



Quick Reference Guide

Delegation of Authority

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Updated: March 2024



Delegation of Authority

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Delegation of Authority

I. INTRODUCTION

This document serves to provide a basic overview of a Delegation of Authority from the Authority Having Jurisdiction (“AHJ”) (i.e. State Fire Marshal, head of a fire department or other person) to other members of their department, as found in M.G.L. c. 148, s. 4. As such, the information presented here is for informational purposes only and does not, nor is it intended to, constitute legal advice. Questions about a specific factual scenario should be directed to your local city solicitor/town counsel.

II. AUTHORITY TO ENTER AND INSPECT PREMISES

The State Fire Marshal, the head of a fire department, or any person to whom the Marshal or the head of a fire department may delegate the authority of administering any of the duties imposed by M.G.L. c. 148, or in furtherance of the purpose of any provision of any law, ordinance, or by-law relating to the subject matter of c. 148, or of any rule or regulation of the board of fire prevention regulations, established under section four of chapter twenty-two D, or any order of the Marshal or head of the fire department, may enter at any reasonable hour any building or other premises, or any ship or vessel, to make inspection or investigation, without being held or deemed to be guilty of trespass.

In other words, a person other than the Marshal must be authorized to carry out the duties as described above.

III. DELEGATION OF AUTHORITY

By law, the State Fire Marshal is vested with the original authority to perform the above duties. The Marshal may delegate this authority to the head of a fire department to perform those duties in that city or town. Once delegated, the head of the fire department may further delegate his/her authority to those persons so chosen.

a. How is the authority delegated?

The Marshal will provide the Head of the Fire Department with a letter and pocket card providing verification that the authority of M.G.L. c. 148 s. 4 has been delegated to the person named on the letter and the certificate. The head of the fire department may then utilize the same letter and pocket card to delegate his/her authority to any person so chosen. A template pocket card follows this memorandum (see Appendix “A”).



Delegation of Authority

b. How long does the delegation last?

The delegation is valid until revoked, or separation from the department occurs.

c. How does the Marshal know who the head of the fire department is?

M.G.L. c. 148 s. 10A requires the clerk of each city and town to notify the Marshal, in writing, of the name and official address of the head of the fire department. This notification must be completed annually and received by the Marshal, on or before, April 1st. The Marshal should also be notified immediately whenever the head of the fire department changes.

d. What if the head of the Fire Department leaves the position and there is no one within the fire department to take his/her place?

M.G.L. c. 148 s. 1 defines "head of the fire department" as the chief executive officer of the fire department in a city, town, fire district, the 104th fighter wing fire department, the Devens fire department established pursuant to chapter 498 of the acts of 1993 or the Massachusetts military reservation fire department having such an officer, otherwise the fire commissioner, board of fire commissioners or fire engineers, or commissioner of public safety; and, in towns not having a fire department, the chief engineer, if any, otherwise the chairman of the board of selectmen.

527 CMR 1, 1.7.5 of the Fire Code states that the AHJ may delegate to other qualified individuals such powers as necessary for the administration and enforcement of this Code as provided in M.G.L. c. 148.

This means, in situations where the head of a fire department is not a member of the fire department, (i.e. retirement by the head of the fire department leaves chairman of the board of selectmen in charge), the Marshal will rely on the city or town to determine who shall be designated as head of the fire department, and the Marshal may delegate the authority to that person consistent with s. 1. Once the city or town has made this determination of who they wish to have serve as "head of the fire department", a delegation of authority request should be sent to the Marshal as soon as is reasonably possible so the delegation may issue.

A delegation of authority is solely administrative in nature, intended to facilitate continued inspectional and enforcement measures for a local fire department. Personnel decisions, including the appointment of a fire chief to the department, remain within the exclusive purview of the local form of government that exists in the community.



Delegation of Authority

IV. APPENDIX A



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Fire Services

In accordance with the provisions of Section 4, Chapter 148, General Laws, I hereby delegate the authority vested in me to:

Name: _____
Given under my hand at _____, Massachusetts,
this ____ day of _____, 20__.

_____, Chief

Delegation is valid until revoked or upon separation from the Department

_____ fold here _____

The marshal, the head of the fire department, or any person to whom the marshal or the head of the fire department may delegate the authority, may, in the performance of the duties imposed by this chapter, or in furtherance of the purpose of any provision of any law, ordinance or by-law relating to the subject matter of this chapter, or of any rule or regulation of the board of fire prevention regulations, established under section four of chapter twenty-two D, in this chapter referred to as the board, or any order of the marshal or head of the fire department, enter at any reasonable hour any building or other premises, or any ship or vessel, to make inspection or investigation, without being held or deemed to be guilty of trespass.

M.G.L. Chapter 148, section 4

Delegation of Authority

_____ cut on this line _____



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Fire Services

In accordance with the provisions of Section 4, Chapter 148, General Laws, I hereby delegate the authority vested in me to:

Name: - _____
Given under my hand at _____, Massachusetts,
this ____ day of _____, 20__.

_____, Chief

Delegation is valid until revoked or upon separation from the Department

_____ fold here _____

The marshal, the head of the fire department, or any person to whom the marshal or the head of the fire department may delegate the authority, may, in the performance of the duties imposed by this chapter, or in furtherance of the purpose of any provision of any law, ordinance or by-law relating to the subject matter of this chapter, or of any rule or regulation of the board of fire prevention regulations, established under section four of chapter twenty-two D, in this chapter referred to as the board, or any order of the marshal or head of the fire department, enter at any reasonable hour any building or other premises, or any ship or vessel, to make inspection or investigation, without being held or deemed to be guilty of trespass.

M.G.L. Chapter 148, section 4

Delegation of Authority

_____ cut on this line _____



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Fire Services

In accordance with the provisions of Section 4, Chapter 148, General Laws, I hereby delegate the authority vested in me to:

Name: - _____
Given under my hand at _____, Massachusetts,
this ____ day of -_____, 20__.

_____, Chief

Delegation is valid until revoked or upon separation from the Department

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M.G.L. Chapter 148, section 4

Delegation of Authority

_____ cut on this line _____