

Supreme Judicial Court
FOR THE COMMONWEALTH OF MASSACHUSETTS
No. SJC-13726

JAMES M. RYAN, Executor of the ESTATE OF JULIA W. RYAN,
individually and on behalf of all others similarly situated, Plaintiff-Appellant,

v.

MARY ANN MORSE HEALTHCARE CORP. d/b/a HERITAGE AT FRAMINGHAM,
Defendant-Appellee.

On Appeal From An Order And Judgment Of The Middlesex Superior Court

CORRECTED BRIEF OF AARP, ET AL. *AMICI CURIAE*
SUPPORTING APPELLEE AND SEEKING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

The Internal Revenue Service has determined that AARP Foundation, Dignity Alliance Massachusetts, the National Consumer Law Center, and Justice in Aging are organized and operated exclusively for a charitable purpose pursuant to Section 501(c)(3) of the Internal Revenue Code and are exempt from Income Tax. AARP is organized and operated exclusively for a charitable purpose pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from Income Tax. The National Academy of Elder Law Attorneys and the Massachusetts Chapter of the National Academy of Elder Law Attorneys are organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(6) of the Internal Revenue Code and are exempt from Income Tax. Pursuant to Massachusetts Rule of Appellate Procedure 17(c)(1) and Supreme Judicial Court Rule 1: AARP, Dignity Alliance Massachusetts, the National Consumer Law Center, Justice in Aging, the National Academy of Elder Law Attorneys and the Massachusetts Chapter of the National Academy of Elder Law Attorneys all certify that they have no parent corporations and that no publicly held company holds 10% or more of the stock of AARP, Dignity

Alliance Massachusetts, the National Consumer Law Center, Justice in Aging, and the Massachusetts Chapter of the National Academy of Elder Law Attorneys.

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**STATEMENT OF *AMICI* PURSUANT TO MASSACHUSETTS
RULE OF APPELLATE PROCEDURE 17(c)(5)**

No party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting this brief. No person or entity contributed money that was intended to fund preparing or submitting this brief. Neither *Amici* AARP, AARP Foundation, Dignity Alliance Massachusetts, the National Consumer Law Center, Justice in Aging, the National Academy of Elder Law Attorneys, and the Massachusetts Chapter of the National Academy of Elder Law Attorneys nor their counsel represent or have represented one of the parties to the present appeal in another proceeding involving similar issues, or were a party in a proceeding or legal transaction that is at issue in the present appeal.

INTEREST OF THE *AMICI CURIAE*

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans ages 50 and older to choose how they live as they age. With a nationwide presence, AARP strengthens communities and advocates for what matters most to the more than 100 million Americans 50-plus and their families: health security, financial stability, and personal fulfillment. AARP's charitable affiliate, **AARP**

Foundation, works for and with vulnerable people 50 and over to end senior poverty and reduce financial hardship by building economic opportunity. Among other things, AARP and AARP Foundation bring litigation and file *amicus* briefs in federal and state courts to challenge practices that affect housing rights of older low-income people including residents of assisted living facilities. *See, e.g., Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 658 F.3d 375 (3d Cir. 2011), *cert. granted*, 133 S. Ct. 2824 (2013) (holding that minority residents displaced by a redevelopment plan established disparate impact), *cert. dismissed*, 134 S. Ct. 636 (2013). AARP has also supported the rights of tenants in cases before this Court and appeared as an *amicus curiae* in *Boston Hous. Auth. v. Bridgewaters*, 452 Mass. 833 (2009) (holding that before a public housing authority can evict a tenant for being a threat to the health or safety of others, it must first make an individualized determination of whether a reasonable accommodation would mitigate the risk), and previously appeared as an *amicus curiae* in *Ryan v. Mary Ann Morse Healthcare Corp.*, 483 Mass. 612 (2019) (*Ryan I*). AARP is a 501(c)(3).

Dignity Alliance Massachusetts, is a state-wide, grass roots coalition of aging and disability service and advocacy organizations and supporters dedicated to systemic transformation to ensure the dignity of older adults, people with disabilities, and caregivers. We are committed to advancing new ways of providing long-term services, support, living options and care while respecting choice and self-determination. Among our educational and advocacy efforts are promoting best practices in the various systems serving the senior and disabled community, and the environment serving those populations including but not limited to the Assisted Living Residences industry, in terms of the safety, and consumer and civil rights of its residents. Dignity has proposed consumer protection regulations to the office of the Attorney General and several Dignity members are members of the Legislative Assisted Living Residence Commission currently studying the industry. Dignity Alliance is a 501(c)(3).

Justice in Aging is a national non-profit organization with the principal mission of protecting the health and economic security of low-income older Americans. Justice in Aging's work puts special emphasis on persons who have historically been disadvantaged, including women,

members of the LGBT community, people of color, and people with limited English proficiency. Justice in Aging has a long-standing record of advocacy for residents of long-term care facilities, including federal advocacy dating back to the 1987 enactment of the federal Nursing Home Reform Law. Justice in Aging appears frequently as *amicus* in federal and state courts, including cases involving unfair provisions in admission agreements in long-term care facilities. *See Northport Health Servs. of Ark. v. United States HHS*, 438 F. Supp. 3d 956 (W.D. Ark. 2020) (upholding federal regulation limiting arbitration clauses in nursing facility admission agreements); *Harrod v. Country Oaks Partners, LLC*, 15 Cal.5th 939 (2024) (health care agent without authority to bind nursing facility resident to arbitration). Justice in Aging is a 501(c)(3).

Since 1969, the **National Consumer Law Center (NCLC)** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's activities include policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC has long been

recognized nationally as the “leading non-profit low-income consumer advocacy organization in the country.” *Mazok v. May Dep’t Stores Co.*, 1999 WL 1261312 at * 4 (D. Mass. Jan. 27, 1999). For half a century, it has drawn on this expertise to provide information, legal research, policy analyses, and market insights to federal and state legislatures, administrative agencies, and the courts. NCLC also publishes a twenty-one-volume Consumer Legal Practice Series. Many of these volumes address the impact of unfair practices on consumers, including, *e.g.*, Unfair and Deceptive Acts and Practices. A major focus of NCLC’s work is to increase public awareness of unfair and deceptive practices perpetrated against low-income and elderly consumers, and to promote protections against such practices. NCLC frequently appears as *amicus curiae* in consumer law cases before trial and appellate courts throughout the country, including *Ferman v. Sturgis Cleaners, Inc.*, 481 Mass. 488 (2019); *Rental Prop. Mgmt. Services v. Hatcher*, 479 Mass. 542 (2018); *Easthampton Savings Bank v. City of Springfield*, 470 Mass. 284 (2014); *U.S. Bank Nat’l Ass’n v. Schumacher*, 467 Mass. 421 (2014); *Bank of Am., N.A. v. Rosa*, 466 Mass. 613 (2013); *Eaton v. Fed. Nat’l Mortg. Ass’n*, 462 Mass. 569 (2012); *Bevilacqua v. Rodriguez*, 460 Mass.

762 (2011); and *U.S. Bank Nat’l Ass’n v. Ibanez*, 458 Mass. 637 (2011).

NCLC previously appeared as an *amicus curiae* in *Ryan I*. NCLC has an interest in seeking strong and effective enforcement of consumer protection laws, such as G. L. c. 186 § 15B. NCLC is a 501(c)(3).

The National Academy of Elder Law Attorneys (“NAELA”) is a non-profit professional organization of elder and special needs law attorneys dedicated to improving the quality of legal services provided to older adults and people with disabilities. Founded in 1987, NAELA has more than 4,000 members across the country and active chapters in 31 states; its largest chapter is Massachusetts. NAELA accomplishes its mission of helping older adults and individuals with disabilities live life to the fullest through education of its members and the public, advocacy at the federal and state levels, professional development opportunities, and community-building activities. NAELA is organized pursuant to Section 501(c)(6) and is organized and operated as a nonprofit corporation under Oregon law.

The Massachusetts Chapter of the National Academy of Elder Law Attorneys (“MassNAELA”) is a non-profit organization

that was incorporated in 1992 to serve the legal profession and the public with the following mission:

- To provide information, education, networking, and assistance to Massachusetts attorneys, bar organizations, and other individuals or groups advising elderly clients, clients with special needs and their families;
- To promote high standards of technical expertise and ethical awareness among attorneys, bar organizations and other individuals or groups engaged in the practice of advising elderly clients, clients with special needs and their families;
- To develop public awareness and advocate for the benefit of the elderly, those with special needs and their families, by promoting public policies that support our mission; and
- To encourage involvement and enhance membership in, and to promote networking among members of the National Academy of Elder Law Attorneys.

MassNAELA is a voluntary association whose members consist of a dedicated group of elder law and special needs attorneys across the Commonwealth of Massachusetts. MassNAELA previously appeared as

an *amicus curiae* in *Ryan I*. MassNAELA has proposed increasing protections for the rights of ALR residents, including advocating for the Massachusetts Attorney General's Office to promulgate consumer protection regulations for residents of assisted living, pursuant to G. L. c. 93A. MassNAELA is a 501(c)(6) organization affiliated with the National Academy of Elder Law Attorneys, Inc.

ARGUMENT

Introduction

Assisted Living Residences (ALRs) abuse their bargaining power and violate state law in charging junk fees, including so-called “community fees.” The “community fee” charged by Defendant Mary Ann Morse Healthcare Corp. is a “junk fee” that preys on vulnerable consumers. It is not tied to the provision of specific services or benefits, does not reflect the costs of providing any specific kinds of services or benefits. It was imposed simply because Mary Ann Morse Healthcare Corp. could get away with extracting additional money from an especially vulnerable population at an especially vulnerable time. Since it is not a fee for the provision of the kinds of services authorized by the ALR statute, G. L. c. 19D, it falls within the scope of the Security Deposit statute, G. L. c. 186 § 15B. Accordingly, the Superior Court was

correct in holding that these fees violated the Security Deposit statute and ALR regulations, and awarding damages accordingly.

Older adults and individuals with disabilities seek ALRs when they need more support services than they can receive in an independent living setting. ALR admission often results from crisis, including worsening health or the death of a spouse or caretaker. People often choose to live in an ALR, rather than a nursing facility, to retain a certain level of independence and dignity when they cannot be supported at home. ALR residents deserve the full breadth of protection afforded to consumers under the Security Deposit statute and Massachusetts's ALR regulations.

I. ASSISTED LIVING RESIDENCES CHARGE COMMUNITY FEES AT MOVE-IN, A TIME WHEN RESIDENTS ARE ESPECIALLY VULNERABLE AND AT A SIGNIFICANT BARGAINING DISADVANTAGE.

ALRs routinely charge up-front “community fees” at move-in, which is typically a fearful and stressful time. *See* Diana T.F. Lee et al., *A Review of Older People's Experiences with Residential Care Placement*, 37 JOURNAL OF ADVANCED NURSING 19-20 (2002). Moving into a facility is often done quickly and during a time of crisis, typically preceded by declining health, financial problems, or the death of a

spouse. *Id.* at 19-20. Examples of triggers for moving into an ALR include onset/worsening of dementia, a stroke, no longer being able to cook or maintain a house, increased risk of falling in an empty house, losing a long-time spouse, the death of a caretaker, and adult children not living in the area. See Dafina Petrova et al., *Risky Decision-Making Is Associated With Residential Choice In Healthy Older Adults*, FRONTIERS IN PSYCHOLOGY (Aug. 31, 2016), <https://www.frontiersin.org/articles/10.3389/fpsyg.2016.01304/full#B17>.

These difficulties are compounded by the extraordinarily high cost of assisted living. In Massachusetts, assisted living care costs on average \$108,696 per year, which creates significant financial pressure for all but the wealthiest persons needing long-term care. *Cost of Care Survey 2024*, GENWORTH, <https://www.genworth.com/aging-and-you/finances/cost-of-care.html> (median cost, searchable by state and region).

By contrast, ALRs are profitable, well-resourced, and well-positioned to comply with the bookkeeping requirements of the Security Deposit Statute. See NATIONAL CENTER FOR ASSISTED LIVING, *Massachusetts By The Numbers*, (2020)

<https://www.ahcancal.org/Assisted-Living/Facts-and-Figures/Documents/State%20Facts/Massachusetts-AL.pdf> (ALRs generate nearly \$2 billion annually in economic activity in Massachusetts alone); *see also* EXECUTIVE OFFICE OF ELDER AFFAIRS, *Assisted Living Residence Census Report 5* (2025), <https://www.mass.gov/doc/assisted-living-residences-census-report-2025/download> (82 percent of ALRs in Massachusetts operate for a profit). Considering this contrast between facilities and their residents alongside the text and purpose of the Security Deposit Statute, Appellant’s contention that it is being treated unfairly strains credulity. Brief of Defendant/Appellant Mary Ann Morse Healthcare Corp. at 21. As observed by the Superior Court Judge assigning damages, “It would be inconsistent [with the state’s statutory scheme] to punish Plaintiffs for Heritage’s undifferentiated use and insufficient recordkeeping.” RA IV-373 n.4.

Heritage has improperly benefited from unlawful conduct by not only violating the Security Deposit statute, which they claim they did not know applied, but also by violating the ALR regulations which they certainly knew applied. In accordance with this Court’s decision in *Ryan*

I, ALR residents should – except to the extent specifically provided in the ALR statute – have the same rights as other tenants in the Commonwealth. It is always important for laws to be strictly applied to actions undertaken by ALRs, and in this context it is especially important because these laws intended to protect vulnerable consumers are likely to be the only form of protection the consumer has. It is difficult enough for low-income individuals to gain admission and sustain residency in an ALR. In the situations in which a low-income individual can arrange to reside in an ALR, strict adherence to these laws may make the difference between sustained residency and unnecessary institutionalization in a more restrictive setting.

II. JUNK FEES—LIKE HERITAGE’S COMMUNITY FEE—VIOLATE STATE LAW BY FORCING OLDER ADULTS TO PAY MORE YET GET NOTHING IN RETURN.

A. The Heritage fee was a junk fee.

“Junk fees” conceal real prices from consumers, deceive consumers about their real purpose, and/or charge consumers for illegitimate costs. They are fees that “a company charges consumers for a service that often costs it little to provide,” to raise revenue. Beth Braverman and Erica Sandberg, “What Is a Junk Fee and How Does It Affect You?”

U.S. News and World Report (May 27, 2025)

[https://money.usnews.com/money/personal-](https://money.usnews.com/money/personal-finance/spending/articles/what-are-junk-fees-and-how-do-they-affect-you)

[finance/spending/articles/what-are-junk-fees-and-how-do-they-affect-](https://money.usnews.com/money/personal-finance/spending/articles/what-are-junk-fees-and-how-do-they-affect-you)

[you](https://money.usnews.com/money/personal-finance/spending/articles/what-are-junk-fees-and-how-do-they-affect-you). In other words, they are “junk” fees because the charge is not tied to a genuine benefit or service.

Junk fees “have spread and now pervade” many industries, “especially rental housing.” See Comm’r. Rebecca Slaughter, *Concurring Statement Regarding the Final Trade Regulation Rule on Unfair or Deceptive Fees*, FED. TRADE COMM’N (Dec. 17, 2024),

[https://www.ftc.gov/system/files/ftc_gov/pdf/slaughter-fees-rule-](https://www.ftc.gov/system/files/ftc_gov/pdf/slaughter-fees-rule-statement.pdf)

[statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/slaughter-fees-rule-statement.pdf). This includes the assisted-living industry, where junk

fees with “significant costs that often aren’t included in what’s

advertised” now impact “over 1 million older Americans resid[ing] in

assisted living facilities.” See Paul Wynn, *Beware of Hidden Fees in*

Assisted Living Facilities, AARP (June 10, 2025),

[https://www.aarp.org/caregiving/financial-legal/unexpected-costs-](https://www.aarp.org/caregiving/financial-legal/unexpected-costs-assisted-living.html)

[assisted-living.html](https://www.aarp.org/caregiving/financial-legal/unexpected-costs-assisted-living.html).

In rental housing, junk fees are charged on top of a renter’s base rent for rental and occupancy. These fees can take the form of

application fees, processing fees, pet fees, convenience fees, administrative fees, late fees, and any other types of obligatory fees that raise total rental costs. The White House’s Council of Economic Advisors estimated that the “excess burden” of apartment application fees alone was \$276 million in 2023. *The Price Isn’t Right: How Junk Fees Cost Consumers and Undermine Competition*, THE WHITE HOUSE (March 5, 2024), <https://bidenwhitehouse.archives.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition>.

Junk fees are exactly the type of fee the Security Deposit Statute was designed to prevent because the Legislature – recognizing that tenants in general, and ALR residents in particular, were vulnerable populations with little bargaining power – deliberately restricted the types of payments permitted to those specified in the security deposit and ALR statutes. *See Hermida v. Archstone*, 826 F. Supp. 2d 380 (D. Mass. 2011) (explaining that the statute “limits the up-front charges that the landlord legally can collect from the tenant in order to prevent unfair or deceptive charges.”)

Bargaining power imbalances between ALRs and their residents are what make junk fees possible. The Security Deposit Statute, G. L. c. 186 § 15B, seeks to establish “an equitable relationship between tenants and landlords” to equalize power dynamics and prevent this kind of exploitation. *Jinwala v. Bizzaro*, 24 Mass. App. Ct. 1, 6 (1987). “By enacting [the Security Deposit Statute] . . . the legislature manifested a concern for the welfare of tenants in residential property who, as a practical matter, are generally in inferior bargaining positions.” *Mellor v. Berman*, 390 Mass. 275, 282 (1983); *see also Phillips v. Equity Residential Mgmt., LLC*, 478 Mass. 251, 255 (2017) (“In passing the act, the Legislature recognized that tenants have less bargaining power than landlords and are less able to vindicate their right in court.”).

Rental junk fees, such as those charged by Heritage, are an increasingly common threat around the country. *Amicus* National Consumer Law Center (NCLC) conducted a survey of legal services and nonprofit attorneys in 2022 to obtain detailed information about the state of rental housing-related junk fees. *See* Ariel Nelson et al., *Too Damn High: How Junk Fees Add to Skyrocketing Rents*, NAT’L

CONSUMER L. CTR. 3 (2023), <https://www.nclc.org/resources/too-damn-high-how-junk-fees-add-to-skyrocketing-rents>. (“*Too Damn High*”). It received 95 responses from 26 states and Washington, DC. *Id.* The survey asked respondents to indicate whether they had seen particular junk fees assessed as part of rental housing, including “Processing or administrative fees” and “Charges in lieu of a security deposit.” *Id.* Around two-thirds of NCLC’s survey respondents (68%) reported observing processing or administrative fees. *See Too Damn High* at 16. Advocates in many states reported that these fees are often “unspecified or unexplained.” *Id.* Even when advocates “have some sense of what these fees are for,” they may still be unconnected to real costs. *Id.* Given this increase in junk fees, it is especially crucial that the Court uphold strict adherence with the laws and regulations in place.¹

¹ The Attorney General has recently responded to this increase in junk fees by promulgating 940 CMR § 38.00 (“Unfair and Deceptive Fees”), to govern the types of fees at play in this case, demonstrating that this is a serious issue requiring action and monitoring.

B. Heritage violated state laws designed to protect consumers from junk fees.

In *Ryan I*, this Court held that Heritage's community fee violates both the Security Deposit Statute, G. L. c. 186 § 15B, and Massachusetts's ALR regulations. 651 Code Mass. Regs., § 12.08(2)(a)(9). 483 Mass. at 628-630. Heritage's community fee was intended to both (1) "cover upfront staff administrative costs, the Resident's initial service coordination plan and move-in assistance" and (2) "establish a replacement reserve for building improvements." *Id.* at 614-615. In *Ryan I*, this Court held that while these first, ALR-specific purposes were "permissible," the second purpose "would fall afoul" of the Massachusetts Security Deposit Law. 483 Mass. at 629.

However, the record on remand demonstrated that even Heritage's purported "permissible" ALR-specific purposes were not representative of any legitimate costs. *See* RA II-8. Instead, Heritage's community fee was a junk fee unconnected to any real costs. Heritage claims that it collected community fees to fund a portion of various salaries. *See* Brief of Defendant/Appellant Mary Ann Morse Healthcare Corp. at 16. However, as the resident class explains: "the salary figure calculated using the various percentages handpicked by Heritage in no

way resembled the amount of the ‘Community Fees’ collected.” *See* Brief of Plaintiff/Appellee James M. Ryan et al., at 40. Instead, Heritage set the price based “on nothing other than what competing facilities charged,” or in other words, what the market would bear. RA II-8. Indeed, the non-refundable, one-time community fee “ranged from \$1,500.00 to \$3,400.00.” RA II-6-7. As such, Heritage’s community fee violates state junk fee protections requiring itemized receipts for both ALR-specific fees and security deposit fees.

In Massachusetts, landlords must provide itemized receipts for both (1) ALR-related fees and (2) security deposit fees. First, the ALR statute itself provides that charges for ALR services must be “on a fee for service basis.” G. L. c. 19D § 13(3). “Every Resident of an Assisted Living Residence shall have the right to ... an itemized bill for fees, charges, expenses and other assessments for the provision of Resident services, Personal Care Services, and optional services,” 651 Code Mass. Regs., § 12.08(1)(t), and the Residency Agreements for ALRs must include “[a] clear explanation of the services included in any fees, a description and itemization of all other bundled services as well as an explanation of other services available at an additional charge.” 651

Code Mass. Regs., § 12.08(2)(a)(9). Second, security deposit fees must “be held in a separate, interest-bearing account” for which “a receipt” must “be given to the tenant.” *See* G. L. c. 186, § 15B(3)(a)).

However, Heritage failed to provide itemized receipts satisfying either the ALR statute or the security deposit statute. None of Heritage’s “billing records or invoices itemize[d], explain[ed] or disclose[d] the specific ALR-related charges that [were] purportedly built into the ‘community fees’ charged to each tenant.” RA II-19. Nor were the community fees deposited into a segregated “interest-bearing account for the benefit of the tenant” for which receipts were provided. RA II-17. Indeed, as Heritage admits, these were not “fee[s]” for specific “service[s]” at all. G. L. c. 19D § 13(3). Instead, they were simply “thrown in the pot like everything else,” RA II-17, and “used to pay all expenses except payroll.” RA II-17. Thus, Heritage’s Community Fee is a junk fee in violation of *both* G. L. c. 19D § 13(3) and its implementing regulations 651 Code Mass. Regs., §§ 12.08(1)(t) and 12.08(2)(a)(9), *and* G. L. c. 186 § 15B(3)(a).

CONCLUSION

For the reasons discussed above, the Superior Court was correct in holding that these fees violated the Security Deposit statute and awarding damages accordingly.

Respectfully submitted,



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ADDENDUM

**ADDENDUM
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> **651 CMR, § 12.08 - Resident Rights and Required Disclosures**

651 CMR, § 12.08 - Resident Rights and Required Disclosures

State Regulations Compare

Prior to scheduling a formal meeting with a prospective Resident, the Residence shall inform him or her of the right to be accompanied by a Legal Representative, Resident Representative, or other advisor. During its first formal meeting with a prospective Resident, the Residence shall deliver to and verbally review with the prospective Resident a consumer guide developed by EOEA and the Disclosure of Rights and Services required by 651 CMR [12.08\(3\)](#), which incorporates the provisions of 651 CMR [12.08\(1\)](#). At the time of or prior to the execution of the Residency Agreement or the transfer of any money to a Sponsor by or on behalf of a prospective Resident, whichever first shall occur, the Sponsor shall deliver to and verbally review with the prospective Resident, the person with whom the contract is entered into, and, if applicable, the prospective Resident's Legal Representative a copy of the Residency Agreement, which shall state all applicable costs and terms of payment, services offered and not offered, shared risks, and all other important terms and conditions of the Agreement. All documents shall be written in plain language and published in typeface no smaller than 14 point type.

(1) Resident Rights. Every Resident of an Assisted Living Residence shall have the right to:

- (a) Live in a decent, safe, and habitable residential living environment;
- (b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy;
- (c) Privacy within the Resident's Unit subject to rules of the Assisted Living Residence reasonably designed to promote the health, safety and welfare of Residents;
- (d) Retain and use his or her own personal property, space permitting, in the Resident's living area so as to maintain individuality and personal dignity;
- (e) Private communications, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of her or his choice;
- (f) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community;
- (g) Directly engage or contract with licensed or certified health care providers to obtain necessary health care services in the Resident's Unit or in such other space in the Assisted Living Residence as may be available to Residents to the same extent available to persons residing in their own homes, and with other necessary care and service providers, including, but not limited to, the pharmacy of the Resident's choice subject to reasonable requirements of the Residence. The Resident may select a medication packaging system within reasonable limits set by the Assisted Living Residence. Any Assisted Living Residence policy statement that sets limits on medication packaging systems must first be approved by EOEA;
- (h) Manage his or her own financial affairs, unless the Resident has a Legal Guardian or other court-appointed representative with the authority to manage the Resident's financial affairs;
- (i) Exercise civil and religious liberties;
- (j) Present grievances and recommended changes in policies, procedures, and services to the Sponsor, Manager or staff of the Assisted Living Residence, government officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to representatives of the Assisted Living Ombudsman program established under M.G.L. c. 19D, § 7, the Elder Protective Services program established under M.G.L. c. 19A, §§ 14

through 26 and the Disabled Persons Protection Commission (DPPC) established under M.G.L. c. 19C;

(k) Upon request, obtain from the Assisted Living Residence, the name of the Service Coordinator or any other persons responsible for his or her care or the coordination of his or her care;

(l) Confidentiality of all records and communications to the extent provided by law;

(m) Have all reasonable requests responded to promptly and adequately within the capacity of the Assisted Living Residence;

(n) Upon request, obtain an explanation of the relationship, if any, of the Residence to any health care facility or educational institution to the extent the relationship relates to his or her care or treatment;

(o) Obtain from a person designated by the Residence a copy of any rules or regulations of the Residence which apply to his or her conduct as a Resident;

(p) Privacy during medical treatment or other rendering of services within the capacity of the Assisted Living Residence;

(q) Informed consent to the extent provided by law;

(r) Not be evicted from the Assisted Living Residence except in accordance with the provisions of landlord/tenant law as established by M.G.L. c. 186 or c. 239 including, but not limited to, an eviction notice and utilization of such court proceedings as are required by law;

(s) Be free from Restraints;

(t) Receive an itemized bill for fees, charges, expenses and other assessments for the provision of Resident services, Personal Care Services, and optional services;

(u) Have a written notice of the Residents' Rights published in typeface no smaller than 14 point type posted in a prominent place or places in the Assisted Living Residence where it can be easily seen by all Residents. This notice shall include the address, and telephone number of the EOEA Assisted Living Ombudsman Program, and the telephone number of the Elder Abuse Hotline; and

(v) Be informed in writing by the Sponsor of the Assisted Living Residence of the community resources available to assist the Resident in the event of an eviction procedure against him or her. Such information shall include the name, address and telephone number of the Assisted Living Ombudsman Program.

(2) Residency Agreement.

(a) The Residency Agreement shall include, at a minimum, the following:

1. Charges, expenses and other assessments for the provision of Resident services, Personal Care Services, Lodging and meals;
2. The agreement of the Resident to make payment of the charges specified;
3. Arrangements for payment;
4. A Resident grievance procedure which meets the requirements of 651 CMR 12.08(1)(j);
5. The Sponsor's covenant to comply with applicable federal and state laws and regulations concerning consumer protection and protection from abuse, neglect and financial exploitation of the elderly and disabled;
6. The conditions under which the Residency Agreement may be terminated by either party, including criteria the Residence may use to determine whether the conditions have been met, and the length of the required notice period for termination of the Residency Agreement;
7. Reasonable rules for the conduct and behavior of staff, management and the Resident;
8. The Residents Rights required by 651 CMR 12.08(1);
9. A clear explanation of the services included in any fees, a description and itemization of all other bundled services as well as an explanation of other services available at an additional charge;
10. An explanation of any limitations on the services the Residence will provide, specifically including any limitations on services to address specific Activities of Daily Living and behavioral management. Such explanation shall also include a description of the role of the nurse(s) employed by the Residence, and the nursing and personal care worker staffing levels;
11. An explanation of the eligibility requirements for any available subsidy programs, including a statement of any costs associated with services beyond the scope of the subsidy program for which the Resident or his or her Legal Representative would be responsible;
12. The refund policies for all Administrative Fees, deposits, and other charges; and
13. A copy of the Residence's medication management policy: its Self-administered Medication Management (SAMM) policy, including its policy on assistance with as-necessary or PRN medication when part of the SAMM plan; and, if applicable, Limited Medication Administration.

If the Disclosure of Rights and Services required by 651 CMR 12.08(3) fully states all of the items required by 651 CMR 12.08(2)(a)4., 7., 8., 10., 11. and 13., the Residency Agreement may, incorporate those requirements by reference.

(b) The Residency Agreement may include the agreement of the Sponsor to provide or arrange for the provision of additional services, including, but not limited to, the following:

1. Barber and beauty services, sundries for personal consumption, and other amenities; and
2. Local transportation for medical and recreational purposes.

(c) The Residency Agreement shall be for a term not to exceed one year and may be renewable upon the agreement of both parties.

(d) The Residency Agreement shall be for a single or double living Unit in the Residence with lockable entry doors on each Unit which meet the bathroom, Bathing Facility and kitchenette requirements of 651 CMR 12.04(1).

(e) A Residency Agreement for a Residence receiving funding through MassDevelopment pursuant to M.G.L. c. 23A, which otherwise meets the requirements of 651 CMR 12.08(2), may be executed for an initial period not to exceed 13 months.

(f) A Resident may voluntarily agree to vacate his or her Unit in accordance with his or her Residency Agreement. A Resident may not be evicted from the Resident's Unit following termination of the Residency Agreement except in accordance with the provisions of landlord/tenant law as set forth in M.G.L. c. 186 and c. 239.

(3) Disclosure of Rights and Services. The disclosure statement shall include, at a minimum, the following:

- (a) The number and type of Units the Residence is certified to operate;
- (b) The number of staff currently employed by the Residence, by shift, an explanation of how the Residence determines staffing, and the availability of overnight staff, awake and asleep, and shall provide this information separately for any Special Care Residence within the Residence;
- (c) A copy of the list of Residents' Rights set forth in 651 CMR 12.08(1);
- (d) An explanation of the eligibility requirements for any subsidy programs including a statement of any additional costs associated with services beyond the

scope of the subsidy program for which the Resident or his or her Legal Representative would be responsible. This explanation should also state the number of available Units, and whether those Units are shared;

(e) A copy of the Residence's medication management policy, its Self-administered Medication Management policy for dealing with medication that is prescribed to be taken "as necessary", and an explanation of its Limited Medication Administration policy;

(f) An explanation of any limitations on the services the Residence will provide, including, but not limited to, any limitations on specific services to address Activities of Daily Living and any limitations on behavioral management;

(g) An explanation of the role of the nurse(s) employed by the Residence;

(h) An explanation of entry criteria and the process used for Resident assessment;

(i) Statement of the numbers of staff who are qualified to administer cardio pulmonary respiration (CPR), and the Residence's policy on the circumstances in which CPR will be used;

(j) An explanation of the conditions under which the Residency Agreement may be terminated by either party, including the criteria the Residence may use to determine whether conditions have been met, and the length of the required notice period for termination of the Residency Agreement;

(k) An explanation of the physical design features of the Residence including that of any Special Care Residence;

(l) An illustrative sample of the Residence's service plan, an explanation of its use, the frequency of review and revisions, and the signatures required;

(m) An explanation of the different or special types of diets available;

(n) A list of enrichment activities, including the minimum number of hours provided each day;

(o) An explanation of the security policy of the Residence, including the procedure for admitting guests;

(p) A copy of the instructions to Residents in the Residence's Disaster and Emergency Preparedness Plan;

(q) A statement of the Residence's policy and procedures, if any, on the circumstances under which it will, with the member's permission, include family members in meetings and planning;

(r) Each Residence that provides special care shall provide a written statement describing its special care philosophy and mission, and explaining how it implements this philosophy and achieves the stated mission.

(s) If a Residence allows non-Residents to use any of its facilities, such as a swimming pool, gymnasium or other meeting or function room, it shall disclose the fact of such usage to its Residents. Said disclosure shall:

1. inform the residents of the existence of non-regulated programming on site;
2. disclose the amount of interaction or shared use of the facilities; and
3. describe any resultant impact on Residence staffing.

(4) Additional Disclosures. EOEa may create and require the inclusion of an informational cover sheet for each Residency Agreement. Each Resident or Legal Representative executing the Residency Agreement must also sign the cover sheet in the presence of a witness.

Notes

651 CMR, § 12.08

Amended by Mass Register Issue 1279, eff. 1/30/2015. Amended by Mass Register Issue 1330, eff. 1/13/2017.

State Regulations Toolbox

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Part I	ADMINISTRATION OF THE GOVERNMENT
Title II	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
Chapter 19D	ASSISTED LIVING
Section 13	PRE-SCREENING AND SERVICE PLAN MONITORING ASSESSMENTS FOR MEDICAL ASSISTANCE RECIPIENTS

[Introductory paragraph effective until January 9, 2025. For text effective January 9, 2025, see below.]

Section 13. All elderly residents or residents with special needs who seek admission to an assisted living residence and who are eligible for the medical assistance program under chapter one hundred and eighteen E, shall:

[Introductory paragraph as amended by 2024, 392, Sec. 101 effective January 9, 2025. For text effective until January 9, 2025, see above.]

All older adult residents or residents with special needs who seek admission to an assisted living residence and who are eligible for the medical assistance program under chapter one hundred and eighteen E, shall:

[Subparagraph 1 effective until January 9, 2025. For text effective January 9, 2025, see below.]

1. Be afforded the opportunity to apply for assisted living residence services, and be informed about the eligibility requirements and his or her rights and obligations under the program.

[Subparagraph 1 as amended by 2024, 392, Sec. 102 effective January 9, 2025. For text effective until January 9, 2025, see above.]

1. Be afforded the opportunity to apply for assisted living residence services, and be informed about the eligibility requirements and the resident's rights and obligations under the program.

2. Have an initial pre-screening assessment conducted for the purposes of determining eligibility for and need of assisted living services. Such assessment shall consider the appropriateness of assisted living services for said resident, and other community-based alternatives that are appropriate and available.

[Subparagraph 3 effective until January 9, 2025. For text effective January 9, 2025, see below.]

3. Have a service plan monitoring assessment conducted by an assessor at the site of the assisted living resident annually from the date of initial occupancy. Said monitoring assessment shall determine if the services provided to the resident are meeting his or her needs as determined in the service plan, the assessor shall report any instances of resident abuse or neglect pursuant to section fifteen of chapter nineteen A and section seventy-two G of chapter one hundred and eleven of the General Laws. With the consent of the division of medical assistance, the secretary may contract for the purpose of administering subparagraphs 1 to 3, inclusive, with one or more non-profit agencies, one or more home care corporations as defined in clause (c) of the third paragraph of section four of chapter nineteen A of the General Laws, a combination of such home

care corporations as determined by the department, or a state agency. Privately paying elderly residents or residents with special needs who are not eligible for medical assistance under chapter one hundred and eighteen E of the General Laws, may be offered the services specified in said subparagraphs 1 to 3, inclusive, on a fee for service basis; provided, however, that the executive office of elder affairs shall promulgate such regulations as are necessary to carry out the provisions of this section.

[Subparagraph 3 as amended by 2024, 392, Secs. 101 to 103 effective January 9, 2025. For text effective until January 9, 2025, see above.]

3. Have a service plan monitoring assessment conducted by an assessor at the site of the assisted living resident annually from the date of initial occupancy. Said monitoring assessment shall determine if the services provided to the resident are meeting the resident's needs as determined in the service plan, the assessor shall report any instances of resident abuse or neglect pursuant to section fifteen of chapter nineteen A and section seventy-two G of chapter one hundred and eleven of the General Laws. With the consent of the division of medical assistance, the secretary may contract for the purpose of administering subparagraphs 1 to 3, inclusive, with one or more non-profit agencies, one or more home care corporations as defined in clause (c) of the third paragraph of section four of chapter nineteen A of the General Laws, a combination of such home care corporations as determined by the department, or a state agency. Privately paying older adult residents or residents with special needs who are not eligible for medical assistance under chapter one hundred and eighteen E of the General Laws, may be offered the services specified in said subparagraphs 1 to 3, inclusive, on a fee for service basis; provided,

however, that the executive office of aging and independence shall promulgate such regulations as are necessary to carry out the provisions of this section.

Part II	REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS
Title I	TITLE TO REAL PROPERTY
Chapter 186	ESTATES FOR YEARS AND AT WILL
Section 15B	ENTRANCE OF PREMISES PRIOR TO TERMINATION OF LEASE; PAYMENTS; RECEIPTS; INTEREST; RECORDS; SECURITY DEPOSITS

Section 15B. (1) (a) No lease relating to residential real property shall contain a provision that a lessor may, except to inspect the premises, to make repairs thereto or to show the same to a prospective tenant, purchaser, mortgagee or its agents, enter the premises before the termination date of such lease. A lessor may, however, enter such premises:

- (i) in accordance with a court order;
- (ii) if the premises appear to have been abandoned by the lessee; or
- (iii) to inspect, within the last thirty days of the tenancy or after either party has given notice to the other of intention to terminate the tenancy, the premises for the purpose of determining the amount of damage, if any, to the premises which would be cause for deduction from any security deposit held by the lessor pursuant to this section.

(b) At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

(i) rent for the first full month of occupancy; and,

(ii) rent for the last full month of occupancy calculated at the same rate as the first month; and,

[Paragraph (iii) of clause (b) of subsection (1) effective until August 6, 2024. For text effective August 6, 2024, see below.]

(iii) a security deposit equal to the first month's rent provided that such security deposit is deposited as required by subsection (3) and that the tenant is given the statement of condition as required by subsection (2); and,

[Paragraph (iii) of clause (b) of subsection (1) as amended by 2024, 150, Sec. 50 effective August 6, 2024. For text effective until August 6, 2024, see above.]

(iii) a security deposit equal to the first month's rent provided that such security deposit is deposited as required by subsection (3) and that the tenant is given the statement of condition as required by subsection (2); provided, however, that the executive office of housing and livable communities may promulgate regulations to authorize a lessor and a tenant or prospective tenant to agree to the payment of a fee in lieu of payment of a security deposit; provided further, that any such regulations shall: (A) require the lessor to utilize a fee collected to waive a security deposit to cover for unpaid rent or unit damage that applies to the tenant's lease; (B) require that a fee so collected be: (I) entirely or partially non-refundable; provided, however, that the lessor shall disclose that the fee is

non-refundable in the lease; provided further, that the tenant shall agree to the fee and acknowledge that the tenant understand that it is entirely or partially non-refundable, as the case may be, in writing; and (II) a recurring monthly fee, or payable upon any schedule and in an amount that the lessor and tenant agree upon, as authorized by the executive office; (C) limit the total sum of the fee or recurring payments, regardless of the duration of the lease and any extensions thereto, to an amount not to exceed 1 month's rent; (D) require that the fee be made optional for both the tenant and the lessor and that the tenant be permitted to choose to pay a full security deposit rather than the fee; (E) require a lessor who offers such a fee in lieu of security deposit: (I) to offer the option of a fee in lieu of a security deposit to every prospective tenant whose application for occupancy has been approved, regardless of income, race, gender, gender identity, disability, sexual orientation, immigration status, size of household or credit score; and (II) not to consider such factors and categories when setting the amount of the fee; and (F) allow a tenant who agrees to pay a fee to waive a security deposit to opt-out of the obligation to pay such fee if such tenant pays the security deposit that would otherwise be in effect for the tenant's apartment on the day the tenant chooses to opt-out of such fee; provided further, that the sum of fees paid to waive a security deposit and the payment of the security deposit shall not exceed, in total, the amount of 1 month's rent; and provided further, that the executive office shall consult with the office of the attorney general prior to promulgating regulations authorizing a fee in lieu of a security deposit under this section; and,

(iv) the purchase and installation cost for a key and lock.

(c) No lease or other rental agreement shall impose any interest or penalty for failure to pay rent until thirty days after such rent shall have been due.

(d) No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by this section. The payment in advance for occupancy pursuant to this section shall be binding upon all successors in interest.

(e) A security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the lessor, and shall not be subject to the claims of any creditor of the lessor or of the lessor's successor in interest, including a foreclosing mortgagee or trustee in bankruptcy; provided, however, that the tenant shall be entitled to only such interest as is provided for in subsection (3)(b).

(2)(a) Any lessor or his agent who receives, at or prior to the commencement of a tenancy, rent in advance for the last month of the tenancy from a tenant or prospective tenant shall give to such tenant or prospective tenant at the time of such advance payment a receipt indicating the amount of such rent, the date on which it was received, its intended application as rent for the last month of the tenancy, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom the rent is received, and a description of the rented or leased premises, and a statement indicating that the tenant is entitled to interest on said rent payment at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held payable in accordance with the provisions of this

clause, and a statement indicating that the tenant should provide the lessor with a forwarding address at the termination of the tenancy indicating where such interest may be given or sent.

Any lessor or his agent who receives said rent in advance for the last month of tenancy shall, beginning with the first day of tenancy, pay interest at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held. Such interest shall be paid over to the tenant each year as provided in this clause; provided, however, that in the event that the tenancy is terminated before the anniversary date of such tenancy, the tenant shall receive all accrued interest within thirty days of such termination. Interest shall not accrue for the last month for which rent was paid in advance. At the end of each year of tenancy, such lessor shall give or send to the tenant from whom rent in advance was collected a statement which shall indicate the amount payable by such lessor to the tenant. The lessor shall at the same time give or send to such tenant the interest which is due or shall notify the tenant that he may deduct the interest from the next rental payment of such tenant. If, after thirty days from the end of each year of the tenancy, the tenant has not received said interest due or said notice to deduct the interest from the next rental payment, the tenant may deduct from his next rent payment the interest due.

If the lessor fails to pay any interest to which the tenant is then entitled within thirty days after the termination of the tenancy, the tenant upon proof of the same in an action against the lessor shall be awarded damages in an amount equal to three times the amount of interest to which the tenant is entitled, together with court costs and reasonable attorneys fees.

(b) Any lessor or his agent who receives a security deposit from a tenant or prospective tenant shall give said tenant or prospective tenant at the time of receiving such security deposit a receipt indicating the amount of such security deposit, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom such security deposit is received, the date on which it is received, and a description of the premises leased or rented. Said receipt shall be signed by the person receiving the security deposit.

(c) Any lessor of residential real property, or his agent, who accepts a security deposit from a tenant or prospective tenant shall, upon receipt of such security deposit, or within ten days after commencement of the tenancy, whichever is later, furnish to such tenant or prospective tenant a separate written statement of the present condition of the premises to be leased or rented. Such written statement shall also contain a comprehensive listing of any damage then existing in the premises, including, but not limited to, any violations of the state sanitary or state building codes certified by a local board of health or building official or adjudicated by a court and then existing in the premises. Such statement shall be signed by the lessor or his agent and contain the following notice in twelve-point bold-face type at the top of the first page thereof:

"This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within fifteen days after you receive this list or within fifteen days after you move in, whichever is later. If you do not return this list, within the specified time

period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit."

If the tenant submits to the lessor or his agent a separate list of damages, the lessor or his agent shall, within fifteen days of receiving said separate list, return a copy of said list to the tenant with either such lessor's signed agreement with the content thereof or a clear statement of disagreement attached.

(d) Every lessor who accepts a security deposit shall maintain a record of all such security deposits received which contains the following information:--

(i) a detailed description of any damage done to each of the dwelling units or premises for which a security deposit has been accepted, returned to any tenant thereof or for which the lessor has brought suit against any tenant;

(ii) the date upon which the occupancy of the tenant or tenants charged with such damage was terminated; and

(iii) whether repairs were performed to remedy such damage, the dates of said repairs, the cost thereof, and receipts therefor.

Said record shall also include copies of any receipt or statement of condition given to a tenant or prospective tenant as required by this section.

Said record shall be available for inspection upon request of a tenant or prospective tenant during normal business hours in the office of the lessor or his agent. Upon a wrongful failure by the lessor or his agent to make such record available for inspection by a tenant or prospective tenant,

said tenant or prospective tenant shall be entitled to the immediate return of any amount paid in the form of a security deposit together with any interest which has accrued thereon.

The lessor or his agent shall maintain said record for each dwelling unit or premises for which a security deposit was accepted for a period of two years from the date of termination of the tenancy or occupancy upon which the security deposit was conditioned.

(3) (a) Any security deposit received by such lessor shall be held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for its transfer to a subsequent owner of said property. A receipt shall be given to the tenant within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit.

(b) A lessor of residential real property who holds a security deposit pursuant to this section for a period of one year or longer from the commencement of the term of the tenancy shall, beginning with the first day of the tenancy, pay interest at the rate of five per cent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held payable to the tenant at the end of each year of the tenancy. Such interest shall be paid over to the tenant each year as provided in this clause, provided, however, that in the event that the tenancy is terminated before the anniversary date of the tenancy, the

tenant shall receive all accrued interest within thirty days of such termination. Such interest shall be beyond the claims of such lessor, except as provided for in this section. At the end of each year of a tenancy, such lessor shall give or send to the tenant from whom a security deposit has been received a statement which shall indicate the name and address of the bank in which the security deposit has been placed, the amount of the deposit, the account number, and the amount of interest payable by such lessor to the tenant. The lessor shall at the same time give or send to each such tenant the interest which is due or shall include with the statement required by this clause a notification that the tenant may deduct the interest from the tenant's next rental payment. If, after thirty days from the end of each year of the tenancy, the tenant has not received such notice or payment, the tenant may deduct from his next rent payment the interest due.

(4) The lessor shall, within thirty days after the termination of occupancy under a tenancy-at-will or the end of the tenancy as specified in a valid written lease agreement, return to the tenant the security deposit or any balance thereof; provided, however, that the lessor may deduct from such security deposit for the following:

(i) any unpaid rent or water charges which have not been validly withheld or deducted pursuant to any general or special law

(ii) any unpaid increase in real estate taxes which the tenant is obligated to pay pursuant to a tax escalation clause which conforms to the requirements of section fifteen C; and

(iii) a reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded.

In the case of such damage, the lessor shall provide to the tenant within such thirty days an itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct such damage, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof. No amount shall be deducted from the security deposit for any damage to the dwelling unit which was listed in the separate written statement of the present condition of the premises which was required to be given to the tenant prior to the execution of the lease or creation of the tenancy pursuant to clause (c) of subsection (2) or any damages listed in any separate list submitted by the tenant and signed by the lessor or his agent pursuant to said clause (c), unless the lessor subsequently repaired or caused to be repaired said damage and can prove that the renewed damage was unrelated to the prior damage and was caused by the tenant or by any person under the tenant's control or on the premises with the tenant's consent. Nothing in this section shall limit the right of a landlord to recover from a tenant, who wilfully or maliciously destroys or damages the real or personal property of said landlord, to the forfeiture of a security deposit, when the cost of repairing or replacing such property exceeds the amount of such security deposit.

No deduction may be made from the security deposit for any purpose other than those set forth in this section.

(5) Whenever a lessor who receives a security deposit transfers his interest in the dwelling unit for which the security deposit is held, whether by sale, assignment, death, appointment of a receiver or trustee in bankruptcy, or otherwise, the lessor shall transfer such security deposit together with any interest which has accrued thereon for the benefit of the

tenant who made such security deposit to his successor in interest, and said successor in interest shall be liable for the retention and return of said security deposit in accordance with the provisions of this section from the date upon which said transfer is made; provided however, that the granting of a mortgage on such premises shall not be a transfer of interest. The successor in interest shall, within forty-five days from the date of said transfer, notify the tenant who made such security deposit that such security deposit was transferred to him and that he is holding said security deposit. Such notice shall also contain the lessor's name, business address, and business telephone number, and the name, business address, and business telephone number of his agent, if any. Said notice shall be in writing.

Upon such transfer, the lessor or his agent shall continue to be liable with respect to the provisions of this section until:

(a) there has been a transfer of the amount of the security deposit so held to the lessor's successor in interest and the tenant has been notified in writing of the transfer and of the successor in interest's name, business address, and business telephone number;

(b) there has been compliance with this clause by the successor in interest; or

(c) the security deposit has been returned to the tenant.

In the event that the lessor fails to transfer said security deposit to his successor in interest as required by this subsection the successor in interest shall, without regard to the nature of the transfer, assume liability for payment of the security deposit to the tenant in accordance with the provisions of this section; provided, however, that if the tenant still occupies the dwelling unit for which the security deposit was given, said

successor in interest may satisfy such obligation by granting the tenant free use and occupancy of the dwelling unit for a period of time equivalent to that period of time for which the dwelling unit could be leased or occupied if the security deposit were deemed to be rent. The liability imposed by this paragraph shall not apply to a city or town which acquires title to property pursuant to chapter sixty or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the commonwealth or the United States. The term "rent", as used in the preceding sentence, shall mean the periodic sum paid by the tenant for the use and occupation of the dwelling unit in accordance with the terms of his lease or other rental agreement.

(6) The lessor shall forfeit his right to retain any portion of the security deposit for any reason, or, in any action by a tenant to recover a security deposit, to counterclaim for any damage to the premises if he:

(a) fails to deposit such funds in an account as required by subsection (3);

(b) fails to furnish to the tenant within thirty days after the termination of the occupancy the itemized list of damages, if any, in compliance with the provisions of this section;

(c) uses in any lease signed by the tenant any provision which conflicts with any provision of this section and attempts to enforce such provision or attempts to obtain from the tenant or prospective tenant a waiver of any provision of this section;

(d) fails to transfer such security deposit to his successor in interest or to otherwise comply with the provisions of subsection (5) after he has succeeded to an interest in residential real property; or,

(e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section, together with any interest thereon, within thirty days after termination of the tenancy.

(7) If the lessor or his agent fails to comply with clauses (a), (d), or (e) of subsection 6, the tenant shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof to which the tenant is entitled plus interest at the rate of five per cent from the date when such payment became due, together with court costs and reasonable attorney's fees.

(7A) Whenever a lessor who receives rent in advance for the last month of tenancy transfers his interest in the dwelling unit for which the rental advance was received, whether by sale, assignment, death, appointment of a receiver or trustee in bankruptcy, or otherwise, the lessor shall credit an amount equal to such rental advance together with any interest which has accrued thereon for the benefit of the tenant who made such rental advance, to the successor in interest of such lessor, and said successor in interest shall be liable for crediting the tenant with such rental advance, and for paying all interest accrued thereon in accordance with the provisions of this section from the date upon which said transfer is made; provided, however, that the granting of a mortgage on such premises shall not be deemed a transfer of interest. The successor in interest shall, within forty-five days from the date of said transfer, notify the tenant who made such rental advance that such rental advance was so credited, and that such successor has assumed responsibility therefor pursuant to the foregoing provision. Such notice shall also contain the lessor's name,

business address, and business telephone number, and the name, business address, and business telephone number of his agent, if any. Said notice shall be in writing.

Upon such transfer, the lessor or his agent shall continue to be liable with respect to the provisions of this section until:--(a) there has been a credit of the amount of the rental advance so held to the lessor's successor in interest and the tenant has been notified in writing of the transfer and of the successor in interest's name, business address, and business telephone number; (b) there has been compliance with this clause by the successor in interest; or (c) the rental advance has been credited to the tenant and all accrued interest has been paid thereon.

In the event that the lessor fails to credit said rental advance to his successor in interest as required by this subsection, the successor in interest shall, without regard to the nature of the transfer, assume liability for crediting of the rental advance, and payment of all interest thereon to the tenant in accordance with the provisions of this section; provided, however, that if the tenant still occupies the dwelling unit for which the rental advance was given, said successor in interest may satisfy such obligation by granting the tenant free use and occupancy of the dwelling unit for a period of time equivalent to the period of time covered by the rental advance. The liability imposed by this subsection shall not apply to a city or town which acquires title to property pursuant to chapter sixty or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the commonwealth or by the United States.

(8) Any provision of a lease which conflicts with any provision of this section and any waiver by a tenant or prospective tenant of any provision of this section shall be deemed to be against public policy and therefore void and unenforceable.

(9) The provisions of this section shall not apply to any lease, rental, occupancy or tenancy of one hundred days or less in duration which lease or rental is for a vacation or recreational purpose.

CERTIFICATE OF COMPLIANCE

I hereby certify, under the pains and penalties of perjury, that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to:

- Rule 17 (brief of an amicus curiae);
- Rule 20 (form and length of briefs, appendices, and other documents).

This brief was prepared using Century Schoolbook, 14-point font. It was prepared in Microsoft Word, Microsoft Office Professional Plus 2016. The length of the brief was determined using the Word Count function and it contains 3,446 words within the non-excluded portions.

A handwritten signature in cursive script, appearing to read "Lindsay Mitnik", written in dark ink. The signature is positioned above a horizontal blue line.

Lindsay Mitnik

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2025, I caused to be served a copy of the foregoing document on counsel for the parties via the Court's e-filing system and by e-mail to the addresses shown below:



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