

Revised Title Standard: Bankruptcy Code Transfers Pursuant to Court Order

~ A Practical Skills Session ~



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Lauren advises clients on recent case law, statutes, and regulations affecting foreclosures, and post-foreclosure evictions, including the impact of such law on the prevention and resolution of both lender liability claims and quiet title litigation. Her practice also includes employment litigation, counseling and workplace investigations. She counsels companies and human resource professionals in all areas of employment law, including discharge and discrimination issues, personnel policies and handbooks, employee discipline, wage and hour issues, disability, family and medical leave, unemployment, independent contractor agreements, severance and separation agreements, individual terminations, and reductions in force. Lauren also regularly conducts, manages, and provides advice regarding workplace investigations.

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ORIGINAL

REBA Title Standard No. 30 Bankruptcy Transfers

I. *Bankruptcy Code Transfers*

A conveyance of real estate by a trustee, debtor or debtor in possession conveys the interest of the debtor of the time of the filing of the petition by or against the debtor, as modified as to liens and other encumbrances by the Bankruptcy Court, and is not defective if the following are duly recorded:

A. Clerk's Certificate that an examination of the docket in the case indicates the following:

(1) The case was commenced by filing of a petition;

(2) (a) The Trustee was appointed when the conveyance is by the Trustee;

or

(b) Certificate of Retention of Debtor in Possession when the sale or conveyance is by the debtor in possession (See Bankruptcy Form No. 26);

(3) That on a particular date, the trustee, debtor or debtor in possession filed a Notice of Intended Sale of Property;

(4) That Notice of the Sale was given to all interested parties in interest and an affidavit of the mailing of said Notice has been filed with the Court; and

(5) If so, that no objections to the sale were filed and no hearing requested.

and

B. (1) Certified copy of the Notice of Intended Sale referenced in A(3) above;

or

(2) Certified copy of Judge's Order in the event that a timely objection to the intended sale is made;

II. *Bankruptcy Act Transfers*

A conveyance of real estate by a trustee, receiver or debtor in possession conveys the interest of the bankrupt or debtor as of the time of the filing of the petition by or against the bankrupt or debtor, as modified as to liens and other encumbrances by the Bankruptcy Court, and is not defective if the following are duly recorded:

(1) Certified copy of bankruptcy judge's order

- (a) approving the bond of the trustee or receiver, when the conveyance is by the trustee or receiver.

or

- (b) approving the debtor as in possession when the conveyance is by the debtor in possession;

and

(2) Certified copy of bankruptcy judge's order authorizing the conveyance with certified copy of the application for such authority annexed (unless obviously merged in (3) below);

and

(3) Certified copy of bankruptcy judge's order confirming the conveyance with certified copy of the application for such confirmation annexed.

The conveyance should be in accordance with the bankruptcy judge's order or orders.

Comment

The examiner should be reasonably satisfied by Bankruptcy Court recordable certificates and a search of the records of the case that:

- (a) no time for or proceeding for appeal remains open*

and

- (b) due notice was given to creditors, particularly when their liens or other encumbrances are affected.*

See Bankruptcy Act § 70A (11 USC, § 110) for vesting of bankrupt's title in trustee as of filing. See Crocker's Notes on Common Forms (7th ed.) § 683 as to form of deed.

See also Bankruptcy Act § 21e (11 USC, § 44e) for certified copy of order approving bond of trustee (or receiver, see Rule 212(g)) constitutes conclusive evidence of appointment and qualification and Bankruptcy Act § 21f (11 USCA, § 44f) for certified copies of orders or decrees are evidence of jurisdiction and regularity of the proceedings, and, if recorded, impart the same notice as would a deed.

See Bankruptcy Act § 21g (11 USC, § 44g) and Rule 602(a) for constructive notice of proceedings under the Act.

See also Bankruptcy Act § 70f (11 USC, § 110(f)) when practicable, sales shall be subject to approval of the Court (confirmation). See Rule 606 on appraisal and sale including sales free of liens or other interests. See also Rule 302(a)(2) notice of a proposed sale and Collier on Bankruptcy 14 ed. 4a-s. 70.99 - sales free of liens and encumbrances.

Comment

Bankruptcy Code § 363(b)(1) provides that “The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”

Bankruptcy Rule 6004(a) provides that “Notice of a proposed use, sale or lease of property other than in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c), and (i).” Rule 2002(a)(2) provides for twenty (20) days notice for a sale other than in the ordinary course. Rule 2002(c)(1) requires that the notice include the time and place of a public sale, the terms and conditions for a private sale and the time fixed for filing objections. Notice is sufficient under 2002(c)(1) if it “generally describes the property”. Rule 2002(i) provides for notices to (creditors) committees.

Bankruptcy Rule 6004(b) requires that any objection to a proposed sale be filed within 5 days before the date set for the proposed action or as set by the Court.

Bankruptcy Rule 6004(e)(1), requires, if not impracticable, the filing of a statement with the Clerk of the Bankruptcy Court upon completion of the sale.

Bankruptcy Code § 1107(a) confers on a debtor in possession the same rights and powers as a trustee in a Chapter 11 case. Code § 1303 confers the same rights and powers on a debtor in a Chapter 13 case.

Code § 102(1)(B) authorizes an act without an actual hearing if notice is properly given and if:

(i) a hearing is not requested timely by a party in interest;

or

(ii) ... the Court authorizes such act.

Adopted May 15, 1978
Amended May 20, 1985
Amended May 6, 1991

REVISED

REBA Title Standard No. 30 Bankruptcy Code Transfers Pursuant to Court Order

Title conveyed by a trustee, debtor, or debtor in possession which is the subject of a bankruptcy proceeding at the time of conveyance, as modified as to liens and other encumbrances by the Bankruptcy Court, is not defective if an examination of the Bankruptcy Court records shows:

A. Each of the following:

- (1) The case was commenced by the filing of a voluntary petition or, in the case of an involuntary petition, an order for relief has entered;
- (2) Prior to the conveyance, the Bankruptcy Court entered an order authorizing the sale, and the order recites either that proper notice has been given to all creditors or other interested parties, or that the notice to the creditors and interested parties is sufficient;
- (3) When conveyance is by a trustee, the trustee is duly appointed and serving at the time of the conveyance;
- (4) The order authorizing the sale has been recorded;
- (5) The time to appeal the order authorizing the sale has expired, or, if an appeal has been filed, the order is upheld or the appeal has been dismissed;
- (6) Whether or not an appeal has been filed, at least 14 days has expired since entry of the authorizing order on the Docket, unless the authorizing order contains language modifying the stay of its order pursuant to Bankruptcy Rule 6004(h);

or

- B. The sale is conducted pursuant to a plan of reorganization confirmed by a final order of the Bankruptcy Court within the meaning of the plan, and the appeal period for such final order has expired, or, if an appeal is pending, no stay of such order has entered pending such appeal as of the date of conveyance, and that each and every person or entity having an interest of record in the property affected by such sale has been given notice of the plan of reorganization, including the objection deadline and hearing dates, prior to entry of the order confirming such plan, as evidenced by the Certificate of Service for said notice.

Caveats

1. *This Standard does not address transfers of real estate that have been abandoned by the Trustee or debtor in possession pursuant to Section 554 of the Bankruptcy Code.*
2. *Under Land Court Guidelines, Section 55, Bankruptcy Code Transfers and Lien Avoidance Orders require approval by the Chief Title Examiner of the Land Court prior to filing.*

Comment 1

In a present transaction, where the real estate is being conveyed from a Bankruptcy estate, or where the order authorizing the sale does not comply with Paragraph (A)(2) of this Standard, the practitioner should be reasonably satisfied by a search of the records of the case in Bankruptcy Court (including records contained at the website for Public Access to Court Electronic Records, found at www.pacer.gov) that:

- (a) *due notice was given to secured creditors, when their liens or other encumbrances or interests are affected by such a sale.*

and

- (b) *no time for or proceeding for appeal remains open (See Bankruptcy Rule 8002 or that, if time is remaining for an appeal or an appeal is pending, that no stay has been issued and the authorizing order contains an express finding that the purchaser is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code);*

Comment 2

Bankruptcy Code § 363(b)(1) provides that "The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

Bankruptcy Code § 363(m) provides that : "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Bankruptcy Code § 554(a) provides that: [a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

Bankruptcy Code § 554(c) provides that “[u]nless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.”

Bankruptcy Code § 554(d) provides that “[u]nless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.”

Bankruptcy Code § 1107(a) confers on a debtor in possession the same rights and powers as a trustee in a Chapter 11 case. Code § 1303 confers the same rights and powers on a debtor in a Chapter 13 case.

Bankruptcy Rule 6004(h) provides that an order authorizing a sale of property is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.

Bankruptcy Rule 8002(a)(1) provides generally that, except when a party has timely moved to modify the authorizing order, “the notice of appeal must be filed with the bankruptcy clerk within 14 days after the entry of the...order...being appealed.”

Comment 3

Ordinarily, an order authorizing the sale of property is preceded by a motion seeking such order and a notice of the proposed sale in a form approved by the Bankruptcy Court that includes, among other things, the deadline for filing objections or submitting counteroffers and the hearing date. See Bankruptcy Rule 6004(a). See also Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts, Local Rule 6004-1 and Official Local Form 2A. Any sale order entered as a result of a procedure that deviates from these rules should be closely scrutinized to ensure that the Bankruptcy Court made express findings of good cause for such deviation.

Adopted May 15, 1978

Amended May 20, 1985

Amended May 6, 1991

Amended November 4, 2024 (removed all references to the Bankruptcy Act, added comments and caveats, and changed the title of the Standard)

Glossary of Helpful Bankruptcy Terms Relating to Real Estate Transactions

341 Meeting of Creditors - Soon after a bankruptcy case is filed, a meeting is held so that creditors and the trustee can ask questions about the debtor's financial situation. This meeting is required by Bankruptcy Code section 341(a) and the meeting is presided over by either the trustee assigned to the case and/or a representative of the U.S. Trustee's Office.

Adversary Proceeding - A lawsuit arising in or related to a bankruptcy case that is commenced by filing a complaint with the court. A nonexclusive list of adversary proceedings is set forth in Fed. R. Bankr. P. 7001. This is different from the main bankruptcy case which involves a debtor and the creditors of that debtor. The main bankruptcy case has its own separate electronic docket and case number. When an adversary proceeding commences, the clerk's office starts a separate electronic docket to record all activity in the adversary proceeding. Each adversary proceeding has its own "adversary number" and specific deadlines for proceeding until the adversary is resolved (by Court Order, settlement or dismissal).

Automatic Stay - Immediately after the bankruptcy case is filed, an injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed. In some cases of multiple bankruptcy filings, there is no automatic stay at all, or there is only an automatic stay if the debtor obtains a court order which imposes the automatic stay.

Chapter 7 - The chapter of the Bankruptcy Code providing for "liquidation," and can be used by an individual to obtain a discharge of many debts without making payments in the future. It may also be used by a business that wishes to liquidate its business assets under the protection of the bankruptcy court.

Chapter 13 - The chapter of the Bankruptcy Code providing for adjustment of debts of an individual who has regular income and debts that are below certain statutory limits. A Chapter 13 debtor proposes a "Chapter 13 Plan" which proposes a repayment schedule. The plan identifies details for the debtor to retain control of property, keeping up with current debts, and repay at least some of the past due debts.

Chapter 11 - The chapter of the Bankruptcy Code providing (generally) for reorganization, usually involving a corporation or partnership. A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals can also seek relief in chapter 11.

Closing of the Case - Closing means that all activity in the main bankruptcy case is completed, and the automatic stay is terminated. Closing does not mean that a discharge was entered.

Conversion - Conversion means that the court has approved changing a bankruptcy case from one chapter to another chapter. Conversion may be requested by a debtor, by a trustee or creditor, or be independently ordered by the court. Sometimes conversion is automatically approved, and in other situations it is disallowed or requires a court hearing to approve a motion to convert.

Creditor - One to whom the debtor owes money or who claims to be owed money by the debtor. Creditors generally have the right to file "claims" which identify the amount of money owed and the documents supporting the claim. A secured creditor has a claim backed by collateral (e.g. a house or car), allowing it to seize the asset if the borrower defaults. An unsecured creditor has no debt backed by any specific collateral and must rely on the debtor's general assets for repayment.

Debtor - The individual or entity who has filed a petition for relief under the Bankruptcy Code.

Debtor in Possession - A business or individual that has filed for Chapter 11 bankruptcy protection but retains control of its assets and continues operating its business, while under the oversight of the bankruptcy court, to facilitate a potential reorganization.

Discharge - A court order releasing a debtor from personal liability for certain debts set forth in the Bankruptcy Code. The discharge order prohibits a creditor from attempting to collect from a debtor a debt that has been discharged. Not all debts are dischargeable. A party can file an adversary complaint to have the court determine if a debt is dischargeable. A Court Order issuing a discharge does not terminate the automatic stay.

Dismissal - All proceedings in the main bankruptcy case **AND** all adversary proceedings are dismissed. Dismissal can occur because a debtor requested the dismissal and qualifies for voluntary dismissal. Dismissal can also occur without a debtor's consent if the court orders dismissal on its own, or a trustee or a creditor files a motion to dismiss the bankruptcy case and the court grants the motion.

Estate - All legal or equitable interests of the debtor in property at the time of the bankruptcy filing. The estate includes all property in which the debtor has an interest, even if it is owned or held by another person.

Lien Avoidance - The process of removing a judgment lien to extent that the lien "impairs" the debtor's exemption in the property (Chapter 7). In Chapter 13 cases, a lien can be avoided by a cramdown or stripping.

Petition - The official document filed by the debtor (in a voluntary case) or by creditors (in an involuntary case) by which opens the bankruptcy case. The filing of the petition commences the Bankruptcy case. While a Petition opens a bankruptcy case, this is only the beginning of the process. Additional documents are required, so that the court and trustee know how to properly treat a debtor and the debtor's financial situation.

Relief from the automatic stay - A Court Order allowing a creditor to proceed with liquidating of its collateral. I.e. Lifting of the injunction order. If a creditor does not obtain a court order, that creditor could be sanctioned and any action taken by that creditor may be void.

Trustee - The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the U.S. trustee or bankruptcy administrator. A trustee is automatically appointed in every Chapter 7 and Chapter 13 bankruptcy case.

In chapter 7, the trustee liquidates property of the estate, and makes distributions to creditors, if available. Trustees in chapter 13 have similar duties to a chapter 7 trustee and the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors. If a trustee is appointed in a chapter 11 bankruptcy case, a trustee will manage the affairs of the debtor and make all decisions about property of the estate.

US Trustee - An officer of the Justice Department responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties. Compare, bankruptcy administrator.

760 CMR: EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

760 CMR 71.00: PROTECTED USE ACCESSORY DWELLING UNITS

Section

71.01: Statement of Purpose

71.02: Definitions

71.03: Regulation of Protected Use ADUs in Single-family Residential Zoning Districts

71.04: Data Collection

71.01: Statement of Purpose

(1) St. 2024, c. 150, § 8 amends M.G.L. c. 40A, § 3 to encourage the production of accessory dwelling units throughout the Commonwealth with the goal of increasing the production of housing to address statewide, local, and individual housing needs for households of all income levels and at all stages of life.

The Executive Office of Housing and Livable Communities is the regulatory agency that is authorized by St. 2024, c. 150, § 8 to promulgate 760 CMR 71.00 that establish rules, standards and limitations that will assist Municipalities and landowners in the administration of St. 2024, c. 150, § 8.

(2) St. 2024, c. 150, § 8 and 760 CMR 71.00 seek to balance municipal interests in regulating the use and construction of ADUs while empowering property owners to add much needed housing stock to address the Commonwealth's housing needs. St. 2024, c. 150, § 8 establishes that in certain circumstances the use of land or structures for ADUs are protected from zoning restrictions by providing that zoning shall not prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single ADU, or the rental thereof, in a single-family residential zoning district, and imposes protections on ADUs through M.G.L. c. 40A, § 3, the Dover Amendment. St. 2024, c. 150, § 8 balances protection for these ADUs by authorizing municipalities to impose reasonable regulations on the creation and use of ADUs. St. 2024, c. 150, § 8, however, explicitly prohibits municipalities from imposing requirements on protected accessory dwelling units that require owner-occupancy of either the ADU or the principal dwelling and imposes limitations on Municipal parking requirements.

(3) 760 CMR 71.00 establishes definitions, standards, and limitations to assist in the local administration of M.G.L. c. 40A, § 3, para. 11, pursuant to St. 2024, c. 150, § 8. Nothing in 760 CMR 71.00 is intended to supersede state health and safety laws and regulations, such as, but not limited to the Building Code, Fire Code, M.G.L. c. 111, § 189A: *Massachusetts Lead Law*, or any federal laws.

71.02: Definitions

Accessory Dwelling Unit (ADU). A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that:

- (a) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the Building Code for safe egress;
- (b) is not larger in Gross Floor Area than $\frac{1}{2}$ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller; and
- (c) is subject to such additional restrictions as may be imposed by a municipality including, but not limited to, additional size restrictions, and restrictions or prohibitions on Short-term Rental as defined in M.G.L. c. 64G, § 1; provided, however, that no Municipality shall unreasonably restrict the creation or rental of an ADU that is not a Short-term Rental.

Building Code. The Massachusetts state building code, 780 CMR.

Bus Station. A location serving as a point of embarkation for any bus operated by a Transit Authority.

Commuter Rail Station. Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

71.02: continued

Design Standards. Clear, measurable and objective provisions of Zoning, or general ordinances or by-laws, which are made applicable to the exterior design of, and use of materials for an ADU.

Dwelling Unit. A single housing unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EOHLC. The Executive Office of Housing and Livable Communities.

Ferry Terminal. The location where passengers embark and disembark from a ferry service with year-round service with ferries departing at regular time intervals, rather than intermittent, seasonal, or event-based service.

Fire Code. The Massachusetts state fire code, 527 CMR 1.00: *Massachusetts Comprehensive Fire Safety Code*.

Gross Floor Area (GFA). The sum of the areas of all stories of the building of compliant ceiling height pursuant to the Building Code, including basements, lofts, and intermediate floored tiers, measured from the interior faces of exterior walls or from the centerline of walls separating buildings or dwelling units but excluding crawl spaces, garage parking areas, attics, enclosed porches and similar spaces. Where there are multiple Principal Dwellings on the Lot, the GFA of the largest Principal Dwelling shall be used for determining the maximum size of a Protected Use ADU.

Historic District. A district in a Municipality established pursuant to M.G.L. c. 40C or other state law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted by the Municipality pursuant to M.G.L. c. 40C or other state law.

Lot. An area of land with definite boundaries that is used, or available for use, as the site of a structure, or structures, regardless of whether the site conforms to requirements of Zoning.

Modular Dwelling Unit. A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation and connected to external utilities.

Municipality. Any city or town subject to the provisions of M.G.L. c. 40A.

Principal Dwelling. A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one Dwelling Unit and is, or will be, located on the same Lot as a Protected Use ADU.

Prohibited Regulation. Zoning or general ordinances or by-laws, or Municipal regulations that are prohibited pursuant to 760 CMR 71.03(2).

Protected Use ADU. An attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-family Residential Zoning District and is protected by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition.

Short-term Rental. Short-term rental, as defined in M.G.L. c. 64G, § 1.

Single-family Residential Dwelling. A structure on a Lot containing not more than one Dwelling Unit.

Single-family Residential Zoning District. Any Zoning District where Single-family Residential Dwellings are a permitted or an allowable use, including any Zoning District where Single family Residential Dwellings are allowed as-of-right or by Special Permit.

Site Plan Review. A process established by local ordinance or by-law by which a Municipal board or authority may review and impose terms and conditions on, the appearance and layout of a proposed use of land or structures prior to the issuance of a building permit.

71.02: continued

Special Permit. A permit issued by a Municipality's special permit granting authority pursuant to M.G.L. c. 40A, § 9.

Subway Station. Any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, Silver Line, or Blue Line, including any extensions or additions to such lines.

Transit Authority. The Massachusetts Bay Transportation Authority established by M.G.L. c. 161A, § 2 or other local or regional transit authority established pursuant to M.G.L. c. 161B, § 3 or M.G.L. c. 161B, § 14.

Transit Station. A Subway Station, Commuter Rail Station, Ferry Terminal, or Bus Station.

Unreasonable Regulation. Zoning or general ordinances or by-laws, or Municipal regulations that are unreasonable pursuant to 760 CMR 71.03(3).

Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of the Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the occupants, such as but not limited to, income, age, familial relationship, enrollment in an educational institution, or that limits the number of occupants beyond what is required by applicable state code.

Zoning. Ordinances and by laws, including base, underlying, and overlay zoning, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

Zoning District. A geographic area within a Municipality which, pursuant to Zoning, is subject to use and structure requirements that are uniform within the area.

71.03: Regulation of Protected Use ADUs in Single-family Residential Zoning Districts

(1) Municipalities shall not prohibit, impose a Prohibited Regulation or Unreasonable Regulation, or, except as provided under 760 CMR 71.03(5) and 760 CMR 71.03(6), require a special permit, waiver, variance or other zoning relief or discretionary zoning approval for the use of land or structures for a Protected Use ADU, including the rental thereof, in a Single-family Residential Zoning District; provided that Municipalities may reasonably regulate a Protected Use ADU, subject to the limitations under 760 CMR 71.00.

(2) Prohibited Regulation. A Municipality shall not subject the use of land or structures on a Lot for a Protected Use ADU to any of the following:

(a) Owner-Occupancy Requirements. A requirement that either the Protected Use ADU or the Principal Dwelling be owner-occupied.

(b) Minimum Parking Requirements. A requirement of, as applicable:

1. More than one additional on-street or off-street parking space for a Protected Use ADU if all portions of its Lot are located outside a 0.5 mile radius of a Transit Station; or

2. Any additional on-street or off-street parking space for a Protected Use ADU if any portion of its Lot is located within a 0.5 mile radius of a Transit Station.

(c) Use and Occupancy Restrictions. A requirement that a Protected Use ADU be subject to a Use and Occupancy Restriction.

(d) Unit Caps & Density. Any limit, quota or other restriction on the number of Protected Use ADUs that may be permitted, constructed, or leased within a Municipality or Zoning District. Protected Use ADUs shall not be counted in any density calculations. 1/31/25 760 CMR – 675

(e) Relationship to Principal Dwelling. A requirement that a Protected Use ADU be attached to or detached from the Principal Dwelling.

71.03: continued

(3) Unreasonable Regulation.

(a) A Municipality may reasonably regulate and restrict Protected Use ADUs provided that any restriction or regulation imposed by a Municipality shall be unreasonable if the regulation or restriction, when applicable to a Protected Use ADU:

1. Does not serve a legitimate Municipal interest sought to be achieved by local Zoning;
2. Serves a legitimate Municipal interest sought to be achieved by local Zoning but its application to a Protected Use ADU does not rationally relate to the legitimate Municipal interest; or
3. Serves a legitimate Municipal interest sought to be achieved by local Zoning and its application to a Protected Use ADU rationally relates to the interest, but compliance with the regulation or restriction will:
 - a. Result in complete nullification of the use or development of a Protected Use ADU;
 - b. Impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality's legitimate interest; or
 - c. Substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest.

(b) Municipalities shall apply the analysis articulated in 760 CMR 71.03(3)(a) to establish and apply reasonable Zoning or general ordinances or by-laws, or Municipal regulations for Protected Use ADUs, but in no case shall a restriction or regulation be found reasonable where it exceeds the limitations, or is inconsistent with provisions, described below, as applicable:

1. Design Standards. Any Design Standard that:
 - a. Would not be applied to a Single-family Residential Dwelling in the Single-family Residential Zoning District in which the Protected Use ADU is located or
 - b. Is so restrictive, excessive, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU.
2. Dimensional Standards. Any requirement concerning dimensional standards, such as dimensional setbacks, lot coverage, open space, bulk and height, and number of stories, that are more restrictive than is required for the Principal Dwelling, or a Single-family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation, provided that a Municipality may not require a minimum Lot size for a Protected Use ADU.
3. Utilities, Safety, and Emergency Access. Any requirement concerning utilities, safety and emergency access that is more restrictive than is permitted by state requirements, including under the Fire Code. A Municipality may not require a separate utility connection, such as water, sewer, electric, provided that a separate connection may be required by a Municipal or regional utility, investor-owned utility; by state law; by a local, regional, or state board or commission; or by court order.
4. Environmental Regulation. Any regulation for the protection of public health, safety, welfare and the environment pursuant to 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, that is more restrictive than is required for a Single-family Residential Dwelling in the Zoning District in which the Protected Use ADU is located.
5. Site Plan Review. Site Plan Review concerning the Protected Use ADU that is not clear and objective or imposes terms and conditions that are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A.
6. Impact Analysis, Studies, and Fees. Any requirement for any impact analysis, study, report, or impact fee that is not required for the development of a Single-family Residential Dwelling in the Single-family Residential Zoning District in which the Protected Use ADU is located.
7. Modular Dwelling Units. Any requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as a Protected Use ADU that is more restrictive than the Building Code.

71.03: continued

8. Historic Districts. Municipalities may establish Design Standards and Dimensional Standards for Protected Use ADUs located in an Historic District that are more restrictive or different from what is required for a Single-family Residential Dwelling, or Principal Dwelling, in the Single-family Residential Zoning District; provided, however, that such standards are not unreasonable pursuant to 760 CMR 71.03(3)(a).
9. Pre-existing Nonconforming Structures. A Municipality may not prohibit the development of a Protected Use ADU in an existing structure or Principal Dwelling, or Lot due to nonconformance, that could be used for, or converted into, a Protected Use ADU in conformance with the Building Code, 760 CMR 71.00, and state law.
- (c) Short-term Rentals. Municipalities may establish restrictions and prohibitions on the Short-term Rental of Protected Use ADUs pursuant to M.G.L. c. 64G.
- (4) Enforceability of Restrictions and Regulations on Pre-existing ADUs. A Municipality shall not enforce any Prohibited Regulation or Unreasonable Regulation that was imposed as a condition for the approval of the use of land or structures for a Protected Use ADU prior to the effective date of 760 CMR 71.00, regardless of whether such Protected Use ADU complies with the Municipality's Zoning, including, but not limited to, use requirements and dimensional requirements, such as setbacks, bulk, and height.
- (5) Special Permits for Multiple ADUs on the Same Lot. Notwithstanding 760 CMR 71.03(1), if a Municipality chooses to allow additional ADUs on the same Lot as a Protected use ADU in a Single-family Residential Zoning District, Zoning shall require a Special Permit for the use of land or structures for the additional ADUs.
- (6) Floodplain and Aquifer Protection Overlay Districts. Municipalities may require a Special Permit for development of a Protected Use ADU in a floodplain or aquifer protection overlay if required for the Principal Dwelling, provided that the Special Permit is based on clear, objective, and non-discretionary criteria.
- (7) Nothing in 760 CMR 71.00 is intended to prevent a Municipality from adopting more permissive Zoning, or general ordinances or by-laws, or Municipal regulations than would be allowed under 760 CMR 71.03.
- (8) Address Assignment. All ADUs shall be assigned an address consistent with the most current Address Standard published by MassGIS. ADU addresses shall be reported to MassGIS and EOHLC after assignment.

71.04: Data Collection

To assist EOHLC in the administration of M.G.L. c. 40A, § 3, para 11, Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.

REGULATORY AUTHORITY

760 CMR 71.00: M.G.L. c. 40A, § 3, para. 11; St. 2024, c. 150, § 8.