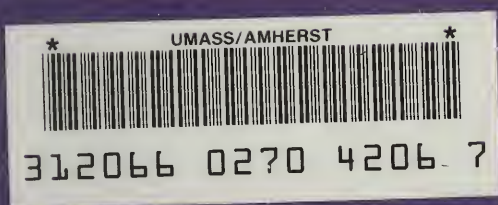


MASS. AG 12-753/2

Facts for consumers

Title 5

septic system
regulations



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Attorney General Thomas Reilly and the
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what is title 5?

Improperly functioning sewage systems and cesspools are a major cause of the pollution for Massachusetts' coastal waters, rivers and water supply. As of March 31, 1995, the state environmental code governing septic systems, commonly known as TITLE 5 regulations, requires inspections of septic systems and cesspools before a home is sold or enlarged. In most instances, systems that fail inspection must be repaired within two years. In addition, applications to install new systems require a soil evaluation test be performed by a soil evaluator approved by the Massachusetts Department of Environmental Protection (DEP).

Title 5 is a consideration for those who live in non-sewered communities. Homes that are not connected to a sewer system use septic systems or cesspools, both of which are regulated by the state 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. Cesspools do not conform with Title 5.

mandatory inspection of septic systems and cesspools

Title 5 Requires Inspections:

- ▶ Within two (2) years before the sale of a home or transfer of title (different rules apply for "shared systems" and condominiums) or
- ▶ In certain inheritance situations; for example, when a child inherits a house from his or her parent, or

- ▶ In certain insolvency proceedings; for example, sometimes in bankruptcy, tax taking or foreclosure, or
- ▶ When the use of the home is changed; for example, from residential to commercial use, or
- ▶ When the footprint of the house is changed, or
- ▶ When the home is expanded and a building or occupancy permit is required; for example, a bedroom is added to your home.

If weather prevents an inspection at sale or transfer, the inspection must occur as soon as weather permits, but no later than six months after the sale or transfer.

NOTE: All septic systems and cesspools must meet TITLE 5 requirements, but they must also comply with local board of health ordinances which can be more stringent than TITLE 5.

Title 5 Does Not Require Inspections When:

- ▶ A mortgage is refinanced, or
- ▶ The system was inspected within three (3) years before the sale and you have records proving that your system was pumped annually since the inspection, or
- ▶ Title to the house is transferred from one spouse to another or placed in certain family trusts, or
- ▶ The local board of health issued a certificate of compliance within two (2) years before the time of transfer or title, or
- ▶ The community has adopted a comprehensive plan approved by the DEP requiring periodic inspections and the system was inspected at the most recent time required by the plan, or

- ▶ 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 two (2) years of transfer or sale.

Signs a Septic System or Cesspool May Fail a Title 5 Inspection

- ▶ Backups of raw sewage
- ▶ Discharges of raw sewage to the surface of the ground
- ▶ System requires pumping four or more times per year
- ▶ The cesspool or leach field is below high groundwater elevation
- ▶ System is located too close to a drinking water supply, unless the local board of health says the system is adequate to protect public health and the environment
- ▶ System has a metal septic tank

NOTE: TITLE 5 imposes stricter requirements on cesspools and privies.

title 5 inspectors

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 system 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.

inspections

The regulations allow for the inspection to be done in the least intrusive manner possible. As part of the inspection process, a cesspool must be pumped out and examined. A septic tank may be pumped, but it is not required. A leach field usually is not dug up.

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 a 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 two years following inspection, regardless of whether the property is sold.

However,

- ▶ In certain circumstances, the DEP or the local board of health may approve a longer schedule in order to achieve maximum feasible compliance with TITLE 5. For example, commitments to extend municipal sewers or to install shared systems within five years combined with adequate interim measures and an enforceable schedule, may mean a property owner does not have to install a new system or upgrade the existing system within the next two-year period. Check with your local board of health to see if you qualify.
- ▶ If the defect to the system is minor, a "conditional pass" may be issued, whereby once the defect is repaired or replaced with local board of health approval, the system passes inspection.

NOTE: The local board of health or the DEP may impose a shorter period of time if a system presents an imminent public health hazard.

Failure to comply with the requirements of TITLE 5 could result in penalties.

inspection costs

The price of an inspection is not regulated. On average, expect to pay \$300 to \$500 for a TITLE 5 inspection.

responsibility for payment

The owner of the property is responsible for compliance with TITLE 5. However, the seller, the buyer, and the mortgage lender may decide who will pay for the costs of the repair or upgrade, which can be negotiated as a part of the sales agreement. Mortgage lenders may require any repair or upgrade to be completed before closing or that funds for the cost of the repair be placed in escrow before closing.

costs of repairs or upgrades

The costs will vary depending on:

- \$ The nature of the problem
- \$ The location of the system
- \$ The size of the system
- \$ Soil conditions
- \$ Site restrictions

Homeowners can call the local board of health to inquire about typical costs in their community. On average, a simple repair may cost \$500; more extensive repairs and upgrades may cost up to \$12,000 or more.

for financial assistance

To help finance the cost of the repair or upgrade of your septic system or cesspool consider the following options:

Betterment Funds

Eligible towns 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 town participates in the Betterment Fund Program.

Home Improvement Loan Program (HILP)

HILP loans are available for owner occupied residential dwellings for amounts ranging from \$2,500 to \$15,000. Monthly loan payments are generally lower than conventional loans because no points are charged, the loan is recorded subject to any first or second mortgage and debt-to-income ratios are flexible. You can apply for HILP loans at Massachusetts Housing Finance Agency affiliated local rehabilitation programs.

Rural Housing Service Home Improvement/ Repair Loans

The U.S. Rural Housing Service, under its Section 504 program, offers low-interest home improvement and repair loans and grants to elderly or low-income homeowners living in rural areas. Eligibility information and applications are available from the U.S. Rural Housing Service.

Tax Credits

Chapter 62 of the Massachusetts General Laws now provides for an income tax credit for a substantial portion of

the cost of upgrading a septic system to Massachusetts homeowners. The law states that a credit of up to \$6,000 or 40 percent of the cost of the upgrade, whichever is less, may be taken by homeowners over a five-year period. The maximum amount of credit that may be taken in any given year is \$1,500. The tax credit does not apply to federal income tax or to vacation or investment properties. Other restrictions on the utilization of this important credit may apply as well. Homeowners should discuss these matters with a qualified tax advisor or the Commonwealth's Department of Revenue at (800) 392-6089 to ensure compliance with the law.

Conventional Lenders

Contact various banks and lending institutions to inquire about private financing options.

protect yourself..

Tips to help you comply with TITLE 5 in the most cost-effective manner:

- ▶ If a TITLE 5 inspection is required, time the inspection so that costs of the inspection and necessary repairs or upgrades are determined before closing.
- ▶ Even if you do not intend to sell your property, consider having a "voluntary inspection" performed just to assess the system's condition. The results of voluntary inspections are not reported to the local board of health or DEP. Such an inspection may allow a homeowner to voluntarily correct a problem with a system before a condition worsens, but first be sure to have any voluntary correction approved by the local board of health.
- ▶ Determine the physical location of your system and get all records, plans, certificates of compliance, past permits,

inspection reports and water table and usage records pertaining to your system from your local board of health before hiring an inspector.

- ▶ Obtain the list of approved system inspectors and soil evaluators from the local board of health. Only hire soil evaluators whose names appear on the list. Hire only inspectors from the list or certified health officers, registered sanitarians or professional engineers who are qualified automatically even though they may not be on the list.
- ▶ To prevent an unscrupulous inspector from failing your system in order to generate repair business, consider hiring one person to inspect the system and another to design and install any repairs or upgrades.
- ▶ Avoid the quick fix; if a solution seems too inexpensive or too good to be true, it most probably is.
- ▶ For repairs or upgrades, get more than one estimate. If costs seem excessive, talk to your system designer and local board of health to see if the design can be modified and still provide adequate protection of public health and the environment.
- ▶ Before signing a contract for a repair, upgrade or installation, ask for references and consult them. Make sure the contract specifies exactly the work to be performed, the costs, the payment schedule, any guarantees, and that the contractor will obtain all required permits.
- ▶ If you are selling or buying a home, be sure to negotiate and specify who will pay for the cost of the inspection and any necessary repairs or upgrades. Explore financing options. Consider consulting a lawyer who is familiar with TITLE 5.

- ▶ Once your system is in compliance, protect the environment and your investment by maintaining your system properly.
- ▶ Have your system pumped every three (3) years, or annually, if you have a garbage disposal system, and maintain all pumping records for future reference.

NOTE: Always be sure your system is in compliance with TITLE 5 and all local board of health ordinances regulating septic systems and cesspools. TITLE 5, like any regulation, may change.

for more information

For further information on TITLE 5, septic systems and cesspools, financing the repair or upgrade of your system, or to file a complaint, please contact:

Massachusetts Dept. of Environmental Protection

Title 5 Hotline (800) 266-1122 or (617) 292-5886

Local Boards of Health

Contact your town clerk's office for the correct telephone number.

Office of the Attorney General

Consumer Complaint & Information Line
(617) 727-8400

Massachusetts Better Business Bureau

(617) 426-9000
(413) 734-3114
(508) 755-2548

National Small Flows Clearinghouse

(800) 624-8301

The Clearinghouse provides literature and answers questions from the most basic to the highly technical about all areas of human waste management.

Mass. Housing Finance Agency (HILP Loans)

Consumer Information Line (617) 854-1020

U.S. Rural Housing Service (Section 504 Loans) (413) 253-4327

State House Book Store

To request a copy of the TITLE 5 regulations

(617) 727-2834

(413) 784-1376

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