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Short Term Rental Guidance for 1 & 2 Family Dwellings

Based on the 10th Edition of 780 CMR

The 10th Edition of the Massachusetts Building Code (780 CMR) includes language that is new to the code regarding the inspection and sprinkler requirements for certain types of rental accommodations within a one- and/or two-family dwelling. This document seeks to provide guidance to Building Officials regarding these new code provisions to ensure consistent application across the Commonwealth while recognizing that the Building Official having jurisdiction must make individual determinations based on an application of the code to the facts before them.

What are the new periodic inspection requirements?

780 CMR now requires certain rental situations to be periodically inspected which were not previously subject to this requirement. Below are new provisions to the code excerpted from 780 CMR 110.7 Table 110 (Commercial Code) and 780 CMR R110.7 (Residential Code)

780 CMR 110.7 (Table 110)

Use Group	Use Group Description	Minimum Inspections	Maximum Certification Period
Other R Uses	NON-Primarily Owner occupied residential facilities utilized as a <i>short term rental: Use Group as determined in Section 310.</i>	Annual	One year
R-3	<u>Primarily owner occupied</u> One and/or Two family dwellings used as a <i>Lodging House</i> for <i>short term rentals</i> .	See Note 5	Five Years
Chapter 51 Residential Code	<u>Primarily owner occupied</u> One and Two family dwellings used as a <i>Lodging House</i> for <i>short term rentals</i> per 780 CMR Chapter 51.	See Note 5	Five Years



780 CMR R110.7

Primarily owner occupied One and/or Two Family Dwellings meeting the 780 CMR Chapter 2 definition of "Lodging House" used as "short term rentals" shall be inspected in accordance with 780 CMR Table 110.7 (see "other R's") by the building official for compliance with R102.8 Maintenance of Existing Buildings and Structures.

Periodic Inspections of NON-Primarily Owner Occupied One and/or Two Family Dwellings meeting the 780 CMR Chapter 2 definition of a "short term rental" shall be inspected pursuant to 780 CMR Table 110.7 based on the Use Group designation determined in accordance with 780 CMR Chapter 3.

Owners shall be responsible for requesting the periodic inspection prior to the expiration of the current Certificate of Inspection. The fee for such inspection shall be set by the municipality.

Here is a short summary of what these code provisions mean:

1. Non-primarily owner occupied one and two family dwellings used for short term rentals are subject to an annual inspection/certification.
2. Primarily owner occupied lodging houses where a short term rental situation is occurring are subject to an inspection/certification at least once every five years.
3. The owner of the structure is responsible for requesting the inspection and the building department may charge a fee for this inspection.

Note: A primarily owner occupied one- and/or two-family dwelling used for short term rentals that is not a lodging house is **NOT** subject to periodic inspection.

What is a short term rental?

The definition of "short term rental" does not appear in 780 CMR Chapter 2 despite the reference to it in 780 CMR R110.7. Regardless, 780 CMR R110.7 indicates what type of rental situation occurring in a non-primarily owner occupied one- and/or two-family dwelling would be considered a short term rental by directing you to 780 CMR Chapter 3. 780 CMR 310.2 and 310.4 were amended by the Board of Building Regulations and Standards (BBRS) to add two new use groups for one- and two-family dwellings that were previously not part of the code, and these are the only one- and/or two-family uses specifically called out in this chapter.

780 CMR 310.2 was amended to add the following Use Group: One- and two-family houses available for rent (transient) with more than five guest rooms or more than 10 occupants.

780 CMR 310.4 was amended to add the following Use Group: One- and two-family houses available for rent (transient) with five or fewer guest rooms and 10 or fewer occupants.

780 CMR R110.7 directs you to identify a Use Group from 780 CMR Chapter 3 when dealing with a NON-primarily owner occupied one- and/or two-family dwelling with short term rentals occurring and the two Use Groups above are the only two that are applicable. Because of this, we can identify that transient rental arrangements are what is covered by these code provisions. 780 CMR Chapter 2 defines “transient” as, “Occupancy of a dwelling unit or sleeping unit for not more than 30 days.”

By reading these provisions of 780 CMR together, one can conclude that R110.7 requires an annual inspection for non-primarily owner occupied one- and/or two-family dwellings that have rentals occurring for periods of 30 days or less.

What is a Lodging House?

780 CMR defines “Lodging House” as, “A one-family dwelling with five or fewer guest rooms where one or more occupants are primarily permanent in nature and compensation is provided for the guest rooms. A building licensed as a "lodging house" in accordance with M.G.L. c. 140, §§ 22 through 31 shall comply with 780 CMR requirements according to its appropriate use and occupancy classification.” To be classified as a Lodging House under 780 CMR, the structure and use must meet all four elements contained in the definition of Lodging House.

Note that the definition of Lodging House acknowledges that there are structures that are licensed as Lodging Houses under M.G.L. c. 140, which contains its own definition of Lodging Houses, and that definition is different than the 780 CMR definition. A structure licensed as a Lodging House under M.G.L. c. 140 may be a Lodging House under 780 CMR or it may be a different use group identified in 780 CMR 310.

780 CMR 110.7 (Table 110) and R110.7 says, “Lodging House for short term rentals.” Since the 780 CMR definition of “Lodging House” assumes some level of permanent occupancy, the only Lodging Houses that are subject to periodic inspections under 780 CMR are those that have short term rentals occurring, which as discussed above would be a rental period of 30 days or less.

What are the inspection requirements for short term rentals?

During these periodic inspections, Building Officials are confirming compliance with 780 CMR 102.8 (R102.8) Maintenance of Existing Buildings and Structures which states:

“All buildings and structures and all parts thereof, both existing and new, and all systems and equipment therein which are regulated by 780 CMR shall be maintained in a safe, operable, and sanitary condition. All service equipment, life safety/fire protection systems, means of egress, devices and safeguards which are required in a building or structure, or which were required by a previous statute in a building or structure, when erected, altered, or repaired, shall be maintained in good working order.”

Building Officials may access spaces that are rented or that serve the rented space, that are within the structure, and which access is required to confirm compliance with this Building Code section. If an owner objects to the inspection of a particular area of the building which the Building Official feels is necessary to confirm compliance with R102.8, the Building Official may deny issuing a certificate of inspection and the property owner may appeal that decision to the Building Code Appeals Board (BCAB).

If an existing one- and/or two-family dwelling is used for short term rentals, does that trigger a change of occupancy or other additional code requirements?

The 2021 International Residential Code as amended by 780 CMR does not contain a provision that stipulates a change of occupancy occurs if a one- and/or two-family dwelling starts being used short term rentals. Additionally, 780 CMR 101.2.1 and R101.2 make clear that that detached one- and two-family dwellings are subject to 780 CMR 51, the Residential Building Code, thus there is no change of occupancy requirements to apply if the owner of a one- and/or two-family dwelling starts using it for short term rentals.

That said, 780 CMR R313.2 requires certain lodging houses and certain one- and/or two-family dwellings to receive an automatic sprinkler system. Below are the code sections:

R313.2 One- And Two-Family Dwellings Automatic Sprinkler Systems

Primarily owner occupied one- and two-family dwellings and accessory spaces newly constructed as short term rental lodging houses and primarily owner occupied one- and two-family dwellings and accessory spaces which began being used as short term rental lodging houses on or after October 17, 2017, shall be equipped with an automatic sprinkler system installed in accordance with NFPA 13D.

Note: Non-primarily owner occupied one and two-family dwellings shall meet the requirements of 780 CMR based on the use classification determined in accordance with 780 CMR Chapter 3.

R313.2.1 Design and Installation

One and two-family dwellings with an aggregate area greater than 14,400 ft², shall be equipped with an automatic sprinkler system installed in accordance with NFPA 13D. For the purposes of this section, aggregate area shall include the combined area of all stories of the building, basement areas and finished habitable attic areas. Garages, unfinished habitable attic areas, attic areas and crawlspaces shall not be included in the aggregate area.

Exception: An automatic sprinkler system shall not be required where additions or alterations are made to existing one- or two-family dwellings having an aggregate area greater than 14,400 ft² that are not already provided with an automatic sprinkler system. Aggregate area for the purposes of this exception shall be as described in R313.2 and shall include the addition or alteration area in the calculation.

To summarize R313.2, the following residential structures and uses require a sprinkler system:

1. Primarily owner occupied one- and two-family dwellings and accessory spaces newly constructed as short term rental lodging houses.
2. Primarily owner occupied one- and two-family dwellings and accessory spaces which began being used as short term rental lodging houses on or after October 17, 2017.
3. Newly constructed non-primarily owner occupied one- and two-family dwellings which have a use classification listed under 780 CMR Chapter 3 shall have a sprinkler system that meets the requirements for that use group.
4. One- and two-family dwellings with an aggregate area greater than 14,400 ft² not subject to the listed exception.

What does “Primarily Owner Occupied” mean?

The terms “primarily owner occupied” and “non-primarily owner occupied” are not defined in 780 CMR. 780 CMR 201.4 tells us, “Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.” A plain reading of these terms suggests that a primarily owner occupied structure is one where the primary occupant of the structure is someone meeting the definition of an owner. Since there is no explicit language regarding how much time or space an “owner” must occupy a structure for to be considered primary, so the Building Official having jurisdiction must assess the code and the facts and make their own determination when required.

Some resources a Building Official may turn to in making their determinations are:

780 CMR Chapter 2 – Definition of Owner

OWNER. Every person who alone or jointly or severally with others (a) has legal title to any building or structure; or (b) has care charge or control of any building or structure in any capacity including but not limited to agent, executor, executrix, administrator, administration, trustee or guardian of the estate of the holder of legal title; or (c) lessee under a written letter agreement; or (d) mortgagee in possession; l(e) agent, trustee or other person appointed by the courts. Each such person is bound to comply with the provisions of 780 CMR.

While not approved by the BBRS, the Office of Consumer Affairs and Business Regulations and the courts have interpreted what owner occupancy is in regard to the Home Improvement Contractor program. Under that program, owner occupancy occurs when the owner lives in the home as their primary residence, when the owner intends to reside in the home as their primary residence once work is complete on the home, or when a tenant resides in the home and is making decisions like an owner, with the approval of the owner.

More information can be found here: [Owner Occupied or Owner-owned? How to determine if your home qualifies under the Home Improvement Contractor Law. | Mass.gov](#)

If required to decide whether a structure is primarily owner occupied, the Building Official should collect what they feel are the necessary facts about the structure's occupancy, consult any resources they feel provides meaning to the terms in the context of the code, and then reduce both into a written determination. If an owner/applicant is aggrieved by the determination of the Building Official, they may appeal that decision to BCAB.

Email your comments or question to BO-Education@mass.gov.