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Division of Professional Licensure
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Board of Home Inspectors

BARBARA ANTHONY
UNDERSECRETARY OF OFFICE
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BUSINESS REGULATION

MARK R. KMETZ
DIRECTOR, DIVISION OF
PROFESSIONAL LICENSURE

November 14, 2012

Fellow Inspectors:

In reviewing the various cases that have come before the **Division of Professional Licensure, Board of Home Inspectors**, herein after known as the **Board,** two of the most prominent contract issues subject to sanctions are:

1. Indicating the inspection standards used for the inspection are other than the Massachusetts Standards of Practice, 266 CMR 6.00. (A number of contracts indicate NAHI, ASHI and/or others).

   See 266 CMR 6.03.7

"Regardless of any additional professional registrations or licenses held by the Inspector and/or Trainee practicing in the Commonwealth of Massachusetts he/she shall conduct his/her Home Inspection in accordance with 266 CMR 6.00".

2. Having a contract that contains limited liability language:

   M.G.L. c 112, § 225(6) (v)

"Attempting to limit liability for negligent or wrongful errors or omissions by use of a clause within a performance contract that limits the cost of damages for negligent or wrongful errors or omissions."

Should you have any questions about the language in your contract, **consult your attorney** to ensure that your contract is free of such language.

There are two additional items that many need to be aware of:

3. The **Board** has also developed a method for handling an individual who knowingly permits a real estate broker or salesperson (as defined in M.G.L. c 112, § 87PP) to directly recommend his/her services.

See 266 CMR 8.03.3 (b) 4.

"**Registrants shall not knowingly permit a real estate broker or salesperson (as defined in M.G.L. c 112, § 87PP) to directly recommend his/her services**. This prohibition shall not apply if there is a written contractual agreement or a written agency disclosure between a specific buyer and the real estate broker specifying the real estate broker is acting exclusively for the buyer as a Buyer's Broker".

To avoid any misunderstanding your best bet is to request removing your name and/or the name of your company from the realtors' website.

4. The **Board** is also addressing the issue of providing insurance, waivers of liability and/or indemnifying real-estate offices, Buyer's Brokers, real estate brokers or salespersons (as defined in M.G.L. c 112, § 87PP and M.G.L. c 112, § 87YY½) and/or Seller's Representatives. Your best bet in avoiding the fine is to go over your policy with your insurer to see if your policy is free of any endorsements providing this coverage.

See 266 CMR 8.03.3 (b) 5.

"**Registrants shall not provide fees, gifts, insurance, waivers of liability, or other forms of gratuities** to real-estate offices, Buyer's Brokers, real estate brokers or salespersons (as defined in M.G.L. c 112, § 87PP and M.G.L. c 112, § 87YY½) and/or Seller's Representatives".

Each instance is treated as a separate violation, carries a fine of $ 1,000 and may affect the status of your license.

Your attention is also directed to 266 CMR 8.03.3 (b) 7

"Registrants having knowledge of any alleged violation of 266 CMR shall cooperate with the **Board** in furnishing such information or assistance as may be required".

To protect yourself from any future action by the Board, you are advised to notify the real estate broker and/or company requesting that your name and/or the name of your company be removed from the listing. Copies of this request must also be mailed to the address listed on the letterhead. Letters should be sent certified mail, return receipt requested, so that you have a copy for your files.

I am pleased to inform you that the number of cases brought forth to the board has declined over the years. In general the majority of licensees have been conducting themselves in a very professional manner, which has protected the profession and the citizens of the commonwealth.

Sincerely,

Michael McDowell

Michael McDowell,
Board Chairman