

# CHAPTER 16

## HOUSING / SANITARY CODE

### BOARD OF HEALTH ROLE AT A GLANCE

- \$ Conduct housing inspections upon request to determine if violations of the State Sanitary Code exist.
- \$ Report findings of the inspection to the property owner and tenant, and issue orders to correct the violations.
- \$ Afford the property owner a hearing with the board of health and initiate judicial proceedings if the property owner fails to obey the order.
- \$ Conduct a re-inspection at the property and issue a compliance letter if all violations are remedied.
  - Make sure your staff are up to date on all MA smoke alarm and carbon monoxide detector legislation.
  - Make sure your staff are familiar with safety standards for home swimming pools, including fencing, self-closing latches and special drain covers or drain cover systems.

### OVERVIEW

The State Sanitary Code, Chapter II, *Minimum Standards of Fitness for Human Habitation*<sup>®</sup> provides detailed standards for safe and sanitary housing...*to protect the health, safety and well-being of the occupants of housing and of the general public, to facilitate the use of legal remedies available to occupants of substandard housing, to assist boards of health in their enforcement of this code, and to provide a method of notifying persons of conditions which require immediate attention.*

Poor water supplies, insufficient heat, or pest infestation can contribute to or cause serious health problems, especially for the elderly, children, or other vulnerable residents. Defective electrical systems, inadequate exits, and structural defects may seriously endanger both residents of the unit and neighbors or visitors as a result of fires or accidents. Crowded conditions, improper sewage disposal, and shared use of toilets, water, and sleeping quarters is conducive to the proliferation of gastrointestinal ailments and other communicable diseases, and could result in contamination of water supplies. Thus, problems associated with substandard housing can be particularly challenging for boards of health.

All persons should be afforded a suitable living environment. Local boards of health are charged with the responsibility of ensuring that occupants receive decent housing. The board of health (BOH) should direct their efforts towards maintenance of the quality of housing to prevent development of health problems and public nuisances and to protect the quality of life. Measures to prevent housing problems may include periodic inspections (which may uncover potential problems as well as actual violations of the Sanitary Code) as well as public education and advice to homeowners and landlords on how best to maintain and repair their property.

If substandard housing exists, a BOH may require repairs, encourage rehabilitation, or condemn and order demolition of unfit housing. The board may move beyond the level of responding to complaints by working with other town officials, the business community and community groups to develop goals for rehabilitation and repair of housing in the community. The BOH and its staff are likely to know community conditions well enough to help set priorities and identify the most serious problem areas.

The Sanitary Code itself defines a minimal list of *Conditions Deemed to Endanger or Impair Health or Safety*® (105 CMR 410.750). Inspectors must determine when they make an inspection if any violations of the Code constitute conditions that may endanger or impair the health, safety, or well being of an occupant (105 CMR 410.700). If a town decides to seek local or other funding (from either tax revenues or private sources) for a housing rehabilitation program, the BOH can have an important role in defining, documenting and describing the problems and proposed solutions.

A program of routine or systematic inspections may alert landlords to the interest of the town in maintaining housing standards. If rental units or older homes likely to contain lead paint hazards are of special concern, a limited routine inspection program may be directed at these types of dwelling units. Inspecting a random sample of the target group of units may be a low-cost way to determine how widespread a problem is. In addition, a routine inspection program may be considered a screening device to check on those standards that the Sanitary Code and local boards of health identify as most important.

The BOH may wish to enact a “Certificate of Occupancy” regulation requiring that all rental units be inspected and brought up to code prior to occupancy. The municipality has leverage to ensure that this class of housing is maintained in compliance with the minimum standards.

If inspection of a neighborhood uncovers numerous housing violations, there should be a search for general environmental problems conducted prior to any other efforts to correct violations. The neighborhood may contain environmental stresses that adversely affect the residents such as excessive noise, glare, land covering, non-residential land uses, and traffic problems that may make the total neighborhood an unpleasant place in which to live, and may lead residents to let their houses deteriorate.

The first part of Chapter II, Sections 410.100 through 410.750, provides a set of standards that are designed to help determine whether or not a dwelling is fit for habitation.

Minimal standards are established for the following areas:

kitchen facilities - 410.100

bathroom facilities - 410.150 to 410.152

potable water - 410.180

hot water supplies - 410.190

heating requirements - 410.200, 410.201

lighting and electrical facilities - 410.250 to 410.258

ventilation - 410.280, 410.281

sewage disposal - 410.300

installation and maintenance of facilities - 410.350 to 410.352

space and use - 410.400 to 410.402

temporary housing - 410.430, 410.431

exits - 410.450, 410.451

security - 410.480, 410.481

maintenance of structural elements - 410.500 to 410.505

insects and rodents - 410.550 to 410.553  
garbage and rubbish storage and disposal - 410.600, 410.602  
curtailment of service - 410.620

Massachusetts has a number of strong laws that provide a solid foundation on which to build fire-related and carbon monoxide poisoning prevention. These include:

- **Smoke Alarm Laws:** The requirements concerning residential smoke alarm installation in existing structures are stated in Massachusetts General Laws (MGL) , Chapter 148, sections 26B-26F. The minimal standard in Massachusetts is for smoke alarms to be installed on every floor of the home, both inside and outside the bedrooms and elsewhere as required by the Massachusetts Building Code, 780 Code of Massachusetts Regulations (CMR), Chapters 9 and 36, effective February, 1997. Chapter 148, section 26F describes the “sale of property law” that requires that the seller of a property must provide smoke alarms in the required locations upon the sale or transfer of the building.
- "Massachusetts Fire Safety Act" Chapter 304 of the Acts of 2004. This law mandates sprinklers in places of assembly, such as nightclubs, with an occupancy of 100 persons or more by Nov. 15, 2007.
- **Nicole's Law:** Massachusetts General Laws Chapter 148 section 26F1/2. Requires residential buildings that contain enclosed parking or equipment such as boilers, furnaces and hot water heaters to have working carbon monoxide detectors. Local fire departments will inspect residences upon the sale or transfer of a property to ensure compliance with the law.

## **BOH RESPONSIBILITIES**

Enforce minimum housing standards for all housing as set forth in the State Sanitary Code, Chapter II, A Minimum Standards for Human Habitation®, 105 CMR 410.000, as required by M.G.L. c. 111 ' 127A. Enforcement of the Minimum Standards for Human Habitation includes enforcement of certain sections (specified in the Sanitary Code) of other Massachusetts state codes as they apply to housing. (Note: Certain types of accommodations including recreational camps or cabins, motels and mobile home parks, are defined and regulated under M.G.L. c. 140 ' 32A-G.)

Massachusetts State Regulations for Lead Poisoning Prevention and Control  
(105 CMR 460.000)

Minimum Standards for Sewage Disposal Systems (State Environmental Code, Title 5, 310 CMR 15.00)  
Massachusetts State Plumbing Code (248 CMR 2.00)  
Massachusetts State Fuel Gas Code (248 CMR 4.00-8.00)  
Massachusetts State Electrical Code (527 CMR 12.00)  
Massachusetts State Building Code (780 CMR 1.00-22.00)

Enforcement for minimum standards for housing includes the following responsibilities:

Inspect when complaint is received or when requested to do so: (105 CMR 410.820, M.G.L. c. 111 ' 127A; M.G.L. c. 140 ' 32B)

- dwellings/ dwelling units
- rooming houses/rooming units (must be inspected prior to annual licensing)
- motels and mobile home parks (must be inspected prior to annual licensing).

Complaints may be made anonymously by anyone and must be acted upon.

Report all violations found during an inspection to the occupant (410.822C) and inform the occupant (in summary) of the legal remedies available to him or her (410.821B). Verbal reports must be made at the conclusion of the inspection with a written report of the inspection provided within seven days.

Order (in writing) the owner or occupant to correct violations within the time specified by the Sanitary Code, according to the seriousness of the hazard created by the violation (M.G.L. c. 111 ' 127A; 105 CMR 410.830). If there are no violations, issue a letter of compliance (105 CMR 410.832).

Conduct necessary re-inspections to determine compliance with previous orders (105 CMR 410.830C).

Hold a hearing if requested to do so by person(s) upon whom orders have been served, by anyone aggrieved by a BOH or an inspector's actions, or by their failure to take action (105 CMR 410.850-410.860).

Keep records of all:

- inspection requests
- inspection reports
- written orders to correct violations or to condemn a dwelling or unit
- variances granted, notices, orders or other records prepared in connection with hearings (these must be kept as public records at the BOH or in the office of the town clerk). A copy of the variance must be filed by the owner at the Registry of Deeds
- final decisions and actions taken by the board in connection with enforcement of Chapter II of the Sanitary Code.

The Sanitary Code contains specifications for maintaining records on requests for inspection and for inspection report forms (see Sections 410.820B and 410.821). Boards of health may use their powers specified in the Sanitary Code including emergency powers, if necessary, to protect life or health, to clean a dwelling unit, make necessary repairs, condemn or demolish a dwelling or portion thereof. (Refer to General Laws and Sanitary Code.)

§ The board may charge expenses incurred back to the responsible party.

§ The board may use various legal means to obtain cooperation and compliance with the provisions of the Sanitary Code, including prosecution in the courts to impose fines upon violators or persons impeding legitimate BOH activity (M.G.L. c. 111 ' 127A-N).

§ The board may seek injunctive relief to require a person to take corrective action.

§ The board may petition the court to set up a rent receivership in order to ensure that necessary repairs can be made and paid for (M.G.L. c. 111 ' 127H-J).

§ Ticketing (M.G.L. XXX, c.40 ' 21D).

Consider and act upon any application for a license to operate a lodging house, mobile home park or motel. A motel is defined by M.G.L. c. 140 ' 32A as Any building or group of buildings which provide sleeping accommodations for transient motorists and which is not licensed as an inn@ (under M.G.L. c. 140 ' 32A). Mobile home parks are defined and regulated by provision of M.G.L. c. 140 ' ' 32A-Q. A lodging house is defined by M.G.L. c. 140 ' 22. (For details on licensing and inspection of recreational camps and family-type campgrounds, see chapter on inspection of public areas of this Guidebook.)

Requirements for licensing (M.G.L. c. 140 ' 32B). Before granting, suspending or revoking a license, the BOH must hold a public hearing, reasonable notice of which shall have been published once in a local newspaper. Such licenses (unless previously suspended or revoked) shall expire on December 31 of the year of issue, but may be renewed annually upon application without a hearing. The fee for each original or renewal license is set by statute.

Notification requirements. The BOH must notify the Department of Environmental Protection (DEP) of the granting or renewal of such a license, and DEP shall have jurisdiction to inspect the premises to determine the source of water supply and works for the disposition of sewage are sanitary. If DEP finds water sources polluted or disposal works unsanitary, it must notify the BOH and the licensee to that effect by registered mail, and the board must forthwith prohibit the use of any polluted water supply (M.G.L. c. 140 ' 32B).

The BOH must immediately, upon issuance of a license for a mobile home park, send a copy of said license to the city or town clerk (M.G.L. c. 140 ' 32F).

Inspect from time to time (at least annually) all rooming houses, motels and mobile home parks licensed by the BOH. If unsanitary conditions (violations of the state Sanitary Code or local regulations) are found, the board may, after notice and a hearing, suspend or revoke the license (M.G.L. c. 140 ' 32B).

Enforce local regulations regarding housing conditions.

Enforce state laws regarding fire safety and carbon monoxide poisoning prevention.

## **STATE RESPONSIBILITIES**

- \$ Establish standards of fitness for human habitation that must be maintained by the occupants and owners of housing (M.G.L. c.111 ' 127A).
- \$ Provide technical assistance and advice upon request from boards of health. The Department of Public Health (DPH) provides staff to assist in performing inspections, instructs BOH members or staff in how to conduct inspections, interprets the regulations and performs lead paint tests and other special services.
- \$ Act in any way a BOH is authorized to act to effect compliance with Chapter II of the Sanitary Code (105 CMR 400.300). The commissioner of DPH or his designee may take such action if a local BOH has failed to enforce the provisions of the Sanitary Code after a reasonable time (refer to Chapter I of the Sanitary Code - 105 CMR 400.000).
- \$ With respect to lead paint violations, under M.G.L. c. 111 ' 198, the director of the lead

poisoning prevention program has concurrent responsibility and authority to enforce M.G.L. c. 111 ' ' 196, 197 and has all powers and authority available to boards of health pursuant to M.G.L. c. 111 ' 127A-K.

For more information contact:

Massachusetts Department of Public Health  
Bureau of Environmental Health  
Community Sanitation Program  
(617) -624-5757

## PROCEDURAL PROTOCOL I:

### INSPECTIONS

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#### SECTION I: PRE-INSPECTION

Receive and record in a bound book with numbered pages or on a computer-based system, any complaint or request for inspection regarding possible violations of the housing code (Chapter II of the State Sanitary Code 410.000; required by 410.820B). Record at least:

- Name, if given, or person requesting inspection
- Time and date of request
- Location of dwelling
- Nature of alleged violation
- Date the inspection is completed

Schedule an inspection, regardless of whether or not the person requesting the inspection has notified the owner of the dwelling of the condition causing concern (M.G.L. c. 410 ' 820). Prerequisites for inspections are that:

- § The occupant, or his representatives, shall be present.
- § The inspection should be set at a time satisfactory to the occupant and the BOH. Exterior inspections requiring access to the property must be made in the presence of the occupant or owner. The date and time for inspection should be set within the time limits specified in Section 410.820:
  - a. within 24 hours when the alleged violation constitutes a condition which may endanger or materially impair the health or safety and well-being of an occupant
  - b. within five days for any other alleged violation

#### SECTION II: CONDUCTING AND REPORTING INSPECTIONS

Use a printed inspection report form that meets all the requirements stated in Section 410.821 and M.G.L. c. 111 ' 127B. The inspection report form must be kept as a permanent record of the inspection.

The form must include, but not be limited to:  
Specifically labeled spaces for:

- a. name of the inspector
- b. date and time of the inspection or investigation
- c. location of the dwelling or dwelling unit inspected
- d. date and time of any scheduled follow-up inspection
- e. description of the conditions constituting violations
- f. listing of the specific provisions of this Article or other applicable laws, ordinances, by-laws, rules or regulations that appear to be violated
- g. a determination by the official inspecting the premises whether the violations are listed in 105 CMR 410.750 and whether the effect of any violations(s) not listed in 105 CMR 410.750 may endanger or materially impair the health and safety, and well-being of any person occupying the premises

§ A brief summary of the legal remedies available to the occupant(s) of the affected premises followed by this statement: AThe information presented above is only a summary of the law. Before you decide to withhold your rent or take any other legal action, it is advisable that you consult an attorney. If you cannot afford to consult an attorney, you should contact the nearest Legal Services Office which is...@

Inspect at least:

§ the condition alleged to be a violation of the Sanitary Code

§ all conditions listed in the Sanitary Code, Chapter II CMR 410.750, as violations which may Aendanger or materially impair the health or safety and well being of an occupant@ except as otherwise provided (410.822B).

The inspector must inform the occupant of their right to a comprehensive inspection and conduct the inspection, if requested.

If a more specialized inspection is needed, the BOH inspector should complete as much of the inspection form as possible and promptly request the services of the specialized inspector. DPH, as well as local building, electrical, plumbing and fire inspectors, may be contacted for advice or assistance.

Make a report to the occupant, of violations found at the conclusion of the inspection and indicate whether there is a need for an additional inspection by an expert.

### SECTION III: ADMINISTRATION AND FOLLOW-UP OF INSPECTIONS

If the inspection reveals that a dwelling is not in compliance with the provisions of Chapter II, the BOH shall order the owner or occupant to correct any violations. The schedule in Section 410.830 indicates how long after the inspection is made an order must be issued, and how soon the owner/occupant must comply with the order.

§ All orders shall be in writing.

§ All orders must be served personally by a person authorized to serve civil process by leaving a copy at the last known residence of the owner/occupant, or by registered mail. If his/her last residence is unknown or is outside the

Commonwealth, a copy of the order should be posted in a conspicuous place on or about the dwelling (M.G.L. c. 111 ' 124).

- § All orders shall include (105 CMR Section 410.832):
- a. a statement of the violations or defects found during inspection
  - b. a copy of all inspection reports
  - c. in the case of occupied dwelling units, a determination of whether any violations or the cumulative effect of more than one violation may endanger or materially impair the health, safety, or well-being of an occupant (M.G.L. c. 111 ' 127B)
  - d. notice of the right to a hearing (M.G.L. c. 111 ' 127B)
  - e. a time list for compliance according to Section 410.830
  - f. the following statement translated into any non-English language that is spoken as a primary language by greater than one percent of the population of the community, "This is an important legal document. It may affect your rights. You should have it translated."
  - g. in an order to an owner, advise the owner that the conditions which exist may permit the occupant of the dwelling to exercise one or more statutory remedies

Orders issued under Section 410.830 (in which the dwelling does not comply with the provisions of the Sanitary Code) are to be served on the persons responsible for the violation. In most situations where a violation of the sanitary code is found, the order will be served upon the owner of the dwelling, rather than upon the occupant. If the owner feels that it is the occupant who is responsible, they may bring a civil action against the occupant in court. Situations in which an order is served on the occupant usually involve either the failure to maintain the dwelling in a sanitary manner or an occupant who has improperly installed equipment (e.g. appliances) in the dwelling.

Copies of an order issued under Section 410.830 must be sent to all affected tenants; if there are more than three dwelling units affected, a copy of the order may instead be posted in a conspicuous place in a common area.

Orders issued under Section 410.831 (conditions that render the premises unfit for human habitation) shall be served to the owner and to the affected occupants.

Copies of an order issued under Section 410.831 must be sent to every mortgagee and lien holder of record (M.G.L. c. 111 ' 127).

The BOH must reinspect the dwelling to determine if the order has been complied with. The reinspection may address only those conditions found to be in violation of the Sanitary Code in the original inspection. Reinspection must occur within 24-hours of the specified date of compliance when the violation(s) may endanger the health or safety, and well-being of the occupants and within five days of the date set for compliance with an order issued on any other violations.

## PROCEDURAL PROTOCOL II:

### REPAIR, CONDEMNATION & DEMOLITION OF DWELLINGS, AND REMOVAL OF OCCUPANTS



SECTION I: EXPENSES INCURRED BY THE BOH IN REPAIRING OR CLEANING A DWELLING

(105 CMR 410.960)

If the BOH acts in an emergency situation to clean or repair a dwelling, the owner or person responsible for the property shall be charged with repaying all expenses incurred.

If the BOH orders a dwelling to be cleaned and/or repaired and the order is not complied with, the BOH may do the cleaning and/or repairing itself. The board may then charge the person(s) responsible for the dwelling, with all expenses incurred.

SECTION II: CONDEMNATION PROCEDURES (105 CMR 410.831, 410.950)

A. Occupied Property

If the property is occupied, the BOH must, prior to issuing a finding of condemnation, provide a written notice including the following information to both the occupants and the owner: (105 CMR 410.831B)

- \$ identification of the dwelling including address and unit number
- \$ a copy of the inspection report
- \$ a statement that the board will consider issuing a finding that the dwelling or a specifically identified portion thereof is unfit for human habitation
- \$ a statement that the finding may result in an order of condemnation requiring the property to be vacated and secured
- \$ a statement of the time and place of a public hearing to be conducted by the BOH to determine whether the dwelling or portion thereof is unfit and whether an order to vacate and secure shall be issued.
  
- \$ This notice must be served on both the owner and occupants as well on mortgage and lien holders in
- \$ accordance with 105 CMR 833.

A hearing must be held in all cases where the building is occupied, unless the BOH determines that an emergency exists and there can be no delay in vacating the property. When a hearing is held, it must:

- \$ be held at least five days after service of the notice required by 105 CMR 410.831(B)
- \$ give opportunity to the owner and any other affected parties to be heard, to present witnesses or documentary evidence and to show cause why the property should not be found to be unfit and an order to close-up should or should not be issued.

Following the hearing, if the board determines that the property is unfit for human habitation and must be vacated, it shall issue a written finding that the property is unfit. The finding shall include a statement of the material facts and conditions upon which the finding is based (105 CMR 410.831A). The board at the same time may issue an order condemning the property requiring the occupants to vacate and the owner to secure it (105 CMR 410.831E).

B. Emergency

If the BOH determines in writing that an *emergency exists*, that the danger to the life or health of the occupant (s) is so immediate that no delay may be permitted, then the BOH may issue a finding that an occupied dwelling or portion thereof is unfit for human habitation and order it vacated without a hearing. A copy of the determination of immediate danger and a copy of the finding of unfitness shall be sent to each affected occupant and to the owner.

C. Property is not Occupied.

If the property is not occupied, the BOH may issue an order to condemn the property before holding a hearing. In such a case, the owner has a right to request a hearing

SECTION III: REMOVING OCCUPANTS

The BOH or local police may forcibly remove anyone who refuses to leave a dwelling that has been ordered condemned, vacated and has been placarded (105 CMR 410.950C). M.G.L. c. 79A ' 13 states that public agencies must provide relocation assistance and reasonable, documented moving expenses if they displace a person or family by ordering that a dwelling be vacated, unless such payment is otherwise provided. The state may reimburse the municipality 50 percent of the expenses involved if relocation services and payments have been provided and reported.

SECTION IV: DEMOLISHING A DWELLING

The BOH may demolish any dwelling upon serving an order for demolition on the owner and all mortgagees of record (105 CMR 410.950D).

The owner is responsible for paying the cost of the demolition (see CMR 410.950D for a full explanation of the owner's responsibility with regard to paying the costs of demolition). It is advised that legal counsel be retained by the BOH or the town counsel or city corporation counsel in cases of demolition.

PROCEDURAL PROTOCOL III:

HEARINGS

SECTION I: REQUEST FOR HEARING BEFORE THE BOARD OF HEALTH (105 CMR 410.850860)

The purpose of a hearing is to sustain, modify, or withdraw an order, or to determine whether further action is necessary. It is the only legal remedy available to an alleged violator of the Sanitary Code after they have been issued an order.

A request for a hearing must be made in the form of a written petition within seven days after the order was served.

Anyone who has received an order may petition for a hearing. Exception: under 105 CMR 410.831, which concerns the condemnation, vacating, and demolition of a dwelling, opportunity for a hearing is given before the order has been issued. After all of the requirements of 105 CMR 410.831B are met, no further opportunity for a hearing is allowed.

Anyone aggrieved by the failure of the BOH to do any of the following, may petition for a hearing:

- \$ Inspect a premise upon request
  - \$ Issue a report of an inspection
  - \$ Find violations where they are claimed to exist or certify that a violation or combination of violations may endanger or materially impair the health or safety, and well-being of the occupant(s) of the premise
  - \$ Issue an order as required by 105 CMR 410.830
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- \$ Upon receiving a petition for a hearing, the BOH must:
  - \$ Inform the petitioner and other affected parties (at least the owner and occupants) of the date, time and place of the hearing
  - \$ Inform the petitioner and other affected parties of their right to inspect and copy the board's file concerning the matter to be heard

## SECTION II: TIME LIMITS FOR HEARINGS (105 CMR 410.852)

Hearings must take place no later than 30 days after the order was served and generally within a shorter period as specified below.

- \$ The hearing will take place no later than seven days after an order was served for the correction of violations listed under 105 CMR 410.830A and B, and the petitioner refuses to correct these conditions specified in the order pending the outcome of the hearing.
- \$ The hearing will take place no later than 14 days after a request for a hearing was made in which it is alleged that BOH personnel have failed to inspect the premise upon request, failed to issue an inspection report, failed to find violations where violations are claimed to exist, and failed to issue an order as required by 105 CMR 410.830.
- \$ The hearing will take place no later than 14 days after a request for a hearing was made when a dwelling was found to be unfit for human habitation and ordered to be condemned, vacated, or demolished if necessary (105 CMR 480.831).

Failure to hold a hearing within the specified time period does not affect the validity of the order.

## SECTION III: PROCEDURES FOR THE HEARING (105 CMR 410.853)

At the hearing, the petitioner and any other affected parties will be given a chance to be heard, to present witnesses or evidence, and to show why an order should be changed or withdrawn; why a dwelling should not be condemned, vacated or demolished; or why an action or failure to act by an inspector or other personnel of the BOH should be reconsidered, rescinded, or ordered.

## SECTION IV: BOH ACTION ON THE PETITION FOR A HEARING

The BOH must inform the petitioner in writing of its decision within seven days after the conclusion of the hearing:

- \$ The BOH must sustain, modify, or withdraw the order. If the order is sustained or modified, it must be carried out within the time period allotted in the original order or in the modification.
- \$ Every notice, order, or other record prepared by the BOH in connection with the hearing, must be entered as a matter of public record in the city/town clerk's office, or in the BOH office.

#### SECTION V: LEGAL OPTIONS FOR BOH OR PERSONS AGGRIEVED

**Right to appeal final decisions:** Any person aggrieved by the final decision of the BOH with respect to any order issued under the provisions of Chapter II, may seek relief in any court of competent jurisdiction (105 CMR 410.860).

**Penalties:** The BOH may bring suit in court to seek penalties against violators or people impeding legitimate inspections:

- \$ Anyone who tries to prevent or in any way interfere with an inspection after a search warrant has been obtained and presented shall, upon conviction, be fined not less than \$10 nor more than \$500.
- \$ Anyone who fails to comply with an order shall, upon conviction, be fined not less than \$10 nor more than \$500. Each day's failure to comply is a separate violation.
- \$ Anyone violating any provision of the Sanitary Code for which no penalty is specified shall be fined, upon conviction, not less than \$10 nor more than \$500.

**Granting variances (105 CMR 410.840):** If the BOH feels that enforcement of the Code would do manifest injustice, it may grant a variance (except in the case of violations of conditions in Section 410.750, AConditions Deemed to Endanger or Impair Health or Safety®), provided that:

- \$ The variance is granted after all affected occupants have been notified and given the opportunity to request a hearing.
- \$ The variance is reported in writing and filed by the owner in the registry of deeds for the county in which the dwelling is located.
- \$ A copy of the variance is made available to the public in the office of the city/town clerk or the BOH.
- \$ Notice of the grant of variance is filed with the Commissioner of Public Health of the Commonwealth.

**Revoking, modifying or suspending a variance:** This may occur only after the owners and affected occupants have been notified in writing and given an opportunity for a hearing.

#### LIST OF VIOLATIONS WHICH MAY ENDANGER OR MATERIALLY IMPAIR

## THE HEALTH OR SAFETY AND WELL-BEING OF AN OCCUPANT (105 CMR 410.750)

The following violations are always considered to have the potential to endanger or materially impair the health or safety and well-being of the dwelling's occupants or the public. Any violation of 105 CMR 410.100 through 410.499 may fall into this category in some cases, but they are not listed here because they are not always in this category. Regulation 410.750N states that if any violation other than those listed below is not corrected within the time specified by the BOH, the violation will fall into this category.

- A. Failure to provide a supply of water sufficient in quantity, pressure, and temperature, both hot and cold, to meet the ordinary needs of the occupant for a period of 24 hours or longer (105 CMR 410.180 and 410.190).
- B. Failure to provide heat as required by 105 CMR 410.210; improper venting or use of a space heater or water heater as prohibited by 105 CMR 410.200B and 410.202.
- C. Shutoff and/or failure to restore electricity or gas.
- D. Failure to supply the electrical facilities required by 105 CMR 410.250B, 410.251A, 410.253A, 410.253B and the lighting in common area required by 105 CMR 410.254.
- E. Failure to provide a safe supply of water.
- F. Failure to provide a toilet and maintain a sewage disposal system in operable condition as required by 105 CMR 410.150A (1) and 410.300.
- G. Failure to provide adequate exits; the obstruction of any exit; passageway or common area caused by any object, including garbage or trash, which prevents egress in case of emergency (105 CMR 410.450 and 410.451).
- H. Failure to comply with the security requirements of 105 CMR 410.480D.
- I. Failure to comply with any provisions of 105 CMR 410.600 through 410.602 which results in any accumulation of garbage, rubbish, filth or other causes of sickness that may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease.
- J. The presence of lead-based paint violations in a dwelling or dwelling unit built before 1978, where a child under the age of 6 years resides, in violation of the Massachusetts Department of Public Health Regulations for Lead Poisoning Prevention and Control, 105 CMR 460.000 (see M.G.L. c. 111 ' 190-199).
- K. Roof, foundation, or other structural defects that may expose the occupant or anyone else to fire, burns, shock, accident or other dangers or impairment to health or safety.
- L. Failure to install electrical, plumbing, heating and gas-burning facilities in accordance with accepted plumbing, heating, gas-fitting and electrical wiring standards or failure to maintain such facilities as are required by 105 CMR 410.351 and 410.352, so as to expose the occupant or anyone else to fire, burns, shock, accident or other danger or impairment to health or safety.

M. Any of the following conditions which remain uncorrected for a period of five or more days following the notice to or knowledge of the owner of said condition or conditions:

1. lack of a kitchen sink of sufficient size and capacity for washing dishes and kitchen utensils or lack of a stove and oven, or any defect that renders either inoperable
2. failure to provide a washbasin and a shower or bathtub as required in 105 CMR 410.150A(2) and 410.150A(3) and any defect which render them inoperable
3. any defect in the electrical, plumbing, or heating system which makes such system or any part of such system in violation of generally accepted plumbing, heating, gas fitting, or electrical wiring standards that do not create an immediate hazard
4. failure to maintain a safe handrail or protective railing for every stairway, porch balcony, roof or similar place as required by 105 CMR 410.503A and 410.503B
5. failure to eliminate rodents, cockroaches, insect infestations and other pests as required by 105 CMR 410.550.