

TOWN OF CHATHAM
BOARD OF HEALTH

REAL ESTATE TRANSFER REGULATION

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SECTION 1 PURPOSE

To determine and protect the public health from potential and present sources of pollution to ground water or salt water from existing on-site sewage disposal systems, the Board of Health requires that the Owner(s) of a developed property in the Town of Chatham order an open inspection of the existing on-site sewage disposal system(s) prior to the time of transfer of the property in accordance with the provisions of 310 CMR 15.00: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems as supplemented and upgraded by this Real Estate Transfer Regulation by the Board of Health of the Town of Chatham

SECTION 2 DEFINITIONS

- 2.1 **DEVELOPED PROPERTY** A parcel of land with a man-made structure erected upon it which has affixed to it an on-site sewage disposal system(s) as described in 310 CMR 15.302, and this regulation.
- 2.2 **OPEN INSPECTION** A visual inspection of all the components, uncovered and opened, of the septic system(s) attached to the existing structure(s), in accordance with the criteria for inspection as described in 310 CMR 15.302 and this regulation.
- 2.3 **TRANSFER OF PROPERTY** A real estate transfer or an act conveying the title of a property in accordance with the requirements of this regulation.
- 2.4 **CONDITIONALLY PASSED SYSTEM** An onsite sewage disposal system having one or more of the following problems:
- a. The system could not be judged because of an extended period of non-use; or
 - b. there are problems with individual components of the system.
- 2.5 **CERTIFICATE OF COMPLIANCE** A certificate issued by the Local Approving Authority to the owner or operator of the system.
- 2.6 **SYSTEM NEEDS FURTHER EVALUATION BY THE LOCAL APPROVING AUTHORITY** An on-site sewage disposal system having one or more of the following problems:
- a. Records show excessive pumping, more than two (2) times within any ninety (90) day period for commercial and residential property, except for required grease trap maintenance for commercial property;
 - b. presence of visible ferric sulfide stains;
 - c. the system is inadequate for its intended use;

- d. the system is located within one hundred (100) feet of a wetland, watercourse, or domestic water supply well; or
 - e. any other problem as defined by the Local Approving Authority.
- 2.7 **FAILED SYSTEM** An on-site sewage disposal system having one or more of the following problems:
- a. There is evidence of sewage flow to the surface of the ground;
 - b. there is evidence of sewage backup into the structure(s) served;
 - c. there is evidence of an overload of the system;
 - d. the first or primary component of the system is a cesspool;
 - e. the system is in such a state of disrepair that it cannot function as originally intended;
 - f. the system lacks a four (4) foot protective zone between the bottom of the system and maximum high groundwater;
 - g. any other problem as defined by the Local Approving Authority.
- 2.8 **LOCAL APPROVING AUTHORITY** the Board of Health of the Town of Chatham or its Health Agent, or other agents designated by the Board of Health.

SECTION 3 GENERAL REQUIREMENTS & TRANSFER OF TITLE

The purpose of this regulation is to establish specific local standards and requirements for inspection, repair, and upgrading of on-site sewage disposal systems in the case of real estate transfers or devises of property. In such cases, the provisions of 310 CMR 15.300 State Environmental Code, Title 5 shall generally apply, except to the extent that the provisions of these Regulations are intended to supplement Title 5 and/or require a more specific standard, and in such instances, the provisions of this regulation shall govern. Reference is also made to the Town of Chatham Board of Health's Minimum Requirements for the Subsurface Disposal of Sanitary Sewage.

- 3.1 Open inspection is required at or prior to the time of transfer of title to the property. Unless otherwise set forth herein, the inspection shall take place no more than 18 months or less than thirty 30 days prior to the transfer of the property.
- 3.2 The following transactions shall not be considered transfers of title for the purposes of this regulation:
 - a. taking a security interest in a property, including but not limited to issuance of a mortgage;
 - b. refinancing a mortgage or similar instrument, whether or not the identity of the lender remains the same;

- c. a change in the form of ownership among the same owners, such as placing the property within a family trust of which the same owners are the beneficiaries, or changing the proportionate interests among a group of existing owners or beneficiaries; but not including any new owners or beneficiaries;
- d. adding or deleting a spouse as an owner or beneficiary; or a transfer between spouses during life, outright or in trust; or the death of a spouse;
- e. in the case of joint ownership, when the property is conveyed to one of the original owners, but not including any new owners; or
- f. the appointment of or a change in a guardian, conservator, or trustee.

3.3 **Applicability to Specific Transfers of Title:**

- a. **Units in a Condominium or Cooperative Corporation:** The cooperative corporation or condominium association shall be responsible for the inspection, maintenance, and upgrade of any system or systems serving the units, unless otherwise provided in the governing documents of the condominium association or the cooperative corporation. For a facility comprised of five (5) or more condominium or cooperative units, each system located on the property shall be inspected at least once every three years instead of at time of transfer of title. For a property comprised of fewer than five (5) condominium or cooperative units each system located on the property shall be inspected at least once every three years or at the time of transfer of title of any unit, the system serving that unit shall be inspected in accordance with the time of transfer provisions of this regulation.
- b. **Foreclosure or Deeds in Lieu of Foreclosure:** Entities foreclosing on properties are required to notify those who acquire title to the property, by certified mail, with a copy to the Local Approving Authority, of the inspection and upgrade requirements of this regulation.
- c. **Inheritance by Will or without a Will:** With the exception of inheritance by a spouse, executors or administrators are required to notify those who acquire title to the property from an estate, by certified mail with a copy to the Local Approving Authority of the inspection and upgrade requirements of this regulation.
- d. **Legal Life Estate or an Interest for Life or for a Term of Years in Trust:** Inspection of the system must occur within two years before or six months after the death of the life tenant or the expiration of a present interest in trust for a term of years. If a successive life

interest or an interest in trust for a term of years passes to a spouse, the inspection must occur within two years before or six months after the death of the last surviving spouse or the expiration of a present interest in trust to the spouse for a term of years.

- e. **Tax Taking either by the Federal, State, or Municipal Government:** The Federal, State, or municipal governmental entity making the tax taking shall notify the buyer, by certified mail, with a copy to the Local Approving Authority of the inspection and upgrade requirements of this regulation.
- f. **Levy of Execution that Result in a Conveyance of Property:** The officer making the levy of execution shall notify the buyer, by certified mail, with a copy to the Local Approving Authority, of the inspection and upgrade requirements of this regulation.
- g. **Bankruptcy:** The bankruptcy trustee shall notify the buyer, by certified mail, with a copy to the Local Approving Authority, of the inspection and upgrade requirements of this regulation.
- h. **Change in Ownership or the Form of Ownership Where New Parties are Introduced (e.g., introduction of new beneficiary/ies in a nominee trust; introduction of new joint tenant(s) or new tenant(s) in common:** Introduction of new parties or beneficiaries, including any change in ownership or the form of ownership is subject to the inspection and upgrade requirements of this regulation.

3.4 The open inspection of existing commercial and residential on-site sewage disposal systems shall be the responsibility of the Owner(s) of record of the property prior to the transfer of title.

3.5 A shared system, including Innovative Alternative Septic Systems, shall be inspected every three years in accordance with the requirements of 310 CMR Title 5, in lieu of an inspection at the time of transfer, unless otherwise indicated as part of the conditions of approval by the Department of Environmental Protection or the Local Approving Authority.

SECTION 4 INSPECTION PROCEDURES

4.1 All inspections shall be done by a Massachusetts Registered Professional Engineer with a concentration in civil, sanitary or environmental engineering; Massachusetts Registered Sanitarian; Massachusetts Certified Health Officers, or by an individual who is certified by the Department of Environmental Protection (DEP) of the Commonwealth of Massachusetts as a Certified System Inspector, as outlined in 310CMR 15.340, hereinafter, collectively known as "The Inspector." The Inspector, upon completing the inspection, shall file a completed Commonwealth of Massachusetts Title 5 Official Inspection Form to the Local Approving Authority with copies to the Owner, Buyer, and the listing Realtor

stating whether the system(s) PASSES, CONDITIONALLY PASSES, NEEDS FURTHER EVALUATION BY THE LOCAL APPROVING AUTHORITY, or FAILS.

- 4.2 *The Commonwealth of Massachusetts Title 5 Official Inspection Form* is considered to be a part of this regulation and is incorporated by reference.
- 4.3 Any new Title 5 system, having been installed and having received a final inspection approval and Certificate of Compliance from the Local Approving Authority within the prior two (2) years shall be exempt from this regulation, provided additional living space has not been added and/or there has been no change in its intended use. A copy of the Disposal System Construction Permit and/or other evidence, approved by the Local Approving Authority, shall be submitted in lieu of the Commonwealth of Massachusetts Title 5 Official Inspection Form no less than thirty (30) days prior to each Real Estate Transfer. Upon satisfactory review of the file, the Local Approving Authority shall issue a waiver letter exempting the property from the requirements of this regulation.
- 4.3 A real estate transfer otherwise subject to this regulation that took place within 18 months of an Inspection conducted under this regulation where the system passes is exempt from further inspections provided that additional living space has not been added and/or there has been no change in its intended use. A copy of the Commonwealth of Massachusetts Title 5 Official Inspection Form shall be submitted to the Board of Health or its Agent for review no less than thirty (30) days prior to Real Estate Transfer. Upon satisfactory review of the inspection report the Local Approving Authority will issue a letter of its findings in accordance with Section 5 of this regulation. Said letter of findings will be valid for 60 days from the date of issue.
- 4.4 Owners and Buyers who transfer an existing structure with the intent to demolish and replace the existing on-site sewage disposal system with a system in compliance with 310 CMR 15.000: The State Environmental Code, Title 5 and applicable Town of Chatham Regulations may apply to the Board of Health for an exemption from this regulation at a legally noticed hearing of the Board. The Owner and Buyer shall apply together, in writing, showing that both parties have agreed to the arrangement. An engineer or sanitarian hired by the party(s) shall provide in writing that they have been contracted to do the plan and that a preliminary survey of the property in question shows that an on site sewage disposal system in compliance with 310 CMR 15.000: *The State Environmental Code, Title 5* and applicable Town of Chatham Regulations can be installed on the property. The buyer shall have the burden of demonstrating to the Board of Health that they have filed the required application(s) for such demolition and reconstruction with all other applicable town boards and commissions, and further advise the Board of Health of the expected time needed to complete the review process. The Board will decide, on a case by case basis, what is an expected reasonable time necessary to complete the review processes. The property shall not be occupied, or utilized in any manner, pending approval of such applications, without the express authorization of the Board of Health following a legally noticed hearing with good cause shown.

- 4.5 Unless exempted from this requirement by the Local Approving Authority, open inspection of an on-site sewage disposal system where any component of the system is located below elevation 15' (using U.S.G.S. Mean Sea Level datum) or within 100 feet of a wetland shall include a test boring or deep observation hole dug in order to establish the groundwater level. Maximum high groundwater shall be determined by:
- a. Observation of soil color using the Munsell system and the abundance, size, and contrast of mottling, if present; and/or
 - b. A DEP-approved method for determining inland high groundwater elevation as contained in Frimpter, M.H. 1980. "Estimating maximum high ground-water levels in Massachusetts," in Farquhar, O.C., Ed. March 1980, *Proceedings of Conf. Geotechnology in Massachusetts*, p. 73; and/or
 - c. A DEP-approved method of determining coastal high groundwater elevation that incorporates tidal fluctuation information into the use of historical high groundwater data as contained in Frimpter, M.H. and G.C. Belfit. 1992. "Estimating highest ground-water levels for construction and land-use planning, Cape Cod, Massachusetts," updated, Barnstable, MA, Cape Cod Commission Technical Bulletin 92-001 or, if the location of the system is affected by tidal cycle typically within three hundred (300) feet of mean high water of the ocean, monitoring the high groundwater elevation over a tidal cycle during a full moon high tide.

SECTION 5 REPORTS, FINDINGS, AND REMEDIES

- 5.1 If, at the time of the inspection, the Inspector finds evidence of sewage on the surface of the ground or draining into any waterways or wetlands, the Inspector shall notify the-Local Approving Authority immediately but no later than 24 hours. The Local Approving Authority shall take appropriate action.
- 5.2 When the Local Approving Authority receives the completed Official Inspection Form, from the inspector, the report shall be reviewed to determine if the inspection meets the requirements of 310 CMR 15.301 and the requirements of this regulation, and whether additional living space has been added and/or if there has been any change in the intended use of the property. The owner of record shall be notified in writing by the Local Approving Authority as to the results of the inspection and any actions that may be necessary in accordance with sections 5.3 through 5.9 of this regulation.
- 5.3 If the Inspection finds the system to be in FAILED condition, the Local Approving Authority shall order the system repaired or replaced, in full compliance with 310 CMR 15.000: The State Environmental Code, Title 5 and Town Of Chatham Board Of Health's Minimum Requirements For The Subsurface Disposal Of Sanitary Sewage. The Local Approving Authority shall notify the Owner by Certified Mail.

- 5.4 If the Local Approving Authority determines that the system constitutes a danger to the Public Health, it shall order the Owner to make repairs and/or replace the system in full compliance with 310 CMR 15.000: The State Environmental Code, Title 5 and Town Of Chatham Board Of Health's Minimum Requirements For The Subsurface Disposal Of Sanitary Sewage. The Local Approving Authority shall notify the Owner by Certified Mail.
- 5.5 If the Inspection finds the system to CONDITIONALLY PASS or NEEDS FURTHER EVALUATION BY THE LOCAL APPROVING AUTHORITY, the Local Approving Authority will decide after reviewing the inspection form whether or not the system constitutes a danger to the Public Health and should be repaired or replaced. The Local Approving Authority shall notify the Owner by Certified Mail whether or not the system shall be repaired or replaced.
- 5.6 The repair or replacement of a system must be completed within 90 days of the transfer of property. A lesser time may be designated should the Local Approving Authority determine that the system constitutes a danger to the public health. More time may be given upon written request by the owners of the property and upon approval by the Board of Health, at a legally noticed hearing, as outlined in a letter of notification to the owner. If the work is not completed within the time designated by the Local Approving Authority, the Board may impose fines, in accordance with sections 7 and 8 of this regulation, and/or may take any other appropriate legal action it deems necessary.
- 5.7 If repair or replacement is required, upon completion of that work, the Local Approving Authority shall inspect and issue a Certificate of Compliance in accordance with the requirements of 310 CMR 15.000: Title 5 and Town Of Chatham Board Of Health's Minimum Requirements For The Onsite Disposal Of Sanitary Sewage.

SECTION 6 SEVERABILITY

Each part of this regulation shall be construed as separate to the end that if any paragraph, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of this regulation shall continue in full force.

SECTION 7 ENFORCEMENT

- 7.1 The Local Approving Authority is authorized to issue Notices of Violations, Cease and Desist Orders, and fines or other enforcement orders to compel compliance with the terms of this regulation, as they deem necessary or appropriate.
- 7.2 In addition to any other remedy, the Local Approving Authority may take any enforcement action deemed appropriate including but not limited to Criminal Prosecution, including fines as set forth in MGL Chapter 111, Sec. 31, or Civil Action in the Courts of the Commonwealth for injunctive relief and/or money damages, or both Criminal and Civil enforcement.

Section 8 Penalties

To provide for more effective enforcement of this regulation, where judged appropriate by the Board of Health at a legally noticed hearing, the use of non-criminal dispositions shall be implemented for enforcement. This action is authorized by M.G.L. c. 40, § 21D and pursuant to Town of Chatham Bylaw. Each day's failure to comply with an order shall constitute a separate violation.

Fine Schedule

Violation	\$300.00
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Revised: February 6, 2003
December 14, 2009

Effective: December 24, 2009

Signed:

Ronald Broman, Chairman

Mary Ann Gray, Vice Chairman

Edward Sheehan, Member

Edwin Whittaker, Member

Allen Ward, M.D., Member