnb and an out-ofstate landlord.

Massachusetts General Law Chapter 93A specifies the "regulation of business practices for consumers' protection." This is a powerful statute that awards triple damages, attorney's fees and costs to consumers who were wronged by a business. As landlords, we face 93A claims from our renters. And I had a chance to see the law from the other side, as a renter myself. I will share my story of a vacation Airbnb in London, where I was a short-term letter, in their parlance (think "subletter"). I'll show that the long arm of Chapter 93A stretches across state lines and even the ocean, not only for letters, but also for lucky landlords.



This was the smoke detector base station at Princess Road. Chapter 93A protects all commonwealth residents from all unfair and deceptive business practices. For instance, advertising an apartment with working smoke detectors but delivering this was a Chapter 93A violation. CC BY-SA Douglas Quattrochi

#### THE AIRBNB WAS NOT AS ADVERTISED

I live in Massachusetts, but I have family in London. Whenever the chance is given to me, I travel abroad to see them. It was for this reason that late in December 2021 I checked into an Airbnb on Princess Road, London.

I picked the Airbnb first on the basis of its proximity to family, but second on the basis of its having advertised a working smoke detector and a carbon monoxide alarm. In my professional capacity, I've known of too many killed by fire or exhaust to rent anyplace less.

After keying in, I found the smoke detector missing. In the UK, some detectors have a hardwired base station that chirps when the detector is missing. Someone removed the smoke detector, tore the base station from the wall, and left it hanging by a live wire, chirping for help. It took me some time to identify

this as the source of the chirp. I wasn't immediately familiar with this UK hardware, and the place was echoey.

I messaged my host. My host called me and admitted "Oh yeah, we noticed that before." He asked if I would be willing to stay in the unit without a working smoke detector. I said no. He offered I could at least open the fuse box and deactivate the circuit to stop the chirping. I explained that I valued a working smoke detector. He said he wasn't sure he could get anyone there to fix it for several days. I said I was cancelling the reservation. My host said he would not issue a refund. I said we'd discuss it after I found a place to stay for the night.

I left the premises exactly as I found them, with the keys in the lockbox, within an hour of checking in. All of that hour was spent investigating the chirping and discussing it with the host. Chapter

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### NO ONE GAVE A REFUND

After much discussion, the host said he wouldn't refund my reservation. That was sad for me, because if the host had refunded me, it would have ended our story and saved me a lot of time. But I'm sharing this story because here is where it gets interesting.

Airbnb's Guest Refund Policy effective December 15, 2019 stated that I would be entitled to a refund in this circumstance:

"If you are a Guest and suffer a Travel Issue, you are covered by this policy as follows:

"If you report a Travel Issue up to 24 hours after check-in, we agree, at our discretion, to either (i) reimburse you the amount paid by you through the Airbnb Platform ("Total Fees"), or (ii) use our reasonable efforts to help you find and book for any unused nights left in your booking another Accommodation."

Travel Issues are defined as including:

"(c) at the start of the Guest's booking, the Accommodation: ... (ii) contains safety or health hazards that would be reasonably expected to adversely affect the Guest's stay at the Accommodation in Airbnb's judgment."

Long story short: Airbnb refused to issue a refund under their policy. In fact, they ignored their policy. Every time I cited it, they deflected. If they didn't intend to follow their policy, this would make the policy deceptive. I told this to their various customer service people. No one listened.

I wrote the following to Airbnb customer service and in a print letter mailed to headquarters:

"Airbnb's denial of my request under this policy references neither this policy nor Airbnb's discretion called for in the policy. If Airbnb had actually attempted to argue that lack of a smoke detector was immaterial to my safety, Airbnb would still have failed. But Airbnb did not even make such an attempt. Rather than exercise its discretion with respect to safety concerns, Airbnb have attempted to ignore the Guest Refund Policy and force me to accept less than the policy offers. This makes the Guest Refund Policy and your actions deceitful."

Deceit or deception is an important phrase in Chapter 93A. But first let's look at whether I have standing to raise a Massachusetts claim in another country.

#### MASSACHUSETTS' LEGAL FRAMEWORK DOMINATED

There are three parties in this case: We have a Massachusetts resident alleging protections under Massachusetts General Law Chapter 93A, a London landlord operating under UK safety regulations and UK consumer protection laws, and a booking facilitated by Airbnb, a California company. Whose jurisdiction prevails? Short answer: Massachusetts', because 93A is a hammer.

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HM2AXQZN33 has been process	ed for you which you will receive in
your original payment method wit	hin 5-15 business days.
Along with that another amount o	f has been processed for
you. To receive this amount, plea	se add a payout method by
following the steps on the link give	en below:
https://www.airbnb.co.in/help/artic	cle/54/adding-a-payout-method
I hope you find this imfromation h	elpful. We will be closing this case
for today. Please feel free to reac questions.	h out in case you have any further
Regards,	

This case is simpler than it looks, for we can dismiss the landlord right away. I paid Airbnb, not the landlord. Although Airbnb is a California company, they have nexus in (operate in) Massachusetts. Therefore I have incontestable Massachusetts rights with Airbnb. Those rights are not limited to the particular country of my stay. We can therefore ignore the UK landlord and UK safety regulations.

This setup is relevant to all Massachusetts landlords. I was a Massachusetts resident talking with a company that operated in Massachusetts.

#### **AIRBNB'S AGREEMENT WAS VOIDED**

Did Airbnb's terms and conditions say I could sue them under Chapter 93A? No. The Airbnb Terms and Conditions, paragraph 22, "United States Governing Law and Venue," actually called for the exact opposite. It said their agreement would be interpreted in accordance with the laws of the State of California. Furthermore, paragraph 23 called for arbitration.

Unfortunately for Airbnb, both of these clauses were in conflict with Massachusetts law. This rendered them void and unenforceable.

### CHAPTER 93A AIMS TO HAMMER OUT DECEPTION AND UNFAIRNESS

General Law Chapter 93A is broadly written. It reads, without limitation,

"Section 2. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

There are no ifs, ands or buts about it.

Is Airbnb engaged in a trade or commerce and subject to this law? Yes. G.L. Chapter 93A Section 1(b), reads:

"(b) "Trade" and "commerce" shall include the advertising, the offering for sale, rent or lease, the sale, rent, lease or distribution of any services and any property, tangible or intangible, real, personal or mixed... and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth."

That's very powerful. I could be renting an apartment on the moon and Chapter 93A would apply, because that "trade or commerce" would be "affecting the people of this commonwealth." As long as I hadn't moved permanently to the moon, I'd be protected.

All renters residing in Massachusetts are protected under Chapter 93A.

### THE CHAPTER 93A DEMAND LETTER GOT ME REFUNDED

I used all of the above to write a demand letter. A demand letter is the start of a lawsuit. The way Chapter 93A works, the business receiving the letter has 30 days to make a good faith offer of settlement. If they don't, they could be ordered by a court to pay triple damages, attorney's fees and costs.

Imagine! Airbnb refused to refund the cost of my deficient rental. As a result, they would have to pay me three times the rental's cost, plus cover my attorney and all court costs. What a mistake it would be not to stand by their policy!

I mailed them my demand letter. I added up every penny of expense and inconvenience along the way, not just the cost of the Airbnb at Princess Road. And Airbnb settled. They paid 1x my full damages, which were more than just the Princess Road rental costs. If Airbnb had refunded me what I asked at the outset, they would have saved money. I didn't have to go to court. If I had, I would have walked away with even more.

### CHAPTER 93A LESSONS FOR LANDLORDS

Chapter 93A is a very powerful law for consumers to use against businesses in any of the following broad scenarios:

- A business practice is unfair, or
- A business practice is deceptive.



This means as a landlord you should always try to make full disclosures and treat all renters fairly. Specifically, landlords should note the following aspects of 93A:

- Your apartment ad must accurately describe what is for rent.
- All Massachusetts residents are protected from all unfair and deceptive practices.
- No written agreement can invalidate these protections.
- You need good customer service to avoid a Chapter 93A demand letter.
- Everyone on your team needs to give the same good service. Everyone needs to understand how Chapter 93A can spiral out of control.
- The first step in a Chapter 93A dispute process is a demand letter.
- If you get a demand letter, you have 30 days to make a good faith offer of settlement. Do it!
- If you end up in court, you may be ordered to pay three times whatever you should have settled for, plus attorneys' fees, plus costs.
- Chapter 93A claims are preventable: Make full disclosures and be fair always.

### POLICY IMPLICATIONS FOR CHAPTER 93A

It should be noted that I did not hire an attorney either to draft the letter or to bring a suit. An attorney is not necessary. But I could have hired an attorney. If I had, I would have included the attorney's bill as part of the damages in my demand letter. This is the final key point about Chapter 93A: Attorneys can get paid out of settlements without the courts ever being involved.

We saw this during the COVID-19 pandemic: Landlords who did not want rental assistance were sent demand letters by legal services. These letters alleged discrimination on the basis of receiving public assistance. The landlords settled in such as a way as to pay the renter and their attorney. This was a bad outcome for everybody except legal services. The landlord settled for an enormous amount. And the renter faced eviction for a long time.

As an industry, it is very important to follow Chapter 93A scrupulously. We must always deal fairly and openly, and encourage other landlords to do so, as well. In this way, we will reduce the amount of settlement money flowing to those who advocate against us. And we will be supporting our mission to create better rental housing. No one wants to rent a place with chirping smoke detectors.

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### **Deadly Fire Prompts City of Worcester to Propose Rental Property Registry and Inspection Ordinance**

By Kimberly Rau, MassLandlords Inc.

### 9.15 DEPARTMENT OF INSPECTIONAL SERVICES Administration Christopher P. Spencer, Commissioner

A. Recommend adoption of Two (2) Ordinances regarding joint programs of the Fire Department and Department of Inspectional Services with regard to a Rental Registry Program.

Mayor Petty read the item and moved to take the item up with item #20f CC. Mayor Petty recognized Councilor Russell, who spoke concerning the item. Mayor Petty moved to refer the items to Economic Development Committee. Referred to Economic Development Committee

### If the ordinances pass, landlords must register their properties and have regular inspections, or face hefty fines

The city of Worcester has proposed two ordinances that would affect rental property owners: a mandatory rental registry, and a requirement that all rental units be inspected once every five years.

These proposed ordinances would be a massive undertaking for the city. Implementation would include establishing a registry and enforcing it, hiring more building inspectors and completing inspections for an estimated 50,000 citywide rental units.

The proposed ordinances that would change how rentals are tracked and how

inspections are handled first appeared before the city council at the end of May, shortly after a deadly fire claimed multiple lives in the city. They had support from the city manager, along with various municipal departments, including Worcester's fire chief. At the first city council meeting in June, the matter was referred to the city's economic development committee, which was slated to discuss the issue on July 19 (after deadline for this piece).

### A RUNDOWN OF THE TWO ORDINANCES

The first ordinance requires all rental property landlords or managers to register their properties – residential and commercial – with the city. Collected data will include the number of units in a building (and how many are residential) and number of bedrooms. "During a fire emergency, ready access to this data can save time and ultimately save lives," read <u>a memo</u> released by Christopher Spencer, Worcester's commissioner of inspectional services.

Landlords would have to register their rental units, and then renew that registration annually, as well as if the building changes ownership. Landlords or property managers would need to provide the city with contact information for both day-to-day communications and emergency use. If the rental is owned by a large corporation, a contact person must be appointed who has authority to make decisions in an emergency. Landlords or managers must live within 60 miles of the rental unit in question, or appoint a proxy to act on their behalf in an emergency situation.

The residential rental inspection program would verify whether housing units meet minimum standards under the state sanitary code. Landlords would be responsible for scheduling their inspections (which must occur once every five years), which the city estimates would take half an hour. These would ideally be scheduled at the same time as the 110 inspections required under the state sanitary code, which do not require access to individual units. Between the two, a "whole building" inspection could be completed, including examining the exterior and fire escapes, utility spaces, common spaces and individual living spaces.

"While there are those that may feel this is an invasion of privacy, it has clearly been developed to ensure that any dwelling units rented are

A snippet of the June 7, 2022, Worcester City Council meeting agenda, where the Rental Registry Program was referred to the city's Economic Development Committee. The matter was first discussed at the City Council meeting on May 24, 2022. Lic: CC by SA 4.0 MassLandlords Inc.

safe and meet the minimum housing standards," Spencer wrote.

"Complaint-based" inspections – that is, inspections that come from someone reporting violations in the building – would remain in place as well.

### ORDINANCES FUNDED BY LOW ANNUAL FEES; HIGH FINES FOR NON-COMPLIANCE

The cost for landlords to register their units is low: \$15 to initially register each unit (\$25 per rental lot), then \$5 per unit per year thereafter (\$15 per year for rental lots). The cost for an inspection once every five years is \$50. Owner-occupied units do not need to be registered, but other units in the building must be.

Failure to comply with either the registration ordinance or some aspect of the inspection ordinance, however, is a different story. The city is proposing hefty fines: \$300 per day, with each day of the violation considered a separate offense.

The city will not charge for the first re-inspection of a unit, and will not charge for the first missed inspection. Landlords will be charged \$100 per unit for subsequent missed or failed inspections.

City administrators hope that these fees will only pay for the programs, including administration and hiring five new inspectors, and are not being considered sources of excess revenue for the city. The city also plans to launch an informational program to educate landlords on what is required if the ordinances are enacted.

### DEADLY FIRE SPURS CALLS TO ACTION IN WORCESTER

What triggered this flurry of activity in the city? In this instance, tragedy. On May 14, 2022, a four-alarm fire in a multifamily rental on Gage Street in Worcester killed four people and injured others. The six-unit apartment building has a long history of code violations, including issues that were present at the time of the fire, as well as at least one previous fire. Public records show that code enforcement officers visited the property at least a dozen times between 2013 and 2021, and the place still went up in flames, killing multiple people. The owners, Huanchen Li and Wendy Wang, did not comment on the fire or history of code violations, except to blame dissatisfied tenants who would call the building inspector when they were short on rent. (One of their other Worcester rental properties was condemned shortly after the fire.) The city did not comment directly on the violations or inspection history, but did note that Worcester did not have a law requiring periodic inspections at the time. And there was no statute that automatically triggered any kind of sanction or legal action as long as landlords corrected reported violations.

A lot of things had to go wrong for people to die on Gage Street. After years of repeated code violations and tenant complaints, including blocked egresses, vermin, water damage and leaking sewer lines, why were Li and Wang never brought up on legal charges or compelled to sell their property?

### COULD MANDATORY INSPECTIONS SPELL TROUBLE FOR PROTECTED CLASSES?

We cannot state strongly enough that we are in support of safe housing for all. However, after reading the documents supplied by Worcester, there are areas of concern.

The first is the mutually acknowledged fact that some people may not report code violations out of fear that their housing will be condemned. The city has said that illegal units and units out of compliance will be given the chance to come into compliance under the new registry. However, if a unit cannot be brought up to standards, it may be condemned as a rental.

If that happens, people will lose their homes. Naturally, they shouldn't be living in conditions that are unsuitable for habitation, but does the city have the infrastructure to support an unknown number of families and likely pets that will find themselves without shelter when this happens? Will there be a safety net for them?

The second cause of concern is the city's assertion that it is important to know whether a three-bedroom unit is being rented by one family or if it is "being rented all individually, with separate locks on each bedroom[.]" We're unsure why this matters. Surely if a fire department knows that they are entering a three-bedroom dwelling, they would check the bedrooms regardless of whether each person is renting their own room. This seems like it could unfairly impact student housing, or situations where low-income individuals are renting jointly and severally. If these door locks are cited for violations, what happens to the people who cannot afford to rent an entire apartment on their own? This would not be the first time Worcester has tried to enforce restrictions that are not found in the law: at one point the Supreme Judicial Court had to rule against Worcester, which was claiming that four unrelated people living together constituted a lodging house.

On the other side of it, the estimated half hour that the city believes an inspection will take is enough to notice the biggest issues (missing smoke detectors, missing electrical wall plates, leaky tubs), but hardly enough time to notice smaller issues that may become much larger over the five years between inspections. We must also question how realistic the estimated productivity is. Ten inspectors visiting 50,000 properties over five years is 1,000 properties per year, per inspector, totaling 500 hours if each one only takes 30 minutes. That's doable on paper, but doesn't include travel time, report generation or re-inspections. It doesn't include situations in which the inspector shows up but the landlord doesn't, nor cancelations. It's not that it can't work, it's that the inspectors are going to have to work with an ever-shrinking margin of error with every setback they encounter. And that assumes perfect compliance with the program.

Finally, the 60-mile radius that landlords must live within before having to appoint a proxy to handle emergencies sounds small, but really depends on which direction you're looking. An emergency at 3 p.m. on a Friday with a landlord who lives in Boston turns into hours of travel time before they can be on-site to address the problem.

#### CONCLUSION

There's clearly lots of support for these ordinances in Worcester. And there's reason for city officials to be optimistic. The reports and letters submitted by the city manager reference data from two cities in North Carolina. In Greensboro, complaints dropped by 61% after proactive inspections were instituted. Fire incidents reportedly dropped by 50% in Asheville. But what about closer to home?

Boston implemented a rental registry system in 2013, but the city is still working out kinks nearly 10 years later. In 2015, thousands of the city's rentals were <u>reportedly still unregistered</u>. This is despite the city moving back the original deadline to give landlords more time to register their rental properties. In 2016, the city had to revamp its <u>approach to inspections</u>, as some occupants were denying entrance to inspectors. And as of 2021, Boston was considering raising certain municipal fines tenfold to try to combat "<u>chronic offenders</u>," large landlords who budget for fines and simply pay them rather than fixing their violations.

On the other hand, small-time landlords who miss an inspection and forget to reschedule could end up with enough fines to equal a down payment on a house.

This doesn't mean registries and mandatory inspections are bad ideas. Anything that helps tenants feel safe in their homes is beneficial. However, concern must be given to issues that could quickly cause disparate impact to the very populations the city is trying to help. Repeated inspections on Gage Street didn't end up saving the lives of four people, and they didn't seem to have much effect on the landlords, who had another property condemned after the fatal fire. Fines may deter some landlords from keeping poor properties, but repeat code violators should be compelled to sell their properties, not given multiple chances to risk their tenants' lives.

Point your camera app here to read more online



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, MassLandlords.net		2022 AUGUST			Upcoming events See details under each region	
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4	5	6
7	8	9	10	<b>11</b> Webinar 12:00pm-1:00pm	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26 Webinar 12:00pm-1:00pm	27
28	29	30	31			



### **2022 SEPTEMBER**

### Upcoming events See details under each region

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7 Virtual Meeting 5:00pm - 6:40pm	<b>8</b> Virtual Meeting, NWCLA 5:00pm - 6:40pm, 7:00pm - 8:00pm	9	10
11	<b>12</b> SWCLA 7:00pm - 8:00pm	13	<b>14</b> Virtual Meeting 5:00pm - 6:40pm	15	16	17
18	19	<b>20</b> Virtual Meeting 5:00pm - 6:40pm	21	22 Webinar 12:00pm-1:00pm	23	24
25	<b>26</b> Virtual Meeting 5:00pm - 6:40pm	27	28	29	30	

#### STATEWIDE

### Webinar: Deleading Overview

Landlords cannot turn away households with children because of lead, but children cannot live around lead hazards. We must delead! So what must we do, exactly? This presentation is fully updated to reflect changes to the lead law since 2017. We will teach the **basics** of lead remediation:

THU 08/11

- Why lead is hazardous
- Where we find lead
- Deleading methods
- Letters of interim control
- Certificates of Deleading Compliance
- How to delead with renters still in the unit
- What to say when a renter informs you they have a **baby on the way** (hint: delead, don't discriminate)
- Tax credits and grant funding

• Using the new CLPPP database 2.0. This is **not a moderate risk deleader** training. Attendees will learn about the deleading training that is available (typically, 12 hours). Attendees will leave better prepared to either take the deleader training course or hire a licensed deleader contractor.



Learn about Deleading



MassLandlords Executive Director Doug Quattrochi

This presentation will be given by **Doug Ouattrochi**, Executive Director, MassLandlords, Inc. Doug was a founding member of MassLandlords in 2013. He became the association's first Executive Director under new bylaws in 2014. Since then, he has scaled the organization from a core of 160 members in Worcester to approximately 2,500 dues paying businesses from Pittsfield to the Cape, and from an all-volunteer team to approximately 20 full and part-time staff plus 50 volunteers. Doug has been instrumental in advancing democratic governance mechanisms, including score voting for policy priorities and a staggered and democratically elected Board of Directors. Doug also oversees the RentHelper spin-off, which is expanding access to electronic banking for those of us who are unbanked or underbanked. Prior to MassLandlords, Doug held leadership roles in various Massachusetts startups, two of which are still operating. Doug holds a Master of Science in Aerospace Engineering from the Massachusetts Institute of Technology.

"Doug's presentation was excellent. He was very clear and provided detailed explanations." -Larry

"Doug always holds very informative classes full of substance and Very organized!" -Thomas

"Your answers to member's questions were most helpful." -Liz

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#### THURSDAY, AUGUST 11<sup>TH</sup>

#### WEBINAR AGENDA

12:00pm Webinar Begins 1:00pm Webinar Ends

#### **Participation is Easy**

and are recorded.

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### WEBINAR DETAILS (HOSTED BY ZOOM)

We will share our video, audio, and computer screen and slides.

• You can chat questions. You will not be on video or audio.

Registrants will have **full access to the webinar**, including watching live or watching the recording any time after the webinar is posted.

### WATCH LIVE:

Password will be emailed and viewable <u>online</u>. When: Aug 11, 2022 12:00 PM Eastern Time (US and Canada) Topic: Deleading Webinar August 11, 2022

Please click the link below to join the webinar: https://us02web.zoom. us/j/87033707999

Passcode: Will be emailed and viewable <u>online</u>

Webinar ID: 870 3370 7999 Passcode: Will be emailed and viewable <u>online</u> International numbers available: https:// us02web.zoom.us/u/kHJfPv0g

### PRICING

Open to the public. Membership is not required! • Public: \$9

• Members: \$3

Watch Recording (three business days after event): Recording Link: This event will be recorded and uploaded

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### Webinar: Buying or Selling Occupied Property



This presentation will teach the essentials of buying or selling occupied property, when tenants are in the building being bought or sold. We will look at all aspects of the process:

- Offer stage what to include
- Due diligence what rental documents to request from owner/seller
- P&S ensuring correct terms
- Closing ensuring transfer of last month's rent and security deposits
- Post closing starting off relationships with new tenants on the right fooThese best practices ought to be known by all investors, brokers and REALTORs. Even if you have good help, it's always a good idea to know the process yourself to supervise it.



Attorney Jordana Greenman

Part of this presentation will be given by Attorney Jordana Roubicek Greenman, a real estate lawyer and recipient of the Super Lawyers Rising Star award 2012-2020. Attorney Greenman has a solo practice with a main office in Watertown and additional office in Downtown Boston. Her practice consists of a broad range of real estate-related legal matters, including commercial and residential landlord/tenant disputes, condominium association representation, general real estate litigation and commercial and residential real estate closings. Attorney Greenman has a well-respected reputation for aggressively advocating for her clients' goals and ensuring beneficial outcomes at a reasonable cost. She was among the first attorneys to take legal action in response to the unfunded eviction moratorium and has been working as co-counsel on a pro bono basis with the recent Boston Eviction Moratorium.

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#### FRIDAY, AUGUST 26<sup>TH</sup>

**WEBINAR AGENDA** 12:00pm Webinar Begins 1:00pm Webinar Ends

### **PARTICIPATION IS EASY**

and are recorded.

We have two formats of online events:

Virtual meetings include optional audience participation via video, phone, and screenshare and are not recorded.
Webinars have limited participation options (typed questions only)

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We will share our video, audio, and computer screen and slides.

• You can chat questions. You will not be on video or audio.

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### STATEWIDE

### Virtual Meeting: Emotional Support Animals (Streamlined Agenda Times)

THU 09/14

This presentation will review the legal framework for service animals and assistance animals. We will also cover emotional support animals, a type of assistance animal.

Service animals and assistance animals are needed by those of us living with certain disabilities. Legal protections in the U.S. and Massachusetts increase the availability of accessible housing. But some unscrupulous renters **abuse the law**. We as landlords see ordinary pets paraded through our rental application and right into our "no pets" apartment. What are landlords supposed to do? How can we protect our property against unreasonable damage? How can we safeguard a renter's rights when they say they legitimately need an animal? And **what's the correct terminology to use?** 

This presentation will review U.S. law and regulation, state law and regulation, and how discrimination lawsuits begin. This presentation has been updated to reflect the latest HUD guidance.



**Emotional Support Animals** 



Attorney Adam Sherwin of The Sherwin Law Firm

**Part of this presentation will be given by attorney Adam Sherwin.** Adam is an experienced real estate litigator with years of experience representing landlords, property owners, and other real estate professionals. He has extensive experience litigating real estate disputes before judges and juries and has obtained favorable decisions from the Massachusetts Appeals Court and District Court Appellate Division. He is also a long-time crash course instructor at the Cambridge headquarters and over zoom.

Networking time host to be announced.

### Purchase your ticket in just a few clicks!

#### "No Sales Pitch" Guarantee

MassLandlords offers attendees of directly managed events a "No Sales Pitch" guarantee. If a guest speaker offers services, their presentation will not discuss pricing, promotions, or reasons why you should hire them. We do not permit speakers to pay for or sponsor events. Guest speakers are chosen for their expertise and willingness to present helpful educational content. Your purchase of an event ticket sustains our nonprofit model.

#### WEDNESDAY, SEPTEMBER 14<sup>TH</sup>

### VIRTUAL MEETING AGENDA (NEW TIMES!)

• 5:00 pm Sign-in and virtual networking: you can chit chat with others as people log in

- 5:40 pm Presentation
- 6:40 pm Virtual meeting ends

By member survey, the business has been reimagined as a set of convenient videos viewable anytime online.

### **PARTICIPATION IS EASY**

We have two formats of online events:
Virtual meetings include optional audience participation via video, phone, and screenshare and are not recorded.
Webinars have limited participation options (typed questions only) and are recorded.

Our **virtual registration desk** is open for all events one hour starting 30 minutes prior to the event start time. Call 774-314-1896 or email <u>hello@masslandlords.net</u> for live, real-time help signing in and using your technology.

If joining a virtual meeting, please use the zoom "test audio" feature. You will be allowed to talk to others if your microphone is good and there is no background noise. We reserve the right to mute anyone for any reason. Attendees without a microphone or who don't want to be heard can type questions.

### VIRTUAL MEETING DETAILS (HOSTED BY ZOOM)

We will share our video, audio, and computer screen and slides.

• **Optional:** You can share your video with everyone, talk to everyone, and type chat with everyone. Video sharing is not required. Talking is not required.

Password will be emailed and viewable <u>online</u>.

Topic: Emotional Support Animals Virtual Meeting September 14, 2022 Time: Sep 14, 2022 08:00 AM Eastern Time (US and Canada)

Join Zoom Meeting https://us02web. zoom.us/j/88090898151

Meeting ID: 880 9089 8151

Passcode: Will be emailed and viewable <u>online</u>

Dial by your location:

- +1 312 626 6799 US (Chicago)
- +1 646 876 9923 US (New York)
- +1 646 931 3860 US
- +1 301 715 8592 US (Washington DC)
- +1 408 638 0968 US (San Jose)
- +1 564 217 2000 US
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 386 347 5053 US

Meeting ID: 880 9089 8151

Passcode: Will be emailed and viewable online Find your local number: https:// us02web.zoom.us/u/kjVUKEoOM

### PRICING

Open to the public. Membership

- is not required!
- Public: \$21Members: \$7
- Members. \$7

This event will not be recorded.

Slides and handouts if any will be uploaded to Emotional Support Animals.

### Click here to purchase tickets

### for this event

TThe virtual meeting counts for continuing education credit for Certified Massachusetts Landlord Level Three. Beep in. Leave feedback/beep out.

This event is operated by MassLandlords staff.

Want to speak at a MassLandlords meeting? Submit a speaker request.

This is part of the <u>Virtual rental real</u> estate networking and training series.

Google calendar users: <u>add our event</u> calendar to your own.

iPhone & iPad users: <u>add our event</u> calendar to iCal.

Outlook users: <u>add our event calendar to</u> Outlook.

#### BERKSHIRE COUNTY BOSTON, CAMBRIDGE, SOMERVILLE CENTRAL WORCESTER COUNTY

Wanted for Guarantee: Worcester Studios and One Bedrooms The City of Worcester has signed an agreement to pilot a landlord-tenant guarantee fund, under which you may be eligible to receive \$10,000 of coverage for unpaid rent, property damage, and attorney's fees if you rent to one of our renters instead of a market renter.

The guarantees are being issued to Worcester landlords who choose to rent to residents currently experiencing homeless in the city. All of our residents have been awarded permanent subsidies (MRVP, VASH, or Section 8) so they can pay the rent. All of our residents also receive supportive services, so they get help with whatever caused them to experience homelessness in the first place. These residents are all individuals, so we are looking for studios or one-bedrooms near bus routes.

You will still be able to screen your renter as normal. You will have to waive screening criteria that would adversely affect an applicant with non-violent criminal history, bad credit, and/or an eviction record. All other screens can be conducted as normal (ability to pay rent, move-in monies, smoking, pets, etc.).

You will get unlimited helpline access if you participate. We can issue these guarantees because we know in over 80% of cases, you won't lose a dime, and we won't have to pay the guarantee.

For no-obligation information, call the helpline at 774-314-1896 or email hello@ masslandlords.net.



### \* PROXIMA

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