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RE08RC12: Massachusetts Real Estate License Law and Regulations

Approved on March 9, 2012

I. Board of Registration of Real Estate Brokers and Salespersons

A. "The Board" – M.G.L. c. 13, §§ 54, 55, 56 & 57

1. Composition of the Board

2. License oversight

3. Enforcement authority

II. Licensing Requirements

1.
 - a. M.G.L. c. 112, §§ 87PP - 87DDD1/2 and 254 CMR 2.00 – Two licenses
 - b. Code of Massachusetts Regulations 254 CMR 2.00 et. Seq.
 - c. Pre-license education – M.G.L. c. 112 c. 87SS & 87TT
 - d. Salesperson – 40 classroom hours
 - e. Broker – 40 classroom hours
 - f. Examination
 - g. 3-year affiliation to obtain Broker license – Min. 25 hrs. per calendar week
 - h. Good Moral Character
 - i. \$5,000 Surety Bond (Broker candidates only)
 - j. Exemptions

- k. Massachusetts attorney (no classroom, no exam, no C/E)
- l. i. Massachusetts law school student (No classroom)
- m. ii. Reciprocity/Education Waivers - 254 CMR 2.00 (13)

C. Business entities (Broker only) – M.G.L. c. 87 UU - 254 CMR 2.00 (11) & (12)

1. Limited Liability Companies and Partnerships

1. Insurance requirements

- a. General and Limited Partnerships
- b. Corporations and Limited Liability Companies (LLC)

2. Continuing Education – M.G.L. c. 112, § 87 XX ½ - 254 CMR 5.00

1. 12 Hours at Board Approved Schools and Instructors every 2 years

2. Exemptions

a. Licensed by reciprocity in MA without having to take the examination

- Must complete approved program of home state or MA program
- When exempt in the home state NOT exempt in MA

b. MA attorneys in good standing

III. What constitutes practice of real estate?

A. Two licenses

1. Broker – Definition of broker M.G.L. c. 112, § 87PP

2. Salesperson same as broker except:

- a. Cannot be self-employed
- b. Affiliate with only one broker at any time
- c. Cannot receive valuable consideration from anyone except broker
- d. May not complete transaction
- e. Broker has vicarious liability for salesperson (and broker employees)

B. Sale, lease, exchange of an interest in real property - M.G.L. c. 112, § 87PP

C. Exemptions from license requirement – M.G.L. 87 QQ

1. Principals (buyer or seller)
 2. Negotiating loans secured by real estate
 3. Property managers while acting under contract with property owner
 4. A licensed auctioneer
 5. Dealing with securities or beneficial interests of a trust
 6. Public officials
 7. An attorney-in-fact
 8. An attorney ONLY in the normal performance of their duties
 9. A receiver, executor, administrator, guardian or conservator
 10. 0. Selling real estate pursuant to a court order
 11. 1. A trustee of a trust
 12. 2. A bank, credit union or insurance company acting as a fiduciary
1. Gifts and Inducements
 1. From brokers only
 2. To principals (buyer/seller)
 3. Licensee prohibited from sharing compensation with unlicensed persons or entities.

E. Co-broker relationship allowed with duly licensed broker of other states

F. Employee versus independent contractor

1. Advisability of written relationship agreement

G. Promotional sales of out-of-state land development - M.G.L. c. 112, § 87AA – 254 CMR 6.00

IV. Active– Inactive Status - M.G.L. c. 112, § 87XX 1/2

A. Inactive licensees may accept referral fee from an active broker.

1. Inactive licensees may not affiliate.

2. Inactive salespeople may not accumulate experience toward broker licensure.

B. Referral fees

1. Payment to inactive licensee for procurement of prospects.

2. Payment of referral fee to Active, un-affiliated salesperson prohibited.

V. Disclosures

A. Mandatory Licensee/Consumer Relationship Disclosure – 254 CMR 2.00 (13) - State mandated form

1. Disclosure required all property types for purchase or sale (not rental).
2. Only three brokerage relationships in Massachusetts
3. What is disclosed
4. Disclosure required when all three events occur
5. First personal meeting
6. To discuss a specific property
7. With a prospective buyer or seller
8. Signing the Disclosure
9. Must be retained for three years
10. Only legal exception to use of Disclosure
11. Written Fee disclosure to all prospective residential tenants – 254 CMR 7.00 (1)

Note: 254 CMR 7.00 includes ALL residential rentals

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C. Disclosure of all fees and commissions – 254 CMR 2.00 (11)

1. Net listings illegal for sales or rentals

D. Disclosure licensee's personal or familial interest – 254 CMR 2.00 (11) (a)

E. Broker options to purchase

F. Home Inspection brochure/recommending inspectors – M.G.L. c. 112, § 87 YY 1/2

1. Buyer's Agent may recommend
2. All others prohibited including Dual Agents

VI. Handling money

1. Deposits – 254 CMR 3.00 (10)
 1. Offers
 2. Purchase and sales agreements
- B. Escrow funds – 254 CMR 3.00 (10)
 1. Commingling prohibited
 2. Record keeping
 3. Interest and non-interest bearing accounts
 4. Only brokers have the authority to access funds

VII. Board disciplinary authority over agents relating to practice

- A. M.G.L. c. 112, § 87AAA and 254 CMR 3.00
- B. Highlights of causes for suspension, revocation or refusal to renew license
 1. Violation of License Law
 2. Knowingly engaged in misrepresentation
 3. Undisclosed principal
 4. Undisclosed dual agent
 5. Failing to account for or remit funds
 6. Paid commission to unlicensed person
 7. Undisclosed commission or fees
 8. Inducing a party to break a real estate contract for personal gain
 9. Commingled funds
 10. Failed to provide Purchase and Sales Agreement to both parties
 11. Discriminatory practices
 12. Net listing
 13. Practicing while impaired by drugs, alcohol or other
 14. Practicing while the license is expired, revoked or suspended
 15. Falsifying license applications and license renewal applications
 16. Assuming duties not qualified to perform
 17. Failing to report a criminal conviction

18. Failing to comply with law regarding out-of-state land development

VIII. Professional standards of practice – 254 CMR 3.00

1. Address reporting
2. Broker employee
3. Business Name
4. Display of license
5. Single license requirement
6. Salesperson may not practice unless affiliated
7. Sharing of fees
8. False or misleading advertising
9. Improper handling of client funds
10. Conflicts of Interest
11. Attorney services
12. Improper relationships with broker and salesperson

IX. Advertising – 254 CMR 3.00 (9)

1. Advertising
1. Broker identification
2. Salesperson prohibited
3. Discrimination prohibited

X. Record keeping – 254 CMR (10) (b)

1. Conveying offers
1. Attorney services
2. Sharing of Fees
3. Written notification to Board of affiliation

XI. Brokerage Relationships (254 CMR 3.00(13))

- A. Consensual dual agency – both residential and commercial – M.G.L. c. 112, § 87 AAA

1. Consent to Dual Agency

2. Notice of Dual Agency (*If Consent to Dual Agency provided in advance*)

a. Notice required "after a listed property is first shown to the purchaser" - M.G.L. c. 112, § 87 AAA ¾ (b)

B. Designated Agency – residential properties

1. Consent to Designated Agency

2. Notice of Designated Agency (*If Consent to Designated Agency provided in advance*)

3. *Dual agency with designated agency*

C. Sub-agency representation – M.G.L. c. 112, § 87 AAA ¾ (e)

D. Non-agent Facilitator – M.G.L. c. 112, § 87 AAA ¾ (f)

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Handouts and reference materials: M.G.L. c. 112 § 87pp - 87DDD1/2 inclusive, 254 CMR §§ 2 - 7