

Buying or Selling Property with an On-Site System

In order to ensure that on-site systems (conventional septic systems, cesspools, and innovative/alternative systems) are protective of human health and the environment, Title 5 generally requires that systems be inspected when the property is sold. This information sheet provides basic details on property transfer requirements, but information provided here is not intended as legal advice to buyers or sellers.

When is an inspection required?

In general, Title 5 requires an inspection at the time of property transfer:

- When a property is sold to new owners, or there otherwise is a transfer of title to new owners, with certain exceptions.

"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 grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor". [REF: MGL Ch21A Â§ 13]

- When properties are divided or combined.

Even if there is not a sale or transfer of title, Title 5 requires an inspection when there is a change in use or an expansion of the facility. For example, conversion of a retail store to a restaurant requires an inspection.

How long is an inspection valid?

For most property transfers, the inspection must occur within two years prior to the time of transfer. Exceptions to this requirement are:

- If inclement weather conditions prevent inspection at the time of transfer, the inspection must occur as soon as weather permits, but in no event later than six months after the transfer, provided that by the time of transfer the seller notifies the buyer in writing of the requirements in 310 CMR 15.300 - 305 for inspection and upgrade.
- If a system has been pumped annually since its inspection, and pumping records are available, the inspection is valid for three years.

If an inspection was conducted within the two-year timeframe, the inspection will fulfill the inspection requirement for more than one transfer of title, and does not need be repeated within the two-year period.

Inspection requirements for specific transfers

1) Transfers between 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 grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor".

2) Foreclosure or deeds in lieu of foreclosure: Within two years before or six months after the execution of the memorandum of sale or delivery of the deed in lieu of foreclosure to the foreclosing institution or the loan servicer. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

3) Tax taking by the federal, state, or municipal government: Inspection of the system must occur within two years prior to transfer by governmental entity to buyer or within six months after the expiration of the right of redemption, provided that the governmental entity notifies the buyer in writing of the requirements of 310 CMR 15.300-5.305 for inspection and upgrade. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

4) Levy of execution that results in a conveyance of property: Within two years prior to officer's deed of debtor's

interest to buyer or within six months after the expiration of the right of redemption, provided that the officer notifies the buyer in writing of the requirements of 310 CMR 15.300-15.305 for inspection and upgrade. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

5) Bankruptcy: Within two years prior to transfer by bankruptcy trustee to buyer or within six months after the transfer, provided that the debtor notifies the buyer in writing of the requirements of 310 CMR 15.300-15.305 for inspection and upgrade, if necessary. An inspection conducted up to three years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time.

6) Sale of a condominium unit or condominiums: Condominiums with five or more units - all systems must be inspected every three years. Condominiums with fewer units must either inspect all systems every three years, or the system serving the unit being transferred must be inspected within two years prior to transfer. If weather conditions prevent inspection at the time of transfer, the inspection must occur as soon as weather permits, but in no event later than six months after the transfer, provided that the buyer is notified in writing of the requirements in 310 CMR 15.300-15.305 for inspection and upgrade.

Inspections for new construction and upgrades

Inspections are not required for new construction or for upgrades. The Certificate of Compliance from the local Board of Health (or MassDEP in the case of state and federal facilities and large systems), which must be obtained upon completion of a new system or a system upgrade, excludes the system from the inspection requirement for any transfer of title within the next two years.

Title changes that do not require an inspection

Several types of property transfers do not require 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 grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor".
- Refinancing a mortgage or similar financial instrument, whether or not the lending agency remains the same;
- 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;
- Change in the form of ownership among the same owners, such as placing the property within a family trust of which the owners are the sole, present beneficiaries, or changing the proportionate interests among a group of owners or beneficiaries;
- Any other change in ownership or the form of ownership where NO NEW parties are introduced (e.g., from spouses jointly or as tenants by the entirety to one spouse either for estate planning purposes or as part of a divorce settlement or court order; from joint ownership to nominee or business trust or into limited or general partnership);
- Owner of the property or person acquiring title 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 two years following the transfer of title, provided that such agreement has been disclosed and is binding on subsequent owners;
- Property is subject to a comprehensive local plan of on-site 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 required by the plan.

Responsibility for obtaining the inspection and submitting results

The property owner or facility operator is generally responsible for obtaining an inspection of the system. Prior to the transfer of title, however, the parties may contractually allocate responsibility for the inspection, provided that such inspection occurs within the specified timeframes. An inspection must be conducted by a MassDEP-approved System Inspector. [Click here for lists of System Inspectors.](#)

The System Inspector must record the inspection results on the MassDEP-approved inspection form and submit the form, within 30 days of the inspection. In most cases, the inspection report is submitted to the local Board of Health.

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

- Inspection reports 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.

Buyers' rights in property transfers

Title 5 requires that a copy of the inspection report be provided to the buyer or other person acquiring title to the property served by the system. The inspection is intended to provide sufficient information to make a determination as to whether or not the system in its current condition is adequate to protect public health and the environment. The inspection, however, is not a guarantee that the system will continue to function adequately and is not a guarantee that the system will not fail at a later date.

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. MassDEP will review your complaint and determine if further action is required. 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).