

STATE BUILDING CODE INTERPRETATION NO. I-5-06

March 21, 2006

The following is offered in response to your February 13, 2006 letter to me in which you seek an official interpretation of the provisions of Sections 116.2 and 119.3 of the BOCA National Building Code/1996 portion of the 1999 State Building Code (SBC), which applies to permits applied for from May 1, 1999 through December 30, 2005.

Question 1: "Who can hand deliver an SBC 119.3 Unsafe Condition Notice?"

Answer 1: Section 119.3 of the code requires that the building official serve a written notice containing specific information regarding the unsafe condition. Section 119.4 sets forth the method of service. Personally delivering a copy of the notice to the owner is one option listed. The code does not specify by whom the notice may or may not be delivered. The intent of the code is that the notice be delivered. The building official may delegate the delivery to whomever he feels will satisfy the intent of the code.

Question 2: (This question pertains to sample "Notice of Violation" and "Unsafe Condition Notice" documents prepared by the Office of the State Building Inspector and distributed as a training aid) "Why do the Unsafe Condition Notices authorize hand delivery but the Notice of Violation does not?"

Answer 2: Hand delivery is specifically called out as one of the methods for delivery of an Unsafe Condition Notice. The code does not specify a method for delivery of a Notice of Violation, although hand delivery is probably the most common method of noticing violations since the person responsible for the violation is frequently in attendance at the inspection during which the violation is discovered. The documents you reference are training aids meant to demonstrate allowable examples but not meant to convey all requirements or optional methods sanctioned by the code.

Question 3: "If delivery of an SBC 116.2 Notice of Violation or an SBC 119.3 Unsafe Condition Notice sent by certified mail does not occur, has a building official met the requirements to 'serve' such a notice?"

Answer 3: Section 116.2 requires that the building official serve a notice of violation but is silent on how such service should take place. If a building official elects to serve a notice of violation by certified mail and such mail is refused by the recipient, the building official has performed his duty to serve the notice. Section 119.3 is, however, more specific with respect to service of a notice of unsafe condition. If an attempt to serve such notice by certified mail is unsuccessful, the code requires that the building official post a copy of the notice in a conspicuous place in or about the structure affected by such notice.

Question 4: “Can a building official ‘serve’ an SBC 116.2 Notice of Violation or an SBC 119.3 Unsafe Condition Notice by using USPS first class mail?”

Answer 4: Again, Section 116.2 is silent on how notice takes place, so first class mail would be an acceptable method of delivery for a Notice of Violation. Section 119.4 does not include first class mail as one of the listed methods of delivery but does not preclude its use in addition to one of the listed methods of delivery. Since code violators might be especially sensitive to accepting certified or registered mail, it is not uncommon to send an additional copy of the notice by first class mail.

Question 5: “Who can ‘serve’ SBC 116.2 Violation and SBC 119.3 Unsafe Condition Notices?”

Answer 5: The code does not specify by whom the notice may or may not be delivered. The intent of the code is that the notice be delivered. The building official may delegate the delivery to whomever he feels will satisfy the intent of the code.

Question 6: “Can a building official ‘serve’ an SBC 116.2 Notice of Violation or an SBC 119.3 Unsafe Condition Notice by using any delivery method that cannot prove receipt?”

Answer 6: Yes. Section 116.2 only requires service of the notice, not proof of delivery. Section 119.4 allows posting of the notice in or about the premises if certified or registered mail delivery is not successful. In this case, the code presumes that the person in violation will read the posted notice but does not require proof of it.

Question 7: “Is an SBC 116.2 Notice of Violation criminal process?”

Answer 7: There are penalties for violation of the provisions of the State Building Code that include fines of not less than two hundred nor more than one thousand dollars or imprisonment of not more than six months, or both. Such penalties are authorized by section 29-254a of the Connecticut General Statutes.

Question 8: “Is an SBC 119.3 Unsafe Condition Notice criminal process?”

Answer 8: There are penalties for violation of the provisions of the State Building Code that include fines of not less than two hundred nor more than one thousand dollars or imprisonment of not more than six months, or both. Such penalties are authorized by section 29-254a of the Connecticut General Statutes.

Question 9: “If a property owner provides advance written notice forbidding building official or building official agent entry to land or buildings (pursuant to U.S. v. Reilly, U.S. v. Katz, etc.) who can ‘serve’ an SBC 116.2 Notice of Violation or an SBC 119.3 Unsafe Condition Notice?”

Answer 9: If the premises in question is a single-family residence, the building official has no right of entry and must heed any order against trespass. The code does, however, provide for methods of delivery, discussed in the answers above, that do not require entry onto the premises themselves. For instance, “about the structure affected by such notice” can be construed to mean attached to a tree in the public right-of-way adjacent to the affected premises.