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MAR Legal Hotline Q&A



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Q. How should a REALTOR® handle a seller who wants to meet the prospective buyers before accepting an offer?

A. As a real estate professional, it is the job of the REALTOR® to educate their clients on the home selling process and assist the seller in achieving the most favorable terms and conditions for the sale of their property. Determining which offer to accept should be based solely on objective criteria. A seller wanting to meet interested buyers prior to selecting an offer introduces subjective information that may lead to a Fair Housing violation.

Race, color, religion, sex, handicap, familial status, national origin, gender identity, sexual orientation, ancestry, genetic information, marital status, age, veteran/military status, and source of income are all protected classes in Massachusetts. In meeting prospective buyers, the seller will learn information that will identify a buyer as belonging to one or more protected classes, information which is not relevant in determining that buyer's qualifications to purchase the property. The seller is not required to act with malice or intent to have violated the Fair Housing Act.

If faced with a seller wanting to meet interested buyers, first determine why the seller thinks a personal meeting is important. Counsel the seller on the risks associated with a personal meeting and try to develop a solution that will satisfy the seller within the parameters of the fair housing laws. To avoid any potential liability as the listing agent, decline to arrange an in-person meeting between the seller and the buyer.

Q. Who can be paid a referral fee?

A. Much like commissions earned from a real estate transaction, the payment of referral fees is limited to licensed real estate professionals. A referral from a neighbor cannot result in the payment of a referral fee, but a referral from a fellow REALTOR® may. A salesperson affiliated with a broker does not have the ability or authority to pay a referral fee to another agent, so it is important to ensure referral agreements are signed off by the brokers involved (see MAR Form 521). All referral fees to salespeople with active licenses must be paid through the salesperson's broker.

Massachusetts General Laws Chapter 112, Section 87XX ½ created an "inactive" license status for those licensees who have not completed the required continuing educational credits. This status prohibits the inactive licensee from affiliating with a broker or engaging in real estate brokerage activities; however, an inactive licensee may engage in referral business and receive a referral fee directly. This is the only instance in which a salesperson may be compensated directly.

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