

[There's Nothing "Standard" About The Massachusetts Standard Form Real Estate Purchase And Sale Agreement](#)

Although home buyers sign a never ending pile of legal documents to purchase a home, arguably the most important document in the entire transaction is the purchase and sale agreement. In Massachusetts, the purchase and sale agreement most often used is the so-called standard form agreement supplied by the [Greater Boston Real Estate Board](#) or one modeled very closely to this form. The "standard" form purchase and sale agreement is, however, far from standard.

From a buyer's perspective, there are two major problems with the "standard" form purchase and sale agreement:

1. It significantly favors the seller, and
2. It doesn't adequately address such important issues as seller repairs, septic system/Title V compliance, radon gas, UFFI insulation, lead paint, mortgage rate lock expiration, certain title issues, and buyers' access to the property while it is under agreement.

There are also deficiencies from a seller's perspective as well. This is why it's imperative that home buyers and sellers alike retain a Massachusetts real estate attorney to modify the "standard" form purchase and sale agreement in order to best protect all parties' rights and remedies, and customize the agreement to the particular aspects of the transaction. This is typically done through a "rider" to the purchase and sales agreement. Often, the buyers' attorney and the sellers' attorney will attached two different riders to the agreement.



I'll outline a few common issues not addressed adequately in the "standard" purchase and sale agreement. (Most of these are from the buyer's perspective).

Mortgage Contingency

The "standard" purchase and sale agreement does provide a basic mortgage contingency which gives the buyer the option of terminating the agreement if mortgage financing falls through. However, for a buyer, the more specific you are in terms of interest rate, points, name of lending institution and definition of "diligent efforts," the better. Buyers' counsel should specify that the buyer will not be required to apply to more than one institutional lender currently making mortgage loans of the type sought by the buyer and that the buyer may terminate the purchase and sale agreement unless the buyer obtains a firm, written commitment for a mortgage loan. Here is a sample rider provision:

MODIFICATION TO PARAGRAPH 26: Application to one such bank or mortgage lender by such date shall constitute "diligent efforts." If the written loan commitment contains terms and conditions that are beyond BUYER'S reasonable ability to control or achieve, or if the commitment requires BUYER to encumber property other than the subject property, BUYER may terminate this agreement, whereupon any payments made under this agreement shall be

forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

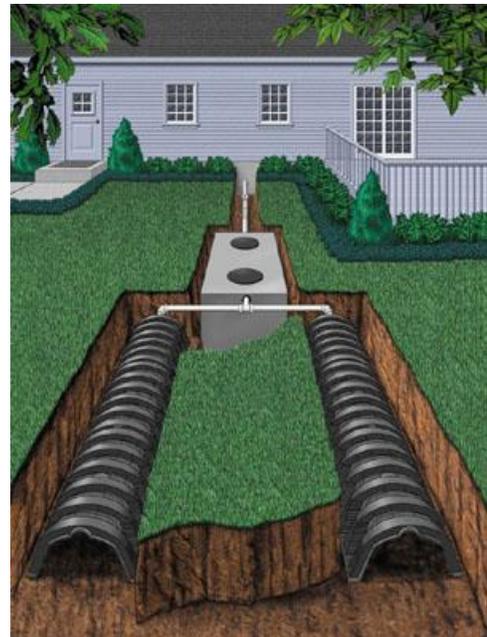
Home Inspection/Repairs

Typically, buyers complete the home inspection process prior to the signing of the purchase and sale agreement, and any inspection contingency provision is deleted from the purchase and sale agreement. What happens if the inspection results are not ready before the P&S signing deadline or if the seller has agreed to perform repairs prior to the closing or give a credit at closing? In this case, a home inspection contingency clause should be added back to the agreement, and any seller repairs or closing credits should be meticulously detailed in the rider.



Septic Systems/Title V

If the home is serviced by an on-site sewage disposal system otherwise known as a septic system, the [Massachusetts Septic System Regulations](#) known as Title V requires the inspection of the system within 2 years of the sale of the home. Failed septic systems can cost many thousands of dollars to repair or replace. Thus, buyers would look to be released from the agreement if the septic system fails inspection. Alternatively, buyers could be given the option to close if the seller can repair the septic system during an agreed upon time period, provided that the buyer do not lose their mortgage rate lock.



Radon Gas

[Radon](#) is a naturally occurring radioactive gas. The ground produces the gas through the normal decay of uranium and radium. As it decays, radon produces new radioactive elements called radon daughters or decay products which scientists have proven to cause lung cancer. Radon testing should be performed by buyers during the home inspection process. Elevated levels of radon (above 4.0 picoCuries per liter (pCi/l) can be treated through radon remediation systems. The purchase and sale agreement should provide for a radon testing contingency and the buyers' ability to terminate the agreement if elevated radon levels are found, or the option of having the sellers pay for a radon remediation system.

Lead Paint

Under the [Massachusetts Lead Paint Law](#), buyers of property are entitled to have the property inspected for the presence of lead paint. (Sellers are not required to remove lead paint in a sale situation). Because the abatement of lead paint can be costly, buyers typically look for a right to terminate the purchase and sale agreement if lead paint exists and the abatement/removal of it exceeds a certain dollar threshold. Here is an example of a provision added to the standard form:

LEAD PAINT. Seller acknowledges that the Buyers have a child under six (6) years of age who will live in the premises. In accordance with Massachusetts General Laws, Chapter 111, section 197A, as the premises was constructed prior to 1978, Buyer may have the premises inspected for the presence of lead paint which inspection shall be completed within ten (10) days after the execution of this Agreement, unless extended in writing by the parties. If the inspection reveals the presence of lead paint, the abatement and/or removal of which will cost \$2,000 or more, then Buyer may terminate this agreement, whereupon any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. Any lead paint removal or abatement shall be Buyers' responsibility.

Access

When my wife and I signed the Offer to Purchase on our house, she couldn't wait to get in there with her tape measure, paint chips and fabric swatches. Oftentimes overlooked, but a cause of friction is buyers' ability to access the house prior to the closing. To avoid such friction, an access clause should be added to the purchase and sale agreement giving the buyer reasonable access at reasonable time with advance notice to the sellers—it's still their house after all.

These are just a few of the issues not adequately addressed by the "standard" form purchase and sale agreement. There are many more. I urge you to consult a qualified real estate attorney to help you draft the ideal Massachusetts "standard" purchase and sale agreement.

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