


Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick Governor • Timothy P. Murray, Lt. Governor

Tina Brooks,
Undersecretary

Public Housing Notice 2008-01

Memorandum

To: All Local Housing Authorities
From: Deborah Goddard, Chief Counsel 
Date: March 5, 2008
Subject: Trespass Notices and Policies

Concerns have been raised to DHCD regarding the manner in which LHAs are handling trespass notices. The Massachusetts trespass law can be an effective tool for LHAs in carrying out their duty to provide decent, safe and sanitary housing. However, it is incumbent upon the LHA when employing trespass notices to make sure that it is using policies and procedures that comply with Massachusetts law.

The Massachusetts statute pertaining to the crime of trespassing, General Laws chapter 266, section 120, provides that a trespasser is: (1) a person without right; (2) who enters or remains; (3) in buildings, improved or enclosed land of another;¹ (4) after having been forbidden directly or by posted notice; (5) by a person who has lawful control of the premises.

Court decisions have further held that: (1) any person has a right to pass through the common areas of multi-unit housing to and from the entryway leading to a tenant's apartment and cannot be forbidden to do so by the landlord; and, (2) individuals may engage in the lawful exercise of first amendment rights on the streets and sidewalks of a public housing development and cannot be forbidden to do so by the landlord.

LHAs should adopt policies and procedures to designate the LHA employee(s) who have authority to issue notices to individuals that they may be considered trespassers on LHA property. LHA policies and procedures must make it clear that (1) any person, even someone subject to a trespass notice, has the right to visit a tenant, which includes both being in the company of a tenant and passing through common areas for the purpose of traveling to and from a tenant's apartment; and that (2) individuals may engage in the lawful exercise of first amendment rights on the streets and sidewalks. Trespass notices may not be used to remove tenants or their household members from the LHA property at which they reside, or to remove

¹ Meaning fenced or otherwise surrounded in a manner designed to exclude intruders.

individuals who are on LHA property for the purpose of visiting a tenant household. However, although the trespass law does not allow LHAs to prohibit tenants from having guests, it does not require the LHA or the police to accept a person's bare assertion that he or she is a guest. Inquiry to the tenant claimed to have invited the person may be advisable before taking further action, or the LHA could direct the person to go immediately to the tenant's apartment or otherwise be considered a trespasser if he or she fails to do so.

Individuals on the property who are not traveling to or from a tenant's apartment may be asked to leave LHA property or be considered trespassers. Guests who are accompanied by tenants are not trespassers.

Guests of LHA tenants who have committed certain serious criminal acts on or near LHA property may be prohibited from entering LHA property by an injunction obtained by the LHA pursuant to G.L. c. 121B, §32C et seq.

LHAs should review any existing notices for compliance with this memorandum, rescind any notices as needed, and provide notice of the rescission to the affected individual, local police, and affected tenants.