



COMMONWEALTH OF MASSACHUSETTS

**REAL ESTATE  
LICENSE LAW RULES  
AND REGULATIONS**

**JANUARY 2009**

Produced by the Massachusetts Board  
of Registration of Real Estate Brokers  
and Salesman. April 15, 2005

## M.G.L. CH. 13

### **§ 54. Board of Registration of Real Estate Brokers and Salesmen; Appointment; term; re appointment; Filling of Vacancies.**

There shall be a board of registration of real estate brokers and salesmen, in this section and in sections fifty-five to fifty-seven, inclusive called the board, to be appointed by the governor, with the advice and consent of the council, consisting of five members, citizens of the commonwealth, three of whom shall be actively engaged in the real estate business as a full-time occupation for at least seven years prior to their appointment and who shall be licensed real estate brokers, and two of whom shall be representatives of the public. The governor shall designate the chairman. As the term of office of a member of the board expires, his successor shall be appointed by the governor, with like advice and consent, to serve for five years. Each member shall be eligible for re appointment and shall serve until the qualification of his successor. The governor may also, with like advice and consent, fill any vacancy of the board for the unexpired portion of the term.

### **§ 55. Same Subject; Meetings.**

The board shall hold at least four meetings each year and may hold special meetings as required. Time, place and notice of all meeting shall be as required by rules or by-laws made by the board. A quorum shall consist of three members. In case of vacancy in the office or the absence of the chairman the senior member shall perform the duties of the chairman. A written record which shall be open to public inspection shall be kept of all meetings and of the business transacted thereat.

### **§ 56. Same Subject; Rules or Bylaws; Seal; Annual Report.**

The board may make such rules or by-laws, not inconsistent with the law, as it may deem necessary in the performance of its duties. The board shall have a seal. The board shall annually render to the governor and the general court a report of its proceedings, which shall include an itemized statement of all receipts and expenses of the board for the year.

### **§ 57. Same Subject; Compensation and expenses; Employment of Secretary and Clerical and Technical assistants and Compensation thereof.**

Each member of the board shall serve without compensation, but shall be paid by the commonwealth the expenses necessarily incurred by him in the discharge of his official duties. The board may, subject to chapter thirty-one, employ a secretary and such other clerical and technical assistants as may be necessary to discharge its official duties, shall establish their duties, and, subject to the provisions of sections forty-five to fifty, inclusive, of chapter thirty, shall fix their compensation which shall be paid by the commonwealth. The commonwealth shall provide the board with adequate office space and shall pay the expenses of the board in the performance of its duties.

## M.G.L. CH. 112

### § 87PP. Definitions

For the purposes of sections eighty-seven PP to eighty-seven DDD, inclusive, the following words and phrases, unless the context otherwise requires, shall have the following meanings:-

**“Board”**, the board of registration of real estate brokers and salesmen.

**“Non-resident”**, shall include and deemed to apply to an individual whose principal place of abode is without the commonwealth and to corporation, society, association or partnership, organized, formed or existing under the laws of another state and which does not maintain a usual place of business within the commonwealth.

**“Real estate broker”**, hereinafter referred as broker, any person who for another person and a fee, commission or other valuable consideration, or with the intention or with the expectation of upon the promise of receiving or collecting a fee, commission or other valuable consideration, does any of the following:- sell, exchange, purchases, rents or leases, or negotiates, or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of any real estate, or lists or offers, attempts or agrees to list any real estate, or buys or offers to buy, sells or offers to sell or otherwise deals in options on real estate, or advertises or holds himself out as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate, or assists or directs in the procuring of prospects or the negotiation or completion of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, leasing or renting of any real estate.

**“Real estate salesman”**, hereinafter referred to as salesman, an individual who performs any act or engages in any transaction included in the foregoing definition of a broker, except the completion of the negotiation of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, renting or leasing of any real estate.

### § 87QQ. Sections 87PP to 87DDD Not to be Applicable to Certain Persons.

The provisions of sections eighty-seven RR to eighty-seven DDD, inclusive, shall not apply to the following:- any person whom, acting for himself as owner, lessor, leasee, tenant or mortgagee, shall perform any of the aforesaid acts of a broker or salesman with reference to real estate owned or leased or rented by or to him; the regular employees of any person aforesaid, with respect to such real estate, if such acts are performed in the regular course of, or as an incident to, the management of such real estate and the investment therein; any person, while acting for himself, who seeks to acquire, lease or rent real estate for his own use or investment or his regular employees acting in behalf of such person in the regular course of their employment; a person acting for himself in negotiating a loan secured or to be secured by a mortgage or other encumbrance upon real estate, of his regular employees acting therein in behalf of such person in the regular course of their employment; a managing agent while acting under a contract with the owner of the real estate or the regular employees of such agent acting in his behalf in the regular course of their employment; a person acting as a licensed auctioneer; a person buying selling or otherwise dealing in stock, bond or other security or certificate of beneficial interest in any trust; a public officer or employee while performing his official duties; a person acting as attorney in fact under a duly executed power of attorney from an owner of real estate authorizing the final consummation by performance of any contract for the sale, leasing or exchange of real estate; the services rendered to a client by an attorney at law in the performance of his duties as such; a receiver, trustee in bankruptcy, executor, administrator, guardian or conservator, while acting as such; a person selling real estate under order of any court; a trustee acting under a written instrument of trust, or deed or declaration of trust, or will, or his regular employees, acting in the course of their employment; a bank as defined in section one of chapter one hundred and sixty-seven or organized under the laws of the United States or an insurance company lawfully engaged in business in the commonwealth, or the regular employees of such bank or insurance company acting in the course of their employment, when such bank or insurance company is acting in any aforementioned capacity of fiduciary or is acting for itself in negotiating a loan secured or to be secured by a mortgage or other encumbrance upon real estate or is acting for itself with reference to real estate owned, mortgaged, leased or rented, by or to it or which it seeks to acquire, lease or rent for its own use; a credit union organized under chapter one hundred and seventy-one or the regular employees thereof acting in the course of their employment.

**§ 87RR. License to Engage in Business as Broker or Salesman; Relationship Between Salesman and Broker, Recovery of Fees.**

Except as otherwise provided, no person shall engage in the business of or act as a broker or salesman directly or indirectly, either temporarily or as an incident to any other transaction, or otherwise, unless he is licensed.

No salesman may conduct or operate his own real estate business nor act except as the representative of a real estate broker who shall be responsible for the salesman and who must approve the negotiation and completion by the salesman of any transaction or agreement which results or is intended to result in the sale, exchange, purchase, renting or leasing of any real estate or in a loan secured or to be secured by mortgage or other encumbrance upon real estate. No salesman shall be affiliated with more than one broker at the same time nor shall any salesman be entitled to any fee, commission or other valuable consideration or solicit or accept the same from any person except his licensed broker in connection with any such agreement or transaction. A salesman may be affiliated with a broker either as an employee or as an independent contractor but shall be under such supervision of said broker as to ensure compliance with this section and said broker shall be responsible with the salesman for any violation of section eighty-seven AAA committed by said salesman.

Except as otherwise provided no person shall recover in any suit or action in the courts of the commonwealth for compensation for services as a broker performed within the commonwealth unless he was a duly licensed broker at the time such services were performed; provided, however, that nothing contained herein shall be construed as affecting the right of a licensed salesman to recover in a suit or action against a broker on any contract or agreement with said broker.

**§ 87SS. Requirements for Issuance of License; Compliance with § 87SS to 87DDD; Classroom Instruction; Written Examinations.**

No license to engage as a broker or salesman shall be issued to any applicant unless he has complied with all the pertinent provisions of this section and sections eighty-seven TT to eighty-seven DDD, inclusive, and if the applicant is an individual, unless he shall have satisfactorily passed a written examination conducted by the board or an independent testing service designated by the board, and, in the case of an application for broker's license by an individual resident of the commonwealth, unless he shall have had his principal place of abode within the commonwealth for one year next prior to the issuance of such license; provided, however, that any applicant who is an attorney at law of the commonwealth shall not be required to take such examination or to have had such principal place of abode for such period.

Every individual applicant for a license as a salesman who is required to take an examination therefor shall, as a prerequisite to taking such examination, submit proof satisfactory to the board that he has completed courses in real estate subjects approved by the board, such courses to total twenty-four classroom hours of instruction; provided, however, that applicants having successfully completed a course in real property while enrolled in an accredited law school in the commonwealth may also take such examination. Every individual applicant for a license as a broker who is required to take an examination therefor shall, as a prerequisite to taking such examination, submit proof satisfactory to the board that he has been actively associated with a real estate broker for a period of one year as a real estate salesman and that he has completed additional courses in real estate subjects approved by the board, such courses to total thirty classroom hours of instruction.

Such examination shall be prepared by the board or the designated independent testing service to enable the board to determine the competence of the applicant to transact the business of a broker or a salesman. The board or its designated independent testing service shall conduct such examinations at least six times in each calendar year for broker's examinations and at least eight times in each calendar year for salesman's examinations. There shall be no limit placed on the number of applicants who may take the examinations on any examination date. In determining competence the board shall require proof that the applicant has a fair understanding of the principles of real estate practice, real estate agreements and principal and agent relations, of the rudimentary principles of the economics and appraising of real estate, and of the provisions of sections eighty-seven PP to eighty-seven DDD, inclusive. The examination for a salesman's license shall be based upon the same general subject matter as for a broker's license, but shall be more elementary in character.

The board may make, and from time to time alter, amend or repeal rules and regulations for the conduct of such examinations not inconsistent herewith.

**§ 87TT. Requirements for Issuance of License; Application for License; Issuance; Bond by Applicant for Broker's License; Temporary License upon Death of Broker.**

Applications for licenses, signed and sworn to by the applicant, shall be made on forms furnished by the board and shall be accompanied by the prescribed fee for examination. The fee for the issuance of the license shall be payable upon receipt of notice of passing the examination. Each applicant shall furnish evidence of good moral character. If an application for a broker's license is made by a corporation, society, association or partnership, evidence of the good moral character of all the officers and directors, or holders of similar positions, or of all the partners, as the case may be, shall also be furnished. No license shall be issued unless evidence of good moral character, as required by this section is found.

No license shall be issued unless the application has been on file with the board at least ten days. No broker's license shall be issued to any individual under eighteen years of age.

No broker's license shall be issued or renewed until the applicant gives to the board a bond in the form approved by said board in the sum of five thousand dollars, executed by the applicant and by a surety company authorized to do business within the commonwealth, or by the applicant and by two good and sufficient sureties approved by the board. Said bond shall be payable to the commonwealth, for the benefit of any person aggrieved, and shall be conditioned upon the faithful accounting by the broker for all funds entrusted to him in his capacity as such. Any person so aggrieved may bring suit on the bond in his own name; provided, however, that the aggregate liability of the surety to all such persons shall, in no event, exceed the sum of such bond. The board may revoke the license of any broker whenever the bond filed by him ceases to be in full force and effect.

In the event of the death of a licensed broker who is the sole proprietor of a real estate business, the board shall, upon application by his legal representative, issue, without examination, a temporary license to such legal representative, or to an individual designated by him and approved by the board, upon filing of a bond as aforesaid and the payment of the prescribed fee, which shall authorize such temporary licensee to continue to transact said business for a period not to exceed one year from the date of death subject to all other provisions of sections eighty-seven PP to eighty-seven DDD applicable to a licensed broker except that such temporary license shall not be renewed.

**§ 87UU. Issuance of Broker's License to Corporation, etc.; Effect; No Salesman's License to Be Issued to Corporation, etc.**

An application for a broker's license by a corporation, society, association or partnership shall designate at least one of its officers or partners as its representative for the purpose of obtaining its said license, and each such officer or partner so designated shall apply to the board for a broker's license in his own name at the same time unless he is already as licensed broker.

No broker's license shall be issued to a corporation, society, association or partnership unless an officer or partner so designated has been issued a broker's license as an individual. When the officer or partner so designated has been issued a broker's license as an individual and the corporation, society, association or partnership has complied with all pertinent requirements for the issuance of a broker's license to it, the board shall, for a fee, as determined annually by the commissioner of administration under the provisions of section three B of chapter seven, paid in advance to the board, issue to it a broker's license which shall also bear the name of each designated officer or partner to whom a broker's license as an individual has been issued, and each such designated officer or partner shall be entitled to perform all the acts of a broker as agent or officer of such corporation, society, association or partnership, but shall not so act on his own behalf so long as he continues to be a designated officer or partner, unless the written consent thereto of such corporation, society, association or partnership is filed with the board. The license of a corporation, society, association or partnership shall cease unless at least one such designated officer or partner, as the case may be, is a licensed broker. If any designated officer or partner shall be refused a license or renewal, or if his license is revoked or suspended, or if he ceases to be connected with or to act in behalf of such corporation, society, association or partnership, it shall have the right to designate another officer or partner in his place who shall apply for a broker's license as an individual, unless he is already a licensed broker. Upon the death or disability of a sole designated officer or partner, who has been licensed, or upon the severance of his connection with the corporation, society, association or partnership, the corporation, society, association or the surviving partner or partners or successor partnership of the licensed partnership, if any, acting by another officer or partner, as the case may be, may continue to transact business and to exercise all rights of a broker subject to such regulations as may be made by the board, for

a period not to exceed one year from such death, disability or severance as if its license were in full force and effect, subject to the suspension or revocation of such privilege for any cause which would be grounds for the suspension or revocation of a license; provided, that it shall proceed with due diligence to qualify for the issuance of a new license; and provided, further, that the corporation, society, association or the surviving partner or partners or successor partnership, as the case may be, shall maintain in effect during said period a bond as prescribed in section eighty-seven TT as if a broker's license had been issued and was in effect for such period.

Except as otherwise provided, nothing in this section shall permit any other individual connected with any corporation, society, association or partnership, to which a license has been issued, to act as a broker or salesman on its behalf or otherwise without first obtaining a license so to act, and nothing in this section shall be construed as preventing any such other individual who is a licensed broker or salesman from acting as such on its behalf, if so authorized by it.

No salesman's license shall be issued to a corporation, society, association or partnership.

**§ 87VV. Unlicensed Salesman Not to Be Affiliated with Broker; Certain Acts of Licensed Salesman Prohibited; Notice of Change of Business Addressee.**

No salesman who is not licensed shall be affiliated with a broker. A licensed salesman affiliated with a licensed broker shall not act as salesman for any other licensed broker while so affiliated, nor accept any valuable consideration for the performance of any act as a real estate salesman from any person except the broker with whom he is affiliated. A licensed salesman shall promptly give written notice to the board of any change of his business address, and failure to give such notice shall be grounds for the revocation of such license.

**§ 87WW. Licensing of Non-Resident as Broker or Salesman; Appointment of Chairman of Board to Receive Service of Process.**

A non-resident may be licensed as a broker and a non-resident individual may be licensed as a salesman upon conforming to all pertinent provisions of sections eighty-seven PP to eighty-seven DDD, inclusive; provided, that the board may exempt from the written examination prescribed in section eighty-seven SS a broker or salesman duly licensed in any other state of the United States under the laws of which a similar exemption is extended to licensed brokers and salesmen of the commonwealth. Such non-resident licensee shall not be required to maintain a usual place of business within the commonwealth; provided, that such non-resident broker shall maintain a usual place of business within such other state in which he is so licensed.

No license shall be issued to such non-resident until he shall have filed with the chairman of the board a power of attorney constituting and appointing said chairman and his successor his true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against him may be served, and therein shall agree that any lawful process against him which may be served upon his said attorney shall be of the same force and validity as if served on said non-resident, and that the authority thereof shall continue in force irrevocably as long as any liability of said non-resident remains outstanding in the commonwealth. Service of such process shall be made by leaving duplicate copies thereof in the hands or office of the chairman, and the chairman shall forthwith send one of said copies by mail, postage prepaid, addressed to the defendant at his last address as appearing on the records of the board. One of the duplicates of such process, certified by the chairman as having been served upon him, shall be deemed sufficient evidence of such service, and service upon such attorney shall be deemed service upon the principal.

**§ 87XX. Issuance of License; Form; Term; Renewal; Board to Keep Record and Provide for Publication of Lists of Licensed Brokers and Salesmen.**

The board shall issue a license to an applicant who has complied with all pertinent requirements which shall entitle him to act as a broker or a salesman, as the case may be; provided, however, that a license issued to a corporation, society, association or partnership shall not authorize any unlicensed individual connected therewith to act as broker or salesman except as expressly provided in section eighty-seven UU. Such license shall be in such form as the board may determine, shall set forth the name and address of the licensee, shall specify the nature of the license, whether for a broker or salesman, the date of issuance, and shall bear a facsimile of the seal of the board. Except as otherwise provided in section eighty-seven UU in the case of a license issued to a corporation, society, association or partnership, a license shall be valid for a period of two years from the date of issue unless sooner suspended or revoked and shall be valid for a period of two years from the date of issue unless sooner suspended or revoked and shall be renewed by the board biennially thereafter, without examination, upon payment of the fee prescribed in section eighty-seven ZZ; provided, that the applicant, if an individual, or, if a corporation, society, association or partnership, each officer and director or holder of similar position or each partner, of whom evidence of good moral character is required in connection with the application for an original license in section eighty-seven TT, has not been found to be disqualified because of lack of good moral character, or for any ground set forth in sections eighty-seven PP to eighty-seven DDD, inclusive; and, provided, further, that the license of a corporation, society, association or partnership shall be renewed only upon the renewal of the individual license of at least one of its designated officers or partners as the case may be. No fee shall be required of a corporation, society, association or partnership for the renewal of its license. Applications for renewals of licenses shall be signed and sworn to by the applicant and shall be made on forms furnished by the board. Such application forms shall be mailed by the board to each broker and salesman registered with the board, together with notice of the expiration of his license, not less than thirty days prior to such expiration. Renewal license shall be in such form as the board may determine. Notwithstanding the foregoing, the license originally issued to an individual shall be valid until the anniversary of the licensee's date of birth next occurring more than twenty-four months after the date of issuance. The board shall keep a record of all licensed brokers and salesmen which shall be open to inspection by the public and shall, from time to time, cause to be printed a new or revised publication containing an alphabetical list of such brokers and salesmen, together with their addresses, accompanied by such other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public.

**§ 87XX<sup>1</sup>/<sub>2</sub>. Continuing Education**

Any person holding a real estate broker or salesman license, which is subject to renewal on or after January First, nineteen hundred and ninety-nine, shall, within twenty-four months prior to each renewal, satisfactorily complete courses or programs of instruction approved by the board; provided, that for licenses renewed on or before December thirty-first, two thousand, the attendance at such courses or programs of instruction shall be equal to a total of twelve hours; and provided, further, that for licenses renewed on or after January first, two thousand and one, such number shall be no less than six hours but no more than twelve hours as determined by the board. The curriculum contained in such courses or programs shall contain at least six hours of instruction concerning or related to compliance with laws and regulations selected from any of the following subjects: fair housing; equal employment opportunity; accessibility for the disabled; agency law; environmental issues in real estate; zoning and building codes; real estate appraisal and financing; property tax assessments and valuation; and real estate board regulations. The board shall certify in advance the curriculum forming the basis of such courses and programs which satisfy the provisions of this section.

Every person who is subject to the provisions of this section shall furnish, in a form satisfactory to the board, written certification that the required courses or programs were successfully completed. Upon such completion of approved courses or programs, the licensee shall be deemed to have met the continuing education requirements of this section for license renewal. Every person who fails to furnish, in a form satisfactory to the board, written certification that the required courses or programs were completed shall be granted inactive status by the board upon renewal of his license in accordance with section eighty-seven XX.

Any person failing to meet requirements imposed upon him by this section or who has submitted to the board a false or fraudulent certification of compliance therewith, shall, after a hearing thereon, which hearing may be waived by such person, be subject to the suspension of his license until such time as such person shall have demonstrated to the satisfaction of the board that he has complied with all of the requirements of this section as well as with all other laws, rules and regulations applicable to such licensing.

The provisions of this section shall not apply to any person licensed by the board under the provisions of section eighty-seven SS who is not required to take an examination to be licensed; provided, however, that any out-of-state licensee who receives reciprocity from the board to practice in the commonwealth shall demonstrate to the board compliance with a continuing education program in such licensee's home state.

The provisions of this section shall not apply to any person licensed by the board who has been granted inactive status by the board. A person licensed by the board and whose license is inactive may not engage in the business of, or act as, a real estate broker or salesman, as defined in section eighty-seven PP, except that he may assist with or direct the procuring of prospects and may receive referral fees for such procurement activities. A person licensed by the board whose license is inactive shall be considered unlicensed for the purposes of section eighty-seven RR. Engaging in the business of, or acting as, a real estate broker or salesman while a license is inactive, except as otherwise provided in this section, may be grounds for the revocation of such license. A person licensed by the board and whose license is inactive shall renew such license in accordance with section eighty-seven XX while such license is inactive. A person licensed by the board and whose license is inactive may apply to the board to reactivate such license, upon demonstration of completion of the continuing education requirement for the renewal period immediately preceding the application for reactivation of such license and compliance with all then acceptable requirements for licensure.

The board shall perform such duties and functions necessary to carry out the provisions of this section and shall promulgate rules and regulations pertaining to the development and administration of an inactive license designation. Such rules and regulations shall include, but not be limited to, developing procedures for the granting of inactive status, the reactivation of licenses, renewal fees and notification of licensees of continuing education requirements prior to license reactivation.

The board of registration of real estate brokers and salesmen, created pursuant to sections eighty-seven PP through eighty-seven DDD, inclusive, of chapter one hundred and twelve of the General Laws, shall promulgate rules and regulations to implement the provisions of this act within one hundred and eighty days after its effective date.

**§ 87YY. Licensed Resident Broker to Maintain Usual Place of Business; Display of License Therein; Notice of Change of Business Location.**

A licensed resident broker shall maintain a usual place of business in the commonwealth and shall display conspicuously therein or in any branch thereof his license or a certified copy thereof. He shall promptly give written notice to the board of any change of business location, and the board shall issue a new license for such new location for the unexpired term of such license. Failure to give such notice shall be grounds for the revocation of such license.

**§ 87YY<sup>1/2</sup>. First signing of purchase agreement; distribution of home inspection brochure; prohibition of specific recommendations; exception**

At the time of the signing of the first written contract to purchase, real estate brokers and salesmen, or the seller if no broker or salesperson is involved in the sale, shall distribute a brochure, published by the office of consumer affairs and business regulations, educating consumers about the home inspection process. Real estate brokers and salesmen shall not directly recommend a specific home inspection company or home inspector but may, upon request, provide a complete list of licensed home inspectors prepared by the board. This prohibition shall not apply if there is a written contractual agreement or a written agency disclosure between the buyer and the real estate broker specifying that the real estate broker is acting exclusively for the buyer as a buyer's broker.

**§ 87ZZ. Fees.**

Fees, as determined annually by the commissioner of administration under the provision of section three B of chapter seven, shall be paid by individuals in advance for the following:-

[From and after July 1, 1985, paragraph (a) shall read as follows:]

- (a) For each examination for a broker's license, fifteen dollars; for each examination for a salesman's license, eight dollars; provided, however, that a veteran holding an honorable discharge or a blind person shall not be required to pay any examination fee; and provided, further, in the event the examination is conducted by an independent testing service designated by the board under authority of section eight-seven Ss, in addition to the above fee, each individual shall pay to the testing service a fee, approved by the board, covering the actual cost of giving the examination.
- (b) Issuance and renewal of a broker's license; provided, however, that a blind person or a veteran suffering from paraplegia, as defined in section six B of chapter one hundred and fifteen, shall not be required to pay such fee.
- (c) Issuance and renewal of a salesman's license; provided, however, that a blind person or a veteran suffering from paraplegia, as defined in section six B of chapter one hundred and fifteen, shall not be required to pay such fee.
- (d) The applicable fee for the issuance of a license shall be adjusted by the board on the basis of each month during which the license originally issued would be valid unless revoked or suspended and, for this purpose, any part of a month shall be considered as a full month.

**§ 87AAA. Suspension, Revocation or Refusal of Renewal of License; Grounds; Reinstatement; Other Punishment.**

The Board may, and upon the verified complaint in writing of a aggrieved person shall, investigate the action of any broker or salesman or any person who attempts to act in such capacity within the commonwealth, and, in addition to any grounds hereinbefore enumerated, may suspend, revoke or refuse to renew any license which it has found to have been obtained by false or fraudulent representation. The board may suspend, revoke or refuse to renew any license, when the board has found as a fact that the licensee, in performing or attempting to perform any act authorized by his license, has (a) knowingly made any substantial misrepresentation; (b) acted in the dual capacity of broker and undisclosed principal in the same transaction; (c) acted for more than one party to a transaction, without the knowledge and consent of all the parties for whom he acts; (d) failed, within a reasonable time, to account for or remit any moneys belonging to others which have come into his possession as a broker or salesman; (e) paid commissions or fees to or divided the same with any person, who, being required to be licensed as a broker or salesman in this or any other state, is not so licensed; (f) accepted, given or charged, any undisclosed commission, rebate or profit on expenditures for a principal; (g) induced any party to a contract or lease relating to real estate to break the same when such action is effected for the personal gain of the licenses; (h) commingled the money or other property of his principal with his own; (i) failed to give to both the buyer and seller a copy of the purchase and sale agreement; or (j) committed any act expressly prohibited in sections eighty-seven RR to eighty-seven CCC, inclusive; (k) affirmatively solicited for sale, lease, or the listing for sale or lease, of residential property on the grounds of alleged change of value due to the presence or the prospective entry into the neighborhood of a person or persons of another race, economic level, religion or ethnic origin or distributes, or causes to be distributed, material or makes statements designated to induce a residential property owner to sell or lease his property due to such change in the neighborhood; or (l) accepted from a prospective seller a net listing, an agreement to sell real estate for a stated price which authorized the broker to keep as commission any amount of money received from the sale of said real estate in excess of the stated price. The board shall, after notice by the Massachusetts commission against discrimination that said commission has made a finding, which finding has become final, that a licensed broker or salesman committed an unlawful practice in violation of chapter one hundred and fifty-one B arising out of or in the course of his occupation as a licensed broker or salesman, shall suspend forthwith the license of said broker or salesman for a period of sixty days and, if the said commission finds that said violation by such licensed broker or salesman occurred within two years of the date of a prior violation of said chapter one hundred and fifty-one B, which finding has been final, it shall so notify the board, and the board shall forthwith suspend the license of such broker or salesman for a period of ninety days. Whoever violates the provisions of clause (k) shall be punished by a fine of not less than one thousand nor more than twenty-five hundred dollars, or by imprisonment for not more than six months, or both.

No broker shall engage in a sale in the commonwealth of real property located in a land development in another state which is the subject of promotional advertising in the commonwealth unless the owner or developer of such land has submitted to the board full particulars regarding such land and the proposed terms of sale thereof and has deposited with the board such sum as it shall determine, to pay the expense of the investigation hereinafter prescribed. Any broker acting for such owner or developer and his salesmen, shall comply with such rules, regulations, restrictions and conditions pertaining thereto as the board in its discretion may impose. The board shall investigate such matters and all reasonable expenses incurred by the board in such investigation shall be borne by the owner or developer of the property involved. No broker or salesman shall in any manner refer to the board of registration of real estate brokers and salesmen or to any member or employee thereof, in selling, offering for sale, or advertising or otherwise promoting the sale, mortgage or lease of any such property, nor make any representation whatsoever that such property has been inspected or approved or otherwise passed upon by said board or by any official, department or employee of the commonwealth. The board may suspend, revoke or refuse to renew any license when it has found that the licensee has failed to comply with the requirements of this paragraph or any part thereof.

The board may also suspend, revoke or refuse to renew any license when it has found that the licensee has been convicted of a criminal offense by a court of competent jurisdiction of this or any other state which demonstrates his lack of good moral character to act as a broker or salesman as the case may be.

The board may reconsider any decision made by it and may reinstate any license which has been suspended and reissue any license which has been revoked.

Any person whose license is suspended or revoked shall also be liable to such other punishment as may be provided by law.

**§ 87AAA<sup>3/4</sup>.**

- (a) This section shall only apply to real estate brokers and salesmen for the intended purchase or sale of land with a building intended for use as 1 to 4 residential dwellings or the intended purchase or sale of land on which a building is intended to be constructed for use as 1 or 2 residential dwellings.
- (b) A real estate broker or salesperson may act as a dual agent who represents both prospective purchasers and sellers only with the informed written consent of the prospective purchasers and sellers. Consent to dual agency shall be obtained in the form prescribed by the board and shall be signed and dated. Such written consent may be obtained when an agency relationship with the seller or purchaser is created, but notice of a dual agency relationship shall also be given to the prospective purchaser and to the seller after a listed property is first shown to the purchaser. Nothing herein shall require written notice to each prospective purchaser or seller who attends an open house showing of real property, provided that the broker or salesperson must conspicuously disclose the agency relationship.
- (c) A real estate broker or salesperson and his affiliates may act for more than one party to a real estate transaction as designated agents only with informed written consent. With informed written consent in the form prescribed by the board, a real estate broker or salesman may appoint one or more licensees to act as a designated agent on behalf of a purchaser and may appoint one or more other licensees to act as a designated agent on behalf of a seller for a potential real estate transaction. With informed consent in the form prescribed by the board, a real estate broker or salesman may appoint one or more licensees to act as a designated agent on behalf of a seller and may appoint one or more other licensees to act as a designated agent on behalf of a purchaser for a potential real estate transaction. Appointment of a designated agent shall not be made unless the party has consented, at the commencement of the party's agency relationship with the real estate broker, that the party's designated agency relationship shall not extend to any other licensee affiliated with a broker and shall be limited to the licensees appointed to act as designated agent.

Upon appointment of a designated agent, the responsibility to satisfy agency duties owed to a purchaser or seller shall be solely the responsibility of the designated agent. Substitution of designated agents shall not be made without consent. When a designated agent is appointed, information known or acquired by the designated agent shall not be imputed to the appointing broker or salesman or to other affiliated licensees. Notwithstanding the foregoing, a designated agent and an appointing broker or salesman shall each have an obligation to reveal known material defects in a listed property and shall comply with all other requirements of law. When a real estate broker or salesman has appointed designated agents for both a buyer and a seller, the broker or salesperson shall be presumed to be a dual agent, who does not exclusively represent either the buyer or seller. Appointment of a designated agent shall not limit the liability or responsibility of the appointing broker or salesperson for breach of duty by a designated agent.

- (d) There shall be a conclusive presumption that a purchaser or seller has consented to a designated agency relationship, if he has signed a disclosure form that substantially contains the descriptions in this section and any other provisions required by law no later than the date that the buyer makes or submits an offer to purchase the property or that a purchase and sale agreement is executed, whichever is first. Consent may be given before identifying a property or transaction. Nothing herein shall require written notice of each prospective purchaser or seller who attends an open house showing of real property, provided that the broker or salesperson must conspicuously disclose the agency relationship.
- (e) No real estate broker or salesman shall enter into or offer a subagency agreement to another real estate broker or salesperson when marketing a property for sale without informing the seller about vicarious liability and obtaining written consent of the seller.
- (f) A real estate broker or salesman may provide services as a facilitator who does not represent a buyer or seller and who does not act in an agency capacity.

**§ 87BBB. Enforcement by Board; Hearings and Matters Related thereto; Decisions; Appeal; Costs; Appeal Not to Stay Refusal, etc.**

- A. The board is hereby empowered to conduct such investigations and hearings and to take such action as may be appropriate and necessary to administer and enforce the provisions of sections eighty-seven PP to eighty-even CCC, inclusive, and to report the violation of any provision of said sections to the proper prosecuting officers. The board may require by summons the attendance and testimony of witnesses and the production of books and papers. Witnesses at hearings shall be duly sworn. Any member, or agent of the board designated for such purpose, may administer oaths, examine witnesses and receive evidence. The board may take testimony by deposition as in civil actions in the superior court. In case of the failure or refusal of a witness to appear and testify or to produce books and papers as required, the superior court for the county in which the investigation is carried on, or for the county in which the witness resides or has his principal place of business, upon application by the board, shall have jurisdiction to issue to such witness an order requiring such witness to appear before the board, there to produce books and papers, if so ordered, or to give testimony concerning the matter under investigation or in questions. Witnesses summoned before the board shall be paid the same fees and mileage paid to witnesses in civil cases in the courts.
- B. Decisions of the board shall be by at least a majority thereof and shall be in writing, signed by the members making the same, and shall contain a statement of the reasons therefore including determination of each issue of fact or law necessary thereto, and shall be sent to each interested party. No renewal of a license shall be refused, and no license shall be suspended or revoked, except after a hearing, of which at least ten days' written notice, including a statement of the grounds and a copy of the complaint or charges, if any, which the board proposes to consider, shall be given to the applicant for renewal or the licensee, who shall have the right to appear personally and by counsel at such hearing and to cross-examine witnesses and to produce evidence. In the case of a decision refusing to grant an original license, such a hearing shall be held, if, within ten days of the receipt of the decision the applicant files a written request with the board for such a hearing. The board shall fix the time and place of all hearings.

C. Any person aggrieved by a decision of the board refusing to grant or renew, or suspending or revoking, a license after a hearing, may appeal to the superior court sitting in equity for the county wherein he resides or has his principal place of business, or to said court sitting in equity for the county of Suffolk; provided, that such appeal shall be filed in such court within twenty days following receipt of notification by the board of such decision. The court shall hear all pertinent evidence and determine the fact, and upon the facts as so determined, annul such decision if found to exceed the authority of the board, or make such decree or decision as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exception as in other equity cases.

Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith or with malice in making the decision appealed from. Costs shall not be allowed against the party appealing from the decision of the board unless it shall appear to the court that said party acted in bad faith or with malice in making the appeal to the court.

Such appeal from a decision of the board refusing renewal of or suspending or revoking a license shall not operate as a stay of such refusal, suspension or revocation pending the final determination of such appeal.

**§ 87CCC. Penalty.**

Whoever, without being licensed as required by section eighty-seven RR, acts as a broker or salesman or advertises that he is a broker or salesman shall be punished by a fine of not more than five hundred dollars.

**§ 87DDD. Section 61-65 Not to Apply to Board, etc.**

The provisions of section sixty-one to sixty-five, inclusive, shall not apply to the board, to the registration or licensing of real estate brokers or salesmen, or to any real estate broker or salesman or to any person acting as such.

**§ 87DDD<sup>1/2</sup>. Charging of Fees for Locating Dwelling Accommodations for Prospective Tenants: License Required.**

No person shall engage in the business of finding dwelling accommodations for prospective tenants for a fee unless such person is a licensed broker or salesman as defines in section eighty-seven PP of chapter 112.

## REAL ESTATE REGULATIONS (reregs1a.doc)

### 254 CMR 1.00: *Reserved*

### 254 CMR 2.00: *Licensure.*

(1) **Purpose.** 254 CMR 2.00 sets forth the application procedures, examination, experience, good moral character requirements for licensure.

(2) **Applications.** Applications for licenses shall be made on forms furnished by the Board and shall be accompanied by the prescribed fee.

(3) **Examinations.** No broker or salesperson license shall be issued to any individual unless such individual satisfactorily passes a written examination conducted by the Board or its agent. Prior to taking the examination applicants must submit certification to the Board that the required education has been completed. This certification shall be valid for a period not to exceed 24 months following the date on which the education was completed. Any applicant who is an attorney at law in good standing of this Commonwealth shall not be required to take such examination.

(4) **Re-Examination.** An individual who fails to pass the written examination for a real estate broker or salesperson may be re-examined by paying the prescribed fee.

(5) **License Fees.** An individual who has been notified of passing the examination for real estate broker or salesperson must pay the prescribed fee within 30 days from the date of notification. If the required fee is not paid within the specified time period the individual shall be required to be re-examined and pay the prescribed fee for such examination. This requirement may be waived by the Board upon showing of good cause.

(6) **Experience Requirement for License as a Broker.** A salesperson seeking licensure as a real estate broker must:

(a) Be employed or affiliated with a licensed real estate broker in performing those activities as defined (for licensed salespeople) in M.G.L. c. 112, § 87PP for at least one year. The Board shall determine the form and manner to verify such employment or affiliation.

(b) Be employed or affiliated with such licensed real estate broker for a minimum of twenty-five hours per calendar week under the supervision of such broker.

(c) Obtain licensure as a real estate broker within two years of the date that such employment or affiliation as a real estate salesperson is terminated.

(7) **Moral Character.** Each individual seeking a license as a broker or salesperson shall furnish evidence of good moral character. Applications for a license shall be accompanied by the recommendations of three reputable citizens, not related to the applicant, who reside in or have their place of business in the Commonwealth. Each recommendation shall certify that the individual bears a good reputation for honesty and fair dealing and shall recommend that a license be granted to such individual.

(8) **Personal Appearance.** Applicants may be required to appear at the office of the Board for an interview.

(9) **Qualification Reports.** The Board may require each individual seeking a license to submit a report from an independent source pertaining to the individual's previous occupation or any other information which is material to the qualification of such individual for a license.

(10) **Surety Bonds.** No broker's license shall issue or be renewed until such broker gives the Board the bond required by M.G.L. c. 112, § 87TT.

(11) **Business Entities.** No licensee may engage in the business of real estate brokering in a corporation, limited liability company (LLC), partnership, limited liability partnership (LLP), association or society unless the entity is licensed by the Board.

No broker's license shall issue to a corporation, LLC, partnership, LLP, association or society unless an officer in such corporation, society or association or partner in a partnership is a licensed broker in the Commonwealth and designated as the broker of record for the entity. The broker of record must be currently licensed at all times, otherwise the license of the entity shall cease. The broker of record shall be in responsible charge of the business entity and personally responsible for the acts of the entity and its employees and agents.

**(12) *LLC, LLP Insurance.*** An LLC and LLP must maintain professional liability insurance which meets the following minimum standards:

(a) The insurance shall cover negligence, wrongful acts, errors and omissions and insure the LLC and its officers or the LLP and its partners as required by M.G.L. c. 156C, §. 65 and M.G.L. c. 108A, §. 45(8)(a).

(b) The insurance shall be in an amount for each claim of at least \$50,000 multiplied by the number of individual licensees employed by, or officers of, the LLC, and in an aggregate amount of at least \$150,000 multiplied by the number of individual licensees who are employed by, or officers of, the LLC.

(c) The insurance shall be in an amount for each claim of at least \$50,000 multiplied by the number of individual licensees employed by, or partners of, the LLP, and in an aggregate amount of at least \$150,000 multiplied by the number of individual licensees who are employed by, or partners of, the LLP.

(d) The requirements of 254 CMR 2.00(12) shall be satisfied if the LLC or LLP maintains insurance sufficient to provide coverage at a level of at least \$300,000 for each claim with an aggregate top limit of liability for all claims, during any one year, of at least \$1,000,000; and

(e) The insurance required by 254 CMR 2.00(12) may provide that it does not apply to any dishonest, fraudulent, criminal, or malicious act or omission of the insured LLC, or any officer or employee thereof, or the LLP, or any partner or employee thereof.

(f) Cancellation or any other interruption in required insurance coverage shall require the LLC or LLP to immediately cease the practice of real estate brokering until such time as the LLC or LLP is in compliance with 254 CMR 2.00(12).

(g) An LLC or LLP must notify the Board within 5 business days, if the LLC or LLP insurance coverage is canceled or otherwise interrupted. Failure to provide required notice to the Board will subject the LLC and its officers or the LLP and its partners who are licensed by the Board to disciplinary action pursuant to M.G.L. c. 112, § 87AAA.

(h) An LLC or LLP may be required to provide verification of compliance with 254 CMR 2.00(12), satisfactory to the Board, when it seeks initial licensure, the renewal of such license and at any other time at the request of the Board.

**(13) *Reciprocal Licensure.*** The Board may issue a real estate salesperson or brokers license to individuals licensed in other states or jurisdictions without requiring the satisfaction of the education and examination requirements where such other state or jurisdiction has laws similar to the Commonwealth governing the practice of real estate brokering and extends the same privilege to licensed Massachusetts real estate brokers and salespersons. Applicants for reciprocal licensure shall apply on the form provided by the Board and pay the prescribed fee.

**(14) *License Renewal.*** No license may be renewed later than one year following the expiration of such license nor may any broker or salesperson practice when such license has expired. Any license renewal sought after license expiration but prior to the end of the one year grace period must be on the form provided by the Board and verify to the Board's satisfaction completion of continuing education as required by M.G.L. c. 112, § 87XX 1/2, and be accompanied by the prescribed fee.\*

\*The statutory prohibition on license renewal after one year of expiration has been repealed. All licensees must renew or reinstate the license originally issued regardless of the amount of time that elapsed since license expiration.

## **254 CMR 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 for 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.

**(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.

**(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.*** This section 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 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 purchase 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 paragraph (b), above, 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 dual agent with regard to the transaction. Written notice of dual agency shall satisfy section 13(b) herein 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.

**(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.** This section 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 Section 13(c) herein. 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 separate consent form that substantially contains the description of designated agency set forth in Section 13(c) above. 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. The broker or salesperson shall also provide written notice. 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 section 13(c) above.

(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.

(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. The designated broker or salesperson must comply with the requirements set forth in Section (13)(a)(1) through (4) herein 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 omission 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. This Section 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.

**(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 thirty 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.

## 254 CMR 4:00: Real Estate School Authorization.

(1) **Purpose.** In order to provide the real estate education that can qualify individuals for licensure as real estate brokers or salespersons or provide continuing education a real estate school must be authorized by the Board.

(2) **Applications.** Applications for authorization as a real estate school must be made on the form prescribed by the Board and accompanied by the required fee. The Board shall verify the locations suitability for occupancy.

(3) **Renewal.** School authorizations are valid for two years from the date of issuance and shall be renewed biennially.

(4) **Single Location Authorized.** Each location at which a school operates must be separately authorized (and the Board may set a limit on the number of separate locations for an authorized school).

(5) **Authorized Agents.** Each authorized school must designate one individual as an authorized agent. The authorized agent shall:

(a) maintain records documenting the attendance of individuals including the name of individuals, the dates on which the individuals attended the school and the date on which the individuals completed either the curriculum for licensure as a real estate broker or salesperson, the continuing education curriculum for licensed brokers and salespeople or the instructor curriculum. Each authorized school shall maintain the record of each individual for at least two years following the completion of the curriculum by such individual;

(b) ensure that only individuals who complete the 24 hours of education for salesperson's, 30 hours of education for brokers or 12 hours of continuing education for brokers and salesperson's are certified, in a form prescribed by the Board, as meeting the educational requirements for licensure or renewal of licensure;

(c) shall notify the Board of any change in the address or telephone number of the authorized school or any change of the authorized agent within seven days of such change.

(d) ensure that only qualified instructors are permitted to teach the curriculum that contributes toward certification for licensure or continuing education.

(6) **Rescinding of Authorization.**

The Board may suspend, revoke or refuse to renew the authorization of any school which fails to adhere to the rules and regulations of the Board including:

(a) failure to maintain records as required by 254 CMR 4.00(5)(a);

(b) failure to provide appropriate notice to the Board of any change of address, telephone number or of the authorized agent;

(c) failure to provide the Board or its agents with copies of or access to requested information;

(d) failure to use the exact name of the authorized school on any postings, advertisements, solicitations or any other medium of communication;

(e) failure to have an qualified instructor, in accordance with 254 CMR 4.00(7), in the classroom with the individuals taking the curriculum described in 254 4.00(5)(b) during the time that it is provided;

(f) obtaining a school authorization by false pretenses or fraudulent representation;

(g) discriminating against an individual based on age, marital status, gender, sexual preference, race, religion, socio-economic status or disability;

(h) failing to provide an individual completing the curriculum for licensure as a broker or salesperson or for continuing education with appropriate certification of completion of such curriculum;

(i) providing certification of completion to an individual who has not completed such curriculum;

(j) combining any part of the broker, salesperson, instructor or continuing education curriculum into a single curriculum or offering.

(k) failure to offer the curriculum for licensure and renewal established by the Board.

**(7) Instructor Qualification.**

**(a) Requirements To Become An Instructor.** No person may act as an instructor of the salesperson or broker curriculum in any authorized real estate school unless such person verifies to the Board satisfaction of the requirements established in 254 CMR 4.00(7)(a)1. through 4.

- (1) Instructors must hold a current brokers license issued by the Board.
- (2) Instructors must have a minimum of two years work experience as a real estate broker involving at least 25 hours per week.
- (3) Instructors must have co-taught or audited the curriculum in an authorized school before they may teach it.
- (4) Instructors must have a minimum of 30 hours of instruction in an instructor training program which has been approved by the Board.

**(b) Issuance of Instructor Authorization.** The Board may issue authorization to act as an instructor to any person who has satisfied the requirements of 254 CMR 4.00(7)(a)1. through 4 or the equivalent in lieu thereof as determined by the Board.

**(c) Use of Specialists.** Instructors may employ specialists to teach particular portions of the salesperson or broker curriculum and such specialists need not obtain authorization from the Board. Specialists may not be employed to teach the entire curriculum.

### **254 CMR 5:00: Continuing Education.**

**(1) Continuing Education Requirement.** Effective January 1, 1999 no license of a real estate broker or salesperson will be renewed unless they verify, in a form and manner determined by the Board, that they have completed the continuing education requirements established in M.G.L. c. 112, § 87XX 1/2.

**(2) Educational Curriculum.** The Board shall publish the curriculum which will form the basis of the continuing education requirement and may change such curriculum from time to time as necessary, consistent with M.G.L. c. 112, § 87XX 1/2.

**(3) Verification Of Compliance.** With each renewal of their license, a broker or salesperson must certify to the Board that they have completed the 12 hours of continuing education in the curriculum published by the Board pursuant to 254 CMR 5.02. Authorized schools shall maintain records for each individual broker or salesperson who has completed the continuing education curriculum for a period of at least three years following completion of the curriculum.

**(4) Inactive Status.** Licensed brokers and salespersons who fail to comply with the continuing education requirement shall have their license placed on an inactive status by the Board. Brokers and salespersons designated inactive are prohibited from practicing as such. An inactive broker may receive a referral fee from a licensed active real estate broker when making a referral of a person to such licensed active broker. Nothing herein shall authorize inactive real estate brokers and salespersons to engage in brokering as defined in M.G.L. c.112, § 87PP.

**(5) Recording Of Inactive License Status.** Licensees placed on an inactive status shall not be issued a license.

### **254 CMR 6:00: Promotional Sales of Out of State Real Property.**

**(1) Prohibition On Broker Sales Activity.** No broker shall offer for sale in the Commonwealth an interest in real property which is located in a land development of another state unless the owner or developer of such land development registers such property with the Board.

**(2) Filing Requirement.** Prior to promoting for sale an interest in real property located in a land development of another jurisdiction the owner or developer of such real property shall register it with the Board on the form and paying the fee prescribed by the Board. Such registration shall be renewed annually.

**(3) Inspections.** The Board may inspect any out of state real property developments seeking registration or registered with it. The costs of any inspection shall be borne by the owner or developer. Following an inspection of an out of state real property development the Board shall issue a written report. Such report shall be kept on file with the Board during the time that the out of state real property development is currently registered with the Board and for one year following the termination or expiration of such registration. The owner or developer of such out of state real property shall also maintain such report in its files while such registration is current and for one year following the termination or expiration of such registration.

**(4) Advertising Notice of Registration.** Once the Board registers an out of state real property development the owner or developer of such development must note, in a form to be determined by the Board, the fact of such registration in all its subsequent advertisements in the Commonwealth.

**(5) Sales By Brokers.** No interest in any real property located in an out of state real property development shall be subject to any promotional advertisement, offering for sale or sold in the Commonwealth unless it is offered for sale and sold by a licensed Massachusetts broker. Promotional advertising as used herein means any advertising material offered through any means of communication in the Commonwealth.

**(6) Brokers Notice to Board.** A broker acting on behalf of an owner or developer of an out of state real property development shall notify the Board in writing of such status within seven days of accepting the client.

### **254 C.M.R. 7.00: Apartment Rentals.**

**(1) Notice To Prospective Tenants.** Brokers and salespersons engaged in renting real property, whether by written agreement or not, shall provide each prospective tenant with a written notice which states whether the prospective tenant will pay any fee for such service, the amount of such fee, the manner and time in which it is to be paid and whether or not any fee or any portion thereof will be payable by the tenant if a tenancy is not created. This written notice must be given by the real estate broker or salesperson at the first personal meeting between the broker or salesperson and a prospective tenant. It must be signed by the real estate broker or salesperson, contain the license number of such broker or salesperson, be signed by the prospective tenant and contain the date such notice was given by the broker or salesperson to the prospective tenant. Where a prospective tenant declines to sign such written notice the real estate broker or salesperson must note on such written notice the tenants name and the refusal to sign such notice.

**(2) Record Maintenance And Inspection.** A copy of the written notice referred to in 254 CMR. 7.00 shall be maintained by the real estate broker or salesperson for a period of three years from the date on which the notice was provided to the prospective tenant. Real estate brokers or salespersons shall furnish the notice to the board, its investigators or other agents upon request.

**(a)** Brokers shall maintain all rental listings and written documents that demonstrate the availability of an apartment at the time it is advertised for rental for a period of three years from the date on which such apartment is rented.

**(b)** Brokers shall maintain a copy of any check, money order and written cash receipt for any fees, deposits or payments made by a prospective tenant or actual tenant for a period of three years from the date of issuance. Brokers shall also maintain a copy of any check issued on an escrow account over which they have issuing authority for a period of three years from the date of issuance.

**(c)** Any advertisement concerning the availability of an apartment shall disclose in print no smaller than that for the apartment itself that "The apartment advertised may no longer be available for rental".

**(3) Fees For Service.** No real estate broker shall charge any fee to a prospective tenant unless a tenancy is created or in those cases where no tenancy in real property is created unless the prospective tenant has agreed in writing to pay such a fee.

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