

**THE BOROUGH OF FORTY FORT CONVEYANCING  
INSPECTION ORDINANCE**

AN ORDINANCE OF THE BOROUGH OF FORTY FORT, COUNTY OF  
LUZERNE, AND COMMONWEALTH OF PENNSYLVANIA  
ESTABLISHING STANDARDS FOR PROVIDING PURCHASERS OF  
REAL PROPERTY WITHIN THE MUNICIPALITY THE OPPORTUNITY TO  
REVIEW THE DATA AND INFORMATION CONTAINED WITHIN A  
BUILDING INSPECTION REPORT PRIOR TO ENTERING INTO AN  
AGREEMENT OF SALE AND/OR CONSUMMATING A PURCHASE AND  
REQUIRING COMPLIANCE WITH THE VERSION OF THE  
INTERNATIONAL PROPERTY MAINTENANCE CODE IN EFFECT AS  
PROVIDED BY CHAPTER 5 OF THE BOROUGH CODE AND THE  
ZONING CODE OF THE BOROUGH OF FORTY FORT AS A  
PREREQUISITE TO OBTAINING AN OCCUPANCY PERMIT PRIOR TO  
AND FOLLOWING A CONVEYANCE SUBJECT TO THIS ARTICLE

ORDINANCE NO. 3 OF 2022

**BOROUGH OF  
FORTY FORT**

LUZERNE COUNTY, PENNSYLVANIA

Adopted at a Public Meeting Held on

December 5, 2022

**FORTY FORT BOROUGH  
Luzerne County, Pennsylvania**

**1. Title.**

This article shall be known and may be cited as "The Borough of Forty Fort Conveyancing Inspection Ordinance."

**2. Intent.**

The intent of this article is to provide purchasers the opportunity to review the data and information contained within a building inspection report prior to entering into an agreement of sale and/or consummating a purchase. This article is furthermore intended to require compliance with the version of the International Property Maintenance Code in effect as provided by Chapter 5 of the Borough Code and the Zoning Code of the Borough of Forty Fort as a prerequisite to obtaining an occupancy permit prior to and following a conveyance subject to this article.

**3. Definitions**

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**Constructive Knowledge**

Knowledge of a violation listed on the seller's property disclosure statement made pursuant to the act of July 2, 1996 (P.L.500, No.84), known as the Real Estate Seller Disclosure Act, a violation appearing on a buyer's notification certificate provided by a municipality or a violation that is a matter of public record.

**Date of purchase**

The closing date on which title and right to possess the property transfers to the purchaser or, in cases where the property is sold pursuant to the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, the first day following the right of redemption period authorized under the Municipal Claim and Tax Lien Law.

**Known to Have**

Knowledge of a violation based on actual or constructive knowledge.

**Municipality**

Any city, borough, incorporated town, township, home rule municipality, optional plan municipality, optional charter municipality or any similar general purpose unit of government which may be created or authorized by statute.

**Substantial Violation**

A violation of a building, housing, property maintenance or fire code, which violation posed a threat to health, safety or property but not a violation of such a code deemed by a court to be de minimis. an adopted building, housing, property maintenance or fire code or maintenance, health or safety nuisance ordinance that makes a building, structure or any part thereof unfit for human habitation and is discovered during the course of a municipal inspection of a property and disclosed to the record owner or prospective purchaser of the property through issuance of a municipal report.

**Temporary Access Certificate**

A certificate issued by a municipality as a result of the municipal inspection of a property incident to the resale of the property that identifies at least one substantial violation, and the purpose of the certificate is to authorize the purchaser to access the property for the purpose of correcting substantial violations pursuant to the maintenance and repair provisions of this act. No person may occupy a property during the term of a temporary access certificate, but the owner shall be permitted to store personalty that is related to the proposed use or occupancy of the property or is needed to repair the substantial violations during the time of the temporary access certificate.

**Temporary Use and Occupancy Certificate**

A certificate issued by a municipality as a result of the municipal inspection of a property incident to the resale of the property that reveals a violation but no substantial violation, **and the purpose** of the certificate is to authorize the purchaser to fully utilize or reside in the property while correcting violations pursuant to the maintenance and repair provisions of this act.

**Unfit for Human Habitation**

A condition which renders a building or structure, or any part thereof, dangerous or injurious to the health, safety or physical welfare of an occupant or the occupants of neighboring dwellings. The condition may include substantial violations of a property that show evidence of: a significant increase to the hazards of fire or accident; inadequate sanitary facilities; vermin infestation; or a condition of disrepair, dilapidation or structural defects such that the cost of rehabilitation and repair would exceed one-half of the agreed-upon purchase price of the property.

**Use and Occupancy Certificate**

A certificate issued by a municipality stipulating that the property meets all ordinances and codes and may be used or occupied as intended.

**Violation**

A violation of a properly adopted building, housing, property maintenance or fire code or maintenance, health or safety nuisance ordinance that does not rise to the level of a substantial violation and is discovered during the course of a municipal inspection of a property and disclosed to the record owner or prospective purchaser of the property through issuance of a municipal report.

**4. Inspection of dwellings or buildings for sale.**

- A. It shall be the obligation of every owner and/or agent of the owner of a dwelling or building to notify the Borough Code Enforcement Officer and/or his/her designee upon listing, advertising, or offering a dwelling or building for sale. At that time, an inspection request shall be completed by the requester on a form supplied by the Borough. This form shall include the following notation: The inspection required by the Borough of Forty Fort Conveyancing Inspection Ordinance is not intended to take the place of due diligence inspections by a prospective purchaser for wood-boring insects, radon and structural issues or any other inspections that may be advisable in the purchase of a dwelling or building.
- B. The Borough Code Enforcement Officer and/or his/her designee shall thereupon provide an inspection report for the dwelling or building based upon physical inspection of the dwelling or building.
- C. Should the owner and/or agent of the owner fail to comply with the obligation to obtain an inspection, this obligation shall become the obligation of the purchaser/grantee.
- D. Should the purchaser/grantee fail to comply with obtaining a Forty Fort inspection, said purchaser/grantee or partners if the grantee is a partnership or the corporate officers if the grantee is a corporation or the managing member(s) if the grantee is a limited liability company shall be subject to the penalties set forth in Part 15.
- E. No occupancy permit will be issued for a property subject to this article until and unless the inspection requirement has been accomplished.

**5. Building inspection report.**

- A. The Borough Code Enforcement Officer and/or his/her designee shall review the information contained within the inspection report within the parameters of this article to determine the issuance or denial of a certificate of occupancy, as provided in Part 6.
- B. The building inspection report furnished by the Borough Code Enforcement Officer and/or his/her designee to the owner and/or agent will contain the following:
- (1) The street address or other appropriate description of the subject dwelling or building;
  - (2) A statement concerning whether the dwelling or building is single, double, or multi-unit at the time of inspection prior to the conveyance.
  - (3) A statement of zoning applicable to the subject dwelling or building;
  - (4) A statement concerning the conformity or nonconformity of existing uses maintained within the dwelling or building and violations of the Zoning Ordinance, if any, existing at the time of inspection;
  - (5) A statement concerning variances and/or use permits issued to date which affect the dwelling or building;
  - (6) A statement of Property Maintenance Code violations, if any, existing at the time of inspection.
  - (7) A statement of Zoning Code violations, if any, existing at the time of inspection.

**6. Issuance or denial of certificate of occupancy.**

A. The Borough Code Enforcement Officer and/or his/her designee shall review the information contained within the inspection report. If the inspection report reveals no violations the Borough Code Enforcement Officer and/or his/her designee may issue a use and occupancy certificate. If the inspection report reveals at least one violation, but no substantial violations a temporary use and occupancy certificate shall be issued. If the inspection report reveals at least one substantial violation a temporary access certificate shall be issued. The Borough Code Enforcement Officer or his/her designee shall deliver such certificate to the owner and/or agent who lists, advertises, or offers a dwelling or building for sale.

B. The certificate shall be transferred and delivered by the owner and/or agent to the purchaser of the dwelling or building upon consummation of purchase or sale.

C. The Borough Code Enforcement Officer and/or his/her designee shall provide and deliver to the owner and/or agent written notice and explanation for the issuance of a temporary use and occupancy certificate or a temporary certificate of access for any dwelling or building listed, advertised, or offered for sale.

D. Within 12 months of the date of purchase or longer subject to an agreement between the purchaser and the borough, any purchaser of any building, structure or part of a building or structure known to have one or more substantial violations of borough codes relating to building, housing, property maintenance or fire shall: purchase, the purchaser of a property known to be in violation of a municipal code or ordinance shall, at his option, either:

- (1) bring the building, structure or that part of a building or structure property into compliance with [those] municipal codes or ordinances; or
- (2) demolish the building or structure in accordance with law.

**7. Review prior to sale or purchase.**

It shall be the obligation of every owner and/or agent to allow the purchaser to review the use and occupancy certificate or written notice denying the use and occupancy certificate as provided in Part 6C prior to the execution of agreement of sale and/or purchase of the dwelling or building, prior to the transfer of the dwelling or building, and prior to the exchange of any monetary sum relative to the purchase of the dwelling or building should an agreement of sale not be utilized.

**8. Option of review by purchaser.**

The purchaser shall have the right to review the information contained within the inspection report or to waive the right to review the inspection report prior to entering into an agreement of sale or consummating a purchase.

**9. § 62-8. Procedure after purchase; duties of parties.**

A. It shall be the obligation of every owner and/or agent to deliver the purchaser acknowledgement form to the purchaser prior to the transfer of the dwelling or building and prior to the exchange of any monetary sum relative to the purchase of the dwelling or building should an agreement of sale not be utilized.

B. The purchaser of the dwelling shall complete the purchaser acknowledgement form and deliver it together with a copy of the recorded deed to the Borough Code Enforcement Officer and/or his/her designee.

**10. § 62-9. Period of notice.**

A. Six months from the date of inspection, if a dwelling has not been sold, the conclusiveness of the inspection report must be either endorsed, as described in Subsection B, or altered by a new inspection to indicate appropriate changes. The inspection report will only indicate violations and conditions as of the date of inspection. Such inspection report does not indicate violations or corrections of such occurring between the date of inspection and the date of agreement of sale of a dwelling, or transfer of dwelling when an agreement of sale is not utilized, and/or the exchange of a monetary sum relative to the sale of a dwelling.

B. However, upon the request of owner and/or agent, prior to the expiration of the six-month period referred to in Subsection A, the Borough Code Enforcement Officer and/or his/her designee may issue endorsements to the inspection report, extending its conclusiveness for up to two additional three-month periods, showing any change to the information shown on the original inspection report. Each endorsement, however, shall extend the conclusiveness of the inspection report for only three months.

**11. § 62-10. Remediation of property denied an occupancy permit when inspected.**

A. When a property is denied a certificate of use and occupancy as a result of a conveyancing inspection, no certificate of use and occupancy will be issued to a subsequent owner unless the property maintenance issues noted in the inspection are remediated in compliance with the Forty Fort Property Maintenance Code. Furthermore, no certificate of use and occupancy will be issued for any occupancy that does not comply with the Forty Fort Borough Zoning Code.

B. Except as provided in Part 6D, when a property is denied a certificate of use and occupancy as a result of a conveyancing inspection, the current owner is nevertheless required to remediate any property maintenance issues found in such inspection in compliance with the Forty Fort Property Maintenance Code.

C. Except as provided in Part 6D, when a property is denied a certificate of use and occupancy as a result of a conveyancing inspection, the current owner is nevertheless required to remediate any zoning issues found in such inspection so as to bring the property in compliance with the Forty Fort Borough Zoning Code.

**12. Fees.**

Fees for buyer notification inspections shall be set by resolution of Borough Council. The initial fees shall be:

A. Residential structures/buildings: \$50.

B. Commercial structures/buildings under 6,000 square feet: \$150.

C. Commercial structures/buildings over 6,000 square feet: \$200.

**13. Exceptions.**

The building inspection report, set forth in Part 3, shall not be required for a dwelling should any of the following conditions be applicable:

A. Where such building is intended to be demolished and a valid demolition permit pursuant to the building code of the borough has been obtained;

B. Where such building is sold to any of the following which take title to property for the purpose of holding the property for sale to offset losses incurred on a loan or other obligation in default secured by a mortgage, deed of trust or other lien on the property:

(1) Bank.

(2) Savings association.

(3) Credit union.

(4) Mortgage lender.

(5) Financial institution similar to an institution listed in paragraphs (1) through (4).

(6) Subsidiary of a financial institution listed in paragraphs (1) through (5).

Exception: A financial institution not subject to this act under subsection (a) may be required by a municipality to correct a substantial violation.

C. Where such dwelling is given as a gift inter-family, i.e., husband and wife, parents and children and spouses of children;

D. When title to such dwellings pass by virtue of laws relating to a decedent's estate;

E. Where such dwelling is new and has never been occupied as a dwelling and has been inspected and approved for occupancy by a Construction Code inspector of the Borough of Forty Fort.

**14. Disclaimer; waiver.**

A. Notwithstanding any other law or ordinance, the provisions of this article may not be waived or disclaimed by an oral or written agreement executed by any owner, agent or purchaser excepting for such waiver exercised under Part 7 hereof.

B. The inspection report shall be compiled from the records of the Borough and from an inspection of the dwelling or building. Neither the enforcement of this article nor the preparation and delivery of any inspection report required hereunder shall impose any liability upon the Borough, or officers or employees thereof, for any errors or omissions contained in such inspection report; nor shall the borough bear any liability not otherwise imposed by law.

C. The inspection required under this article is not intended to take the place of due diligence inspections by a prospective purchaser for wood-boring insects, radon, structural issues, or any other inspections that may be advisable in the purchase of a dwelling or building.

**15. Filing of appeal.**

A. Appeals from the findings set forth in the building inspection report must be filed in writing with the Borough Code Enforcement Officer within 20 business days after issuance of the inspection report, who will refer the appeal to the board or boards as follows:

(1) Property Maintenance Board of Appeals, where the conditions reported constitute violations of the applicable codes of the Borough or deal with the suitability of any dwelling or structure, with regard to the health, safety and welfare of our citizens for continued occupancy; and/or

(2) The Zoning Hearing Board, where the findings set forth in the building inspection report relate to matters concerning the classification and the use of property under the Zoning Ordinance.

B. Any party may appeal decisions of the Property Maintenance Board of Appeals or the Zoning Hearing Board to the Court of Common Pleas of Luzerne County.

**16. Violations and penalties.**

Any person, partnership, corporation, or limited liability company who or which shall violate the provisions of this article shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than \$500. All fines collected for the violation of this article shall be paid over to the governing body.

**17. Severability.**

The provisions of this article are declared to be severable, and if any section, sentence, clause, or phrase of this article shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this article, but the same shall remain in full force and effect, it being the intent that this article shall stand, notwithstanding the invalidity of any part thereof.

**18. Effective Date.**

This article shall become effective upon date duly enacted.

**DULY ENACTED AND ORDAINED** this 5th day of December, 2022,  
by the Council of the Borough of Forty Fort in lawful session duly assembled.

THE BOROUGH OF FORTY FORT:

  
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THOMAS MURRAY, Council President

APPROVED:

  
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BRIAN THOMAS, Mayor

ATTEST:

  
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MICHELE PASCARELLA, Secretary