

NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

January 2020

Q. What is my responsibility as a homeowner for snow removal?

- A.** All Massachusetts property owners have a duty to use “reasonable care” for the protection of visitors and are legally responsible for the removal of snow and ice from their property. This duty extends to Landlords, who are responsible for snow removal at their rental properties. The sanitary code requires property owners to keep all means of egress free from obstruction. Landlords must maintain all entrances and exits in a safe, operable condition at all times. This includes keeping all exterior stairways, walkways, fire escapes, and doorways free of snow and ice. These responsibilities cannot be avoided or transferred by any lease provision.

The landlord may only require the tenant to remove snow and ice only when a tenant has an independent means of egress not shared with other tenants, and the requirement is contained in a written lease agreement. Therefore, in situations where an occupant in a single or multi-family home has their own exclusive entrance, be sure to review the lease to determine who is responsible for snow removal. However, placing this responsibility on the tenant may still not protect the landlord from liability if someone is injured on the property due to snow and ice.

Snow removal is also a critical consideration for sellers during the winter months. Failure to properly clear snow and ice places a seller at risk of liability for visitors’ injuries. Realtors® should advise their home sellers to remain diligent in their snow removal efforts or hire an insured company to clear snow and ice on their behalf. Realtors® should not take on the responsibility of snow removal on behalf of their sellers because they may be exposing themselves and their clients to liability for injuries.

Realtors® should advise their clients to:

- (1) ensure they have adequate insurance coverage;
- (2) determine whether those hired to remove snow and ice have insurance; and
- (3) be vigilant when there is newly fallen snow, melting or freezing.

If complete clearing is not possible, warning signs may be appropriate. Clients that have specific questions regarding their duty to clear snow should consult their attorney.

Q. I just met with a prospective client who needs to sell their current house and buy a new one – can I make them use my services for both transactions?

A. Probably not. Situations like these raise potential antitrust concerns as they may be construed as unlawful tying arrangements. A tying arrangement occurs when someone offering a product or service requires a client to also purchase a second product or service in order to receive the initial product or service. In the real estate world, these types of arrangements potentially run afoul of antitrust laws because requiring a client to hire you for both the sale and the purchase forecloses other Realtors® from the opportunity to compete for that client's business in the second transaction.

This is not to say that a Realtor® cannot represent one client for both a sale and a purchase simultaneously. A Realtor® may also offer to prospective clients a “package deal” in which the client may be offered a different rate of commission if they use the Realtor® for both transactions. It only becomes problematic when the client is faced with an all-or-nothing decision and are not provided an option to use a Realtor® of their choosing for each transaction. Realtors® may simply offer their services to the client to serve all of their needs, but must allow the client to make their own decision.

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