



SUFFOLK
UNIVERSITY
BOSTON

LAW
SCHOOL

Fair Housing for Community Leaders

Suffolk University Law School

Housing Discrimination Testing Program

Fair Housing is Your Right – Use it!

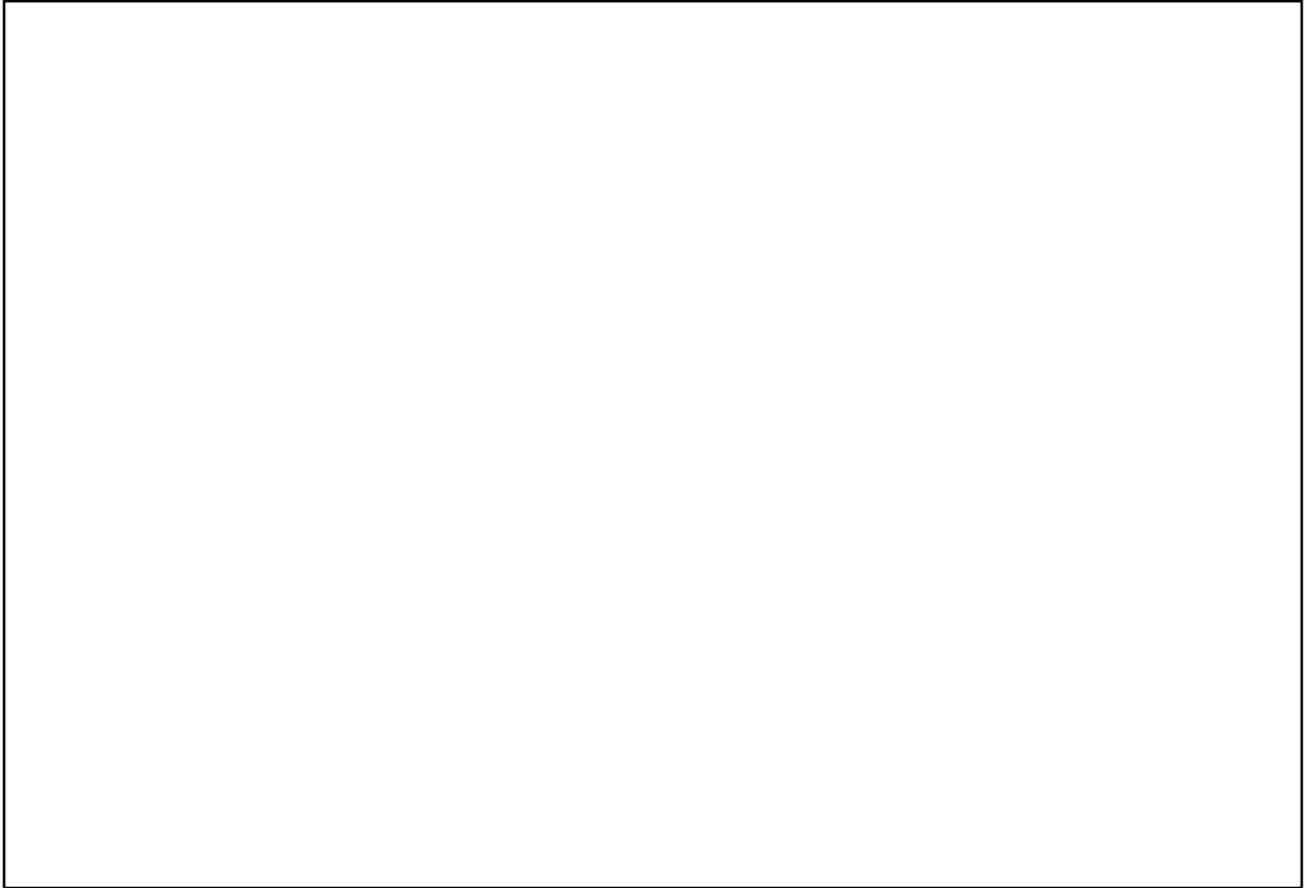
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Table of Contents

Introduction.....	3
I. What is a Protected Class?	5
II. Illegal Actions (or prohibited actions)	14
III. Hypotheticals.....	16
IV. Spotting Discrimination / Filing a Complaint.....	23
V. Interpreter Request Form.....	29

Introduction

Draw a home.



What did you draw and why?

If you could live anywhere, where would you live?

If you could live anywhere in Massachusetts, where would you live? Why?

What is important to you when looking for a place to live?

- The City of Boston reported the following in a 2010 report¹:
 - 1,397 complaints were filed between 2005 and 2010
 - Some of the most common violations of law reported were refusal to rent, eviction, or the threat of eviction
 - Most complaints alleged discrimination based on:
 - Disability (29.4%)
 - Race (20.7%)
 - National Origin (8%)
 - Children, Familial Status and lead paint issues (17.7%)

Every qualified person has the right to buy, rent or obtain a mortgage without being discriminated against.

It is illegal to discriminate in housing based on membership in a protected class. To fully understand what housing discrimination is, we must understand what actions (by those providing housing) are illegal and how “protected class” is defined.

¹ Victoria L. Williams, Boston Fair Housing Commission, City of Boston Analysis of Impediments to Fair Housing Choice, 74 (2010).

I. What is a Protected Class?

A protected class is a characteristic that cannot be targeted for discrimination. A housing provider cannot treat a person who is in a protected class differently just because they are in that protected class. For example, a housing provider cannot treat a person differently due to their race or what country they are originally from. Under the Fair Housing Act (FHA) and the Massachusetts Anti-Discrimination Law (151B), the protected classes are:

- Race
- Color
- Religion
- Sex
- Disability (the term “handicap” is used in 151B and FHA)
- Familial Status (the term “children” is used in 151B)
- National Origin
- Marital Status
- Gender Identity
- Sexual Orientation
- Ancestry
- Age (40 or older)
- Military Status
- Public Assistance
- Genetic Information

The first seven classes are protected at the federal level under the FHA. The entire list is protected by the Commonwealth of Massachusetts under 151B. This is important to know because it identifies where a person may file a complaint (more on this later). The prohibited action is only illegal if it is done *because* of membership in one these classes. Also, the protected class of the housing seeker, *not* the housing provider, is protected under law.

For example: A man refuses to rent his apartment to students. Refusal to rent is on the list of prohibited conduct, meaning it is illegal; however, it is only illegal if the man refused to rent the apartment because the renter was in a protected class. Take a look at the protected class list above. Is student listed there? Neither the federal government nor Massachusetts have made being a student a protected class, therefore, the man can refuse to rent his apartment to students.

Now the same man refuses to rent his apartment to female students, but is willing to rent to male students. Yes, he can refuse to rent to students, he cannot however, treat people differently based on their sex (or because of any of the protected classes). In this scenario his action is illegal because he is refusing to rent to certain students because of their sex, which is a protected class. A female student would be protected under the law and could file a housing discrimination complaint if the housing provider is refusing to rent to her not because she is a student, but because she is female.

A complaint is the document that a person submits to a government agency that explains why a person thinks that they have been discriminated against. The following is a list of some of the places that a person can file a housing discrimination complaint: the Department of Housing and Urban Development (HUD); the Massachusetts Commission Against Discrimination (MCAD); the Office of Massachusetts Attorney General (Mass. A.G.); the Boston Fair Housing Commission (for complaints within the City of Boston); the Cambridge Human Rights Commission (for complaints within the City of Cambridge); and in state court. There is more information on complaints in Section IV.

The protected classes explained:

- **Age**

This is a class protected under state law. Age is defined as 40 or older. Senior housing is allowed under the law, but under certain circumstances.

- **Ancestry**

Ancestry is protected under state law. This refers to a person's line of descent or lineage.

- **Color**

Color is a class protected under both federal and state law. Color refers to skin tone (whether someone is light complexioned or dark complexioned). It is important to remember that people can and do experience discrimination by people who are the same race. At times this discrimination may be based on color. Remember, it is always the protected class of the housing seeker or tenant that is protected under fair housing laws *not* the housing provider.

- **Disability** (the term "handicap" is used in 151B and FHA)

Disability is protected under federal and state law.

Disability means:

- (1) a physical or mental impairment that substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or
- (3) being regarded as having such an impairment.

A person is not considered disabled under the fair housing laws if he or she is currently using illegal drug (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

- *What's a "major life activity"?*

Major life activity means activities that are of central importance to day to day life. Examples are seeing, walking, breathing, caring for oneself, and speaking. A person may not qualify for SSDI, but may meet the definition of disabled under fair housing laws.

Disability is a protected class, therefore people cannot be treated differently from other tenants or housing seekers because of their disability; if they are presumed to have a disability when they do not; and/or if they are associated with someone else who has a disability.

A housing provider cannot ask if an applicant for an apartment has a disability or if a person intending to live there or anyone associated with an applicant or resident has a disability. A housing provider cannot ask about the nature or severity of a person's disabilities.

Housing providers may, however, ask questions related to the following, **provided these inquiries are made of all applicants**, including those with and without disabilities:

- Questions about an applicant's ability to meet the requirements of tenancy;
- Questions to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- Questions to determine if an applicant qualifies for housing that is legally available only to persons with a disability or to persons with a particular type of disability; and
- Questions to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example: A housing provider operates housing that is legally limited to people with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent (without having to ask) that an applicant has a chronic mental disability, the provider may request reliable

information/documentation of the mental disability needed to qualify for the housing.

- **Reasonable Accommodation**

A reasonable accommodation is the phrase that is used to describe a person's request that a change in policy or procedure happen so that person may use and enjoy the property. The request must be related to the person's disability. An example would be if a person has an emotional support animal that is needed because of a disability, he or she might request that a building's "no pet" policy be waived so that the person can continue to live there and have the needed emotional support animal.

A housing provider may not ordinarily ask about the nature and severity of an individual's disability. However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that:

- is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities),
- describes the needed accommodation, and
- shows the relationship between the person's disability and the need for the requested accommodation.

Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is **not** necessary.

- **Reasonable Modification**

A modification is a change to the physical property (i.e., putting in a grab bar in a bathroom or lowering cabinets in a kitchen). The housing provider may go through the same process for a modification as what is explained above about accommodations.

A person with a disability does not need to use the phrase “reasonable accommodation” or “reasonable modification” when making a request, he or she should just make sure that the housing provider understands that the request is related to the person’s disability. If that is not clear, additional information from the person making the request may be needed. A person does not need to put the request in writing (although that is often very helpful). A person does not need to fill out the housing provider’s forms in order to make a request.

Just because a person has a disability does not mean that they are allowed to have the reasonable accommodation or modification. Requests can be denied if a person does not have a disability (as defined by the FHA) or if there is no related need between the disability and the request. Requests can also be denied if unreasonable or if it would impose an undue financial and administrative burden or if it would fundamentally alter the nature of the program. If a request is denied, a housing provider should discuss if there is an alternate accommodation (or modification) that would effectively meet the requestor’s need. This should be an interactive process.

- **Familial Status**

Familial status is protected under federal and state law (151B uses the term “children”). It means one or more people living in a household who have not yet reach the age of 18. The protection also applies to a person who is pregnant or in the process of gaining legal custody of a child under the age of 18.

Many people with young children have been told that they have to move or cannot rent an apartment because of lead paint. This is illegal. Landlords have an obligation under law (the Mass. lead law) to make housing lead safe if a child under the age of six lives or will live there. A landlord cannot evict or refuse to rent to a person because he or she

has a young child. That person would have cause to file a fair housing complaint.

- **Gender Identity**

Gender Identity is protected under state law. The term refers to a person's gender-related identity, appearance or behavior whether or not that appearance or behavior is different from what is traditionally associated with physiology or assigned sex at birth.

- **Genetic Information**

This will rarely, if ever, present as an issue related to housing. This is a class protected under state law. Massachusetts General Law 151B makes it discriminatory for an insurance company or employer to use genetic information in any way. It is illegal in Massachusetts to treat someone differently because of the results of genetic testing or family history related to the presence or absence of a gene.

“Genetic information” is any written, recorded individually identifiable result of a genetic test or explanation of such a result or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes. The purpose of the law is to protect a person's right to keep genetic test results private and ensure that such test results will not be used to disadvantage a person.

- **Marital Status**

Marital Status is protected under state law. It means treating someone differently based on their relationship status (i.e. whether people are married, single, living together but not married, widowed, etc.).

- **Military Status**

Military status is protected under state law. This includes veterans and those who are currently serving.

- **National Origin**

National origin is protected under both federal and state law. It means what country a person is from or where their ancestors are

from. This also could include if a person is treated differently because he or she has an accent, speaks a language other than English, or if a person is believed to be from a particular place or have a particular ethnic background.

- **Public Assistance**

The receipt of public assistance is protected under state law. This includes housing vouchers such as a Section 8 voucher or MRVP. It also includes SSI and SSDI and other forms of public assistance. Some federal housing programs also prohibit discrimination based on a person receiving public assistance.

- **Race**

Race is a class protected under both federal and state law. Race is a social construct. HUD collects data related to race and uses five categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

- **Religion**

Religion is a class protected under both federal and state law. This includes, but is not limited to: Atheism, Baha'i, Buddhism, Catholicism, Hinduism, Islam, Jehovah's Witnesses, Judaism, Mormon, Paganism, Shinto, Taoism and Unitarianism. People who practice no religion are also protected.

It is important to remember that although religion is a protected class, the FHA does not require that housing providers reasonably accommodate religious beliefs or practices. The FHA prohibits only:

- Applying different terms and conditions of housing because of a person's religion
- Denying a housing application, a dwelling, or evicting people because of their religion

- Steering or restricting people to one area of a building or complex based on their religion
- Housing advertisements stating that people are preferred or not wanted based on religion.

- **Sex**

Sex is a class protected under both federal and state law. This includes being treated differently based on being female or male and it also includes sexual harassment.

Sexual harassment is unwelcome verbal, visual, or physical actions of a sexual nature that is severe or pervasive and affects a person's housing conditions or creates a hostile living environment.

- **Sexual Orientation**

Sexual orientation is protected under state law. Some federal housing programs also prohibit discrimination based on sexual orientation. This includes whether a person is bisexual, heterosexual, or homosexual. It also includes whether someone is assumed to be bisexual, heterosexual, or homosexual.

II. Illegal Actions (or prohibited actions)

What is illegal is defined by law. There are federal, state and local (city) laws that cover housing. The federal government sets the minimum level of protection (the floor) and states (and cities) can then add more protections if they decide to (the ceiling). Those who provide housing must follow all fair housing laws in their area.

The Fair Housing Act (FHA) is the federal law that states what activity is illegal, who is protected, what agencies can hear complaints, who must comply with the law, and what could happen if a person has been found to have violated the law. In Massachusetts the state anti-discrimination law is commonly known as chapter 151B. The FHA and 151B tell us what actions a seller, landlord, real estate agent, or other person related to providing housing cannot do based upon a person's membership in a protected class.

What are some activities related to housing that you think are illegal?

The following actions are illegal under federal and state law:

- Refusing to rent or sell
- Refusing to negotiate for housing
- Making housing unavailable
- Denying housing
- Setting different terms, conditions, or privileges for sale or rental
- Providing different housing services or facilities to people
- Falsely denying that housing is available for inspection, sale, or rental
- Blockbusting: for profit, persuading (or trying to persuade) homeowners to sell by suggesting that people of a particular race (or other protected class) have moved or are about to move into the neighborhood)
- Denying access, membership, or participation in any organization, facility, or service related to sale or rental of housing or setting different terms and conditions for such access, membership, or participation
- To make, print, or publish any notice, advertisement, or statement that indicates a preference or limitation based on a protected class
- Coerce, intimidate, threaten, or interfere with anyone exercising a fair housing right or assisting someone else who is exercising that right

All of these actions are illegal if done based upon a person's protected class.

Many laws have exceptions and the fair housing laws are no different. Some housing may not be covered by the fair housing laws depending on whether or not the owner lives there, how many units are in a building among other factors. A fair housing organization can help you determine if the housing is covered.

III. Hypotheticals

Scenario 1

Consuelo and Mitchell are looking for an apartment closer to where they both work. Consuelo calls a landlord regarding a recent ad for an apartment to rent. Upon hearing Consuelo's accent, the landlord tells her the apartment has been rented. The next day, Mitchell calls the landlord, not realizing his wife had called the day before. Not hearing an accent, the landlord tells Mitchell that he can come later that afternoon to see the apartment, as it is still available.

Protected Class(es)?

Discriminatory Conduct?

Scenario 2

Catherine just received a promotion. She is excited to rent a bigger apartment for herself and her three children. She calls the landlord regarding an apartment for rent in a new complex. The landlord asks her, "Who will be renting?" Catherine replies that it will be her and her three children, ages 2, 6, and 11. The landlord replies, "The apartment has steep stairs that are too dangerous for children. I am sorry, but I cannot rent this apartment to you."

Protected Class(es)?

Discriminatory Conduct?

Scenario 3

Scenic Springs is a beautiful neighborhood. It is a community of white families and many families have lived there for generations. A non-white family, the Millers, looks at a home they can definitely afford in Scenic Springs that was recently put on the market. It's their dream house with a large backyard where their three children would be able to play. The real estate agent showing the house informs the Millers that they would probably feel more comfortable in a different neighborhood on the other side of town and gives them list of houses for sale there.

Protected Class(es)?

Discriminatory Conduct?

Scenario 4

Roberto and Maria are very excited about a new apartment that they are interested in renting. Their son, Jorge, has Autism and is in need of a place with more space for his homeschooling and physical therapy. The landlord, upon meeting the family, says that she can rent them the apartment but they will need to take out an extra insurance policy to cover any damages that may be caused by their son. They will also need to give a larger security deposit than other renters. Roberto and Maria do not think this is right, but they agree to it because they need the apartment.

Protected Class(es)?

Discriminatory Conduct?

Scenario 5

NhuHan wants to buy a condominium. She visits a lender to find out how much mortgage she can afford. The loan officer asks NhuHan if she will be married soon so her husband can help her make the payments. NhuHan says she is going to buy the condo by herself. The lender suggests that since she will be buying it without a husband, she should not spend more than \$130,000.

Protected Class(es)?

Discriminatory Conduct?

Scenario 6

Ann called a property manager about a two bedroom apartment that she saw advertised on Craigslist. The property manager asked Ann if she had any pets and who would be living there. Ann responded that they did not have any pets and it would be herself, and her kids, ages 2 and 4. The real estate agent apologized and informed Ann that the apartment was not lead safe and, because of the presence of lead paint, it would not be safe for children under the age of 6 to live there. The property manager informed Ann that the company also had two and three bedroom apartments available at their other property two blocks away that was lead safe for kids.

Protected Class(es)?

Discriminatory Conduct?

Scenario 7

The tenant is a 26 year old man who uses a wheelchair. He has lived in his current residence for 2 years and is moving to a new apartment due to a new job in a new city. He is a tenant in good standing and he is a tenant at will (no lease).

Upon giving his property owner the 30 days required notice that he was moving, the tenant was told that he would not receive his security deposit. When he questioned the property owner why the security deposit was being withheld, the property owner said "You use a wheelchair so I know that the walls and doorways are pretty banged up. I am using the security deposit to fix the mess that your wheelchair caused." The property owner made those remarks without inspecting the unit. In fact in the 2 years that the client has lived in the unit, the unit has never been inspected.

The tenant spoke with a family that had moved out of the same complex within the last six years and discovered that most of their security deposit was returned to them after their unit had been inspected and they had moved out. A portion of it was not returned due to a cracked mirror in the bathroom. The tenant is unsure of what he should do.

Protected Class(es)?

Discriminatory Conduct?

IV. Spotting Discrimination / Filing a Complaint

Ask yourself three questions when you are trying to decide whether you or someone you know has been a victim of housing discrimination: 1) are you protected under any of the anti-discrimination laws; 2) is the apartment or house covered by the fair housing laws; and 3) are the actions by the landlord, owner, property manager or other person illegal under the law.

If the answer to all three questions is yes, fair housing laws apply. Fair housing is your right, use it! If you are unsure of the answer to any of these questions, contact a fair housing organization for help.

A complaint is the document that is filed with a government agency that states that you believe you were discriminated against. It should outline that you are a member of a protected class, where the property is so it can be determined if the housing is covered by fair housing laws and what happened that makes you believe that you were discriminated against. You can take a complaint directly to a government agency (HUD, MCAD, BFHC, etc.) or you can go to an attorney or fair housing organization for help. Organizations will help you fill out the complaint.

A copy of the form that a person would fill out when filing a complaint with the Boston Fair Housing Commission (BFHC) is on the next three pages. Once this form is completed and filed with the BFHC, an investigation will begin.



City Of Boston

Martin J. Walsh, *Mayor*

HOUSING DISCRIMINATION INTAKE FORM

This form is for intake purposes ONLY and does not indicate that the Office of Fair Housing and Equity or its Commissions have accepted this report as a valid complaint

Please check off the appropriate box below if you believe it played a role in your complaint

- | | | |
|---|---|---|
| <input type="checkbox"/> Age | <input type="checkbox"/> Children | <input type="checkbox"/> Color |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Familial Status | <input type="checkbox"/> Gender Identity and Expression |
| <input type="checkbox"/> Marital Status | <input type="checkbox"/> Military Status | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Race | <input type="checkbox"/> Religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Source of Income |

CONTACT INFORMATION:

First and Last Name: _____ Date _____

Home Address: _____ City _____ State _____ Zip: _____

Phone: _____ E mail _____

Additional Contact Information: _____

What else do we need to know about you? (e.g Translation, Reasonable Accommodation)

Who referred you? How did you hear about our office? _____

COMPLAINT INFORMATION:

1) Why do you believe you were discriminated against?

2) Who do you believe discriminated against you? (Name, address and phone)

3) What happened?

4) When did the discrimination happen? (Date) _____

5) Where did the discrimination happen?

Street _____ **Boston, MA** _____

The government agency where a complaint is filed will investigate the complaint. They do not work for you. It is their job to gather all of the relevant information and decide whether there is enough evidence that it is more likely than not that discrimination occurred. If they decide this, the case goes forward.

How much does it cost to file a complaint?

It does not cost any money to file a complaint.

Do I need to be a U.S. citizen to file a complaint?

No. Your fair housing rights are not affected by your immigration status. Your citizenship should not be questioned nor should you be asked for copies of your documentation.

Do I need a lawyer to file a complaint?

No. An intake worker at the agency will assist you in filling out their form.

How much time do I have to file a complaint?

It depends on where you are filing as different agencies can only accept complaints within a certain period of time of when the discrimination occurred.

For example if a person was told they could not see an apartment that was for rent because they have a baby, he or she could file a complaint (based on familial status) within the following number of days of when they were told that:

Court = 2 years

HUD = 1 year

Mass. Commission Against Discrimination= 300 days

Boston Fair Housing Commission = 6 months

Places like Suffolk University Law School and the Fair Housing Center of Greater Boston are not listed here because they are agencies that help people file complaints, they do not make determinations like the government agencies listed above.

What do I get if I win the case?

This will vary depending on a number of factors. People can be found to be entitled to actual damages and punitive damages. The amount of money will vary depending on the facts of each case.

A court or agency can also order the offender to pay your attorney's fees and can also issue an order prohibiting the offender from discriminating against other people in the future.

V. Interpreter Request Form

Hello, I would like to speak with someone about a potential housing complaint.

I communicate in (write language): _____

My name is: _____

My phone number is: _____

My email is: _____

My address is: _____

The best way to contact me is (circle): phone email mail alternate contact

Alternate contact: _____

Alternate contact phone number: _____

Reasonable accommodation request: _____

The best time or times to reach me is/are:

Monday <input type="checkbox"/> AM <input type="checkbox"/> PM	Tuesday <input type="checkbox"/> AM <input type="checkbox"/> PM	Wednesday <input type="checkbox"/> AM <input type="checkbox"/> PM
Thursday <input type="checkbox"/> AM <input type="checkbox"/> PM	Friday <input type="checkbox"/> AM <input type="checkbox"/> PM	Other:

Where to file a fair housing complaint, get help filing a complaint, or ask fair housing questions:

**Suffolk University Law School (clinic)
Housing Discrimination Testing Program**

120 Tremont Street

Boston, MA 02108

Phone: 617- 884-7568

TTY users, please call the MA Relay Service at 1-800-439-2370

<http://www.suffolk.edu/law/academics/26012.php>

Boston Fair Housing Commission

1 City Hall Plaza, Room 966

Boston, MA 0220

Phone: 617-635-4408

TTY users, please call the MA Relay Service at 1-800-439-2370

www.cityofboston.gov/civilrights

Cambridge Human Rights Commission

51 Inman Street, 2nd Floor

Cambridge, MA 02139

Phone: 617-349-4396

TTY: 617-492-0235

www.cambridgema.gov/HRC

Fair Housing Center of Greater Boston

262 Washington Street

Boston, MA 02108

Phone: 617-399-0491

TTY users, please call the MA Relay Service at 1-800-439-2370

www.bostonfairhousing.org

HUD FHEO Region I

Thomas P. O'Neill, Jr. Federal Building

10 Causeway Street,

Boston, Massachusetts 02222-1092

Phone: 617-994-8300

Toll Free: 1-800-827-5005

TTY: 617-565-5453

Mass. Commission Against Discrimination

One Ashburton Place

Boston, MA 02108

Phone: 617-994-6000

TTY: 617-994-6196

<http://www.mass.gov/mcad/>

Mass. Fair Housing Center

57 Suffolk Street

Holyoke, MA 01040

Phone: 413- 539-9796

Email: info@massfairhousing.org

<http://www.massfairhousing.org/contact-us>

SouthCoast Fair Housing, Inc.

257 Union Street

New Bedford, MA 02740

Phone: 774-473-8333

<http://www.southcoastfairhousing.org/>

If you think that you may have experienced discrimination, do something about it! You can make a difference. You can help stop housing discrimination in our community.