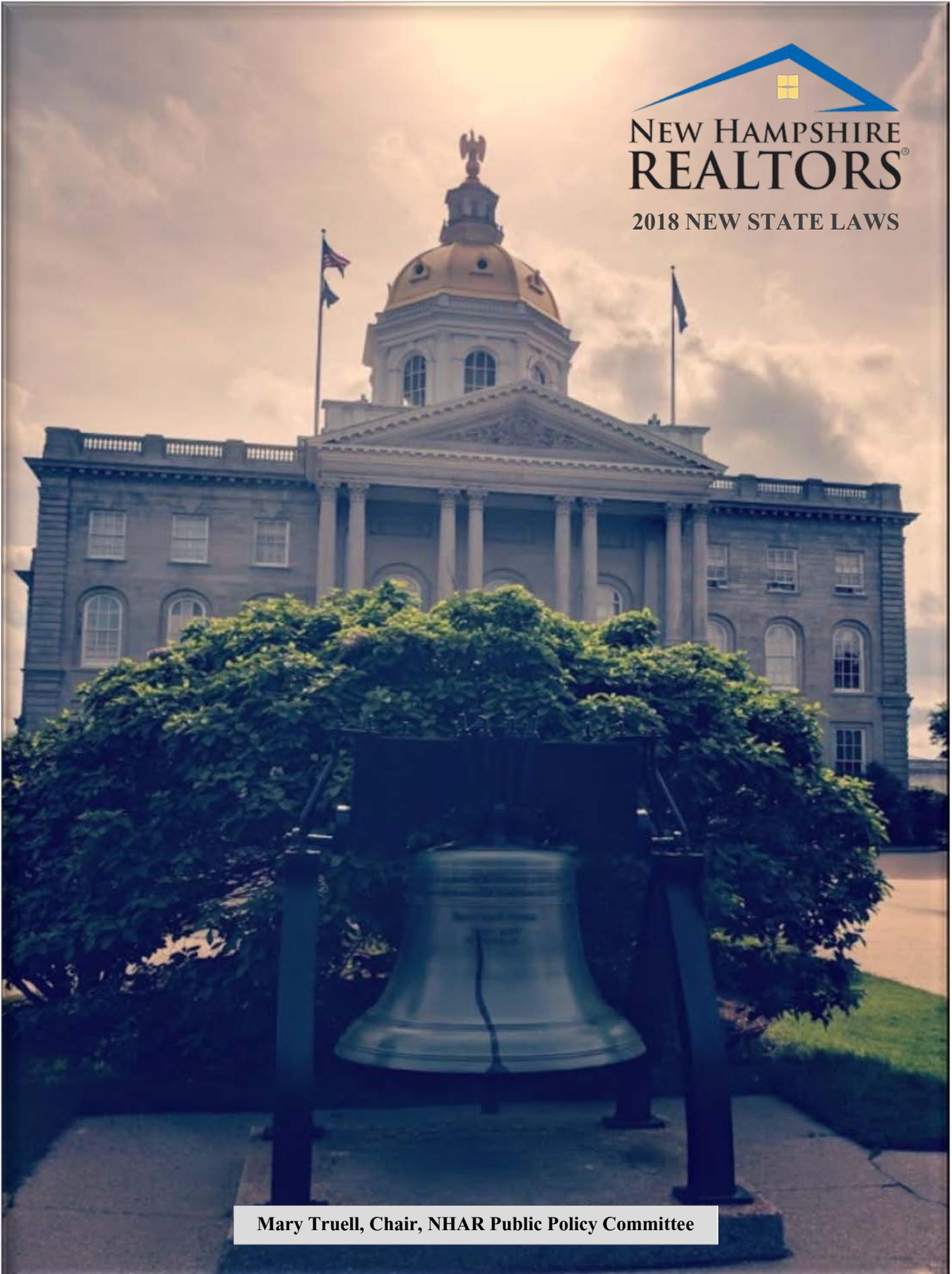




NEW HAMPSHIRE
REALTORS®

2018 NEW STATE LAWS



Mary Truell, Chair, NHAR Public Policy Committee

For more information, contact NHAR Vice President for Government Affairs Bob Quinn (bob@nhar.com or 225-5549)

CHANGES TO NEW HAMPSHIRE'S LEAD PAINT LAW

[Senate Bill 247 – Chapter Law 4](#)

Relatively significant changes were enacted which primarily altered the Lead Paint Control Act ([RSA 130-A:1](#)). Highlights of the new law include the following:

Changes the blood levels for notifications from the NH Dept. of Health and Human Services to property owners relative to blood lead levels in children, from 5 micrograms per deciliter to 3.5.

Requires testing for blood lead levels in children at the ages of 1 and 2.

Lowers child blood threshold for abatement orders from 10 micrograms to 7.5 micrograms in 2019, and to 5 micrograms in 2021.

Creates revolving loan fund to provide loans to property owners to make units lead-safe.

Mandates new disclosures on lead in water and paint prior to the execution of any contract for the purchase and sale of any interest in real property

As a result of concerns raised by NHAR and others, the new law only requires property owners to abate units with children and pregnant women, as opposed to the current requirement that all units in the building must be abated. This should lower overall costs to property owner when facing abatement expenses.

The bill went into effect in April 2018.

CONTINUING EDUCATION REQUIREMENTS FOR NEW REAL ESTATE LICENSEES

[Senate Bill 461 – Chapter Law 259](#)

The bill requires that all real estate salespersons take specific and prescribed 12 hours of continuing education courses prior to their first license renewal. This does not increase the number of CE courses for new licensees.

The approved courses must be established by the Real Estate Commission in specified topics or courses related to the salesperson's practice. The Commission will need to go through a rule making process before the new requirement can go into effect.

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CHANGE TO ZONING BOARD APPROVAL PROCESS IN ORDER TO CLARIFY WHEN A MOTION SUCCEEDS

[Senate Bill 339 – Chapter Law 214](#)

The bill states that concurring votes of any three members of the zoning board of adjustment is necessary to act on any matter on which the board is responsible.

The intent is to clarify that if a proposal were to fail on a 2-1 vote, that does not mean the application is rejected, since three votes would be needed to either approve or reject.

NHAR supported the legislation.

The bill goes into effect August 8, 2019.

RELATIVE TO THE EXPIRATION OF VARIANCES AND SPECIAL EXCEPTIONS

House Bill 1553 – Chapter Law 75

The bill permits a town to alter a zoning ordinance to provide for the termination of all variances that were authorized before August 19, 2013, and that have not been exercised.

After adoption of such an amendment to the zoning ordinance, the Planning Board must post notice of the termination in the town hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice. The notice shall state that variances authorized before August 19, 2013, are scheduled to terminate, but shall be valid if exercised within two years of the expiration date of the notice or as further extended by the Zoning Board of Adjustment for good cause.

The same holds true for special exceptions granted prior to August 19, 2013.

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ZONING BOARDS REQUIRED TO SPECIFY HOW THEY ARE TO VOTE ON VARIANCES.

House Bill 1215 – Chapter Law 168

The law requires municipal Zoning Boards of Adjustments to use one voting method consistently for all applications until it formally votes to change the method.

Any change in the Board's voting method cannot take effect until 60 days after the Board has voted to adopt such change and shall apply only prospectively, and not to any application that has been filed and remains pending at the time of the change.

The bill is effective Aug 7, 2018.

EXEMPTIONS EXTENDED FOR THIRD PARTY MORTGAGES

Senate Bill 314 – Chapter Law 211

The new law allows an individual to act as a mortgage banker, mortgage broker, mortgage servicer, or mortgage originator if the individual is not engaged habitually and repeatedly in such activities in a commercial context.

It is now a rebuttable presumption that an individual is not engaged in the business of a mortgage originator if the individual is not involved in more than three loans in any consecutive 12-month period.

Keep in mind that federal law may be more [restrictive under RESPA/TILA](#). Always engage an attorney when providing financing when the property is used as collateral.

The bill goes into effect August 8, 2018.

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STANDARDS FOR ARSENIC IN WATER

HB 1592 – Chapter Law 190

By January 1, 2019, the Commissioner of the Department of Environmental Services must review the groundwater standard for arsenic to determine whether it should be lowered, taking into consideration the extent to which the contaminant is found in New Hampshire, the ability to detect the contaminant in public water systems, the ability to remove the contaminant from drinking water, the impact on public health, and the costs and benefits to affected entities that will result from establishing the standard.

The current standard is 10 parts per billion.

Any proposed change to the ambient groundwater standard for arsenic must be voted on by the legislature.

New Hampshire groundwater standards, which are enforceable against municipal water supplies, tend to become the standards used by laboratories for private well water.

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MUNICIPAL INTEREST CHARGES ALTERED FOR PROPERTY TAXES

[House Bill 1673 – Chapter Law 282](#)

The bill lowers the interest rate charged on late and delinquent property tax payments from 12 to 8 percent and 18 to 14 percent per annum.

The bill will go into effect in April 2019.

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TIME LIMITS RELATED TO WETLANDS PERMITS AND TERRAIN ALTERATIONS; ESTABLISHES CERTIFIED APPLICATION PROVIDER

[House Bill 1104 – Chapter law 279](#)

The bill is intended to decrease the timeframe for wetland and terrain alteration applications. If the Department of Environmental Services (DES) fails to take action within the prescribed timeline, the application will be deemed approved.

Within 50 days (as opposed to the current 75 days) of issuing a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact, and 75 days (as opposed to the current 105 days) for all other projects, the DES must complete its evaluation of the application and seek additional information.

The DES must grant a 60-day extension if additional information is requested. If a public hearing is required, it now must be scheduled with 30 days. After a public hearing, the DES has 45 days (as opposed to existing 60 days) to approve or deny.

The new law also requires DES to develop a voluntary certified application preparer program for submission of applications for all qualifying minimum impact projects. The qualifications established shall include that the individual is a permitted septic system designer or is licensed or certified by the office of professional licensure and certification as a certified wetland scientist, certified soil scientist, professional engineer, licensed land surveyor, or any other professional designated by the department.

Qualifying minimum impact projects shall include, but not necessarily be limited to, all projects which the department has designated as minimum impact projects in its wetlands rules.

All applications for qualifying minimum impact projects submitted by a certified application preparer will not require technical review by the DES and they must issue a permit within 10 days of receipt of a complete application.

The bill goes into effect January 1, 2019.

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RELATIVE TO VOTES BY A CONDOMINIUM UNIT ASSOCIATION WITHOUT A MEETING

[House Bill 1519 – Chapter Law 187](#)

Current statute allows an association to conduct a vote without a meeting. In those cases, all ballots cast in an association vote must be counted using a tally sheet for the vote. If more than one ballot item was voted on, the board may elect to keep a corresponding tally sheet for each ballot item. The ballots and tally sheets shall be made available for examination and recount, by request of any owner participating in the vote, immediately following announcement of the results of the vote taken.

During any examination and recount, one or more members of the board of directors, and at

least one additional owner, must be present. The ballots are to be examined and tallied to verify that the count and announced result was correct.

The bill goes into effect August 8, 2018.

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DEFINITION OF AN EMERGENCY FOR A SPECIAL ASSESSMENT IN A CONDOMINIUM

House Bill 1521 – Chapter Law 186

Currently, the statute allows some condominium board directors to determine by a two-thirds vote that a special assessment is necessary to respond to an emergency.

HB 1521 defines that an "emergency" requires immediate action by the board of directors where a danger to the structural integrity of the common areas is discovered, impacting the life and safety of property unit owners, as required by a court order, or to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.

The bill goes into effect on August 8, 2018.

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NEW LAW PROHIBITS DISCRIMINATION BASED ON GENDER IDENTITY

House Bill 1319 – Chapter Law 176

Currently, New Hampshire statute bans discrimination in obtaining housing because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin.

This new law adds "gender identity" to that list of protected classes.

The bill went into effect July 8, 2018.

BILL ALLOWS REAL ESTATE AGENTS TO SELL TAX DEEDED PROPERTY

Senate Bill 504 – Chapter Law 149

The bill allows town officials to engage a real estate agent or broker to list and sell tax-deeded property.

The current statute permits such sales only by a public auction or by advertised sealed bids

Before proceeding under this provision, the town's governing body must make an affirmative finding that disposal by a method other than sealed bid or public auction is in the public interest.

The bill also permits a municipality to sell such properties on undeveloped parcels to abutters for consolidation into adjoining lots for the purpose of affordable housing development, preserving open space, or reducing development density.

The bill goes into effect July 29, 2018.

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AUTHORITY FOR MUNICIPALITIES TO ISSUE BONDS FOR BROADBAND INFRASTRUCTURE

Senate Bill 170 – Chapter Law 118

A municipality may now issue bonds for the purpose of financing the development, construction, reconstruction, and improvement of broadband infrastructure in any locations within a municipality unserved by broadband.

Requests for proposals must be provided to all providers serving the area for the purpose of engaging in a public-private partnership.

The bill goes into effect July 29, 2018.

ADDITIONAL PROTECTIONS FOR AGRITOURISM

Senate Bill 412 – Chapter Law 56

No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in statute.

The statute defines agritourism as meaning attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.

Prior to a party filing a land use application with a municipality, or after such land use application is denied, an applicant may petition the NH Agriculture Commissioner for a declaratory ruling regarding whether or not a municipality's ordinance, bylaw, definition, or policy regarding agritourism activities conflicts.

The bill went into effect July 15, 2018.

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CLARIFYING RECIPROCITY FOR LICENSEES

Senate Bill 459 – Chapter Law 321

The bill is intended to clarify that if an applicant holds an active real estate broker or salesperson license in good standing and issued by examination in accordance with the laws of another jurisdiction, that applicant may apply for and be granted an original New Hampshire license.

The Real Estate Commission has indicated that RSA 331-A already granted such authority.

COMMISSION ON DEMOGRAPHIC TRENDS ESTABLISHED

House Bill 1817 – Chapter Law 162

Establishes the position of state demographer in the office of strategic initiatives and establishes a Commission on Demographic Trends.

A permanent Commission is established to review demographic trends. The Commission will work with the state demographer to develop long-term net migration goals, review and recommend programs and legislation designed to meet the net migration goals, and monitor the success of any such programs.

The Commission will likely look at housing and commercial development.

The bill also requires the legislative budget assistant to include a demographic analysis as part of the fiscal note for certain legislation.

The bill went into effect July 1, 2018.

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CHANGES TO OFFICE OF PROFESSIONAL LICENSURE

Senate Bill 531 – Chapter Law 330

All fees authorized by statute for all boards within the Office of Professional Licensure and Certification (OPLC), including the Real Estate Commission, will be established and maintained by the OPLC. Currently, fees are set by the individual boards and unused funds are sent to the general fund.

OPLC new authority includes rules governing the administration of complaints and investigations, payment processing procedures, and application procedures

The bill went into effect July 1, 2018

2018 REAL ESTATE DECLARATORY RULINGS

The New Hampshire Real Estate Commission was petitioned for a declaratory ruling for clarification under RSA 331-A:26, XXIV relative to a licensed broker ability to pay a commission to a broker who has formed an LLC, but has not obtained a license.

The RE Commission ruled that such a payment is prohibited as real estate brokers are limited to paying commissions to licensees. ([Click here for full text.](#))

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The New Hampshire Real Estate Commission was petitioned for a declaratory ruling to clarify whether transaction commissions can be shared with a principal to the transaction.

The RE Commission found that such a sharing is not allowed. Real estate brokers are limited to paying commissions to licensees. ([Click here for full text.](#))

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The New Hampshire Real Estate Commission was petitioned for a declaratory ruling clarifying whether an unlicensed, third-party company can solicit and book real estate listings on behalf of an agent.

The RE Commission found that such a solicitation for compensation is not allowed if the company is performing activities that are outside the scope of those that can be performed by an unlicensed assistant. Unlicensed assistants can perform clerical duties, but these cannot include solicitation. ([Click here for full text.](#))