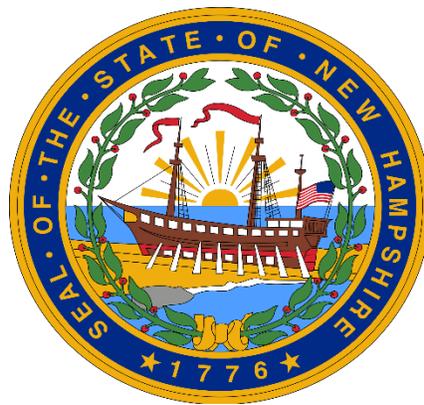


2019 NEW STATE LAWS



Mary Truell
CHAIR | PUBLIC POLICY COMMITTEE

Private road maintenance agreements

[Senate Bill 39 – Chapter Law 308](#)

When securitizing a loan on a private road, both Fannie Mae and the VA home loan program require a written maintenance agreement between all property owners on that road. However, both entities waive such a requirement if there is state statutory requirement for maintenance of a private road.

NHAR-backed [Senate Bill 39](#) creates such a minimum state statutory requirement.

The new law states that in the absence of an express agreement or requirement governing maintenance of a private road, when more than one residential owner enjoys a common benefit from a private road, each residential owner shall contribute equitably to the reasonable cost of maintaining the private road, and has the right to bring a civil action to enforce the requirement of this paragraph.

The new law is not intended to extend or restrict the common law as applied to residences on private roads, nor to affect the rights and obligations of non-residential owners on private roads. The intent is to simply satisfy the appraisal requirements of Fannie Mae and the VA.

The new law is now in effect.

Real estate commissions paid to unlicensed business entities

[House Bill 268 \(Chapter Law 49\)](#)

This NHAR-backed legislation allows a principal broker to pay a commission to an unlicensed LLC or other business

entity, as long as all partners of the business entity have a valid and active real estate license.

The new law makes it clear that all members of any business entity receiving a commission must hold a valid and active real estate license. The law also requires that the broker must keep a record of who earned the commission and the amount of the commission for a period of three-years as well as makes it clear that the new law does not grant either the broker nor licensee any protection from liability in a regulatory action against the broker or licensee for a violation of the Real Estate Practice Act or a civil action.

In 2018, the New Hampshire Real Estate Commission issued a declaratory ruling indicating such payments were not allowed by statute – even though it had become a common practice. NHAR worked with the Real Estate Commission to craft the legislation.

Requiring the Department of Environmental Services to lower arsenic in drinking water standards, PFAO standards

[House Bill 261 \(Chapter Law 208\)](#)

The bill requires NHDES revise the ambient groundwater as well as public water systems standard for arsenic to a value not to exceed 5 micrograms per liter. The current level is 10 micrograms per liter.

A public water system is defined as a piped water system supplying 15 or more service connections or 25 or more people for 60 or more days per year ([RSA 485:1-a](#)). This includes most condo and

homeowner associations as well as some commercial developments.

The NHDES must begin enforcing the new limits no later than July 2021.

In addition, the NHDES has promulgated new rules on PFAS and PFOA chemicals which are also enforceable against “public water systems,” including some condo associations and HOAs which have their own wells.

Establishing a statewide housing appeals board

[House Bill 4 – Chapter Law 346](#)

The legislature appropriated money to establish a statewide housing appeals board composed of three members experienced in questions of land use law or housing development. At least one member must be an attorney and at least one member must be either a professional engineer or land surveyor.

The Board has concurrent, appellate jurisdiction with the Superior Court. Any decision by the Board may be appealed to the supreme court.

The application fee to the Board for an appeal is \$250. The Board is mandated to resolve all cases in less than six months.

The Board has authority to hear and affirm, reverse or modify, in whole or in part, appeals of final decisions of municipal boards, committees, and commissions regarding questions of housing and housing development. All local appeals must be exhausted before the Board hear an appeal.

The applicant to the municipal board or any other aggrieved party who can demonstrate legal standing to appeal

pursuant to RSA 677:4 or RSA 677:15 may appeal to the Board.

The Board will decide whether a denial by a local land use board was unreasonable or unlawful. Rules of evidence will be the same as those in Superior Court.

The Housing Appeals Board will be established in July 2020.

Creation of a lead paint remediation fund

[House Bill 4 – Chapter Law 346](#)

The legislation authorizes a fund within the New Hampshire Housing Finance Authority to be used for loans to property owners for the purposes of remediating lead paint hazards in housing.

The initial funding of the fund is \$3 million.

Eligibility requires an owner-occupied single family home with a child under 6 years, or a pregnant woman, and where household income is no more than 100 percent of the median income for the metropolitan area or county

Or it must be a unit in a multi-unit residential property or a renter-occupied single-family home where household income is no more than 90 percent of the median income.

Annual funding for affordable housing

[House Bill 4 – Chapter Law 346](#)

Annually, the state will utilize \$5,000,000 from revenue collected from the Real Estate Transfer Tax to the affordable housing fund established in [RSA 204-C:57](#).

Funds will be used by the NH Housing Finance Authority to facilitate the purchase, rehabilitation or construction of affordable housing primarily for low- and moderate-income persons and families.

Expansion of construction property tax exemption

Senate Bill 22 – Chapter Law 221

The bill expands RSA 72:81 to give municipalities the ability to target property tax exemptions for commercial or industrial development.

The intent of the exemption is to provide incentives to businesses to build, rebuild, modernize, or enlarge within the municipality

Under this bill, towns can now provide the benefit to either all properties within the municipality or to a specific group of parcels.

The bill is now in effect.

Adoption of new building and fire codes

House Bill 562 – Chapter Law 250

Senate Bill 49 – Chapter Law 186

HB 562 updates the definition of the state building code to include the 2015 editions of the International Building Code, the International Energy Conservation Code, and the International Residential Code. New Hampshire had been operating under to 2009 codes.

It also adds the International Swimming Pool and Spa Code to the definition of the state building code.

SB 49 adopts Life Safety Code 2015 edition and the Uniform Fire Code NFPA 1, 2015 edition, as published by the National Fire Protection Association. Again, New Hampshire had been operating under the 2009 code.

The new codes are now effective.

Relative to adoption of state building and fire code amendments and appeals of local building code decisions.

House Bill 710 – Chapter Law 219

Amendments to the building codes must now be submitted annually to the legislature for ratification by the adoption of appropriate legislation before they become effective.

Previously, the state Building Code Review Board could amend the code without legislative review or approval.

HB 710 also allows the State Building Code Review Board to hear appeals of final decisions of any local building code board of appeals established under RSA 674, provided that the appeal shall be based on a claim that the intent of the code or the rules adopted by a town have been incorrectly interpreted, the provisions of the code do not fully apply, or there is an alternative construction.

The board shall not have authority to waive or grant variances to requirements of the code.

This bill is now in effect.

Increasing the time for the zoning board of adjustment to hold a public hearing.

[House Bill 136 – Chapter 2](#)

The bill changes the maximum time for a ZBA to hold a public hearing from 30 days to 45 days of the receipt of the notice of appeal.

The legislation is now in effect.

Authorizing Association Health Plans

[House Bill 4 – Chapter Law 346](#)

The legislation authorizes Association Health Plans, which would permit professional associations such as the New Hampshire Association of Realtors, to pool its membership in order to access health insurance through the large-group market.

By doing so, Realtors could have access to less expensive rates and expanded benefits.

Unfortunately, the state law is contingent on the establishment of the legal validity of a United States Department of Labor's (DOL) Association Health Plan Rule. In early 2019, a federal court had struck down the DOL rule in 2019 and that ruling is now on appeal.

If that case is overturned on appeal, the New Hampshire law will become effective.