

## Notes from the MAR Legal Hotline

Michael McDonagh, MAR General Counsel  
Justin Davidson, Legislative & Regulatory Counsel  
Catherine Taylor, Staff Attorney

February 2018

**Q. My accountant recommended that I establish an LLC for my commission payments, can I do that?**

**A:** With the passage of the tax reform legislation, we have received many calls from Realtors® who have been advised by their CPAs to form an LLC to receive the agent's commissions. While the short answer is yes, there are important Massachusetts laws and regulations that must be followed in order to do so.

The licensing of a corporation is governed by Massachusetts General Laws Chapter 112, Section 87UU. A license will only be issued to a corporation if the corporation designates a representative to obtain the license and that representative already holds a broker's license as an individual. Further, the statute expressly prohibits the issuance of a salesperson's license to a corporation.

The issuance of broker's licenses is further regulated by 254 CMR 2.11, which states:

No licensee may engage in the business of real estate brokering in a corporation, limited liability company (LLC), partnership, limited liability partnership (LLP), association or society *unless the entity is licensed by the Board.*

No broker's license shall issue to a corporation, LLC, partnership, LLP, association or society *unless an officer in such corporation, society or association or partner in a partnership is a licensed broker in the Commonwealth and designated as the broker of record for the entity.* The broker of record must be currently licensed at all times, otherwise the license of the entity shall cease.

Fees and commissions earned from a real estate transaction may only be paid to a licensed salesperson or broker, as such, any payments to an unlicensed LLC (or other unlicensed entity) are impermissible. If you wish to take advantage of the benefits to corporations under tax reform, make sure you act within the bounds of Massachusetts laws and regulations.

**Q. What is my responsibility as a landlord for snow removal?**

**A:** Landlords have the primary responsibility for snow removal at their rental properties. The sanitary code requires property owners to keep all means of egress free from obstruction. Regarding the removal of snow and ice, the Code requires landlords to maintain all means of egress at all times in a safe, operable condition and shall keep all exterior stairways, fire escapes, egress balconies and bridges free of snow and ice. These obligations cannot be negated by any lease provision.

Only when a tenant has an independent means of egress that is not shared with other tenants may the landlord require the tenant to remove snow and ice, so long as that requirement is in a written lease agreement. Placing this responsibility on the tenant, however, may not absolve the landlord, as the owner of the property, from liability if someone suffers a personal injury on the property due to snow and ice.

For more information regarding these topics authorized callers should contact the MAR legal hotline at 800-370-5342 or e-mail at [legalhotline@marealtor.com](mailto:legalhotline@marealtor.com).