



## REALTORS® ASSOCIATION OF NEW MEXICO INFORMATION SHEET – SEPTIC SYSTEMS – 2017

### IMPORTANT GENERAL INFORMATION AND DISCLAIMER

*This is neither a disclosure nor a warranty concerning any specific property.*

If a property is not connected to a public sewer system, there may be a liquid waste disposal system, also known as a septic system (system). The owner of a system is responsible for ensuring that the system on that property and excavation related to the system do not pose a public safety hazard and for properly operating and maintaining the system in accordance with the recommendations of the manufacturer or designer of the system. Furthermore, owners of septic systems are subject to the liquid waste disposal and treatment regulations promulgated by the New Mexico Environment Department (NMED). Under the NMED liquid waste disposal and treatment regulations (regulations), the term “owner” is defined as any person who owns: a septic system or any component thereof; or any lot on which any septic system or any component thereof is located. **In the case of property sold or purchased on a real estate contract (REC), the NMED considers the “owner” of the property to be the buyer.** If the property sold or purchased is owned collectively by multiple owners, the “owner” of the common property is the entity or governing body specifically designated in the governance documents for the common property.

#### CESSPOOLS

Cesspools, septic tanks without lids and other open pits of raw sewage are dangerous and illegal. A cesspool is defined as an excavation or non-water tight unit that receives untreated water-carried liquid waste allowing direct discharge to the soil. Owning a cesspool is a crime and punishable by up to \$500 in fines and/or up to six months in jail. The NMED has traditionally taken the position that an owner of property with a cesspool who reports the illegal cesspool and applies for a permit to install a modern system will not be prosecuted; however, **neither the seller, the real estate brokers involved in this transaction, nor RANM make any warranties or guarantees with regard to the NMED’s position on this issue.** Financial assistance to install a modern system may be available for low-income households.

#### TYPES OF SEPTIC SYSTEMS

Under the regulations, systems may be classified as conventional or advanced treatment systems. There are additional regulations that apply to advanced treatment systems and such systems are generally more expensive and require more maintenance than conventional systems. The maintenance for advanced treatment systems must be proved by a factory-authorized individual and has an associated cost. An owner of an advanced treatment system installed after September 1, 2005 is required to enter into an NMED approved maintenance contract with a maintenance service provider that assures maintenance of the system in accordance with the recommendations of the manufacturer or designer of the system. Owners and/or buyers should contact a licensed installer/contractor for information on the increased costs associated with the installation and maintenance of advanced treatment systems.

#### TYPE OF SEPTIC SYSTEM REQUIRED

The type of system appropriate for any particular piece of property is dependent on the size and use of the property. For example, the number of bedrooms in a home will dictate the size and type of system required for the home. A bedroom is defined under the regulations as any room within a building that is designated as a sleeping room on drawings submitted to the responsible building permitting authority, manufactured housing authority or in the case of unpermitted systems, to the NMED. An otherwise fully functioning system may fail evaluation if the system is considered inadequate in size or type for the number of bedrooms in the home.

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Typically, a lot that is 0.75 acres or greater is eligible for a conventional system. However, there may be circumstances in which lots that are 0.75 acres or greater may not qualify for a conventional system for reasons including, but not limited to, the condition of the soil. Undeveloped lots of less than 0.75 acre will likely require an advanced treatment system; conventional treatment systems are not allowed on lots sized smaller than 0.75 acre where there is not an established system. However, the NMED may issue a permit for such an installation in cases where the NMED has identified and mapped where groundwater is not at risk from nitrogen loading from onsite systems. The factors to be considered in determining if groundwater is at risk are set forth in the regulations. Lot size is determined by the total area of the lot plus or minus the area of any liquid waste disposal easements; roadway easements are not deducted in determining the size of the lot.

It is important to note that building, remodeling or expanding improvements on the property in the future may require an upgrade to an existing system. Parties may request a letter of determination from the NMED that indicates the type and size of system required for a specific property and/or particular use.

In atypical circumstances where the property cannot meet the requirements of the regulations, the NMED may consider alternative solutions. In these situations, the parties should consult with a licensed engineer and the NMED.

### EVALUATION REQUIREMENTS PRIOR TO TRANSFER

Except as noted below, NMED regulations require that prior to the transfer of a property with an existing system, the seller must have the system evaluated by either NMED or a third-party evaluator depending on *whether* the system is permitted and if permitted, *when* the system was permitted. See below for more information. “Transfer” is defined under the NMED regulations as the “transfer of *equitable* or legal title to a property.” Evaluations must be recorded on either the NMED standard form or a form approved by the NMED. Evaluators must submit to the NMED copies of all evaluation reports, whether completed or not, within 15 days of the evaluation. If a permit or variance is required to correct any deficiencies or permit violations identified by the evaluation, an application for such must be submitted within 15 days of the evaluation by the party *who is or will be the owner of the property on the 15th day following the evaluation*. This means that in the event the property is being sold, based on the closing date, there will be occasions where the seller will be required to request the permit or variance, and other occasions where the buyer will be required to make the request. Per the regulations, the property may be transferred prior to the remediation of the system; however, **buyer should be aware that once the property is transferred to the buyer, the buyer becomes responsible to the NMED for remedying any defects in the system identified by the evaluation.** In the event the Buyer is obtaining a loan for the purchase of the Property, the lender may require all defects in the septic system be remedied before closing.

**A property transfer evaluation is NOT required if a final evaluation with final approval for a new or modified system or a property transfer evaluation for an existing system has been done within 180 days of the transfer.**

### All Permitted Systems

Prior to property transfer, a third-party evaluator must evaluate all permitted systems. The term “third-party evaluator” is defined as someone who has the following qualifications: a valid and appropriate classification of licensure by the construction industries division of RLD; licensure as a professional engineer; accreditation in on-site wastewater evaluation by the National Sanitation Foundation; certification by the National Environmental Health Association as an installer of onsite wastewater treatment systems; certification as a Registered Environmental Health Specialist or a Registered Sanitarian; or demonstration of a similar accreditation or certification or a combination of training and experience as approved by the NMED.

The evaluator must determine: that the treatment unit is watertight and functioning properly; that the existing tank has a liquid capacity within one tank size of the capacity required by the regulations; that the disposal system appears to be functioning properly; that the system appears to meet setbacks and clearances; that the system meets lot size requirements in effect at the time of initial installation, or at the time of the most recent permitted modification; and that the system does not constitute a public health or safety hazard.

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In addition to the above requirements, permitted advanced treatment systems must meet additional requirements as set forth in the regulations. Additionally, if a regularly-scheduled sampling event of the advanced treatment system has not occurred within 180 days of the evaluation, the system must be sampled in accordance with the regulations. The new owner of an advanced treatment system must file an amendment of permit reflecting the change in ownership, along with a copy of the maintenance and sampling contract in the name of the new owner.

### **Unpermitted systems installed or modified prior to February 1, 2002**

For an unpermitted conventional system installed or modified prior to February 1, 2002, the NMED may issue a registration for continued operation or a new permit if, after evaluation by the NMED or an installer specialist, it is determined that the system has met the same criteria as set forth above for permitted systems and the appropriate permit fee has been paid for the system installed. The qualifications for an installer specialist are set forth in the regulations.

### **Unpermitted liquid waste systems installed after February 1, 2002**

The NMED must inspect unpermitted liquid waste systems installed after February 1, 2002. For unpermitted conventional systems, the NMED may issue a permit if the NMED determines that all construction and material requirements are met, that all of the above-criteria for permitted systems are met and that the appropriate fee has been paid.

### **IMPORTANT INFORMATION REGARDING EVALUATIONS**

If the system is underground, it cannot be evaluated merely by a visual examination of the property. Some evaluations are invasive and can actually damage the system. It may be impossible to obtain necessary soil tests during certain times of the year and the soil-test results may vary with weather and other conditions. Also, even if an evaluation is completed that indicates the system is functioning in compliance with NMED regulations and other local codes/ordinances, there is no guarantee that the system will not fail in the future.

### **POTENTIAL PROBLEMS WITH SEPTIC SYSTEMS**

Individual septic systems can vary greatly as to quality and condition. Problems with a system may include, but are not limited to the following: odors; seepage on the surface of the land; back-up of waste lines in the home; failure of the system to meet current code requirements; insufficient capacity; failing or defective equipment; damage from improper use and/or maintenance; or problems with the tank, pipes or leach field. Furthermore, a system could be seriously deteriorated, poorly designed or overloaded. Some problems with a system may be intermittent and/or not easily observable, particularly by a lay person. In other words, a problem could exist that is unknown to the Seller and real estate broker(s). In some cases, the exact location of the system may not even be known.

### **MULTIPLE SYSTEMS ON ONE LOT AND SETBACKS**

Under the regulations, there may be multiple systems located on a single lot, provided that the systems are set back a minimum distance from each other in accordance with a formula set forth in the regulations. The regulations also establish a protocol to be used when the NMED discovers that a private drinking water well has been drilled at a location that is not set back from a pre-existing system by the distance required.

### **PERMITTING PROCESS**

Only the permittee who is defined as any owner of a permitted system may request that the NMED cancel a permit; the request must be made in writing. An installer whose CID license number is on a permit may, upon written notice to the owner and to NMED withdraw from the permit. An owner may amend the permit to change the installer without installer withdrawal, provided the owner provides written notice to the installer. Upon installer withdrawal, permit approval shall be suspended until the owner amends the permit either to include another licensed installer or to reflect approval as a qualified homeowner. A "qualified homeowner" is defined as a person who is the owner residing at the property who has been provided homeowner installation training materials and who has passed an exam administered by the NMED. If a contractor withdraws after construction has commenced, construction of the system cannot proceed until the permit amendment is approved by NMED and the owner must eliminate any public safety hazards posed by open treatment systems, excavations or other conditions related to unfinished construction.

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**PUBLIC SEWER SYSTEMS**

It is important to note that the fact that nearby properties are connected to a public sewer system is no guarantee that the subject property is also connected to that sewer system. Additionally, buyers should be aware while there is NO guarantee that a public system will ever become available, if a public system should become available, the property owner may be REQUIRED BY LAW to pay for and connect to that public system. In this event, the current system would have to be abandoned in accordance with the regulations.

**ADDITIONAL LAW AND CHANGES THERETO**

Regulations are subject to change. Parties should contact the NMED to confirm current system requirements for the property at issue. Furthermore, county and municipalities may have additional septic codes or ordinances that may apply. Parties should contact the appropriate divisions of the city and county in which the property is located to determine any additional requirements.

**BUYERS RESPONSIBILITY AND DISCLAIMERS**

Buyers and sellers should familiarize themselves with current regulatory requirements prior to entering into a contract. Even though the regulations require the seller to have an evaluation done prior to transfer, a *buyer* should ensure that an evaluation by a licensed expert has been completed before purchasing property. Sellers and real estate brokers are not generally familiar with the laws governing septic systems and normally would not know if a system was in compliance with NMED regulations or local codes/ordinances. Neither the Seller, nor the real estate brokers involved in the sale or lease of a property with a septic system warrant the condition of the system. In addition, the real estate brokers involved in the sale of such property do not warrant the seller's compliance with any applicable liquid waste system laws or regulations.

**NMED CONTACT INFORMATION**

General information on Septic Systems: <http://water.epa.gov/infrastructure/septic/septicsmart.cfm>. NMED Liquid Waste Program: (800) 219-6157 or <http://www.nmenv.state.nm.us>.

**BUYER/SELLER**

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Buyer/Seller Signature	Date	Time
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Buyer/Seller Signature	Date	Time
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Buyer/Seller Name (Print)