

NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

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Q. What documents will I need to provide to the DPL investigator if my office is audited? Are there any COVID-19 related documents I should be maintaining?

A. The Division of Professional Licensure routinely performs random audits on real estate brokerages. An audit may also occur following a complaint against the brokerage or one of the affiliated agents. Ensure that you are prepared for an audit at any time by properly maintaining the following documents:

- Escrow account ledger with a proper account of all funds;
- Mandatory Real Estate Licensee-Consumer Relationship Disclosures;
- Copies of any affiliated agents' licenses;
- Lead paint disclosures (for required transactions);
- Broker rental fee disclosure (for required transactions).

We have also recently learned that investigators may request to view a brokerage's COVID-19 reopening plan, as well as tracing records. The [Massachusetts guidelines for reopening office spaces](#) requires the posting of signs related to mask wearing, social distancing, directional indicators for foot traffic, and hygiene protocols. In addition, you should be maintaining records of individuals who physically enter the office, as well as documentation of who is present at showings. This is necessary for contact tracing in the event someone tests positive for COVID-19.

Q. My seller accepted an offer that waived the home inspection contingency, but now the buyer is asking for an inspection for information purposes. Is my seller required to allow this inspection?

A. No, if the contract does not include a home inspection, a seller is not required to allow one. Prior to waiving any contingencies, a buyer should thoroughly discuss the ramifications of such a waiver with their REALTOR®. A buyer who is interested in an information-only inspection should be sure to include that in the terms of their offer, rather than waiting for their offer to be accepted and then requesting access for an inspection. A buyer who later decides they would like an inspection, may negotiate to have a clause added to the Purchase and Sales Agreement allowing for an inspection to take place, but, again, a seller is not obligated to agree to that request. Waiving the home inspection should be a carefully considered decision.

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