C A T I C

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To: Ann vom Eigen

From: Carol D. Brooks

Date: October 4, 2004

RE: New Hampshire SLRAC 2004 Report

Ann,

Enclosed is the New Hampshire SLRAC Legislative Report passed in the Granite State during the 2004 session!

Carol

2004 STATE LEGISLATIVE TOPICS

The NH State Legislature considered legislation affecting title insurance business requirements or operations as noted in **BOLD**. Use bill number to locate text: http://www.gencourt.state.nh.us/ie/

Submitted By:
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I. CIVIL ACTIONS

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B. Statute of Limitations
C. Appeals
D. Statute of Frauds
E. Receivership
F. Estates and Probate
G. Torts
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III. ESCROWS

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VI. TAXES

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B. Transfer Taxes
C. Subdivision

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B. Indians
C. Sale of Municipal Lands
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2004 Survey of Real Property Legislation
New Hampshire

Chapter 10: An Act Relative to the Taxation of Manufactured Housing

This act provides that manufactured housing shall be taxed and treated as real estate. A number of statutes dealing with manufactured housing are amended, in order to accommodate this change. The act also changes the definition of "security interest" contained in RSA 382-A:1-201, relative to the Uniform Commercial Code. *Effective April 5, 2004.* (HB 459; Sponsors Rep. Fraser, Rep. Langley) **VI. Taxes: A.**

Chapter 46: An Act Relative to Solicitation and Marketing of Insurance Products

This act concerns the consumer disclosure which must be made by a financial institution and any person who solicits, sells, advertises, or offers insurance on behalf of a financial institution or on the premises of a financial institution which is also selling insurance products, advising the consumer that the purchase or nonpurchase of insurance will have no effect on the lending decisions of the financial institution. (RSA 406-C:10) The act also provides for alternative means by which a financial institution may document that a customer has in fact received the disclosure. *Effective May 3, 2004.* (HB 1161; Sponsor Rep. Spiess) **III. Escrows: A.**

Chapter 60: An Act Relative to Record Books Maintained by Registers of Deeds

This act provides added flexibility to registers of deeds relative to recording methods used. The act amends RSA 478:5 to provide that the register may use any acceptable recording method when entering into the record the receipt of a deed or instrument. The statute is also amended to provide that the register may use any appropriate media when photographing and preserving the original of a document, not just microfilm or optical disk. *Effective July 2, 2004.* (SB 456; Sponsors: Sen.Roberge, Rep. Barry, Rep. Mercer) **X. Recording: C.**

Chapter 71: An Act Enabling Municipalities to Adopt Subdivision and Site Plan Review Regulations that Require Innovative Land Use Controls on Certain Lands When Supported by the Master Plan, Making a Change in an Innovative Land Use Control, and Relative to the Preliminary Review of Subdivisions

Section 1 of this act adds the transfer of density rights to the list of actions which constitute innovative land use controls. Other sections of the act concern the ability of a land use board to require innovative land use controls or to require preliminary review of a proposed subdivision. *Effective July 6, 2004.* (HB 761; Sponsors: Rep. Spang, Akins, Twombley et al.) **VIII. Real Property: J.**

Chapter 73: An Act Relative to Disclosures Required Prior to a Condominium Sale

This act provides that the prospective seller of a condominium unit shall provide written notice to the prospective buyer, in accordance with the act's provisions, prior to or during the preparation of an offer for the purchase and sale of the unit. The notice shall advise the buyer that he or she has the right to obtain certain information from the unit owners' association and

shall include a copy of the condominium declaration, by-laws, any formal rules of the association, a statement of the monthly and annual fees and any special assessments made within the past three years. The buyer shall acknowledge receipt of the notice by signing a copy thereof. *Effective January 1, 2005.* (HB 1133; Sponsor Rep. Almy***)*** **VIII. Real Property: G.**

Chapter 78: An Act Relative to Self-Storage Facility Liens

This act removes the requirement for filing self-storage facility liens with the town clerk. *Effective January 1, 2005.* (HB 1210; Rep. Jasper) **V. Statutory Liens: C.**

Chapter 93: An Act Making a Technical Correction to the Eminent Domain Procedure Act

RSA 498-A:4, at III(b)(5) concerns eminent domain proceedings and the election made by the condemnees as to whether compensation paid shall be tied to the date of taking or to the date the governmental authority votes to acquire the property. The new act makes a "technical correction" to the statute to provide that the condemnees shall make such election no later than thirty days from the return date of the RSA 498-A:8 order of notice of the taking. *Effective May 10, 2004.* (SB 529; Sponsors Rep. Flanders, Gatsas, Below) **VII. Public Entities: A.**

Chapter 103: An Act Relative to Standards for Plats Recorded in the Registry of Deeds

This act establishes a set of standards for plats submitted for recording in the registry of deeds. The standards cover matters such as the width of margins, text sizes, certifications, and the types of information which must be set forth on the map. The register of deeds shall refuse for recording any map which does not meet the definition of a plat contained in Section 1 of the act or which does not contain the information or meet the specifications required by the act. The act also repeals RSA 478:13-a, relative to the recording of plans. *Effective January 1, 2005.* (SB 176; Sponsor: Sen. Johnson) **X. Recording: C.**

Chapter 116: An Act Relative to Homeowner Exemptions from Certain Environmental Permitting, Relative to Certification as a Wetland Scientist, and Making Certain Technical Corrections

This act establishes an exemption from the licensing requirement imposed on the practice of soil science or wetland science, as to a homeowner who is preparing a plan to provide vehicular or utility access to the homeowner's primary residence within fifty feet from the edge of a traveled way, provided the homeowner complies with rules adopted by the Department of Environmental Services and standards adopted by the State Board of Natural Scientists. The act also amends RSA 482-A:3, concerning excavation and dredging permit exemptions for "minimum impact" activities, to provide that a minimum impact notification issued by the Department of Environmental Services shall be valid for two years. *Effective May 17, 2004.* (HB 1136; Sponsor:Rep. Patton, Taylor, Wall) **II Environmental Issues: A.**

Chapter 122: An Act Relative to Damage to Land by Certain Recreational Uses

This act provides that a landowner shall not be liable for violations of Chapter 482-A, "Fill and Dredge in Wetlands," caused by persons operating off-highway recreational vehicles in a location or in a manner not authorized by the landowner. *Effective May 17, 2004.*(SB 377; Sponsors: Rep Johnson, Royce, Alger) **II. Environmental Issues: A.**

****Chapter 130: An Act Establishing the Uniform Trust Code in New Hampshire***

This lengthy act adopts a new Chapter 564-B, titled "Uniform Trust Code." The new Chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute,

judgment, or decree that requires the trust to be administered in the manner of an express trust. The act covers matters such as the creation, modification and termination of a trust; the powers and duties of trustees; and claims of creditors. The new act will generally apply to all trusts, whether created before, on or after the act's effective date. Section 9 of the act sets forth a list of current statutes concerning trusts which are repealed as of the act's effective date. *Effective October 1, 2004*. (House Bill 1224; Sponsor Rep. Hunt) **VIII. Real Property Interests: H**

Chapter 140: An Act Relative to Compliance with Federal Law in the Making of First and Second Mortgage Loans

This act amends RSA 397-A:1, concerning nondepository first mortgage bankers and brokers, and RSA 398-A:1, concerning second mortgage loan bankers and brokers, to provide that these licensees must comply with the provisions of the federal Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639 *et seq*. ("HOEPA"). The HOEPA Act requires additional disclosures and certain protections to homeowners as to home-secured loans carrying rates and fees above specified limits. *Effective January 1, 2005.* (SB 99; Sponsor: (Sen. Flanders, Clegg, Johnson, D'Allesandro) **III. Escrows: A.**

Chapter 150: An Act Relative to the Sale of Manufactured Housing and the Management of Manufactured Housing Parks

This act regulates certain practices by manufactured housing park owners, including tenant application fees, pre-sale inspections, required repairs, and aesthetic standards imposed on residents. The act also provides for circumstances under which a decision of the Board of Manufactured Housing relative to the reasonableness of a park rule shall be binding on the parties in any subsequent court proceeding between the parties. *Effective January 1, 2005. (SB 348; Sponsor: Flanders, Barnes, Letourneau, Belk)* **VIII. Real Property: C**

Chapter 153: An Act Authorizing Municipalities to Adopt Quarterly Billing of Taxes

This act allows any city or town which has adopted an optional fiscal year to adopt a system for quarterly billing and collection of taxes, as provided in RSA 76:15-b. Detail is set forth as to the proper billing of such taxes, notices of tax due, payment dates, and relevant definitions. *Effective July 23, 2004.* (SB 357; Sponsors: Sen. Odell, Gallus, Gould) **VI. Taxes: A.**

Chapter 154: An Act Relative to Construction of Buildings on Certain Pre-Existing Streets

RSA 674:41 provides, generally, that no building shall be erected on a lot, nor building permit issued, unless the street giving access to the lot meets one of several specified criteria. Chapter 154 of the Acts of 2004 amends the statute to add the following to the list of qualifying criteria: "Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street." *Effective July 23, 2004.* (SB 359: Sponsor: Sen. Green) **VIII. Real Property: B.**

Chapter 195: An Act Relative to the Real Estate Transfer Tax, the Calculation of the Commissioner's Warrant for the Statewide Enhanced Education Tax, and to Defining Penacook as a Municipality

The first part of this act concerns the statewide enhanced education tax, and amends the calculation of the tax as it relates to utility property. The act also provides that the Penacook section of Concord is a municipality for purposes of the statewide enhanced education act. The act also changes the criteria for determining whether the transfer of manufactured housing is

subject to the real estate transfer tax. *Effective, generally, on July 1, 2004.* (SB 324: Sponsor: Sen. Clegg, Packard, Carlson et al) **VI. Taxes: A.**

Chapter 199: An Act Clarifying the Laws Relative to Municipal Impact Fees, Off-Site Exactions, Vesting of Development Rights, and Waiver of Subdivision Regulations

The first portion of this act amends RSA 674:39 and RSA 674:21 to clarify the authority of municipalities to adopt impact fees and impose exactions for off-site improvements. The act also provides that a municipality's subdivision regulations may include a provision for waiver of any portion of the regulations in such cases where, in the opinion of the planning board, strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of the regulations. *Effective, generally, on June 7, 2004, with Section 2, concerning the timing of the assessment of an impact fee, which shall take effect June 1, 2005.* (SB 414: Sponsors: Sen. Green, Clegg, Foster) **VIII. Real Property: J.**

Chapter 203: An Act Relative to the Certification of Property Assessors and Assessing Officials, the Updating of Tax Maps by Municipalities, the Form for Abatement Applications, the Enforcement of Discretionary Preservation Easements, the Annual Appraisal of Real Estate, and Reports on the Status of Monthly Tax Refunds

This act, *inter alia*, concerns the powers and duties of the Assessing Standards Board, the certification and decertification of assessors, the updating of tax maps, applications for tax abatements, and procedures for the appraisal of real estate for tax purposes. *Effective June 11, 2004.* (HB 426; Sponsors: Rep Stohl, Patten, Stone) **VI. Taxes: A.**

Chapter 210: An Act Authorizing the Commissioner of Insurance and the Commissioner of Banking to Order the Payment of Restitution to Individuals harmed by Unfair or Deceptive Practices of Licensees.

This act authorizes the commissioner of insurance and the commissioner of banking may order after a hearing, relief for actual economic losses to restore any individual consumer harmed by unfair or deceptive practices of licensees to the position that the consumer formerly occupied either by the return of that which the consumer formerly had or by receipt of its equivalent in money. Unless the parties agree, an order of relief under this paragraph shall not exceed $2,500 for each method of competition, act, or practice found to be in violation of RSA 417:3 and where a pattern of conduct or practice has been established. Relief may be ordered only when the consumer has agreed that such relief shall constitute a waiver of any action for the same cause that might otherwise be filed before an administrative agency or any court. Relief ordered shall not apply to disputes regarding claims or losses. *Effective, generally, August 10, 2004* (HB 1282; Sponsor Rep. Hunt) **IV. Insurance/Business: J.**

Chapter 227: An Act Making Certain Changes to the Real Estate Practice Act

This act makes a number of revisions to various parts of RSA Chapter 331-A, the "New Hampshire Real Estate Practice Act." Matters covered include the qualifications for licensure and the process for renewing an expired license. The act expands the list of crimes for which a conviction shall subject a licensee to disciplinary action. Section 7 of the act prohibits the submission of a property owner's name to an electronic database or multiple listing service

without the express written permission of the property owner. *Effective, generally, August 10, 2004, with Section 7 not effective until January 1, 2005.* (SB 459; Sponsors: Sen. Gallus, Sapareto, Clegg, et al.) **VIII. Real Property: I.**

Chapter 242: An Act Relative to the Penalty for Violating a Zoning Ordinance and Relative to Residences in Industrial or Commercial Zones

Section one of this act amends RSA 676:17, to provide for a higher civil penalty for second and subsequent violations of zoning ordinances. First offenses shall remain subject to a $275 penalty, while subsequent offenses shall be subject to a $550 penalty. The statute is also amended as to the award of costs and attorney's fees to a municipality which has prevailed in a legal action brought to enforce the statute. Prior to the passage of this act, such an award was permissible; the act provides, instead, that the award *shall* be ordered. Section 2 of the act repeals RSA 75:11, which requires assessing officials to file with the register of deeds a list of residences located in an industrial or commercial zone which are eligible for special appraisal. *Effective January 1, 2005, as to Section 1, and June 15, 2004, as to Section 2.* (HB 713: Sponsor: Rep. Cooney, Naro) **VII. Public Entities: D.**

Chapter 243: An Act Defining a Wetland for the Purpose of Fill and Dredge in Wetlands and for Local Land Use Planning, Relative to the Wetlands Council Appeal Process, Relative to Smith Pond in Enfield, and Relative to Site Plan Review of Certain Trails

Section 1 of this act adds a new definition for the term "wetland," for purposes of fill and dredge regulations and local land use planning. The act also amends RSA 482-A:10, concerning an appeal from a decision of the Department of Environmental Services, to provide that an appeal shall be considered timely filed and received by the Wetlands Council if it is postmarked or hand delivered to the Council on or before the thirtieth day from the date of the Department's decision. Other sections of the act concern repairs to the dam and dikes impounding Smith Pond in Enfield, and the use of trails on private property for snow-traveling vehicles, as defined in RSA 215-A:1. *Effective, generally, July 1, 2004.* (HB 1148; Sponsor: Rep. Camm)
II. Environmental Issues: A.

Chapter 248: An Act Relative to Registration of Business Organizations

This lengthy act makes a number of changes to various statutes governing business organizations. Among the areas affected are the requirements relative to the name of a business entity, the designation of its agent , the electronic filing of documents and procedures for the service of process. The act also revises a number of filing fees imposed by the Secretary of the State. *Effective, generally, July 1, 2004.* (HB 1348; Sponsor: Rep. Francoeur, Rogers Johnson)
X. Recording: A.

Chapter 258: An Act Establishing a Sewer and Other Water-Related Purposes District for Great Bay

This act establishes a new Chapter 485-E, titled "Estuary Alliance for Sewage Treatment." The stated purpose of the new Chapter is to restore the Great Bay estuary habitat, establish a funding strategy for habitat restoration projects, and develop appropriate public wastewater collection facilities. The act creates the Estuary Alliance for Sewage Treatment, and provides detail as to its powers and responsibilities, its Board of Directors and methods of funding available for wastewater collection projects. *Effective August 15, 2004.* (SB 481; Sponsor: Sen. Prescott, Green, Wall) **II. Environmental Issues: A.**