



MASSACHUSETTS ASSOCIATION OF REALTORS®

Title 5 Overview

Homes that are not connected to a sewer system use septic systems or cesspools, both of which are regulated by the state Department of Environmental Protection (DEP) and local boards of health. A septic system has a tank, a distribution box, and soil absorption system commonly known as a "leach field." A cesspool has a pipe carrying waste from the home to a pit which distributes liquid waste.

Improperly functioning sewage systems and cesspools are a major cause of the pollution of our coastal waters, rivers, and water supplies. As of March 31, 1995, the state environmental code governing septic systems, commonly referred to as Title 5 regulations, requires inspections of septic systems and cesspools prior to a home being sold or enlarged. In most instances, systems that fail inspection must be repaired within 2 years. After January 1, 1996, most septic system replacements or upgrades will also require that the soil evaluation test be performed by a DEP-approved soil evaluator. On November 3, 1995, Title 5 was again revised to encourage increased compliance with the regulations and to minimize financial hardships and delays for homeowners.

Relevant Law: Massachusetts Septic System Inspection Regulation, 310 CMR 15.00.

Important Issues: Because compliance with Title 5 is complex and potentially lengthy and costly, it is imperative that Realtors familiarize themselves with the general requirements of Title 5. Quick and thorough discussion of Title 5 to a seller and buyer can help to prevent delays in a pending sale. This is especially true since many mortgage lenders may require any septic system or cesspool repair or upgrade to be completed before closing or that funds for the cost of the repair be placed in escrow before closing. Although Title 5 is a state regulation, it is a minimum code therefore permitting local boards of health to adopt ordinances that are more stringent than Title 5. As with any regulation or law, there are many nuances and details that must be carefully followed to ensure compliance. Careful instruction will help prevent any unnecessary delays or expenses. Informational brochures on Title 5 are available for purchase from the Massachusetts Association of Realtors.

Frequently Asked Questions: (Note: All answers are subject to additional local requirements, if any.)

Q: When are septic system and cesspool inspections required under Title 5?

A: Septic system and cesspool inspections are required in the following circumstances:

Within 2 years before the sale of a home or transfer of title;

In certain inheritance situations; (e.g. - when a child inherits a house from his/her parents);

In certain insolvency proceedings (e.g. - bankruptcy, tax taking or foreclosure);

When the use of the home is changed (e.g. - from residential to commercial use);

When the footprint of the house is enlarged;

When the home is expanded and a building, or occupancy permit is required (e.g. - adding a bedroom)

Q: When are septic system and cesspool inspections NOT required under Title 5?

A: Septic system and cesspool inspections are not required in the following circumstances:

When a mortgage is refinanced;

When the system was inspected within 3 years before the sale and you have records proving that your system was pumped annually since the inspection;

Title to the house is transferred from one spouse to another or placed in certain family trusts;

When the local board of health issued a certificate of compliance within 2 years before the time of transfer of title;

When the community has adopted a comprehensive plan approved by DEP requiring periodic inspections and the system was inspected at the most recent time required by the plan; or

When the homeowner has entered into an enforceable agreement, binding on subsequent buyers, with the board of health requiring an upgrade of the system or connection to the municipal sewer system within 2 years of transfer or sale.

Q: How much does the average inspection and replacement or upgrade, if required, cost?

A: The average cost of a septic system or cesspool inspection ranges between \$300 to \$500. The cost of repairs or upgrades vary depending on the nature of the problem; the location of the system, the size of the system, soil conditions; and site restrictions. A simple repair may only cost \$500 while more extensive repairs may cost up to \$12,000 or more. Contact your local board of health to inquire about typical costs in your community.

Q: If a septic system or cesspool inspection is required at what point in time must the inspection be performed?

A: The inspection must be performed within 2 years prior to the sale or transfer of the home or 6

months after the sale if weather conditions preclude prior inspection. If the system fails inspection, the system must be upgraded or replaced within 2 years of the inspection regardless whether the house is actually sold or transferred. However, voluntary inspections, inspections not performed because of an intent to sell the property, may be performed just to assess the system's condition. The results of a voluntary inspection are *not* reported to the local board of health or DEP.

Q: Who is allowed to perform septic system or cesspool inspections?

A: Only inspectors and soil evaluators approved under the regulations can perform required system inspections and soil tests. A list of DEP-approved soil evaluators and inspectors is available from your local board of health. Certified health officers, registered sanitarians and professional engineers qualify automatically as system inspectors under the regulations, and their names may or may not appear on the DEP-approved list. Consult with your local board of health to ensure that the system is inspected by a qualified individual.

Q: What happens with the results of a septic system or cesspool inspection?

A: If a system passes, the inspector is required to submit an approved system inspection form to the local board of health within 30 days, and the homeowner must provide a copy to the buyer. Prospective buyers and lending institutions may also require a copy of the approved inspection form.

If the system fails a required inspection, the inspector is required to submit the form to the local board of health within 30 days, and the homeowner must provide a copy to the buyer. The system must be repaired or upgraded within 2 years following the inspection, regardless whether the property is sold.

Q: Is there any state financial assistance available to homeowners faced with the financial burden of replacing or upgrading their septic system?

A: With the support of the Massachusetts Association of Realtors, the Massachusetts legislature passed a Title 5 tax credit which will provide eligible homeowners with a tax credit equal to 40 percent of the design and construction costs incurred to upgrade or repair a septic system. The tax credit relief measure provides credits of up to \$1,500 per year for qualified homeowners with a maximum credit of \$6,000 over a four-year period. This tax credit is available for all septic system and cesspool upgrade and repairs which occurred on or after January 1, 1997.

Additional financial assistance is available in the form of low interest loans through the Massachusetts Housing Finance Agency and the Rural Economic Development Service Loan program. In addition, eligible municipalities can make low-interest 20-year loans to low-to-moderate income homeowners, repaid by adding an annual "betterment" to their tax bill. Contact your local board of health to see if your community participates in the Betterment Fund Program.

For more information please contact the following:

Massachusetts Association of REALTORS ® at (800) 370-LEGAL

Massachusetts Department of Environmental Protection, Title 5 Hotline

at (617) 292-5886 or (800) 266-1122.

Office of the Attorney General, Consumer Complaint and Information Line at (617) 727-8400

Massachusetts Better Business Bureau at (413) 734-3114 or (508) 755-2548 or (617) 426-9000

Massachusetts Housing Finance Agency (HILP Loans) at (617) 854-1020

Rural Economic Development Service Loans at (413) 253-4330

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