

## **940 CMR 10.00: MANUFACTURED HOUSING COMMUNITY REGULATIONS**

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940 CMR 10.00 defines certain unfair acts or practices, but is not intended to describe all types of activities prohibited by M.G.L. c. 93A, § 2(a). 940 CMR 10.00 does not legitimize acts that are not specifically prohibited by 940 CMR 10.00. 940 CMR 10.00 is designed to supplement state and federal law, and to supplant any irreconcilably conflicting local bylaws or ordinances. References to statutes and other regulations shall include amendments thereto from time to time.

### **10.01: Definitions**

**Act:** shall mean M.G.L. c. 140, §§ 32A through 32S, as amended and supplemented from time to time.

**Basic Utilities:** shall mean those utility services listed in 940 CMR 10.05(4).

**Clear and Conspicuous Type:** shall mean printed typeface no smaller than 12-point print.

**Common Areas and Facilities:** shall mean all land areas and facilities in a manufactured housing community, except manufactured homes, manufactured homesites, and areas and facilities that are specified in the occupancy agreement or the written community rules as not available for common use by residents. Common areas and facilities shall include, without limitation, community roads, common parking areas, common storage areas, common walkways, community social, recreational and operational facilities, and utilities other than those located on a manufactured homesite.

**Cooperative:** shall mean a manufactured housing community where the land underlying the community is cooperatively owned by at least 51% of the community manufactured homeowners.

**Fair market rental rates:** shall mean the rental rates that would be charged in the market between a willing owner of a manufactured housing community and a willing prospective tenant seeking initial residency in the community, each acting freely and without compulsion or collusion, for the manufactured homesite in question. This definition is not intended to replace or supersede any applicable rent control laws and, with respect to manufactured housing communities that are subject to rent control, "fair market rental rates" shall mean the rates established pursuant to such laws.

**Federal Fair Housing Act:** shall mean 42 U.S.C. §§ 3600 et seq. and regulations promulgated thereunder.

**Guest:** shall mean a person who resides in a home for fewer than 90 days in any 12 month period.

**Licensee:** shall mean an operator who holds a current manufactured housing community license from the local board of health under M.G.L. c. 140, § 32B.

**Manufactured Home:** is defined in M.G.L. c. 140, § 32Q.

**Manufactured Home Dealer:** shall mean a person engaged in the business of selling manufactured homes to retail customers.

**Manufactured Homesite:** shall mean the land within a manufactured housing community on which a manufactured home and appurtenances are or may be located and over which a tenant has possessory or other rights or interests.

**Manufactured Housing Community:** shall have the meaning assigned in M.G.L. c. 140, § 32F.

**Non-Discriminatory Rent Increase:** shall mean proposed rental increases, to the extent permitted by occupancy agreements, that are apportioned equally among similarly situated tenants in the community.

**Occupancy Agreement:** shall mean any written agreement, including but not limited to a lease, a license, or a tenancy at will, and any amendment, renewal or extension thereof, for use or occupancy of a manufactured homesite, common areas, facilities, and other appurtenant rights.

**Operator:** shall mean a person who directly or indirectly owns, conducts, controls, manages, or operates any manufactured housing community, and his or her agents or employees.

**Person:** shall mean any individual or entity described in M.G.L. c. 4, § 7, twenty-third.

**Personal Motor Vehicle:** shall mean any automobile, van, truck, motorcycle, or motor bicycle as defined under M.G.L. c. 90, § 1, that is for personal use by a resident, whether or not it is also used to conduct a trade or business, except for vehicles with two or more axles with a gross weight exceeding 8,600 pounds.

**Qualifying Retirement Community:** shall mean a manufactured housing community that qualifies for exemption from the age discrimination prohibitions contained in M.G.L. c. 151B and the familial status discrimination prohibitions contained in the Federal Fair Housing Act because it meets either the definition of “55-or-over-housing” or “62-or-over-housing” as provided for in the Federal Fair Housing Act.

**Reasonable Insurance Requirement:** shall mean an amount and type of required insurance coverage that is reasonably correlated to the nature, scale and probability of the potential loss and does not exceed the then-prevailing average amount or type of coverage that is customarily required of vendors of the particular goods or services being supplied in the area where the manufactured housing community is located.

**Resident:** shall mean any person who normally resides in a manufactured home in a manufactured housing community, regardless of whether or not he or she has an occupancy agreement with the operator.

**Rule:** shall mean any written or unwritten rule, regulation, or policy imposed by an operator that governs procedures, conduct, or standards within the manufactured housing community, including without limitation procedures for the screening and approval of prospective residents.

**Secretary:** shall mean the Secretary of the Executive Office for Communities and Development.

**Tenant:** shall mean a person who has an occupancy agreement or oral tenancy agreement with an operator for the use and occupancy of a manufactured homesite, common areas, facilities, and other appurtenant rights.

**Tenants’ Association:** shall mean any association of which the operator has notice and which represents at least 51% of the tenants in a manufactured housing community.

## **10.02: Unfair or Deceptive Acts or Practices: General**

It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for an operator:

- (1) to impose, through any rule or occupancy agreement, any unreasonable, unfair, or unconscionable restriction governing the rental or occupancy of a manufactured homesite;
- (2) to impose any rule, or term or condition of occupancy, or to otherwise take action, that conflicts with any applicable provision of 940 CMR 10.00, M.G.L. c. 140, §§ 32A through 32S, or other applicable law. Any such rule, term, or condition shall be void and unenforceable;
- (3) to fail to comply with any applicable provision of M.G.L. c. 140, §§ 32A through 32S, 940 CMR 10.00, or any other local, state or federal statute, rule or regulation which generally or specifically provides protection to or for residents or prospective residents of manufactured housing communities;
- (4) to enforce any rule that has not been approved by the Attorney General and the Secretary, unless the rule is conditionally in effect pursuant to M.G.L. c. 140, 32L(5) and 940 CMR 10.04(3);
- (5) to fail or refuse to inform a tenant or prospective tenant in writing of the fact that the community has rules or regulations, and to fail or refuse to furnish a copy of all such rules, printed in clear and conspicuous type, to the tenant or prospective tenant;
- (6) to fail or refuse to inform a tenant in writing that the Attorney General has promulgated regulations relating to the conduct of manufactured housing communities, and to fail to make available for resident inspection a copy of 940 CMR 10.00, either at the office of the manager on the site, or where the rules and regulations are otherwise posted pursuant to M.G.L. c. 140, § 32D;
- (7) to impose, where the community is under the jurisdiction of a duly promulgated rent control statute, ordinance, bylaw, or regulation, any rent increase or additional fee, or to attempt to evict any tenant, except as permitted pursuant to such rent control law;
- (8) to increase a tenant's rent or other fee, or change the terms or conditions of a tenancy, notwithstanding any provision in 940 CMR 10.00 that would permit the imposition of a fee or restriction in the absence of a controlling occupancy agreement, except as permitted:
  - (a) under the occupancy agreement,
  - (b) under M.G.L. c. 186, § 12 with respect to a tenancy at will, or
  - (c) in accordance with any applicable rent control law;

(9) to sell a home, or to approve a prospective resident's application for residency in conjunction with the sale of a home within the community, without disclosing that the operator intends to issue, or has actually issued, a notice of discontinuance to residents; or

(10) to fail to make the disclosures required under 940 CMR 10.03(4) when offering a new tenancy to any prospective or existing tenant.

**10.03: Terms and Conditions of Occupancy**

(1) Unfair or Deceptive Acts or Practices: General. It shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for an operator:

(a) to restrict the number of occupants of a manufactured home beyond any applicable restriction in any valid local, state or federal law. A guest will presumptively not increase the number of persons deemed normally living in the home.

(b) to impose any occupancy restriction based upon race, religious creed, color, national origin, sex, sexual orientation, age, ancestry, marital status, familial status, veteran status or membership in the armed forces, blindness, hearing impairment, or other handicap, or based upon any other ground prohibited by M.G.L. c. 151B or the Federal Fair Housing Act, unless such a restriction is explicitly exempted from the scope of those laws;

(c) to discriminate in the terms, conditions or privileges of the rental of a manufactured homesite, or in the provision of services or facilities, upon a ground prohibited by either M.G.L. c. 151B or the Federal Fair Housing Act;

(d) to impose any restriction based upon age unless the manufactured housing community is a qualifying retirement community;

(e) to advertise or in any way hold out a manufactured housing community as a "retirement" or "adults only" community, or like terms, if the community is not a qualifying retirement community;

(f) to rent or lease a manufactured homesite, or to offer a new tenancy after terminating a prior tenancy under M.G.L. c. 186, § 12, without offering a written five-year lease as required under M.G.L. c. 140, § 32P; or

(g) to require or retain a security deposit or any other amount in violation of M.G.L. c. 186, § 15B.

(2) Unfair or Deceptive Acts or Practices: Fees and Charges. It shall be an unfair or deceptive act or practice in violation of M.G.L. c. 93A for an operator:

- (a) to charge any entrance or exit fee for assuming or leaving occupancy of the manufactured housing community;
- (b) to charge a fee for a service unless such fee is permitted under M.G.L. c. 140, §§ 32A through 32S or 940 CMR 10.00, and is either listed in the tenant's occupancy agreement or is charged for services requested by the resident and actually rendered by the operator;
- (c) to charge a fee for costs associated with the processing of any residency application, including but not limited to any credit verification costs;
- (d) to charge a fee for a guest, except as allowed in 940 CMR 10.03(2)(h);
- (e) to charge a per capita fee for an additional household occupant, unless such fee is objectively based on actual additional expenses incurred by the operator as a result of the increased occupancy, and the operator raises the rent only to the extent needed to conform to the rent paid by other residents with the same number of adult occupants in their household;
- (f) to charge a fee for maintenance work on the manufactured home or homesite, except as permitted under 940 CMR 10.04(5)(d) or as otherwise mutually agreed by the operator and the resident;
- (g) to charge a pet fee unless such fee is reasonably related to the actual cost of providing a pet service or facility in the community, and further provided that no such fee shall be charged for a guide dog or other service animal assisting a disabled resident or to a pet that is kept exclusively within a manufactured home;
- (h) to charge a fee for the non-exclusive use of common areas and facilities by any resident or guest, unless such fee is a user fee for recreational or storage areas and reasonably relates to the cost of providing and maintaining such areas and facilities. Nothing herein shall preclude the imposition of reasonable fees for use of such areas and facilities for a private social or recreational function hosted by a resident;
- (i) to impose any interest or other monetary penalty for late rent, except pursuant to an occupancy agreement and in an amount reasonably intended to compensate the operator for the delay in payment, and provided that no such interest or penalty may be charged until payment is 30 days overdue;
- (j) to impose in any occupancy agreement a provision allowing for recovery of the operator's attorneys' fees and expenses incurred as the result of any legal action taken against the tenant for violation of the occupancy agreement, unless the agreement also

provides that the tenant may recover his or her attorneys' fees and expenses if the tenant prevails in any such legal action;

(k) to seek to recover a fee or charge that is not separately listed in the occupancy agreement;

(l) to seek to recover, through lump sum charges, the costs of capital improvements to the community or any homesite to the extent such costs exceed \$100 in the aggregate; provided that the amortized costs of such capital improvements may (if specifically listed in the occupancy agreement) be recovered from tenants over the useful life of such improvements through community-wide nondiscriminatory rent increases;

(m) to seek to recover costs or expenses resulting from any legal obligation of the operator to upgrade or repair sewer, water, gas, or electrical systems to meet minimum standards required by law, unless such standards first become effective after a tenant has initially assumed residency in a manufactured housing community and unless such costs are recovered as capital improvements in accordance with 940 CMR 10.03(2)(l);

(n) to require any resident to pay for the removal or replacement of oil storage tanks on a homesite to meet environmental concerns or risks not caused by the negligence of the resident, provided that the operator may recover such costs as capital improvements in accordance with 940 CMR 10.03(2)(l);

(o) to charge a new fee, during the term of an occupancy agreement, for a service or facility that had previously been supplied or maintained by the operator without a separately listed charge in the occupancy agreement; or

(p) to charge any fees exceeding those authorized under any applicable rent control law.

(3) General Terms and Conditions. Any violation of any applicable local, state or federal statute, regulation or ordinance governing landlord-tenant relations (including, but not limited to, M.G.L. c. 186, §§ 12 through 21, M.G.L. c. 111, § 127A, 105 CMR 410.000, local ordinances and rent control laws) with regard to manufactured housing shall constitute a violation of M.G.L. c. 93A.

(4) Initial Disclosure and Lease Offer. All terms and conditions of occupancy shall be disclosed in writing to any prospective resident, including without limitation, an existing tenant whose prior occupancy agreement is being amended, renewed, or extended, any tenant at will whose terms of tenancy are being changed under M.G.L. c. 186, § 12, or any approved subtenant. Such disclosure shall be signed by the operator and delivered at least 72 hours prior to either the signing of the occupancy agreement or the commencement of

the new occupancy, whichever comes first. Disclosure shall include, but shall not be limited to:

- (a) the amount of rent;
- (b) an itemized list of any usual charges or fees, including, upon request of any prospective resident, a statement of the charges and fees assessed over the preceding 12 months and estimated for the ensuing 12 months, and a description of the circumstances under which any special charges or fees may be imposed for extraordinary work, services, or repairs to the extent otherwise permitted under M.G.L. c. 140, §§ 32A through 32S and 940 CMR 10.00;
- (c) the proposed term(s) of occupancy, as provided under 940 CMR 10.03(5);
- (d) the names and addresses of all the owners and operators of the community, and if a corporation, partnership, trust or other entity, the principal beneficial owners thereof;
- (e) all community rules;
- (f) the size and location of the manufactured homesite, including a disclosure of any known and materially adverse conditions or defects;
- (g) a description of all common areas and facilities and any restrictions on the use thereof;
- (h) the statutory notice required under M.G.L. c. 140, § 32P.

(5) Minimum Term of Occupancy. The written disclosure required by 940 CMR 10.03(4) shall contain a bona fide, good faith offer to enter into an occupancy agreement with a term of five years at fair market rental rates, subject to any applicable rent control restrictions, as an alternative to any other proposed term lengths which may include periods shorter or longer than five years. Where a valid notice of discontinuance under M.G.L. c. 140, § 32L and 940 CMR 10.10 is then in effect, such offer shall be for the period remaining before the scheduled effective date of the discontinuance.

The requirement in 940 CMR 10.00 regarding an operator's responsibility to offer a fair market five-year lease does not create a new right of action, beyond those available at common law and/or by statute, by which tenants can challenge the fair market rent of such leases after executing the leases. However, any fraud, material misrepresentation, or other unfair or deceptive act by operators during negotiations with prospective tenants regarding the fair market value shall be a violation of M.G.L. c. 93A.

(6) Credit Verification. An operator shall not, in requiring a prospective tenant to complete any credit application, require the prospective tenant to supply more than three credit

references; all credit verifications shall be carried out through recognized credit verification sources and in accordance with applicable law.

(7) Sublease and Assignment. An operator shall not unreasonably restrict leasing of a tenant's manufactured home or subleasing or assignment of a tenant's interest in a manufactured homesite. In addition, all restrictions imposed by the operator on tenant subleasing or assignment shall also apply to any direct leasing of homes by the operator. Moreover, an operator shall not restrict a tenant's ability to lease his or her manufactured home and sublease the underlying manufactured homesite after a discontinuance notice has been issued.

(8) Operator's Right of Entry.

(a) No occupancy agreement shall contain a provision that an operator may enter a manufactured home. Moreover, an operator shall not enter a manufactured home without the prior written consent of the tenant, provided on a separate document which addresses only the issue of consent and no other topic. Such consent may be revoked at any time, without penalty or consequence to the tenant of any sort.

(b) No occupancy agreement shall contain a provision that an operator may enter onto a manufactured homesite prior to the termination of such agreement, except to inspect the site, to make repairs thereto subject to 940 CMR 10.04(5)(d), or to show the site to a prospective tenant, purchaser or mortgage or its agents. An operator may enter onto a manufactured homesite as permitted in M.G.L. c. 186, § 15B(l)(a)(i),(ii) or (iii). Any entry pursuant to 940 CMR 10.03(8)(b) shall require reasonable prior notice from the operator, except in the case of an emergency that creates an imminent threat to the safety or property of the tenant or others, and shall not interfere unreasonably with the tenant's right to use and enjoyment of the manufactured home or the manufactured homesite.

(9) Resident's Insurance and Indemnification.

(a) An operator shall not require a tenant to maintain insurance unless insurance is available at reasonable rates.

(b) Any rule or provision of an occupancy agreement which imposes liability on a resident without regard to fault, or which violates M.G.L. c. 186, § 15B, or which releases or limits the operator's liability arising under law or resulting from an act or omission of the operator, or which provides for indemnification of an operator for any such liability or costs connected therewith, shall be void and unenforceable. The foregoing shall not affect any statutory liability of either the operator or the tenant.

(10) Notice of Change in Terms and Conditions of Occupancy. An operator shall give each resident, and any tenants' association written notice of any permitted increase in rent or charges, any permitted reduction in services or utilities, or any other permitted change in the terms and conditions of tenancy at least 30 days before the effective date of the change, or with such longer notice period as the occupancy agreement or M.G.L. c. 186, § 12 may require. An operator shall give notice of any change or proposed change in the community rules in accordance with 940 CMR 10.04.

#### **10.04: Manufactured Housing Community Rules**

(1) Unfair or Deceptive Acts or Practices: General. It shall be an unfair or deceptive act or practice in violation of M.G.L. c. 93A for any operator:

(a) to impose or enforce any rule that either:

1. is not in writing;
2. has been disapproved by the Attorney General or the Secretary;
3. is not otherwise enforceable under M.G.L. c. 140, § 32L(5);
4. is inconsistent with any provision of M.G.L. c. 140, §§ 32A through 32S or 940 CMR 10.00; or
5. with respect to matters not addressed herein, is unreasonable, unfair, unconscionable or deceptive.

(b) to fail to post the rules then in effect as required by M.G.L. c. 140, § 32D; or

(c) to make any material false representation as to any material matter related to the giving of notices or the receipt of approvals related to community rules.

(2) General Content of Rules.

(a) A licensee may adopt written rules to promote the convenience, quiet enjoyment, safety or welfare of the residents in the community, to preserve the operator's property from abusive use, to preserve or enhance the quality and appearance of the community, or to allocate services and facilities in a fair and appropriate manner, all subject to M.G.L. c. 140, §§ 32A through 32S and 940 CMR 10.00.

(b) All rules shall apply to and be enforced against residents in a nondiscriminatory manner free from selective enforcement, shall be sufficiently explicit to fairly inform residents of the prohibitions, directions, or limitations contained therein, and shall be reasonably related to a permissible purpose.

(c) An operator shall include in any community rules and regulations an emergency telephone number to be called when the community is left unattended by a manager.

(3) Approval Procedure.

(a) If an operator promulgates, adds, deletes, or amends any rule, new copies of all such proposed rules shall be conspicuously posted in a common area of the community and concurrently provided to any tenants' association, at least 75 days prior to the effective date of such rules. Attached to the aforementioned copies shall be a notice stating in clear and conspicuous type that:

1. the operator is seeking to change the rules of the community;
2. the operator intends to apply the changes to all community residents;
3. the changes may have a material effect on living conditions in the community;
4. the Attorney General and the Secretary have the authority to approve the changes;
5. any resident who wishes to comment on the changes should write to the Office of the Attorney General; and
6. residents may also comment to the operator regarding the proposed changes, if the residents choose to do so.

At least 60 days prior to the effective date of the rules, the rules shall be sent for approval to the Attorney General and the Secretary as set forth in M.G.L. c. 140, § 32L(5). A copy of such rules, including any amendments or deletions thereto after their initial submission, with copies of the certified mail receipts signed by a representative of the Attorney General and a representative of the Secretary, also shall be sent or delivered to each resident in the affected manufactured housing community at least 30 days prior to their effective date, as set forth in M.G.L. c. 140, § 32L(5).

(b) If the notice provisions of M.G.L. c. 140, § 32L(5) have been complied with and neither the Attorney General nor the Secretary disapproves of such rules or amendment or addition thereto prior to the proposed effective date thereof, such rules may be enforced by the licensee from and after the proposed effective date until such time as the Attorney General or the Secretary disapproves such rules or portions thereof. Any such disapproval shall apply prospectively, but shall not preclude a private party from challenging such rules or portions thereof in a court of competent jurisdiction prior to or after such disapproval. Approval or disapproval of the Attorney General or the Secretary shall be deemed given only when explicitly so stated and shall not be implied or inferred in the absence of an explicit statement.

(c) Each annual application to the board of health for an original or renewal license to operate a manufactured housing community shall include a true and complete copy of the rules then in effect, in accordance with M.G.L. 140, § 32B and 940 CMR 10.11(2).

(4) Guests. An operator shall not unreasonably restrict a resident from having a guest or require any such guest to register. An operator shall not unreasonably restrict the right of a guest to use any community facility or service.

(5) Exterior Appearance and Improvements.

(a) A licensee may promulgate reasonable rules that require residents to keep neat and in good repair the exterior of a manufactured home and the manufactured homesite.

(b) A licensee may require residents to conform a home's exterior to reasonable aesthetic standards that are applied consistently throughout the community (with the exception of those homes where conformance with such standards is not practicable or possible because the home, if built before June 15, 1976, does not comply with federal standards for construction of manufactured housing that became effective on that date and are administered by the U.S. Department of Housing and Urban Development) so long as such aesthetic standards are disclosed prior to the tenant's entry into the community. New or revised standards may be proposed in rules submitted for approval to the Attorney General and the Secretary in accordance with 940 CMR 10.04(3).

(c) An operator shall not restrict a tenant from removing any improvements made by the tenant to the manufactured homesite during his or her tenancy, such as plants, vines, edgings, shrubs, gravel, stone or other additions made for the benefit of his or her tenancy, except that, by agreement of both parties the licensee may retain the improvements by paying the tenant for their actual cost. A licensee may require the tenant to repair any damage to the homesite caused by the removal of any such improvements.

(d) An operator shall not perform or charge a resident for maintenance work on the resident's manufactured home or homesite, unless requested by the resident, or unless:

1. the exterior does not comply with a reasonable rule as described in 940 CMR 10.04(5)(a) and (b);
2. the resident's occupancy agreement allows the operator's proposed actions; and
3. the resident first receives written notice from the operator that specified work is required, and that the operator will perform the work or cause it to be performed at the expense of the resident no sooner than 10 days from receipt of the notice, if the resident does not do the work; and

4. the notice specifies the amount that will be charged.

(e) An operator shall not misrepresent governmental health, safety and use requirements nor seek to exercise enforcement powers thereunder not granted by law.

(f) An operator shall not require any resident to make permanent improvements to the manufactured homesite, or the manufactured housing community or any of its facilities, nor assess any separate fee or charge for any such permanent improvements made by the operator, except as specifically provided for in 940 CMR 10.00.

(6) Interior Appearance and Improvements. An operator shall not impose any restriction on the interior appearance or equipment of a manufactured home, nor shall an operator require a resident to make interior improvements. Residents shall be responsible for the interior's compliance with applicable governmental health, safety and other regulations, and shall only be subject to enforcement by the appropriate governmental authorities.

(7) Motor Vehicles. An operator shall not prohibit any resident from parking up to two personal motor vehicle at or on a manufactured homesite. A licensee may otherwise reasonably restrict parking, maintenance and storage of motorized vehicles, trailers, and boats. Where there is no provision made in a community for guest parking, an operator shall not place unreasonable restrictions on guest parking at a resident's homesite or adjacent roadways.

(8) Non-Residential Use of a Manufactured Home. An operator shall not restrict ancillary non residential activities within a residential manufactured home or homesite, including but not limited to home offices, child care, and yard sales, if such activities comply with local zoning and other laws, and do not substantially disrupt the residential character of the manufactured housing community. A licensee may impose reasonable restrictions on the times and manner in which yard sales are conducted, so long as such restrictions are included in the community's rules.

(9) Residents' Meetings and Communications.

(a) An operator shall not prohibit or unreasonably restrict free movement, speech, assembly and association within a manufactured housing community.

(b) An operator shall not restrict or prohibit residents from meeting peacefully for any lawful purpose nor restrict or prohibit the presence of any public official, candidate for public office, or representative of a manufactured homeowners' organization. Meetings may be held in a common area or facility not otherwise in use or in a resident's home.

(c) An operator shall not prohibit, or require fees or deposits for, any meetings held in a common area or facility by the community's residents to discuss the community's

affairs, so long as the meetings are held when the facility is not otherwise in use. An operator shall not prohibit the distribution of notices of such meetings.

(d) An operator shall not restrict peaceful canvassing and petitioning of residents, including without limitation the distribution or circulation of oral or printed information, for any noncommercial, political or public purpose.

(e) An operator shall not prohibit any resident from soliciting membership in any resident association, including but not limited to oral or written requests for membership or the payment of dues.

(10) Pets. A licensee may reasonably restrict pets that go outside a manufactured home. An operator shall not regulate pets that live solely within a manufactured home, except for requirements that any such pets not disturb the peace and quiet of other residents.

### **10.05: Goods and Services**

(1) Choice of Seller. An operator shall not restrict a resident in his or her choice of a seller of fuel, furnishings, goods, services or accessories connected with the rental or occupancy of a manufactured homesite:

(a) so long as such seller is in compliance with:

1. applicable law and;
2. applicable rules, if any, of the manufactured housing community approved by the Attorney General and the Secretary or otherwise in effect pursuant to M.G.L. c. 140, § 32L(5), including any such rules and regulations imposing reasonable insurance requirements, as defined under 940 CMR 10.01; and

(b) unless such seller has repeatedly failed to meet prevailing industry standards, as evidenced by complaints to the Attorney General's office, the Better Business Bureau or regulatory agencies having jurisdiction over the provision of such goods or services. Where goods or services are offered by an operator to residents, the operator also shall inform residents in writing of their right to obtain such goods and services from other providers.

(2) Central Fuel Systems. If fuel is supplied to manufactured homesites in a manufactured housing community through a central fuel and gas meter system, a licensee may impose reasonable conditions related to such system, including conditions limiting a resident's ability to choose a fuel dealer. The operator shall provide such services at no charge to the resident, pursuant to 105 CMR 410.354 and 410.355.

(3) Kickbacks. No operator shall charge, demand or receive, directly or indirectly, any fee or amount, or any free good or service, from any provider of goods or services to residents.

(4) Basic Utilities.

(a) An operator shall make available, or cause to be made available, the following to each manufactured homesite:

1. Electrical service supplying each manufactured home with sufficient amperage to meet the reasonable needs of the residents. Should the amperage be determined to be inadequate for such needs, it shall be corrected, without charge to the residents, so that it meets the amperage requirements of 527 CMR 12.00, the Massachusetts Electrical Code; and
2. Natural gas connection to any provider of natural gas at the location of the manufactured housing community, provided such connection is economically reasonable.

(b) An operator shall supply and pay for the following to each manufactured homesite:

1. a supply of potable water sufficient in quantity and pressure to meet the ordinary needs of the residents, connected with a public water supply system, or with any other source that the board of health has determined does not endanger the health of any potential user; and
2. a sanitary sewage disposal system connected to the public sewerage system, provided, that if, because of distance or ground conditions, connection to a public sewerage system is not practicable, the operator shall provide, and shall maintain in a sanitary condition, a means of sewage disposal that complies with 310 CMR 15.00; and
3. electricity, natural gas, or other heating fuel, except for that which is metered through a meter which serves only the individual manufactured home and the occupancy agreement provides for payment by the occupant,

(c) A licensee may recover expenses incurred under 940 CMR 10.05(4)(b)1., 2. and 3. through non-discriminatory rent increases, except as otherwise limited by 940 CMR 10.00.

(d) The basic utilities described in 940 CMR 10.05(4)(a) and (b), as applicable, shall be installed to the point of connection at each manufactured home and maintained in good repair and operating condition by the operator without charge to residents, except as damage thereto is caused by the negligent act or omission or willful misconduct of a

resident. All such installation and maintenance shall be in accordance with applicable laws, codes, and professional standards.

(e) Residents shall not be required to pay charges for hook-up and use of basic utilities described in 940 CMR 10.05(4)(a) and (b), pursuant to 105 CMR 410.354 and 410.355, except that use charges may be imposed and determined by metering at a manufactured homesite by a utility or utilities.

(f) An operator shall not willfully or intentionally interrupt any utility service furnished under 940 CMR 10.05(4)(a) or (b), and shall be liable for any such interruption pursuant to M.G.L. c. 186, § 14.

(5) Access to Cable Television Service. An operator shall not restrict a resident's access to cable television connection to the licensed municipal provider(s) of cable television in the surrounding community in violation of M.G.L. c. 166A, § 22. An operator shall not unreasonably restrict a tenant's access to satellite transmission services.

(6) No Required Utilities or Services. An operator shall not require a resident to use a basic utility such as natural gas, or other services such as cable television, notwithstanding the fact that the operator is required to make such items available or accessible.

(7) Maintenance of Common Areas and Facilities. An operator shall maintain all common areas clean and in good repair, free from debris, rubbish and garbage and in compliance with applicable health and safety laws. All common areas and facilities shall be generally available for use by any resident, and any scheduled daily periods during which such facilities and common areas are to be closed shall be conspicuously posted.

(8) Collection of Garbage and Rubbish.

(a) An operator shall be responsible for the final collection or ultimate disposal or incineration of residents' garbage and rubbish by means of:

1. the regular municipal collection system; or
2. any other collection system approved by the board of health.

(b) A licensee may require tenants, without charge, to comply with recycling rules imposed by the municipality on the collection company. Any costs borne by the operator in complying with local recycling laws may be recovered through non-discriminatory rent increases implemented in conformity with 940 CMR 10.00.

(9) Maintenance of Roadways. An operator shall maintain and keep in good repair all community roadways that are part of the common areas and facilities, including but not limited to ensuring that roadways are reasonably free of debris and potholes. An operator shall provide necessary snow plowing for all community roadways. Roadways shall be

sufficient to provide access for residential use and emergency vehicles, and shall be open to residents, guests, service providers, school buses (except where narrow roadways will not accommodate such access, in which case a central bus stop shall be provided), vans servicing the elderly or the handicapped, and others generally entitled to use public ways.

(10) Maintenance of Manufactured Homesites and Common Areas Free From Hazards. An operator shall provide for the removal or repair of all naturally occurring hazardous conditions on a manufactured homesite or common areas that are determined by an appropriate governmental authority to pose a risk to the safety of others or their homes, including but not limited to the removal of hazardous trees or tree limbs.

#### **10.06: Sale of a Manufactured Home by an Operator**

(1) General. An operator shall not make any false, deceptive, or misleading representation to induce a person to purchase a manufactured home or lease a manufactured homesite, or make any representation inconsistent with or contrary to the written occupancy agreement.

(2) Restrictions on Choice of Dealer. A licensee may restrict a tenant or prospective tenant in the choice of a manufactured home dealer for the purchase or lease of a manufactured home only if the manufactured homesite on which the home is to be placed is being leased or rented, whether by such operator or any predecessor, as a manufactured homesite for the first time. A licensee may reasonably restrict any tenant in the choice of certain brands of manufactured homes for purchase or lease throughout the period of occupancy for the purpose of maintaining a pre-established aesthetic standard in the manufactured housing community. Any such restriction on brands shall be listed in the community rules. A restriction will be presumptively unfair if it substantially limits a tenant's choice of manufactured home dealers. An operator shall not otherwise restrict a resident or prospective resident in the choice of a manufactured home dealer, nor require any person desiring to purchase a previously owned home in a community to first inquire about availability of homes at the community management or sales office, nor otherwise interfere with the inspection, purchasing, or lease of a tenant-owned home or a home being sold by another manufactured home dealer or broker.

(3) Cancellation of Purchase Contract. Any purchaser of a manufactured home located in a manufactured housing community, from an operator or a manufactured home dealer, may rescind the contract for the purchase of the home after execution thereof if:

(a) at the time of executing the contract, the seller or the seller's agent misrepresented, or failed to disclose, to the purchaser or the purchaser's agent that the home could not

remain in the community and the purchaser is subsequently not permitted to keep the home in the community; or

(b) the purchaser is rejected for residency in the community.

**10.07: Sale of Manufactured Home by Homeowner**

(1) General.

(a) An operator shall not limit a manufactured homeowner's right to sell or encumber a manufactured home, or require a manufactured homeowner to remove a home from the manufactured community because of the sale of the home.

(b) An operator shall not condition its approval of residency of a purchaser on payment by the selling homeowner of monies lawfully withheld under M.G.L. c. 239, § 8A. An operator shall not charge or collect from a succeeding manufactured homeowner or resident any rent, taxes or other charges relating to a prior owner's ownership of the home or occupancy of the manufactured homesite.

(c) An operator shall not make any false, deceptive, or misleading representation to discourage a potential buyer from purchasing a home from a homeowner in the community. Where the operator discloses that a notice of discontinuance has been issued to community residents, the operator must also disclose the existence of and nature of any legal challenge to the issuance of the notice, and any related judicial rulings that have attacked the validity of the notice.

(d) A licensee may have a lien upon a manufactured home as provided in M.G.L. c. 140, § 32J, upon a manufactured home and the contents thereof, as provided in M.G.L. c. 255, § 25A, or if otherwise authorized by a court of law, but it shall be an unfair or deceptive practice to fail to disclose to a prospective purchaser of a manufactured home the existence of a lien placed by or on behalf of an operator on such home.

(e) A licensee may require a homeowner to provide notice of an intended sale at least 30 days prior to its execution.

(2) Residency Application by Purchaser. Upon the sale or proposed sale of a manufactured home by the homeowner, the operator shall consent to entrance by the purchaser and members of the purchaser's household if the purchaser meets the currently enforceable rules of the manufactured housing community and provides reasonable evidence of financial ability to pay the rent and other charges associated with the tenancy in question. An operator shall not reject the application or prohibit the sale because the applicant owns another home in the community or leases another site in the community. Any application

for residency shall be deemed approved if the operator fails, within 10 days of receipt of the application, to notify the applicant of its rejection of the application and the reasons for the rejection. If such application is not timely rejected, then the purchaser shall have the right to assume the obligations thereafter arising under any continuing occupancy agreement of a current resident then in effect or, if such occupancy agreement has expired, to enter into a new occupancy agreement on terms satisfactory to the operator and purchaser and not inconsistent with 940 CMR 10.00.

(3) Broker. No operator or manufactured home dealer shall:

- (a) require a resident to designate the operator, the manufactured home dealer, or any designee thereof, as broker or agent for any sale, sublease or lease assignment; or
- (b) restrict the manufactured homeowner in undertaking such a transaction directly or through a broker or agent of the homeowner's choosing.

(4) Fees or Commissions. No operator, manufactured home dealer, or agent shall impose any fee (which is to be passed, directly or indirectly, to the operator) as a condition to the sale, lease or other transaction involving a manufactured home unless such person has entered into a separate written contract for, and rendered, brokerage services in connection with such transaction and the fee or charge is reasonable in relation to the services provided. No commission or fee paid to an operator for the sale of a manufactured home shall exceed 10% of the sale price.

(5) "For Sale" Signs. An operator shall not prohibit a homeowner from placing on their manufactured home or manufactured homesite commercially reasonable "for sale" or "for lease" signs. An operator may not require that any such signs display the community logo or contain information directing an interested buyer to the community sales or management office, except pursuant to any exclusive brokerage contract the homeowner enters into with the operator for the sale of the home.

(6) Condition of Home on Sale. An operator shall not reject the application for residency of a prospective purchaser of a tenant's home:

- (a) because of the age of the home; and
- (b) because the home, if built before June 15, 1976, does not comply with federal standards for construction of manufactured housing that became effective on that date and are administered by the U.S. Department of Housing and Urban Development; or
- (c) because the external condition of the home or site does not comply with community rules, unless before the home was offered for sale the operator specified in writing the

area(s) of noncompliance with community rules and gave the homeowner a reasonable opportunity to bring the home into compliance and the homeowner failed to do so.

(7) Operator's Right of First Refusal. A right of first refusal granted to an operator or manufactured home dealer or designee thereof shall be enforceable only if:

- (a) it is based on the full amount of the bona fide third-party offer;
- (b) the operator must accept or reject the offer within 15 days;
- (c) the sale will take place on the terms set forth in the third-party offer;
- (d) if the operator fails to timely accept the offer and the third-party offer is not consummated, the selling homeowner shall not be required to submit a subsequent third-party offer made within one year and unless a price is materially reduced; and
- (e) the right of first refusal shall not apply to any transfer to members of the homeowner's family, including, but not limited to, step-relatives and domestic partners.

#### **10.08: Termination of Tenancy and Eviction**

(1) General.

(a) A licensee may terminate an occupancy agreement or tenancy of any kind only for a reason specified as a basis for termination in M.G.L. c. 140, § 32J. An operator shall not terminate an occupancy agreement or tenancy for any other reason, including without limitation:

1. a. because of the age of home;
- b. because the home, if built before June 15, 1976, does not comply with federal standards of construction of manufactured housing that became effective on that date and are administered by the U.S. Department of Housing and Urban Development; or
- c. because the external condition of the home or site does not comply with community rules, unless the operator has specified in writing the area(s) of non-compliance and has given the homeowner a reasonable opportunity to bring the home into compliance; and
2. in retaliation for the matters set forth in 940 CMR 10.08(4).

(b) No action by an operator to terminate an occupancy agreement or tenancy, or to recover possession of the manufactured homesite, for any of the reasons set forth in M.G.L. c. 140, § 32J, shall be maintained unless the operator has provided the resident with a written default notice and the opportunity to cure as set forth in M.G.L. c. 140, §

32J. The default notice required thereunder shall be effective only if it sets forth the reason(s) relied upon for the termination with specific facts, where applicable and available, alleging the date(s), place, witnesses, and circumstances concerning the reason(s) for the default. Reference to 940 CMR 10.00 or to M.G.L. c. 140, § 32J alone is not sufficient for compliance with 940 CMR 10.08(1)(b).

(c) Where an operator is required to obtain a certificate of eviction or similar permit from a local rent control board prior to evicting a resident, the operator shall not apply for such certificate or permit except for a reason specified as a basis for termination under M.G.L. c. 140, § 32J. Any certificate of eviction obtained by an operator that is issued on any other basis shall have no legal effect in any subsequent summary process action.

(d) An operator shall not refuse to renew an occupancy agreement or tenancy for the reason that the operator wishes to make the manufactured homesite available to a person purchasing a manufactured home from the operator.

(e) After a termination of an occupancy agreement or tenancy in compliance with M.G.L. c. 140, §§ 32A through 32S and 940 CMR 10.00, the licensee may seek to recover possession of the manufactured homesite by summary process under M.G.L. c. 239, and the resident shall be entitled to assert all rights and defenses available under applicable law.

(2) Substantial Violation of Rules.

(a) An operator shall not declare a default, terminate an occupancy agreement or tenancy, or seek to recover possession of the manufactured homesite for an alleged violation of a community rule that either has been disapproved by the Attorney General or the Secretary, is inconsistent with M.G.L. c. 140, §§ 32A through 32S or 940 CMR 10.00, or is not otherwise enforceable under M.G.L. c. 140, § 32L(5).

(b) No violation of a rule shall be deemed “substantial” for purposes of M.G.L. c. 140, § 32J unless the violation by the resident endangers the health or safety of the other residents of the community, their guests, or the operator, unreasonably interferes with the use and quiet enjoyment by other residents of their homes, homesites, or the common areas or facilities, or damages or poses a substantial risk of damage to the property or equipment of the operator.

(c) Nothing herein shall be deemed to restrict a licensee’s right to seek injunctive relief from a court of competent jurisdiction with respect to any violation of enforceable rules, whether or not “substantial.”

(3) Violation of Law or Ordinance Protecting Health or Safety.

(a) An operator shall not declare a default, terminate an occupancy agreement, or seek to recover possession of the manufactured homesite for an alleged violation of any noncriminal and/or misdemeanor health and safety law or ordinance, unless the resident fails to comply with such law or ordinance within a reasonable period after receiving notice of such noncompliance from the governmental agency charged with enforcing same.

(b) No termination or eviction action shall be undertaken by an operator because of a violation by a resident of a criminal statute protecting the health and safety of other residents if the person convicted of the offense has permanently vacated and does not subsequently reoccupy the manufactured homesite.

(4) Retaliation.

(a) An operator shall not terminate a tenancy or refuse to renew a tenancy because a resident has reported to any governmental authority a violation or suspected violation by the operator of any law, regulation, or ordinance, including without limitation any provision of any building or health code, M.G.L. c. 140, §§ 32A through 32S or 940 CMR 10.00, or filed suit alleging such violation(s).

(b) An operator shall not terminate a tenancy or refuse to renew a tenancy for the reason that the tenant is a member of a tenants' association or sought to establish or amend any rent control statute or ordinance.

(c) An operator shall not terminate a tenancy or refuse to renew a tenancy for the reason that the tenant is asserting a right under 940 CMR 10.00, M.G.L. c. 140, §§ 32A through 32S or any other applicable landlord-tenant law.

(d) The receipt by a resident of any notice of default or termination, except for nonpayment of rent, within six months after the resident has taken any of the actions described in 940 CMR 10.08(4)(a) through (c), shall create a rebuttable presumption that such notice is a reprisal against the resident for taking such action, and such presumption may be pleaded in defense to any eviction proceeding against such resident brought within one year after the resident took such action.

(e) Nothing herein shall limit a resident's right to recover damages, costs and reasonable attorneys' fees for an operator's reprisals or threatened reprisals as set forth in M.G.L. c. 140, § 32N.

(5) 120-Day Post-Eviction Period.

(a) After eviction of a resident, and for so long as the homeowner has the right to sell the manufactured home within the 120-day period provided under M.G.L. c. 140, § 32J, an operator shall not terminate or otherwise interfere with utility hookups, or cause the manufactured home to be moved from its site.

(b) During the 120-day post-eviction period, an operator may not unreasonably restrict the homeowner from placing “for sale” signs on the home or site in accordance with 940 CMR 10.07(5), or from showing the home to prospective purchasers or their agents, including but not limited to home inspectors.

(c) The purchase of a manufactured home by an operator, or any affiliate of the operator, from an evicted homeowner for a price substantially below the fair market value of the home, as determined under M.G.L. c. 140, § 32L(7)(A), shall create a rebuttable presumption that such transaction was unfair or deceptive.

**10.09: Sale or Lease of a Manufactured Housing Community**

(1) Unfair or Deceptive Acts or Practices: General. It shall be an unfair or deceptive act or practice in violation of M.G.L. c. 93A for an operator to fail:

(a) to give notice of any intention to sell or lease all or part of the manufactured housing community, as required under M.G.L. c. 140, § 32R(a);

(b) to give notice of an offer for such a sale or lease that the operator intends to accept, to the extent required under M.G.L. c. 140, § 32R(b); or

(c) to unreasonably refuse to enter into, or to unreasonably delay the execution or closing on, a purchase and sale agreement or lease with residents who have exercised their right of first refusal to purchase or lease the community under M.G.L. c. 140, § 32R(c) by making a bona fide offer as set forth therein.

(2) Notice of Proposed Sale or Lease. A bona fide offer by a third-party that the operator intends to accept for purposes of M.G.L. c. 140, § 32R(b) shall include any offer, except under any of the circumstances described in the last sentence of M.G.L. c. 140, § 32R(d).

(3) Residents’ Right of First Refusal to Purchase or Lease. For purposes of determining residents’ rights to purchase and lease under M.G.L. c. 140, § 32R(c):

(a) “reasonable evidence that the residents of at least 51% of the occupied homes in the community have approved the purchase of the community by such group or association” shall include, without limitation, a document signed by such persons; and

(b) “a binding commitment for any necessary financing or guarantees” shall include, without limitation, a contract subject to customary and commercially reasonable pre closing and closing conditions.

**10.10: Discontinuance of a Manufactured Housing Community**

(1) Good Faith. There shall be a rebuttable presumption that a change of use or a discontinuance of a manufactured housing community is not in “good faith” where:

(a) a discontinuance notice is issued within six months after a group of tenants, either collectively or in the aggregate, has reported a violation of M.G.L. c. 140, §§ 32L or 32M or any applicable building or health code to the board of health of a city or town in which the community is located, the Department of Public Health, the Department of the Attorney General or any other appropriate government agency;

(b) a discontinuance notice is issued within six months after the tenants of a manufactured housing community seek to obtain, or do actually obtain, rent control in their manufactured housing community;

(c) a discontinuance notice is issued within six months after a manufactured housing community owner has failed to obtain a rent increase that he or she sought from a local rent control board;

(d) credible evidence is produced that the manufactured housing community owner’s stated reasons in the discontinuance notice for discontinuing the community are demonstrably false;

(e) a notice of discontinuance is issued prior to issuance of any permit or approval required under local law;

(f) the discontinuance notice contains no planned alternative use for the land upon which the manufactured housing community sits or where the current zoning of the land does not allow for any stated planned alternative use; or

(g) a manufactured housing community owner fails to subsequently conduct and distribute the results of the annual survey required by M.G.L. c. 140, § 32L(7)(A).

(2) Required Notices Relating to Discontinuance.

(a) Notices of hearings and other appearances before governmental bodies shall be given to all tenants as set forth in M.G.L. c. 140, § 32L(8) and to all prospective tenants as set forth in M.G.L. c. 140, § 32L(9).

(b) An operator shall give notice of the change of use or discontinuance to any prospective tenant before he or she initially occupies, or enters into an occupancy agreement for, the manufactured homesite.

(3) Relocation or Purchase.

(a) A resident is not entitled to a relocation payment or the purchase of a manufactured home by the operator under M.G.L. c. 140, § 32L(7)(A) if, after receiving actual notice of the issuance of a licensee's notice of change of use or discontinuance, the resident purchased a manufactured home already situated in the manufactured housing community or moved a manufactured home into the manufactured housing community.

(b) A resident shall deliver to the manufactured housing community owner good title to the manufactured home, free and clear of all liens and encumbrances, at the time of payment of the purchase price therefore under M.G.L. c. 140, § 32L(7)(A).

(c) Completion of relocation under M.G.L. c. 140, § 32L(7)(A) shall be deemed to occur upon actual physical relocation of the manufactured home, and adjustments on account thereof shall be paid within 14 days after receipt by the operator from the former resident of reasonable evidence of the relocation costs incurred.

### **10.11: Licensing and Enforcement**

(1) License. Each owner of land upon which three or more manufactured homes are occupied for dwelling purposes shall apply to the Board of Health with jurisdiction over the manufactured housing community for an annual manufactured housing community license pursuant to M.G.L. c. 140, § 32B.

(2) Rules. An operator who is applying for a new license or renewing a license shall annually submit to the Board of Health a copy of the rules currently in effect in the community with the license application and shall keep such rules on file for inspection by residents and other interested parties. Such rules shall be accompanied by a written certification from the prospective licensee, under the pains and penalties of perjury, that such prospective licensee has complied with M.G.L. c. 140, § 32L(5) with respect to submission to and approval, or absence of disapproval by the Secretary and the Attorney General of such rules.

(3) Fines. A board of health that determines that an operator has failed to comply with M.G.L. c. 140, § 32E may issue notices of violation and assess fines for such violations pursuant to M.G.L. c. 140, § 32E. 940 CMR 10.11 shall not be construed in derogation of the authority of any other appropriate enforcement agency or court from enforcing M.G.L. c. 140, § 32E or any other part of M.G.L. c. 140, §§ 32A through 32S.

(4) Revoked License. Where a board of health has revoked or suspended a community license pursuant to M.G.L. c. 140, § 32B, the operator of the community shall still be subject to all the provisions of M.G.L. c. 140, §§ 32A through 32S and 940 CMR 10.00.

**10.12: Cooperatives**

940 CMR 10.00 shall not apply to any disputes or transactions between a cooperative and its shareholders. However, any unfair act or practice, regardless of its relation to 940 CMR 10.00, is a violation of M.G.L. c. 93A.

**10.13: Severability**

If any provision of 940 CMR 10.00 or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of 940 CMR 10.00 and the applicability of such provision to any other person or circumstance shall not be affected thereby.

**10.14: Enforcement Date**

940 CMR 10.00 shall be enforced as of September 23, 1996. The regulations herein relating to notices of change of use or of discontinuance shall apply to notices pending on or issued after September 23, 1996. 940 CMR 10.00 shall also apply to the enforcement of manufactured housing community rules after September 23, 1996, regardless of the date such rules were first adopted.