

## GUIDE

# Buying or Selling Property with a Septic System

If you are buying or selling property with a septic system installed, an inspection of the system may be part of the process. Certain types of ownership changes have different requirements. Learn what your requirements and rights are.

## When are system inspections required?

- Within 2 years before a sale. If weather conditions prevent inspection at the time of a sale, the inspection must take place within 6 months afterward.
- When there is a proposed change to the facility which requires a building or occupancy permit.
- Any change in the footprint of a building, to make sure that new building construction will not take place on top of any system components or on the system's reserve area.
- For large systems with a design flow of 10,000 to 15,000 gallons per day or more at full build-out, on the basin schedule shown in 310 CMR 15.301(6), and every five years thereafter.
- Every 3 years for shared systems.
- When the property is divided, or ownership of 2 or more properties is combined.
- When MassDEP or the local Board of Health orders an inspection.

## Property transfers with special requirements

System inspections must occur within 2 years before or 6 months after the following types of property transfers, provided that the transferring entity notifies the buyer in writing of the requirements of 310 CMR 15.300-15.305 for inspection and upgrade. If the system is pumped once per year following the date of the inspection, then the inspection remains valid for three years, provided the inspection report includes records demonstrating that the system has been pumped at least once a year during that time.

- **Foreclosure** or deeds in lieu of foreclosure
- Levy of execution that results in a **conveyance of property**
- **Bankruptcy**

Sale of a **condominium unit or condominiums**:

- Condominiums with 5 or more units - all systems must be inspected every 3 years.

- Condominiums with fewer units must either inspect all systems every 3 years, or the system serving the unit being transferred must be inspected within 2 years prior to transfer.

## When you DON'T need an inspection

**Transfers between certain family members:** Title 5 does not require a system inspection if the transfer is of residential real property, and is between the following relationships:

1. Between current spouses;
2. Between parents and their children;
3. Between full siblings; and
4. Where the property is held in a trust. See the "Guidance on Exemptions from Title 5 System Inspections", below.

**Refinancing a mortgage** or similar financial instrument;

Taking of a **security interest** in a property, e.g., issuance of a mortgage;

**Appointment of, or a change in, a guardian, conservator, or trustee;**

Any other **change in ownership or the form of ownership where NO NEW parties are introduced** (e.g., for estate planning or in a divorce);

The property owner or buyer has signed an enforceable agreement with the Board of Health to **upgrade the system** or to connect the facility to a sanitary sewer or a shared system within 2 years following the transfer of title, provided that such agreement has been disclosed and is binding on subsequent owners;

The property is subject to a **comprehensive local plan of septic system inspection** approved in writing by MassDEP and administered by a local or regional government; and the system has been inspected at the most recent time the plan requires.

### Additional Resources for When you DON'T need an inspection

[Open PDF file, 25.59 KB, for Guidance on Exemptions from Title 5 System Inspections](#) (PDF 25.59 KB)

## The System Inspection Process

### Arranging for the Inspection

The property owner or operator is responsible for arranging the inspection. The buyer and seller may change the responsibility for arranging the inspection prior to title transfer, provided that this change is put in writing and that the inspection still occurs within the specified timeframes.

The purpose of the inspection is to determine if the system in its current condition can protect public health and the environment. The inspection does not guarantee that the system will continue to function adequately, or that the system will not fail at a later date. This is particularly important if you plan to increase the flow to the system.

The inspection includes determining the location and condition of cesspools, septic tanks and distribution boxes. Often, this will not require extensive excavation.

Only MassDEP-approved individuals can conduct system inspections. The New England Interstate Water Pollution Control Commission maintains lists of approved system inspectors (see below). ***System inspections conducted by any other individual are not valid for compliance with Title 5.***

A System Inspector may not act as an agent of the Board of Health and also represent the system owner.

## **Reporting the Inspection Results**

The System Inspector must use the MassDEP-approved inspection form, provided below. MassDEP and the local board of health will not accept reports in other formats as valid.

The inspection report must be submitted within 30 days of the inspection.

For most systems, the System Inspector is responsible for submitting the inspection report directly to the Board of Health. The buyer must also receive a copy from the seller of the property.

In some cases, inspection reports must be submitted to authorities other than the Board of Health:

- Inspection forms for State and Federal facilities must be submitted to MassDEP instead of the local Board of Health.
- Reports for large systems and shared systems must be submitted to both the local Board of Health and MassDEP.

The buyer or other person acquiring title to the property served by the system must receive a copy of the inspection report.

Inspections in connection with a property sale generally are good for 2 years. If a property is sold more than once in the 2-year period, the single inspection is valid for all property transfers.

If a system is pumped annually and the pumping records are available, an inspection is valid for 3 years.

## **Incomplete or Delayed Inspections**

If weather conditions prevent an inspection before a sale, Title 5 allows the inspection to be done up to 6 months afterwards, provided that the seller notifies the buyer in writing of the need to complete the inspection.

If for some reason not all the system components can be thoroughly inspected, at a minimum, the cesspool, septic tank, and distribution box (if present) must be located and inspected. The System Inspector must also make reasonable efforts to locate and identify other components and features. If any component cannot be located or inspected, or if any determination cannot be made, the Inspector must state on the Inspection Form the reasons and the steps taken to complete the inspection. Section 15.302 of Title 5 provides examples of "reasonable efforts."

## **Other Types of System Inspections**

### **New Construction and Upgrades**

A new or upgraded system does not require inspection. These systems receive a Certificate of Compliance from the local Board of Health. This certification exempts the system from the inspection requirement for any transfer of title within the next 2 years. This exemption continues up to 3 years, provided that system pumping records demonstrate that the system was pumped at least once during the third year.

### **Condominiums and Large Systems**

The condominium association is responsible for the inspection, maintenance and upgrade of the system or systems serving the units, unless the association's governing documents provide otherwise.

Condominium systems should be inspected once every 3 years. Condominium developments with 4 or fewer units should also have their system inspected every 3 years, or within 2 years prior to the sale of one of the units.

Large systems serve a facility with a design flow of 10,000 to 15,000 gallons per day. Large systems must be inspected on the basin schedule shown in 310 CMR 15.301(6), and then every five years afterward.

### **Changes of Use and Increases in Flow**

These situations require a system inspection only if the modification requires a building permit or occupancy permit. For example:

- adding a bedroom to a house
- adding seats to a restaurant
- changing the type of business operating at a commercial location.

Check with your Building Department or Board of Health to find out if your modification meets these requirements.

Any change in the footprint of a building also requires an inspection to determine the location of the system, to ensure that construction will not be located on top of any system components or on the reserve area. Check with your local Board of Health.

### **State and Federal Facilities**

Title 5 applies to state and federal facilities as well as homes and businesses. MassDEP is the approving authority for state and federal facilities, so the inspection forms are submitted to MassDEP (310 CMR 15.003).

### **Cross-State Ownership**

If a property is located in two states, with the house in one state but the septic system in another state, the state where the septic system is located has jurisdiction and the owner must follow the regulations for that state. For example, if the septic system is located in New York, but the house is in Massachusetts, the property is subject to New York's laws and regulations.

### **Voluntary inspections**

A system owner may choose voluntarily to have an assessment of the condition of the system even if there is no requirement for an inspection. Results of these voluntary assessments are solely for the use of the owner, and do not need to be submitted to local Boards of Health or MassDEP.

## **Conditional Pass or Failed Inspection**

A system with certain components which need repair or replacement can qualify for a **conditional pass** on the inspection report. Upon completion of replacement or repair of the specific system component, and with the approval of the Board of Health, the system will pass inspection.

Examples of system components eligible for a conditional pass include:

- A metal or cracked septic tank,
- A broken or obstructed pipe,
- An uneven distribution box,
- A malfunctioning pump chamber.

Soil absorption systems and cesspools cannot be repaired under a conditional pass.

If a system **fails inspection** and the owner decides not to sell as a result, the owner still has an obligation to repair the system.

A failed system must be upgraded within 2 years, unless the local Board of Health or MassDEP authorizes an alternative schedule.

The System Inspector is responsible for determining that the system meets or fails Title 5 standards *as of the date of the inspection*. If a system fails shortly after a sale, the buyer may have legal recourse, but it may be very hard to prove that the system was in failure at the time of the inspection.

MassDEP may revoke or suspend the approval of a System Inspector if it determines that an Inspector has falsified or fraudulently altered an inspection form or misrepresented the results of an inspection. Property owners must pursue claims against the inspector in court.

If you have a complaint about the results of an inspection, contact your regional MassDEP office and speak to the staff responsible for Title 5. If you receive an inspection report that appears to have been altered or contains false or misleading information, call the Massachusetts Environmental Strike Force at 617-556-1000 or toll free at 1-888-VIOLATE (1-888-846-5283).

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