

MAR Legal Hotline Q&A

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December 2020

Q. What is my obligation as a REALTOR[®] for snow removal at listed properties?

- A.** Unless there is an agreement with the property owner that requires the REALTOR[®] to be responsible for snow removal, that responsibility lies with the property owner. Massachusetts requires property owners to use reasonable care for the protection of visitors. This duty of care mandates the removal of snow and ice from areas of the property such as driveways, walkways, and steps.

With COVID-19 restrictions still in place, many sellers are opting to host open houses with scheduled times for each interested buyer or to only let one group in at a time in order to reduce the number of individuals in the property at any given time. This process may lead to individuals having to wait to enter the property. Not only is it important to be mindful of appropriate distancing between waiting parties, but to also ensure that there is adequate space that is free of snow and ice for waiting to occur.

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.

Q. If an offer is submitted with a personal letter from the buyer what is my obligation to present that to the seller?

- A.** Buyer letters, or love letters as they are often referred to in real estate, have been under a lot of scrutiny recently. Often times, these letters contain personal information about the buyer(s) that identifies them as belonging to a protected class. If a seller's decision to accept an offer is influenced by that information, they, and their REALTOR[®], may be on the receiving end of a Fair Housing complaint. Malice or intent are not required when determining whether Fair Housing has been violated.

These letters, if submitted alongside an offer, would likely be considered part of the offer, obligating the REALTOR[®] to present it to their seller client. Massachusetts Regulations



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254 CMR 3.11(d) obligates a real estate licensee to present all offers submitted to the seller. The Board of Registration has opined that this legal obligation to present all offers may be modified based upon a lawful instruction from a seller. It is important for REALTORS® to discuss the importance of Fair Housing with their clients at the outset of the relationship. Upon explaining the potential risks of accepting personal letters from prospective buyers, a seller may instruct their REALTOR® to not accept personal letters. If this instruction is provided, document the parameters in the listing agreement or another writing, and inform prospective buyers and their agents that personal letters will not be shared with the seller(s).

The current market conditions have led to an uptick in the use of these types of letters. REALTORS® working with buyers should explain that personal letters should not be used. If a buyer insists on including a letter, counsel them to limit the information contained in the letter to the characteristics of the property, not the people.

The following are protected classes in Massachusetts: 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.

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