

## 266 CMR 8.00: PROFESSIONAL COMPETENCE AND CONDUCT

### Section

- 8.01: Grounds for imposition of disciplinary sanctions
- 8.02: Prohibition against deceptive advertising and fee setting practices
- 8.03: Ethical standards and professional conduct

#### 8.01: Grounds for imposition of disciplinary sanctions

- (1) Violation of one or more of the specified rules of conduct set forth in M.G.L. c. 112, §225 may be considered unprofessional and improper conduct subject the Registrant to Board discipline as set forth in M.G.L. c. 30A, c. 112, §226, and 266 CMR 9.00.
- (2) Violation of or failure to comply with any of the laws of the Commonwealth relating to the practice of home inspecting or a violation of or failure to comply with a rule or regulation adopted there under may be considered unprofessional and improper conduct subject to Board discipline as set forth in M.G.L. c. 30A, c. 112, §226, and 266 CMR 9.00.
- (3) If a Registrant is convicted of or admits to sufficient facts or pleads *nolo contendere* to a crime in any jurisdiction, whether a felony or misdemeanor, regardless of adjudication or sentence, which relates to home inspecting or impacts the Registrant's ability to safely and effectively practice home inspecting, said conviction may be considered unprofessional and improper conduct subject to Board discipline as set forth in M.G.L. c. 30A, c. 112, §,§ 61 and 226, and 266 CMR 9.00.

#### 8.02: Prohibition Against Deceptive Advertising and Fee Setting Practices

- (1) Deceptive Advertising. The following advertising practices are considered fraudulent, false, deceptive, or misleading and are prohibited:
  - a. No person or persons shall advertise as a Home Inspector and/or hold themselves out as able to operate a home inspection firm, company, corporation and/or business unless there is a duly licensed Home Inspector on staff who is responsible for all inspection activities and all inspections are in conducted in compliance with 266 CMR 6.00 *et seq.*
  - b. Advertising that contains a misrepresentation of facts or false statements regarding the Registrant's professional achievements, degrees, training, skills, and/or qualifications in the home inspection profession and/or any other profession requiring licensure.
  - c. Advertising in which the content or the context makes only a partial disclosure of relevant facts (such as advertising, which advertises a discounted price without identifying the specific product or service to which the discounted price applies and without specifying the usual price for the product or services, identified).
  - d. Advertising that contains a representation that a continuing education or training program is approved by the Board, if the content of the program departs from the content approved by the Board or is not in fact approved.
  - e. Advertising that claims the Commonwealth of Massachusetts or any of its political subsidiaries certify the Inspector's reports and/or its contents.
- (2) The Inspector shall charge a fee commensurate with the services provided.

### **8.03: Ethical Standards and Professional Conduct**

#### **1. Requirement to respond to Board**

- a) A Registrant shall respond within 10 days to a written communication from the Board or its designee and shall make available to the Board any relevant records with respect to an inquiry or complaint about the Registrant's professional conduct. The 10-day period commences on the date the Board sends the communication to the Registrant's address of record.
- b) A Registrant shall cooperate with any reasonable request from a Division agent or employee acting on behalf of the Board while investigating a complaint or allegation regarding the Registrant's professional conduct as a Home Inspector, Associate Home Inspector or an Associate Home Inspector or Trainee under his/her supervision.

#### **2. Welfare of persons served**

- a) Registrants shall not provide any services beyond the scope of their practice or for which they are not appropriately licensed.
- b) Registrants shall not misrepresent certifications, qualifications, affiliations, educational background or experience in the profession to the public, colleagues or other individuals or institutions.
- c) Registrants shall fully inform persons served of the nature, possible effects, and limitations of services rendered or to be rendered.
- d) Registrants shall disclose, in writing, including a written statement imbedded in the report in bold print in an obvious location, any financial or family relationship with the Seller, the Seller's Representative and/or the Seller's Representative office.
- e) A Registrant shall not charge for services not rendered excepting, but not limited to cancellation fees, access not being provided to the dwelling and/or areas to be inspected.
- f) Unless required by law, the Registrant shall not reveal to any unauthorized person any confidential information obtained from the Home Inspection or individual that the Registrant serves professionally without the client's permission.
- g) Registrants shall take all reasonable precautions to avoid injuring persons and property in the delivery of professional services.
- h) Registrants shall establish professional relationships with clients and colleagues and follow acceptable patterns of professional conduct with such persons regardless of race, religion, gender, sexual orientation or age.
- i) Registrants shall stamp and/or sign only those documents reviewed or prepared by them certifying they are in conformity with 266 CMR 6.00 *et seq.*

8.03: Ethical Standards and Professional Conduct Continued:

3. Professional objectivity/conflict of interest.

(a) Registrants shall maintain objectivity in all matters concerning the welfare of persons served professionally.

(b) Registrants must guard against conflicts of professional interest.

- They shall not engage in commercial activities that conflict with their responsibility to clients or to colleagues.
- Registrants shall promptly disclose to a Client or potential Client information about any business interest of the licensee that may affect the Client or the potential Client in connection with the Home Inspection.
- Registrants shall not accept fees, gifts, or other forms of gratuities for recommending or not recommending a particular contractor or product or use of a particular referral source.
- Registrants shall not knowingly permit a real estate broker or salesperson (as defined in M.G.L. c 112 § 87 PP) to directly recommend his/her services. This prohibition shall not prohibit a broker or salesperson from distributing a brochure, published by the Office of Consumer Affairs and Business Regulations, educating the consumer about the home inspection process or providing a complete list of licensed Home Inspectors prepared by the Board. Further, this prohibition shall not apply if there is a written contractual agreement or a written agency disclosure between a specific buyer and the real estate broker specifying the real estate broker is acting exclusively for the buyer as a Buyer's Agent.
- Registrants shall not provide fees, gifts, insurance, waivers of liability, or other forms of gratuities to real-estate offices, Buyer's Broker, real estate broker or salesperson (as defined in M.G.L. c 112 § 87 PP and M.G.L. c 112 § 87 YY1/2 ) and/or Seller's Representatives.
- Registrants shall not permit the use of their name or firm name nor associate in business ventures with any person or firm which they have reason to believe is engaging in fraudulent or dishonest business or professional practices.
- Registrants having knowledge of any alleged violation of 266 CMR shall cooperate with the Board in furnishing such information or assistance as may be required.