

AMENDED REGULATIONS

Adopted March 1, 2001

BOSTON FAIR HOUSING COMMISSION

***One City Hall Plaza, Room 966
Boston, Massachusetts 02201***

(617) 635-4408

Fax: (617) 635-3290

TTY: (617) 635-2541

BOSTON FAIR HOUSING COMMISSION REGULATIONS

Table of Contents	PAGE
Regulation 1: General Provisions	
1.00 Authority	01
1.01 Discrimination Prohibited	01
1.02 Definitions	01
1.03 Persons and Property Covered	07
1.04 Unlawful Housing Practices	08
a. Refusal to Rent, Sell, Negotiate, Etc.	08
b. Discrimination in Conditions or Privileges	08
c. Restriction of Choices	08
d. Admission, Eligibility Requirements	09
e. Notices, Advertising	09
f. Representations of Unavailability	09
g. Real Estate Related Transactions, Loans	10
h. Blockbusting	11
i. Inquiries and Records	11
j. Multiple Listing, Brokers Services	12
k. Coercion, Intimidation and Threats	12
l. Reasonable Modifications, Accessibility	13
m. Source of Income Discrimination In Credit and Rentals	14
n. Other	14
1.05 Exemptions	15
Regulation 2: Practices and Procedures Before The Boston Fair Housing Commission	16
2.01 Complaint	16
a. Who May File	16
b. Form and Filing	16
c. Time of Filing	17
d. Manner of Filing	17
e. Service Upon Respondent	17
f. Amendment of Complaints	17
g. Withdrawal of Complaints	18
h. Extension of Time Periods	18
i. Class Action	19
j. Prompt Judicial Relief	19
2.02 Parties	
a. Intervention	20
b. Substitution	20
c. Consolidation	21

2.03 Representation of Parties	21
a. Prior to Probable Cause	21
b. After Probable Cause	21
c. Other	21
2.04 Jurisdiction	22
2.05 Investigation	22
a. Commencement of Investigation	22
b. Assignment of Investigator	22
c. Service and Notification of Rights	22
d. Final Investigative Report	24
e. Confidentiality	25
f. Completion of Investigation	25
2.06 Conciliation and Settlement	26
a. Conciliation Efforts and Stay of Reports	26
b. Agreements	26
c. Confidentiality of Conciliation	27
d. Compliance Review	27
e. Reopening	27
2.07 Motions	28
a. Requesting and Objecting	28
b. Hearing	28
c. Ruling	28
2.08 Dispositions	28
a. Issuance of Final Investigative Report	28
1. Probable Cause	28
2. No Probable Cause	29
b. Reconsideration of Probable Cause	29
c. Request for Preliminary Hearing	30
d. Election of Civil Action	30
2.09 Public Hearing	32
a. Certification to Public Hearing	32
b. Hearing Commissioner	32
c. Respondents' Answer	34
d. Pre-hearing Conference	34
e. Continuances	35
f. Settlement After Commencement of Public Hearing	35
g. Default	35
h. Discovery	36
i. Subpoenas	36
j. Transcript and Record	37
k. Stipulations	37
l. Evidence	38
m. Administrative Notice	38
n. Oral Argument	38
o. Witnesses	38
p. Briefs and Proposed findings of Fact	38

q. Other Submissions	38
r. Assessments of Costs	39
s. Final Commission Order	39
t. Enforcement Powers After Public Hearing	39
u. Final Disposition of Complaint	40
2.10 Judicial Review	41
2.11 Judicial Enforcement	41
2.12 Private Enforcement	41
2.13 Licensing of Brokers, Realtors	42
Regulation 3: Notice to be Given by Real Estate Brokers, Salespeople, Title Insurance Companies and Lawyers; Records to be Retained	43
3.01 Giving of Notice to Tenants and Buyers	43
3.02 Giving of Notice to Lessors and Sellers	43
3.03 Housing Records to be Retained	44
3.04 Enforcement	45

REGULATION 1: GENERAL PROVISIONS

1.00 Authority

These Regulations were originally promulgated pursuant to City of Boston Code, Ordinances, Title 10, Section 154 (1982) and are hereby amended in accordance therewith and pursuant to St. 1994, c. 37, as amended by St. 1998, c. 165. This statute empowers the Boston Fair Housing Commission to enforce the City of Boston's fair housing laws in a manner substantially equivalent to enforcement under Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, (Title VIII) and to promulgate related regulations. Where any ambiguity may exist in the substance or application of the Statute or these Regulations, as amended, they shall be interpreted consistent with the provisions and related regulations of Title VIII and Chapter 151B of the Massachusetts General Laws.

1.01 Discrimination Prohibited

It is unlawful to deny equal access to or to discriminate in housing regardless of the public or private source of denial or discrimination against an individual or group based on race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income.

1.02 Definitions: As used in these Regulations:

- (a) "Age," unless a different meaning clearly appears from the context, means the actual or perceived chronological age of an individual forty (40) years or older.
- (b) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or who believes he or she will be injured by a discriminatory housing practice that is about to occur.
- (c) "Blockbusting" includes those prohibited practices contained in Section 1.04(h) of these Regulations.
- (d) "Boarder," "roomer" or "lodger" means a person living within a household who pays consideration for such residence and does not occupy such space within the household as an incident of employment therein.
- (e) "Children" means one or more individuals who have not attained the age of 18 years being domiciled with i) a parent or another person having legal custody of

such individual or individuals; or ii) the designee of such parent or other person having such custody, with the written permission of such parent or other person. For the purposes of those Unlawful Housing Practices listed in or incorporated by reference in Section 1.04 of these Regulations, discrimination against persons with children shall extend to women who are pregnant and to persons who are in the process of securing legal custody of a child or children.

- (f) "Commission" means the Boston Fair Housing Commission and "Commissioner" means a commissioner of the Boston Fair Housing Commission.
- (g) "Complainant" means the person who files a complaint alleging a discriminatory housing practice.
- (h) "Covered Multi-Family Dwelling" means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwellings in other buildings consisting of four or more dwelling units.
- (i) "Discriminatory Housing Practice" means an act that is unlawful under Section 804, 805, 806 or 818 of the Fair Housing Act or a discriminatory housing practice that is unlawful under GL c. 151B, Section 4 and the Statute, Section 5. (The "Unlawful Housing Practices" listed in these Regulations at Section 1.04 are generally categorized and based upon the specific prohibitions under the Fair Housing Act and/or GL c. 151B, Section 4. These "Unlawful Housing Practices" are therefore an inclusive list, which incorporates by reference all of the specific "Discriminatory Housing Practices" as defined above).
- (j) "Dwelling" means a building, structure or portion thereof containing housing accommodations.
- (k) "Dwelling unit" means housing for the exclusive use of persons who maintain a common household.
- (l) "Duly Authorized Representative" means a person authorized to represent another by a written authorization document either signed by the person represented or in a form otherwise recognized by law.
- (m) "Executive Director" means the executive officer of the Commission as appointed by the Commission.

- (n) "Fair Housing Act" means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600-3620).
- (o) "Family" includes a single individual.
- (p) "Final Commission Order" means a decision of the full Commission, which shall require three votes for passage. Settlement agreements pursuant to Section 2.06(b) shall constitute Final Commission Orders.
- (q) "Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. As used in this definition:
 - (1) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
 - (2) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
 - (3) "Is regarded as having an impairment" means:
 - (i) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such limitation
 - (ii) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

For the purposes of those "Unlawful Practices" listed in or incorporated by reference under Section 1.04(a)(b)(i) and (l), of these Regulations, "handicap" refers to that of a) the buyer or renter, b) a person residing in or intending to reside

in that dwelling after it is sold, rented or made available; or c) any person associated with that person.

- (r) "Hearing Commissioner" means a Commissioner assigned to preside at a Hearing pursuant to Section 2.09(b).
- (s) "Housing or Housing Accommodations" includes any building, structure, or portion thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings and any vacant land which is offered for sale or lease for the construction or location of any such building structure or portion thereof. This shall not include a hospital, convent, monastery, asylum or public institution.
- (t) "Housing for Older Persons" in connection with the provisions regarding children at 1.05(c) means:
 - (1) Housing provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons as defined in the State or Federal program;
 - (2) Housing intended for, and solely occupied by, persons 62 years of age or older; or
 - (3) Housing intended and operated for occupancy by at least one person 55 years of age or older per unit, and which meets the requirements of the Regulations promulgated by the U.S. Department of Housing and Urban Development. See 24 CFR PART 100, Subpart E.

The status of "age" and "children" shall not apply to residency in Housing for Older Persons.

- (u) "Housing Law" refers to local, state and federal housing law, specifically, the ordinance, the Statute, GL c. 151B and the Fair Housing Act.
- (v) "Marital Status" means the actual or supposed state of being or having been unmarried, married or separated as defined under Massachusetts law. Unmarried includes persons who are single, divorced or widowed.
- (w) "Military Status" means the actual or supposed condition of being, not being, having been or not having been in the service of the military.

- (x) "Multiple Dwelling" means a dwelling which is usually occupied for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. It shall not be deemed to include a hospital, convent, monastery, asylum or public institution.
- (y) "Ordinance," unless a different meaning clearly appears from the context, means City of Boston Code, Ordinances, Title 10, Sections 150-157 (1982), as amended.
- (z) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the Commonwealth and all political subdivisions and boards and commissions thereof.
- (aa) "Personal Service" means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the last known place of business, residence or usual abode of the person to be served. A Commission staff member of the Commission may provide personal service.
- (bb) "Person in the Business of Selling or Renting Dwellings" means any person who:
 - (1) Within the preceding twelve months has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
 - (2) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
 - (3) Is the owner of any dwelling designed or intended for occupancy by or occupied by five or more families.
- (cc) "Plaintiff" means the City of Boston acting by and through the Fair Housing Commission.
- (dd) "Probable Cause" means a conclusion, after appropriate investigation, that there is sufficient evidence upon which a fact finder could form a reasonable belief that it

is more probable than not that the Respondent committed an unlawful practice. In making this finding, disputes involving genuine issues of material fact are to be reserved for determination at a Hearing.

- (ee) "Racial Designation" shall mean "white (non-Hispanic)," "black (non-Hispanic)," "American Indian/Alaska Native," "Hispanic" and "Asian/Pacific Islander."
- (ff) "Reasonable Attorney's Fees and Costs" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney's fees. The amount of fees and costs awarded shall be based upon the prevailing market rate for the kind and quality of services furnished.
- (gg) "Religious Creed" shall mean the actual or supposed faith, belief or moral philosophy of an individual or lack thereof.
- (hh) "Residential Real Estate Related Transactions" means
 - (1) The making or purchasing of loans or providing other financial assistance;
 - (2) For purchasing, constructing, insuring, improving, repairing or maintaining a dwelling; or
 - (3) Secured by residential real estate; or
 - (4) The selling, brokering, insuring or appraising of residential real property.
- (ii) "Respondent" means
 - (1) The person or other entity accused in a complaint of a discriminatory housing practice; and
 - (2) Any other person or entity identified in the course of investigation and notified as required with respect to Respondents so identified under these Regulations at Section 2.05(c)(2).
- (jj) "Sexual Orientation" means the actual or supposed heterosexuality, homosexuality, or bisexuality of an individual, but shall not include persons whose sexual preference involves minor children as the sex object. "Sexual

Preference," as used in the Ordinance, shall have the same meaning as "Sexual Orientation."

- (kk) "Source of Income" shall mean public assistance reciprocity. Source of income shall not include income derived from criminal activity.
- (ll) "Statute," unless a different meaning clearly appears from the context, means St. 1994, c. 37, which codifies as state law the Home Rule Petition entitled "An Act Empowering the Boston Fair Housing Commission to Impose Civil Penalties and Enforce by Judicial Power the Provisions of Title VIII.
- (mm) "Statute of Limitations," unless a different meaning clearly appears from the context, means the one hundred eighty (180) day deadline for the filing of a complaint under Section 154 of the Ordinance. The term "one hundred eighty (180) days after the occurrence of the alleged discriminatory practice" shall be interpreted to mean within one hundred eighty (180) days after the alleged discriminatory event, or, in the case of a continuing discriminatory practice, within one hundred eighty (180) days after the termination of the alleged practice.

1.03 Persons and Property Covered

- (a) These Regulations shall apply but are not limited to any person, corporation, association, firm or enterprise engaged in the business of selling or renting dwellings; or ownership, rental, sale, lease, management, construction or rehabilitation of housing accommodations; or appraisal of residential real property; or any person, bank, building and loan association, firm or enterprise whose business consists in whole or in part of the making of residential real estate related transactions.
- (b) All housing accommodations not expressly excluded by these Regulations or housing law in the City of Boston are subject to these Regulations.
- (c) Nothing in these Regulations shall apply to housing or land intended or suitable for housing that is specifically excluded from coverage by the Ordinance.
- (d) Nothing in these Regulations shall apply to the leasing or rental to two or fewer roomers, boarders, or lodgers.

1.04 Unlawful Housing Practices:

The following Unlawful Housing Practices are based upon those specific discriminatory housing practices made unlawful under Sections 804, 805, 806 or 818 of the Fair Housing Act, Massachusetts General Law chapter 151B, Section 4 and St. 1994, c. 37 as amended by St. 1988, c. 165 which are incorporated herein by reference. These Unlawful Housing Practices shall include, but are not limited to, the following prohibited acts:

(a) REFUSAL TO RENT, SELL OR NEGOTIATE, OR TO DENY ACCESS

It is unlawful to refuse to rent, lease or sell, to refuse to negotiate for the sale or rental or to deny access or otherwise make unavailable to any person, housing or land intended or suitable for housing because of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income. For the purposes of this "Unlawful Practice," "handicap" refers to that of 1) the buyer or renter; 2) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or 3) any person associated with that person.

(b) DISCRIMINATION IN TERMS, CONDITIONS, PRIVILEGES

It is unlawful to discriminate against any person because of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income, in terms, conditions or privileges of such housing or in the furnishing of facilities or services in connection therewith. For the purposes of this "Unlawful Practice," "handicap" refers to that of 1) the buyer or renter; 2) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or 3) any person associated with that person.

(c) RESTRICTION OF CHOICES

It is unlawful because of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation, or source of income to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a

dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(d) ADMISSION, ELIGIBILITY REQUIREMENTS

It is unlawful to discriminate on the basis of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation, or source of income in determining whether a person satisfies any occupancy, admission, enrollment, eligibility, membership or other requirement or condition which applicants must meet in order to be provided housing.

(e) NOTICES, ADVERTISING

It is unlawful to make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, including "For Rent" and "For Sale" signs and listings with respect to the sale or rental of housing or land, that indicates any preference, limitation or discrimination based on race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income, or that indicates an intention to make any such preference, limitation or discrimination. These prohibitions shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(f) REPRESENTATIONS OF UNAVAILABILITY

It is unlawful to represent to any person because of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income that no suitable housing accommodation is available for inspection, sale or rental within a particular neighborhood or area when such a suitable housing accommodation within the particular neighborhood or area is in fact so available; or similarly to fail to disclose or offer to show all properties listed or held for sale or rent within a requested price or rental range, regardless of location, or to make false

representations regarding the listing, prospective listing, sale or prospective sale of any housing accommodation.

(g) REAL ESTATE RELATED TRANSACTIONS, LOANS, APPRAISALS, INSURANCE

It is unlawful for any person whose business includes granting mortgage loans or engaging in residential real estate-related transactions to discriminate against any person in the granting of any mortgage loan or in making available such a transaction, or in the terms or conditions of such a loan or transaction because of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income. Such transactions shall include, but are not limited to:

- (1) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, insuring, improving, repairing or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or
- (2) The selling, brokering, insuring or appraising of residential real estate.

In the case of age, the following shall not be an unlawful practice:

- (1) An inquiry of age for the purpose of determining a pertinent element of credit worthiness;
- (2) The use of an empirically derived credit system which considers age; provided, however, that such a system is based on demonstrably and statistically sound data; and provided further, that such system does not assign a negative factor or score to any applicant who has reached age sixty-two;
- (3) The offering of credit life insurance or credit disability insurance, in conjunction with any mortgage loan to a limited age group;
- (4) The failure or refusal to grant any mortgage loan the duration of which exceeds the life expectancy of the applicant as determined by the most recent Individual Annuity Mortality Table.

Nothing in this Unlawful Practice prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than those herein above proscribed.

(h) BLOCKBUSTING

It is unlawful for any person to directly or indirectly induce or attempt to induce or prevent or attempt to prevent the sale, purchase, or rental of housing accommodations by:

(1) Implicit or explicit representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religious creed, marital status, handicap, military status, national origin, sex, age, ancestry, sexual orientation, source of income or a person or persons having a child; or implicit or explicit representations regarding the effects or consequences of any such entry or prospective entry.

(2) Making any unrequested contact or communication with any person or persons, initiated by any means, for the purpose of so inducing or attempting to induce the sale, purchase, or rental of any housing accommodations when he/she knew or, in the exercise of reasonable care, should have known that such unrequested solicitation would reasonably be associated by the persons solicited with the entry into the neighborhood of a person or persons of a particular race, color, religious creed, marital status, handicap, military status, national origin, sex, age, ancestry, sexual orientation, source of income or a person or persons having a child.

(i) INQUIRIES AND RECORDS

It is unlawful to cause to be made any written or oral inquiry or record, except those required to be submitted to the Commission, the U.S. Department of Housing and Urban Development, the Massachusetts Commission Against Discrimination or the Massachusetts Executive Office of Communities and Development, as part of an affirmative marketing proposal or permitted under 24 CFR Part 100.202 (c)(1-5) (see below) concerning the race, color, religious creed,

marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income of any person or group of persons seeking to rent, lease, or buy housing or land. For the purposes of this "Unlawful Practice," "handicap" refers to that of 1) the buyer or renter; 2) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or 3) any person associated with that person. Pursuant to 24 CFR Part 100.202(c)(1-5) (see below) the following inquiries are permitted, provided these inquiries are made of all applicants:

- (1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
- (2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
- (3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;
- (4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
- (5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(j) MULTIPLE LISTING, BROKERS SERVICES

It is unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service organization or facility relating to the business of selling or renting dwellings or to discriminate against any such person in the terms or conditions of such access, membership or participation because of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income.

(k) COERCION, INTIMIDATION, THREATS

It is unlawful to coerce, intimidate, threaten, interfere with or injure; or to attempt

to coerce, intimidate, threaten, interfere with, or injure any person because of his or her race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income, and his or her selling, purchasing, renting, financing, occupying or negotiating for the sale or rental of housing or land; or because of his or her compliance with housing law; or because he or she has taken affirmative action in the area of fair housing; or because he or she has filed a complaint under housing law; or exercised or encouraged or aided another in the exercise of any right granted or protected by housing law.

(1) REASONABLE MODIFICATIONS AND ACCESSIBILITY FOR HANDICAPPED

It is unlawful to discriminate on the basis of handicap by:

(1) Refusing to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) Refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

- (ii) With respect to dwellings with a building entrance on an accessible route:
 - A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;
 - B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
 - C) All premises within covered multi family dwelling units contain an accessible route into and through the dwellings; light switches, electrical outlets, thermostats and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. Compliance with (C) above will be satisfied if the housing provider complies with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI" A117.1-1986).

For the purposes of this "Unlawful Practice," "handicap" refers to that of a) the buyer or renter; b) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or c) any person associated with that person.

(m) SOURCE OF INCOME DISCRIMINATION IN CREDIT AND RENTALS

It is an unlawful practice for any person furnishing credit services or rental accommodations to discriminate against any individual because of the individual's source of income or because of any requirement of such source of income.

- (n) The enumeration of specific forms of prohibited conduct in paragraphs (a-m) of this section does not limit the generality of the prohibition of Section 1.01 above.

1.05 Exemptions

- (a) Nothing in these Regulations shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual preference or source of income.
- (b) Nothing in these Regulations concerning the Commission's powers of enforcement granted under the Statute, Section 7, shall apply to owners of housing accommodations who occupy as their permanent residence a dwelling unit in any building or structure containing one, two, three or four dwelling units, except, consistent with the Fair Housing Act, Chapter 151B of the General Laws and the Ordinance, nothing in Section 7 of the Statute or these Regulations shall be construed to permit such owners to engage in discriminatory advertising (Unlawful Practice (e), herein), discriminatory residential real estate related transactions (Unlawful Practice (g), herein), or coercion, intimidation or threats (Unlawful Practice (k), herein).
- (c) Nothing in these Regulations prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802). Nothing in these Regulations regarding "children" status shall apply with respect to Housing for Older Persons as defined under the Fair Housing Act Section 807(b)(2) and herein at Section 102(t). The Commission expressly adopts the federal regulations under the Fair Housing Act found at 24 CFR 100, Subpart E for application of this exemption. Nothing in these Regulations regarding "age" status shall apply with regard to residency in such Housing for Older Persons. Nothing in these Regulations shall limit the application

of reasonable local, state or federal restrictions regarding the maximum number of persons permitted to occupy a dwelling.

REGULATION 2: PRACTICE AND PROCEDURE BEFORE THE BOSTON FAIR
HOUSING COMMISSION

2.01 Complaints

(a) Who may file

- (1) Any person aggrieved by an alleged unlawful discriminatory housing practice;
- (2) Any duly authorized representative of a person aggrieved by an alleged discriminatory housing practice; or
- (3) The Commission, through its Executive Director or an individual Commissioner.

(b) Form and Filing

- (1) Any complaint shall be in writing and shall be signed and verified by the Complainant. Verification for this purpose means:
 - (i) The signing of the complaint under oath before a notary public. The Commission will provide notary public services at no charge; or
 - (ii) A signature accompanied by the statement: "I declare under the pains and penalties of perjury that the foregoing is true and correct."
 - (iii) The signature and verification may be made at any time during the investigation.
- (2) The complaint shall contain the following information:
 - (i) The name and address of the Complainant,
 - (ii) The name and address, if known, of the person alleged to have committed the unlawful discriminatory housing practice complained of (hereafter the Respondent),

- (iii) A concise statement of the alleged discriminatory housing practice(s),
- (iv) The date(s) on which such alleged unlawful discriminatory acts occurred or, where such acts are of a continuing nature, the period of time during which such acts occurred, and
- (v) If appropriate, a statement indicating that the complaint is a class action as provided in Section 2.01.

(3) The original complaint shall be filed with the Commission; a copy of the complaint shall be transmitted by first class mail to the Massachusetts Commission Against Discrimination.

(c) Time of Filing

Complaints of discriminatory housing practices must be filed within one hundred eighty (180) days after their occurrence or the last date of an alleged continuing discriminatory housing practice.

(d) Manner of Filing

The complaint may be filed in person or by mail, addressed to the offices of the Commission.

(e) Service Upon Respondent

Within ten (10) days of the filing of a complaint, the Commission shall serve a copy of the complaint upon the Respondent either by certified mail, return receipt requested, at his/her last known address or place of business or by personal service. (See also Service and Notification of Rights, Section 2.05 (c) herein).

(f) Amendment of Complaints

A complaint may be amended by the Complainant or by the Executive Director or the Hearing Commissioner as of right at any time prior to fifteen (15) days before the Public Hearing. Thereafter it may be amended for good cause at the discretion of the Hearing Commissioner. The Respondent shall be served by regular mail with the amended complaint prior to filing with the Commission, and certification of such service shall be a prerequisite to filing with the Commission. All amendments shall relate back to the original filing date. When a complaint is

amended after an answer has been filed, Respondent may amend his/her answer within ten (10) days after notice of an amendment, or upon the first day of the Public Hearing, whichever period may be shorter. In addition, the Respondent may amend the answer once as a matter of course at any time prior to fifteen (15) days before the initial day of the Public Hearing.

(g) Withdrawal of Complaints

A complaint may be withdrawn by the Complainant with the consent of the Commission. A Request to Withdraw shall be in writing and signed by the Complainant or his/her duly authorized representative. Such a request may be granted by the Executive Director or a Commissioner, whereupon all other parties shall be notified by regular mail. The Commission's right to file a complaint based upon the same facts shall not be affected by any private party's withdrawal, and any such Commission-initiated complaint shall relate back to the date of filing of the individual complaint.

(h) Extension of Time Periods

Subject to the provisions of subsection (3) below, when an act is required or permitted within a specified time period under these rules or an Order of the Commission, the Executive Director or a Commissioner may:

- (1) If a request is made before the expiration of the time period, extend that period in his/her discretion; or
- (2) If a written request is made after the expiration of the time period, extend that period if the failure to act was due to excusable neglect or for good cause;
- (3) Exercise discretion in the extension of time periods except for the following time limits:
 - (i) Filing of a complaint within one hundred eighty (180) days of the occurrence or termination of the alleged discriminatory housing practice;
 - (ii) Notification to Respondent within ten (10) days;

- (iii) Commencement of investigation of the complaint within thirty (30) days;
- (iv) Completion of the investigation within one hundred (100) days, unless impracticable (See Section 2.05(e));
- (v) Election of a judicial action as an alternative to an administrative proceeding within twenty (20) days after receipt of a Probable Cause finding; and
- (vi) Final disposition of the complaint within one (1) year of receipt, unless impracticable (See Section 2.09 (u)).

(i) Class Action

The Commission may grant permission for a case to proceed as a class action before or during investigation if the following prerequisites are met:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (4) The representative parties will fairly and adequately protect the interest of the class; and
- (5) The public interest is served by a class proceeding.

(j) Prompt Judicial Relief

Whenever, after the filing of a complaint, the Executive Director or a Commissioner deems it necessary, in the interest of justice, to preserve the rights of the aggrieved party(ies) and/or, the Commission's right to investigate complaints and afford relief, he/she may authorize the Director of Investigations, other Commission staff or the Corporation Counsel of the City of Boston to seek prompt judicial action in the form of appropriate preliminary, temporary and/or injunctive relief, including orders or decrees against the Respondent restraining the selling, renting or otherwise making unavailable to the Complainant any housing accommodations with respect to which the complaint is made pending the

final finding of the proceedings. This judicial action shall be in the form of a petition filed in Suffolk Superior Court or the Boston Housing Court departments of the Trial Court of the Commonwealth of Massachusetts.

2.02 Parties

(a) Intervention

(1) Intervention of Right: Any aggrieved person may file a request for intervention to participate as a Complainant or Respondent under this section. Intervention shall be permitted by the Commission under the following circumstances:

- (i) The request is timely filed. Requests for intervention submitted within 30 days after the receipt of a Final Investigative Report containing a finding of probable cause shall be considered timely filed; and
- (ii) The intervenor is the aggrieved person on whose behalf the claimed interest in the property or transaction that is the subject of the finding of Probable Cause may not be otherwise adequately protected by existing parties.

(2) Discretionary Intervention: At any other time during the proceeding, any person not originally a party to the proceeding may be permitted to intervene as a Complainant or Respondent if, in the judgment of the Executive Director or the Hearing Commissioner:

- (i) Such action will assist in the orderly disposition or presentation of the case, and
- (ii) Such person asserts a claim or defense having common questions of law or fact with the main proceeding.

(b) Substitution

The Executive Director or the Hearing Commissioner may, upon his/her own motion or upon the motion of any party, at any time during any proceeding or investigation, make such substitution, joinder, or amendment of parties as the

interests of justice and convenience may require. All parties shall be duly notified of any substitution.

(c) Consolidation

The Executive Director or the Hearing Commissioner may, upon his/her own motion or upon motion of any party, order proceedings involving a common question of law or fact to be consolidated for investigation, conciliation, or Hearing on any or all matters at issue in such proceedings.

2.03 Representation of Parties

(a) Prior to Probable Cause finding

Prior to a finding that there is Probable Cause to believe the allegations of the complaint, no member of the Commission's Commission staff shall act as an advocate for either the Complainant or the Respondent. This prohibition shall not apply where the Commissioner(s), Executive Director, Director of Investigations or other Commission staff designated by a Commissioner or the Executive Director, deems it necessary, in the interest of justice, to preserve the rights of the aggrieved party and/or the agency's right to investigate complaints and afford relief, to seek (through its Director of Investigations, the Corporation Counsel of the City of Boston or other Commission staff designated by a Commissioner or the Executive Director) appropriate injunctive relief in a court of competent jurisdiction.

(b) After Probable Cause finding

After a finding is made that there is Probable Cause to credit the allegation of the complaint, unless otherwise prescribed (See Section 2.08(d) Judicial Election), the Commission's Director of Investigations or other Commission staff designated by a Commissioner or the Executive Director shall act as counsel for the Commission in support of the Complainant during the proceedings.

(c) Other

Any party may be represented by counsel or duly authorized representative at any stage in proceedings before the Commission.

2.04 Jurisdiction

(a) General

The Commission has jurisdiction to conduct investigations of complaints regarding the denial of equal access to and discrimination in housing (regardless of the private or public source of such denial or discrimination) where such denial or discrimination against either a group or individual is based on race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income; to eliminate the presence in the City of Boston of prejudice, intolerance, bigotry or discrimination in the area of housing; and to enforce the provisions of St. 1993, c. 37, as amended by St. 1998, c. 165, and the Ordinance in a manner substantially equivalent to enforcement under Title VIII including but not limited to the award of compensatory damages, the imposition of civil penalties and the authorization to seek injunctive relief and the award of attorney's fees and costs.

2.05 Investigation

(a) Commencement of Investigation

The Commission shall commence the investigation within thirty (30) days of receipt of the complaint.

(b) Assignment of Investigator

Within five (5) days of the filing of a complaint, a member of the Commission's investigation Commission staff shall be assigned to investigate it.

(c) Service and Notification of Rights

(1) Upon the filing of a complaint, each Complainant shall be notified by certified mail, return receipt requested, or personal service. The notice shall:

- (i) Acknowledge the date that the complaint was accepted for filing;
- (ii) Identify the alleged discriminatory housing practice; and
- (iii) Advise the Complainant of the time limits applicable to complaint processing and procedural rights and obligations

including but not limited to three choices of forum under the housing law: 1) the right to commence a civil action in federal court within two years after the occurrence or termination of the alleged discriminatory housing practice, and that this two year time period excludes any time during which a proceeding is pending under this part; 2) the right to commence a civil action in state court within three years after the occurrence or termination of the alleged discriminatory housing practice, and that this three year period does not exclude the time a proceeding is pending; 3) the right to commence a civil action in state court within one year of the alleged discrimination without filing a complaint at the Commission.

- (iv) Advise Complainant that retaliation against any person because he or she has made a complaint, testified or assisted or participated in an investigation is prohibited as a discriminatory housing practice.

(2) Within ten (10) days of the filing of the complaint, each Respondent shall be notified by certified mail, return receipt requested or personal service. The notice shall:

- (i) Acknowledge the date that the complaint was accepted for filing;
- (ii) Identify the alleged discriminatory housing practice and include a copy of the complaint;
- (iii) Advise the Respondent of the time limits applicable to complaint processing and procedural rights and obligations, including the opportunity to submit a reply within ten (10) days of receipt of the notice;
- (iv) Advise Respondent of the Complainant's right to commence a civil action (1) in federal court within two

years after the occurrence or termination of the alleged discriminatory housing practice, and that this two year time period excludes any time during which a proceeding is pending under this part; 2) in state court within three years after the occurrence or termination of the alleged discriminatory housing practice, and that this three year period does not exclude the time a proceeding is pending; and in state within one year of the alleged discrimination without filing a complaint at the commission.

- (v) Advise Respondent that retaliation against any person because he or she has made a complaint, testified or assisted or participated in an investigation is prohibited as a discriminatory housing practice.

(d) Final Investigative Report

The Commission staff shall make prompt investigation of the complaint and, unless the complaint has been withdrawn, or a Pre-determination Settlement Agreement has been signed, shall issue a Final Investigative Report, signed by the Executive Director. This report shall be full and complete and shall include findings of fact and, with respect to each separate allegation of an unlawful discriminatory housing practice, a finding that:

- (1) No Jurisdiction exists over the parties or subject matter of the complaint;
- (2) There is Probable Cause to believe the allegations of the complaint;
- (3) There is No Probable Cause to believe the allegations of the complaint; or
- (4) The case has been Closed Administratively due to inability to locate a party, unreasonable refusal by the Complainant to cooperate with processing of the case including failure to provide information or materials or responses to the Respondent's submissions which are necessary for

investigation of the case, independent decision of the Complainant not to proceed, or the loss of the right to proceed, with further actions and commencement of a trial pursuant to the provisions of these Regulations. Issuance of the Final Investigative Report and related Notifications shall be in accordance with Section 2.08 herein.

(e) Confidentiality

All information and documents received during investigation shall be confidential and for the internal use of the Commission's Commission staff only, except that:

(1) Upon service upon the Respondent, the complaint shall be a public document;

(2) The Complainant, Respondent and witnesses shall each be entitled to copies of their own affidavits or other signed documents; and

(3) Upon signing of the Final Investigative Report by the Executive Director, that Report and all sworn affidavits shall be public documents, except as provided in Section 2.06 (a) (2), below. The Executive Director may, for good cause, which shall be stated in the Final Investigative Report, conceal the identity of any witness or person other than the Complainant or Respondent, subject to the limitation that if any such person will testify at a Public Hearing or if any affidavit is entered into evidence, then that person's identity shall be discoverable pursuant to Section 2.09 (h), below.

(f) Completion of the Investigation

The investigation of the complaint shall be completed within one hundred (100) days after its receipt, unless it is impracticable to do so. If the Commission is unable to complete the investigation within one hundred (100) days, it shall notify the Complainant and Respondent in writing and state the reasons for the delay.

2.06 Conciliation and Settlement

(a) Conciliation Efforts and Stay of Reports

Conciliation shall include the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person.

(1) At any time the Commission may endeavor to eliminate the unlawful practice complained of by mediation, conciliation or other appropriate action.

(2) When it appears to the Director of Investigations or other Commission staff designated by a Commissioner or the Executive Director, that a Probable Cause finding is likely to issue, he/she may schedule a conference to endeavor to reach a just resolution of the complaint through mediation, conciliation and persuasion. If such conference is scheduled, the parties shall be served written notice of the date, time and purpose.

(3) The Executive Director may stay the signing of the Final Investigative Report and maintain its confidentiality for ten days after completion, if in his/her judgment this would assist in bringing the Complainant, Respondent and Commission to settlement through conciliation or mediation.

(b) Agreements

The investigating Commission staff shall attempt to achieve just resolutions of complaints and to obtain assurances, where appropriate, that the Respondent will satisfactorily remedy any violations of the rights of the person aggrieved and will act to prevent such violations in the future. Such agreements may be obtained at any time during the proceedings. Any agreement arising out of mediation or conciliation efforts by the Commission shall be an agreement between the Respondent and the Complainant and shall be subject to the approval of the Commission.

(1) The terms of such agreements shall be reduced to writing, signed by both parties and by the Executive Director on behalf of the Commission or by a Commissioner. Such agreements shall seek to protect the interests of the Complainant, other persons similarly situated, and the public interest.

(2) Such agreements shall be known as:

- (i) Pre-determination Settlement Agreements, when signed before a Final Investigative Report is issued;
- (ii) Conciliation Agreements, when signed after a Final Investigative Report is issued; or
- (iii) Consent Orders, when signed after commencement of Public Hearing.

(c) Confidentiality of Conciliation Conferences

Nothing said or done as a part of the Commission's efforts at conciliation may be made public without the written consent of all parties involved. The written terms of any settlement agreement, however, shall be a public document unless sealed from public view by agreement of all parties and a finding by vote of three (3) Commissioners that disclosure is not required to further the purposes of the housing law.

(d) Compliance Review

The investigating Commission staff may, from time to time, review compliance with an agreement and may, upon a finding of non-compliance, take such enforcement action as is provided for under the settlement agreement or as may otherwise be appropriate.

(e) Reopening

The Commission retains jurisdiction after execution of any agreement. Upon motion of the Complainant, the Respondent or Commission staff asserting that a Pre-determination Settlement Agreement, Consent Order or Conciliation Agreement has not been complied with or requires modification, a Commissioner may in his or her discretion reopen the case and certify it to a public Hearing to

determine whether the agreement has been complied with or requires modification and to take such further action as may be appropriate.

2.07 Motions

(a) Requesting and Objecting

A party may request of the Commission any Order or action not inconsistent with law. Such a request shall be called a motion. Motions may be made in writing at any time or may be made orally at a Public Hearing. Each motion shall set forth the grounds for the desired Order or action and state whether a Hearing is desired. A party opposing a motion may file written objections to the allowance of the motion within 14 days and may, if desired, request a Hearing.

(b) Hearing

The Director of Investigations, the Hearing Commissioner, or other Commission staff designated by a Commissioner or the Executive Director shall determine whether a Hearing on the motion is warranted and give at least three days' notice of the time and place for Hearing. A motion may be ruled upon without a Hearing if delay would seriously injure a party, or if it involves a matter which can be decided without oral argument or the presentation of testimony.

(c) Ruling

The Director of Investigations, the Hearing Commissioner or other Commission staff designated by a Commissioner or the Executive Director shall act upon a motion when all parties have responded thereto, or the deadline for response has passed, whichever comes first. Whenever practicable, a ruling on a motion shall be made within seven (7) days.

2.08 Disposition

(a) Issuance of Final Investigative Report and Notifications

(1) Probable Cause: When a finding of Probable Cause is made, a copy of the signed Final Investigative Report (See Section 2.05(d)(2) herein) shall be sent immediately to the Complainant and Respondent by certified mail, return receipt requested or by personal service. In addition, the parties shall be notified concerning their option to elect a court action as

an alternative to an administrative Public Hearing, in accordance with the provisions of Section 2.08(d) and Section 2.09, and the provision for Reconsideration pursuant to Section 2.08(b) herein.

(2) No Probable Cause: When a finding of No Probable Cause, No Jurisdiction or Closed Administratively is made, a copy of the signed Final Investigative Report (See Section 2.05(d)) shall be sent within ten (10) days to the Complainant and the Respondent by certified mail, return receipt requested or by personal service, and the Executive Director shall dismiss the complaint. In addition, the parties shall be notified concerning the provision for appeal pursuant to Section 2.08(c) herein.

(b) Reconsideration of Probable Cause

The Commission may reconsider a Probable Cause finding at any time upon the recommendation of the Director of Investigations or other Commission staff designated by a Commissioner or the Executive Director. If the Executive Director or a Commissioner concludes that the Commission's files do not indicate the existence of evidence sufficient to meet the standard set forth in Section 1.02(dd), the Executive Director or a Commissioner shall, after notice to the parties, set a date for a Conference to consider the reversal of the finding. At said Conference, the Commission will accept affidavits or other indications of new evidence from the parties, as well as memoranda of law. An Order, signed by the Executive Director or a Commissioner, shall result from the Conference. Such Order may:

- (1) Reverse the Probable Cause finding and require service upon the parties of a finding of No Probable Cause;
- (2) Reopen the case for further investigation;
- (3) Affirm the Probable Cause finding;
- (4) Modify the Probable Cause finding; or
- (5) Require such other action as is deemed necessary in the interests of justice.

(c) Request for Preliminary Hearing

When a finding of No Probable Cause, No Jurisdiction, or Closed Administratively is made, and issued in accordance with Section 2.08(a)(2) herein, the Complainant may appeal the finding as follows:

(1) Within ten (10) days of receipt of the Final Investigative Report in which such a finding has been made, the Complainant may appeal the finding by filing with the Commission a written Request for Preliminary Hearing.

(2) Within thirty (30) days of receipt of a Request for Preliminary Hearing, an individual Commissioner shall be assigned and shall preside at such a Hearing at which the Complainant may present evidence and oral or written reasons why the finding is in error. The Respondent may not, except as permitted by the Hearing Commissioner, present testimony or oral argument, but may submit a written statement. Within ten (10) days after such Hearing, the Commissioner shall affirm, reverse, or modify the finding, stating his/her reasons therefor. A decision affirming the finding shall become a Final Commission Order only after adoption pursuant to Section 2.09 (s), below.

(d) Election of Civil Action or Provision of Administrative Proceeding

If a Probable Cause finding is issued, a Complainant or Respondent, or an aggrieved person on whose behalf the complaint is filed may elect to have the claims asserted in the Final Investigative Report decided in a court of competent jurisdiction, as an alternative to an administrative proceeding, i.e. Public Hearing before the Commission in accordance with Section 2.09 herein.

(1) The election must be in writing and filed no later than twenty (20) days after the receipt of a Probable Cause finding. The person making such an election must file the notice of election with the Executive Director of the Commission and send the notice of election to all other Complainants and Respondents to whom the Probable Cause finding relates.

(2) If a timely election is made, a Commissioner, the Executive Director, the Director of Investigations or other Commission staff designated by a Commissioner or the Executive Director shall immediately notify the Massachusetts Commission Against Discrimination (“MCAD”). If the MCAD also finds Probable Cause, it shall immediately notify the Office of the Attorney General of the Commonwealth of Massachusetts who, within thirty (30) days after election is made under MGL c. 151B, shall commence and maintain a civil action on behalf of the aggrieved person. Upon receipt of such notice, the Commission shall dismiss the complaint pending before it and the Complainant shall be barred from subsequently bringing a complaint on the same matter before the Commission. The Director of Investigations, or other Commission staff designated by a Commissioner or the Executive Director, shall be available for consultation on any legal issues raised by the Attorney General as to how best to proceed in the event that a new court decision or newly discovered evidence is regarded as relevant to the Probable Cause finding. This civil action shall be maintained in accordance with MGL c. 151B, Section 5. Accordingly, the Complainant may intervene as of right in said civil action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant appropriate injunctive relief, compensatory and punitive damages and attorney's fees and costs.

(4) If a timely election is not made under this subsection, the Commission, through its Director of Investigations or other Commission staff designated by a Commissioner or the Executive Director, will maintain an administrative proceeding in accordance with the procedures in Section 2.09 herein.

2.09 Public Hearing

(a) Certification to a Public Hearing

Following the issuance of a finding of Probable Cause, the expiration of the twenty (20) day period without the making of a timely election pursuant to Section 2.08(d) herein, and within the same twenty (20) days, a finding by Commission staff or notification by either party that reasonable conciliation efforts have been unsuccessful, a Commissioner or the Executive Director shall issue a certificate instructing the Director of Investigations or other Commission staff to schedule the case for Public Hearing. The Hearing shall be scheduled to commence within one hundred twenty (120) days of the issuance of the Probable Cause finding. A copy of the certificate and notice of the date, time, and place of the Hearing shall be sent to each party by certified mail, return receipt requested. A matter may also be certified to a Public Hearing pursuant to Section 2.06(e) herein.

(b) Hearing Commissioner

(1) Upon scheduling a case for Public Hearing, one or more Hearing Commissioners shall be assigned to preside over the case. At no time may a Commissioner who has participated in an investigation of that complaint be assigned to preside at the Public Hearing of that case.

(2) Hearing Commissioners shall be under a duty to conduct a fair Hearing and to take all necessary action to avoid delay and maintain order. They shall have all powers necessary to these ends including (but not limited to) the following (A) Administrative Powers and (B) Enforcement Powers:

(A) Administrative Powers include the power to:

(i) Arrange and issue notice of the date, time and place of the Hearing(s), or upon due notice to all parties, to change the date, time, or place of Hearing(s) previously set;

- (ii) Hold Conferences to settle, simplify, or establish issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of proceedings;
 - (iii) Require parties to state their position with respect to various issues in connection with the proceedings;
 - (iv) Determine the scope of discovery;
 - (v) Administer oaths or affirmations;
 - (vi) Rule on motions and other procedural items;
 - (vii) Regulate the course of the Hearing and the conduct of counsel;
 - (viii) Examine witnesses and direct witnesses to testify;
 - (ix) Receive, rule on and limit evidence;
 - (x) Establish the time for filing motions, petitions, briefs or other matters;
 - (xi) Issue initial or interim decisions, recommendations or final decisions.
- (B) Enforcement Powers are as follows:
- (i) Issue subpoenas and subpoenas duces tecum;
 - (ii) Grant compensatory damages, including damages for emotional distress;
 - (iii) Assess civil penalties, in the amounts prescribed by Section 2.09(u)(4);
 - (iv) Issue cease and desist Orders;
 - (v) Seek, in court, preliminary, temporary and/or injunctive relief against a Respondent, including Orders or Decrees restraining and enjoining the selling, renting or otherwise making unavailable to the Complainant of any housing accommodations with respect to which the complaint is made;

- (vi) Seek, at agency expense, in court, an award of punitive damages and/or reasonable attorney's fees and costs;
- (vii) Take any action authorized by the Ordinance, the Statute, as amended, or these Regulations, as amended.

(3) When more than one Hearing Commissioner is assigned to preside, a single Hearing Commissioner shall be designated to rule on all Pre-hearing matters.

(c) Respondent's Answer

(1) Respondent shall, within fifteen (15) days of receipt of the notice of Public Hearing file a written answer with the Commission, and shall serve by regular mail a copy of the answer upon the Complainant(s), and certification of such service shall be a prerequisite to filing with the Commission.

(2) The answer shall contain appropriate identification of the Complainant(s) and Respondent(s), including but not limited to, their names, addresses and representatives if any. The Respondent shall state in the answer, in short and plain terms, his/her defenses to each claim asserted, and shall admit or deny the averments upon which the complaint is based. If he/she is without knowledge or information sufficient to form a belief as to the truth of an averment, he/she shall so state, which statement shall have the effect of a denial. Any averment not answered shall be deemed admitted.

(d) Pre-Hearing Conference

A Hearing Commissioner, prior to commencement of the Public Hearing, may conduct a Pre-hearing Conference with the parties or their representatives, and may issue Pre- Hearing Orders concerning any of the following matters:

- (1) Stipulations;
- (2) Discovery;

- (3) Motions;
- (4) Witnesses;
- (5) Identification of facts and issues in dispute;
- (6) Submission of legal memoranda in support of a party's position;
- (7) Any other matter, which in the judgment of the Hearing Commissioner, is likely to expedite the case.

(e) Continuances

Any party requesting a continuance shall file a written request with the commission and shall provide all other parties with a copy of the request. A Hearing Commissioner shall grant or deny the request as the interests of justice require.

(f) Settlement after Commencement of Public Hearing

In cases settled after the commencement of Public Hearings, the Hearing Commissioners, at their discretion, may assess costs including but not limited to sheriff's fees and stenographer services to any or all parties. If the case has been settled after conclusion of the Hearing, the Commission, through its Director of Investigations, the Corporation Counsel, or other Commission staff designated by a Commissioner or the Executive Director, may arrange for the award of reasonable attorney's fees and costs, consistent with the Statute, Section 7(4).

(g) Default

(1) Entry of default Order. Whenever any party properly served with a notice of Public Hearing fails to obtain a continuance and fails to appear, either in person or by representative, the Hearing Commissioner(s) shall enter his/her default. Notice of default shall be sent to all parties and their counsel.

(2) Vacating Entry of default. Within fifteen (15) days after entry of default, upon written petition, a Hearing Commissioner may vacate the default and reopen the case for good cause shown.

(3) Final Commission Order. Thirty (30) days after entry of default, if there is no petition by the party in default, the Hearing Commissioner(s) shall report to the full Commission pursuant to Section 2.09(s), below.

(h) Discovery

(1) Parties shall be allowed to conduct reasonable discovery. A request for discovery shall be directed in writing to the Commission. A Hearing Commissioner shall issue an Order to respond to discovery as requested or he or she may modify the request as the interests of justice may require. A discovery Order shall be responded to in full within twenty (20) days after mailing or shall be objected to, with specific reasons stated, within ten (10) days after mailing.

(2) Discovery available to the parties shall include:

- i. No more than thirty (30) interrogatories;
- ii. Requests for Admissions;
- iii. Requests for Documents; and
- iv. Depositions.

(3) Noncompliance with a discovery Order shall constitute an admission that the interrogatories or requests for admissions, if answered, would have established facts in accordance with the claim of the requesting party.

(i) Subpoenas

(1) Any party may compel the attendance and testimony of a witness at the Public Hearing and the production of evidence by filing a request with a Hearing Commissioner for a subpoena as authorized by the Ordinance. Fees and other costs in connection with such subpoena shall normally be borne by the requesting party, although the Hearing Commissioner shall waive such fees and costs if the party is indigent or for other good cause.

(2) The Commission may compel the attendance and testimony of a witness and the production of evidence at any point in the investigative

process by filing a request with an individual Commissioner for a subpoena as authorized by the Ordinance.

(3) Subpoenas shall be issued in the name of the Commission by an individual Commissioner.

(4) Any witnesses subpoenaed may request in writing that the subpoena be vacated or modified. A single Commissioner other than the Issuing Commissioner shall review the subpoena and, after such investigation as he or she considers appropriate, may grant the request in whole or in part if the interests of fairness and justice so require.

(5) Upon the failure of any person to comply with a subpoena issued pursuant to these Regulations and not vacated or modified, the Commission may apply to an appropriate state or municipal court for an Order requiring compliance

(j) Transcript and Record

(1) All testimony and arguments offered at a Public Hearing shall be either transcribed by stenographer retained by the parties or recorded by the Commission's electronic recording equipment.

(2) Any party to a Hearing may have a private stenographer present at any Hearing provided that a copy of any such private transcript be furnished to the Commission within twenty (20) days of its completion.

(3) A party desiring a copy of the electronic tape of a Hearing shall so request in writing and bear the expense of copying.

(4) In addition to the tape or written transcript of the Hearing, the record shall consist of the complaint, answer, stipulations, exhibits in evidence and any motions (and the dispositions thereof) filed after certification to Public Hearing.

(k) Stipulations

Written stipulations may be introduced in evidence if signed by the persons sought to be bound thereby or by their representatives. Oral stipulations may be made on the record during a Public Hearing.

(l) Evidence

In proceedings before the Commission, the Massachusetts law of evidence shall apply. The Commission adopts Rule 803(8) of the Federal Rules of Evidence which permits the admission as an exception to the hearsay rule, of records, reports, statements or data compilations of public agencies setting forth factual findings resulting from an investigation made pursuant to authority granted by law, unless the source of the information indicates a lack of trustworthiness.

(m) Administrative Notice

The Commission may take administrative notice of matters as might be judicially noticed by the courts of the United States or of the Commonwealth and of technical or general facts within its specialized areas of knowledge.

(n) Oral Argument

The Commission may allow the parties reasonable time for oral argument either prior to or at the close of evidence presented during the Hearing.

(o) Witnesses

Either party, or the Hearing Commissioner(s), may call witnesses to testify during the proceeding. Each party, and the Commissioner(s), shall have the opportunity to cross-examine any witness called to testify.

(p) Briefs and Proposed Findings of Fact

Briefs and proposed findings of fact may be filed by parties or by any interested persons before or during the course of a Hearing or within such time thereafter as the Commissioner may designate.

(q) Other Submissions

The Commission may allow the parties, after a showing of good cause, to file evidentiary documents or exhibits within a reasonable time after completion of the Hearing. Copies of any document or exhibit which is allowed to be so filed shall be sent to all other parties. The Hearing Commissioner(s) may also require on their own motion that the parties file evidentiary documents or exhibits subsequent to the completion of the Hearing.

(f) Assessments of Costs

Costs may be assessed by the Commission pursuant to Section 2.09(f) and (i), above.

(s) Final Commissioner Order

Within sixty (60) days after the conclusion of the Hearing, the Hearing Commissioner(s) shall report to the full Commission detailed Findings of Fact and Conclusions of Law, and shall recommend to the Commission a Final Decision and Order. The Commission may adopt, by vote of three (3) Commissioners, the Findings and Order of the Hearing Commissioner(s) as a Final Commission Order or it may remand the matter to the Hearing Commissioner(s) for further consideration. If the Hearing Commissioner(s) concludes that the charges of discriminatory conduct by the Respondent cannot be substantiated, and the Commission concurs, the case shall be dismissed with prejudice. The parties shall be notified in writing of the decision. The Commission shall make public disclosure of each Final Order.

(t) Enforcement Powers after Public Hearing

Upon finding after Public Hearing that a person has violated or is in violation of the Ordinance or these Regulations, as amended, the Commission may, based upon Findings of Fact and Conclusions of Law:

- (1) Order that such person cease and desist from illegal activity;
- (2) Take appropriate remedial action in the interests of the Complainant or the general public;
- (3) Award compensatory damages, including damages for emotional distress;
- (4) Assess a civil penalty against the Respondent in the following amounts as prescribed by the Statute, Section 7(2):
 - (i) In an amount not to exceed ten thousand dollars if the Respondent has not been adjudged to have committed a prior discriminatory housing practice;

- (ii) In an amount not to exceed twenty five thousand dollars if the Respondent has been adjudged to have committed one (1) other discriminatory housing practice during the five (5) year period ending on the date of the filing of the complaint; and
- (iii) In an amount not to exceed fifty thousand dollars if the Respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven (7) year period ending on the date of the filing of the complaint.

(5) Arrange to have adjudicated in court, at the Commission's expense, the award of punitive damages and the allowance of reasonable attorney's fees and costs to the prevailing aggrieved party unless special circumstances make the recovery of such fees and costs unjust. The plaintiff alleging violations of these Regulations shall be liable for attorney's fees and costs only to the extent where his/her participation was frivolous, vexatious or for the purpose of harassment;

(6) Seek, in court, preliminary, temporary and or injunctive relief against a Respondent, including orders or decrees restraining and enjoining the selling, renting or otherwise making unavailable to the Complainant of any housing accommodations with respect to which the complaint is made and/or;

(7) Take affirmative action in the interests of fair housing in Boston (See Section 2.11 for Judicial Enforcement).

(u) Disposition of Complaint

The Commission shall make a final administrative disposition of the complaint within one (1) year of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the Complainant and Respondent in writing and state the reasons for the delay.

2.10 Judicial Review

- (a) The Complainant, Respondent or other person aggrieved by a Final Commission Order may seek review of such Order by filing a petition in an appropriate Trial Court of the Commonwealth pursuant to Section 8 of the Statute, as explained below, Mass. Gen. Laws, chapter 214, chapter 231A, chapter 185C or other law conferring jurisdiction. The Commission may designate its own counsel, or City of Boston Corporation Counsel or counsel of the party who prevailed in Commission proceedings as agent of the Commission for the purpose of defending the decision upon judicial review.
- (b) Judicial review of a Final Commission Order issued pursuant to Section 8 of the Statute, shall be in Suffolk Superior Court or the Boston Housing Court department of the Trial Court of the Commonwealth of Massachusetts, which shall have the authority to grant to any party such temporary relief, Restraining Order, or other Order as the Court determines is just and proper.
- (c) The reviewing Court shall affirm, modify or set aside the Order in whole or in part, or remand the Order for further proceedings. The Court shall also enforce the Order to the extent to which it is affirmed or modified.

2.11 Judicial Enforcement

The Executive Director, a party to a Consent Order, Conciliation Agreement or Pre-determination Settlement Agreement or a person affected by a Final Commission Order may file a Request for Enforcement with the Commission alleging non-compliance with such Agreement or Order. The Commission shall use its best efforts to bring about compliance by filing a petition in an appropriate Trial Court of the Commonwealth pursuant to Mass. Gen. Laws chapter 214, chapter 231A, chapter 185C or other law conferring jurisdiction, or by referral to the Massachusetts Commission Against Discrimination, or may appear in an enforcement proceeding by its own counsel, or City of Boston Corporation Counsel, for the purpose of obtaining enforcement.

2.12 Private Enforcement

- (a) Pursuant to Section 9 of the Statute, within two years of the occurrence or termination of an alleged discriminatory housing practice prohibited by these

Regulations, or breach of a Conciliation Agreement, whichever occurs last, an aggrieved person may file a civil action in a court of competent jurisdiction for equitable relief including temporary or permanent injunctions, and/or legal relief, including compensatory damages, punitive damages and attorney's fees and costs. Upon receipt of proof of service upon a Respondent of a summons and complaint also filed in such court, the Commission may cease administrative procedures pertaining to the underlying allegation. In no instance shall the period during which said statute of limitations runs include the time consumed by administrative proceedings before the Commission.

- (b) Pursuant to M.G.L. chapter 151B, Section 9, an aggrieved party may file a civil action in state court for equitable and/or legal relief within three (3) years of the occurrence or termination of an alleged discriminatory practice. Upon receipt of proof of service upon a Respondent of a summons and complaint, the Commission may cease administrative procedures. The three (3) year statute of limitations includes the time consumed by administrative proceedings.
- (c) Pursuant to M.G.L. chapter 151B, Section 9, an aggrieved party may file a civil action in state court for equitable and/or legal relief within one (1) year of the occurrence or termination of an alleged discriminatory practice if the aggrieved party has not filed a complaint at the Commission or other administrative agency.

2.13 Licensing of Brokers/Realtors

- (a) Upon an entry of a Final Order under Section 2.09(s) herein, as against a licensed real estate agent or broker, or corporation or partnership or individual doing business as an agent or broker of real property which includes a finding that said person committed a practice prohibited by the Ordinance or these Regulations, the Executive Director shall, at the direction of the Commissioners approving said Final Order, deliver to the appropriate licensing bodies and professional associations governing said profession a copy of said Order.
- (b) In the event that a Final Order enters against a banking or lending organization or person engaged in such business, the Executive Director shall in the same manner as (1) above deliver to the appropriate bank regulatory bodies a copy of said Order.

REGULATION 3: NOTICE TO BE GIVEN BY REAL ESTATE BROKERS,
SALESPEOPLE, TITLE INSURANCE COMPANIES, AND LAWYERS: RECORDS TO BE
RETAINED

3.01 Giving of Notice to Tenants and Buyers

Every real estate broker or salesperson handling transactions pertaining to property covered in Section 1.03 within the City of Boston shall give to every prospective tenant or buyer of property subject to these Regulations who inquires about or solicits the services of such broker or salesperson, a notice in writing, to be supplied by the Commission, in a form substantially as follows:

- I. In the City of Boston, IT IS AGAINST THE LAW to discriminate against any person because of race, color, religion, marital status, military status, handicap, children, national origin, sex, age, ancestry, sexual orientation or source of income in the sale or rental of housing.
- II. If you believe that you have been denied equal access to any housing, or have been discriminated against, YOU HAVE THE RIGHT to file a complaint with the Boston Fair Housing Commission within one hundred-eighty (180) days after the occurrence or termination of the discrimination.
- III. The Boston Fair Housing Commission will investigate at no charge all complaints of prejudice, intolerance, bigotry and discrimination in the area of housing. The Commission may be contacted by writing to:

Boston Fair Housing Commission
One City Hall Plaza, Room 966
Boston, MA 02201
or by calling: 617 635-4408

3.02 Giving of Notice to Lessors and Sellers

Every real estate broker or salesperson handling transactions pertaining to property covered in Section 1.03 within the City of Boston shall give to every owner, seller, or lessor of property subject to these Regulations who lists with said broker or salesperson, a

notice in writing to be supplied by the Boston Fair Housing Commission, in a form substantially as follows:

I. The sale or rental of your property is governed by the City of Boston Code, Ordinances, Title 10, Sections 150-157 (1982), as amended and St. 1994, c.37, as amended. It prohibits the denial of equal access to and discrimination in housing (regardless of the public or private source of such denial or discrimination) where such denial or discrimination is based on race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income.

II. Under the Ordinance and the Statute:

(1) Neither you nor your broker may discriminate in the sale or rental of housing.

(2) Your broker is prohibited from accepting or retaining any listings with the understanding that illegal discrimination may be practiced.

(3) Neither you nor your broker may engage in activities such as inquiring as to race, color, religious creed, marital status, handicap, military status, children, national origin, sex, age, ancestry, sexual orientation or source of income over the telephone, establishing quotas, giving false or misleading information to a prospective tenant or applicant, or steering people in those categories to particular neighborhoods, houses or apartments.

(4) Harassment of you and your broker because of your compliance with the Fair Housing Ordinance is also prohibited.

(5) The Boston Fair Housing Commission will investigate all complaints of prejudice, intolerance, bigotry, and discrimination in the area of housing.

3.03 Housing Records to be Retained

- (a) All real estate brokers, agents, management agents, owners and others subject to these Regulations, if they prepare or ask others to prepare certain documents in the course of business, shall retain those records for one hundred-eighty (180) days

following an initial inquiry or application for housing, provided, however, that if a complaint has been filed with the Commission against such persons, these records must be retained until final finding by the Commission and the courts. Those records include: All applications, leases, records, documents or data pertaining to the rental, lease or sale of housing.

- (b) The records described in Section 3.03(a) shall be made available during business hours for inspection by authorized representatives of the Commission and are subject to subpoena by the Commission.

3.04 Enforcement

Failure to give notice or maintain records as required by this regulation shall be deemed prima facie evidence of a discriminatory housing practice.

I certify and attest that the above is a true copy of the Proposed Amended Regulations of the Boston Fair Housing Commission which were approved for comment and a Public Hearing by official act of the Commission at its meeting (Public Hearing not held yet).

Date

Chairman
Boston Fair Housing Commission