

## 760 CMR 74.00: Residential Home Inspection Waivers

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#### 74.01: Statement of Purpose

- (1) St. 2024, c. 150, s. 45 (the Act) added a new section to M.G.L. c. 143 that requires the Executive Office of Housing and Livable Communities (EOHLC) to promulgate regulations to ensure that no Seller of a Residential Property, or an Agent thereof (i) conditions the acceptance of an offer to purchase on the Prospective Purchaser's agreement to waive, limit, restrict or otherwise forego a Prospective Purchaser's right to have the structure or unit inspected, except when the sale is to occur at an Auction conducted by an Auctioneer licensed under M.G.L. c. 100 or (ii) accepts an offer to purchase from a Prospective Purchaser, or an agent thereof who, in advance of the seller's acceptance of an offer, informs the seller, either directly or indirectly, that the Prospective Purchaser intends to waive, in whole or in part, the Prospective Purchaser's right to a Home Inspection, subject to limited exemptions and other exemptions that may be established by EOHLC.
- (2) To effectuate the Act, which is intended to protect the health, safety, and welfare of homebuyers and consumers, 760 CMR 74.00, also establishes a framework that requires the Seller in certain residential real estate transactions to disclose to Prospective Purchasers that they may have the home inspected.

#### 74.02: Definitions

Auction. Any sale, coming within its ordinary meaning, conducted by an Auctioneer by public outcry, including in addition thereto, any sale conducted by an Auctioneer by public outcry where property is offered first at a stated price and thereafter successively or gradually at higher or lower prices until an acceptor or purchaser is found pursuant to M.G.L. c. 100.

Auctioneer. Any person licensed under M.G.L. c. 100 who, for a fee, commission, profit or any other valuable consideration, or with the intention or expectation of receiving the same, by means of, or process of, an Auction or sale at Auction, offers, negotiates or attempts to negotiate, a listing contract, sale, purchase or exchange of goods, chattels, merchandise, real or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public Auction.

Agent. Any Person with actual or apparent authority to act on behalf of a Seller or Prospective Purchaser in the sale of a Residential Property, including, but not limited to, a Real Estate Broker or a Real Estate Salesperson.

Board. The board of registration of home inspectors established pursuant to M.G.L. c. 13, s. 96.

Condominium Unit. A Residential Dwelling Unit within a condominium established pursuant to M.G.L. c. 183A where the owner has exclusive ownership and possession of such Residential Dwelling Unit. The term "Condominium Unit" includes any appurtenant areas such as balconies, terraces and storage lockers if any are stipulated in the master deed as being owned exclusively or in common by the Residential Dwelling Unit owner.

Cooperative Corporation. A cooperative corporation, as defined under M.G.L. 157B, s. 4.

Cooperative Corporation Stock. The ownership of stock in a Cooperative Corporation entitling the stockholder to a propriety lease, as defined under M.G.L. c. 157B, s. 4 or other agreement with the right to use and occupy a specific Residential Dwelling Unit owned by the Cooperative Corporation.

Home Inspection. The use of a Home Inspector to observe and forthrightly discloses the physical conditions of systems and components listed in 266 CMR 6.04 which are readily accessible and observable, as defined in 266 CMR 2.01, including but not limited to identifying those systems and components, which are observable safety hazards, as defined in 266 CMR 2.01, at the time of the inspection, in conformity with the standards of practice promulgated by the Board under 266 CMR 6.00.

Home Inspector. A person licensed as a home inspector pursuant to M.G.L. c. 112, ss. 221 through 226.

Person. A natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity.

Prospective Purchaser. A Person who has made an offer to purchase a Residential Property or has communicated their intent to make an offer to purchase a Residential Property.

Purchase and Sale Agreement. A written agreement between a Prospective Purchaser and Seller that typically follows an offer to purchase, specifying the purchase price and material terms and conditions of a purchase of a Residential Property.

Real Estate Broker. A Person who is a real estate broker, as defined under M.G.L. c. 112, s. 87PP.

Real Estate Salesperson. A Person who is a real estate salesman, as defined under M.G.L. c. 112, s. 87PP.

Residential Building. A building or structure consisting of one to four Residential Dwelling Units; provided, that all such dwelling units shall comprise a single property, to be sold to and owned by a single Person. A Residential Building shall include all the common areas inside and outside such building or structure.

Residential Dwelling Unit. A unit within a building or structure, occupied or intended for occupancy as a residence.

Residential Property. Any of the following: (i) a Residential Building, (ii) a Condominium Unit or (iii) Cooperative Corporation Stock.

Seller. A Person, who is selling or intends to sell a Residential Property.

Transfer of Ownership: The conveyance of title of a Residential Building or Condominium Unit pursuant to M.G.L. c. 183 or the sale or transfer of Cooperative Corporation Stock.

#### 74.03 Limitations on the Waiver of a Home Inspection and Requirements of Seller.

(1) A Seller of a Residential Property, or their Agent, shall not condition the acceptance of an offer to purchase or the execution of an agreement to sell on the Prospective Purchaser's agreement to waive, limit, restrict or otherwise forego a Home Inspection, in whole or in part, except when the sale of the Residential Property is to occur at an Auction or is otherwise exempted pursuant to 760 CMR 74.04. The inclusion of any contract provision that would render a Home Inspection meaningless, whether in an offer to purchase, a Purchase and Sale Agreement, or otherwise, shall constitute a violation of this prohibition.

(2) A Seller of a Residential Property, or their Agent, shall not accept an offer to purchase from a Prospective Purchaser, or an Agent thereof if the offer to purchase as accepted, or any other contract document related to the sale, would require the purchaser to waive, limit, restrict or otherwise forego a Home Inspection, in whole or in part, except when the sale of the Residential Property is to occur at an Auction or is otherwise exempted pursuant to 760 CMR 74.04.

(3)(a) Not later than the signing of the first written contract to purchase a Residential Property, whether it is the offer to purchase or a Purchase and Sale Agreement, whichever occurs first, the Agent acting on behalf of the Seller, or the Seller if no such Agent is involved in the sale, shall provide a copy of the following written disclosure which shall be signed by the Seller and Prospective Purchaser:

“Pursuant to 760 CMR 74.00, Seller warrants and represents that the agreement to purchase is not, and in no event shall be, contingent upon waiver, limitation, or restriction of Buyer's choice to obtain a home inspection, in whole or in part (unless one of the exceptions under 760 CMR 74.00 applies). Seller agrees and acknowledges that Buyer may choose to have the premises inspected by a licensed home inspector of the Buyer's choice. The Seller further agrees, warrants, and represents that, if the Prospective Purchaser chooses to have a Home Inspection, the Prospective Purchaser shall have ten

(10) days after the Home Inspection or such other reasonable period as agreed to by the Seller and the Prospective Purchaser, to decide whether to proceed with the transaction if the results of the inspection are not satisfactory to the Prospective Purchaser.”

#### 74.04 Exemptions

- (1) The limitations under 760 CMR 74.03 shall not apply if the Prospective Purchaser is any of the following:
  - (a) The spouse or domestic partner, sibling, child, parent, grandparent, grandchild, great-grandchild or great-grandparent of the Seller; or
  - (b) The former spouse of the Seller and the sale of the Residential Property is being made pursuant to a judgment or order under M.G.L. c. 208; or
  - (c) A Home Inspector.
- (2) The limitations under 760 CMR 74.03 shall not apply to any of the following sales or Transfers of Ownership:
  - (a) A sale or Transfer of Ownership where the offer to purchase or a Purchase and Sale Agreement, whichever occurs first, was executed on or before July 15, 2025;
  - (b) A sale or Transfer of Ownership involving the foreclosure of a mortgage and the conveyance by the foreclosing party;
  - (c) A sale or Transfer of Ownership involving a short sale or deed-in-lieu of foreclosure;
  - (d) Deeds reconveying a property in order to release a debt, lien or other security obligation; or
  - (e) Where the Seller transfers the Residential Property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is the spouse or domestic partner, sibling, child, parent, grandparent, grandchild, great-grandchild or great-grandparent of the Seller.

#### 74.05 Relation to Other Laws

- (1) A violation or failure to comply with the provisions of 760 CMR 74.03 shall constitute an unfair or deceptive act or practice in the conduct of trade or commerce under M.G.L. c. 93A, § 2 if undertaken by a Person acting in a business context, such as a Real Estate Salesperson or Real Estate Broker. Nothing in this subsection shall be deemed to impose liability on A homeowner or purchaser participating in the isolated sale of a private home for residential use.

- (2) A violation or failure to comply with the provisions of 760 CMR 74.03 by a Real Estate Broker or Real Estate Salesperson licensed under M.G.L. c. 112, s. 87PP to 87DDD, inclusive, may constitute a violation for which the board of registration of real estate brokers and salesmen may take action as authorized pursuant to M.G.L. c. 112, 254 CMR 2.00 and 254 CMR 3.00.
- (3) In an action for damages brought against the Seller within one year from the date of the first written contract, the Seller's failure to comply with 760 CMR 74.03(3) may be evidence of the Seller's intent to misrepresent or conceal a material fact in a real estate transaction.

Regulatory Authority

St. 2024, c. 150 s. 45; St. 2024, c. 150 s. 136A; M.G.L. c.143, s, 101.