

# Underground Oil Storage Tanks UST



**Berkshire County Board of REALTORS®, Inc. (413) 442-8049**  
**From Massachusetts Assoc. of REALTORS, Atty. Robert Kutner**

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Calls from REALTORS® to our office indicate that fuel oil underground storage tanks (UST) are major obstacles to closings, often complicating and sometimes even stopping home sales. Residential USTs are an issue today because of publicity and regulations. But a UST is a manageable issue. Our experience is that the probability of a residential UST leaking is very slim. Further, the cost of eliminating the UST issue by replacing it with an aboveground tank is quite affordable.

Federal Regulations exempt USTs used for storing heating oil for consumptive use on the premises. Massachusetts regulations do address these tanks, and some communities have enacted more stringent rules. Massachusetts UST regulations may be summarized as follows:

## Requirements for tanks installed after 1/1/89:

Tanks under 1,100 gallons storing heating oil for consumptive use may be either fiberglass or coated steel with cathodic protection. Other tanks must be double wall composite material or double wall steel with cathodic protection, either type with constant monitoring. All tanks must have spill containment and overfill protection devices.

## Upgrading of tanks installed before 1/1/89:

Tanks over 1,100 gallons require spill containment devices before 5/30/93. All tanks require overfill prevention devices before 5/30/93. Some local communities have additional requirements dealing with testing, useful tank life, proximity to water supplies, and so on. Local fire departments are the best source of this information.

However, regulations are not usually the real problem for home buyers and sellers. The key practical factors are fear of the unknown ("Is the tank leaking now? Will it leak in the future?) and liability concerns. Homeowner insurance does not cover most tank leaks. Testing is one potential solution. But it is not a guarantee for the future, and may indicate a leak now. The average cost for a residential tank test is \$500-\$600. Many people have found that the simplest and most cost-effective solution is to just remove the UST now--before problems arise--and replace it with one or two aboveground tanks.

A UST cannot be abandoned in place unless it is under a building, or so close that its removal would damage the building. State regulations require that USTs which are not in use must be removed under the direction of the head of the local fire department. A permit is required, and the tank and its contents must be disposed of in accordance with regulations. Once this procedure is completed, uncertainty is eliminated and the property has a "clean bill of health."

If a leak is discovered during removal, the local fire chief--who is present when the tank is lifted--makes a determination as to whether the spillage is above the ten gallon threshold for reporting it to the D.E.P. If a clean-up is required, he may also be able to provide information about contractors who are qualified to do it.

Standard aboveground tanks can be easily installed in a basement, garage, or outside the building. Automatic deliveries eliminate the need for large storage capacity, but two tanks can provide peace of mind for people used to a large oil supply. The cost for a typical UST removal and aboveground installation ranges from \$1,200-\$4,000, depending on tank size. It is a reasonable suggestion to make to a buyer concerned about a UST. For a seller, a UST changeover should be high on the list of "make ready for sale" improvements.

## From the Purchase and Sale Agreement

(Multiple Listing Service of the Berkshire County Board of REALTORS, Inc.)

\_\_\_\_ 19. UNDERGROUND STORAGE TANKS. The parties acknowledge that the Massachusetts Board of Fire Prevention has issued regulations governing the maintenance, repair, and removal of underground storage tanks to prevent and detect leakage of tank contents into surrounding soil and water supplies. The SELLER hereby discloses that to the best of SELLER's knowledge, there are/are not (delete one) one or more underground storage tank(s) at the Premises. If there are one or more underground tanks at the Premises, the SELLER further discloses that the tanks have/have not (delete one) been used within the past six (6) months exclusively for the storage of fuel oil for consumption of the Premises and to the best of the SELLER's knowledge there has been no release or leakage of oil from such tank(s). If the Property is not in compliance with 527 CMR 9.00 et. seq. and BUYER does not cancel this Agreement, pursuant to paragraph 14, BUYER shall be obligated to purchase the Property and shall be deemed to have assumed the obligation to bring the Property into compliance with 527 CMR 9.00 et. seq.