

BUYER AND SELLER ADVISORY REGARDING PORTLAND ENERGY AUDITS
Portland Metropolitan Association of REALTORS® (PMAR)



This Advisory summarizes the recently implemented rules for Portland's Home Energy Score program (hereinafter, "the Program"). This information is provided for informational purposes only, and is not intended to be used or relied upon as legal advice. Buyers and Sellers with specific issues or questions about the Program should contact an attorney familiar with their particular factual situation. Your real estate agent may not provide legal advice or direction about compliance with the Program.

- 1. WHAT IS THE PURPOSE OF THE NEW LAW?** The stated purpose of the Program is "...to make energy performance in residential buildings transparent, to enable more knowledgeable decisions about the full costs of operating a home, to motivate energy efficiency investments in homes that lower utilities, to reduce carbon emissions, and increase comfort, safety and health for home owners." The Program goes into effect on January 1, 2018.
- 2. HOW IS "ENERGY PERFORMANCE" DETERMINED?** It does not depend on personal usage or number of occupants. Rather, the calculations are based upon energy generated from the home's "physical assets", i.e. those providing heating, cooling, lighting, water heating, or energy used for powering or fueling other end-uses in the building and related facilities through electricity, natural gas, propane, steam, heating oil, wood or other products sold for use in a building, or renewable on-site electricity generation.
- 3. WHAT TYPE OF HOMES DOES THE PROGRAM APPLY TO?** It applies to "...any residential structure containing at least one dwelling unit or house, regardless of size, on its own lot." It includes attached single dwelling units where each unit extends from foundation to roof, such as row house, attached homes, common-wall homes, duplexes, and townhomes. Excludes: multi-story units stacked vertically, such as an apartment or multifamily structure; detached accessory dwellings units or manufactured dwellings.
- 4. DOES THE PROGRAM APPLY JUST TO HOMES WITH A PORTLAND MAILING ADDRESS?** This can be confusing. You should not use a property's address to determine whether it is subject to the Program. That is because an address, by itself, does not necessarily signify which governmental jurisdiction the property is located in. To confirm the jurisdiction, visit www.portlandmaps.com, and look to the "Jurisdiction" field, which is located directly below the "Neighborhood" field. If the jurisdiction identifies the City of Portland, the home is subject to the Program. If the property is not covered by the Program, there will be a banner at the site of the address, stating that "This property is not within the City of Portland or its service districts."
- 5. HOW WILL THE PROGRAM WORK?** Each home subject to the Program must undergo a "Home Energy Assessment" ("Assessment"). This is essentially an on-site audit conducted by a licensed Home Energy Assessor ("Assessor"), which results in a Home Energy Performance Report ("Report"). The Assessor is required to be licensed by the Oregon Construction Contractors Board to determine home energy performance scores, and authorized as a qualified Home Energy Assessor under the Program. (See, <https://www.pdxhes.com/sellers/>)
- 6. EXACTLY WHAT ENERGY INFORMATION IS REQUIRED TO BE IN THE REPORT?** The Report must include the U.S. Department of Energy Home Energy Score ("Score") and an explanation of the Score. A sample Report can be obtained by going to: <https://www.portlandoregon.gov/bps/71421>.
- 7. WHAT WILL THE ASSESSMENT COST AND HOW LONG WILL IT TAKE?** According to City of Portland Home Energy FAQs (<https://www.portlandoregon.gov/bps/article/586918>): "As of July 2016, the market rate cost to obtain a home energy performance report is between \$150-\$250. This is the cost of having a trained, certified home energy assessor conduct a 45-minute, in-home assessment and generate the report based on the data gathered from the home visit." PMAR suggests that seller agents encourage their clients to obtain estimates from multiple Assessors before settling on one.
- 8. WILL THE PROGRAM APPLY TO NEW CONSTRUCTION?** For newly constructed homes that have never been occupied, the Report and the Score may be produced based on design documents prior to the construction through a "Pre-construction Assessment". High Performance Homes for sale may be granted a waiver upon application to the

Portland Bureau of Planning and Sustainability Director. A “High Performance Home” is one built to exceed the requirements of the Oregon Building Energy Codes Program. (See, <https://www.energycodes.gov/adoption/states/oregon>.)

9. WHEN SHOULD THE ASSESSMENT BE CONDUCTED? Prior to a home being “listed publicly for sale”. However, this phrase is defined to include the use of printed advertising, internet postings, or publicly displayed signs, including, but not limited to, Regional Multiple Listing Service (RMLS™), Redfin, Zillow, Trulia and other third-party listing services. All such public listings are required to disclose the Report and Score. The Program will apply to For-Sale-By-Owner (“FSBO”) properties, including those listed with a brokerage but not officially appearing on the local MLS.

10. WHAT HAPPENS TO THE REPORT AND SCORE AFTER THEY ARE GENERATED FROM THE ASSESSMENT? After obtaining the Report and Score, if the property is listed, sellers are required to provide them to their real estate agent. It is to be attached to the listing, or linked to the City of Portland’s webpage, which is: <http://www.greenbuildingregistry.com/portland>. Printed copies of the Report must be made available and visible to all prospective buyers who visit the home, including buyers of newly constructed homes, while they are publicly listed.

11. HOW LONG IS THE REPORT GOOD FOR? Printed and electronic copies of the Report expire after two (2) years from the date of Assessment. Following the expiration date, a seller listing a home publicly for sale is required to have the Report reissued. However, this does not require a new Assessment – just the utility costs, and emission factors must be updated. Reports will not be available after eight (8) years from the date of the Assessment, and would thereafter require a new Assessment if the property was to become publicly listed.

12. WHAT IF A HOME IS REMODELED OR NEW ENERGY SYSTEMS ARE INSTALLED AFTER A REPORT HAS BEEN ISSUED AND BEFORE IT EXPIRES? If changes have been made to the home since the last onsite Assessment, a new Assessment may be required in order to generate a new Report. The original Report is considered void if alterations or remodeling of the home affect the heated square footage, the quality and type of windows, insulation, HVAC equipment, or remodeled spaces such as basements or attics, as they can be expected to impact the home’s estimated energy use.

13. WHO IS RESPONSIBLE FOR ASSURING THAT THE ASSESSMENT IS PERFORMED, THE REPORT IS GENERATED, AND THEN POSTED TO THE WEBSITE? Home sellers are personally responsible for obtaining and distributing the Reports, but they may designate an agent to act on their behalf to do so. However, for liability and insurance reasons, some real estate companies may decline to accept such responsibility. The Program applies to individual sellers owning the property, or LLCs, corporations, and all other forms of entity ownership as they appear on title.

14. ARE THERE ANY EXEMPTIONS FROM THE PROGRAM? Yes. They include: (a) Publicly noticed distressed housing sales, such as foreclosure or trustee sales, deeds in lieu and short sales; (b) Property tax foreclosure sales; (c) Sales of distressed properties by court-appointed receivers; (d) Sales where a senior mortgage is subject to a notice of default; (e) The property is deemed uninhabitable due to casualty; (f) The property has been condemned by a government entity; and (g) If compliance would pose a financial hardship for the seller.

15. WHAT IF A SELLER DECLINED TO PARTICIPATE IN THE PROGRAM? ARE THERE ANY PENALTIES? Yes. If a violation is deemed to have occurred, a “written warning notice” may be issued describing the violation and steps necessary to comply. If the violation is not remedied within 90 calendar days after issuance of the warning notice, the Director of the Bureau of Planning and Sustainability may assess a civil penalty of up to \$500. For every subsequent 180-day period for which the violation continues, the Director may assess additional civil penalties of up to \$500.

16. WHERE CAN I GET MORE INFORMATION?

- <https://pmar.org/portland-energy-assessment-faq/>
- www.pdxhes.com