

## MASSACHUSETTS CONSENT TO DUAL AGENCY

A real estate broker or salesperson may act as a dual agent who represents both prospective buyer and seller with their informed written consent. A dual agent is authorized to assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller. Consequently, a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds.

Buyers and sellers should understand that material information received from either client that is confidential may not be disclosed by a dual agent, except: (1) if disclosure is expressly authorized; (2) if such disclosure is required by law; (3) if such disclosure is intended to prevent illegal conduct; or (4) if such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson. This duty of confidentiality shall continue after termination of the brokerage relationship.

### BUYER/SELLER ACKNOWLEDGMENT

I acknowledge and agree that \_\_\_\_\_ (insert name of licensee) is (are) authorized to represent both the buyer and seller as a dual agent. I hereby consent to dual agency.

\_\_\_\_\_  
Signature of Buyer / Seller  
(strike one)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Buyer / Seller  
(strike one)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

### BROKER/SALESPERSON ACKNOWLEDGMENT

I acknowledge and agree to represent the above named consumer as a dual agent and my signature below signifies that I understand the duties and responsibilities of that relationship, and explained to the consumer that I am a dual agent and therefore will assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller.

\_\_\_\_\_  
Signature of Broker/Salesperson

\_\_\_\_\_  
License Number/Type (Broker or Salesperson)

\_\_\_\_\_  
Date



## TYPES OF AGENCY REPRESENTATION

### **SELLER'S AGENT**

A seller can engage the services of a real estate agent to sell his property (called the listing agent) and the real estate agent is then the agent for the seller who becomes the agent's client. This means that the real estate agent represents the seller. The agent owes the seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the seller's interests first and negotiate for the best price and terms for their client, the seller. (The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions).

### **BUYER'S AGENT**

A buyer can engage the services of a real estate agent to purchase property and the real estate agent is then the agent for the buyer who becomes the agent's client. This means that the real estate agent represents the buyer. The agent owes the buyer undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the buyer's interests first and negotiate for the best price and terms for their client, the buyer. (The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions).

### **(NON-AGENT) FACILITATOR**

When a real estate agent works as a facilitator that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

### **DESIGNATED SELLER'S AND BUYER'S AGENT**

A real estate agent can be designated by another real estate agent (the appointing or designating agent) to represent either the buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate agent once so designated is then the agent for either the buyer or seller who becomes their client. The designated agent owes the buyer or seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put their client's interests first and negotiate for the best price and terms for their client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer then the appointing agent becomes a dual agent. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. The dual agent does not represent either the buyer or the seller solely only your designated agent represents your interests. The written consent for designated agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample designated agency consent is available at the Board's website at [www.mass.gov/dpl/re](http://www.mass.gov/dpl/re).

### **DUAL AGENT**

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. The written consent for dual agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample dual agency consent is available at the Board's website at [www.mass.gov/dpl/re](http://www.mass.gov/dpl/re).



# The Commonwealth of Massachusetts

Executive Office of Health and Human Services  
Department of Public Health  
Environmental Health  
250 Washington Street, 7th Floor  
Boston, MA 02108  
(800) 532-9571

## CHILDHOOD LEAD POISONING PREVENTION PROGRAM (CLPPP) PROPERTY TRANSFER LEAD PAINT NOTIFICATION

Under Massachusetts and federal law, this notification package must be given to prospective purchasers of homes built before 1978. This package must be given in full to meet state and federal requirements. It may be copied, as long as the type size is not made smaller. Every seller and any real estate agent involved in the sale must give this package before the signing of a purchase and sale agreement, a lease with an option to purchase, or, under state law, a memorandum of agreement used in foreclosure sales. Sellers and agents must also tell the prospective purchaser any information they know about lead in the home. They must also give a copy of any lead inspection report, risk assessment report, Letter of Compliance or Letter of Interim Control. **This package is for compliance with both state and federal lead notification requirements.**

Real estate agents must also tell prospective purchasers that under the state Lead Law, a new owner of a home built before 1978 in which a child under six will live or continue to live must have it either delead or brought under interim control within 90 days of taking title. This package includes a check list to certify that the prospective purchaser has been fully notified by the real estate agent. This certification should be filled out and signed by the prospective purchaser before the signing of a purchase and sale agreement, a lease with an option to purchase or a memorandum of agreement used in a foreclosure sale. It should be kept in the real estate agent's files. After getting notice, the prospective purchaser has at least 10 days, or longer if agreed to by the seller and buyer, to have a lead inspection or risk assessment if he or she chooses to have one, except in cases of foreclosure sales. There is no requirement for a lead inspection or risk assessment before a sale. A list of private lead inspectors and risk assessors licensed by the Department of Public Health is attached and can also be found on the Childhood Lead Poisoning Prevention Program's website at [www.mass.gov/dph/clppp](http://www.mass.gov/dph/clppp).

Sellers and real estate agents who do not meet these requirements can face a civil penalty of up to \$1,000 under state law; a civil penalty of up to \$10,000 and possible criminal sanctions under federal law, as well as liability for resulting damages. In addition, a real estate agent who fails to meet these requirements may be liable under the Massachusetts Consumer Protection Act.

The property transfer notification program began in 1988 and has been very successful. It provides information you need to protect your child, or your tenants' child, from lead poisoning. Massachusetts has a tax credit of up to \$1,500 for each unit delead. There are also a number of grants and no-interest or low-interest loans available for deleading. It's up to you to do your part toward ending lead poisoning.

PLEASE TAKE THE TIME TO READ THIS DOCUMENT. LEAD POISONING IS THE NATION'S LEADING ENVIRONMENTAL HAZARD AFFECTING CHILDREN. DON'T GAMBLE WITH YOUR CHILD'S FUTURE.



## **What is lead poisoning? How do children become lead poisoned?**

Lead poisoning is caused by exposure to lead in the environment. It is most dangerous for children under six years old. In young children, too much lead in the body can cause permanent harm to the brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children's bodies can slow growth and cause learning and behavioral problems. The main way children get lead poisoned is by swallowing lead paint dust. They do not have to chew on leaded surfaces or eat paint chips to become poisoned. Most childhood lead poisoning is caused by children's normal behavior of putting their hands or other things, such as toys, in their mouths. If their hands or these objects have touched lead dust, this may add lead to their bodies. Children can also be exposed to lead from such other sources as lead-contaminated soil or water, but these sources alone rarely cause lead poisoning. Lead can be found in soil near old, lead-painted houses. If children play in bare, leaded soil, or eat vegetables or fruit grown in such soil, or if leaded soil is tracked into the home and gets on children's hands or toys, lead may enter their bodies.

## **What are the symptoms of lead poisoning? How is it detected?**

Most lead poisoned children have no special symptoms. The only way to find out if a child is lead poisoned is to have his or her blood tested. The Massachusetts Lead Law requires all children between 9 months and 3 years old to be screened annually for lead, and again at age 4 if living in a high-risk community. If your child has been exposed to lead, or if you do not know if your child under age six has been screened for lead, ask your child's doctor, other health care provider or your local board of health for a simple screening test of your child.

## **What is the treatment for lead poisoning?**

Treatment of a lead poisoned child starts with finding and removing the lead hazards to which the child is exposed. This will include a lead inspection of the child's home, and if lead hazards are identified, deleading of the home. Medical treatment depends on the child's blood lead level and the child's response to the removal of the lead source. Parents will be taught about protecting their child from lead exposure. They will need to watch the child's progress through frequent blood tests. If necessary, the child may receive special drugs to help rid his body of excess lead. With this treatment, drugs are given daily for as long as several weeks. Sometimes this must be done more than once. A child who has been lead poisoned will need a lot of blood tests for a year or more. He or she should be tested for learning problems before starting school.

## **Are children under six years old the only ones at risk of lead poisoning?**

No. Young children are usually more easily and seriously poisoned than older children or adults, but lead is harmful to everyone. Lead in the body of a pregnant woman can hurt her baby before birth. Older children and adults who live in older housing with lead paint hazards may become exposed to lead and could potentially develop lead poisoning through home renovation. Most lead poisoning in adults is caused by work-related exposure or home renovation. Even hobby supplies, such as stained glass, bullets and fishing sinkers, can expose people to lead. Lead poisoning in adults can cause high blood pressure, problems having children for both men and women, digestive problems, nerve disorders, memory loss and problems concentrating, and muscle and joint pain. Adults who have any of these symptoms and who have been exposed to lead should consider being screened for lead. Those who are regularly exposed to lead through their work are required by law to have their blood tested once a year for lead.

## **What are the dangers of lead paint in homes, and when was it used?**

Lead paint in homes causes almost all childhood lead poisoning. Lead is so harmful that even a small amount of fine lead dust that cannot be seen can poison a child. Lead paint covered by layers of nonleaded paint can still poison children, especially when it is disturbed, such as through normal wear and tear, or home repair work. When such lead paint is on moving surfaces, such as windows, fine lead dust is released through normal use. This dust settles, where it can be easily picked up on children's toys and fingers. Household paint with poisonous (now illegal) levels of lead was in use in Massachusetts from the 1690s until 1978. In 1978, the U.S. government banned lead from house paint. Lead can be found in all types of pre-1978 homes: homes in cities, suburbs or the countryside; private housing and state or federal public housing; single-family and multi-family homes. The older the house, the more likely it is to contain lead paint. The older the paint, the higher the likely lead content.

## **Can routine home repairs cause lead poisoning?**

There can be a danger of lead poisoning whenever painted surfaces inside or outside the home are scraped for repainting, or woodwork is stripped or removed, or windows or walls are removed. This is because lead paint is found in almost all Massachusetts homes built before 1978, and so many of Massachusetts' homes are old. Do not use power sanders, propane torches or heat guns to remove leaded paint, as these methods create a lot of lead dust and fumes. Temporarily move your family (especially children and pregnant women) out of the home while the work is being done and cleaned up, or at a minimum, tape up plastic sheets to completely seal off the work area. Get a lead inspection done, so that you will know which surfaces have lead paint and need extra care when preparing for and doing home repair work, and during cleanup afterwards. Do not do repairs in older homes without learning about safe ways to do the work to reduce the danger of lead dust. Hundreds of cases of childhood and adult lead poisoning result each year from do-it-yourself home projects.

## **How does the owner of a home built before 1978 in which a child under six years old lives meet the requirements of the Massachusetts Lead Law?**

The first step is to have a lead inspection or risk assessment done. A licensed lead inspector will test the surfaces of the home for lead and give the owner a written report that states where there is lead in amounts considered a violation by state law, and record any lead hazards that must be corrected. A risk assessor, who is a specially licensed lead inspector, will do a lead inspection plus a risk assessment, during which he or she checks the home for the most serious lead hazards that must be fixed for interim control. (See question about interim control, below.) Only a licensed deleader may do high-risk work, such as removing lead paint or repairing chipping and peeling lead paint. Either a deleader, the owner or someone who works for the owner (an agent) can do certain other deleading and interim control tasks. (See next question.) An owner or agent must get special training to perform the deleading tasks they may do. After the work is done, the lead inspector or risk assessor returns to check the home. He or she may take dust samples to test for lead and makes sure the home has been properly cleaned up. If everything is fine, he or she gives the owner a Letter of Compliance or a Letter of Interim Control. After getting one of these letters, the owner must take reasonable care of the property, mainly by making sure there is no peeling lead paint.

## **Can I do some of the deleading myself?**

In Massachusetts, the owner or someone who works for the owner (an agent) can do certain deleading activities. These include covering surfaces with certain materials; removing certain building parts; capping baseboards; installing vinyl siding on the exterior, and applying encapsulants. Encapsulants are special liquid coatings made to be long-lasting barriers over lead paint. Before any of these deleading tasks are done, the owner must first have a lead inspection done and whoever is going to do the work must get special training. Contact CLPPP for information about this training. In addition, owners or their agents can perform structural repairs and lead dust cleaning for interim control. Before doing this work, owners and agents should get and read CLPPP's interim control booklet.

### **Is there financial help for deleading?**

There is a state income tax credit of up to \$1,500 per unit for full deleading. A credit of up to \$500 per unit is available for interim control work that also contributes to full deleading. There are also grants and no-interest, deferred loans, or low-interest loans available to eligible property owners. These funds are available through the U.S. Department of Housing and Urban Development, the Massachusetts Executive Office of Communities and Development, the Massachusetts Housing Finance Authority, local city and town community development planning departments, and banks.

### **Does deleading improve the value of my property?**

Many homeowners have found that the benefits of deleading are not unlike the benefits of other home improvement projects. Replacement windows and doors can save the homeowner money because they are more energy efficient. Having a legally delead home, whether it is a single-family or multi-family, owner-occupied or rental unit, can make it easier to sell or rent, often at a better price.

### **What surfaces must be delead for full compliance with the Massachusetts Lead Law?**

Owners of homes built before 1978 where children under six years of age live must have the following lead hazards corrected to get a Letter of Compliance:

- \* any peeling, chipping or flaking lead paint, plaster or putty;
- \* intact lead paint, other coating or putty on moveable parts of windows with sills five feet or less from the floor or ground and those surfaces that come in contact with moveable parts;
- \* intact lead paint or other coating on "accessible mouthable surfaces." These surfaces generally include woodwork, such as doors, door jambs, stairs and stair rails, and window casings.

### **What is interim control?**

Interim control is a set of temporary measures that property owners can take to correct urgent lead hazards, especially peeling or chipping lead paint and lead dust. These steps protect residents from lead poisoning until the home is fully delead. Homes in good condition may need little or no work to get interim control status. Owners then have up to two years before they have to fully delead the home. For that period, they are protected from strict liability under the state Lead Law should a child become lead poisoned in the home, as long as the home is maintained and the conditions for interim control are met. In addition to the repair of peeling and chipping lead paint and the cleaning of lead dust, other work may be necessary for interim control. This includes fixing water leaks or other damage that makes lead paint peel and chip; making window wells smooth and easy to clean; making windows work properly and deleading any badly chipping and peeling lead-painted surfaces.

Property owners interested in interim control must hire a licensed risk assessor. He or she will then decide what work, if any, needs to be done to get a Letter of Interim Control. The original Letter of Interim Control is good for one year. The property owner can have the home reinspected before the end of that year, and if all conditions are met, the home can be recertified for another year. By the end of the second year, the home must be delead, if a child under six still lives there, for the owner to remain free of strict liability.

### **Does my family have to be out of the house during deleading or interim control work?**

Residents must be out of the house for the entire time that a deleader is doing deleading work inside a home, and for some of the deleading work by owners and their agents. Residents may stay at home, but out of the work area, while a deleader, property owner or owner's agent without a deleader's license does certain other deleading tasks, or such interim control work as structural repairs or lead dust cleaning. Residents who have been out of the house may not return until the deleading work that made it necessary for them to leave is complete, the home is cleaned up, and a lead inspector or risk assessor has checked and found this work has been properly done and dust samples have passed. For complete details, contact CLPPP.

### **Are there any exemptions to the Massachusetts Lead Law?**

The Lead Law applies only to homes built before 1978 in which a child under six lives. Any home or apartment having fewer than 250 square feet of living space, or which is in a rooming house, is exempt, as long as no child under age six is living there. Finally, homes rented for 31 days or less for vacation or recreational purposes are also exempt, as long as there is no chipping or peeling lead paint in the home and the renter has received the Short-Term Vacation Rental Notification.

### **What are the requirements of the state Lead Law if there is a lease with an option to buy?**

When there is a lease with an option to buy a home built before 1978 in effect, the owner of the property must have it delead or brought under interim control if a child under six lives there. If the tenant with an option to buy such a home proceeds to purchase it, he or she becomes responsible for meeting the requirements of the Lead Law if a child under six lives there after the purchase.

### **How can I find out about how lead inspections, risk assessments and deleading should be done?**

All lead inspections, risk assessments and deleading must be done according to the Regulations for Lead Poisoning Prevention and Control, 105 Code of Massachusetts Regulations 460.000 and the Deleading Regulations, 454 CMR 22.00. For full information, homeowners may get these regulations at the State House Book Store, State House, Boston, MA 02133. The phone number is (617) 727-2834.

Lead inspectors and risk assessors licensed by the Department of Public Health have been trained and are experienced in using the state-approved methods for testing for lead paint. These methods are the following: use of a solution of sodium sulfide, a portable x-ray fluorescence machine or lab tests of paint samples removed from the home. Deleaders licensed by the Department of Labor and Workforce Development have been trained to use safe methods to prepare for and do deleading work, and clean up afterwards. They may delead using any of the following methods: removing paint, removing building parts, covering and encapsulating. When removing paint, they cannot use certain very dangerous methods, such as open flame burning, dry abrasive blasting or power sanding without a special vacuum attachment.

### **How do I get a lead inspection or risk assessment?**

Included as part of this notification package is a listing of private licensed lead inspectors organized alphabetically, and private licensed risk assessors, similarly organized. Ask to see the inspector or risk assessor's license, to make sure it is current. You should arrange for the inspection or risk assessment as quickly as possible after deciding you want one. If you do have an inspection or risk assessment, you must give the seller a copy of the report.

### **What is the best time to delead or undertake interim control?**

The best time to delead a home or bring it under interim control is when the home is vacant, so that residents will not be exposed to lead and household furnishings will not be contaminated with lead. In addition, it often is efficient, and reduces costs, to combine deleading with other repair work being done to a vacant home.

### **What is a Letter of Compliance and a Letter of Interim Control?**

Under the state Lead Law, a Letter of Compliance is a legal letter that says either that there are no lead paint hazards or that the home has been delead. The letter is signed and dated by a licensed lead inspector. A Letter of Interim Control is a legal letter that says work necessary to make a home temporarily safe from lead hazards has been done. It is signed and dated by a licensed risk assessor. A Letter of Interim Control is good for one year, but can be renewed for one more year. The owner must fully delead the home and get a Letter of Compliance by the end of the second year if a child under six still lives there. The Lead Law does not require the removal of all lead paint from a home. An owner who gets a Letter of Compliance or Letter of Interim Control must take reasonable care to keep up the home, mainly by making sure there is no chipping or peeling lead paint. If an owner fails to take reasonable steps to maintain the home, he or she may become liable for damages to a child lead poisoned as a result of the owner's breach of that duty of reasonable care.

## **RENTAL PROPERTY INFORMATION**

### **What liability do rental property owners have if they don't comply with the state Lead Law?**

If a property owner of a home built before 1978 in which a child under six lives fails to delead or bring the home under interim control, and a child is lead poisoned as a result, the property owner is strictly liable for all damages. An owner is not strictly liable for lead poisoning if a Letter of Compliance or Letter of Interim Control is in effect. Strict liability means owners may be liable even if they did not know lead paint was in the home. Since harm to the kidneys and blood cells, delays in growth, learning disabilities and emotional and behavioral disturbances resulting from lead poisoning can have life-long effects, monetary damages awarded against an owner responsible for a child's lead poisoning can be substantial. Failing to delead or bring under interim control a home to which the Lead Law applies is also an emergency public health matter, and can carry criminal penalties. An owner who is notified by a public agency of Lead Law violation in a property he or she owns, and who willfully fails to correct the dangerous conditions, is also subject to punitive damages, which are three times the actual damages found. These provisions are in addition to any other legal rights the lead-poisoned child may have.

### **Can I avoid state Lead Law requirements by not renting to a family with children under six?**

The Massachusetts Lead Law makes it illegal to refuse to rent to families with children under six, or evicting or refusing to renew the lease of families with children under six, because of lead paint. Discrimination against families with young children is also a violation of the U.S. Fair Housing Act and the Massachusetts anti-discrimination statute. Parents cannot waive the rights of their children to live in lead-safe housing or agree to assume to risks of lead exposure. Owners who violate these laws face heavy penalties. The Massachusetts Commission Against Discrimination investigates and prosecutes cases of discrimination against families with children because of lead paint.

It is also illegal for lenders to deny financing because a home has lead paint, or because financing could trigger future duties under the Lead Law. This does not restrict the right of a lender to process or deny a mortgage application in accordance with accepted underwriting practices and criteria.

### **If I am considering buying a pre-1978 house to rent out, and a child under six lives in one of the apartments, should I have at least that unit and common areas inspected for lead now?**

Yes. If there are children under six living in such an apartment and the apartment does not have a Letter of Compliance or Letter of Interim Control, buyers should find out whether or not the apartment has lead hazards and will have to be brought into compliance with the state Lead Law. This information will be important in deciding whether to buy the property and at what price. As noted above, new owners have 90 days from the date of taking title to have such an apartment delead or brought under interim control. Therefore, they should arrange deleading or interim control work to begin as soon as possible after taking title, to be sure the work is done within 90 days.

### **Can a landlord delay a tenancy to bring a home into compliance with the state Lead Law?**

A landlord who will be deleading a home or bringing it under interim control may delay the start of the tenancy up to 30 days. This can be done as long as a lease between the landlord and the new tenant does not exist. During this delay period, the new tenants are responsible for their living expenses. If there is a signed lease, however, the landlord is responsible for temporary housing during relocation necessary for deleading work.

### **Must a landlord arrange temporary housing for a tenant while a rental home is being delead?**

Under the state Lead Law, tenants have to be relocated for the time that certain deleading work is taking place inside the home. They may not return until that work is done, the home is cleaned up, and a licensed lead inspector or risk assessor checks and finds it is fine for residents to move back in.

The landlord and tenant are responsible for working out an acceptable plan for alternative housing if it is necessary. The landlord may move the tenant to another place to live, which may be another house, apartment, motel or hotel. The landlord is responsible for paying the tenant's reasonable moving costs and any temporary housing costs over and above the rent of the home being dealed. During the time the home is being dealed, the tenant remains responsible for paying the normal rent they would pay for this period as their share of the cost of temporary housing. The Lead Law states the temporary housing must not cause undue economic or personal hardship to the tenant.

### **What is tenant notification?**

The goal of the federal and state requirements for tenant notification is to help reduce lead poisoning by giving all tenants of homes built before 1978 information about lead in their home. The program also educates tenants and landlords about the dangers of lead poisoning, its prevention, and the Massachusetts Lead Law. Tenant notification applies to all tenants, whether or not they have a child under six living with them.

Before renting a home, landlords, managing agents or any real estate agent involved in the rental must give new tenants copies of any existing lead forms for the home. These include lead inspection reports, risk assessment reports, a Letter of Compliance (no matter how old) or a Letter of Interim Control. If the landlord or agent does not have any or all of these forms for the home, he or she simply does not give them. In addition, the landlord or agent must give new tenants the Tenant Lead Law Notification. This form addresses lead poisoning, specific prevention tips for parents, the requirements of the Lead Law and an explanation of the lead forms. Attached to the Tenant Lead Law Notification is the Tenant Certification form. This is to be filled out and signed by both the tenant and the landlord or agent. Each party gets a copy to keep. **These forms have been approved to satisfy both state and federal lead notification requirements.** Landlords or agents may choose to include the Tenant Lead Law Notification/Tenant Certification form in a written lease, instead of using a separate form.

Landlords and agents who fail to carry out their tenant notification obligations are liable for all damages caused by their failure to do so, and are subject to a fine of up to \$1,000.

## **INSURANCE INFORMATION**

### **How can an owner of rental housing in Massachusetts built before 1978 get insurance to cover potential lead liability?**

The answer depends on the number of units that the property owner wishes to insure, and whether the property owner lives in the building for which insurance is sought. An owner-occupant who insures four or fewer units may be covered by homeowners insurance. Generally, the property owner who is not an owner-occupant will need to get commercial liability insurance, as will an owner-occupant who wishes to insure more than four units.

Homeowners insurance may be available from several different sources: the regular, "admitted" market, the FAIR Plan or the "surplus lines" market. The regular, "admitted" market is the usual market for insurance. The FAIR Plan offers homeowners insurance to property owners unable to find coverage in the regular market. The "surplus lines" market is a less regulated, and generally more expensive market. It provides insurance to those who cannot find coverage elsewhere.

Under state Division of Insurance regulations, if an insurer in the regular market decides to write homeowners insurance on rental housing for which a Letter of Compliance or Letter of Interim Control is in effect, the insurer must provide coverage of lead paint liability arising from those premises. **Neither the state Lead Law nor the insurance regulations require a regular market insurer to write liability insurance, including homeowners insurance, on a particular property.** If a Letter of Compliance or Letter of Interim Control is in effect for only part of a property, the coverage for lead liability will extend to only that part of the property. Such insurance will also apply to any common areas covered by the Letter of Compliance or Letter of Interim Control. It will not, however, extend to injuries resulting from gross or willful negligence. The FAIR Plan's coverage of lead liability is subject to the same regulations that apply to the regular market.

An insurer in the regular market, or the FAIR Plan, may ask the property owner to prove that there is a Letter of Compliance or a Letter of Interim Control for the home sought to be insured. Once the proof is provided, coverage for lead liability will apply as of the date of the Letter. If the Fair Plan determines that a given property is eligible for insurance, or if a regular market insurer elects to insure certain premises, either may exclude lead liability coverage on any part of the property it insures to which no Letter of Compliance or Letter of Interim Control applies. If either the Fair Plan or a regular market insurer uses such an exclusion, it must offer the owner of the premises the chance to buy back the excluded coverage. There is an additional charge for the lead liability "buyback" coverage. The amount of this charge is regulated by the Division of Insurance.

In the surplus lines market, there is no requirement to cover lead liability arising from premises to which a Letter of Compliance or Letter of Interim Control applies. Surplus lines insurers generally exclude coverage of lead liability, do not offer the buyback coverage, and charge higher prices than the regular market.

Since the FAIR Plan does not provide commercial liability insurance, property owners who need to get such coverage (as opposed to homeowners insurance) must get it from either the regular market or the surplus lines market. Commercial liability insurance from the surplus lines market, like homeowners insurance from that market, usually will exclude coverage of lead liability, will not include the buyback option, and will cost more than regular market coverage.

While a regular market insurer can decline to write commercial liability insurance on a given property, once such an insurer decides to write such coverage, it must then insure lead liability arising from any part of the property covered by a Letter of Compliance or Letter of Interim Control. If such an insurer chooses to insure a property, it may exclude coverage of lead liability on any part of the premises for which no Letter of Compliance or Letter of Interim Control is in effect. If such insurer applies such an exclusion, it must offer the property owner the opportunity to buy back the excluded coverage. The lead liability insurance regulations described above as applicable to regular market homeowners insurance also apply to commercial liability insurance from the regular market.

Owners of rental housing should try to get coverage for lead liability, whether they have met the requirements of the Lead Law or not, by seeking regular market coverage through insurance agents, or by contacting direct writing companies that are listed in the telephone directory, before resorting either to the FAIR Plan or the surplus lines market.

### **If I own and occupy a single-family house, does my homeowners insurance cover lead liability?**

Under the state lead liability insurance regulations, coverage of lead liability cannot be excluded from regular market and FAIR Plan homeowners insurance policies on single-family owner-occupied homes. Instead, lead liability coverage is included in such policies. However, a family member covered by a homeowners policy cannot make a lead liability claim against another family member covered by the same policy. The requirements of the lead liability insurance regulations do not apply to homeowners coverage from the surplus lines market.

### **How are new owners affected by the lead liability insurance regulations?**

If a buyer of rental housing built before 1978 meets the state Lead Law's requirements and gets a Letter of Compliance or Letter of Interim Control within 90 days after becoming the owner, then, under certain conditions, they will be able to get coverage for lead liability for the period they owned the property before they deleaded or brought it under interim control. This will happen if a regular market insurer chooses to provide liability coverage on the property. Such an insurer is required to provide lead liability coverage to a new owner who obtains a Letter of Compliance or Letter of Interim Control within 90 days after becoming the owner of the property. Such coverage will go back to the time that the new owner took title to the property, unless the liability insurance went into effect some time after the taking of title. In the latter case, the coverage of lead liability will extend back to the time that the liability insurance held by the new owner first went into effect on the premises. The rule for new owner lead liability insurance coverage for the FAIR Plan is the same as for the regular market. These special rules for lead liability insurance for new owners do not apply to insurance from the surplus lines market.

\*\*\*\*\*

## What happens next?

That's up to you. At this point, you should be well informed about lead poisoning, the effects of lead hazards in the home, and your responsibilities under the Massachusetts Lead Law. In the past, the Department of Public Health has had to devote its childhood lead poisoning resources to provide services to the thousands of Massachusetts children who were poisoned, as well as to providing services to children whose blood lead levels are elevated, to prevent them from becoming lead poisoned. Between the Department's work and the preventive deleading carried out by property owners, we have been successful at reducing the number of lead poisonings among young children in Massachusetts. All of us at the Department are hopeful that we will continue that partnership, in which the correction of lead hazards in the homes of young children *before* those children are lead poisoned is so important.

## Where can I get more information on lead poisoning?

Massachusetts Department of Public Health  
Childhood Lead Poisoning Prevention Program (CLPPP)  
(For more copies of this form, and full range of  
information on owners' and tenants' rights and  
responsibilities under the state Lead Law, financial help  
for owners, safe renovation work, and soil testing)

[www.mass.gov/dph/clppp](http://www.mass.gov/dph/clppp)

617-753-8400, 1-800-532-9571

Massachusetts Department of Labor  
Division of Occupational Safety  
(List of licensed deleaders)

[www.mass.gov/dos](http://www.mass.gov/dos)

617-626-6962

Massachusetts Housing Finance Agency  
(Get the Lead Out loan program information)

[www.masshousing.com](http://www.masshousing.com)

617-854-1000

U.S. Environmental Protection Agency  
Region 1 (New England)  
(Information about federal laws on lead)  
<http://www.epa.gov/region1>  
617-918-1524

National Lead Information Center  
(lead poisoning information or lead in  
consumer products)  
[www.epa.gov/lead](http://www.epa.gov/lead) or 1-800-424-LEAD

U.S. Consumer Product Safety  
Commission (Info about lead in  
consumer products)  
[www.cpsc.gov](http://www.cpsc.gov) or 1-800-638-2772

**PROPERTY TRANSFER NOTIFICATION CERTIFICATION**

This form is to be signed by the prospective purchaser before signing a purchase and sale agreement or a memorandum of agreement, or by the lessee-prospective purchaser before signing a lease with an option to purchase for residential property built before 1978, for compliance with federal and Massachusetts lead-based paint disclosure requirements.

**Required Federal Lead Warning Statement:**

Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) \_\_\_\_\_ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) \_\_\_\_\_ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) \_\_\_\_\_ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (circle documents below).

Lead Inspection Report; Risk Assessment Report; Letter of Interim Control; Letter of Compliance

(ii) \_\_\_\_\_ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's or Lessee Purchaser's Acknowledgment (initial)**

(c) \_\_\_\_\_ Purchaser or lessee purchaser has received copies of all documents circled above.

(d) \_\_\_\_\_ Purchaser or lessee purchaser has received no documents.

(e) \_\_\_\_\_ Purchaser or lessee purchaser has received the Property Transfer Lead Paint Notification.

(f) \_\_\_\_\_ Purchaser or lessee purchaser has (check (i) or (ii) below):

(i) \_\_\_\_\_ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) \_\_\_\_\_ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment (initial)**

(g) \_\_\_\_\_ Agent has informed the seller of the seller's obligations under federal and state law for lead-based paint disclosure and notification, and is aware of his/her responsibility to ensure compliance.

(h) \_\_\_\_\_ Agent has verbally informed purchaser or lessee-purchaser of the possible presence of dangerous levels of lead in paint, plaster, putty or other structural materials and his or her obligation to bring a property into compliance with the Massachusetts Lead Law - either through full deleading or interim control - if it was built before 1978 and a child under six years old resides or will reside in the property.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

\_\_\_\_\_  
Seller Date Seller Date

\_\_\_\_\_  
Purchaser Date Purchaser Date

\_\_\_\_\_  
Agent Date Agent Date

Property Address: \_\_\_\_\_

## MASSACHUSETTS MANDATORY LICENSEE CONSUMER RELATIONSHIP DISCLOSURE

This disclosure is provided to you, the consumer, by the real estate agent listed on this form. Make sure you read both sides of this form. The reverse side contains a more detailed description of the different types of relationships available to you. This is not a contract.

**THE TIME WHEN THE LICENSEE MUST PROVIDE THIS NOTICE TO THE CONSUMER:**

All real estate licensees must present this form to you at the first personal meeting with you to discuss a specific property. The licensee can represent you as the seller (Seller's Agent) or represent you as the buyer (Buyer's Agent) and also can assist you as a facilitator.

**CONSUMER INFORMATION AND RESPONSIBILITY:**

Whether you are the buyer or seller you can choose to have the advice, assistance and representation of your own agent who works for you. **Do not assume that a real estate agent works solely for you unless you have an agreement for that relationship.** With your consent, licensees from the same firm may represent a buyer and seller in the same transaction. These agents are referred to as dual agents.

Also, a buyer and seller may be represented by agents in the same real estate firm as designated agents. The "designated seller or buyer agent" is your sole representative. However, where *both* the seller and buyer provide written consent to have a designated agent represent them, then the agent making such designation becomes a "dual agent" for the buyer and seller. All real estate agents must, by law, present properties honestly and accurately. They must also disclose known material defects in the real estate.

The duties of a real estate agent do not relieve the consumers of the responsibility to protect their own interests. If you need advice for legal, tax, insurance or land survey matters, it is your responsibility to consult a professional in those areas. Real Estate agents do not have a duty to perform home, lead paint or insect inspections nor do they perform septic system, wetlands or environmental evaluations.

**RELATIONSHIP OF REAL ESTATE LICENSEE WITH THE CONSUMER**

(check one)       **Seller's agent**       **Buyer's agent**       **Facilitator**

IF A SELLER'S OR BUYER'S AGENT IS CHECKED ABOVE COMPLETE THE SECTION BELOW:

Relationship with others affiliated with \_\_\_\_\_  
(Print name of real estate firm or business and license number)

- (Check one)       The real estate agent listed below, the real estate firm or business listed above and all other affiliated agents have the same relationship with the consumer named herein (**seller or buyer agency, not designated agency**).
- Only the real estate agent listed below represents the consumer named in this form (**designated seller or buyer agency**). In this situation, any firm or business listed above, and other agents affiliated with the firm or business, do not represent you, and may represent another party in your real estate transaction.

**By signing below I, the real estate licensee, acknowledge that this disclosure has been provided timely to the consumer named herein.**

\_\_\_\_\_  
(Signature of real estate agent)      (Printed name of real estate agent)      (License Number/Type)      (Today's Date)

By signing below I, the consumer, acknowledge that I have received and read the information in this disclosure.

\_\_\_\_\_  
(Signature of consumer)      (Printed name of consumer)      (Today's Date)

\_\_\_\_\_  
(Signature of consumer)      (Printed name of consumer)      (Today's Date)

Check here if the consumer declines to sign this notice.



## TYPES OF AGENCY REPRESENTATION

### **SELLER'S AGENT**

A seller can engage the services of a real estate agent to sell his property (called the listing agent) and the real estate agent is then the agent for the seller who becomes the agent's client. This means that the real estate agent represents the seller. The agent owes the seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the seller's interests first and negotiate for the best price and terms for their client, the seller. (The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions).

### **BUYER'S AGENT**

A buyer can engage the services of a real estate agent to purchase property and the real estate agent is then the agent for the buyer who becomes the agent's client. This means that the real estate agent represents the buyer. The agent owes the buyer undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the buyer's interests first and negotiate for the best price and terms for their client, the buyer. (The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions).

### **(NON-AGENT) FACILITATOR**

When a real estate agent works as a facilitator that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

### **DESIGNATED SELLER'S AND BUYER'S AGENT**

A real estate agent can be designated by another real estate agent (the appointing or designating agent) to represent either the buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate agent once so designated is then the agent for either the buyer or seller who becomes their client. The designated agent owes the buyer or seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put their client's interests first and negotiate for the best price and terms for their client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer then the appointing agent becomes a dual agent. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. The dual agent does not represent either the buyer or the seller solely only your designated agent represents your interests. The written consent for designated agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample designated agency consent is available at the Board's website at [www.mass.gov/dpl/re](http://www.mass.gov/dpl/re).

### **DUAL AGENT**

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. The written consent for dual agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample dual agency consent is available at the Board's website at [www.mass.gov/dpl/re](http://www.mass.gov/dpl/re).

# Home Inspectors

## FACTS FOR CONSUMERS

Commonwealth of Massachusetts • Office of Consumer Affairs • Division of Professional Licensure

Deval Patrick, Governor

### Board of Registration of Home Inspectors

[www.state.ma.us/reg/boards/hi](http://www.state.ma.us/reg/boards/hi)

The Board of Registration of Home Inspectors is charged with evaluating the qualifications of applicants and granting licensure to those who qualify. It establishes rules and regulations to ensure the integrity and competence of licensees. The Board protects the public health and welfare through regulation of the profession in accordance with the state statutes and board regulations.

The Board is responsible for insuring that licensed home inspectors have proper training and experience through an education program and meet minimum inspection requirements in each inspection performed. Applicants are required to pass a board approved examination prior to licensure and fulfill continuing education requirements for license renewal.

The Board publishes a Standards of Practice and Code of Ethics for home inspectors.

### About Home Inspections

A standard home inspection is a visual examination of the physical structure and major interior systems of a residential building consisting of one to four dwelling units. An inspection can be likened to a physical exam by a physician; however, it should be clearly understood that a home inspection is not to be confused with an appraisal, a building code inspection, a guarantee of any kind, and/or an insurance policy on the condition of the property.

During an inspection, the inspector will review the readily accessible exposed portions of the structure of the home, including the roof, the attic, walls, ceilings, floors, windows, doors, basement, and foundation as well as the heating/air conditioning

systems, interior plumbing and electrical systems for potential problems.

Home inspections are not intended to point out every small problem or any invisible or latent defect in a home. Most minor or cosmetic flaws, for example, should be apparent to the buyer without the aid of a professional.

### Timing of the Home Inspection

A home inspector is typically hired by a potential homebuyer right after the offer to purchase contract is signed, prior to executing the final purchase and sales agreement. However, before the potential buyer signs the offer to purchase contract, he/she should be sure that there is an inspection clause in the contract making the purchase obligation contingent upon the findings of a professional home inspection. This clause should specify the terms to which both the buyer and seller are obligated.

A current homeowner may also want to get a home inspection to identify any problems, especially if the owner plans to sell the home in the near future.

### Selecting a Home Inspector

Good referral sources for home inspection services are friends, neighbors, or business acquaintances who have been satisfied with a home inspector. In addition, lawyers and mortgage brokers may also recommend a home inspector. The names of local inspectors can be found by searching the Division of Professional Licensure website or in the Yellow Pages where many advertise under "Building Inspection Service" or "Home Inspection Service."

Real estate brokers and salesmen may not directly recommend a specific home inspection company or home inspector unless representing the buyer as a buyer's broker. Brokers, however, may provide assistance to buyers in accessing information on licensed home inspectors.

Division of Professional Licensure • 239 Causeway Street • Boston, Mass. 02114 • 617-727-3074

updated 4/27/01

# Home Inspectors

## FACTS FOR CONSUMERS

Commonwealth of Massachusetts • Office of Consumer Affairs • Division of Professional Licensure  
Deval Patrick, Governor

Following are additional tips when searching for a home inspector:

- As of May 2001, home inspectors are required to be licensed in the Commonwealth of Massachusetts. A home inspector's license should be verified prior to hiring. Consumers should not be confused by home inspector "certifications" offered by, or sold by home inspection trade societies or companies, obtained via home study courses, or provided by home inspection companies that certify their own home inspectors. Since the home inspection business is unregulated in most states, certifications are available to anyone. A home inspector's license can be verified with the Board of Registration of Home Inspectors at its website at [www.state.ma.us/reg/boards/hi](http://www.state.ma.us/reg/boards/hi) or by calling the Board at 617-727-9931.
- The home inspection company that is retained should welcome the potential buyer's presence at the home inspection. The home inspector should be willing to address all of the buyer's questions and provide a full verbal and written report.
- Those hiring an inspector should expect an open door policy from the home inspection company to be able to ask questions about the content of the home inspection report in the future.

### During the Home Inspection

While not necessary, it is recommended that the buyer be present for the inspection. This allows the buyer to observe the inspector, ask questions directly, and obtain a better understanding of the condition of the home, how its systems work, and how to maintain it. The written report may be easier to understand if the buyer was present during the inspection.

It is important that safe access and sufficient lighting is provided so that the inspector can inspect the property.

Inspectors must provide a written evaluation report based on the standards of compliance in accordance with Massachusetts General Laws Chapter 146.

At the conclusion of the home inspection, the buyer should be well informed of the condition of the home. It should be known if there are visible, apparent problems, if repairs need to be made, or whether or not there are any risks of concealed damage, and whether further investigation is recommended and/or required.

### Other Inspections and Tests to Consider

It is strongly recommended that potential buyers consider having the following inspections and/or tests performed prior to signing the final purchase agreement: lead paint, pests, wood destroying insects, including termites, and air quality including radon gas. While some home inspectors are qualified to offer these services, these inspections and tests are not part of the basic home inspection and should be contracted through qualified licensed professionals in those fields. It should also be noted that the seller is required, under 105 CMR 651.010, to provide the potential buyer with an affidavit disclosing the presence of Urea Formaldehyde Insulation if it exists. In addition, the seller under 105 CMR 460.750(A) shall disclose if the property has been inspected for lead paint and provide copies of any lead paint reports concerning the residential premises or any dwelling unit therein.

### Filing a Complaint

While most licensees conduct themselves as true professionals, the Division of Professional Licensure will take action against those licensees who fail to maintain acceptable standards of competence and integrity. In some cases, complaints are made by dissatisfied consumers, however, dissatisfaction alone is not proof of incompetence or sufficient grounds for disciplinary action. If you have a complaint about a home inspector, call or write the Division's Office of Investigations and ask for a complaint form. The Division's Office of Investigations is located at 239 Causeway St., Boston, MA 02114. The phone number is 617-727-7406. A copy of the complaint form can also be downloaded from the Division's web site ([www.state.ma.us/reg/](http://www.state.ma.us/reg/)).

Division of Professional Licensure • 239 Causeway Street • Boston, Mass. 02114 • 617-727-3074

updated 4/27/01

## CONFIDENTIALITY OF OFFER FORM

To: Owner of Record of \_\_\_\_\_

From: \_\_\_\_\_  
Agent Name Company Name

RE: Confidentiality of Offer to Purchase

Date: \_\_\_\_\_

Dear \_\_\_\_\_:

The broker/salesperson named herein represents a potential buyer (herein "the potential Buyer") of your property. The potential Buyer has requested that prior to submitting an Offer to Purchase, you first agree to treat such Offer to Purchase and/or terms: price, contingencies, performance dates, etc. as confidential. Please sign and return the following Confidentiality Agreement so that the Buyer may submit an Offer to Purchase confident that such agreed information shall remain confidential. Upon receipt of the signed Confidentiality Agreement, a written Offer to Purchase will be presented on behalf of the potential Buyer.

Such confidentiality shall apply for the term of the Offer to Purchase or while the potential Buyer and Owner(s) negotiate toward a possible agreement.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_

Property Address: \_\_\_\_\_

In consideration of the Buyer's promise to submit a written Offer to Purchase for the above referenced property, the Owner of Record of the above referenced property, (herein the "Seller") hereby agrees as follows:

\_\_\_\_\_ Neither the Seller nor the Seller's agent(s) shall disclose the existence or terms of the Offer to Purchase submitted by the Buyer to any other potential buyer or real estate licensee. Such Offer terms shall include the price, contingencies, performance dates, etc of the Buyer's Offer to Purchase and it is agreed that all such information is confidential.

\_\_\_\_\_ Neither the Seller nor the Seller's agents shall disclose the terms of the Buyer's Offer to Purchase; price, contingencies, performance dates, etc. HOWEVER, the Seller and/or the Seller's agent(s) may disclose the existence of the Offer to Purchase to any other potential buyer(s) or real estate licensee(s) working with another buyer(s).

The period of this Confidentiality Agreement shall be from the date of this Agreement through to the termination of the Offer to Purchase or termination of negotiations with such Buyer, whichever is later.

Witness my/our hand and seal.

\_\_\_\_\_  
Seller: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller's Agent: \_\_\_\_\_

Date: \_\_\_\_\_



## OFFER TO PURCHASE CONTINGENCY ADDENDUM

The BUYER, if checked, hereby incorporates the following contingencies into this Offer to Purchase Real Estate.

**MORTGAGE CONTINGENCY**

In order to help finance the acquisition of the property, the BUYER shall apply for a conventional bank or other institutional mortgage loan of \$\_\_\_\_\_ at prevailing rates, terms and conditions. If despite the BUYER's diligent efforts a commitment for such loan cannot be obtained on or before \_\_\_\_\_, then the BUYER shall have the option of revoking this agreement by written notice to the SELLER and/or the Broker representing the SELLER prior to the expiration of such time, whereupon all deposits made by the BUYER shall be forthwith refunded, and this agreement shall become null and void and without further recourse to either party. In no event will the BUYER be deemed to have used diligent efforts to obtain such commitment unless the BUYER submits a complete mortgage loan application conforming to the foregoing provisions on or before \_\_\_\_\_.

**INSPECTION CONTINGENCY**

The BUYER may, at the BUYER's own expense and on or before \_\_\_\_\_, have the property inspected by a duly-licensed person engaged in the business of conducting home inspections. If it is the opinion of such inspector that the property contains serious structural, mechanical or other defects and if the repair of such defects would cost the BUYER in the aggregate more than \$\_\_\_\_\_, then the BUYER shall have the option of revoking the agreement by written notice to the SELLER and/or Broker representing the SELLER on or before \_\_\_\_\_. Such notice shall be accompanied by a copy of the inspector's opinion and cost estimates.

**RADON CONTINGENCY**

The BUYER may, at the BUYER's own expense and on or before \_\_\_\_\_, have the property inspected for the presence of radon gas. In the event a customary test for the presence of radon gas indicates the presence of radon gas in excess of levels deemed acceptable by the federal Environmental Protection Agency, then the BUYER shall have the option of revoking the agreement by written notice to the SELLER and/or Broker representing the SELLER on or before \_\_\_\_\_. Such notice shall be accompanied by a copy of the test results.

**PEST INSPECTION CONTINGENCY**

The BUYER may, at the BUYER's own expense on or before \_\_\_\_\_, have the property inspected by a person engaged in the business of pest inspection and control. If it is the opinion of such inspector that the property is infested by termites or other wood boring pests, then the BUYER shall have the option of revoking this agreement by written notice to the SELLER and/or the Broker representing the SELLER on or before \_\_\_\_\_. Such notice shall be accompanied by a copy of the inspector's opinion and any related inspection report.

**LEAD PAINT CONTINGENCY ADDENDUM**

The BUYER may, at the BUYER's own expense and within ten (10) days after the acceptance of this agreement, have the property professionally inspected for the presence of paint, plaster or other accessible materials containing dangerous levels of lead (as such terms are defined by applicable Massachusetts laws and regulations). A copy of the inspector's report shall be furnished to the SELLER upon receipt by the BUYER. If it is the opinion of such inspector that any such materials are present on the property, then the BUYER shall have the option of revoking this agreement by written notice to the SELLER and/or the Broker representing the SELLER prior to the expiration of such time.

In the event the BUYER revokes the agreement consistent with the terms of the above selected Contingencies, then any deposits made by the BUYER shall be forthwith refunded, and this agreement shall be null and void and without further recourse to either party.

Initials:

Seller (or Spouse) \_\_\_\_\_ Seller \_\_\_\_\_

Buyer \_\_\_\_\_ Buyer \_\_\_\_\_

Broker(s) \_\_\_\_\_



# OFFER TO PURCHASE REAL ESTATE

TO \_\_\_\_\_  
(Seller and Spouse)

Date: \_\_\_\_\_

From the Office of: \_\_\_\_\_

The property herein referred to is identified as follows: \_\_\_\_\_

Special provisions (if any) re fixtures, appliances, etc. \_\_\_\_\_ (Buyers)

hereby offer to buy said property, which has been offered to me by \_\_\_\_\_ as the Broker(s) under the following terms and conditions:

CHECK ONE:

1. I will pay therefore \$ \_\_\_\_\_, of which
  - (a) \$ \_\_\_\_\_ is paid herewith as a deposit to bind this Offer  Check, subject to collection
  - (b) \$ \_\_\_\_\_ is to be paid as an additional deposit upon the execution of the Purchase and Sale Agreement provided for below.  Cash
  - (c) \$ \_\_\_\_\_ is to be paid at the time of delivery of the Deed in cash, or by certified, cashier's, treasurer's or bank check(s).
  - (d) \$ \_\_\_\_\_
  - (e) \$ \_\_\_\_\_ Total Purchase Price
2. This Offer is good until \_\_\_\_\_ A.M. P.M. on \_\_\_\_\_, 20\_\_\_\_ at or before which time a copy hereof shall be signed by you, the Seller and your (husband) (wife), signifying acceptance of this Offer, and returned to me forthwith, otherwise this Offer shall be considered as rejected and the money deposited herewith shall be returned to me forthwith.
3. The parties hereto shall, on or before \_\_\_\_\_ A.M. P.M. \_\_\_\_\_, 20\_\_\_\_ execute the applicable Standard Form Purchase and Sale Agreement recommended by the Greater Boston Real Estate Board or any form substantially similar thereto, which, when executed, shall be the agreement between the parties hereto.
4. A good and sufficient Deed, conveying a good and clear record and marketable title shall be delivered at 12:00 Noon on \_\_\_\_\_, 20\_\_\_\_ at the appropriate Registry of Deeds, unless some other time and place are mutually agreed upon in writing.
5. If I do not fulfill my obligations under this Offer, the above mentioned deposit shall forthwith become your property without recourse to either party. Said deposit shall be held by \_\_\_\_\_ as escrow agent subject to the terms hereof provided however that in the event of any disagreement between the parties, the escrow agent may retain said deposit pending instructions mutually given in writing by the parties. A similar provision shall be included in the Purchase and Sale Agreement with respect to any deposit held under its terms.
6. Time is of the essence hereof.
7. Disclosures: For one to four family residences, the Buyer hereby acknowledges receipt of the Home Inspectors: Facts for Consumers brochure produced by the Office of Consumer Affairs. For residential property constructed prior to 1978, Buyer must also sign Lead Paint "Property Transfer Notification."
8. The initialed riders, if any, attached hereto are incorporated herein by reference. Additional terms and conditions, if any:

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney. WITNESS MY HAND AND SEAL

Buyer \_\_\_\_\_ Buyer \_\_\_\_\_

Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_ Work Number \_\_\_\_\_ Home Number \_\_\_\_\_

Receipt of deposit check for transmittal by: (Agent/Facilitator) \_\_\_\_\_  
Check shall not be deposited unless offer is accepted.

This Offer is hereby accepted upon the foregoing terms and conditions at \_\_\_\_\_ A.M. / P.M. on \_\_\_\_\_, 20\_\_\_\_  
WITNESS my (our) hand(s) and seal(s)

Seller (or spouse) \_\_\_\_\_ Seller \_\_\_\_\_

Date \_\_\_\_\_

## RECEIPT FOR DEPOSIT

Received from \_\_\_\_\_ Buyer the sum of \$ \_\_\_\_\_ as deposit under the terms and conditions of above Offer, to be held by \_\_\_\_\_ as escrow agent.

**Under regulations adopted pursuant to the Massachusetts license law: All offers submitted to brokers or salespeople to purchase real property that they have a right to sell shall be conveyed forthwith to the owner of such real property.**

\_\_\_\_\_  
Agent for Seller



## BUYER REPRESENTATION AGREEMENT with Consent to Designated Agency

Date: \_\_\_\_\_

THIS AGREEMENT is made by and between: \_\_\_\_\_  
 \_\_\_\_\_ (the "Buyer")  
 and \_\_\_\_\_ (the "Broker")

In consideration of the mutual covenants and agreements herein contained, the undersigned Buyer hereby gives the undersigned Broker the sole and exclusive right to represent the Buyer in the purchase of a property as herein detailed.

1. The Buyer grants to the Broker the sole and exclusive right to arrange for the acquisition by the Buyer of property of the type generally described as follows (the "Property"):

- |  |   |                                      |                                       |
|--|---|--------------------------------------|---------------------------------------|
| <input type="checkbox"/> Residential   | <input type="checkbox"/> Commercial               | <input type="checkbox"/> Investment  | <input type="checkbox"/> Vacation     |
| <input type="checkbox"/> Single Family | <input type="checkbox"/> Multi-Family (1-4 Units) | <input type="checkbox"/> Condominium | <input type="checkbox"/> Other: _____ |

General Description:

Geographic Location:

Approx. Price Range: \$\_\_\_\_\_ to \$\_\_\_\_\_ (NOTE: this information is confidential under the Agency relationship and the Broker will not disclose this information to a third party without the consent of the Buyer).

2. The period of this Agreement shall commence on \_\_\_\_\_, and terminate on \_\_\_\_\_.
3. The Broker shall use reasonably diligent efforts to locate the Property and to negotiate terms and conditions of a contract acceptable to the Buyer (the "Contract") providing the acquisition of the Property by the Buyer. The Contract may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement or any other instrument under which such acquisition may take place.
4. The Buyer shall pay to the Broker a retainer in the amount of \$\_\_\_\_\_ as compensation for professional counseling, consultation and research. Such retainer is payable upon execution of this agreement and is  refundable/  
 nonrefundable. The retainer,  shall/  shall not be credited against any fee payable under the following paragraph.
5. The Buyer agrees to pay a fee equal to: \_\_\_\_\_. The Broker will be deemed to have earned a full fee hereunder
  - a. When the Buyer takes title to the Property;
  - b. Signs a contract to purchase and assigns it to another buyer;
  - c. If the Buyer signs a contract to purchase which consists of an option, and the Buyer allows the option to lapse;
  - d. Or, in the event that, during the term of this Agreement, the Buyer or any person acting for the Buyer or on the Buyer's behalf, (the "Buyer's Nominee") enters into the contract or otherwise acquires the Property, whether through the services of the Broker or otherwise; or,
  - e. in the event that, within \_\_\_\_\_ months following the term of this Agreement, the Buyer or Buyer's Nominee enters into the contract or otherwise acquires the Property after receiving information about the Property from the Broker during said term.



6. The Broker is a member of a multiple listing service (MLS) whereby representing sellers, "Listing Brokers," offer cooperation and compensation to other brokers, including brokers representing Buyer's. Although the Listing Brokers represent the seller, compensation does not determine agency. The Buyer hereby instructs to Broker to:
- Accept the offer of compensation offered in the MLS from the listing broker. The Buyer shall remain liable for the fee detailed in paragraph 4 of the Agreement. If the fee offered in the MLS is less than the amount listed in paragraph 5, the Buyer shall be responsible for that amount and if the fee offered is greater, the Broker shall refund that amount paid in excess of the agreed fee to the Buyer after closing.
  - Explore properties not currently listed in the MLS, including properties listed for sale by the owner or not currently on the market. The Buyer shall remain liable for the fee detailed in paragraph 5 of the Agreement, and the Broker shall refund any amount paid in excess of such a fee to the Buyer after closing.
7. The Buyer specifically acknowledges and understands that the Broker is in the business of representing buyers in the purchase of real estate and that the Broker may have other buyer clients interested in similar properties. The Broker will make every effort to satisfy the needs of all clients equally, and shall not disclose to the Buyer offer terms or negotiation strategies of other buyers currently represented by the Broker nor will the Broker disclose such information of the Buyer to other clients. The Buyer further acknowledges that the sellers of real estate are not obligated to treat the existence or terms of any offer to purchase as confidential unless the seller expressly agrees to do so.
8. The parties agree that each will act in compliance with the Fair Housing Laws of the United States and Commonwealth of Massachusetts and that neither will participate in discriminatory practices or ask or answer questions regarding race, creed, color, sex, age, marital status, national origin, familial status, handicap, military or veteran status, sexual orientation, government assistance or any other class or characteristic deemed protected at law.
9. The Buyer hereby acknowledges receipt of the Massachusetts Mandatory Consumer Licensee Relationship Disclosure Form. The Broker has explained the firm's policy regarding agency relationships. The Buyer, in signing this Agreement, is giving informed written **CONSENT TO DESIGNATED AGENCY**.

A designated agent is a licensee, broker or salesperson, who has been appointed by a Broker to represent the seller or the buyer. The agent has explained and the Buyer is advised that (a) the Designate Buyer's Agent(s), identified below, will represent the Buyer and will owe the Buyer the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction; (b) all other licensees affiliated with the appointing Broker will not represent the Buyer nor will they have other duties specified herein to you as Buyer and may be appointed to represent a potential seller of the Property; and (c) if the designated agents affiliated with the same Broker represent the Seller and purchaser in a transaction, the appointing Broker shall be a dual agent and neutral as to any conflicting interests of the seller and the purchaser, but will continue to owe the seller and the purchaser the duties of confidentiality of material information and to account for funds while the Designated Seller's Agent and the Designated Buyer' Agent will individually advocate for their respective client. In the event another agent affiliated with the Broker is a designated agent for the seller, the Seller and Buyer shall each receive written notice. In the event Designated Agency occurs, the Broker shall give written notice to the Seller and the Buyer.

**ACKNOWLEDGMENT**

I acknowledge and agree that \_\_\_\_\_ [insert name and license # of licensee(s)] is authorized to represent me as a Designated Buyer Agent(s). I hereby consent to Designated Agency.

Additional terms and conditions:

Time is of the essence hereof.

IN WITNESS WHEREOF, the Buyer and the Broker have hereunto set their hands and seals as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Broker: \_\_\_\_\_ Buyer: \_\_\_\_\_

By: \_\_\_\_\_ Buyer (or spouse): \_\_\_\_\_

Its: \_\_\_\_\_

## BUYER REPRESENTATION AGREEMENT with Consent to Dual Agency

Date: \_\_\_\_\_

THIS AGREEMENT is made by and between: \_\_\_\_\_  
 \_\_\_\_\_ (the "Buyer")  
 and \_\_\_\_\_ (the "Broker")

In consideration of the mutual covenants and agreements herein contained, the undersigned Buyer hereby gives the undersigned Broker the sole and exclusive right to represent the Buyer in the purchase of a property as herein detailed.

1. The Buyer grants to the Broker the sole and exclusive right to arrange for the acquisition by the Buyer of property of the type generally described as follows (the "Property"):

- |  |   |                                      |                                       |
|--|---|--------------------------------------|---------------------------------------|
| <input type="checkbox"/> Residential   | <input type="checkbox"/> Commercial               | <input type="checkbox"/> Investment  | <input type="checkbox"/> Vacation     |
| <input type="checkbox"/> Single Family | <input type="checkbox"/> Multi-Family (1-4 Units) | <input type="checkbox"/> Condominium | <input type="checkbox"/> Other: _____ |

General Description:

Geographic Location:

Approx. Price Range: \$\_\_\_\_\_ to \$\_\_\_\_\_ (NOTE: this information is confidential under the Agency relationship and the Broker will not disclose this information to a third party without the consent of the Buyer).

2. The period of this Agreement shall commence on \_\_\_\_\_, and terminate on \_\_\_\_\_.
3. The Broker shall use reasonably diligent efforts to locate the Property and to negotiate terms and conditions of a contract acceptable to the Buyer (the "Contract") providing the acquisition of the Property by the Buyer. The Contract may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement or any other instrument under which such acquisition may take place.
4. The Buyer shall pay to the Broker a retainer in the amount of \$\_\_\_\_\_ as compensation for professional counseling, consultation and research. Such retainer is payable upon execution of this agreement and is  refundable/  
 nonrefundable. The retainer,  shall/  shall not be credited against any fee payable under the following paragraph.
5. The Buyer agrees to pay a fee equal to: \_\_\_\_\_. The Broker will be deemed to have earned a full fee hereunder
  - a. When the Buyer takes title to the Property, or
  - b. Signs a contract to purchase and assigns it to another buyer;
  - c. If the Buyer signs a contract to purchase which consists of an option, and the Buyer allows the option to lapse;
  - d. Or, in the event that, during the term of this Agreement, the Buyer or any person acting for the Buyer or on the Buyer's behalf, (the "Buyer's Nominee") enters into the contract or otherwise acquires the Property, whether through the services of the Broker or otherwise, or
  - e. in the event that, within \_\_\_\_\_ months following the term of this Agreement, the Buyer or Buyer's Nominee enters into the contract or otherwise acquires the Property after receiving information about the Property from the Broker during said term.



6. The Broker is a member of a multiple listing service (MLS) whereby representing sellers, "Listing Brokers," offer cooperation and compensation to other brokers, including brokers representing Buyer's. Although the Listing Brokers represent the seller, compensation does not determine agency. The Buyer hereby instructs to Broker to:
- Accept the offer of compensation offered in the MLS from the listing broker. The Buyer shall remain liable for the fee detailed in paragraph 5 of the Agreement. If the fee offered in the MLS is less than the amount listed in paragraph 5, the Buyer shall be responsible for that amount and if the fee offered is greater, the Broker shall refund that amount paid in excess of the agreed fee to the Buyer after closing.
  - Explore properties not currently listed in the MLS, including properties listed for sale by the owner or not currently on the market. The Buyer shall remain liable for the fee detailed in paragraph 5 of the Agreement, and the Broker shall refund any amount paid in excess of such a fee to the Buyer after closing.
7. The Buyer specifically acknowledges and understands that the Broker is in the business of representing buyers in the purchase of real estate and that the Broker may have other buyer clients interested in similar properties. The Broker will make every effort to satisfy the needs of all clients equally, and shall not disclose to the Buyer offer terms or negotiation strategies of other buyers currently represented by the Broker nor will the Broker disclose such information of the Buyer to other clients. The Buyer further acknowledges that the sellers of real estate are not obligated to treat the existence or terms of any offer to purchase as confidential unless the seller expressly agrees to do so.
8. The parties agree that each will act in compliance with the Fair Housing Laws of the United States and Commonwealth of Massachusetts and that neither will participate in discriminatory practices or ask or answer questions regarding race, creed, color, sex, age, marital status, national origin, familial status, handicap, military or veteran status, sexual orientation, government assistance or any other class or characteristic deemed protected at law.
9. The Buyer hereby acknowledges receipt of the Massachusetts Mandatory Consumer Licensee Relationship Disclosure Form. The Broker has explained the firm's policy regarding agency relationships and understands that the Broker and the Broker's affiliated agents represent both prospective purchasers and sellers of real estate. When an agent or agents affiliated with the same Broker represent a purchaser and a seller in the same transaction, Dual Agency results. A real estate broker or salesperson may act as agent for both a seller and a prospective purchaser of real estate with the informed written consent from both the seller and the purchaser. The Dual Agent assists the seller and the purchaser in the transaction but shall be neutral with regard to conflicting interest of the seller and the buyer. Consequently, a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds. Material information received from either client that is confidential may not be disclosed by a dual agent, except: (1) if disclosure is expressly authorized; (2) if such disclosure is required by law; (3) if such disclosure is intended to prevent illegal conduct; or (4) if such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson. The duty of confidentiality shall continue after the termination of the brokerage relationship. In signing the Agreement below, the Buyer hereby **GIVES INFORMED CONSENT TO DUAL AGENCY**. In the event Dual Agency occurs, the Broker shall give written notice to the Seller and the Buyer.

Additional terms and conditions:

Time is of the essence hereof.

IN WITNESS WHEREOF, the Buyer and the Broker have hereunto set their hands and seals as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Broker: \_\_\_\_\_ Buyer: \_\_\_\_\_

By: \_\_\_\_\_ Buyer (or spouse): \_\_\_\_\_

Its: \_\_\_\_\_  
Title (duly-authorized)