



2015 New State Laws



Mary Truell, Chair, Public Policy Committee



For more information about any bill, contact NHAR Government Affairs Director Bob Quinn (bob@nhar.com or 225-5549), or visit www.gencourt.state.nh.us

New penalties for lenders who fail to discharge a mortgage properly

[HB 230 \(Chapter Law 224\)](#)

Any mortgagee/lender who fails to discharge within 60 days of the satisfaction of the mortgage as prescribed in [RSA 479:7](#), is now liable for damages to the mortgagor/property owner at the rate of \$200 for each week after the expiration of the 60 days, up to a maximum of \$2,500 or an amount equal to the loss sustained as a result of the failure of the mortgagee to execute and deliver a release, whichever is greater, plus costs and reasonable attorney's fees.

The bill also allows the mortgagor, their assignee or other successor in the title, to execute an affidavit to discharge the mortgage. Currently, only an attorney could do so.

The bill was introduced by REALTOR and State Rep. Brian Chirichiello (R-Derry) and was supported by NHAR.

The bill goes into effect January 1, 2016.

Broker on-site supervision and facilitator requirements altered

[HB 308 \(Chapter law 87\)](#)

The bill eliminates the on-site supervision requirement by the principal or managing broker in RSA 331-A.

Instead, all licensees and employees associated with a real estate office shall be *reasonably* supervised by the principal broker or managing broker.

The bill also requires a facilitator to present in a timely manner all offers and agreements to and from the parties during a real estate transaction.

New disclosure requirements on arsenic prior to purchase

[HB 498 \(Chapter Law 171\)](#)

The bill requires the following notice be provided to the buyer prior to the execution of any contract for the purchase and sale of any interest in real property. The buyer shall acknowledge receipt of this notification by signing a copy of the notification.

“Arsenic: Arsenic is a common groundwater contaminant in New Hampshire that occurs at unhealthy levels in well water in many areas of the state. Tests are available to determine whether arsenic is present at unsafe levels, and equipment is available to remove it from water. The buyer is encouraged to consult the New Hampshire department of environmental services private well testing recommendations (www.des.nh.gov) to ensure a safe water supply if the subject property is served by a private well.”

The arsenic notice will be contained in section 12 of NHAR's Purchase and Sale agreement.

The bill also makes minor changes to the radon notification which will also be found in the P&S document.

Effective January 1, 2016.

New Lead Paint Rules: Notification Requirements and Eviction Laws

[SB 135 \(Chapter Law 250\)](#)

This bill lowers the lead poison threshold needed for a landlord to be notified of the potential problem, makes it more difficult to evict a family when lead paint is found while providing landlords the opportunity to remove tenants in certain circumstances after poisoning has been identified.

The bill was originally introduced to ensure that more at-risk children were screened for lead poisoning in New Hampshire. It is estimated that only about one-third of children under the age of 6 in target communities are screened.

The state's communities classified as highest risk include Berlin, Claremont, Franklin, Laconia, Manchester, Nashua, Newport and Rochester.

The new law requires the Department of Health and Human Services (HHS) to annually determine the percentage of children 6 years of age or younger who are being screened with blood lead level tests and make an annual report.

HHS must now notify in writing the owner of a unit where the child resides if a level of 5 to 9.9 micrograms per deciliter is found in the child's blood. Prior to this law, the Department need only make an effort to notify a landlord if the level was at 6 to 9.9 micrograms per deciliter.

The notification to the property owner is neither a finding that a lead exposure hazard exists in the property nor is it an

order for lead hazard reduction. However, that notice will include information about the health hazards of lead poisoning and information on the federal Renovation, Repair and Painting Program.

It is important to note that *this bill did not alter* the 10 micrograms per deciliter standard when HHS must take proactive measures to inspect the property under [RSA 130:A-5](#).

The new law also makes it unlawful to evict a tenant who has *any level* of lead paint in his or her bloodstream. Previously, the child must have had tested at a level of at least 6 micrograms in order to be protected from eviction. And now a parent or guardian is also permitted to provide the landlord with notification of a child with elevated blood poisoning levels.

In circumstances where the presence of a lead exposure hazard is unsuspected, and becomes known only after the dwelling has been rented to a family with a child, the owner may withdraw the unit from the residential rental market in lieu of undertaking reduction of the lead exposure hazard. In such case, the owner may bring an action to evict the family but only after fulfilling the conditions set forth in [RSA 130-A:8-a, II](#). The dwelling unit shall not be subsequently rented for residential purposes without reduction of all lead exposure hazards associated with the unit.

The bill also creates a commission whose purpose is to ensure more children are screened for potential lead poisoning.

This bill will become effective September 11, 2015.

Ground lease and the Real Estate Transfer Tax

[SB 232 \(Chapter Law 255\)](#)

NHAR and our commercial members worked to introduce Senate Bill 232 to clarify that a lease – including any sales, transfers, or assignments of any interest in the leased property, where the term of the lease, including all renewals, is less than 99 years – are exempt from the transfer tax.

In 2014, the NH Department of Revenue Administration (DRA) asserted that it had the authority under the Real Estate Transfer Tax (RETT) to tax ground lease transactions whose terms were for less than 99 years. This was contrary to decades of practice by the development and legal community and seemed to run counter the DRA’s own rules.

NHAR had challenged a DRA rulemaking change which would have explicitly granted the Department such authority. The Department was forced to withdraw its proposed rule. SB 232 was needed to remove any claim the DRA has that previously untaxed ground leases were now subject to the RETT.

The bill is effective immediately.

Relative to the condominium act and the land sales full disclosure act.

[SB 235 \(Chapter Law 256\)](#)

Developers brought their concerns that the process by which the NH Attorney General’s Office used in assessing financial feasibility of condo and subdivision developments was

unnecessarily burdensome and led to costly delays. The legislature agreed and made some important changes.

Under SB 235, when registering a condominium project the declarant may submit statements from all principals holding more than a 25 percent ownership interest personal financial statements as well as federal income tax returns for the two most recent full calendar years in lieu of the declarant having to submit current financial statements.

The bill also provides greater definition in the Condominium Act and the Land Sales Full Disclosure Act of what constitutes “reasonable assurance” that all uncompleted improvements and amenities will be completed as approved.

The bill goes in effect January 1, 2016.

Increase in the homestead exemption

[HB 147 \(Chapter Law 57\)](#)

The bill increases the homestead exemption to \$120,000 for an individual and \$240,000 for a married couple. The previous exemption was \$100,000 for an individual and \$200,000 for a married couple.

The bill goes into effect January 1, 2016.

Managing agent to return the records of a condominium association

[HB 158 \(Chapter Law 131\)](#)

The bill requires a managing agent to return to the condo unit owners’

association, its board of directors, the president of the association, or the association's attorney, all association records held by the managing agent within 30 days from the date of the request for such records.

Effective date January 1, 2016.

Exempting RETT on inherited property

HB 180 (Chapter Law 133)

This bill clarifies that the definition of "price or consideration" under the real estate transfer tax applies only to contractual transfers. The bill also exempts transfers by devise or other testamentary disposition – property left through a will – regardless of any consideration paid or obligation assumed by the transferee, from the real estate transfer tax. The bill was introduced by REALTOR and State Representative Naida Kane (D-Durham).

The bill became effective on July 1, 2015.

Authorizing special assessment districts

HB 486 (chaptered Law 240)

The bill provides a mechanism for towns and cities to levy and collect special assessments from property owners to recover the cost of providing public facilities that provide a unique benefit to the property upon which they are imposed.

The intent is to shift the financing of public facilities from all taxpayers to

those who specifically benefit from such public facilities.

A town or city must establish a special assessment districts in order to levy any assessment. Owners of at least 50 percent of the lots within the proposed district, representing at least 65 percent of the assessed valuation within the proposed district must petition to create a district.

Effective date is September 11, 2015.

Changes to Property Assessed Clean Energy (PACE) Program

HB 205 (Chapter Law 121)

The bill makes several changes to the NH PACE program ([RSA 53-F](#)), which allows towns to establish an Energy Efficiency and Clean Energy District. The most important is that the bill eliminates the ability of municipalities to provide funding for the loan.

All funding for the qualifying energy improvements must be made by private lenders. The municipality can collect the funds and repay the lender as part of the property tax bill but bears no liability or responsibility for the loan.

PACE loans are junior to all existing liens of record. The loan runs with the property and not the owner.

The bill is effective immediately.

Authorizing certain referral fees on commercial transactions

[HB 495 \(Chapter Law 241\)](#)

Currently, the Real Estate Settlement Protection Act (RESPA) prevents a REALTOR from directing any transaction to a settlement service company in anticipation of receiving a referral fee. However, commercial transactions are exempted from RESPA rules.

RSA 331-A makes no such distinction between residential and commercial transactions.

HB 495 makes it clear in RSA 331-A that directing any transaction to a lending institution, escrow company or title company in a manner is prohibited under the Real Estate Settlement Procedures Act of 1974 (RESPA). However, in a commercial transaction a licensee may be engaged by a principal to serve as its agent to solicit extensions of credit or to provide other services related to the purchase or sale of real estate in a manner not prohibited under RESPA, provided that if the services involve an extension of credit or are related to a loan, the agency fee is not paid by the lender.

Referral fees in residential mortgages remain prohibited.

NHAR worked with REALTOR and State Representative Linda DiSilvestro (D-Manchester) to introduce this legislation.

Effective September 11, 2015.

Allowing applicant on a land use application to request a different third-party consultant

[SB 98 \(Chapter Law 126\)](#)

Currently, a planning board reviewing a subdivision plat, site plan, or other land use application may require the applicant to reimburse the board for expenses. SB 98 allows the applicant to request the planning board choose a different third party consultant. The planning board has reasonable discretion to determine whether the request is warranted. When such a request is granted by the planning board, the 65-day period for the board's action on an application can be extended 45 days to provide the board adequate time to identify a different consultant.

Effective August 8, 2015.

Certification for mold assessment services

[SB 125 \(Chapter Law 208\)](#)

This bill requires persons working for a fee and providing residential mold assessment services for mold contamination in residential dwellings be certified by certain nationally accredited professional organizations and requires the board of home inspectors to inform the public that mold assessment professionals are required to be certified.

Any professional hired by a homeowner, in which the primary work contracted for is not mold assessment, is exempt from the certification requirements.

Effective January 1, 2016.

Defining phased development for purposes of innovative land use controls.

[HB 143 \(Chapter Law 31\)](#)

The bill provides a definition for phased development in RSA 674. Previously, some communities were using phased development as a substitute for a growth management ordinance and therefore limiting building permits.

The new “phased management” definition means a development, usually for large-scale projects, in which construction of proceeds in stages on a schedule over a period of years established in the subdivision or site plan approved by the planning board. In a phased development, the issuance of building permits in each phase is solely dependent on the completion of the prior phase and satisfaction of other conditions on the schedule approved by the planning board.

Phased development does not include a general limit on the issuance of building permits or the granting of subdivision or site plan approval in the municipality, which may be accomplished only by a growth management ordinance under RSA 674:22 or a temporary moratorium or limitation under RSA 674:23.

This bill is effective immediately.