

MAR Legal Hotline Q&A

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Q: The Listing Broker is offering compensation to the Buyer Broker, does the Buyer memorialize that compensation offer in their Contract to Purchase, paragraph 2?

A: Memorialization of this type of cooperative compensation offer belongs on MAR Form 311: Cooperating Compensation Agreement (or its equivalent). If the Listing Broker will be paying the Buyer's Broker less than what is on the underlying fee agreement between the Buyer and the Buyer's Broker, the Buyer may elect to ask the Seller to pay the difference utilizing paragraph 2 of MAR's Contract to Purchase. Conversely, if there is no offer of cooperative compensation from the Listing Broker and instead Buyer Broker compensation is offered directly from Seller as a negotiable term, the Buyer can formally request that the Seller pay their Buyer Broker as a term of the offer in paragraph 2 of the Contract to Purchase.

Q: If a consumer calls me directly to see the property I have listed for the Seller, do I need an agreement with that potential buyer?

A: As a listing agent, if you receive calls directly from potential buyers or potential buyers attend an open house, there is no obligation to have an agreement with those consumers. As a listing agent, the tour you are giving is done because you work for the Seller. When discussing any specific property, the law requires you to provide the consumer with the Massachusetts Mandatory Licensee-Consumer Relationship Disclosure showing the relationship you have with the Seller. That consumer, if interested in the property that you have listed, may remain unrepresented if they wish to proceed that way. As a listing agent you will still be working on behalf of the Seller to move the transaction forward successfully. MAR has released Form 722: Unrepresented Buyer Disclosure to help define for the consumer the limits of your involvement, the fact that you represent the Seller only and that the Buyer has the obligation to do their own due diligence. While this Disclosure is a helpful addition to the MAR Forms Library for members and consumers, it is not meant to take the place of careful practice. Members should ensure they are not blurring the lines of representation and agency.



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Q: Can the landlord charge a non-refundable deposit to a tenant to “hold” the housing? How about a small percentage fee to cover damage and any future work of the real estate broker?

A: The law is clear that the fees a landlord may charge are limited to First Month's Rent, Last Month's Rent, Security Deposit (not to exceed the amount of one month's rent), and Lock and Key Fee. No such “hold” fee is authorized under Massachusetts General Laws Ch. 186 s. 15B. Case law has made clear this statute is strictly enforced and narrowly interpreted. This year, a Massachusetts judge granted summary judgment, affirmed by the appellate court, for a tenant who was charged a \$3,400 “holding fee” finding that this was a violation of the security deposit statute and an unfair and deceptive business practice in violation of 93A awarding a total judgment of \$62,000. Read more about this case on MAR's Blog.

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