

**2012**

New  
Hampshire  
Association  
of  
REALTORS



# **NHAR**

## **Governmental Affairs**

### **New State Laws 2012**

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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)**

UNLESS OTHERWISE NOTED, ALL OF THE FOLLOWING LAWS ARE CURRENTLY IN EFFECT.

### **Replacement of Septic Systems** *Chapter Law 174 (HB 1415)*

The bill creates a new process for acquiring a permit in order to replace an existing septic system through a Permit by Rule (PBR). This new process eliminates the sometimes costly requirement that a new system design needs to be submitted to the NH Department of Environmental Services (DES). It also allows for installation of the new system to start more quickly.

To qualify the system must be “in-kind,” meaning the replacement of the effluent disposal system must be in strict accordance with what is shown on the previously approved plan. If no previously approved plan exists, or cannot be located, then the system is not eligible for a PBR.

“Effluent Disposal Area” means an area designed for the final disposal of effluent, including the bed and any required fill extensions, in which effluent is dispersed using leach lines or dry wells.

Changes to a septic system from the residence to the distribution box should be considered a repair and would not require going through the permitting process

In addition, the system qualifies if all of the following requirements are met; the system only receives domestic sewage, there is no increase in sewage loading, the bottom of the bed is no less than 24 inches above the seasonable high water table, the system must be at least 75 feet from any well or surface water.

Each system is eligible for only one Permit by Rule. A second replacement will require a new design to be submitted to DES for approval.

Once the application is submitted to DES and approval granted – expect no more than 48 hours – construction can begin.

The replaced system cannot be covered or placed in operation without final inspection by the DES or their authorized agent. All inspections must be completed within 7 business days after receipt of written notice from the installer that the system is complete.

The applicant submitting the permit by rule assumes all liability for the design while the installer assumes liability for the construction.

The DES application fee remains at \$300 and needs to be signed by a licensed designer.

The new PBR application can be found at the NH DES Subsurface Systems Bureau's website under Forms/Applications or by going to NHAR's Government Affairs Update Center at Nhar.Org.

## **Approval for Modifications to Sewage Systems**

Chapter Law 147 (HB 1721)

This bill expands the conditions in which no construction or operational approval is required from the Dept. of Environmental Services prior to expanding, relocating, or replacing any structure that does not increase the load on a sewage disposal system, to include lots which are five acres or more in size.

## **New Exemptions Under Mortgage Origination Licensing Law**

Chapter Law 50 (HB 247)

The law expands the exemption from mortgage licensing for non-owners of real property who provide mortgage financing.

A person who is *not the owner of the real property* in question, and any affiliate of the person, who collectively make 3 or fewer mortgage loans in a 12 consecutive month period do not need to be licensed by the NH Banking Department provided that all origination activities are conducted by an originator duly licensed in this state.

Keep in mind, that legislative changes made in 2011, *permits the owner of real property* to make up to 3 mortgage loans in any 12 month period *without* having to use a duly licensed mortgage originator.

## **Exempting Attorney's From Mortgage Licensing**

Chapter Law 85 (HB 408)

An attorney licensed in New Hampshire performing activities that are within the definition of a loan originator, will now be exempt for having to be licensed by the NH Banking Department as a loan originator.

Attorney's had shied away from assisting homeowner's seeking advice on mortgages, especially in short sale situations, due to concerns they might violate the mortgage origination licensing statute. This bill provides them with a broad exemption from that statute.

## **Regulation of Appraisal Management Companies**

Chapter Law 164 (SB 153)

All Appraisal Management Companies (AMC) operating in New Hampshire will now have to be registered with the Real Estate Appraisers Board. One of the main intents is to allow the state to better track AMC's who are hiring appraisers without the geographic expertise to conduct an appraisal.

An Appraisal Management Company is defined as " valuing properties collateralizing mortgage loans or

mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of, or other principal in, the secondary mortgage markets."

### **Relative to the Extension of Fill and Dredge in Wetlands Permits**

#### Chapter Law 145 (HB 1636)

If the NH Dept. of Environmental Services issues a permit to repair, replace, or shore up property that is regularly affected by storms and ice, including but not limited to docks, sea walls, access to ramps and stairs, protective rip rap, and stone walls, in order to maintain the integrity and safety of the property, then those permits will expire in ten years from date of issuance. Previously, those permits were for five years and could be extended for an additional five years.

### **Prorated Assessments for Damaged Buildings**

#### Chapter Law 169 (SB 382)

Whenever a taxable building is damaged due to unintended fire or natural disaster to the extent that it renders the building not able to be used for its intended use, the assessing officials will prorate the assessment for the building for the current tax year.

The proration of the building assessment shall be based on the

number of days that the building was available for its intended use divided by the number of days in the tax year, multiplied by the building assessment.

This bill takes effect on April 13, 2013

### **Limiting Conservation Committees Ability to Conduct Studies on Private Property** Chapter Law 202 (HB 514)

A designee of a Conservation Committee cannot enter private property to gather data about the property for use in a wetlands designation, prime wetlands designation, natural resource inventory report or map, or natural heritage map without first obtaining permission of the property owner. Such permission may be oral or written, provided that record is made of oral authorization. If consent for entry is denied, the conservation commission, or designee, may obtain an administrative inspection warrant

Additionally, no data gathered by entering property without the permission of the landowner or an administrative warrant shall be used for any purpose other than certain law enforcement purposes.

### **Relative to Eminent Domain by Public Utilities**

#### Chapter Law 2 (HB 648)

The bill establishes a commission to investigate procedures for obtaining a

hearing for landowners whose property is being considered for eminent domain as well as develops a framework to provide use rights to transmission developers on state owned rights-of-way.

The law prohibits any public utility or agent of that utility, such as a real estate agent hired by the utility, from referring to the use of eminent domain in any landowner negotiations, unless the newly established commission has first specifically authorized its use under this chapter with respect to the affected landowner.

The law states that a public utility may not petition for permission to take private land or property rights for the construction or operation transmission project eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO – New England or its successor regional system operator.

Further, if a utility needs to enter private property they must send by certified mail to the property owner of its desire to enter at least 30 days prior to entry.

### **Establishes a Statute of Limitations on Wetland Filing and Dredging Violations**

Chapter law 55 (HB 1233)

The bill creates a limitation on enforcement action under the wetlands filing and dredging statute. A person who acquires property, by any means, more than 5 years after an activity constituting a violation of this

chapter has been completed, will not be subject to an enforcement for a violation, provided the owner allows restoration of impacted areas, unless the person knew of the existence of the violation at the time that the person acquired the property.

Nothing in the new language limits any enforcement action with respect to any violation of this chapter, including injunctive relief requiring restoration of impacted areas, for which written notice of the violation has been provided to the owner by the department prior to January 1, 2013

This bill is effective Jan. 1, 2013.

### **Changes to NH Real Estate Practice Act**

Chapter Law 35 (HB 1370)

A real estate licensee must provide in writing to a potential buyer or lessee, their ownership interest, direct or indirect, in property offered for sale or lease by the licensee. Disclosures need to be made prior to an offer to purchase, sell, or lease and acknowledge by all parties in writing.

### **Requiring Local Officials to Provide Fire Code Appeal Process Information**

Chapter 225 (HB 1480)

All local fire chiefs and duly authorized subordinates shall provide information on the local appeals process for local fire code ordinances

and the variance process for the state fire code upon review of plans and notice of violations.

### **Clarifying the Liability of Landowners**

Chapter Law 214 (HB 1551)

A landowner owes no duty of care to keep the premises safe for entry or use by others for outdoor recreational activity or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes.

This protection does not extend when a charge or fee is exchanged or if there is willful or malicious failure to guard or warn against a dangerous condition.

### **Alteration of Terrain Permits Extended**

Chapter Law 148 (SB 241)

The bill provides that a terrain alteration permit shall be valid for 5 years and authorizes an extension of the permit for another 5 years if the applicant meets specified criteria such as the project is proceeding towards completion in accordance with approved plans.

### **Relative to Transparency of Impact Fees and Use on State Roads.**

Chapter Law 106 (SB 291)

No later than 60 days following the end of the fiscal year, any municipality having adopted an impact fee ordinance shall prepare a report listing all expenditures of impact fee revenue for the prior fiscal year, identifying the capital improvement project for which the fees were assessed and stating the dates upon which the fees were assessed and collected. The annual report shall enable the public to track the payment, expenditure, and status of the individually collected fees to determine whether said fees were expended, retained, or refunded.

The bill also allows revenues collected from municipal impact fees for municipal roadways to be used on state-owned roads, provided that such improvements are related to impacts caused by the development. The bill neither alters the current statutory prohibition on municipalities assessing impact fees for state roads, nor allows a town or city to use state roads when calculating impact fees

### **Relative to the Commercial and Industrial Construction Property Tax Exemption.**

Chapter Law 186 (SB 306)

A person seeking a property tax exemption for commercial construction now needs to submit a request by December 31st before the beginning of the tax year for which the exemption is sought.

The selectmen or assessors must notify the applicant of their decision no later than February 28. The decision shall specify the amount of the exemption, that it is effective with the new tax year and the number of years for which the exemption applies to qualified construction.

charged with closing a real estate transaction shall prepare and deliver to the buyer and seller upon completion of a transaction a detailed financial statement of all accounts relative to the transaction showing receipts and disbursements.

### **New Regulations Passed by Real Estate Commission.**

Several new regulations were passed by the New Hampshire Real Estate Commission, including application fee increases for each original individual, firm, or firm branch broker license the applicant increased from \$100 to \$110.

The applicant for each qualifying examination increased from \$115 to \$155 for a salesperson examination and from \$130 to \$170 for a broker examination.

Candidates applying for the Broker's examination can qualify for the 60 hours of approved study by completing the Certified Commercial Investment Member (CCIM) course of the Graduate Realtor Institute (GRI) within the past five years. Other accredited Realtor courses will not automatically qualify but can be used to meet some of the 60 hour requirement.

Rea 404.03 was changed to clarify that photocopy or electronic transmission of any instruments to any party are acceptable.

The Commission repealed Rea 702.03 which had stated a broker