

RE15RC21 Selling Historic Properties

The outline below is the required course outline as mandated and provided by the Massachusetts Board of Registration of Real Estate Brokers and Salesperson.

Please Note:

- *Items may not be covered in the exact order of the state outline.*
- *Information is subject to change, please always verify before using*
- *Links may have changed*

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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.

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
 - 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
- “Home in a Box,” 1920 - 1960
- Colonial Revival, 1880 – Present
- Ranch, 1920 – Present
- 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>