

254 CMR: BOARD OF REGISTRATION OF
REAL ESTATE BROKERS AND SALESMEN

254 CMR 3.00: PROFESSIONAL STANDARDS OF PRACTICE

Section

3.00: Professional Standards of Practice

3.00: Professional Standards of Practice

Violation of any of the provisions of 254 CMR 3.00 may result in the suspension, revocation or discipline of a license.

- (1) Address Reporting. Each broker and salesperson shall provide to the Board written notice of their current business and residential address at all times.
- (2) Broker Employee. A broker who is employed by or affiliated with another broker shall not employ or have affiliated with him/her any salespersons within the business entity.
- (3) Business Name. Any broker operating under a business or trade name (doing business as) shall provide the Board with written notice of such name.
- (4) Display of License. Each broker and salesperson shall display a copy of their license in a conspicuous location that is readily observable to the general public.
- (5) Single License Requirement. No broker shall also be licensed as a salesperson nor shall any salesperson be licensed as a broker.
- (6) Salespersons Cannot Be Self-Employed. A licensed salesperson must be engaged by a licensed broker and a licensed salesperson shall not conduct his own real estate business.
- (7) Notification to Board of Affiliation. Brokers shall furnish the Board with the names, addresses and license numbers of all brokers and salespeople engaged by them at the commencement of such association or affiliation and shall further notify the Board of the termination of such relationship at the time such relationship is terminated.
- (8) Sharing of Fees. No fee, commission or other valuable consideration shall be paid to or shared by an owner's managing agent or its employees as the result of the sale of real estate for the owner unless such agent and its employees are licensed brokers or salespersons, except as provided in M.G.L. c. 112, § 87QQ.
- (9) Advertising. A broker shall not advertise in any way that is false or misleading.
 - (a) Broker Identification. No broker may advertise real property to purchase, sell, rent, mortgage or exchange through classified advertisement or otherwise unless he/she affirmatively discloses that he/she is a real estate broker. No broker shall insert advertisements in any advertising publication or other means where only a post office box number, telephone, facsimile, electronic mail number or street address appears. All advertisements shall include the name of the real estate broker.
 - (b) Salespersons Prohibited From Advertising. Salespeople are prohibited from advertising the purchase, sale, rental or exchange of any real property under their own name.
 - (c) Discriminatory Advertising Prohibited. No broker shall advertise to purchase, sell, rent, mortgage or exchange any real property in any manner that indicates directly or indirectly unlawful discrimination against any individual or group.

254 CMR: BOARD OF REGISTRATION OF
REAL ESTATE BROKERS AND SALESMEN

3.00: continued

(10) Client Funds.

(a) Escrow Accounts. Unless otherwise agreed to in writing by the parties in transactions involving the sale, purchase, renting or exchange of real property, all money of whatever kind and nature paid over to a real estate broker to be held during the pendency of a transaction shall be immediately deposited in a bank escrow account and such broker shall be responsible for such money until the transaction is either consummated or terminated, at which time a proper account and distribution of such money shall be made. An escrow account is an account where the broker deposits and maintains the money of other parties in a real estate transaction and such broker has no claim to such money. An escrow account may be interest or non-interest bearing but where it is interest bearing the broker must make a proper account of such interest at either the consummation or termination of the transaction.

(b) Record Keeping. Every broker shall keep a record of funds deposited in his/her escrow accounts, which records shall clearly indicate the date and from whom the broker received the money, date deposited along with the source of the money and check number, date of withdrawal with the name of the person receiving such withdrawal, and other pertinent information concerning the transaction and shall clearly show for whose account the money is deposited and to whom the money belongs. Every broker shall also keep a copy of each check deposited into and withdrawn from the escrow account for a period of three years from the date of issuance. All such funds and records shall be subject to inspection by the Board or its agents.

(c) Salespersons Prohibited from Holding Funds. A real estate salesperson or broker engaged by another broker shall immediately turn over all deposit money or other money received to such employing broker. No salesperson shall at any time hold client funds.

(11) Conflicts of Interests. A broker or salesperson must act honestly and ethically and in the best interests of their client at all times.

(a) A broker or salesperson shall not buy, sell, rent, mortgage, or acquire any interest in, or represent a client in the buying, selling, renting or exchange of real property in which the broker or salesperson or his/her kin has a personal financial interest unless the broker or salesperson shall fully disclose in writing to all parties to the transaction the nature of his/her interest and unless the parties shall provide the broker or salesperson with written acknowledgment of such disclosure.

(b) A broker shall not take an option, either directly or indirectly, upon real property for the lease or sale of which the broker has been approached by the owner to act as a broker without first disclosing that such broker is now a prospective purchaser or lessor and no longer acting as a broker for the owner.

(c) A broker or salesperson shall not accept a "net" listing from an owner or landlord for the sale or rental of real property in which the commission is unspecified.

(d) Conveying Offers. All offers submitted to brokers or salespeople to purchase or rent real property that they have a right to sell or rent shall be conveyed forthwith to the owner of such real property.

(12) Attorney Services. No broker or salesperson shall advise against the use of an attorney in any real property transaction.

(13) Relationships with Real Estate Brokers and Salespeople.

(a) Agency Disclosure for Real Estate Agents Representing the Seller or Buyer. A real estate broker or salesperson shall provide to a prospective purchaser or seller of real estate a notice developed and approved by the board which clearly discloses the relationship of the broker or salesperson with the prospective purchaser or seller of the real estate. The notice, developed by the Board, shall be provided to a prospective purchaser or seller at the time of the first personal meeting between the prospective purchaser or seller and the broker or salesperson for the purpose of discussing a specific property.

254 CMR: BOARD OF REGISTRATION OF
REAL ESTATE BROKERS AND SALESMEN

3.00: continued

1. A broker or salesperson shall request a prospective purchaser or seller to sign and date such notice, provide the original to the prospective purchaser or seller and maintain a copy with their records for a period of three years from the date on the notice. The broker or salesperson must also sign the notice, indicate their license status as either a broker or salesperson, provide their license number and date such notice.
 2. If a prospective purchaser or seller declines to sign the notice the broker or salesperson shall make a notation indicating the date the notice was given to the prospective purchaser or seller and that the prospective purchaser or seller declined to sign it. The broker shall maintain such notice for a period of three years from the date on the notice.
 3. Nothing herein shall require written notice to each prospective purchaser or seller who comes to an open house showing of real property provided, however, the broker or salesperson, by sign, poster, distributed listing literature or property description form conspicuously discloses any pre-existing agency relationship. Where the listing literature or property description form is distributed at an open house the written disclosure of the agency relationship therein shall be more conspicuous than any other written material.
 4. All such records and notices are subject to inspection by the Board or its agents.
- (b) Consensual Dual Agency Disclosure. 254 CMR 3.00(13)(b) applies to real estate brokers or salespeople engaged in the purchase or sale of land with a building intended for use as a one to four unit residential dwelling or the purchase or sale of land on which a building is intended to be constructed for use as a one or two unit residential dwelling. A real estate broker or salesperson may act as an agent for both a seller and prospective purchaser of real estate provided that the broker or salesperson obtains informed written consent from both the seller and the prospective purchaser. The real estate broker or salesperson shall provide a written consent form which shall clearly state that the broker or salesperson will be representing both the seller and prospective purchaser in the purchase and sale of real property. The consent form must also state that a dual agent assists the seller and buyer in a transaction but shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently, the consent form must state that a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds. The consent form must provide that material information received from either client that is confidential may not be disclosed by a dual agent, except: (1) if disclosure is expressly authorized; (2) if such disclosure is required by law; (3) if such disclosure is intended to prevent illegal conduct; or (4) if such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson. Lastly, the consent form must state that the duty of confidentiality shall continue after termination of the brokerage relationship.
1. A broker or salesperson shall obtain the signature of the seller or prospective purchaser on one or more of such consent forms, provide the original forms to the seller and prospective purchaser and maintain a copy with their records for a period of three years from the date on the form. The broker or salesperson must also sign the consent form, indicate their license status as either a broker or salesperson, provide their license number and date such form. Nothing herein shall require the seller and prospective purchaser to sign the same consent form.
 2. There shall be a conclusive presumption that the seller or prospective purchaser has consented to dual agency if they have signed a form that contains the description in 254 CMR 3.00(13)(b), indicating consent to that relationship. Consent may be given by a seller in a written agreement to list their property for sale with a real estate agent; by a prospective purchaser in a buyer representation agreement; or in another document signed either before or after a potential transaction between a seller and prospective purchaser has been identified. When consent to dual agency has been given by a seller or prospective purchaser in advance of the identification of a potential transaction, written notice of dual agency must also be given by the broker or salesperson to the seller and prospective purchaser after a transaction has been identified stating that the broker is a dual agent with regard to the transaction. Written notice of dual agency shall satisfy 254 CM 3.00(13)(b) and such written notice shall be given prior to the seller and prospective purchaser entering into a written agreement for the purchase or sale of residential property.

254 CMR: BOARD OF REGISTRATION OF
REAL ESTATE BROKERS AND SALESMEN

3.00: continued

3. Nothing herein shall require written notice to each prospective purchaser or seller who comes to an open house showing of real property provided, however, the broker or salesperson, by sign, poster, distributed listing literature or property description form conspicuously discloses any pre-existing agency relationship. Where the listing literature or property description form is distributed at an open house the written disclosure of the agency relationship therein shall be more conspicuous than any other written material.
 4. All such records and notices are subject to inspection by the Board or its agents.
- (c) Designated Agency Disclosure. 254 CMR 3.00(13)(c) applies to real estate brokers or salespeople engaged in the purchase or sale of land with a building intended for use as a one to four unit residential dwelling or the purchase or sale of land on which a building is intended to be constructed for use as a one or two unit residential dwelling. A real estate broker or salesperson may appoint one or more affiliated brokers or salespersons to represent the seller, provided the seller gives written consent after being advised that (a) the designated seller's agent will represent the seller and will owe the seller the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction; (b) all other licensees affiliated with the appointing broker will not represent the seller nor will they have the other duties specified herein to that seller, and may potentially represent the purchaser; and (c) if designated agents affiliated with the same broker represent the seller and purchaser in a transaction, the appointing broker shall be a dual agent and neutral as to any conflicting interests of the seller and purchaser, but will continue to owe the seller and purchaser the duties of confidentiality of material information and to account for funds. Conversely, a real estate broker or salesperson may appoint one or more affiliated brokers or salespersons to act as a designated agent on behalf of a prospective purchaser, provided the purchaser gives written consent after being advised that; (a) the designated buyer's agent will represent the purchaser and will owe the purchaser the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction; (b) all other licensees affiliated with the appointing broker will not represent the purchaser nor will they have the other duties specified herein to that purchaser, and potentially may represent the seller; and (c) if designated agents affiliated with the same broker represent the seller and purchaser in a transaction, the appointing broker shall be a dual agent and neutral as to any conflicting interests of the seller and purchaser, but will continue to owe the seller and purchaser the duties of confidentiality of material information and to account for funds.

There shall be a conclusive presumption that a seller or purchaser has consented to a designated agency relationship, if they have signed a consent form that substantially contains the description of designated agency set forth in 254 CMR 3.00(13)(c). If the designated seller's agent and designated buyer's agent in a transaction are affiliated with the same broker and the seller and purchaser each have consented to designated agency, a separate consent to dual agency of the appointing broker shall not be required. Consent to designated agency may be given by a seller in a listing agreement; by a purchaser in a buyer representation agreement or by either the seller or purchaser in a consent form that substantially contains the description of designated agency set forth in 254 CMR 3.00(13)(c). The form may be signed either before a potential transaction between a seller and purchaser is identified or when it is identified but, in any event, no later than prior to the execution of a written agreement for the purchase or sale of residential property. If consent to designated agency has been given by the seller or purchaser in advance of the identification of a potential transaction, the broker or salesperson shall also provide written notice to the seller and prospective purchaser of designated agency. Such written notice shall be given prior to the seller or purchaser entering into a written agreement for the purchase or sale of a residential property. Such written notice for designated agency shall satisfy 254 CMR 3.00(13)(c).

1. The designated real estate broker or salesperson exclusively represents the seller or purchaser and is responsible for the performance of any duties owed to the seller or purchaser. The designated broker or salesperson may not share known or acquired information with any other real estate agent or person that would harm the seller's or purchaser's interest in the real estate transaction, except for known material defects in real property. The designated broker or salesperson shall have an affirmative obligation to disclose known material defects in real property.

254 CMR: BOARD OF REGISTRATION OF
REAL ESTATE BROKERS AND SALESMEN

3.00: continued

2. Appointment by a broker or salesperson of another affiliated broker or salesperson to represent a seller or purchaser shall not limit the liability or responsibility of the appointing broker or salesperson for any breach of duty by the designated broker or salesperson. The appointment of the broker or salesperson to represent the seller or purchaser shall extend only to those brokers or salespersons so appointed by the appointing broker or salesperson and consented to by the seller or purchaser.
 3. An appointing broker or salesperson who designates another affiliated broker or salesperson to represent the seller and an affiliated broker or salesperson to represent the purchaser shall be presumed to be a dual agent, provided that the seller and purchaser consent to such designation on a form developed by the Board. The designated broker or salesperson must comply with the requirements set forth in 254 CMR 3.00(13)(a)1. through 4. provided, however, that notice must be provided when such designation is established or at the execution of an agreement to advertise for sale the real property of the seller and when an offer to purchase is submitted by the purchaser, whichever is sooner.
- (d) Sub-agency Representation. No broker or salesperson shall enter into an agreement with any other broker or salesperson to represent a seller or purchaser as a secondary or sub-agent without informing such seller or purchaser in writing that the secondary or sub-agent's actions may subject the seller or purchaser to vicarious liability. The broker or salesperson shall provide written notice containing the information of potential vicarious liability and obtain the seller's or purchaser's consent on such notice to secondary or sub-agency. The written notice must state that the broker may cooperate with another broker who is then a sub-agent of the seller or buyer. The written notice must further state that vicarious liability is the potential for a seller or buyer to be held liable for a misrepresentation or an act or commission of the sub-agent and that the seller or buyer authorizes the broker or salesperson to offer sub-agency in signing the notice. The broker or salesperson shall provide such notice at the execution of an agreement to sell the real property of the seller or when the agent and purchaser agree that the agent will represent such purchaser. 254 CMR 3.00(13)(d) applies to real estate brokers or salespeople engaged in the purchase or sale of land with a building intended for use as a one to four unit residential dwelling or to the purchase or sale of land on which a building is intended to be constructed for use as a one or two unit residential dwelling.
- (e) Non-agent Facilitator. Nothing herein shall prohibit a broker or salesperson from working with a seller or purchaser in such capacity where the broker or salesperson does not represent them as a sole, designated or dual agent provided written notice of such representation is provided. The notice must state that no agency relationship exists between the facilitator and the seller or purchaser. The notice must be provided at the first personal meeting to discuss a specific property. A facilitator has a duty to present all real property honestly and accurately, disclosing known material defects and accounting for funds. The facilitator does not have a duty of confidentiality with regard to any information received from the seller or purchaser. A facilitator may also be called a transaction broker or salesperson and a facilitator relationship may be changed to an agency relationship provided for in this regulation with the written agreement of the person so represented.
- (14) Additional Grounds For Discipline. No real estate broker or salesperson shall violate, or attempt to violate, directly or indirectly, or assist or abet the violation of, or conspire to violate any provision of the relevant licensing law, the regulations herein or order of the Board.
- (a) no broker or salesperson shall practice while his/her ability to do so is impaired by drugs, alcohol or other reason.
 - (b) no broker or salesperson shall practice while his/her license is expired, revoked suspended or otherwise not valid.
 - (c) no broker or salesperson shall discriminate in the provision of services on the basis of age, marital status, gender, sexual preference, race, religion, socioeconomic status or disability.
 - (d) no broker or salesperson shall attempt to procure a license by false pretenses or in any way aid another in obtaining a license by false pretenses.

254 CMR: BOARD OF REGISTRATION OF
REAL ESTATE BROKERS AND SALESMEN

3.00: continued

- (e) a broker or salesperson shall only assume those duties and responsibilities for which he/she has adequate preparation and for which competency has been acquired and maintained.
- (f) a broker or salesperson shall comply with all the laws of the Commonwealth, the United States and those of any other state in which he/she is licensed.
- (g) a broker or salesperson shall report to the Board within 30 days his or her conviction of any crime including any misdemeanor or felony under the law of the Commonwealth, the United States or laws of another jurisdiction which if committed in Massachusetts would constitute a crime under Massachusetts law.
- (h) a real estate broker and salesperson who fraudulently certifies to the Board completion of the educational curriculum described in 254 CMR 5.03 may, following a hearing, which hearing may be waived by such broker or salesperson, be subject to the suspension of their license until such time that the Board is satisfied that the educational curriculum has been completed.
- (i) a broker or salesperson upon notice of suspension or revocation of his license shall deliver his/her license to the offices of the Board within seven days of the receipt of such notice.

REGULATORY AUTHORITY

254 CMR 3.00: M.G.L. c. 13, § 56; c. 112, §§ 87RR, 87SS and 87TT.