

Notes from the MAR Legal Hotline

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Q. A colleague in another state recently told me that they received a letter from the EPA stating that the EPA would be performing a Lead-based Paint Disclosure Rule recordkeeping inspection. What information would they be looking for?

A. Any type of regulatory inspection can be nerve wracking, but if you have been diligent in your recordkeeping, you should not have a problem. Prior to an inspection, the EPA Compliance Officer assigned to your inspection will likely provide you with a list of documents that you will need to produce for their review. These documents may include:

- Copies of purchase contracts for homes sold in the last year that were built pre-1978;
- The Property Transfer Lead Paint Notification form provided to the purchaser in each transaction involving a pre-1978 home;
- A list of agents affiliated with the company; and
- A list of all pre-1978 properties sold in the last three (3) years.

Penalties for non-compliance with the lead paint disclosure laws, and failure to properly maintain the required documents for *at least* three (3) years may lead to significant civil penalties and potential criminal liability for willful violations.

Q. A salesperson affiliated with my brokerage wants me to pay their commissions to an LLC they established – can I do that?

A. No, a salesperson is unable to receive commission payments through an LLC, or other corporate entity, *unless* a broker is willing to serve as a representative of that entity. In order to share any real estate commissions or fees with a corporate entity (i.e. partnerships, limited liability corporations, s corporations, etc.), the entity itself must be licensed as a broker pursuant to Massachusetts General Laws Chapter 112, Section 87UU and 254 CMR 2.00(11). A license will only be issued to a corporation if the corporation designates a representative to obtain the license and that representative already holds a *broker's license* as an individual. Further, the statute expressly prohibits the issuance of a salesperson's license to a corporation.

Fees and commissions earned from a real estate transaction may only be paid to a licensed salesperson or broker, as such, any payments to an unlicensed entity are impermissible.

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