Who Must be Licensed

In Massachusetts, anyone who acts as a real estate broker or a real estate salesperson must be licensed (see Chapter 1). In an action to recover consideration owed for real estate brokerage services (i.e., a commission), the person seeking to recover must prove that he was duly licensed at the time the services were performed. Any person who acts as a broker or salesperson without a license is subject to a fine of up to $500. Massachusetts Real Estate License Law and Regulations are governed generally by the M.G.L. c. 13 § 54–57, M.G.L. c. 112 § 87PP- 87DDD1/2, and 254 CMR 2.00–7.00.
Exceptions

The Massachusetts Real Estate License Law does not apply to

- persons selling, buying, exchanging, renting, leasing, or managing their own property;
- managing agents or regular employees of managing agents who perform any real estate activities as part of their regular duties;
- persons acting for themselves in negotiating a loan secured or to be secured by a mortgage or other encumbrance on real property;
- licensed auctioneers;
- persons who deal in stocks, bonds, other securities, or certificates of beneficial interests in trusts;
Exceptions (continued)

- public officers or employees who are performing their official duties;
- persons who are acting as attorneys-in-fact under authority of a power of attorney from an owner that authorizes them to complete a real estate transaction;
- attorneys rendering services to clients (unless they are performing the duties of a broker for a commission, in which case they must pay a fee to be licensed but do not have to take a course or licensing examination);
- receivers, trustees in bankruptcy, administrators, conservators, executors, guardians, or other persons appointed by or acting under a court order;
- trustees or their regular employees acting under written instruments of trust, deeds or declarations of trust, or wills; and
- banks, credit unions, and insurance companies acting as fiduciaries, negotiating a mortgage on real estate, or acting for themselves.
The Massachusetts Board of Registration of Real Estate Brokers and Salespersons (called the board in this chapter) administers the license laws.

- The board consists of five members appointed by the governor to five-year terms.
- Three members must be full-time licensed real estate brokers who have been active in the real estate business for at least seven years.
- The other two members are designated representatives of the public.
- Members serve without compensation but are reimbursed for expenses incurred in carrying out their duties.
- The board must hold at least four regular meetings each year.
- Written records must be kept of all meetings, and the meetings must be open to the public for inspection.
- The board must submit an annual report to the governor that details its proceedings and expenses.
Licensing Procedure

Anyone who performs real estate brokerage services, as either a broker or salesperson, must be licensed. No salesperson may conduct or operate her own real estate business or act in any way except as the representative of a real estate broker.
Requirements for Issuance of License

- Broker or salesperson applicants must take and pass a written examination.
- All applicants for a salesperson’s license must submit proof that they have completed 40 classroom hours of instruction in real estate subjects approved by the board.
  - Those applicants who have successfully completed a course in real property while enrolled in an accredited law school in the Commonwealth of Massachusetts may also take an examination.
- Applicants for a broker’s license must prove that they have been actively associated as a salesperson with a real estate broker for at least three years at a minimum of 25 hours per week and have completed a total of 40 additional classroom hours of instruction approved by the board.
- Applicants must show that they have fulfilled the experience requirement of actively associating as a salesperson with a real estate broker within two years of taking the broker’s examination.
- The broker must have a current Massachusetts salesperson license.
- Neither a broker’s nor a salesperson’s license may be issued to anyone younger than 18.
Requirements for Issuance of License (nonresident)

A nonresident may be licensed as a broker or as a salesperson in Massachusetts if he is licensed in another state.

- A nonresident may be exempt from the written examination for licensure if the laws allowing for a similar exemption are extended to licensees of the Commonwealth. In circumstances where the exemption is not permitted, the classroom study and the general portion of the exam may be waived. However, the nonresident would be required to take the state portion of the exam. A nonresident is not required to maintain an office in Massachusetts but must maintain an office in the state where he is licensed.

All applications must be accompanied by the recommendations of three reputable citizens who reside in Massachusetts and are not related to the applicant. The recommendations must state that the applicant has a good reputation for honesty and fair dealing.
M.G.L. c. 112 § 87TT requires an applicant for a license to furnish evidence of citizenship or intent of citizenship. However, an opinion by the attorney general’s office (1975–76) declared such requirement as constitutionally defective and therefore should not be enforced. Although the state website still lists the requirement, the board, based upon the attorney general’s opinion, does not enforce the requirement of citizenship and has removed the requirement from the Massachusetts Real Estate License Law and Regulation booklet posted on the website.
● Both salespersons and brokers must, to the best of their knowledge and belief, have filed all state tax returns and paid all state taxes as required by law.

● Brokers must obtain a $5,000 surety bond on an original form (a copy is not acceptable), completed by the insurance agent, signed by the principal (i.e., candidate/examinee), and witnessed. The professional identification number provided by Pearson VUE at the time of an examination reservation must be included on the original bond and entered by the insurance agent.

● An applicant may be required to appear for a personal interview with the board. The board may also require an applicant to submit a report from an independent source regarding the applicant’s previous occupation or other material information.
Issuance of a Broker’s License to Corporations and Other Entities

A broker’s license may be held by a corporation, society, association, or partnership.

- At least one officer or partner must be designated as the entity’s representative for the purpose of obtaining a license.
- Each designated officer or partner must apply to the board for a broker's license in her own name.

A salesperson’s license, however, may not be issued to a corporation, society, association, or partnership.
Examination

The broker’s or salesperson’s licensing examination is prepared by Pearson VUE, the board’s designated independent testing service. The examination is designed to enable the board to determine the competence of the applicant to transact the business of a real estate broker or salesperson in Massachusetts.

- There is no limit on the number of applicants who may take the examination on any examination date.
- The broker’s examination must be offered at least six times a year, and the salesperson’s examination must be offered at least eight times a year.
- The applicant must pass the exam within two years of the date of completing the required salesperson or broker education.
- To enter the examination, the examinee must have two forms of identification, one of which must be a photo identification, such as a driver’s license.
Examination

The following rules apply to the examination process:

- Examinees are not permitted to bring notes, books, memoranda, dictionaries, or reference materials to the Pearson VUE Assessment Center. Examinees who are found with these or any other aids, such as watch alarms, listening devices, or recording or photographic devices during the exam will not be allowed to continue the exam.

- All computations must be shown on blank pages provided for that purpose. Calculators may be used only if they are hand-held, battery-operated, non-printing, and without an alphabetic keypad.
Examination

- Cellular phones, beepers, and any other electronic devices are not permitted during the exam, and there is no place for storage of personal belongings at the Pearson VUE Assessment Center.
- Copying questions or making notes about questions is prohibited.
- No one may remove copies of the examination from the examination room either before or after the examination.
- Examinees may leave the examination room to go to the restroom, but they will not be given more time to complete the exam.
- An applicant who fails to attain a passing score may file an application for reexamination after 24 hours.

Violation of any rule may result in the disqualification of the applicant.
Issuance of License

- A real estate license is valid for a period of two years.
- The fees for issuance and renewal of a broker’s or salesperson’s license are waived for blind persons and paraplegic veterans.
- An applicant for a broker’s license must provide the board with a $5,000 bond, payable to the Commonwealth, for the benefit of any person injured by the broker’s actions. The bond is renewable every five years.
- In the event that a licensed broker who is the sole proprietor of a real estate business should die, the board may issue a temporary license to the deceased’s personal representative.
  - The temporary license authorizes a licensee to continue the operation of the business for up to one year from the broker’s date of death.
Continuing Education

- Massachusetts law requires 12 hours of continuing education within each two-year renewal period in topics approved by the board in order for the license to be active.
- Every broker and salesperson must provide written certification that the required courses were successfully completed.
- While an out-of-state licensee who is not required to take an examination to be licensed in the Commonwealth does not need to comply with Massachusetts continuing education requirements, such a licensee must comply with the continuing education requirements of the licensee’s home state.
Inactive Licensee

- With a valid but inactive license, an agent cannot practice real estate but can earn a referral fee from active licensed brokers and can assist with or direct the procuring of prospects.
- A license may remain inactive for an indefinite period.
- If a licensee who is inactive practices real estate, the licensee’s license may be revoked.
- A licensee who is inactive may apply to the board to reactivate the license upon demonstrating the completion of continuing education requirements for the renewal period immediately preceding the application for reactivation.
Usual Place of Business

A licensed resident broker must maintain a usual place of business within Massachusetts and must conspicuously display his license (or a certified copy). The broker must promptly (i.e., within 30 days) give written notification to the board of any change of business location. Failure to notify the board is grounds for revoking the broker’s license.
Suspension, Revocation, or Refusal of License Renewal

In the event that the board receives a verified, written complaint about a broker or salesperson, her license may be suspended, revoked, or not renewed if the board finds that the broker or salesperson

- obtained her license by false or fraudulent representation;
- knowingly made any substantial misrepresentation;
- acted in the dual capacity of broker and undisclosed principal in the same transaction;
- acted for more than one party to a transaction without the knowledge and consent of all the parties;
- failed, within a reasonable time, to account for or remit any money belonging to others that has come into her possession as a broker or salesperson;
Suspension, Revocation, or Refusal of License Renewal

- paid commissions or fees to an unlicensed person who acted as a real estate broker or salesperson, and who was required to have been licensed;
- accepted, gave, or charged any undisclosed commission, rebate, or profit on expenditures for a principal;
- induced any party to break a real estate contract or lease for the personal gain of the licensee;
- commingled the money or other property of a principal with her own;
- failed to give both the buyer and the seller a copy of the purchase and sale agreement;
Suspension, Revocation, or Refusal of License Renewal

- Committed any act expressly prohibited by Massachusetts Real Estate License Law;
- Committed blockbusting
- Engaged in the sale of real property that was located in a land development in another state and that was promoted or advertised in Massachusetts, the owner or developer of which failed to comply with all filing requirements, unless the owner or developer of such land submitted to the board full particulars related to the land and proposed terms of sale and deposited with the board funds to pay the expense of an investigation; or
- Accepted a net listing from a prospective seller
Enforcement

The board is empowered to conduct investigations and hearings and to take other appropriate and necessary action to enforce the license law. All complaints submitted to the board must be in writing and signed by the complainant. A hearing must be held upon 10 days’ notice to the person charged, and no renewal of a license shall be refused and no license shall be suspended or revoked except after the hearing.
Broker-Salesperson Relationship

- A licensed salesperson must be engaged by a licensed broker.
- A salesperson may not be licensed as both a salesperson and a broker at the same time.
- Brokers must furnish the board with the names, addresses, and license numbers of all brokers and salespersons engaged by them.
- The board must also be notified of all terminations of the broker-salesperson relationship.
- Licensed salespersons must promptly notify the board of any change in their business address.
- A broker who is employed by another broker is called a broker salesperson, and during the time of her association may not exercise her rights as a broker (e.g., hold escrow monies, advertise in her own name, sue a client for a commission, engage any real estate salesperson). Although many states use the term broker associate, Massachusetts does not.
Advertising

- A broker may not advertise in any way that is false or misleading.
- Blind advertising is prohibited.
- Any advertisement placed by a broker must affirmatively and unmistakably state that the advertiser is a real estate broker and not a private party.
- Advertisements may not be limited to post office box numbers, telephone numbers, facsimile numbers, electronic address, or a street address.
- The broker’s business name and address must appear in the advertisement.
- Salespersons are prohibited from independently advertising.
- Brokers may not advertise to purchase, sell, rent, mortgage, or exchange any real property in a manner that indicates, either directly or indirectly, any unlawful discrimination against any individual or group (see Chapter 15).
Handling Other People’s Money

One of the most common grounds for discipline of licensees in Massachusetts is the failure to properly handle and account for money.

- All money received by the broker that belongs to another party must be deposited in a fiduciary bank account, called an escrow account, maintained by the broker as a depository for funds.
- All deposits or payments received by a real estate salesperson, or by a broker engaged by another broker, must be turned over to the engaging broker.
- Every broker must keep records of funds deposited in his escrow account.
- Every broker must also keep a copy of each check deposited into and withdrawn from the escrow account for a period of three years from the date of issuance.
- All such funds and records are subject to inspection by the board or its agents.
Disclosure of Interest in Property

A real estate broker or salesperson may not, either directly or indirectly, buy property in which she has acquired an interest or which she has listed without first fully disclosing her interest. The owner must acknowledge that disclosure has been made.

Before a real estate broker or salesperson buys property for a client in which she, or any relative, has an interest, the interest must be disclosed to all parties. Similarly, a real estate broker or salesperson must disclose to a purchaser any interest she or any relative may have in any property prior to its sale.

A broker may not take an option to purchase property for which she has been approached to act as a broker without first disclosing that she is now acting as a prospective buyer rather than as a broker or agent for the owner.
Use of Attorney

No broker or salesperson may advise against the use of an attorney’s services in any real estate transaction.
Duty to Report All Offers

All offers obtained by brokers or salespersons on a property must be immediately presented to the owner. It is the owner’s right to decide whether an offer is legitimate or unreasonable.
Consumer-Licensee Relationship Disclosure

All real estate brokers or salespersons must provide each prospective purchaser and seller with a form disclosing the broker’s or salesperson’s relationship with the prospective purchaser or seller and disclosing the licensee’s relationship with others in his firm (see Chapter 1).

- The notice must be provided at the time of the first personal meeting between the broker or salesperson and the seller or purchaser where a specific property is discussed, where the broker or salesperson represents either the seller or the purchaser exclusively.
- Dual agency and designated agency are permitted if both parties give their informed written consent and receive written notice upon the occurrence of dual or designated agency.
- Permission to offer subagency is now required in writing, along with an explanation of vicarious liability.
- A licensee may also work with both a seller and a buyer as a facilitator and not represent either party.
Real estate brokers are required to distribute a brochure or fact sheet produced by the Office of Consumer Affairs about home inspections to home buyers, and brokers are prohibited (except in the case of buyers’ agents) from directly recommending a home inspector. Brokers may provide a list of licensed inspectors in Massachusetts upon request. This disclosure is to be made before the buyer signs an offer to purchase agreement.
Massachusetts law no longer contains regulations for apartment listing services. It does, however, have a section on apartment rentals. Brokers and salespersons must provide a written notice to prospective tenants as to whether a fee shall be charged for procuring a rental, its amount, the manner and time of its payment, and whether it shall be paid even if a tenancy is not created (see Figure 10.1).

- The notice is to be given at the first personal meeting between the broker or salesperson and the prospective tenant.
- The prospective tenant and broker or salesperson must both sign the agreement.
- It is to be dated and contain the broker’s or salesperson’s license number.
- If the prospective tenant declines to sign, this must be noted on the form and the tenant’s name and refusal must be stipulated.
- This notice, all listings, checks, and written documents are to be saved for three years.
- Any advertising regarding the availability of an apartment must disclose the following in print, no smaller than that for the apartment itself: “The apartment advertised may no longer be available for rent.”
The promotional sale of out-of-state property is strictly regulated by the real estate license law.

- No real property located outside Massachusetts may be offered for sale or sold in the Commonwealth unless it is offered for sale and sold through a real estate broker licensed in Massachusetts.
- Out-of-state property must be registered with the board, and this registration and its accompanying fee are to be renewed annually.
- A broker who represents an out-of-state owner or developer shall notify the board of this agency relationship within seven days of its inception.
Complaint Procedure

The Division of Professional Licensure (hereinafter called the division) of the Massachusetts Board of Registration of Real Estate Brokers and Salespersons maintains a complaint procedure for those instances when a consumer wants to issue a complaint against a licensee.

Grounds for consumer complaints can include, among others, negligence resulting in physical harm to a consumer; misuse of client funds or records; failure to adhere to acceptable standards of practice; fraud; practice while impaired by alcohol or drugs; sexual misconduct; fraudulent procurement of a license; and practice while a license has lapsed.
1. The Board of Registration of Real Estate Brokers and Salespersons was created to

   a. make new laws.
   b. make recommendations to the legislature.
   c. administer the license laws.
   d. raise money for the state.
Quiz

1. c (124–125) The Board of Registration of Real Estate Brokers and Salespersons was created to administer the license law.
2. Applicants for a salesperson’s license must

a. be at least 18 years old and have completed a 12-hour exam prep course.
b. have completed 40 classroom hours of instruction in real estate subjects.
c. have been actively engaged in real estate activities for at least six months.
d. submit recommendations from three persons, two of whom are Massachusetts residents.
2. b (125) Prior to June 1, 2011, any person who applies for a salesperson’s license must provide proof that he has completed 24 hours of classroom instruction in real estate subjects approved by the board. After June 1, 2011, the requirement increases to 40 hours.
Quiz

3. Which of these is NOT exempt from the license law?

a. A salesperson employed by a broker
b. A receiver acting under a court order
c. A loan officer in a credit union
d. A licensed auctioneer
3. a (125) Any salesperson that associates with a broker must have a valid, active salesperson’s license.
4. In the event a sole proprietor of a real estate brokerage firm dies, a temporary license is issued. The license

a. is good for one year and is not renewable.

b. may be renewed if necessary.

c. becomes a permanent license after one year.

d. is given automatically.
4. a (127) Upon the death of a sole proprietor, the board will issue a temporary license good for one year from the broker’s date of death.
5. A corporation may have a broker license if

a. all its officers are personally licensed as real estate brokers.
b. one officer is licensed as a broker and designated to perform all real estate duties.
c. the corporation applies for a license.
d. the corporation already has a salesperson’s license.
5. b (126) When a license is issued to a corporation, at least one officer or partner must obtain a broker’s license in her own name, and that officer is designated to perform all real estate activities.
Quiz

6. A man holds a Massachusetts real estate broker’s license. His brother took, and passed, the Massachusetts exam for him because the man’s car wouldn’t start that day. The man lives in Massachusetts, but his only office is in New Hampshire, five minutes from the Massachusetts border. The man keeps his license locked safely in a file cabinet in his office’s basement. He recently sold a house, although he neglected to tell the buyers that he was the owner of the house. The man deposited the buyers’ earnest money in his wife’s checking account for safekeeping. After closing the sale, the man visited neighboring homeowners to give them his card and to mention that the buyers were poor immigrants and that their presence in the neighborhood would likely depress everyone else’s property values. How many violations of the Massachusetts license law has the man committed?

a. Two
b. Four
c. Six
d. None, because his office is in New Hampshire
6. c (128–129) The man has committed six violations of the Massachusetts License Law: (1) He obtained his license fraudulently, (2) he does not maintain a usual place of business within the Commonwealth because his only office is in New Hampshire, (3) he did not prominently display his license as required, (4) he did not disclose that he is the owner of the house as required, (5) he commingled the earnest money into his wife’s checking account, and (6) he committed blockbusting by soliciting listings based on the potential change in value of properties due to the buyers’ ethnic and religious beliefs. 90 days.
Quiz

7. Which of the following, if true, would NOT be grounds for revoking the broker’s or salesperson’s license?

a. Paying a commission to an unlicensed person who acted as a real estate salesperson
b. Inducing a seller to break a contract so the broker can present a higher offer
c. Affirmatively soliciting residential properties for sale
d. Accepting a disclosed, voluntary, net listing from a prospective seller
7. c (128–129) Soliciting residential properties for sale is a normal part of a licensee’s job.
8. When a complaint has been filed with the board against a licensee, the
   a. licensee must cease acting as a salesperson.
   b. licensee’s license is immediately revoked.
   c. accused is tried in superior court.
   d. board may conduct an investigation to determine if the complaint is justified.
8. d (128) Upon receipt of a verified, written complaint, the board will hold a hearing to review the facts. Should it be determined that the licensee has violated any part of the license law, the board may suspend, revoke, or refuse to renew the licensee’s license.
9. All deposits or payments of money received by a broker or salesperson must be

   a. kept in a designated location in the broker’s office.
   b. placed in the salesperson’s savings account.
   c. deposited in a special bank account maintained by the broker for such deposits.
   d. immediately turned over to the seller.
9. c (131) All money received by the broker that belongs to another party must be deposited in a fiduciary bank account, called an escrow account, maintained by the broker as a depository for funds unless otherwise agreed to in writing.
10. When a licensed broker changes his place of business,

a. a new license will be issued by the board immediately.
b. his license may be revoked if the board is not notified.
c. a new license will be issued for a full term.
d. the new address must be approved by the board.
10. b (128) A licensed broker must promptly notify the board of any changes in his place of business (within 30 days). Failure to do so is grounds for revocation of the broker’s license.
11. A broker has received three offers on a property within an hour. The property is listed for $210,000. Offer A is for $209,500, offer B is for $190,000, and offer C is for $175,000. What should she do?

a. Ignore offer C because it is ridiculously low
b. Find out if the makers of offers A and B want to raise their offers under the circumstances
c. Present all offers immediately
d. Present the highest offer only
11. c (131) All offers must be presented forthwith to the property owner. It is up to the owner to decide if an offer is too low.
12. The Board of Registration is informed that a broker was guilty of discrimination on June 20 of this year. The broker had been found guilty of a similar charge on June 5 of the previous year. For how many days will the board suspend the broker’s license?

a. 45  
b. 50  
c. 60  
d. 90
12. d (129) The first time a broker is found guilty of discriminatory practices, she will receive a suspension of 60 days. If the violation occurs within two years of the previous violation, then the suspension shall be for a period of 90 days.
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Kate Lanagan MacGregor | Instructor/Owner
Kate@agentrising.com | 508-728-3648 | www.katelanaganmacgregor.com

Marie Greany | Dean of Students
Marie@agentrising.com | 508-207-3186 | www.agentrising.com