

# 2011

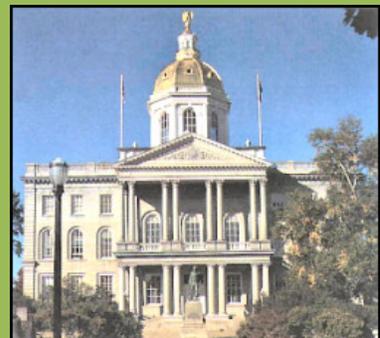
## NHAR Governmental Affairs New State Laws



The New Hampshire Association of REALTORS

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For more information about any bill either contact NHAR Government Affairs Director Bob Quinn ([Bob@Nhar.com](mailto:Bob@Nhar.com) or 225-5549) or go to [www.gencourt.state.nh.us](http://www.gencourt.state.nh.us)



**Senate Bill 28 (CHAPTER LAW 212)  
*Relative to Seller Financed  
Transactions and the SAFE Act.***

Most seller financed transactions dealing with residential mortgages were halted due to the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act which went into effect in January 2010. The NH Banking Departments interpretation of the SAFE Act prohibited a seller from providing financing unless they were a licensed mortgage originator.

NHAR sponsored SB 28 which allows an owner of real property who in any 12 consecutive month period makes no more than 3 mortgage loans to purchasers of the property for all or part of the purchase price of the real estate against which the mortgage is secured without having to be a licensed mortgage originator.

The law does make it clear that final rules under the SAFE Act issued by the United States Department of Housing and Urban Development will supersede this new law if the regulations conflict. HUD issued its final rule on June 30<sup>th</sup> and NHAR does not believe the 3 transactions in any 12-month period conflicts with HUD's rule. *Effective July 1, 2011.*

**House Bill 2 (CHAPTER LAW 224)  
*The Shoreland Water Quality  
Protection Act (formerly the  
Comprehensive Shoreland Protection  
Act)***

A major overhaul of the Comprehensive Shoreland Protection Act resulted in much more than a simple name change. The new law will ensure the sustained funding for the enforcement of the Act and the continued protection of New Hampshire's public waters.

A new permit by notification with the Department of Environmental Services should streamline the process. Within 5 business days of receipt of a permit by

notification filing, the department shall issue a written notice to the property owner or agent stating that the permit has either been accepted or rejected. If the DES fails to respond to the written request within an additional 5 days the property owner shall be deemed to have a permit by notification and may proceed with the project.

Projects eligible for Permit by Notification include construction, excavation, and filing, or other activity that impacts less than 1,500 square feet and adds no more than 900 square feet of impervious area within a protected shoreland area.

The bill also states that the waterfront buffer is defined as the protected shorelands within 50 feet of the reference line. Limitations on removal of stumps, rocks, stumps, root systems are defined. Beyond 25 feet of the reference line, slow or controlled release fertilizer may be used but chemicals within the waterfront buffer are prohibited except by a licensed professional or with a permit.

A revised point system has been implemented which encourages the planting of shrubs among other changes. The amount of impervious surface permitted has also been increased.

The entire language of the new law can found at the Government Affairs Update Center on [nhar.org](http://nhar.org).

**House Bill 2 (CHAPTER LAW 224)  
*Change to Deed Recording Fee***

The \$25 recording fee collected by registrars of deeds to be used for the Land and Community Heritage Investment Program will now be used primarily for general fund purposes. A total of \$240,000 for the biennium will continue to be sent to LCHIP with the remainder going to the general fund.

**Senate Bill 70 (CHAPTER LAW 247)  
*Reduction in Number of Days a  
Landlord Needs to Store Property***

A landlord need only store personal property of a tenant who has vacated the premises for 7 days as opposed to the previous requirement of 28 days.

Violation of this provision will subject the landlord to only actual damages, plus costs and reasonable fees. *Effective January 1, 2012*

**Senate Bill 70 (CHAPTER LAW 247)  
*Repeal of Registration of Landlord  
Agents Penalty***

In 2010, a new law required that all landlords must file a statement with the municipality in which the property is located that provides the name, address, and telephone number of a person within the state who is authorized to accept service of process for any legal proceeding brought against the owner relating to the restricted property. Failure to do so could result in a \$1,000 fine. SB 70 removes any fine for failure to file the statement. *Effective July 1, 2011*

**Senate Bill 144 (CHAPTER LAW 215)  
*Relative to Site Approvals and  
Subdivision of Land***

The law expands the exemption for approved subdivisions from changes to municipal regulations and ordinances from four years to five years. The law also expands the time period from 12 months to 24 months for that project to obtain vested rights by achieving the “active and substantial” development standard. *Effective June 27, 2011*

**House Bill 173 (CHAPTER LAW 208)  
*Relative to the Service on Commercial  
Tenants***

Under the previous law, any notice of demand for rent or eviction notice could be served upon the tenant personally or left at their last known place of abode. This new law now allows commercial

rental property owners to send a copy of such demands by certified mail to their tenants last known legal address due to the difficulty of obtaining access to the commercial tenant last known place of abode. *Effective January 1, 2012*

**House Bill 316 (CHAPTER LAW 206)  
*Relative to Restoration of  
Involuntarily Merged Lots***

The law offers landowners the right to have involuntarily merged lots restored to their premerger status, even if the owner did not hold legal title at the time of the merger. If an owner requests such a restoration prior to December 31, 2016, and no owner in the chain of titled had voluntarily merged the lots, then the lots must be restored. The municipality has the burden of proof to show that a previous owner voluntarily merged the lot.

The restoration of the lots to their premerger status will not be deemed to cure any non-conformity with existing local land use ordinances. *Effective July 24, 2011.*

**House Bill 316 (CHAPTER LAW 206)  
*Relative to the Loss of Appeal on  
Property Assessment***

Chapter Law 206 removes from statute the penalty of losing the right of appeal if an owner refuses to grant inspection of their property for assessment purposes. In addition, if an individual fails to file an Inventory Form before the April 15<sup>th</sup> deadline they likewise will not lose their right of appeal. *Effective July 24, 2011.*

**House Bill 144 (CHAPTER LAW 68)  
*Relative to Energy Efficiency and  
Clean Energy Districts***

In 2010, the NH legislature created Property Assessed Clean Energy Districts (PACE), allowing local government entities to offer low-cost loans for homeowners to install sustainable energy

project such as solar panels. The loans are paid back through an assessment on that homeowners property tax bill which held a priority position in case of foreclosure. HB 144 amends the law in two ways; it establishes that such loans can only be provided through issuance of municipal revenue bonds and not from general revenue; and it removes the priority lien provision. *Effective July 25, 2011.*

**House Bill 109(CHAPTER LAW 203)  
*Municipal Sprinkler Mandates Banned***

Planning board's can no longer require, or adopt any regulation requiring, the installation of a fire suppression sprinkler system in proposed 1- or 2-family residences as a condition of approval for a local permit. The bill makes it clear that the legislature's intent was not to prohibit a duly adopted regulation mandating a cistern, dry hydrant, fire pond, or other credible water source other than a fire suppression sprinkler system.

The legislature intent with HB 109 was to permit municipalities which had already passed sprinkler mandates to continue to enforce those ordinances. There might be some ambiguity in the bill which could lead to a developer challenging that grandfathering in certain towns and cities. *Effective July 1, 2011*

**Senate Bill 111(CHAPTER LAW 145)  
*Short Sales and Foreclosure Consultants***

The bill adds exemptions for foreclosure consultants under New Hampshire RSA 479-B:1 regarding the conveyance of mortgages and realty. A short sale consultant must make certain disclosures so as not to be considered a "rescue scam." If, as part of the sale, a deficiency was required by any creditor, the exact terms and conditions must be disclosed to the buyer at least 72 hours before the

transfer. A "notice of short sale" must also be provided to the homeowner from the purchaser making it clear that the homeowner is selling his or her home, will no longer have any ownership of the home after the sale and describe in detail the terms of the sale. This exemption pertains to consultants only and not investors buying the residence or arranging for another person to purchase the residence. *This bill will become effective on August 6, 2011.*

**House Bill 47 (CHAPTER LAW 134)  
*Relative to Real Estate Salespersons Use of Electronic Media***

Real estate professionals using Twitter, Facebook and other electronic media to advertise will no longer be required to provide their brokers name and business within the limited electronic messages. Disclosure requirements will be satisfied if the message includes a link to a display with the required information i.e. the name and number of their broker. *This bill will become effective on August 6, 2011.*

**Senate Bill 20 (CHAPTER LAW 141)  
*Relative to Shoreland Protection Permits***

Commercial or industrial redevelopments with an approved Alteration of Terrain permit for impacts on shoreland areas are not required to also gain a permit under the Shoreland Water Quality Protection Act (formerly the Comprehensive Shoreland Protection Act). *Effective August 6, 2011.*

**Senate Bill 38(CHAPTER LAW 143)  
*Relative to Extensions for Wetland and Shoreland Protection Permits***

Excavating and Dredging permits issued under RSA 482-A:3 as well as permits under the Shoreland Protection bill will now be valid for five years with a possible extension granted by the Dept. of Environmental Services for another five

years. *This bill will become effective on August 6, 2011.*

**Senate Bill 21 (CHAPTER LAW 195)  
Relative to exemptions from  
excavating and drainage permits**

The bill expands the exemptions for excavating and dredging permits to include roadside and railroad ditches, detention basins and wetlands that have been legally constructed to collect, convey, treat, or control storm water and spring run-off can now be maintained, repaired, replaced, or modified as necessary to preserve their usefulness without a permit provided that provided, that the exempted area is not extended into any area of wetlands jurisdiction of the department of environmental services, dredged spoils are deposited in areas outside wetlands jurisdiction of the department of environmental services, wetlands or surface waters outside the limits of the exempted area are neither disturbed nor degraded, the exempted area was not constructed as mitigation under a wetlands permit or as part of a settlement agreement, best management practices are followed, and the work does not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.  
*Effective August 13, 2011*

**HB 317 (CHAPTER 129)  
Relative to Fire Warning Devices and  
Carbon Monoxide Detection Devices  
in Dwellings**

The law states that carbon monoxide detectors are not required in a multi-unit dwellings, rental units or single-family homes built or substantially rehabilitated after January 1, 2010 if it does not have an attached garage and does not contain an appliance or device that uses a combustion method of burning solid, liquid, or gas fuel. If a garage or combustion fuel appliance or device is later added to the dwelling or rental unit,

a carbon monoxide detection device shall be required. *Effective July 1, 2011*

**House Bill 298(CHAPTER LAW 96)  
Condo Management Company  
Disclosure to Board of Directors**

The bill adds certain disclosures of fees by managing agents and contractors to RSA 356-B.

- I. A managing agent must disclose any referral fees received from contract work performed on behalf of the association to the Board of Directors unless such referral fees are authorized in managing agents contract.
- II. The managing agent shall disclose the Board the amount and purpose of fees, other than maintenance fees, received from a unit owner.
- III. Any licensed contractor who performs work for a unit owner shall disclose on the bill any referral fee charged by the contractor.

*Effective January 1, 2012*

**New DES Rule Regarding  
Repair/Renovation of Septic Systems**

The New Hampshire Department of Environmental Services (DES) has enacted a rule change – which did not go through the legislative process - regarding replacement of existing residential Individual Sewage Disposal Systems (ISDS) as specified in [Env-WQ 1003.14](#). The rule went into effect April 16, 2011.

Under the previous DES rule, a homeowner undertaking a replacement of a septic system which met certain criteria (certified to be not more than 75 feet from surface or well water; bottom of bed is more than 24 inches above seasonal water

table; no change in size or location or type of design; use and flow will not change) could file with the DES a Repair/Replacement Questionnaire, which simply notified that the system was to be replaced. No fee was incurred.

Under the new rule, that questionnaire is eliminated and the owner or designer would need to submit the same application a new system requires, for which the fee would be \$300. If a homeowner has a signed contract with an installer prior to Jan. 14, 2011, that project is exempt from the new rules provided the work is completed by June 1, 2011.

As before, an individual may prepare and submit the application as well as install the replacement ISDS if it will serve the individual's own domicile.

NHAR will be supporting legislation in the 2012 legislative session to modify this rule change.