

## Notes from the MAR Legal Hotline

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**Q. What, if anything, do I have to disclose to prospective buyers about conditions that are outside the four corners of the property?**

**A.** There is no bright-line rule that limits an agent's disclosure obligations under Chapter 93A to the geographic boundaries of the property. We received guidance on this issue from the Supreme Judicial Court in the case of *Urman v. South Boston Savings Bank*. Chapter 93A does not impose a duty to disclose unless there is actual knowledge of the defect. The court, however, did not limit the duty to disclose to conditions within the property lines. Instead, the court found that in appropriate circumstances, off-site physical conditions known to an agent may require disclosure to prospective buyers if:

1. The condition is unknown and not readily observable by the buyer; and
2. The existence of the condition(s) is of sufficient materiality to affect the habitability, use, or enjoyment of the property; and
3. The condition makes the property substantially less desirable or valuable to the objectively reasonable buyer.

The duty to disclose off-site conditions is typically limited to conditions which are "rooted in the land," such as groundwater contamination, rather than so-called "transient social conditions." Transient social conditions may include things like the quality of schools and noisy neighbors.

Agents should discuss the duty to disclose with their sellers and explain the potential liability for failing to disclose certain facts. All disclosures should be made in writing so that there is documentation of when and to whom disclosure was made.

**Q. Is it legal to include a date certain in a listing when all offers will be presented to the seller?**

**A.** Yes, an agent may hold off presenting offers to a seller so long as the delay is the result of a lawful instruction from the seller. 254 CMR 3.11(d) states "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." Further, the REALTOR® Code of Ethics, Standard of Practice 1-6, requires that all offers and counteroffers be presented as quickly as possible. The law allows the seller to set the parameters, which includes specifying a date certain for all offers to be presented. It is important to remember, however, that this decision must be the seller's. An agent may not unilaterally make a determination to hold all offers until a date certain, or place any other limitations on the

presentation of offers. It is recommended that any seller instructions be reduced to writing to mitigate potential liability.

If there is a concern that a listing agent failed to present an offer to their seller, a buyer's agent has the authority, under Standard of Practice 1-7, to request in writing that the listing broker provide written confirmation that the offer was submitted, *or* that the seller has waived the obligation. This does not place a requirement on the seller to formally sign the "rejection" portion of an offer, but places the onus instead on the listing agent to confirm that they have complied with the law.

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