

# UMassAmherst

## Off Campus Housing Referrals

University of Massachusetts Amherst | 235 Whitmore Administration Building | 413-577-2187 | [www.umoch.org](http://www.umoch.org)

## Fair Housing Laws

Under a combination of federal and state fair housing laws, it is illegal to discriminate against a potential tenant based on the applicant's membership in a number of categories which include: race, color, creed, religion, national origin, genetic information, sex, marital or military status, blindness, age, ancestry, hearing impairment or other disability, possession of a hearing ear or seeing eye dog, the presence of children in the household, sexual preference, and the fact that the applicant receives public assistance or a rental subsidy.

Landlords must also make reasonable accommodation in the provision of housing for individuals with a handicap or disability. Federal and state laws define handicapped in essentially the same three ways. The Americans With Disabilities Act uses the term disabled with essentially the same meaning. The characteristics that define a handicapped or disabled person are:

- Physical or mental impairment that substantially limits a person in one or more major life activities,
- A record of such a physical or mental impairment, or
- Being regarded as having such an impairment.

Courts and the Massachusetts Commission Against Discrimination have defined life activities as: walking, seeing, hearing, speaking, breathing, learning, working, performance of manual tasks, and caring for oneself.

It is illegal to make enquiries as to whether an individual falls under a protected category, or to state or advertise that one will not rent to such an individual. This is true, even in a situation where state or federal housing laws may not otherwise apply.

Fair housing laws do not require that a renter must automatically choose the individual who falls under a protected category. It simply means that the renter must make his or her decision based on solid objective criteria as to the applicant's fitness as a tenant, rather than on the applicant's membership in any protected category (see the resource entitled Choosing a Tenant).

Except for discrimination based on race, which is always illegal based on the Civil Rights Act of 1866 (42 USC §1962), there are certain exceptions to these laws. Race aside, owners of two-family owner-occupied houses, for example, are exempted from the requirements of both state and federal fair housing laws dealing with tenant selection, with one important exception. *In fact, although federal law exempts owner-occupied buildings of as many as four units, state law permits only two-unit buildings to be exempt.* State courts and the Massachusetts Commission Against Discrimination have ruled that when lead paint is present in a two-family owner-occupied home built before 1979, the owner is not exempt from the prohibition against discrimination against households that include a child under six years of age, as provided for under the state's lead paint regulations, even though the state's fair housing statute (MGL Ch. 151 B) permits such an exemption (see Lead Paint).

Dwellings of three units or less, in which at least one unit is occupied by an elderly or infirm person to whom the presence of children would constitute a hardship are exempted from the state's provision against discrimination against children. So are certain senior retirement complexes.

Because discrimination against individuals who receive public assistance or rental assistance payments is prohibited under Massachusetts law (except in the case of two-family owner-occupied properties) and both the Section 8 and Massachusetts Rental Voucher Programs require a lease, rental property owners who normally never sign a lease with their tenants are required to do so in the case of subsidized tenants.

The fair housing laws are complex and have been subject to a number of rulings over the years. When in doubt, consult with your attorney. UMass students who wish guidance concerning these regulations, or who feel they've been the victim of housing discrimination, should contact the Student Legal Services Office at (413) 545-1995.