

Title V — Septic Systems

*A Fact Sheet for Berkshire County REALTORS®
What Title 5 Requires at Property Transfer*



When Is an Inspection Required?

In general, Title 5 requires a septic system inspection at the time of property transfer, with certain exceptions. An inspection is also required when:

- A property is sold to new owners, or title otherwise transfers to new owners (with the exceptions below).
- Properties are divided or combined.
- There is a change in use or an expansion of the facility, even without a sale — for example, converting a retail store to a restaurant — if the change requires a building or occupancy permit.
- Large systems (10,000–15,000 gallons/day design flow) reach their scheduled inspection year, and every 5 years after; shared systems, every 3 years.

How Long Is an Inspection Valid?

For most property transfers, the inspection must occur within two years prior to the time of transfer. Exceptions:

- **Weather delay:** if inclement weather prevents inspection at the time of transfer, it must occur as soon as weather permits — but no later than 6 months after transfer — provided the seller notifies the buyer in writing of the requirements in 310 CMR 15.300–15.305.
- **Annual pumping:** if the system has been pumped every year since its last inspection and pumping records are available, that inspection remains valid for three years instead of two.
- **Multiple transfers:** an inspection conducted within the required window satisfies the requirement for more than one transfer of title and does not need to be repeated within that period.

Transfers Between Family Members — Exempt from Inspection*

Title 5 does NOT require a system inspection if the transfer is of residential real property and is between:

- Current spouses (including for estate planning or as part of a divorce settlement/court order);
- Parents and their children (biological, adopted, or step-children);
- Full siblings (same two parents — half-siblings are NOT covered); or
- A revocable or irrevocable trust, where at least one designated beneficiary is of the first degree of relationship (parent/child) to the grantor.

*Note: *Applies only if property is actually used as a residence by the family members involved — not to rental, commercial, or investment property. See MassDEP's "Guidance on Exemptions from Title 5 System Inspections"*

Other Transactions That Are NOT Considered a "Transfer of Title"

These do not trigger an inspection requirement at all:

- Taking a security interest in a property (e.g., issuing a mortgage);
- Refinancing a mortgage or similar instrument, regardless of lender;
- A change in the form of ownership among the same owners (e.g., placing property in a family trust where the owners are the beneficiaries, or changing proportionate interests among existing owners/beneficiaries);
- Adding or removing a spouse as owner/beneficiary, a transfer between spouses during their lifetimes, or the death of a spouse; or
- Appointment of, or a change in, a guardian, conservator, or trustee.

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Inspection Requirements for Specific Types of Transfer

Each of the following has its own required inspection window. Unless noted, an inspection completed up to three years before transfer may be used if accompanied by pumping records showing the system was pumped at least once a year during that time.

1. Condominiums & Cooperative Units

- 5 or more units: every system must be inspected at least once every 3 years (not at each individual transfer).
- Fewer than 5 units: either inspect all systems every 3 years, OR inspect the system serving a unit within 2 years prior to that unit's transfer.

2. Foreclosure or Deed in Lieu of Foreclosure

- Within 2 years before, or 6 months after, execution of the memorandum of sale or delivery of the deed in lieu of foreclosure, provided the foreclosing party notifies the buyer in writing.

3. Inheritance — By Will or Intestacy

- Within 2 years before, or **1 year after**, the will's allowance by the probate court and appointment of the executor — or, if there is no will, the appointment of an administrator.
- Exempt from this rule (no inspection required): inheritance by a spouse, or inheritance between the same family relationships listed in the family exemption above.
- Executors/administrators must notify new titleholders in writing of the inspection and upgrade requirements.

4. Legal Life Estate or Interest for Life / a Term of Years in Trust

- Within 2 years before, or 6 months after, the death of the life tenant or the expiration of the trust interest.
- If a successive life interest passes to a spouse, the clock instead runs to the death of the last surviving spouse (or expiration of that further interest).

5. Interfamily Transfers Not Covered by the Family Exemption

- Examples: grandparent to grandchild, or transfers between half-siblings.
- Inspection required within 2 years prior to transfer (or up to 6 months after, if weather delayed).

6. Tax Taking by Federal, State, or Municipal Government

- Within 2 years prior to transfer by the government entity to a buyer, or within 6 months after the right of redemption expires, with written notice to the buyer.

7. Levy of Execution Resulting in Conveyance of Property

- Within 2 years prior to the officer's deed of the debtor's interest, or within 6 months after the right of redemption expires, with written notice to the buyer.

8. Bankruptcy

- Within 2 years prior to transfer by the bankruptcy trustee to a buyer, or within 6 months after the transfer, with written notice from the debtor to the buyer.

9. Change in Ownership Where NEW Parties ARE Introduced

- Examples: adding a new trust beneficiary, a new joint owner/tenant in common, a new general partner, or a legal life estate created for someone other than the grantor or their spouse.

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- Within 2 years prior to transfer (or up to 6 months after, if weather delayed), with written notice to the new party.
- *This is the flip side of the "no new parties" exemption above — read the two together.*

Practice tip for closings

Estate transfers, trust distributions, and family transfers are where inspection requirements are most often missed — the triggering event isn't always the closing date itself (e.g., date of probate allowance, date of a life tenant's death). Confirm the correct trigger date before assuming a transfer is exempt.

Inspections for New Construction and Upgrades

Inspections are not required for new construction or completed system upgrades. A system with a Certificate of Compliance issued within two years before transfer is exempt from the transfer inspection requirement. The exemption may extend through the third year only when pumping records demonstrate that the system was pumped at least once during that third year.

Responsibility for Obtaining the Inspection & Submitting Results

- The property owner or facility operator is generally responsible for arranging the inspection; parties may contractually reassign this responsibility before transfer, provided the inspection still occurs within the required window.
- Only a MassDEP-approved System Inspector may conduct a valid inspection — inspections by anyone else do not satisfy Title 5.
- Results must be submitted on the current MassDEP-approved Inspection Form within 30 days, generally to the local Board of Health.
- Exceptions: state/federal facility reports go to MassDEP instead of the local Board of Health; large-system and shared-system reports go to both.

Buyers' Rights in Property Transfers

- The buyer (or other person acquiring title) must receive a copy of the complete inspection report.
- An inspection reflects the system's condition as of the inspection date only — it is not a guarantee the system will continue to function or won't fail later.
- **Complaints about an inspection:** contact your regional MassDEP office, or email DEP.Title5@mass.gov.
- **Suspected fraud or an altered inspection report:** call the Massachusetts Environmental Strike Force at (617) 556-1000, or toll-free 1-888-VIOLATE (1-888-846-5283).

One statewide wrinkle that doesn't apply in Berkshire County

2023 amendments to 310 CMR 15.000 added stricter nitrogen-reduction ("BANRT") requirements for new construction and system upgrades within designated Nitrogen Sensitive Areas around Cape Cod estuaries. These do not extend to Berkshire County, but it's worth knowing the term exists if you ever handle a Cape Cod listing.

This fact sheet is for informational use only. We suggest you contact MassDEP or your local Board of Health for guidance on a specific property or transaction. 310 CMR 15.000, including §§15.300–15.305, and current MassDEP guidance