

# *2016 New State Laws*



Mary Truell, Chair, 2016 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](http://www.gencourt.state.nh.us)

## **New Radon in Water guidance from NH Dept. of Environmental Services (DES)**

After more than a year of discussions with NHAR, the Department of Environmental Services agreed to alter its radon in the water guidance to homeowners. Prior to the change, New Hampshire had strictest radon in the water guidance in the country, which REALTORS believed was misleading consumers.

The new guidance states:

- For private wells with radon concentrations at or above 10,000 pCi/L, the treatment of water is recommended in conjunction with mitigation of indoor air radon. Homeowners should consult with radon mitigation and water treatment providers.
- For private wells with radon concentrations between 2,000 and 10,000 pCi/L, the treatment of water may be advisable if air concentrations in the home exceed 4 pCi/L.
- When radon in well water is below 4,000 pCi/L, you should retest air and water every three to five years

NHAR had introduced [SB 311](#), which would have required NH DES to utilize only materials from the US Environmental Protection Agency (EPA) when communicating on radon in the water.

The new guidance can be found at [Des.nh.gov](http://Des.nh.gov) or by [clicking here](#).

## **NHAR-backed bill alters transfer tax applicability on entity-to-entity transactions**

### **[House Bill 1656 - Chapter Law 288](#)**

This bill, in which NHAR authored a critical amendment, both clarifies and expands exemptions under the real estate transfer tax (RETT) on entity-to-entity transfers when no consideration is exchanged for the real property.

The bill alters [RSA 78-B](#), which deals with taxation on real property. That statute stipulates that the RETT is owed when price or consideration is paid. HB 1656 further defines what is “consideration.”

The new law states that a transfer is exempt from taxation if as a result of the change in the form of organization, the assets and liabilities of the entity immediately preceding the transfer and the assets and liabilities immediately following the change in form of organization are the same; and at the time of the transfer of title the ownership and the respective ownership percentages are identical.

In addition, transfers made solely to obtain financing or refinancing, as required by a lending institution, and that accomplish no other business purposes, will not be considered sufficient consideration to make a transfer a contractual transfer.

The Department of Revenue Administration has more information at its website ([revenue.nh.gov](http://revenue.nh.gov)).

## **New advertisement requirements on short-term rentals**

### **House Bill 1590 - Chapter law 323**

The new law states that any advertisement for a short-term rental by print, display, publication, distribution or online listing which offers a short-term rental must include the meals and rooms license number of the operator.

The first violation will result in a warning from the Department of Revenue Administration. Any subsequent violations may result in the operator's meals and rooms license being revoked, suspended or denied.

A short-term rental means the rental of one or more rooms in a residential unit for occupancy for tourist or transient use for less than 185 consecutive days.

Importantly, the law makes it clear that nothing in this law may be construed to change or alter the nature of the use of a property for the purpose of determining compliance with a local zoning ordinance.

NHAR worked closely with the legislature to draft the final language of HB 1590.

The bill went into effect on August 23, 2016.

## **Accessory Dwelling Units must be permitted by all municipalities.**

### **Senate Bill 146 - Chapter law 6**

Municipalities must allow property owners to create an accessory dwelling unit (ADU), sometimes referred to as an in-law apartment, as a matter of right or

conditional use in all districts zoned for single-family housing.

NHAR supported the bill.

The law defines "accessory dwelling unit" as a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

Under SB 146, a municipality may:

- Require owner occupancy of one of the units;
- Require a unit is the owner's primary dwelling unit;
- Control for appearance to maintain the "look and feel" of a single-family home (architecture, driveways, off-street parking);
- Continue to limit the number of unrelated individuals within a single unit.

Under SB 146, a municipality may not:

- Require familial relationship between occupants of different units;
- Require to be less than 750 square feet;
- Require additional lot area or other dimensional standards;
- Require separate water or septic systems.

The new law will not go into effect until June 2017 in order to provide municipalities the opportunity to update their ordinances.

## **Condominium Statute undergoes significant changes**

### **[House Bill 353 - Chapter law 311](#)**

This bill made significant and sweeping changes to the NH Condominium Act ([RSA 356-B:35](#)). If you are involved in the management of condominiums, it is important you review the entire text of the new law.

Here a few of the highlights of HB 353:

- All board responsibilities must be detailed in the bylaws. Any responsibilities not specially assigned to the board will need association members' approval.
- Procedures involving meetings, voting, quorums and other activities of the association must be included in the bylaws.
- Unit members can call a special meeting if they have 33 percent of the votes in the association. The bylaws can permit a lower percentage than 33 percent, but not higher. The statute does refer to the meeting as an "informational meeting" with purpose of "presenting the issue to unit owners."
- Meetings can be held by telephone, video or other conferencing process if allowed by the bylaws.
- Meetings must follow Roberts Rules of Order although the Association can choose to follow a different process if allowed by the bylaws.
- The Board is permitted to send meeting notices via email if an email address is provided by the unit owner.
- Not less than once each quarter the board of directors must hold an open regular meeting during which

unit owners are afforded a reasonable opportunity to comment on any matter affecting the association.

- Unless there is an "emergency," notice must be given to owners 10 days before a Board meeting.
- New quorum and proxy voting rules are established.

In the event of a conflict between the declaration or bylaws, the provisions of RSA 356-B shall control.

The law went into effect in August 2016.

## **Changes to Out-of-State Cooperative Brokerage Agreements.**

### **[House Bill 1579 - Chapter law 91](#)**

The bill alters [RSA 331-A:2, IV-a and IV-b](#) as it relates to out-of-state brokers working with NH licensees.

Under the new law, an out-of-state broker may perform acts with respect to a commercial real estate transaction that require a license, provided he or she enters into a written agreement with a licensed New Hampshire broker that includes the terms of cooperation and any compensation to be paid by the licensed broker and a statement that the out-of-state broker and the out-of-state broker's agents will comply with the laws of New Hampshire.

Each out-of-state broker or out-of-state salesperson who advertises for sale commercial real estate must include in any advertising material the name and contact information in equal prominence of the New Hampshire licensed broker

with whom the out-of-state-broker has a written agreement.

“Commercial real estate” means any real estate other than real estate containing one to four family dwelling units.

Cooperative broker agreements are not permissible in a residential transaction.

NHAR worked closely with the NH Real Estate Commission to draft this legislation.

This bill went into effect in June 2016.

### **Relative to payment of rent pending the stay of an eviction proceeding.**

#### **[House Bill 1204 - Chapter law 220](#)**

This new law creates a process, in spite of judgment for the plaintiff, where an agreement between landlord and tenant may incorporate the arrearage, future rent due, court costs, and service fees. The agreement shall be filed with the court and must state the date when final payment of the arrearage, court costs and service fees are due. Entering into such an agreement waives the defendant's right to appeal.

This bill went into effect in June 2016.

### **Notification of mortgage holders on merged lots; extension of restoration of involuntarily merged lots.**

#### **[Senate Bill 411 - Chapter law 327](#)**

This bill accomplished two changes to [RSA 674:39-a](#).

First, if there is a mortgage on a lot which the owner seeks to be merged, the

applicant must give written notice to any mortgage holder at the time of the submission of the application. The written consent of any mortgage holder is required as a condition of approval of the merger, and must be recorded with the notice of the merger. The municipality will not be liable for any deficiency in the notice to mortgage holders.

The bill also extended the time period for the restoration of the merger of involuntarily merged lots. That portion of the statute was set to expire in 2016 but has been extended until 2021.

More information on the statutory requirements for restoration of lots can be found at [RSA 674:39-aa](#)

The bill goes into effect in August 2016.

### **Change in net metering caps for use in solar power**

#### **[House Bill 1116 – Chapter law 31](#)**

The bill increased the total cap on net metering from 50 Megawatts to 100 Megawatts. The bill also directed the NH Public Utilities Commission to review the current tariff solar customers pay for maintenance of infrastructure while considering the impact of cost-shifting on non-solar customers.

The bill went into effect in May 2016.

## **Amending Condo instruments when mortgagee fails to respond**

### **[House Bill 1307 - Chapter law 315](#)**

Any amendment to the condominium instruments requiring approval of mortgagees on units may be satisfied by the recording of an affidavit by the president of the association that written request for such approval was sent to the last known address of any mortgagee and that the mortgagee failed to respond within 60 days.

The bill goes in effect on August 24, 2016.

## **Alteration to the rivers management and protection program**

### **[House Bill 1595 - Chapter law 287](#)**

The bill alters the New Hampshire Rivers Management and Protection Program, and is intended to accommodate advances in river-related sciences while simplifying the administrative process of nominating members to the Rivers Management Advisory Committee.

Most importantly, it also limits the application of the Shoreland Water Quality Protection Act and its waterfront buffer protections – those which limit vegetative cutting, building, fertilizer application and other activities – to within 50 feet, as opposed to the current 250 feet, of the high water mark to lower order streams.

NHAR supported the bill. The new law goes into effect in August 2016.

## **Septic System Evaluators Licensing**

### **[Senate Bill 210 - Chapter law 266](#)**

With the passage of [SB 210](#), starting in 2017, anyone doing work as a septic system evaluator will need to be licensed with the state of NH and will be subject to a new Board of Septic System Evaluators. Anyone who currently holds a Granite State septic system certified evaluator designation or other recognized designation determined to be acceptable by the board is eligible to be licensed without having to take coursework of completing the exam.

The bill goes into effect on Jan 1, 2017.

## **NH life safety and fire codes**

### **[House Bill 427 - Chapter law 282](#)**

“The New Hampshire Fire Code” is the adoption by reference of the Life Safety Code and the Uniform Fire Code, as published by the National Fire Protection Association and as amended by the state board of fire control and ratified by the legislature.

The bill updates the 2009 Life Safety Code to the 2015 version. However, the legislature did not update the NFPA Uniform Fire Code to the 2015 edition. A legislative committee was established to further review the need to update that code to the 2015 edition.

## **Landowner's right of action when property is damaged by dumping**

### **[House Bill 1298 - Chapter 278](#)**

Notwithstanding any rules adopted by the NH Department of Environmental Services or an ordinance adopted by a municipality, any person who, without authorization, intentionally or recklessly discharges or disposes of fuel, offensive matter, hazardous waste, waste or solid waste on the land of another, is liable for the clean-up.

The owner may obtain damages against the person causing the discharge of up to three times actual damages, as well as attorney fees, based upon the degree of culpability.

The law only applies to discharges that are made directly on the landowner's property and do not apply to discharges that originate from the land of neighbor, including from discharges from any above ground or underground storage tank.

The bill also deals with damage caused by OHRV's and snowmobiles.

The law will go into effect January 1, 2017.

## **Allowing municipalities to extend the current Veterans' Property Tax Credit to all honorably discharged veterans**

### **[House Bill 430 - Chapter 217](#)**

A property owner qualifies for the Veterans' Tax Credit if that person is a resident who served not less than 90 days on active service in the armed forces and

was honorably discharged; or an officer honorably separated from service; or the spouse or surviving spouse of such resident, provided that Title 10 training for active duty by a member of a national guard or reserve shall be included as service; provided, however, that the person is not eligible for and is not already receiving another veterans credit.

The bill is effective August 2016.

## **Inventory of federal lands held in the state**

### **[House Bill 1147 - Chapter law 162](#)**

The Commissioner of the Department of Resources and Economic Development will now annually prepare and file a report on the current inventory of federal landholdings within the state and calculate what percentage of New Hampshire land is held by the federal government in accordance with RSA 121:6 – which states that no more than 2 percent of the state land may be held by the federal government. RSA 121:6 also has restricted the total assessed value of land held in any municipality to be no more than 5 percent.

## **Modifies the deadline for submitting applications to the planning board**

### **[House Bill 1202 - Chapter law 81](#)**

The bill alters the time period an applicant has to file his or her application with the planning board to 21 days prior to the meeting in order for it to be considered. Previously, the applicant could file 15 days prior to the meeting.

## **A judgment may be secured against real estate by recording it with the registry of deeds**

### **House Bill 1175 - Chapter law 80**

A judgment entered by any court in New Hampshire may be secured against real estate by recording at any time during the duration of the judgment, a certified copy of the judgment, along with an affidavit with the registry of deeds of the county in which the real estate is located. At the time of recording, the plaintiff must mail a copy of all documents mailed to the registry of deeds to the defendant's address of record with the court, by first class mail, or if the defendant is represented by counsel, a copy shall be mailed to counsel in the same manner.

The judgment lien is subordinate to any other liens of record entitled to priority on the date of recording.

The new law becomes effective on January 1, 2017.

## **Repurchase of tax-deeded property by the former owner**

### **House Bill 1219 - Chapter Law 37**

This bill extends the time for a former owner to pay the costs of repurchasing a tax deeded property from the town. The bill also reduces the penalty charge added and exempts the penalty charge for certain owners.

If all back taxes, interest, costs and penalty have not been actually tendered within 30 days (as opposed to the 15 days in the former language) of notice of intent to repurchase, the municipality may

proceed with its offering and dispose of the property without any interest by the former owner.

The new law became effective in July 2016.



**Sen. Kelly Ayotte (R-NH) speaks to NHAR Public Policy Retreat on TILA-RESPA Integrated Disclosure.**



**NHAR members discuss the federal flood insurance program with 1<sup>st</sup> District Congressman Frank Guinta (R-NH).**



**NHAR meets with 2<sup>nd</sup> District Congresswoman Annie Kuster (D-NH) in Washington to talk tax policy implication on real estate.**