

# NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

**March 2020**

**Q. There is a discrepancy between the town's field card and the septic rating for my listing. What number of bedrooms can I use in my advertisements?**

**A.** As a best practice, any advertisements should state the smaller of the two numbers when listing the number of bedrooms in the property. The property description may include language that highlights the discrepancy between the two sources, and note the potential for additional bedrooms. Including the smaller number in the field that will be used for search purposes protects the listing agent from potential claims of misrepresenting the property. Both Article 12 of the Realtor® Code of Ethics and Massachusetts regulations (254 CMR 3) prohibit false or misleading advertisements. A listing that uses the larger number of bedrooms likely runs afoul of both the Code of Ethics and Massachusetts regulations because it is not presenting a true picture.

**Q. I am selling a home that has a failed Title 5 inspection. What are my seller's options?**

**A.** Aside from very limited circumstances, a property must have a passing Title 5 inspection within 2 years before a transfer takes place. An inspection is not required before a transfer in the following situations:

1. Refinancing or any situation where no new parties are introduced;
2. a transfer between spouses;
3. a transfer between parents and child(ren);
4. a transfer between full siblings; and
5. where the property is held in a trust.

A property owner or buyer of a property with a failed inspection may also enter into an enforceable agreement with the Board of Health requiring them to upgrade the system or connect to the public sewer within 2 years following the transfer of title. If a property owner has entered into this type of agreement, they must disclose it to prospective buyers, and it must be binding on subsequent owners.

The most straightforward option available to sellers with a failed Title 5 inspection is to repair or replace the system prior to transfer. However, this may not be a viable option for all sellers because of the expense involved. In these situations, the seller and buyer may negotiate a resolution that satisfies both the requirements of the law as well as the financial well-being of all parties involved.

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