

Septic Systems: What is Required?

With an increased number of questions on the Legal Hotline about what is required by sellers with regard to septic systems, we wanted to take this opportunity to do a deeper dive into what is required by law and the Virginia REALTORS® contract, and what you can do to keep your transactions moving smoothly.

There is nothing in the law or regulations that requires a septic system to be inspected or pumped prior to the sale of a property; however, some localities may require evidence that the septic tank has been pumped within the past 5 years and some lenders may require a septic inspection prior to approving the loan.

This means that, if not required by the lender, any pumping, inspection, or other requirements will be controlled by the sales contract. The Virginia REALTORS® sales contract (Form 600) addresses septic system issues in two places: the Home Inspection Contingency Addendum (Form 600D) and paragraph 17 of the Contract.

The Home Inspection Contingency Addendum allows the buyer, at his discretion and expense, to conduct any inspection of the property. The addendum provides a non-exclusive list of the type of inspections that may be conducted and includes septic system. This means that the buyer may do any type of septic inspection he deems appropriate: a walk-over, probing of the drain field, pumping and inspection of tanks, or even digging up the distribution box for visual inspection. Like all inspections, the septic inspection must be done by someone with the proper credentials. In this case, that means someone who is an accredited septic system inspector or has a valid onsite sewage system operator, onsite sewage system installer, or onsite soil evaluator license. One thing that is very important to note is that the Virginia REALTORS® Home Inspection Contingency Addendum is very clear that it is the buyer's responsibility to repair any damage caused as a result of an inspection. This means that if any part of the septic system is damaged during the inspection, the buyer is responsible for repairing the system.

In addition to the Home Inspection Contingency, paragraph 17 of the Contract talks about septic systems. Paragraph 17(b) requires the seller to provide the buyer with a "certificate" that is dated not more than 30 days before settlement indicating there is no evidence of malfunction or needed maintenance to the sewage system. The Contract says this certificate should be from the appropriate governmental authority – the Virginia Department of Health or a local health department – or an acceptable private company. This paragraph does not go into detail on what must be done to determine whether there is evidence of malfunction or needed maintenance, and many sellers will have a simple "walk over inspection" where the inspector looks for surface effluent. This paragraph does not require any specific type of inspection, but we have been hearing more and more that there are few licensed or accredited professionals who are willing to provide a certificate of any type without first conducting an inspection involving more than a "walkover" and that the cost of these more extensive inspections is significantly higher than buyers and sellers, or their agents, have anticipated.

The Virginia REALTORS® Standard Forms Subcommittee is reviewing possible solutions to the issues we've been hearing about. In the meantime, if it doesn't make sense in your transaction to

have the seller provide the certificate called for in paragraph 17(b), this paragraph and the language about septic systems in paragraph 17(c) can be crossed out or the parties can use an addendum to remove these obligations. If you represent a buyer in a transaction where this paragraph is removed, and you are using the Home Inspection Contingency Addendum as part of your contract, then the buyer still has the option of obtaining a septic inspection, at their own cost, based on the inspection language included in the Home Inspection Addendum. Be sure to discuss the importance of a septic inspection with your client to ensure that they are protected.