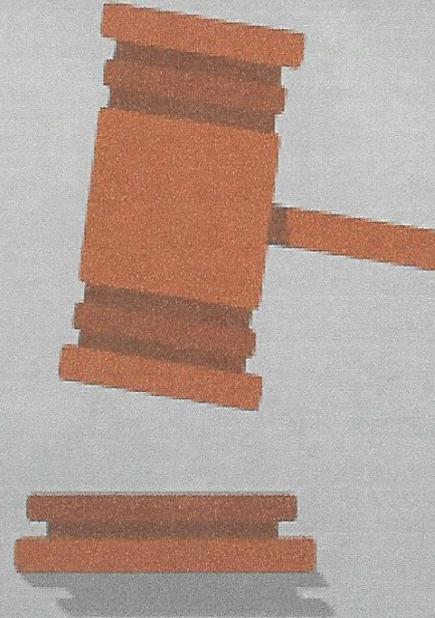


**Chapter 48-A Housing Standards,  
Rent Withholding  
& Abatement**



**TENANT  
RIGHTS  
TRAINING  
SERIES**

**Aug 27,  
2020  
6:30 pm**

***Event 04***

# **WEBINAR PARTICIPATION GUIDELINES**

**THESE WEBINAR'S ARE RECORDED FOR FUTURE VIEWING BY THOSE WHO MAY NEED THEM, IF YOU REQUIRE YOUR PRIVACY NOW IS A GOOD TIME TO ADJUST YOUR SETTINGS BEFORE WE BEGIN**

**IF YOU HAVE QUESTIONS DURING THE WEBINAR YOU CAN ADD THEM TO THE CHAT TO BE ANSWERED AT THE END.**

**TO ASK A QUESTION WHEN IT IS TIME SELECT THE RAISE HAND ICON**

**PLEASE KEEP MUTED TILL YOU NEED TO SPEAK DUE TO THE WEBINAR BEING RECORDED AND ENSURING EVERYONE CAN HEAR**

**THANK YOU**

# Tenant Rights Training Series

## Chapter 48-A Housing Standards, Rent Withholding & Abatement

Sponsored by  
NH Legal Assistance, Granite State Organizing Project  
& Manchester Housing Alliance



## **As of July 1, 2020, per NH Emergency Order #51**

For every eviction notice issued by the owner of restricted or non-restricted property that is based in whole or in part on nonpayment of rent that became due and payable between **March 17, 2020** and **June 11, 2020**, ***the minimum 7 day notice period required in RSA 540:3 is hereby extended to 30 days.*** Therefore, every such eviction notice shall provide that the tenant must vacate the premises no less than 30 days from the date of service of the eviction notice. For purposes of this Order, the terms "restricted property" and "non-restricted property" shall have the meanings assigned to those terms in RSA 540: 1-a.

*This Paragraph shall not apply to eviction notices issued before March 17, 2020.*

# CARES ACT COMPLIANCE

Applies to all properties with a federally backed mortgage. The landlord must complete an Affidavit of Compliance with CARES Act and have provided 30 days' notice prior to filing an eviction action on all covered properties.

Enacted March 27, 2020, landlords are required to submit a [CARES Act Affidavit](#) approved by the Circuit Court prior to requesting a Landlord Tenant Writ if a basis for the eviction is non-payment of rent.

## "Covered Properties" Pursuant to Section 4024 of the CARES Act

A property which participates in, receives subsidies or benefit from, or has any tenant participating in or receiving subsidies or benefits from, any of the following programs:

### **Housing and Urban Development (HUD)**

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher Program or Project-Based Housing (42 U.S.C. § 1437f)
- Section 202 Housing for the Elderly (12 U.S.C. § 1701q)
- Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 17151(d))
- HOME (42 U.S.C. § 12741 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
- Continuum of Care or Other McKinney-Vento Act Homelessness Programs (42 U.S.C. § 11360, et seq.)

### **Department of Agriculture**

- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 Multifamily Rental housing (42 U.S.C. § 1490p-2)

### **Department of Treasury**

- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

### **Rural Housing Voucher Program**

- Section 542 of the Housing Act of 1949 (42 USC § 1490r)

The CARES Act moratorium also applies to all properties with a federally backed mortgage or federally backed multi-family mortgage, meaning all mortgages owned, issued, or guaranteed by: Department of Housing and Urban Development (HUD)

- Department of Veteran Affairs
- Department of Agriculture
- Fannie Mae or Freddie Mac

# CAPNH.ORG HOUSING RELIEF PROGRAM

**The New Hampshire Housing Relief Program is designed to keep people from losing their housing and to secure or maintain permanent housing. The program has two components: one-time assistance grants; and a short-term rental assistance program.**

Governor Chris Sununu has authorized the allocation and expenditure of \$35 million from the CARES Act Coronavirus Relief Fund (“flex funds”) to support families or individuals in need of housing assistance as a result of COVID-19. The Governor’s Office of Emergency Relief and Recovery (GOFERR) will provide the funds to the Department of Health and Human Services (DHHS) which will then make an initial disbursement of funds to New Hampshire’s 5 Community Action Program (CAP) agencies, with additional funding provided based on use and need.

# RESTRICTED

## 540:1-a Definitions. –

II. "Restricted property" means all real property rented for residential purposes, except those properties listed in paragraph 1.

<https://www.gencourt.state.nh.us/rsa/html/lv/540/540-mrg.htm>

# NON-RESTRICTED

## 540:1-a Definitions. –

I. "Nonrestricted property" means all real property rented for nonresidential purposes and the following real property rented for residential purposes:

(a) Single-family houses, if the owner of such a house does not own more than 3 single-family houses at any one time.

(b) Rental units in an owner-occupied building containing a total of 4 dwelling units or fewer.

(c) [Repealed.]

(d) Single-family houses acquired by banks or other mortgagees through foreclosure.

# Eviction Process Timeline

Step 1 The Written Eviction Notice

Step 2 The Landlord & Tenant Writ

Step 3 The Appearance Form

Step 4 The Notice of Hearing

Step 5 Raising Defenses at the Hearing

Step 6 The Writ of Possession

Step 7 Asking for a Discretionary Stay

Step 8 Filing Notice of Intent to Appeal

**Your landlord must begin the lawful eviction process by serving you with a written notice that tells you to leave. A verbal order to leave from your landlord doesn't count. The notice must be in writing. Your landlord can have anyone serve the eviction notice and it can be handed to you or left on or near your door. Most tenants are entitled to a hearing where they get a chance to defend themselves before a judge.**

**A landlord must get the judge's permission before the tenant has to leave.**

# YOU HAVE A PROBLEM AT YOUR APARTMENT

Your landlord hasn't fixed the problem or it seems to be ignoring you, but is rent withholding your best choice? The problem must be serious enough and certain legal steps followed correctly since a landlord has the right to try and evict that tenant for nonpayment of rent.

## To Withhold Rent Or Not To Withhold Rent - That Is The Question

**540:13-d Defenses to Violations of Fitness. – I.** No action for possession based on nonpayment of rent shall be maintained in regard to any premises leased or rented if such premises are in substantial violation of the standards of fitness for health and safety set forth in [RSA 48-A:14](#)/Local Codes/Ordinances or Bylaws established pursuant thereto, and such violation materially affects the habitability of said premises, provided that Tenant gave notice of violation to whom he/she pays rent while not in arrears and the landlord failed to correct the violations within 14 days or as promptly as conditions require upon receipt of written notice within reason.

# REQUEST FOR REPAIRS

Make all requests for repairs in writing, ideally 14 days before your next rent payment is due. Make sure your request is dated and you have made a copy for yourself before sending it to the landlord (preferably by certified mail). If the landlord fails to make the proper repairs, report any serious problems to the town.

1. Written notice. Give your landlord written notice of the violations while you are not behind in rent,. Also, you, your family or guests must not have caused the damages. (Written notice is not an absolute requirement, but is always a good idea);
2. If the landlord fails to take corrective action within 14 days of your written complaint you are within your rights to withhold rent. In an emergency, you may not have to wait 14 days before to begin withholding, you should however consult an attorney first.
3. You did not refuse to let the landlord into your apartment to make the repairs. And extreme weather or conditions did not prevent the repairs

# WITHHOLDING RENT

You must have all the withheld rent at the eviction hearing. Your rent withholding defense will fail if you do not have all the money available at the hearing. If the judge accepts your rent withholding defense, you may be ordered to give the court all of the withheld rent then. You can stay in your apartment while the landlord does repairs. The judge may postpone the hearing for up to 30 days to give the landlord more time to make the repairs. You may also be ordered to pay any future rent as it comes due. At this next hearing the judge will ask if the repairs were made. If the landlord made the repairs, the judge will decide how much of the rent the landlord gets and how much to give back to you, as damages. The judge will then dismiss the eviction case against you. If the landlord didn't make the repairs, the judge could give all the rent back to you. And then the judge will dismiss the eviction case against you.

# **HOUSING STANDARDS**

## **NH, RSA 48-A:14 Minimum Standards Established**

Infestation of insects, bed bugs and rodents; not reduced at least 60 days

Defective internal plumbing, septic or sewage system; inadequate supply of hot water

Improper or Defective electrical system/wires, Danger of shock or fire

Leaks or Holes in Roof/Ceiling/Walls/Floors that reduce function or safety

Porches, stairs or railings are not structurally sound; Accumulation of Garbage or Rubbish in common areas; Free of chipping/peeling paint, exposed lead

Improperly installed Gas Lines/Pilot Lights/Appliances/Heating Facilities that are free of Leaks/Defects and that adequately/safely heat all rooms (65)

## **48-A:11 Minimum Standards; Barring the Use or Occupancy; Violations and Punishment**

Any municipality may (by ordinance adopted by its governing body):

- I. Prescribe minimum standards for the use and occupancy of dwellings throughout the municipality;
- II. Prevent the use or occupancy of any dwelling which is injurious to the public health, safety, or welfare.
- III. Enact, in the sections of their housing codes dealing with infestations of insects, provisions directed at the unique problems posed by infestations of bed bugs, provided that such provisions are no less protective of the residents of dwelling units in which bed bug infestations are found than are the provisions dealing with infestations of other kinds of insects.



# BED BUGS and INFESTATIONS



Do you have an infestation of Insects or Rodents and the landlord is not conducting a periodic inspection and *eradication* program. Eradication is the elimination of every single individual of a species from an area to which recolonization is unlikely to occur. Are your premises infested by **bed bugs** and the landlord is not conducting a periodic inspection and *remediation* program? Remediation means to substantially reduce the presence of bed bugs in a dwelling unit for at least 60 days.

## **NH Bed Bug Law HB 482, effective January 1, 2014**

It is a violation for a landlord to willfully fail to investigate or fail to take reasonable measures to remediate an infestation within 7 days (contempt and damages).

If you need legal assistance regarding bedbugs, **apply online** or you can also call LARC at 1-800-639-5290. **Bed Bug Fact Sheet.pdf**



# ENTRY, PREPARATION and PAYMENT for REMEDIATION

A landlord is allowed emergency entry into the tenant's unit for the next 72 hours after receiving notice of a bed bug complaint. If there is a bed bug complaint from an adjacent unit, a landlord is allowed emergency entry, but must give the tenant 48 hours notice. It is a violation for a tenant to willfully refuse emergency entry. The landlord must provide reasonable written instructions for preparing the unit for remediation to the adult tenant 72 hours in advance of remediation. Landlords must also allow for reasonable accommodation requests, which can be made verbally. Mental or physical disabilities apply.

Landlords are required to pay up-front for all bed bug remediation costs. The tenant is presumed to be "responsible" if only his/her unit has bed bugs and there have been no other bed bug reports in the unit or adjacent units in the previous six (6) months. **540:13-e Infestation of Bed Bugs: Liability for Costs of Remediation**

# **CODE ENFORCEMENT and TOWN MUNICIPAL OFFICE DIRECTORY**

Your local community, particularly a city or larger town, may have its own housing code, which can require your landlord to do more. Ask at your town or city hall if your town has a housing code. You can follow the link below to find your Town Municipal office for your local code enforcement department.

The site also has information such as website, street address, telephone numbers, dates of Governing Board meetings and Town Clerk and Office availability.

<https://www.nhmunicipal.org/municipal-directory>

# 540:13-a Defense to Retaliation

Except in cases in which the tenant owes the landlord the equivalent of one week's rent or more, it shall be a defense to any possessory action, as to residential property, that such possessory action was in retaliation for the tenant:

- I. Reporting a violation or reporting in good faith what the tenant reasonably believes to be a violation of RSA 540-A or an unreasonable and substantial violation of a regulation or housing code to the landlord or any board, agency or authority having powers of inspection, regulation or enforcement as to the reasonable fitness of said residential property for health or safety;
- II. Initiating an action in good faith pursuant to RSA 540-A or availing himself of the procedures of RSA 540:13-d; or
- III. Meeting or gathering with other tenants for any lawful purpose.

# ***Tenant Training and Organizing***

Please have all attending Print, Sign and Date for Record of Attendance,

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

Address \_\_\_\_\_

Complaint \_\_\_\_\_

# RENT ABATEMENT

## DAMAGES BASED UPON THE DIMINUTION IN THE UNITS FAIR RENTAL VALUE

**540:13-d Defenses to Violations of Fitness II.** If a defendant raises a defense provided in paragraph I of this section, the court may order the action continued for a reasonable time not to exceed one month to enable the plaintiff to remedy the violation. At the time such continuance is ordered, the court shall require the person claiming a defense under this section to pay into court any rent withheld or becoming due thereafter as it becomes due. Upon a finding by the court that the violation has been remedied within the continuance period, the court shall dismiss the possessory action and either award the withheld rent money to the plaintiff or apportion the rent paid into court by paying to the plaintiff the fair rental value of the premises while in the substantially defective condition and by awarding the remainder of said funds to the defendant as damages for plaintiff's breach of his warranty of habitability. If the violation has not been remedied within such period, the court shall enter judgment for the defendant and refund to the defendant all money deposited.<sup>4</sup>

# Section 540:14 Judgment

II. Whenever the tenant successfully raises the defense of retaliation pursuant to RSA 540:13-a, damages of not more than 3 months' rent may be awarded to the tenant.

III. If the plaintiff makes a successful claim for unpaid rent as well as possession, or the defendant makes a successful counterclaim, the court shall issue a money judgment at the same time that it makes its ruling regarding possession of the premises.

# SELF-REPRESENTATION (PRO-SE)

Self-representation carries certain responsibilities and risks that pro se parties should be aware of before they file a case. Individuals who are considering representing themselves are encouraged to carefully review the risks associated with self-representation and to educate themselves regarding potential consequences. ***Even if you would like to represent yourself, it may help to talk to an attorney who can explain some of the risks applicable to your particular case.***

**[PRO-SE GUIDE 2017](#)**

# NEW HAMPSHIRE DISTRICT COURT

## **New Orders on Court Operations, In-Court Hearings and Out-of-Court Hearings in Response to Coronavirus Disease 2019(COVID-19)**

The United States District Court for the District of New Hampshire has entered new Standing Orders regarding court operations [\(20-5\)](#) and as well as procedures governing any in-court hearings [\(20-6\)](#) and out-of court videoconference and telephonic hearings [\(20-7\)](#) scheduled before April 13, 2020. Additionally, the court has issued an order authorizing audio and video conference hearings in criminal cases as permitted by the CARES Act [\(20-12\)](#).

For more information on court operations, please visit the court's [COVID-19 webpage](#).

<http://www.nhd.uscourts.gov/>

**IF YOU WOULD PREFER TO HAVE AN ATTORNEY REPRESENT YOU BUT YOU ARE UNABLE TO RETAIN ONE, YOU SHOULD CONSIDER CONTACTING THE FOLLOWING SERVICES FOR FREE OR LOW-COST LEGAL ASSISTANCE:**

**NH Modest Means Legal Program** (603) 715-3290

**Legal Advice and Referral Center** (800) 639-5290 • (603) 224-3333

**New Hampshire Legal Assistance** (603) 224-4107

**Pro Bono Referral Program** (603) 224-6942

**Disabilities Rights Center Inc.** (603) 228-0432 • (800) 834-1721

# **ADDITIONAL RESOURCES FOR HOUSING ASSISTANCE**

The Front Door Agency , *Nashua* **603-886-2866**

The Way Home, *Manchester* **603-627-3491**

New Hampshire Catholic Charities **603-624-4717**

Rental support for immigrants regardless of status **603-682-1921**

To locate your Community Action Agency **211** or **866-444-4211**

To locate your local Town/City Welfare office **211** or **866-444-4211**

Information on avoiding mortgage foreclosure call **866-444-4211**

# UPCOMING EVENTS



## Tenant Rights Series: Prohibited Practices, Right to Quiet Enjoyment

**Thursday September 10, 6:30 - 7:30 pm**



## Tenant Rights Series: Security Deposits, Rent Increases

**Thursday September 24, 6:30 - 7:30 pm**