



Commonwealth of Massachusetts
Division of Occupational Licensure
Office of Public Safety & Inspections

1 Federal Street – Suite 0600 – Boston – MA 02110-2012

CERTIFIED BUILDING OFFICIAL COMPLAINT FORM

PART I. - GENERAL

Please read thoroughly.

Municipal building officials are employed by and, first and foremost report to, the appointing authority in the city\town in which they are employed. However, Massachusetts General Law (MGL) Chapter 143, Section 3 establishes that “*Every inspector of buildings, building commissioner or local inspector shall be certified by the board of building regulations and standards in accordance with regulations promulgated by said board*”. Therefore, the board has limited authority concerning certified building officials. Certification regulations are made part of the Commonwealth’s building code (780 CMR) under Section 110.R7 and may be viewed @ <https://www.mass.gov/doc/chapter-110-special-regulations-r7/download>.

DISCLAIMER:

While the Board sometimes takes action to enforce building laws and regulations generally, the Board does not represent individual consumers. Therefore, we cannot provide you with legal advice or act as your attorney. If you have any questions concerning your individual legal rights or responsibilities, you should contact a private attorney. Note that the sole purpose of this process is to determine whether discipline should be imposed against a certified building inspector. Claimants are encouraged to speak with and\or register concerns with the appropriate municipal authority prior to registering a complaint with the Board. If you are aggrieved by an action or inaction by a municipal building inspector and seek a remedy for said act, you must seek relief through the Building Code Appeals Board (BCAB). Please review information about the BCAB at the end of this form.

If matters cannot be satisfactorily addressed by one of the above methods, a complaint may be filed with the board using this form. Please send completed forms (*neatly printed or typed*) and support material to:

Division of Occupational Licensure
Office of Public Safety & Inspections
Building Official Complaint
1 Federal Street – Suite 0600
Boston, MA 02110-2012

Under 780 CMR, Section 110.R7.4, the board has established that “*A complaint about a certified building official shall be in writing and shall be received and reviewed by the administrator, or his or her designee. The administrator may cause the complaint to be investigated further, dismissed for failure to assert a cognizable or actionable claim, or referred to the Building Official Certification Committee (BOCC) for a hearing on the merits. Actions taken pursuant to this section shall be left to the sound discretion of the administrator*” and the following issues may be grounds for discipline. The certified building official has:

1. obtained a certification by fraud or misrepresentation;
2. aided or abetted in practice as a certified building official any person not authorized to practice as a certified building official under the provisions of 780 CMR 110.R7;
3. fraudulently or deceitfully practiced as a certified building official;
4. been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;
5. failed to maintain continuing education requirements as specified in 780 CMR110.R7;
6. been found to have failed to report an offer, or bribe, or other favor in a proceeding under 780 CMR 110.R7;

PART V. - OFFICE USE ONLY

This portion of the form is to be completed by the board administrator or designee.

Date Received: _____ Complaint Number: _____ Date Recorded in IPS: _____

Reviewed by: _____ Date: _____

Administrator

Designee

Action: Assigned to: _____ for further investigation on: _____
Name\Position Date

Dismissed for failure to assert a cognizable or actionable claim.

Referred to the Building Official Certification Committee (BOCC) for a hearing on the merits.

Date of hearing: _____ Hearing Number: _____

Notes with regard to action: _____

Frequently Asked Questions about the Building Code Appeals Board (BCAB) Process

Question: What is the overall intent of the code?

Answers: The building code sets **minimum** standards for the design and construction of all buildings and structures in the commonwealth. The intent is to ensure that all citizens are afforded a consistent level of safety in all buildings in which they visit, live or work. A code user may choose to exceed requirements of the code, but may not design or construct to a lesser standard.

Question: What if I am not able to abide by the provisions of the code verbatim, are appeals procedures available?

Answer: The Board of Building Regulations and Standards maintains an active Building Code Appeals Board (BCAB) that meets at least twice each month. In order to file an appeal with the BCAB, a notice of violation must first be issued by the municipal or state building official charged with the enforcement of the code. This notice identifies the subject matter to be addressed during an appeal.

Once an appeal application is stamped as received by the BBRS, a stay of proceedings is enacted. This stay prevents a building official from taking further action with regard to the appeal subject matter and allows the applicant to continue work on the project. However, please be aware that work is continued at the applicant's risk. A stay of proceedings may not be applicable if an inspector has issued a *stop work order*.

Among other things, BCAB members may allow variances to provisions of the code or may offer interpretations to clarify disputes relative to a particular code provision. However, BCAB members cannot simply waive code provisions, disregarding its public safety intent. Therefore, an applicant must clearly demonstrate a need for a variance (if this is the intended relief), then substantiate how he\she will achieve a comparable level of safety for building occupants. An applicant should keep in mind that the code is a public safety document and that arguments relating to an appeal should focus on issues of safety and compliance with the intent of the code; arguments should not focus on monetary savings for a project, at least not entirely.

Generally, it takes about 30 to 90 days after receipt of an application for a case to be heard. Although most cases are decided on the day of the hearing, BCAB members have 30 days following a hearing to issue a written decision. Technically, the decision is not finalized until the written decision is issued. Depending on complexity, cases may be continued and/or taken under advisement for determination at a later date.

If an appellant or other party is aggrieved by a BCAB determination, he/she may request reconsideration of the decision. Reconsideration requests must be filed in writing within 10 days of receiving the written decision. It is important to note that a reconsideration may only be considered on the basis of *new evidence*. Reconsiderations are not intended simply as a second chance to review the case. Reconsiderations are reserved for those rare instances where all facts relating to a matter may not have been suitably brought forward and examined during the hearing. Reconsideration requests are required to be reviewed by BCAB members who originally heard the case. If a majority of Board members agree that new evidence exists, a new hearing will be scheduled. Otherwise, aggrieved parties may appeal a BCAB decision to a court of law.

Appeals procedures follow the informal/fair hearings procedures as defined in 801 CMR 1.02. Interested parties may review this document by visiting www.state.ma.us/dala/801cmr.htm.

Question: Are there other reasons for filing an appeal?

Answer: An appeal may also be filed for a building official's *failure to act* on a matter. The building code (780 CMR) allows a 30 day period for a building official to review and act on an application for permit. Technically, if a response is not received within this period, an appeal may be filed on the 31st day. However, such quick action is not recommended. Like most people, building officials may get behind on their workload. If the thirty day period passes without a response, call the building official, documenting the day and time, to see if a response is forthcoming. If a response is not received via phone, try corresponding in writing, by certified mail if so desired. If these methods fail, an appeal may be filed to address the issue of the building code official's *failure to act* on the matter.