

NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

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Q. I've seen listings that place limitations on the types of offers that will be presented to the seller. Is this legal?

A. Yes, listings may include parameters for submitted offers, however, such parameters must be placed by the seller, not the agent or brokerage policy. The Massachusetts Regulations contained within 254 CMR 3.00 require that a licensee submit all offers to purchase or rent real property to the owner of the property upon receipt of such offers. This obligation is not absolute, however, and may be curtailed through a lawful seller instruction. A seller may provide instruction to their agent to only show them offers that meet certain criteria, such as a certain price or not containing certain contingencies or other clauses. So long as the instruction provided by the seller is not discriminatory or otherwise unlawful, the agent is bound to obey that instruction. As a best practice, the Massachusetts Association of REALTORS® recommends memorializing any seller instructions that modify an agent's legal obligations in writing.

Q. What happens to pending transactions and clients when an agent switches brokers?

A. When an agent decides to move to another brokerage, it is critical to review the Independent Contractor Agreement signed with the current broker to determine what happens to any pending transactions or existing clients. If using the MAR Agreement of Association as an Independent Contractor (Form #300), paragraphs 10 and 11 dictate how the agent will be compensated for outstanding transactions and what information must remain with the broker. Additionally, the MAR Agreement explicitly states that the agent is not permitted to take prospects, leads, or listings with them upon termination of the Agreement.

A salesperson should never attempt to induce clients to attempt to terminate exclusive representation agreements with the former brokerage. These agreements are contracts between the broker and the client and, unless otherwise agreed, remain with the broker. In addition to potentially being a breach of the Independent Contractor Agreement, this would likely also amount to a violation of Article 16 of the REALTOR® Code of Ethics.

Whenever an agent leaves a brokerage, it behooves both the agent and broker to document in writing what clients and transactions are outstanding and the current status of each those transaction. This will provide clarity and help to prevent disputes over what compensation is due when those transactions close.

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