



**BROKER** RESOURCES

# Unrepresented Buyer Disclosure



**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®



# Permissible Real Estate Relationships

## Seller's Agent

- A Listing Broker engaged to sell a property. That Broker represents the Seller, and owes undivided loyalty, confidentiality, and accountability; in negotiating price and terms, the Seller's best interest must come first.

## Buyer's Agent

- A Broker engaged to represent the Buyer's best interest in purchasing a property; obeying instructions, keeping confidential information, etc.

## Disclosed Dual Agent

- A Broker can work for both the Buyer and Seller on the same property provided the Broker gets the consent of both parties and provides each with a written notice of the relationship: "disclosed dual agent."
- This Broker owes **both** the Seller and Buyer a duty to deal with them fairly and honestly. In this type of agency relationship, the Broker does not represent either the Seller or the Buyer exclusively, and neither party can expect the Broker's undivided loyalty.  
**Undisclosed dual agency by a Broker is illegal.**

## 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 the property honestly and accurately and owe a duty to account for funds.





# Can Buyers Represent Themselves?

**YES.**

While only current and actively licensed real estate Brokers and salespersons can assist with the purchase, sale or lease, or exchange of real property, a Buyer (or Seller), otherwise known as the “principal” in the transaction, is able to represent themselves throughout the process.



**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®

**BROKER RESOURCES**



# What should I do as the Listing Broker if a Buyer wants to “put an offer in through me?”

## Have a system.

- Discuss this potential with the Seller first and develop Seller instructions to share with anyone interested in purchasing the property, represented or not
- Document all communication
- Remember **OLDCAR**: As an agent, owing your client: **O**bedience, **L**oyalty, **D**isclosure, **C**onfidentiality, **A**ccounting, and **R**easonable care
- Massachusetts Mandatory Licensee Consumer Relationship Disclosure
- Home Inspector Consumer Fact Sheet
- 93 A responsibilities and disclosures

Take careful steps not to unintentionally cross the line into undisclosed dual agency (or perceived agency)


# UNREPRESENTED BUYER DISCLOSURE FORM #722

While real estate agents have disclosure obligations, Buyers must conduct their own due diligence.

In an effort to help communicate this, the MAR Forms Advisory Committee approved a **NEW disclosure** for Unrepresented Buyers to accomplish two goals:

1. Inform Unrepresented Buyers they need to protect their own interests.
2. Assist Listing Agents in discussing the limits of their role.

**Remember:** This is not a ticket to blur representation lines, but rather an informational tool. Use the Disclosure to clearly define your role and help Unrepresented Buyers understand their responsibilities.

UNREPRESENTED BUYER DISCLOSURE #722 

On this \_\_\_ day of \_\_\_\_\_, I/We \_\_\_\_\_,  
a licensed Massachusetts Real Estate Broker and (if applicable)  its agents OR  designated agent(s):  
\_\_\_\_\_, collectively ("LISTING BROKER") who represent  
\_\_\_\_\_, ("SELLER") in the sale of  
\_\_\_\_\_, ("PROPERTY") for which  
\_\_\_\_\_, ("UNREPRESENTED BUYER") is  
interested in purchasing, provide the following disclosure:

**UNREPRESENTED BUYER HAS BEEN INFORMED OF THEIR RIGHT TO HIRE A BUYER BROKER WHO WOULD REPRESENT THEM IN THE PURCHASE OF THE PROPERTY, HOWEVER, UNREPRESENTED BUYER HAS ELECTED NOT TO BE REPRESENTED BY A BUYER BROKER AND ACKNOWLEDGES THE FOLLOWING:**


1. **Mandatory Agency Disclosure.** UNREPRESENTED BUYER has received the **Massachusetts Mandatory Licensee-Consumer Relationship Disclosure** indicating LISTING BROKER'S relationship with the SELLER for the sale of the PROPERTY.
2. **Seller Representation Only.** The LISTING BROKER may communicate with the UNREPRESENTED BUYER, provide transaction documents, SELLER instructions, and may conduct other activities to accomplish the sale of the PROPERTY. UNREPRESENTED BUYER is advised that LISTING BROKER owes fiduciary duties to the SELLER, and anything communicated to the LISTING BROKER by the UNREPRESENTED BUYER may be shared with the SELLER, including confidential information. These communications and activities are done solely on behalf of and for the benefit of SELLER to facilitate the successful sale of the PROPERTY and do not create a representative or agency relationship between the UNREPRESENTED BUYER and the LISTING BROKER. **The LISTING BROKER only represents the SELLER in the sale of the PROPERTY and does NOT represent the UNREPRESENTED BUYER.**
3. **Buyer Due Diligence.** The purchase of the PROPERTY requires the UNREPRESENTED BUYER to perform their own due diligence. The LISTING BROKER shall be honest and truthful, disclose known material defects within the bounds of the PROPERTY, adhere to local, state and federal Fair Housing Laws, and deal fairly with the UNREPRESENTED BUYER. However, the UNREPRESENTED BUYER must take steps to investigate matters that are important to them, both within and around the PROPERTY.

The UNREPRESENTED BUYER acknowledges it is their responsibility to protect their own interests and to hire their own professionals to advise them in the matters of real estate, including, but not limited to negotiations, inspections, contract terms and timelines, contingencies, financing, zoning and legal use, title searches, insurance, or any other area they deem appropriate to assist them in purchasing the PROPERTY. **Specifically, this process requires the signing of legally binding contracts, if legal advice is desired, consult an attorney.**

UNREPRESENTED BUYER has read this Agreement, understands its contents and has received a copy of the same.

\_\_\_\_\_  
UNREPRESENTED BUYER Date

\_\_\_\_\_  
UNREPRESENTED BUYER Date

MASSFORMS® Standard Real Estate Form ©2024 MASSACHUSETTS ASSOCIATION OF REALTORS® 

# *Caveat Emptor: Buyer Beware*

- **Seller discloses very few things:**
  - Existence of Lead Paint
    - Homes built prior to 1978
    - Known lead paint and any documentation
  - Presence of Septic System
    - Title V: Must disclose in writing and inspect within 2 years of sale (limited exceptions)
- **Buyer has to ask questions, Seller must answer truthfully**



# Real Estate Licensees **MUST** disclose “Known Material Facts”

- Must be known, must be material
  - Attorney General guidance defines this as any fact that would dissuade a Buyer from buying!
  - No duty to discover problems
- Off-site conditions known of by the licensee may need to be disclosed:
  - Unknown and not readily observable by the Buyer AND
  - Affects habitability, use, or enjoyment of the property AND
  - Property less desirable or valuable
- Somewhat of a subjective standard, anticipates an “objectively reasonable” Buyer

**IMPORTANT:**  
A REALTOR® MUST truthfully answer direct questions from the Buyer.





# What about these aspects of the property?

PARANORMAL OCCURRENCES

DEATHS

SEX OFFENDERS

CRIME STATISTICS

TRANSIENT SOCIAL CONDITIONS

Quality of schools • Neighbors • Halfway house

- No affirmative disclosure obligations
- Be mindful of steering concerns under the Fair Housing Act
- See: Stigmatized Property Law (Chapter 93, Section 114)
- See: Fair Housing Act







REALTORS® do not have a duty to investigate stigmas even if specifically asked about them by prospective Buyers. If the answer is unknown or additional information is requested, the REALTOR® should direct the prospective Buyer to the appropriate source of information.

**However, if you do know, you must provide an honest answer.**



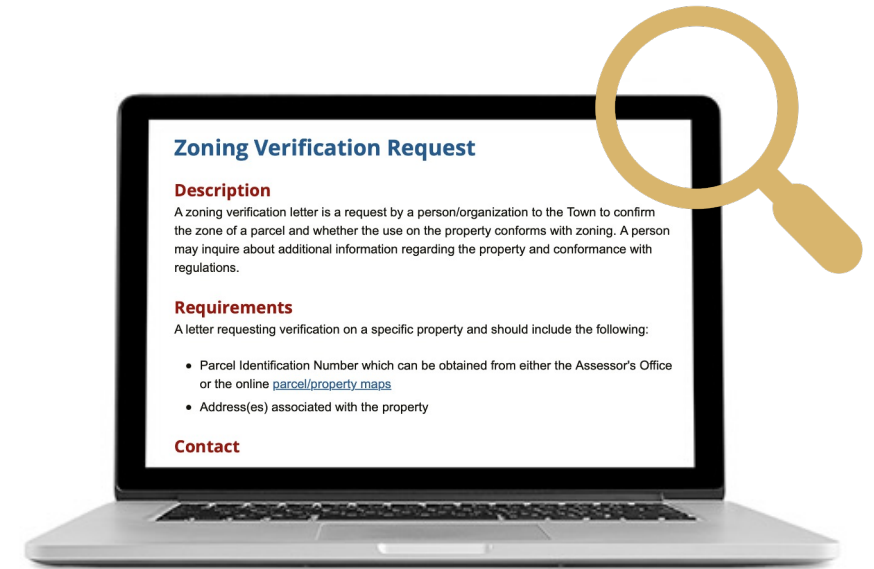
**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®

**BROKER RESOURCES**



# NAR Code of Ethics, Art. 2, Standard of Practice 2-1

- REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction.
  - They should “discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority.”
- REALTORS® shall not, however, be obligated to:
  - discover latent defects in the property,
  - to advise on matters outside the scope of their license, or
  - to disclose facts that are confidential under the scope of agency.



**Be careful of misrepresenting information  
that could be easily ascertained**



**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®

**BROKER RESOURCES**



# Unrepresented Buyers and Referrals

- Real estate Brokers and salespeople 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.
- Brokers may also provide public information on other professionals.

## Home Inspectors Consumer Fact Sheet

### 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. It should be understood that there are certain risks inherent in the purchase of property and a home inspection is inherently limited in its scope and depth. The information gained from home inspection conforming to 266 CMR 6.00 may reduce some of those risks, but the home inspection is not intended to provide the client with protection from all of the risks involved.

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.

## Massachusetts General Laws Chapter 112 Section 87YY



**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®

**BROKER RESOURCES**



# Resources

[Unrepresented Buyer Disclosure Form #722](#)

[MAR Blog](#)

[940 CMR](#)

[Home Inspectors Consumer Fact Sheet](#)

[Real Estate Board Agency Disclosure Form](#)



**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®

**BROKER RESOURCES**





# MAR LEGALHOTLINE



1-800-370-LEGAL (5342)



- Call 800-370-LEGAL (5342) from 9 am – 4 pm Monday through Friday
- Or email [Legalhotline@marealtor.com](mailto:Legalhotline@marealtor.com) any time



**MASSACHUSETTS**  
ASSOCIATION OF REALTORS®

BROKER RESOURCES

