

YOUR RIGHTS UNDER THE MASSACHUSETTS COMMUNITY RESIDENCE TENANCY LAW

Prepared by the Mental Health Legal Advisors Committee
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WHAT DOES THE COMMUNITY RESIDENCE TENANCY (CRT) LAW DO?

The CRT law, codified at Massachusetts General Laws Chapter 186, section 17A, does two things:¹ (1) clarifies who in Department of Mental Health (DMH) community housing is entitled to regular summary process eviction proceedings in court; and (2) establishes procedures which must be followed prior to removing those DMH clients who are not entitled to summary process.

WHO HAS A RIGHT TO THE EXISTING SUMMARY PROCESS?

A lawful housing occupant has a right to summary process if he or she is a client of a program of Residential Care and Services licensed, funded, or operated by DMH, and he or she: (1) pays the program for such residential care and services; (2) receives care and services from the program in a housing unit equipped with a kitchen and bathroom; and (3) occupies the unit either alone or with the occupant's family, as defined in the regulations of the department.

WHO HAS A RIGHT TO THE ADMINISTRATIVE DUE PROCESS PROTECTIONS OF THE CRT LAW?

If an occupant in a program of residential care and services does not meet all of the above conditions, such as if the occupant does not live alone or with family, he or she does not qualify for summary process. However, the occupant is entitled to the due process protections of the CRT law.

WHAT ARE THE NEW DUE PROCESS PROTECTIONS OF THE LAW?

- The housing provider gives **written notice** to DMH and to the occupant of the proposed eviction, including reasons, facts and the sources of the facts; the right to a hearing and to be represented; and the occupant's right to look at his or her file.
- DMH appoints an impartial hearing officer who then conducts a **hearing** between 4 and 14 days after DMH receives the notice (unless a later date is agreed upon). Each side may present evidence, examine adverse evidence, and examine and cross-examine witnesses.

¹ Chapter 186, section 17A codified Chapter 237 of the Acts of 2002, An Act Relative to Community Residency Tenancy Protections, which was signed into law on August 9, 2002. This statute replaces the prior CRT law, section 308 of Chapter 38 the Acts of 1995, as amended by section 56 of Chapter 177 of the Acts of 2001.

- The provider must prove, by a preponderance of the evidence, either that the occupant **"has substantially violated an essential provision" of a written occupancy agreement** or **"is likely, in spite of reasonable accommodation, to impair the emotional or physical well-being of other occupants, program staff or neighbors."** In making its case, the provider may only present evidence, which is within the scope of the reasons for eviction set forth in the notice given to the occupant.
- The hearing officer issues a **written decision** based on the evidence, with findings of fact and legal conclusions. If there seems to be an appealable legal issue, the occupant or advocate should give the provider and the hearing officer notice of intent to **appeal** the matter to the Superior Court, ask for a stay, and find an attorney to handle the appeal. The provider may also appeal.
- If the occupant loses and would otherwise be homeless, DMH must take steps to assist the occupant to **secure alternative housing** in the least restrictive setting that is appropriate and available.
- If, before eviction, **the occupant does not receive the procedural protection** bulleted above, he or she has a right to summary process.
- **If DMH fails to conduct a timely hearing** pursuant to the CRT process, a provider may initiate an eviction proceeding under summary process.

WHAT CAN BE DONE IF A PROVIDER IS SEEKING AN EVICTION WITHOUT COMPLYING WITH THE LAW?

- The provider, typically the agency that provides the occupant with DMH Community Based Flexible Support (CBFS) services, may not be aware of the Community Residence Tenancy Law. Provide them with a copy of this flyer. Give a copy to the CBFS provider team leader, as well as to the agency's Director of Residential (or Community) Services. Explain that you believe that you are covered by the law and have a right to a hearing before an impartial hearing officer prior to any eviction. Ask the provider to consult with their own lawyer.
- If this step is ineffective, contact DMH. Contact, the occupant's DMH case manager, if any, and give him or her this flyer. If the occupant does not have a case manager, contact the DMH site director of the occupant's local DMH office.
- If this step is ineffective, contact the DMH Legal Office in Boston at (617) 626 8000 (ask for legal office) or the DMH Director of Human Rights (617) 626-8139.
- If these steps are ineffective, contact the intake department at the Mental Health

Legal Advisors Committee at (800) 342-9092 or (617) 338-2345.