2013

NHAR Governmental Affairs

2013 NEW STATE LAWS

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PUBLIC POLICY COMMITTEE
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HB 513 (Chapter Law 153)
Modifies several provisions of the Shoreland Protection Act

After the last major modification of the Shoreland Protection Act in 2011, a number of municipalities had concerns with certain provision and either passed or were considering more stringent local shoreland ordinances. Builders were concerned about a patchwork of local ordinances and so the parties worked to resolve some of their concerns which resulted in HB 513.

First, the bill changes the definition of ground cover to make it clear that it does not include lawns, landscaped areas, gardens, stone mulch or other artificial materials.

It also clarifies that the requirement that a certain area within the woodland buffer must be kept in an "unaltered state," meaning only native vegetation is acceptable.

Limestone may no longer be applied to vegetation or soils located within 25 feet of the reference line of any public water.

The point system for tree diameter, shrub and groundcover has changed so that larger trees over 24 inches in diameter are not encouraged.

In addition, the bill states that if a stormwater managements system is developed due to the total impervious surface on the lot, the system design needs to demonstrate that the post-development volume and peak flow rate based on the 10-year, 24-hour storm event, and cannot exceed the pre-development volume and peak flow rate for flow off the property within the protected shoreland.

The bill also alters the procedures for how Dept. of Environmental Service employees may enter property. They must obtain the oral or written permission of the property owner, attempted to notify the property owner or his or her agent either orally or in writing 24 hours prior to entry, or observed, or received credible evidence of the occurrence of activities regulated by the Act that may impact water quality.

Effective August 27, 2013

House Bill 413 (Chapter Law 237)
Relative to establishing that a tenant has relinquished possession or abandoned the premises.

The bill creates new criteria for how a landlord may determine that a tenant has abandoned the premises. A landlord will need to provide the tenants with a written property abandonment notice. The Notice of Property Abandonment language is provided in the statute (here).

At least *two* of the following conditions need to be met in order to establish abandonment:

1) All tenants have notified the landlord in writing that they vacating;
2) All keys have been returned to the landlord;
3) The tenant has removed a majority of their property and the remaining items are inconsistent with the continued use of the premises;
4) The tenant has failed to pay rent for a period of 91 days or more.

If a landlord does establish that the tenant has abandoned the premises it does not relieve the landlord of his/her duty to maintain reasonable care of the tenant's personal property.

Effective January 1, 2014.

House Bill 278 (Chapter Law 207)
Relative to voluntary installation of fire suppression sprinklers.

The bill is an attempt to clarify the law from 2011 which prohibited planning and land use boards from requiring sprinkler systems in proposed one or two family residences as a condition of a permit approval.

Municipalities claimed that the law presented uncertainty when an applicant volunteered to install sprinklers in order to meet fire safety concerns. If the planning board accepted the offer municipal officials were concerned that enforcement of that agreement be prohibited under current statute.

This bill makes it clear that if such a voluntary offer is made by the applicant and accepted by the planning board then that agreement is enforceable. However, the applicant would be permitted to substitute another means of fire suppression if the planning board agrees to the substitute.

Effective September 8, 2013

Senate Bill 50 (Chapter Law 93)
Relative to expiration of variances and special exceptions.

All variances approved by a ZBA are now valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception. The bill is designed to create a minimum uniform standard across the state.

Effective August 19, 2013

House Bill 211 (Chapter Law 87)
Relative to service of process for non-resident commercial tenants

Currently, in a commercial rental property service of process may be made at the property provided that a copy of the demand for rent or eviction notice is also sent by certified mail to the commercial tenant at his or her last known legal address. The new law now allows for service to a non-resident may be sent by certified mail to the tenant's registered agent if there is a registered agent for the tenant or, if there is no such registered agent, by certified mail to the tenant's last known legal address.

Effective August 19, 2013

House Bill 235 (Chapter Law 119)
Allowing counties to contract for professional real estate services for the sale or lease of county property.

County Commissioners can now publish a request for qualifications for professional real estate services and select licensed real estate professionals who have demonstrated competence and qualifications to market the sale or lease of real property.

Effective August 24, 2013

HB 482 (Chapter Law 48)
Regarding the Infestation of Bed Bugs in Rental Housing

Bed bug infestations in buildings across New Hampshire have increased over the past decade and they cause both economic losses to property owners and occupants as well as significant physical and emotional suffering to occupants. Failure to take steps to remediate bed bug infestations increases the spread of the pest as occupants move from one building to another.

The bill is an attempt to ensure both landlords and tenants share in the responsibility of identifying the infestation and taking steps to remediate.

A landlord is permitted entry to the apartment in order formulate a plan for remediation or to engage in emergency remediation of an infestation of rodents or insects, including bed bugs, provided such infestation-related emergency entry took place within 72 hours of the time that the landlord first received notice of the infestation.

No landlord can willfully fail to investigate a tenant's report of an infestation of bed bugs in the tenant's premises within 7 days of receiving notice of such alleged infestation from the tenant, a municipal health official or housing code authority, or fail to take reasonable measures to remediate an infestation.

And no tenant can willfully refuse the landlord access to the premises to conduct remediation or investigation provided the landlord has received notice that bed bugs are present in a dwelling unit adjacent to the premises or a dwelling unit that is directly above or below the premises and provided the landlord gives the tenant 48 hours written notice of his or her need to enter the premises to evaluate whether bed bugs are present.

And no tenant can willfully refuse to comply with reasonable written instructions from a landlord or pest control operator to prepare the dwelling unit for remediation of an infestation of insects or rodents, provided they are given 72 hours notices.

The landlord is required to pay the reasonable costs of remediation of an infestation of bed bugs, but may recover those costs if the tenant is responsible for the infestation.

If a landlord alleges that a tenant is responsible for an infestation of bed bugs, the landlord may bill the tenant for the reasonable costs of remediation of the infestation of bed bugs in the tenant's own unit. If within 30 days of the completion of remediation the tenant has not paid the landlord for the reasonable costs of remediation, or entered into a repayment agreement with the landlord, such failure shall be considered grounds for eviction for nonpayment of rent.

The landlord has the burden of proving both that the tenant was responsible for the infestation and that the landlord offered the tenant the opportunity to enter into a reasonable repayment agreement.

However, that burden of proof shifts to the tenant if during the 6 months prior to the defendant's tenancy, and throughout the defendant's tenancy, there were no reports, to the landlord or a municipal health or housing authority, of the presence of bed bugs in the defendant's unit or the dwelling units adjacent to defendant's unit, or by previous tenants in a single-family home.

Effective January 1, 2014

SB 49 (Chapter Law 179)
Relative to appeals of planning board decisions.

The bill requires appeals of planning board decisions concerning a subdivision or site plan to go to the board of adjustment prior to appeal to the superior court. Presently appeals can go to the court or board of adjustment and due to overlapping time deadlines they are sometimes filed with both simultaneously. Currently, as the ZBA was reviewing the applicants appeal the deadline to take that case to Superior Court sometimes expired. This bill should create a more orderly flow of appeals. Now if any party appeals any part of the planning board's decision to the superior court before all matters appealed to the board of adjustment have been resolved, the court shall stay the appeal until resolution at the ZBA.

Effective August 31, 2014

HB 506 (Chapter Law 70)
Regarding adoption of town codes and ordinances

The bill alters the timeframe when selectman may hold the required two public hearings when amending town ordinances and codes. The current law states they must hold the meetings at least 10 but not more than 14 days apart. The bill changes that from at least 10 to not more than 21days apart. Similarly, the selectmen's vote must take place no sooner than 10 days nor later than 21 days, previously 14 days, after the second public hearing is held

Effective August 5, 2013

HB 543 (Chapter Law 16)
Relative to ascertaining damages to abutting landowners

The bill clarifies the procedures for determining whether, and by what amount, private property has been damaged when a town highway is maintained including changes in drainage structures such as ditches or culverts.

Effective July 8, 2013

HB 655 (Chapter Law 141)
Relative to the collection of a property tax deferral for the elderly or disabled upon sale of the property.

The current statute considers what happens when the owner of a property subject to a tax deferral dies. In that case, the heirs or designee have first priority to redeem the estate by paying in full the deferred taxes plus any interest due.

HB 655 considers when that property is sold, as opposed to inherited, and the lien for tax deferral is not redeemed. If the new owner does not pay within 9 months of the date of sale the municipality may notice the tax collector and action may be taken to collect the full amount.

Effective January 1, 2014

SB 11 (Chapter Law 214)
Relative to establishment of water and sewer utility districts

The bill permits the legislative body of any municipality to establish water or sewer utility districts, which may encompass more than one municipality, and designate a utility commission to be the governing body to manage the activities of the district.

The municipality can levy assessments or fees on property owners in relative proportion to the benefits received by the property owners.

SB 12 (Chapter Law 76)
Relative to protection and preservation of significant archeological deposits.
The bill allows a municipality to indentify archeological resources in its master plan which need to be protected or preserved. As a condition of subdivision approval, where the subdivision requires an alteration of terrain permit, a municipality may require that the applicant protect or document archeological resources in areas of archeological sensitivity that have been identified in the master plan.

Effective January 1, 2014

Senate Bill 124 (Chapter Law 270)
Establishing an integrated land development permit.
The bill establishes an integrated land development permit option that may be sought as an alternative to seeking one or more individual land development permits or approvals issued by the department of environmental services. The intent is to speed up the permitting process especially for larger developments. Permits issued by the Dept. of Environmental Services eligible

include Alteration of Terrain, subdivision and individual sewage disposal systems program, wetlands program, and shoreland protection.

House Bill 204 (Chapter Law 147)

Relative to the removal of social security numbers from registry of deeds documents.

If a deed or instrument that includes an individual's social security number, armed forces service number, credit card number, or deposit account numbers, was filed with the register of deeds and is available on the Internet, and if the information is discovered by the register of deeds in the ordinary course of business the register of deeds must redact the number from internet record.

Effective August 27, 2013