

760 CMR 74.00: RESIDENTIAL HOME INSPECTION WAIVERS

Section

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74.01: Statement of Purpose

(1) St. 2024 c. 150, § 45 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:

(a) 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

(b) 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 St. 2024 c. 150, § 45, 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

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.

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.

Board. The Board of Registration of Home Inspectors established pursuant to M.G.L. c. 13, § 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.

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

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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, § 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 disclose the physical conditions of systems and components listed in 266 CMR 6.04: *Scope of the Home Inspection* which are readily accessible and observable, as defined in 266 CMR 2.01: *Definitions*, 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, at minimum in conformity with the standards of practice promulgated by the Board under 266 CMR 6.00: *Standards of Practice*, including the provision of a written evaluation by the Home Inspector.

Home Inspector. A Person licensed as a home inspector pursuant to M.G.L. c. 112, §§ 221 through 226, or an associate home inspector, as defined under M.G.L. c. 112, § 221.

Newly Constructed. A Residential Dwelling Unit that has been constructed entirely new, inclusive of building foundation.

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, § 87PP.

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

Relative. The spouse or domestic partner or, whether by blood, marriage, or adoption, their sibling, child, brother, sister, aunt, niece, uncle, nephew, parent, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, half sister, grandparent, grandchild, great-grandchild or great-grandparent.

Render a Home Inspection Meaningless. To frustrate the purpose of a Home Inspection under 266 CMR 6.02, or otherwise frustrate the purpose of M.G.L. c. 143, § 101 and 760 CMR 74.00, including, but not limited to:

- (a) unreasonably limiting the Prospective Purchaser's ability to schedule, receive and review a Home Inspection; or
- (b) prohibiting a Prospective Purchaser from choosing not to proceed with the transaction if the results of the Home Inspection are not satisfactory to the Prospective Purchaser; provided, however, that a Seller and Prospective Purchaser (a) may agree to limit a Proposed Purchaser's choice not to proceed with the transaction after a Home Inspection if the estimated aggregate cost of repairs does not exceed a reasonable monetary threshold agreed upon by the parties, or (b) may agree to reasonably limit the Prospective Purchaser's deposit refund if the Prospective Purchaser chooses not to proceed with the transaction.

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.

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

Residential Property. Any of the following:

- (a) a Residential Building;
- (b) a Condominium Unit; or
- (c) Cooperative Corporation Stock.

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

Substantial Completion. The time when the construction is sufficiently complete so that the Residential Dwelling Unit may be occupied whether or not a certificate of occupancy has been issued by the municipality.

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.

(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) 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 separate form that includes 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 Buyer chooses to have a Home Inspection, the Buyer shall have a reasonable period of time after the full execution of the first written contract as agreed to by the Seller and the Buyer, to decide whether to proceed with the transaction if the results of the inspection are not satisfactory to the Buyer."

(4) The inclusion of any contract provision that would Render a Home Inspection Meaningless, in the first written contract to purchase, whether in an offer to purchase, a Purchase and Sale Agreement, or otherwise, shall constitute a violation of 760 CMR 74.03(1) or (2), as applicable.

(5) A Prospective Purchaser whose offer to purchase has been accepted by the Seller of a Residential Property in compliance with 760 CMR 74.03(1) and (2) and who has received written disclosure pursuant to 760 CMR 74.03(3) may subsequently waive, limit, restrict, or otherwise forego a Home Inspection, provided such decision by the Prospective Purchaser is not influenced or required by the Seller or the Seller's Agent.

74.04: Exemptions

- (1) The limitations under 760 CMR 74.03 shall not apply if the Prospective Purchaser is any of the following:
 - (a) A Relative 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.
- (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 October 15, 2025;
 - (b) A sale or Transfer of Ownership involving the foreclosure of a mortgage;
 - (c) A sale or Transfer of Ownership involving a 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 a Relative for estate planning purposes, including but not limited to, through a revocable or irrevocable trust, where at least one of the designated beneficiaries is a Relative of the Seller.
 - (f) A sale or Transfer of Ownership of a Newly Constructed Residential Property where the first written contract to purchase is executed prior to the Substantial Completion of construction and the Seller offers the Prospective Purchaser an express written warranty for a term of at least one year that construction will be completed in a good and workmanlike manner in accordance with all applicable building laws and regulations and that the components of the Residential Property will function properly, including, at a minimum, heating, cooling, plumbing and electrical systems, structural components, foundation, roof, masonry structure, exterior and interior components and any other related residential housing components.

74.05: Relation to Other Laws

- (1) (a) A failure to comply with the provisions of 760 CMR 74.03(3) shall constitute an unfair or deceptive act or practice in the conduct of a 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 760 CMR 74.05(1)(a) shall be deemed to impose liability on a homeowner or purchaser participating in the isolated sale of a private home for residential use and not undertaken in a business context.
 - (b) A violation of 760 CMR 74.03(1) and (2) or 760 CMR 74.03(4) may constitute an unfair or deceptive act or practice in the conduct of a 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 760 CMR 74.05(1)(b) shall be deemed to impose liability on a homeowner or purchaser participating in the isolated sale of a private home for residential use and not undertaken in a business context.
- (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, §§ 87PP through 87DDD 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: *Licensure* and 254 CMR 3.00: *Professional Standards of Practice*.
- (3) In an action for damages brought against a 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

760 CMR 74.00: St. 2024, c. 150, § 45; St. 2024, c. 150, § 136A; M.G.L. c. 143, § 101.