

MAR Legal Hotline Q&A

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Q. Who may receive a referral fee?

- A.** Referral fees may only be paid to individuals who hold a real estate license; unlicensed individuals may **never** be given anything of value in exchange for a referral.

Within the broad category of “licensee,” however, there are several nuances that are important to take note of when paying a referral fee. An individual holding an active salesperson’s license may only receive real estate related compensation through the broker with whom they are affiliated. Any referral fee owed to an active salesperson would be paid to the salesperson’s broker and then distributed to the salesperson according to the terms of their agreement. An individual with an inactive salesperson’s license may receive a referral fee directly, as there is no affiliation requirement for inactive licensees (*see M.G.L. Ch. 112, Sec.87XX1/2*). An individual holding a broker’s license – active or inactive – may be paid a referral fee directly.

A common misconception is that attorneys are automatically real estate brokers in Massachusetts and, thus, may receive referral fees. While there is a streamlined process by which attorneys may obtain a broker’s license, it is not automatic. Therefore, it is important to confirm that any attorney seeking a referral fee is also licensed as a real estate broker.

Q. Who is responsible for snow removal at a property?

- A.** Massachusetts property owners have a legal obligation to keep their property free of snow and ice regardless of whether the accumulation is “natural” or “unnatural.” This obligation exists for owner-occupied, rental, and commercial properties alike. Slippery surfaces should be cleared and treated as soon as possible to avoid potential injury to visitors and guests. In fact, property owners should check municipal ordinances, as many cities and towns specify a timeframe in which surfaces must be cleared after a storm.



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Landlords may only transfer the obligation to clear snow and ice to a tenant if the dwelling has its own egress that is not shared with other units. This, however, must be included in the written rental agreement and does not absolve the landlord of their obligation to clear common areas, such as sidewalks, parking lots, and driveways.

REALTORS® should not take on the responsibility of snow removal on behalf of their clients as they may be exposing themselves and their clients to liability. REALTORS® should advise their clients to (1) review insurance policies to be sure that there is adequate coverage; (2) determine whether contractors or others 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 and ice should consult their attorney.

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