

RE15RC21 Selling Historic Properties

Objective

What is the role of the real estate licensee when their client is considering a historic property, or they are listing such a property? This course is designed to educate the real estate licensee on the various regulations and encumbrances which could impact a historical property, provide resources and apply this information to a licensee's due diligence obligations when listing such a property or working with a buyer considering such a property.

Outline

1. How Residential and Commercial Properties Can Be Regulated

- a. National and state regulations
 - i. The National Register of Historic Places
 - ii. Historic Landmark and "landmark" status
 - iii. National Historic Districts
 - iv. Massachusetts Register of Historic Places
 - v. State Inventory of Historic and Cultural Assets
 - vi. The Massachusetts Historical Commission (State Historic Preservation Office, or SHPO)
- b. Municipal regulation of historic structures
 - i. City or Town Historical Commission
 - ii. Local Historic Districts
 - iii. City or Town Historic District Commission
- c. Private historic preservation organizations
 - i. National Trust for Historic Preservation
 - ii. Historic New England (formerly SPNEA Society for the Preservation of New England Antiquities)
 - iii. New England Historic and Genealogical Society
 - iv. Local Historical Societies

2. Significance of the National Register of Historic Places

- a. Background information on the National Register of Historic Places
 - i. Authorized under the National Historic Preservation Act of 1966
 - ii. Administered by the National Park Service
 - iii. Massachusetts Historical Commission is linked to National Register
 - iv. Nomination approved or denied by the National Park Service
- b. What is required to be considered a historic place?

Five categories of properties, must meet at least one of four criteria:

 - i. **Event:** The property must make a contribution to the major pattern of American history.
 - ii. **Person:** It is associated with a significant person or people of the American past.

- iii. **Design/Construction:** Distinctive characteristics, such as architecture and construction methods,
- iv. **Information Potential:** Property may provide information or have educational value
- c. Significance of being listed
 - i. Listing a property on the National Register imposes no blanket restrictions on private property owners, except protection if federal money is involved (direct grants, not FHA or VA loans)
 - ii. Mostly “an honorary status with some federal financial incentives”
 - iii. National Register standards are used by other organizations to judge preservation worthiness
 - iv. Register is “official” list of cultural resources across America deemed worthy of preservation
 - v. The Register is acknowledgment by the government of historic value of a property
 - vi. Section 106 of the National Historic Preservation Act requires review of impacts if federal money or a federal permitting process is involved
 - vii. State funding or state permitting triggers a review by the Massachusetts Historical Commission
 - viii. Local permitting does not require MHC review
 - ix. National Register properties may be subject to stricter regulations of a Local Historic District
 - x. If owner objects to listing on the Register, the State Historic Preservation Office may declare a property a Historic Building – “Any building or structure which has been certified ... to meet eligibility requirements for individual listing on the National Register of Historic Places.”
- d. Benefits to listing on the National Register
 - i. Recognition of significance
 - ii. Tax incentives for renovation of income-producing properties
 - iii. Limited protection from governmental projects
 - iv. Grants and funding opportunities, mostly to non-profits and municipalities
- e. Massachusetts Register of Historic Places
 - i. Listing on the National Register automatically includes placement on the State Register
 - ii. More than 60,000 properties
 - iii. Published once a year by the Massachusetts Historical Commission

3. How Local Historic Districts Can Affect Property Use and Values

- a. Local Districts are potentially the most restrictive designations affecting use, alteration and sales
 - i. Historic District Commissions have jurisdiction over the exterior look of properties within the district, demolition of buildings, new construction and additions
 - ii. Some work that does not require a building permit may require a certificate from the Historic District Commission

- b. Local Historic Districts enabled under Chapter 40C of the Massachusetts General Laws
 - i. Districts are established by a 2/3 vote of town meeting or city council, governed by a separate Historic District Commission, whose members are appointed by the selectmen or city council
 - ii. Boundaries must be established in enabling legislation
 - iii. Property owners cannot “opt out” of inclusion
 - iv. No requirement that any property within the district be listed on the National or State Registers
 - v. District guidelines apply to **all** properties within the district
 - vi. Bylaw may provide for an appeal of decisions to a regional planning agency or to Superior Court
 - Certificate of Appropriateness
 - Certificate of Non-Applicability
 - Certificate of Hardship
- c. Advantages of Local Historic Districts
 - i. Stability of property values
 - ii. Predictability of adjacent development
 - iii. Availability of renovation assistance
 - iv. Local decision-making
- d. Disadvantages of Local Historic Districts
 - i. Restrictions on future development
 - ii. Regulations are subject to change
 - iii. May be more restrictive than national designations
 - iv. Decision-makers may not be experts in the field

4. Other preservation methods

- a. Preservation Easements
 - i. Similar to a conservation easement; usually purchased by or gifted to a non-profit or a government entity
 - ii. May prohibit physical changes, alteration of building use, and uses not historically appropriate
 - iii. May be used to protect historic vistas, rural land, stone walls
 - iv. Recorded at the Registry of Deeds as an encumbrance
 - v. May impact the resale value of the property
- b. Demolition Delay Bylaws
 - i. Approximately 92 communities have adopted bylaws to delay demolition of historic properties
 - ii. Public or private buildings. Owner cannot object
 - iii. Provide a window in which preservation alternatives must be explored
 - iv. Local Historical Commission holds hearing and votes whether to delay
 - v. Can be enacted in a city or town without a Historic District
 - vi. Delay period can be as little as 21 days; most delays are for 3, 6, or 12 months
- c. Application of other laws and regulations to historic structures

- i. Building code has exemptions for “Historic Buildings,” House Museums or Preserved Buildings
- ii. Other laws remain in effect: Zoning, Lead Paint, State Sanitary Code, Title 5, Americans With Disabilities Act (applies to public buildings), Wetlands Protection Act

5. Tax Incentives

- a. Massachusetts Historic Rehabilitation Tax Credit Program
 - i. Offers up to 20% of cost of certified rehabilitation work in state income tax credits
 - ii. Building must be income-producing and not entirely owner-occupied
 - iii. Must be listed, or eligible for listing, on the National Register of Historic Places
- b. Federal Historic Preservation Tax Incentives
Eligible renovations result in a dollar-for-dollar reduction in the amount of federal income tax owed
 - 20% tax credit for the certified rehabilitation of certified historic structures.
 - 10% tax credit for the rehabilitation of non-historic, non-residential buildings built before 1936.

6. Due Diligence in Transactions Involving Historic Properties

- a. Licensees must disclose material facts they are aware of that may affect the actions of a buyer or seller, such as historic designations, preservation easements, and regulations limiting use and/or alteration.
- b. When listing a property
 - i. Ask the seller for any information on history and designations
 - ii. Contact the Local Historical Commission for information on the State Register and National Register
 - iii. Check with the neighborhood association if one exists
 - iv. Check records at Town Hall – Building Inspector and Planning Department
 - v. Historic District regulations and boundary maps
 - vi. Check Registry of Deeds for easements, deed restrictions, and encumbrances
 - vii. Document your sources, and provide guidance on where to find answers
 - viii. Online resources for selling historic properties
 - www.historicproperties.com
 - www.oldhouses.com
 - www.historicproperties.com
 - savingplaces.org/magazine-advertising-historic-properties
 - www.architecturaldigest.com/
 - www.preservationdirectory.com
 - www.historicforsale.com
 - www.historicnewengland.com
- c. Considerations for buyers of historic properties

- i. Future value
- ii. Lifestyle/use/limitations
- iii. Increased costs of repair/replacement/insurance
- iv. Tax incentives for repairs and restoration

7. Review of Architectural Styles

- Cape Cod Style 1600s – Present
- First Period, 1600s – 1700s
- Georgian, 1700 – 1780
- Federal, 1780 – 1820
- Greek Revival, 1825-1860
- Gothic Revival, 1840 – 1880
- Italianate, 1840-1885
- Second Empire, 1855 – 1885
- Stick Style, 1860 -1890
- Queen Anne, 1880 – 1910
- Shingle Style, 1880 – 1900
- Craftsman, 1905 – 1930
- Colonial Revival, 1880 – Present
- Ranch, 1920 – Present
- “Home in a Box,” 1920 - 1960
- Raised Ranch, 1960 - Present

References & Resources

- National Register of Historic Places: <https://www.nps.gov/subjects/nationalregister/index.htm>
- National Trust for Historic Preservation: www.preservationnation.org
- National Historic Preservation Act of 1966, Section 106:
<https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf>
- Massachusetts Historical Commission: www.sec.state.ma.us/mhc/mhcidx.htm
- Massachusetts Historical Commission Publications:
<http://www.sec.state.ma.us/mhc/mhcpub/pubidx.htm>
- Preservation Easements: MGL Chapter 184, Section 31,
<http://www.malegislature.gov/Laws/GeneralLaws/PartII/TitleI/Chapter184/Section31>
- Local Historic Districts: MGL Chapter 40C,
www.malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40C
- State Building Code, Historic Buildings Section, 780 CMR 780.9309
<http://www.mass.gov/eopss/docs/dps/780-cmr/780093.pdf>
- Massachusetts Historic Rehabilitation Tax Credit Program:
<http://www.sec.state.ma.us/mhc/mhctax/taxidx.htm>
- Federal Preservation Tax Incentives
<http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>

Relevant Judicial Cases

- Permit denial by Historic District Commission did not constitute a taking of property; *Collins v. Historic District Commission of Carver*, 73 Mass. App. Ct. 388
- Variances may be denied for building alterations that violate with Historic District regulations:

Steamboat Realty, LLC v. Zoning Board of Appeal of Boston, 70 Mass. App. Ct. 601

Suggested Handouts

- “Know How #6, Historic Properties Inventory Forms”, published by the Massachusetts Historical Commission, which explains the types of information compiled and maintained by the MHC and how to use this data: www.sec.state.ma.us/mhc/mhcpdf/knowhow6.pdf
- “There’s A Difference: Local Historic District vs. National Register District,” published by the Massachusetts Historical Commission, which discusses the differences between the types of historic districts: www.sec.state.ma.us/mhc/mhcpdf/difference.pdf
- City of Somerville’s “Steps to Apply for a Certificate for Exterior Work on a Historic Property (with flow chart),” as an example of local regulations and processes when seeking to perform work on historic properties:
<https://s3.amazonaws.com/ifa.somervillema.gov/documents/historic/SHPC-CertificateApplicationSteps.pdf>

Note to instructor:

It is the instructor’s obligation to verify that any time sensitive information is updated (such as current tax incentives).

While links to online references are provided to you, they may not be operational by the time you consider this outline, update as necessary