

# WELCOME

## Preparing for the ups & downs of an unfamiliar market. 2023 Annual NH Spring Education Seminar

Tuesday, April 11, 2023, 9:00 AM - 4:15 PM

Manchester Country Club, 180 S. River Rd., Bedford, NH 03110

### The topics for the day include:

- 9:00 AM **Discrimination and Harassment in the Workplace\***  
*Speaker: Anna Cole, Esquire, Drummond Woodsum*
- 10:00 AM **Navigating the Twists and Turns of Conflicts of Interest in Real Estate\***  
*Speaker: Leigh Willey, Esquire, NH Underwriting Counsel, CATIC®*
- 11:00 AM **BREAK**
- 11:15 AM **Federal Banking Regulations-Know Your Alphabet\***  
*Speaker: Rich Hogan, Esquire, Chief Compliance Officer, CATIC®*
- 12:15 PM **LUNCH**
- 1:00 PM **Ethical Ups and Downs of Practicing Law and Running an Ancillary Business\***  
*Speaker: Stephanie Burnham, Esquire, Burnham Legal PLLC*
- 2:00 PM **Claims Scenarios in New Hampshire\***  
*Speaker: David LeFevre, Esquire, and Eaton Tarbell, III, Esquire, Tarbell & Brodich, PA*
- 3:15 PM **Navigating the Slopes of a Commercial Closing\***  
*Speaker: Frank DiSanti, Esquire, VP & National Commercial Services Manager, CATIC®*

*\*NHMCLE does not approve or accredit CLE activities for the NH Minimum CLE requirement. The provider believes this course meets the requirements of NH Supreme Court Rule 53 and may qualify for 360 minutes toward the annual NHMCLE requirement. NH attendees must self-determine whether a program is eligible for credit, and self-report their attendance.*

### Agent Appreciation Social

Immediately following today's Seminar, join us for our Agent Appreciation Social.

Time: 4:15 - 6:00 P.M.



www.CATIC.com

building partnerships together.

**QUESTIONS? REACH OUT.**

Patricia Sawicki: [psawicki@catic.com](mailto:psawicki@catic.com) | (866) 595-5559

**Anna Cole, Esquire**  
**Drummond Woodsum, Manchester, NH**  
[acole@dwmlaw.com](mailto:acole@dwmlaw.com)

Anna Cole delivers well-informed, creative advice to support employers, including schools and colleges, municipalities, private entities, and Tribal Nations, as they navigate the ever-changing landscape of labor and employment laws.

Co-Leader of the firm's Labor and Employment Practice Group, Anna represents employers in collective bargaining negotiations, contract administration, and grievance and arbitration proceedings. Additionally, she represents employers before the state and federal Department of Labor, New Hampshire Human Rights Commission, Equal Employment Opportunity Commission, New Hampshire Public Employee Labor Relations Board, and Occupational Safety and Health Administration. Anna advises and trains employers on their obligations and workplace issues under a variety of federal employment laws, including the Fair Labor Standards Act, Family and Medical Leave Act, Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964, as well as similar New Hampshire state laws.

To help her clients ensure their compliance with state and federal laws, Anna reviews and drafts employee handbooks, policies, and procedures. She also serves as a trusted advisor when clients navigate complicated employment issues such as workplace accommodation requests, leave of absence requests, or investigation and documentation of a disciplinary incident. A recognized thought leader in the employment space, Anna also regularly presents on employment topics and provides customized training seminars for her clients.

Anna's work has received recognition at the state, regional, and national levels. She was included in New Hampshire Union Leader's 40 Under 40, and recognized as a Rising Star by New England Super Lawyers from 2015 to 2020. Additionally, she was selected in Best Lawyers USA for Employment Law-Management in 2020-2021.

Born and raised in New Hampshire, Anna enjoys spending her free time with her husband and sons exploring her home state. Committed to serving her community, she has served as the Programming Chair for the Webster-Batchelder Inns of Court since 2012.

**Leigh S. Willey, Esquire**  
**CATIC NH Underwriting Counsel**  
[lwilley@catic.com](mailto:lwilley@catic.com)

Leigh joined the CATIC family in September of 2021 as Underwriting Counsel in the New Hampshire office. Leigh brings years of legal experience, including litigation and commercial real estate expertise, and is part of the Northern New England team providing underwriting and education to expand the CATIC agency base in New Hampshire.

Leigh comes to CATIC with over 20 years of experience in a broad range of endeavors with both corporate legal representation, commercial real estate, and for the past few years focusing on transactional work. She graduated cum laude from the University of New Hampshire School of Law, and a Bachelor of Science degree in Marketing from Plymouth State University in Plymouth, New Hampshire. Leigh enjoys research, writing articles, and presenting to groups to share her knowledge. Leigh is an avid skier and beginner golfer. When not at work, she enjoys reading cookbooks and traveling with her husband, Sim.

**Richard A. Hogan, CCO, CATIC**

[rhogan@catlc.com](mailto:rhogan@catlc.com)

Richard A. Hogan is Vice President and Chief Compliance Officer at CATIC. In this capacity he ensures compliance for every state in which CATIC conducts business. Mr. Hogan is a Past-President of the Connecticut Title Association. He received his law degree from the University of Connecticut School of Law as well as an undergraduate degree from the University of Connecticut in Storrs. Mr. Hogan is a member of the Board of Directors of the New England Land Title Association.

**Stephanie Burnham, Esquire**

**Burnham Legal PLLC, 603.628.1900**

[info@burnhamlegal.com](mailto:info@burnhamlegal.com)

As a member of the New Hampshire Bar, Stephanie has served on the Ethics Committee for more than 16 years. The New Hampshire Bar Association's Ethics Committee is dedicated to providing guidance to members of the New Hampshire Bar and Judiciary on issues and questions related to the Rules of Professional Conduct. These Rules are what all licensed attorneys must follow in order to remain licensed to practice law in the state of New Hampshire.

She also serves as faculty for continuing legal education seminars for the New Hampshire Bar Association, National Business Institute, and CATIC, lecturing fellow attorneys on areas of estate planning, elder law, probate and trust administration, and ethics topics. Most recently, presenting Drafting Effective Wills and Trusts, New Hampshire Estate Administration from Start to Finish, and the Annual Ethics CLE. On March 10, 2017, Stephanie received the "Distinguished Pro Bono Service" award from the New Hampshire Bar Association Pro Bono Program.

"I grew up in New Hampshire and cannot imagine having my children grow up anywhere else. I love to read, which certainly assists in my line of work, but I also like boating and cars. I love spending time with my family in the lakes region, and Lake Winnepesaukee is my favorite place to unwind. My husband introduced me to Martial Arts, I became a student and then a teacher of this art over the course of the last several years. When I am not working with my clients, I am passing on the skills of martial arts to fellow students."

**Eaton Tarbell, III, Esquire**  
**Tarbell & Brodich, PA**  
[Etarbell3@tarbellbrodich.com](mailto:Etarbell3@tarbellbrodich.com)

Eaton W. Tarbell, III graduated from the University of New Hampshire in 1995 and from University of New Hampshire School of Law in 1998 and practices at Tarbell & Brodich, PA in Concord. He started out conducting mostly residential transactions and over time shifted to commercial real estate transactions representing mostly commercial lenders. He taught real estate transaction UNH Law and filed many petitions to quiet title and otherwise participated in other real estate litigation.

**David Lefevre, Esquire**  
**Tarbell & Brodich, PA**  
[dlefevre@tarbellbrodich.com](mailto:dlefevre@tarbellbrodich.com)

David LeFevre is an attorney with the law firm of Tarbell & Brodich, P.A., where his legal practice focuses on municipal law, bankruptcy, and real estate. Attorney LeFevre's municipal practice primarily involves representing towns in all aspects of municipal law, including land use, zoning and planning, the Right-to-Know law, local government, and town meeting. Attorney LeFevre represents both debtors and creditors in bankruptcy matters under Chapters 7, 11, and 13 of the Bankruptcy Code, including contested matters and adversarial proceedings. Attorney LeFevre's real estate practice mainly involves litigating title issues, boundary line disputes, easements, and actions to partition.

Attorney LeFevre is a graduate of Syracuse University and the University of New Hampshire School of Law. Attorney LeFevre was admitted to the New Hampshire Bar in 1998 and is licensed to practice before all State and Federal Court's in New Hampshire, as well as the United States Court of Appeals for the First Circuit and the Supreme Court of the United States.

Attorney LeFevre is an active member of his community where he resides as the Chairman of his local zoning board of adjustment, and regularly participates in elections as an election official/ballot counter. Attorney LeFevre enjoys hiking in New Hampshire's White Mountains.

**Francis M. DiSanti, Esquire; VP and Manager of NCS; CATIC**

[fdisanti@catic.com](mailto:fdisanti@catic.com)

Frank works out of the National Commercial Services office in Hartford, Connecticut Office. Prior to that, he served as Title Counsel for five years in Massachusetts. In addition to working at CATIC, he had a law practice in West Springfield, Massachusetts with the DiSanti Law Offices for eighteen (18) years. His area of practice included residential/commercial real estate transactions, estate planning, probate of estates/guardianships, corporate/limited liability companies matters, personal injury, litigation and adoptions. Attorney DiSanti obtained his Juris Doctorate from Suffolk University Law School (Cum Laude); and Bachelor of Science from Northeastern University (Magna Cum Laude). He is a past President of the Chicopee Bar Association, member of the Massachusetts Bar Association; Massachusetts Academy of Trial Attorneys and Hampden County Bar Association.

# Discrimination and Harassment in the Workplace

**Tuesday, April 11, 2023**

*CATIC New Hampshire Annual Seminar*

*Manchester Country Club*

**Presented by:**



**Anna B. Cole, Esq.**

*Drummond Woodsum*  
acole@dwmlaw.com

# DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

Anna B. Cole, Esq.  
[acole@dwmlaw.com](mailto:acole@dwmlaw.com)

Drummond Woodsum  
Maine ▪ New Hampshire  
[www.dwmlaw.com](http://www.dwmlaw.com)

670 N. Commercial Street, Suite 207  
Manchester, NH 03101  
603-716-2895

84 Marginal Way, Suite 600  
Portland, ME 04101  
207-772-1941

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>2</b>
<b>II.</b>	<b>QUID PRO QUO HARASSMENT .....</b>	<b>3</b>
<b>III.</b>	<b>HOSTILE WORK ENVIRONMENT HARASSMENT .....</b>	<b>3</b>
	A. Unwelcome Conduct.....	5
	B. Severe or Pervasive Conduct .....	5
	C. Conduct Must be Because of Gender.....	6
<b>IV.</b>	<b>EMPLOYER LIABILITY FOR SEXUAL HARASSMENT .....</b>	<b>7</b>
	A. Sexual Harassment by Supervisors .....	7
	B. Sexual Harassment by Co-Workers .....	7
	1. Knowledge .....	8
	2. Prompt and Appropriate Remedial Measures .....	8
	C. Sexual Harassment by Third Parties .....	8
<b>V.</b>	<b>INDIVIDUAL LIABILITY FOR SEXUAL HARASSMENT .....</b>	<b>9</b>
<b>VI.</b>	<b>CONCLUSION .....</b>	<b>10</b>



## I. INTRODUCTION

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (Title VII) is a federal law applicable to any employer of 15 or more persons engaged “in an industry affecting commerce,” that prohibits covered employers from “fail[ing] or refus[ing] to hire or to discharge any individual, or otherwise [. . .] discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of the individual’s race, color, religion, sex, or national origin” and from “limit[ing], segregat[ing], or classify[ing] employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”

The New Hampshire Law Against Discrimination, RSA 354-A, is similar to, but materially broader than, Title VII. RSA 354-A applies to employers with six or more employees, including the State and its political subdivisions (towns, cities, etc.), board, departments, and commissions. RSA 354-A:2, VII. Pursuant to RSA 354-A:7, the Act specifically states that it is an unlawful discriminatory practice:

For an employer, because of the age, sex,<sup>1</sup> race, color, marital status, physical or mental disability, religious creed, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person’s sexual orientation.

In addition to those acts specified under RSA 354-A:7, the Act further states that it shall also be an “unlawful discriminatory practice” under the Act to “aid[], abet[], incit[e], compel[], or coerc[e] another or attempt[] to aid, abet, incite, compel or coerce another to commit an unlawful discriminatory practice or obstruct[] or prevent[] any person from complying with [the Act] or any order issued under the authority of th[e Act].” RSA 354-A:2,XV. Furthermore, the Act prohibits retaliation against those individuals who have “opposed any practices forbidden under [the Act] or because [such individual] has filed a complaint, testified or assisted in any proceeding under [the Act].” RSA 354-A:19.

Finally, the Act specifically states that “[h]arassment on the basis of sex constitutes unlawful sex discrimination,” and defines “sexual harassment” to include:

Unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature . . . when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

---

<sup>1</sup> Pursuant to RSA 354-A:7, VI, “sex” includes “pregnancy and medical conditions which result from pregnancy.”



- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

RSA 354-A:7, V. Unlike the Act, Title VII does not include the phrase "sexual harassment." However, courts have interpreted Title VII's prohibition against sex discrimination to include a prohibition against sexual harassment and the Equal Employment Opportunity Commission has adopted a regulation defining sexual harassment in nearly identical terms as prohibited by Title VII. 29 C.F.R. 1604.11. Further, reviewing courts have also largely interpreted the standards under both laws consistently. See N.H. Dept of Corrections v. Butland, 147 N.H. 676, 680 (2002) (stating that standard for employer liability in sexual harassment cases brought under RSA 354-A is "similar to that governing employer liability for co-worker sexual harassment under Title VII").

Sexual harassment complaints are some of the most common employment discrimination complaints that are raised by employees; therefore, the below discussion of the law is focused on sexual harassment claims. However, please note that the below analysis is equally applicable to claims predicated on an allegation of discrimination based on race, religion, marital status, or any of the other protected category.

The judiciary, the New Hampshire Commission for Human Rights, and the EEOC have recognized two forms of sexual harassment: "quid pro quo" and "hostile work environment" sexual harassment.

## **II. QUID PRO QUO HARASSMENT**

"Quid pro quo" sexual harassment occurs when "[a] supervisor conditions granting of an economic or other job benefit upon the receipt of sexual favors from a subordinate, or punishes that subordinate for refusing to comply." See Lipsett v. University of Puerto Rico, 864 F.2d 881, 897 (1st Cir. 1988) (citations omitted); see also RSA 354-A:7, V (defining sexual harassment to include situations where submission to or rejection of unwelcome sexual advances is used as the basis for employment decisions). For example, a supervisor who assigns a subordinate to perform menial tasks because she has rejected his requests for dates may be liable for quid pro quo sexual harassment.

## **III. HOSTILE WORK ENVIRONMENT HARASSMENT**

In the case of Meritor Savings Bank v. Vinson, 477 U.S. 57, 64-67 (1986), the United States Supreme Court held that actionable sexual harassment did not require economic coercion as an element of the claim. In Vinson, the Court held that sexual harassment violative of Title VII could exist where an employee is subjected to conduct (whether oral, written, or physical) of a sexual nature that is unwelcome; is severe or pervasive; and unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive work environment.

Since Vinson was decided, the courts have identified the following conduct to be actionable sexual harassment: sexual propositions; unwanted physical contact; workplace posters and drawings; and pinups, calendars, and graffiti.

“Hostile environment” sexual harassment exists when the “work place is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” Harris v. Forklift Systems Inc., 510 U.S. 17, 21 (1993). The courts have generally recognized that an individual must prove the following elements to establish the existence of an unlawful hostile environment:

- That he or she is a member of a protected group;
- That he or she was subjected to unwelcome harassment;
- That the harassment was based on sex;
- That the work place is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of his or her employment and create an abusive working environment; and
- If the alleged harasser was a co-worker and not a supervisor, that the employer knew or should have known of the harassment and failed to take appropriate remedial measures.

See id. at 21-22; Vinson, 477 U.S. at 67; Ponte v. Steelcase, Inc., 741 F.3d 310, 320 (1st Cir. 2014).

Title VII is not intended to create a “general civility code” for the workplace and, when properly applied, the concept of “hostility” should “filter out complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.” Faragher, 524 U.S. at 788. Therefore, in determining whether a “hostile environment” exists, the environment must evaluate both objectively and subjectively. See Harris, 510 U.S. at 21-22. Specifically, the plaintiff must first establish that the workplace was an “objectively” hostile environment – i.e., “an environment that that a reasonable person would find hostile or abusive.” Id. Second, the plaintiff must show that he or she actually perceived the environment to be hostile. Id.

Although some courts disagree on the issue of whether hostile work environment claims should be analyzed within the context of the plaintiff’s particular work environment, the First Circuit, has held that the harassment claim should not be analyzed “in the context of a blue collar environment” and reiterated that “as always, *regardless of the setting*, “[t]he critical issue, Title VII’s text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.”” O’Rourke v. City of Providence, 235 F.3d 713, 735 (1st Cir. 2001) (quoting Harris, 510 U.S. at 25) (emphasis added) (alteration in original).

**A. Unwelcome Conduct**

A plaintiff claiming hostile environment sexual harassment must demonstrate that the alleged sexual remarks, contact, or advances were unwelcome. An employee who walks away from sexual comments or removes her hand every time a supervisor attempts to touch it has clearly communicated unwelcomeness. However, it is often difficult to tell whether conduct is “unwelcome,” particularly because an offended employee is *not* required to tell anyone that the conduct is unwelcome. For example, an employee who participates in jokes may later claim that the conduct was unwelcome and that she felt compelled to make the jokes in order to fit in. To determine whether the conduct was unwelcome, courts consider comments and conduct by the plaintiff, including whether the plaintiff ever initiated any sexual comments, jokes, or conduct with the alleged harasser or others. See, e.g., Velazquez-Perez v. Developers Diversified Realty Corp., 753 F.3d 265, 274-75 (1st Cir. 2014) (holding that plaintiff had sufficiently alleged unwelcomeness where, although she initially engaged in flirtatious exchanges, the plaintiff and harasser had a falling out and thereafter a reasonable jury could infer that subsequent advances were unwelcome).

**B. Severe or Pervasive Conduct**

Courts utilize a “totality of the circumstances” test to determine whether a hostile environment exists and considers the following factors relevant to that analysis:

- the frequency of the discriminatory conduct;
- its severity;
- whether it is physically threatening or humiliating, or a mere offensive utterance; and
- whether it unreasonably interferes with an employee’s work performance.

Harris v. Forklift Systems, Inc., 510 U.S. at 23.

Accordingly, a single incident, if sufficiently severe, can form the basis for a valid sexual harassment claim. Alternatively, a series of smaller incidents, if sufficiently pervasive, may also form the basis for a valid sexual harassment claim.

However, as noted above, the Court has emphasized that Title VII must not become a “general civility code” for the workplace, and that “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’” Faragher, 524 U.S. at 788. The Court reaffirmed that “conduct must be extreme to amount to a change in the terms and conditions of employment.” Id.

### C. Conduct Must be Because of Gender

The focus of all sexual harassment analysis must be whether “discrimi[nation] . . . because of . . . sex” has occurred. See Oncale v. Sundowner Offshore Servs., 523 U.S. 75, 80-81 (1998). “The critical issue, Title VII’s text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.” Id. (quoting Harris, 510 U.S. at 25). The Court explained:

[I]n most male-female sexual harassment situations, . . . the challenged conduct typically involves explicit or implicit proposals of sexual activity; it is reasonable to assume those proposals would not have been made to someone of the same sex . . . but harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex . . . [It] might reasonably [be found], for example, if a female victim is harassed in such sex-specific and derogatory terms by another woman as to make it clear that the harasser is motivated by general hostility to the presence of women in the workplace. A same-sex harassment plaintiff may also, of course, offer direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace.

Id. (holding that Title VII’s prohibition against sexual harassment must extend to sexual harassment of any kind that meets the statutory requirements, including same sex harassment).

Expanding on this concept in Bostock v. Clayton Cty., in which the Court confirmed that Title VII protects individuals from discrimination on the basis of sexual orientation and gender identity, the Court stated:

An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It doesn't matter if other factors besides the plaintiff’s sex contributed to the decision. And it doesn't matter if the employer treated women as a group the same when compared to men as a group. If the employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee—put differently, if changing the employee's sex would have yielded a different choice by the employer—a statutory violation has occurred. Title VII's message is “simple but momentous”: An individual employee's sex is not relevant to the selection, evaluation, or compensation of employees.

140 S. Ct. 1731, 1741 (2020) (internal quotation marks omitted). Applying this logic, the Court reasoned that it is impossible for an employer to discriminate against an individual on the basis of their sexual orientation or gender identity without taking their sex into consideration, and, therefore, such discrimination is on the basis of “sex” and violates Title VII. Id. (“Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to

fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge.”).

#### **IV. EMPLOYER LIABILITY FOR SEXUAL HARASSMENT**

##### **A. Sexual Harassment by Supervisors**

Regardless of whether a plaintiff alleges that he or she was subjected to quid pro quo harassment by a supervisor or hostile work environment harassment by a supervisor, the Supreme Court has held that the employer will be held *strictly liable* for the supervisor’s conduct if the harassed employee also suffered any “tangible employment action,” such as termination, demotion, undesirable transfer, or the like. Faragher v. City of Boca Raton, 524 U.S. 775, 807-08 (1998). With regard to supervisory status, the relevant inquiry is whether the “employer has empowered that employee to take tangible employment actions against a victim, i.e., to effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” Vance v. Ball State Uni., 570 U.S. 421, 431 (2013).

If the harassment by a supervisor did not result in a tangible employment action, but was sufficiently severe or pervasive to be actionable sexual harassment, the conduct will be analyzed as a hostile environment claim. If the plaintiff can prove the elements of a hostile environment sexual harassment claim, the employer will be held liable for the supervisor’s conduct, unless it can prove as an affirmative defense that:

- (1) The employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and
- (2) That the plaintiff-employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm.

Faragher, 524 U.S. at 808-09 (holding that employer failed to show that it exercised reasonable care to prevent sexual harassment because employer’s sexual harassment policy was not distributed to employees, employer did not make efforts to track the behavior of its supervisory personnel, and employer had not made it clear that employees could complain about sexual harassment to management representatives other than their own supervisors).

The United States Supreme Court has also recognized that employers may be liable where the supervisor is of such high rank that the supervisor essentially is the “alter ego” of the employer. See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 758 (1998).

##### **B. Sexual Harassment by Co-Workers**

The federal courts have traditionally held employers liable for co-worker harassment under a negligence standard. To prevail on a claim for sexual harassment, an individual must make a six-part showing. Specifically, that: (1) they are a member of a protected class; (2) they

were subjected to unwelcome sexual harassment; (3) the harassment was based upon sex (or some other protected classification); (4) the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) the objectionable conduct was objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) the harassment is causally connected to negligence by the employer. See O'Rourke v. City of Providence, 235 F.3d 713, 728 (1st Cir. 2001).

Thus, to hold an employer liable for sexual harassment by a coworker, the plaintiff must prove that the employer: (1) knew or should have known of the harassment; and (2) failed to take prompt and appropriate corrective action. See, e.g., White v. New Hampshire Department of Corrections, 221 F.3d 254 (1st Cir. 2000); *see also* N.H. Admin. R. HUM 403.02(e).

1. *Knowledge*

Knowledge of harassment generally can be established by proving that Plaintiff complained to higher management or by demonstrating that the harassment was so severe or pervasive that the employer should reasonably have known about the conduct.

2. *Prompt and Appropriate Remedial Measures*

Although the term "prompt" is not defined, it is clear that starting the investigation on the day a claim is filed or the day the employer learns of the harassment relieves an employer from liability. Furthermore, an investigation conducted within four days of the complaint also has been found to be sufficiently "prompt."

Additionally, in order to fulfill its duty to take prompt remedial action upon warning of the harassment, an employer must take remedial action which is "reasonably calculated to end the harassment." Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991). "The focus is not upon whether the remedial activity ultimately succeeded, but instead upon whether the employer's total response was reasonable under the circumstances." N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 680 (2002) (holding that a suspension and threat of termination for subsequent harassing conduct was a sufficient remedial action and rejecting defendant's argument that the employer was obligated to use the most serious sanction available, i.e., termination).

**C. Sexual Harassment By Third Parties**

A growing number of sexual harassment cases involve harassment of an employee by people outside the work force, such as customers, clients, suppliers, and other non-employees. An employer may be held liable for non-employee sexual harassment, commonly referred to as "third-party harassment," if the harassment otherwise meets the criteria of a hostile environment claim and the employer knew or should have known of the harassment and failed to take appropriate remedial measures. See 29 C.F.R. 1604.11(e). In reviewing such cases, the EEOC focuses less on whether the conduct occurred within the workplace and more on "the extent of the employer's control [over the non-employee] and any other legal responsibility which the employer may have with respect to the conduct of such non-employees." Id.; see also Torres-

Negron v. Merck & Co., 488 F.3d 34, 40 (1st Cir. 2007) (acknowledging employer liability for third-party harassing conduct under certain circumstances). For example, employer liability may be found where customers or independent contractors visiting the employer's work place subject employees to sexual advances, and the employer, who often is concerned about losing business, fails to take action reasonably calculated to end the harassment.

## V. INDIVIDUAL LIABILITY FOR SEXUAL HARASSMENT

Most courts, including the United States District Court for the District of New Hampshire, have held that supervisors cannot be held individually liable for harassment or discrimination claims brought under *federal* anti-discrimination statutes. See Preyer v. Dartmouth College, 968 F. Supp. 20, 25 (D.N.H. 1997).

However, the New Hampshire Supreme Court has determined that individual employees can be held personally liable for aiding and abetting workplace discrimination and harassment or engaging in retaliatory conduct under New Hampshire's Law Against Discrimination, RSA 354-A. EEOC v. Fred Fuller Oil Co., 168 N.H. 606, 611-12 (2016).

In its somewhat recent Fred Fuller decision, the Court determined that RSA 354-A prohibits "any *person*, employer, labor organization, employment agency, or public accommodation" from "[a]iding, abetting, inciting, compelling or coercing another or attempting to aid, abet, incite, compel or coerce another to commit an unlawful discriminatory practice or obstructing or preventing any person from complying with th[e statute] or any order issued under the authority of th[e statute]," and that the term "any person" is broad enough to encompass *individual actors*. *Id.*; see also RSA 354-A:2, XV(d); RSA 354-A:2, XIII; RSA 354-A:21, I(a). Furthermore, where the Act prohibits "any *person* engaged in any activity to which th[e statute] applies" from retaliating against an individual who opposes workplace discrimination or who participates in any complaint proceeding opposing workplace discrimination, the Act's prohibition against retaliation is similarly broad enough to apply to *individual actors*. RSA 354-A:19. Therefore, the Court determined that individual employees who aid and abet workplace discrimination or who retaliate against another person in the workplace because he or she has engaged in protected conduct can be held personally liable for an unlawful discriminatory practice under the statute. Fred Fuller, 168 N.H. at 611-12.

While the Fred Fuller Court did not discuss what would constitute "aiding or abetting" (beyond conduct of the harasser themselves) or other specific individual conduct that would violate the law, the expansive language of the statute in conjunction with its application to individual employees has the potential to lead to claims against supervisors, administrators, or even other co-workers. For example, the supervisor who observes or receives an employee complaint of discrimination or harassment, the Human Resources Director responsible for administering anti-discrimination policies, or the employer's senior manager may all face individual liability under RSA 354-A if a jury were to determine that their actions, or inactions, allowed unlawful harassment or discrimination to occur or to continue. See, e.g., Drake v. Town of New Boston, 2017 WL 2462187, at \*5 (D.N.H. June 6, 2017) (refusing, on a motion for judgment on the pleadings, to reject an aiding and abetting claim filed against a non-employee investigator hired by the claimant's employer); Soderman v. Shaw's Supermarket, 2017 WL 3738460, at \*\_\_



(D.N.H. Aug. 30, 2017) (denying motion to dismiss aiding and abetting age discrimination claim against an individual supervisor where the claimant sufficiently pled facts that, if true, showed the supervisor knew that the claimant had been engaging in the conduct she was purportedly terminated for (gifting alcohol to other employees) for years but failed to share that information with the decisionmaker's and that the supervisor had commented that they wanted a younger person for the claimant's job).

The Fred Fuller decision broadly expanded the scope of potential named defendants in a complaint of discrimination or harassment filed under RSA 354-A and in any resulting lawsuit. Accordingly, it would be prudent for employers to determine whether they have adequate insurance coverage for discrimination and harassment claims. Employers should further determine whether their insurance policies provide adequate coverage for individual employees who may now be named as party defendants. Uninsured employers may wish to reevaluate the cost/benefit of essentially self-insuring their liability risk. Uninsured employers should also consider adopting clear policies regarding the circumstances in which they will or will not defend and/or indemnify employees who are named defendants in discrimination/harassment cases.

## **VI. CONCLUSION**

As always, the best way to avoid liability is to avoid claims. Cautious employers should take this opportunity to review their anti-harassment and discrimination efforts. Employers should assure that their anti-discrimination policies are legally compliant and provide employees with an accessible process for reporting misconduct. Employers may also need to intensify their training programs, with particular emphasis on the role of supervisors in the handling of harassment and discrimination complaints. In order to protect the interests of all employees, employers may need to cause a workplace culture shift to make clear that harassment and discrimination conduct is not tolerable to any degree.

*Navigating The Twists And Turns Of  
Conflicts Of Interests In  
Real Estate Transactions*

---

Presented by  
Leigh S. Willey, Esq., New Hampshire Underwriting Counsel  
CATIC

# TITLE XXX

## OCCUPATIONS AND PROFESSIONS

### CHAPTER 311

### ATTORNEYS AND COUNSELORS

#### Section 311:6

**311:6 Oath.** – Every attorney admitted to practice shall take and subscribe the oaths to support the constitution of this state and of the United States, and the oath of office in the following form: You solemnly swear or affirm that you will do no falsehood, nor consent that any be done in the court, and if you know of any, that you will give knowledge thereof to the justices of the court, or some of them, that it may be reformed; that you will not wittingly or willingly promote, sue or procure to be sued any false or unlawful suit, nor consent to the same; that you will delay no person for lucre or malice, and will act in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the court as to your client. *So help you God or under the pains and penalty of perjury.* The supreme court shall have authority to determine by court rule the manner in which the oaths shall be administered.

**Source.** RS 177:5. CS 187:5. GS 199:5. GL 218:5. PS 213:5. PL 325:6. RL 381:6. RSA 311:6. 1997:1, 204:46, eff. July 11, 2014.

# NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT

## CLIENT-LAWYER RELATIONSHIP

### Rule 1.7. Conflicts of Interest

(a) Except as provided in paragraphs (b) and (c), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

(c) Notwithstanding (a) and (b) above, a lawyer from the New Hampshire Public Defender Program may represent an individual for arraignment if that individual is not:

(1) a co-defendant of a defendant also represented by the New Hampshire Public Defender Program; or

(2) a witness in a case in which the New Hampshire Public Defender Program represents a client and it is a case in which the New Hampshire Public Defender Program determines that there is a significant risk that the representation of the witness will materially limit the lawyer's responsibilities to the existing client.

A man in a dark suit, white shirt, and red tie is shown from the chest up. He has a thoughtful expression, with his right hand resting on his forehead. The background is dark and out of focus. There are decorative elements: a bright green circle in the top right corner, a yellow circle with orange dots in the bottom left corner, and a thin orange horizontal line underlining the text.

*Who Is Your Client?*

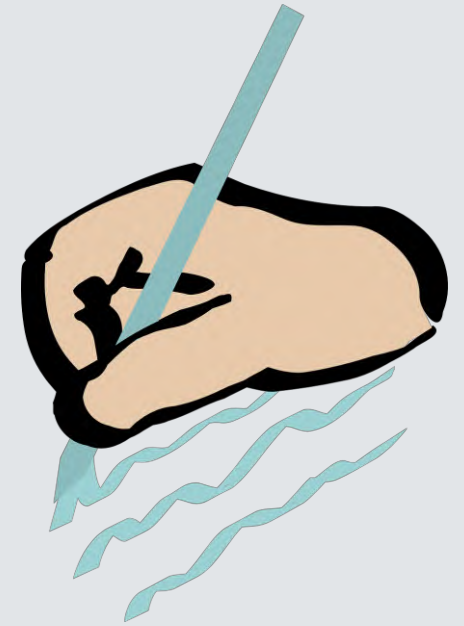
# *Concurrent Conflict Of Interest Exception in Rule 1.7(b)*

“A conflict of interest exists under Conduct Rule 1.7(b) when representation may be materially limited by duties owed to another. . . . This language is broad, and focuses not upon direct adversity at the outset, but **the risk that other material limitations may arise in the course of the dual representation.**”

*In re Wyatt's Case*, 159 N.H. 285 (2009)

- Competent and diligent representation to each affected client;
- Not prohibited by law;
- Does not involve the assertion of a claim by one client against another client;
- ***Informed consent, confirmed in writing.***

# *Conflicts Of Interest*



## ***Confirmed in Writing?***

“When used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent....If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.” NHPRC 1.0(b)

## ***Informed Consent?***

“Denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” NHPRC 1.0(e)



# Harsh Reality Test

---

**“Whether, if a disinterested lawyer were to look back at the inception of the representation once something goes wrong, would that lawyer seriously question the wisdom of the first lawyer’s requesting the client’s consent to this representation or question whether there had been full disclosure to the client prior to obtaining the consent.” *NHBA Ethics Comm. Op. 1988-89/24.***



---

"[T]he general representation of multiple clients in real estate matters will result, in most instances, in an improper division of loyalty or an impairment of representation." *NHBA Ethics Comm., April 1990.*

*Salomon's Case*, 2019 N.H. LEXIS 8\* (2019)

---





**What About Borrower-Lender Joint Representation?**



- ❖ Not automatically impermissible under NHRPC.
- ❖ Must be reviewed carefully **before** agreeing to joint representation.
- ❖ Lawyer should carefully analyze his/her role in the transaction and the likelihood that the potential clients' interests currently differ or may diverge during the representation.
- ❖ If so, will those competing interests "materially interfere with the lawyer's independent judgment and ability to evaluate alternatives available to any of the potential clients."

*"Avoiding Ethical Pitfalls in Real Estate Transactions," Ethics Corner Article, NH Bar News, April 20, 2016*



A photograph of three business professionals sitting around a table in a meeting. A woman on the left is wearing a white shirt and glasses, writing on a document. A man in the center is wearing a blue suit jacket and is also writing. A man on the right is wearing a dark suit jacket and is writing. The background is bright and out of focus, suggesting an office environment. There are decorative green shapes in the bottom left and top right corners of the image.

**A Hypothetical...**

# *Let's Discuss...*

---

**1.) Does the lender's lawyer have an affirmative obligation to advise the parties to the closing to consult their respective counsel before signing the closing documents?**

**2.) Does the lender's lawyer have an obligation to point out the Schedule B exceptions to the borrower/buyer?**

**3.) If so, does this obligation include an explanation that the exceptions impact coverage?**

**4.) What if the borrower/buyer asks the lender's lawyer about the exceptions?**





WHAT INTERESTS SHOULD  
BE CONSIDERED?

---



IF THE PARTIES HAVE  
COMMON INTERESTS, ARE  
THEIR BARGAINING  
POSITIONS UNEQUAL?



IS THERE MORE THAN ONE  
PERSON RELYING ON THE  
LAWYER'S ADVICE?



IS THERE A POTENTIAL  
FOR THE PARTIES TO HAVE  
A FALLING OUT IN THE  
FUTURE?





*CONFLICT CHECKS!*

A hand is shown holding a house, symbolizing care and responsibility. The house is a simple, two-story structure with a gabled roof and a chimney. The hand is positioned below the house, with fingers spread, as if supporting it. The background is dark, with a green circle in the top right and a yellow circle with orange dots in the bottom left.

*What Are My Ethical Obligations To  
Non-Clients Or Third Parties In  
Real Estate Transactions?*

# *The Attorney-Client Privilege*

---

“The general principles of the attorney-client privilege have been stated to be as follows: Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser unless the protection is waived by the client or his legal representatives.” *Riddle Spring Realty Co. v. State*, 107 N.H. 271, 273 (1966).

## Rule 1.6. Confidentiality of Information

**(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).**

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or

(2) to secure legal advice about the lawyer's compliance with these Rules; or

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(4) to comply with other law or a court order; or

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



---

## Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) Make a false statement of material fact or law to a third person; or
- (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6



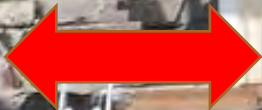
*Salomon's Case*, 2019 N.H. LEXIS 8\* (2019)  
(again)

---





Another Hypothetical...





# *Carpineto's Case*, 139 N.H. 168, 170 (1994)

---





THANK YOU!

ANY QUESTIONS?



## BANK REGULATIONS – KNOW YOUR ALPHABET

Regulatory & Compliance  
By: Richard Hogan, Esq.



Trump appointee Kathy Kraninger – No more rule making by enforcement actions

Biden appointee is the former FTC commissioner

Rohit Chopra

- Harvard graduate and a graduate from the Wharton Business School in the University of Pennsylvania
- Joined Elizabeth Warren at the newly created Consumer Financial Protection Bureau as a student loan ombudsman
- FTC commissioner-known for making outspoken dissents whenever the agency action was not severe enough

## Chopra's Agenda

- Fair lending-focused on racial equity
- Greater focus on fair lending examinations
- Increased referrals to the Department of Justice
- Revival of the disparate impact theory
- Student lending
- Wants to spur competition
- Give new tools to borrowers to make smarter decisions
- Focused on student lending for profit schools
- Student loan examinations

# Consumer Financial Protection Bureau

## Chopra's Agenda

### Mortgage servicing

- major reason why the CFPB was created
- how is the Cares Act being administered
- aggressive supervision and enforcement

## Chopra's Agenda

Aggressive enforcement

Steep monetary fines

Initiative to save Americans' billions of dollars in junk fees

Ask consumers to send in junk fee stories including any insights into mortgage fees

Defines junk fees as:

- unexpected
- seemed too high
- unclear why they were charged



# Consumer Financial Protection Bureau

## Chopra's Agenda

Home  
valuations

Accurate and  
fair with no  
racial bias

# Statutes that Transferred to the CFPB

---

- Alternative Mortgage Transaction Parity Act
- Consumer Leasing Act of 1976
- Electronic Fund Transfer Act\*
- Equal Credit Opportunity Act
- Fair Credit Billing Act
- Fair Credit Reporting Act \*
- Home Owners Protection Act of 1998
- Fair Debt Collection Practices Act
- Federal Deposit Insurance Act\*
- Gramm-Leach-Bliley Act\*
- Home Mortgage Disclosure Act of 1975
- Home Ownership and Equity Protection Act of 1994
- Real Estate Settlement Procedures Act of 1974
- S.A.F.E. Mortgage Licensing Act of 2008
- Truth in Lending Act
- Truth in Savings Act
- Omnibus Appropriations Act of 2009\*
- Interstate Land Sales Full Disclosure Act
- Mortgage Reform and Anti-Predatory Lending Act\*

*\* Indicates that portions of this Act transferred to the CFPB while other portions did not.*

# Statutes that Transferred to the CFPB

---

- Alternative Mortgage Transaction Parity Act
- Consumer Leasing Act of 1976
- Electronic Fund Transfer Act\*
- Equal Credit Opportunity Act
- Fair Credit Billing Act
- Fair Credit Reporting Act \*
- Home Owners Protection Act of 1998
- Fair Debt Collection Practices Act
- Federal Deposit Insurance Act\*
- Gramm-Leach-Bliley Act\*
- Home Mortgage Disclosure Act of 1975

Home Ownership and Equity Protection Act of 1994

Real Estate Settlement Procedures Act of 1974

S.A.F.E. Mortgage Licensing Act of 2008

Truth in Lending Act

Truth in Savings Act

Omnibus Appropriations Act of 2009\*

Interstate Land Sales Full Disclosure Act

Mortgage Reform and Anti-Predatory Lending Act\*

*\* Indicates that portions of this Act transferred to the CFPB while other portions did not.*

# Other Dodd-Frank Mortgage Rules

- Ability-to-Repay and Qualified Mortgage Standard (Regulation Z)
- ECOA Valuations for Loans Secured by a First Lien on a Dwelling (Regulation B)
- Escrow Requirements under Truth in Lending Act (Regulation Z)
- High-Cost Mortgage and Homeownership Counseling (Regulation Z) (Regulation X)
- Loan Originator Compensation Requirements (Regulation Z)
- Mortgage Servicing Rules (RESPA-Reg X) (TILA-Reg Z)
- TILA Appraisals for Higher-Priced Mortgage Loans (Regulation Z)

# Basics

- Know Before You Owe Project
  - Create disclosures that are easier for both consumers and industry to understand and use
    - May 2011-February 2012 – Several rounds of form development
    - February-July 2012 – Rule development with input from small business review panel
    - July 9, 2012 – CFPB publishes 1,099 pages of proposed rule and forms
    - November 20, 2013 – Release of final rule and forms
  - **Implementation: August 1, 2015**



# Basics

- **CFPB Goals**
  - Improved consumer understanding
    - Risk factors
    - Short-term and long-term costs
    - Monthly payments
  - Better comparison shopping
    - Comparisons of competing loan offers
    - Shopping for closing costs

# Basics

- **CFPB Goals Continued**
  - Avoiding costly surprises at the closing table
    - Easier comparisons of the estimated and final loan terms of the loan
    - More time to consider choices
    - Limits on closing cost increases



# Basics

- **Applicable Loans**

- Final rule applies to most consumer mortgages, **EXCEPT:**
  - Home-equity lines of credit
  - Reverse mortgages
  - Mortgages secured by a mobile home or dwelling not attached to land
  - No-interest second mortgage made for down payment assistance, energy efficiency or foreclosure avoidance





**Regulation B**  
**Equal Credit Opportunity Act**

---

This regulation prohibits lenders from discriminating against credit applicants, establishes guidelines for gathering and evaluating credit information, and requires written notification when credit is denied.

---

All lenders are required to comply with Regulation B, which protects applicants from discrimination.

---

Regulation B protects consumers and prohibits lenders from discriminating based on age, gender, ethnicity, nationality, or marital status.

---

Reg B mandates that lenders provide explanations to rejected applicants within 30 days of receiving their completed applications.

---

Creditors that fail to comply with Regulation B are subject to punitive damages.

---

Reg B is part of the Equal Credit Opportunity Act (ECOA), which is regulated and enforced by the Consumer Financial Protection Bureau (CFPB).

---

Townstone Financial



## **Regulation C Home Mortgage Disclosure Act**

The home mortgage disclosure act requires financial institutions to maintain an annually disclosed data about home purchases, home purchase preapprovals, home improvement and refinance applications involving one to four unit and multifamily dwellings.

Regulation C requires many financial institutions to annually disclose loan data about the communities to which they provided residential mortgages.

All providers of mortgages that are backed by the government in any capacity must annually reveal the quantity and dollar amounts of all mortgages provided within the past year.

Regulation C is structured to help public officials determine their distribution plans for public sector investment as a means of drawing more private investments to areas in need.

## Regulation D Reverse Requirements of Depository Institutions

---

Regulation D sets uniform requirements for all depository institutions to maintain reserve balances either with their Federal Reserve Bank or as cash, as well as defines limitations on withdrawals from savings money markets, and CD's.

---

Federal law previously limited the number of withdrawals or transfers you could make from a savings or money market account.

---

That law was suspended in 2020 amid the COVID-19 pandemic, 3 however, some banks still have withdrawal limits in place.

---

You may be able to get around these limits by using an ATM or bank teller to move your money or by calling the bank and asking it to mail you a check from your savings account.

## Regulation E Funds Transfer

this regulation establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and protects consumers when they use such systems.

Regulation E was issued by the Federal Reserve (Fed) as an implementation of the [Electronic Fund Transfer Act](#), a law passed by the U.S. Congress in 1978 as a means of protecting consumers engaged in these sorts of financial transactions.

Much of Regulation E outlines the procedures that consumers must follow in reporting errors with EFTs, and the steps that a bank must take to provide recourse. Errors subject to these regulations could include the consumer's receipt of an incorrect amount of money from an ATM, unauthorized credit or debit card activity, or an unauthorized wire transfer to or from a consumer's account.

## Regulation G Safe Mortgage Act

---

This regulation establishes requirements for the licensing and registration of all mortgage loan originators through its NMLS registry.

---

Regulation G requires disclosure of a bank's compliance with anti-discriminatory lending laws.

---

The Community Reinvestment Act of 1977 mandated an end to discriminatory lending practices.

---

Regulation G is a federal rule that covers all banks insured by the FDIC.

---

The CRA essentially requires banks to make a good-faith effort to extend loans to qualified individuals and businesspeople in low- and moderate-income neighborhoods and requires them to report regularly on those efforts. The regulations are enforced by the same agencies that are responsible for approving applications by banks to open new branches or merge with another institution. Their compliance with CRA is a factor to be considered.



## Regulation J

### Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire



regulation J covers the guidelines for the processing of checks and other cash instruments for Federal Reserve banks, senders and payers of checks, and recipients and senders of Fedwire funds.

Regulation J establishes rules under which banks and other depository institutions may collect and return unpaid checks through Federal Reserve Banks.

The regulation also specifies terms and conditions under which Reserve Banks will receive and deliver transfers of funds over Fedwire, the Federal Reserve's wire transfer system, from and to depository institutions.

Subpart A of Regulation J deals with guidelines for the handling and collection of checks and other non-cash items by Federal Reserve Banks.  
[More Details](#)

Subpart B of Regulation J covers funds transferred through the Federal Reserve's wire transfer system, Fedwire.

## Regulation M Consumer Lending

Regulation M implements the consumer leasing provisions of the truth and lending act by requiring meaningful disclosure of leasing terms.

Regulation M is an IRS regulation that allows regulated investment companies to pass taxes from capital gains, dividends, and interest distributions onto individual investors.

Most regulated investment companies utilize this regulation to pass through distributions to shareholders for the purpose of avoiding double taxation.

This is in accordance with conduit theory so that investment companies, therefore, are not required to pay portfolio taxes on these dispersed payouts.

## Regulation V Fair Credit Reporting

This regulation regulates the collection, sharing, and use of customer credit information. The right allows consumers to obtain a copy of their credit report from credit bureaus that hold information on them, provides for consumers to dispute negative information held and set time limits, after which negative information is suppressed. It requires that consumers be informed when negative information is added to their credit reports and when adverse action is taken based on a credit report.



## Regulation V Fair Credit Reporting

Regulation V requires that all entities providing information to a consumer reporting agency are responsible for ensuring the accuracy of that information. The information must be specific in nature, providing a detailed record of the customer's payment history, such as whether they met their payment due dates on time. The amount that has been paid toward the outstanding balance of debts, and the length of time for which those debts have been owing, are also taken into account.<sup>1</sup>

Importantly, Regulation V gives consumers the right to initiate a formal dispute if they feel that their credit information has been inaccurately entered or improperly handled by a financial institution. For instance, it permits dispute resolution over issues such as the reported history of debt payments by the consumer, their stated income, and personal information such as their name and address.

## Regulation X Real Estate Settlement Procedures Act



This regulation prohibits kickbacks and under and fees. Other topics include mortgage origination and servicing disclosures, affiliated business arrangements, title insurance, escrow accounts, mortgage loan servicing requirements and force placed insurance.

On December 31, 2013, the CFPB published final rules implementing Sections 1098(2) and 1100A (5) of the Dodd-Frank Act, which direct the CFPB to publish a single, integrated disclosure for mortgage transactions which includes mortgage disclosure requirements under the Truth in Lending Act (TILA) and sections 4 and 5 of RESPA. These amendments, also known as the “Know Before You Owe” mortgage disclosure rule, are referred to in this document as the “TILA-RESPA Integrated Disclosure Rule” or “TRID,” and are applicable to covered closed-end mortgage loans for which a creditor or mortgage broker receives an application on or after October 3, 2015. As a result, Regulation Z now houses the integrated forms, timing, and related disclosure requirements for most closed-end consumer mortgage loans.

**Regulation X**  
**Real  
Estate  
Settlement  
Procedures  
Act**

On August 4, 2016, the CFPB issued a final rule (2016 Mortgage Servicing Rule) amending certain mortgage servicing provisions in Regulation X and Regulation Z issued by the CFPB in 2013. This final rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The final rule also addresses proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act. The final rule also makes technical corrections to several provisions of Regulations X and Z.

# Regulation Z Truth in Lending



This regulation promotes the informed use of consumer credit by requiring timely disclosure about its costs. It also includes substantive provisions such as the consumer's right of rescission for certain mortgage loans and timely resolution of billing disputes. This regulation also regulates what fees and how much lenders can charge mortgage borrowers and how these fees can change over the course of the mortgage process.



The Truth in Lending Act (TILA) [protects consumers](#) in their dealings with lenders and creditors.



The regulations found in the TILA apply to most kinds of consumer credit, from mortgages to credit cards.



Lenders are required to clearly disclose information and certain details about their financial products and services to consumers by law.



Regulation Z prohibits creditors from compensating loan originators for anything other than the credit extended and for steering clients to unfavorable options for the sake of higher compensation.



Consumers are able to make better-informed decisions and, within limits, terminate unfavorable agreements, as a result of TILA regulations.

## Regulation CC Availability of Funds and Collection of Checks

This regulation governs the availability of funds deposited in checking accounts, when standard regulation holds an exception holds can be placed on checks deposited to checking accounts, the maximum length of time the money can be held, and the collection and return of checks.

Regulation CC implements the Expedited Funds Availability Act of 1987, which sets forth requirements that banks make deposited funds available according to specified time schedules.

Regulation CC requires financial institutions to provide account holders with disclosures that indicate when deposited funds will be available for withdrawal.

Regulation CC addressed long hold times that customers were facing after they had deposited checks to banks, including implementing maximum hold times.

The enactment of the Check Clearing for the 21st Century Act, implemented under Regulation CC, allowed check collection among banks in the U.S. to become predominantly electronic based.

## Regulation DD Truth in Savings

This regulation governs uniformity in the disclosure of terms and conditions regarding interest and fees and giving out information on or opening a new savings account.

Regulation DD is a directive set forth by the Federal Reserve. Regulation DD was enacted to implement the Truth in Savings Act (TISA) that was passed in 1991. This act requires lenders to provide certain uniform information about fees and interest when opening an account for a customer.<sup>1</sup>

It was enacted in order to help consumers make more meaningful comparisons and more informed decisions about the accounts they open at depository institutions, which provide the information noted above through disclosures. These disclosures are given to consumers at various times, including when an account is first opened.

## Bank Regulations – Know Your Alphabet





## **Ethical Ups and Downs of Practicing Law and Running an Ancillary Business**

### **LAW-RELATED SERVICES**

A law-related service is defined as “services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.” NHRPC Rule 5.7(b). Law-related services can include providing title insurance and real estate counseling. *See* NHRPC Rule 5.7 Comment [9]. Prior to the adoption of NHRPC Rule 5.7, an attorney was subject to the Rules of Professional Conduct for all of their actions and considered to be practicing law regardless of whether or not their actions were more ancillary business in nature.

NHRPC Rule 5.7 was designed to make attorneys exempt from some of the Rules of Professional Conduct when they were engaged in an ancillary business activity separate from their practice of law. In some instances, it may not be possible to run certain types of ancillary business separate from legal practice as the nature of the business may be too closely aligned to separate fully from the practice of law.

#### **Rule 5.7. Responsibilities Regarding Law-Related Services**

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

The burden is on the attorney to show that the services were distinct from the legal services provided by the attorney, and that the attorney has taken reasonable measures to

ensure that the client knows that the services provided in the ancillary business are not legal services. This may involve having separate offices, staff and business names for the entities. When an attorney successfully complies with NHRPC Rule 5.7, then the rules related to the protections of the attorney-client relationship do not apply when the attorney is acting in the capacity of the law-related business and not providing legal services. In all cases, the attorney will still be subject to some of the Rules of Professional Conduct when they are operating their ancillary business, for example, NHRPC Rule 1.6, NH RPC Rule 1.9 relating to confidentiality and client's information.

## **CONFLICTS & BUSINESS TRANSACTIONS WITH CLIENTS**

Even if the attorney successfully complies with NH RPC Rule 5.7, the attorney must still be cautious regarding the rules for conflicts of interest. Referring business between the law practice and the law-related business can result in conflicts of interest that, while perhaps waivable, if the client becomes dissatisfied the burden is on the attorney to show that they complied with the requirements of NHRPC Rule 1.8.

### **Rule 1.8. Conflict Of Interest: Current Clients**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of

this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

An attorney assisting with estate administration and assisting in the sale of assets of the estate, like real estate, will need to be very careful as to how they are interacting with the clients in the provisions of these services. The attorney must ensure that the transaction is fair and reasonable to the client and provide that information to the client in writing, the client is given the opportunity to seek independent counsel and is encouraged to do so, and the client gives informed consent which includes whether or not the attorney is representing the client in the transaction.

New Hampshire Bar Association Ethics Committee Opinion **#2022-23/01 Ancillary Businesses Under Rule 5.7** offers some guidance and considerations for attorneys who may work with estate administration clients and also real estate services under a separate title company or fiduciary services with a financial planning firm. See Formal Opinion #1998-99/14, Lawyers Selling Insurance to Their Clients (NHEC 2000).

The attorney also needs to be cautious when referring business to their law-related ancillary business and when referring business from their law-related ancillary business to their law practice. This can occur frequently when the client gets services from the law-related ancillary business, but the attorney determines that the client also needs legal services due to circumstances uncovered during the law-related activity. NHRPC Rule 7.3 may inhibit the attorney from referring the business to their legal practice or vice versa.

### **Rule 7.3. Direct Contact With Prospective Clients**

(a) A lawyer shall not initiate, by in-person, live voice, recorded or other real-time means, contact with a prospective client for the purpose of obtaining professional employment, unless the person contacted:

(1) is a lawyer;

(2) has a family, close personal, or prior professional relationship with the lawyer;

- (3) is an employee, agent, or representative of a business, non-profit or governmental organization not known to be in need of legal services in a particular matter, and the lawyer seeks to provide services on behalf of the organization; or
  - (4) is an individual who regularly requires legal services in a commercial context and is not known to be in need of legal services in a particular matter.
- (b) A lawyer shall not communicate or knowingly permit any communication to a prospective client for the purpose of obtaining professional employment if:
- (1) the prospective client has made known to the lawyer a desire not to receive communications from the lawyer;
  - (2) the communication involves coercion, duress or harassment; or
  - (3) the lawyer knows or reasonably should know that the physical, mental, or emotional state of the prospective client is such that there is a substantial potential that the person cannot exercise reasonable judgment in employing a lawyer.
- (c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the word "Advertising" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in subsection (a).
- (d) The following types of direct contact with prospective clients shall be exempt from subsection (a):
- (i) participation in a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person, live voice or other real-time contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.
  - (ii) initiation of contact for legal services by a non-profit organization.
  - (iii) contact of those the lawyer is permitted under applicable law to seek to join in litigation in the nature of a class action, if success in asserting rights or defenses of the litigation is dependent upon the joinder of others; and
  - (iv) requests by a lawyer or the lawyer's firm for referrals from a lawyer referral service operated, sponsored or approved by a bar association, or cooperation with any other qualified legal assistance organization.

Do not forget that Rule 1.10 states that any conflicts that you would have if you were a solo-practitioner, apply to the entire firm as if they are one attorney. This can be applicable when dealing with an Ancillary Business as well, in the event that NHRPC Rule 5.7 does not apply to the circumstances surrounding the representation, then conflicts in

representing client in the Ancillary Business and representing a separate client in the Law Practice could result in a conflict. There are very limited and restrictive rules that you should be familiar with in those circumstances.

**Rule 1.10. Imputation of Conflicts Of Interest: General Rule**

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
  - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

In the event that any of these conflicts cannot be reconciled, and the client demands that the attorney take action which may result in violation of any of the Rules of Professional Conduct, or the client demands inaction by the attorney, when action is necessary to preserve the attorney's compliance with the Rules of Professional Conduct, the attorney should consider declining representation or withdrawing from representation. There are no circumstances in which violation of the Rules of Professional Conduct are warranted.



## **CLIENT CONFIDENTIALITY**

All communication and case information between an attorney and a client are considered confidential. Whether or not the client has engaged the attorney for purposes of preparing real estate contracts, closing services, title services, or title insurance, any information that the attorney becomes aware of is subject to confidentiality and possibly attorney-client privilege unless the attorney is providing these services pursuant to the law-related business entity and has ensured that the client understands that the attorney is not providing these services in a legal services capacity.

### **Rule 1.6. Confidentiality of Information**

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
  - (1) to prevent reasonably certain death or substantial bodily harm or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or
  - (2) to secure legal advice about the lawyer's compliance with these Rules; or
  - (3) to establish a claim or defense on behalf of the lawyer in controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
  - (4) to comply with other law or court order.

Determining who the client is when representing an estate can be more complicated than identifying the person who may be sitting in the attorney's office. New Hampshire's rules regarding prospective clients are more extensive than the ABA Model Rules regarding an attorney's duties to prospective clients. Specifically, people who unilaterally reach out to you may become a prospective client under Rule 1.18.

**Rule 1.18. Duties to Prospective Client**

- (a) A person who provides information to a lawyer regarding the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has received and reviewed information from a prospective client shall not use or reveal that information except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received and reviewed information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer has received and reviewed disqualifying information as defined in paragraph (c), representation is permissible if:
  - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
  - (2) the lawyer who received and reviewed the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
    - a. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
    - b. written notice is promptly given to the prospective client.

The ethics committee construes Rule 1.18(a), a “person who provides information to a lawyer,” as inclusive of people who unilaterally send information to a lawyer. This is a more inclusive standard than “person who consults with a lawyer” contained in ABA Model Rule 1.18(a). Ethics Committee Comment 1 says, in part:

...In its version of Rule 1.18, New Hampshire’s rule eliminates the terminology of “consultation” and learning and extends the protections of the rule to persons who, in a good faith search for representation, provide information unilaterally to a lawyer who subsequently receives and reviews the information. This change recognizes that persons frequently initiate

contact with an attorney in writing, by e-mail, or in other unilateral forms, and in the process disclose confidential information that warrants protection. This change further recognizes that receipt and review are likely to be more objective standards than learning. ...

An attorney still must “receive and review” the information before the prospective client’s interests are protected by the remaining provisions of Rule 1.18, and by extension 1.9. An attorney should be wary about what information the client is disclosing to the attorney when acting in the law-related business capacity, as the client may be expecting that they are providing this information to the attorney in their role as attorney.

The attorney must be careful to identify the role in which the attorney is working with the client. Attorney-client privilege under the common law only extends to confidential communications between the privileged parties. These communications must have been made to help provide or receive legal assistance. Draft documents and a client’s statements about her intentions or views of the people in her life, in particular, may be very important to keep privileged. See N.H. R. Evid. 502; Rest. (Third) of the Law Governing Lawyers §§ 68-72. Statements you or your client make to each other when the attorney is acting in their capacity with the law-related business, may not be privileged and may later undermine the representation of the client in future transactions. While the law may make exceptions to the attorney client privilege in several matters, the privilege is an important guarantor of all clients’ ability to have peace of mind in seeking legal representation.

## **ATTORNEY’S FEES**

When representing a client, it is preferred that the attorney get an Engagement Letter or Fee Agreement in writing that explains the scope of representation and any limitations on representation that the attorney is going to provide, how the fees are going to be assessed and charged, and who the client is.

To analyze Attorney’s Fees you should first look to the New Hampshire Rules of Professional Conduct 1.5. The rule sets out some guidelines for determining what might be used to create a reasonable fee. You should discuss your fee schedule with your clients in advance, review a Fee Agreement, and have them sign a Fee Agreement. An

engagement letter can also be used to confirm with the client the expectations of the legal work and its cost. Regardless of whether you are going to charge hourly or as a flat fee, you should always keep track of your hours spent on a case because in the event of a dispute over fees, the Dispute Resolution Committee or the Court will expect to see your notes as to the hours spent. Failure to keep those records contemporaneously can result in your fees being disallowed.

**Rule 1.5. Fees**

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee or expenses include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) the fee customarily charged in the locality for similar legal services.
- (4) the amount involved and the results obtained.
- (5) the time limitations imposed by the client or by the circumstances.
- (6) the nature and length of the professional relationship with the client.
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) whether the fee is fixed or contingent; and

(b) When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or these rules. A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses for which the client will be liable whether or not the client is the prevailing party, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of

the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(f) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is made either:

a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or

b. based on an agreement with the referring lawyer;

(2) in either case above, the client agrees in a writing signed by the client to the division of fees;

(3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable

A standard, reasonable attorney's fee to which your attorney's fees will be compared, under New Hampshire Rules of Professional Conduct 1.5, exists when clear and convincing evidence "establish[es] a generally accepted, reasonable fee for the services in question." Kelley's Case, 137 N.H. 314, 320.

While New Hampshire Rules of Professional Conduct 1.5 governs when the fee is, itself, reasonable, the way that fee's value is transferred to the attorney, such as receiving a property interest from a client or receiving payments for representation of a client from a 3<sup>rd</sup> party, attorneys must also comply with New Hampshire Rules of Professional Conduct 1.8. Rule 1.8(a) and (f) are probably the provisions most relevant to the Fee Agreements in estate administration and similar work where clients may be asset rich but cash poor. Note again, though, that these rules are imputed to all attorneys in a firm, and not just those who actually represent a particular client.

#### **Rule 1.8 Conflict of Interest: Current Clients: Specific Rules**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (1) the client gives informed consent;
  - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
  - (3) information relating to representation of a client is protected as required by Rule 1.6.
- (k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

The New Hampshire Supreme Court held in Richmond's Case, 153 N.H. 729, 736 “while Rule 1.5 did not prohibit the respondent from accepting property as a fee and knowingly acquiring a pecuniary interest that may be adverse to [the clients], the respondent was still required to comply with the procedural requirements of Rule 1.8(a) by communicating the risks and consequences of such an arrangement to [the clients] at the outset of the transaction.”

If, on the other hand, a third party such as a client's child, sibling or parent is paying your fee, you need to follow Rule 1.8(f), obtain informed consent from the client, keep your professional judgment unimpaired and focused on serving your client, and you need to be sure to maintain your client's confidences under Rule 1.6(a), even maintaining those confidences from the persons paying your fee.



## **WORKING REMOTELY**

When an attorney is licensed in more than one state, the attorney has the practical responsibility to comply with the Ethical Rules in all of the jurisdictions in which the attorney practices, and those rules may be different from each other.

The ABA Model Code requires competence to be no more than that of a General Practitioner in many cases, but acknowledges that there are situations and particular fields of law that may require more expertise. Further it allows for newly admitted lawyers who may not have special training or prior experience to be considered as competent as an attorney with extensive experience, as basic skills may be all that is required or so long as the requisite level of competence can be achieved by reasonable preparation. Emergencies are considered exceptions; however, even in an emergency a lawyer's assistance should be limited to what is reasonably necessary in the circumstances.

### **Rule 1.1 Competence**

- (a) A lawyer shall provide competent representation to a client.
- (b) Legal Competence requires at a minimum:
  - (1) specific knowledge about the fields of law in which the lawyer practices;
  - (2) performance of the techniques of practice with skill;
  - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
  - (4) proper preparation; and
  - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
- (c) In the performance of client service, a lawyer shall at a minimum:
  - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
  - (2) formulate the material issues raised, determine the applicable law and identify alternative legal responses;
  - (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
  - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

An attorney who violates a rule of professional conduct in any of the jurisdictions that they are licensed to practice is still subject to the disciplinary authority of New Hampshire, regardless of where the conduct occurred. See New Hampshire Rules of Professional Conduct, Rule 8.5.

**Rule 8.5. Disciplinary Authority; Choice of Law; Application of Rules to Nonlawyer Representatives**

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer admitted in another jurisdiction but not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(c) Application of Rules to Nonlawyer Representatives. Rules 1.2, 1.3, 1.4, 1.14, 1.15, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 8.2(a), and 8.4 of the Rules of Professional Conduct shall apply to persons who, while not lawyers, are permitted to represent other persons before the courts of this jurisdiction pursuant to RSA 311:1 or RSA 311:2-a. The committee on professional conduct shall have jurisdiction to consider grievances alleging violations of these Rules of Professional Conduct by nonlawyer representatives.

A larger concern for an attorney may be practicing from home, if home is over the border from the state in which they are licensed to practice. Working from home poses its own challenges as the attorney's responsibilities to protect client confidentiality may be challenged by a spouse or other family member living and working in the same space. Attorneys also need to be cautious that working remotely may hinder the attorney's ability to "ensure responsibilities regarding competence, diligence and communication are being fulfilled when practicing virtually" including staying abreast of the risks and benefits of relevant technology and promptly respond to a client's needs no matter the attorney's physical location. ABA Opinion 498 (March 10, 2021); *see also* New Hampshire Rules of Professional Conduct Rule 1.3, New Hampshire Bar Association Ethics Committee Ethics Corner Articles **Working Remotely Under NH Rule 5.5** and **Client Confidentiality and Technology**, and **Ethics of Working Remotely**. It is also worth noting that not all jurisdictions follow same versions of the Rules of Professional Conduct, and the local Rules of Professional Conduct where the attorney lives may impact the attorney's ability to work from home even if the attorney is not attempting to acquire clients in their home town.

## **EXTRA GUIDANCE**

There are tools available to you to assist you in analyzing situations as they arise. The New Hampshire Bar Association Ethics Committee can be a very useful tool to discuss your concerns. The Ethics Committee is NOT affiliated with the New Hampshire Supreme Court Attorney Discipline Office nor does it have any disciplinary function. Some options available to you include: requesting a Formal Opinion on an Ethics topic or hypothetical from the Committee, and/or you may review the past Formal Opinions and Practical Ethics Articles on the New Hampshire Bar Association's Website ([www.nhbar.org](http://www.nhbar.org)) or Fastcase, Ethics Committee opinions are also available through most legal research software. The Ethics Committee will NOT provide Formal Opinions on past conduct or conduct which is an issue of pending litigation or disciplinary action, but the Ethics Committee will address hypothetical situations that are presented to the Committee in writing. These requests should be submitted to Robin E. Knippers at [reknippers@nhbar.org](mailto:reknippers@nhbar.org), or at: Ethics Committee c/o NH Bar Association, 2 Pillsbury Street, Suite 300, Concord, NH 03301.

The Ethics Committee also has a hotline for attorneys looking for some more immediate guidance on a particular issue. To use the hotline, you should contact Robin Knippers, who will refer you to members of the Ethics Committee. It is important to note that any opinions expressed by the Member through the hotline are not binding on the Ethics Committee or the Attorney Discipline Committee, the conversations that you have with Ethics Committee Members are not confidential, they serve only to provide a safe discussion of your hypothetical situation, and you should not rely on these opinions for anything other than general guidance. The Attorney Discipline Office and the Supreme Court are not bound by the opinions of the Ethics Committee or the individual Ethics Committee Members.

# **Claims Scenarios in New Hampshire**

**Speakers: Dave LeFevre and Eaton Tarbell, III  
Tarbell & Brodich, P.A.**



# Claims Scenario #1 Consent of Heirs



# TITLE LVI PROBATE COURTS AND DECEDENTS' ESTATES

## CHAPTER 559 LICENSE TO SELL REAL ESTATE

### Section 559:18

**559:18 Sale of Real Estate.** – Unless the will otherwise provides, an administrator or executor with the written consent of the widow or widower and the heirs at law or devisees, or the guardians or conservators of such of them as are under disability, may sell the whole or any part of the real estate of a decedent, conducting the sale with fidelity and impartiality. The administrator, so authorized, may execute and deliver a valid conveyance of the estate to the purchaser. If there are heirs or legatees under disability, or whose whereabouts are unknown, or unknown heirs, the judge may appoint a guardian ad litem to represent their interests; said guardian ad litem to have authority to consent to a sale if, in his opinion, the best interests of his ward would be served thereby.

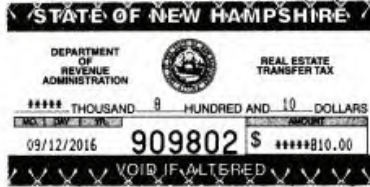
**Source.** 1929, 68:1. 1933, 171:1. RL 358:18. RSA 559:18. 1971, 230:1. 1977, 310:3, eff. Aug. 26, 1977.

392

Doc # 0009185 Sep 12, 2016 2:58 PM

Register of Deeds, Carroll County

*Lisa Scott*



FIDUCIARY DEED

BONNIE M. HUNT of PO Box 684, Holderness, New Hampshire 03245,

Administrator of the Estate of PAUL W. DUMONT, by the power conferred by the 7th Circuit Probate Division Court in Dover, and every other power, for consideration paid, grants to CRAIG J. DUPERE, TRUSTEE OF THE 119 LEHNER STREET REALTY TRUST, with an address of 253 Prescott Road, Epping, New Hampshire 03042, the following described premises:

A certain tract or parcel of land with the buildings thereon, situate in Wolfeboro, County of Carroll, State of New Hampshire, more particularly bounded and described as follows:

Beginning at an iron pipe on the Southerly side of Lehner Street (formerly known as Factory Street) at land now or formerly of F.W. And C.B. Edgerlys, known as the "Sanborn Lot" and running Southerly by land of said Edgerlys ninety feet (90') to a stake and stone; thence

Westerly by land now or formerly of George E. Symonds sixty feet (60') to land now or formerly of Mary A.E. Moore; thence running

Northerly by land of said Moore ninety feet (90') to the above named Lehner Street; thence

Easterly by said Lehner Street sixty feet (60') to bounds begun at.

MEANING AND INTENDING to describe and convey the same premises conveyed to

BK 3283PC

August 19, 2014; see Estate of Paul W. Dumont, 7<sup>th</sup> Circuit Probate Division Court in Dover, Case No. 319-2014-ED-00493.

This is not homestead property.

EXECUTED this 30<sup>th</sup> day of Aug., 2016.

*Bonnie M. Hunt, Admin*  
BONNIE M. HUNT, Administrator of the Estate of PAUL W. DUMONT

STATE OF NEW HAMPSHIRE  
COUNTY OF *Hillsborough*

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of August, 2016 by Bonnie M. Hunt, Administrator of the Estate of Paul W. Dumont.



*Carol Magoon*  
Notary Public/Justice of the Peace  
My commission expires: 4/9/19  
(seal)

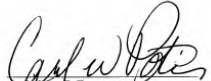
BK 3283PC 11

**CONSENT TO SALE**

**Re: 119 Lehner Street, Wolfeboro, New Hampshire**

I, Archelleta F. Dumont, by and through my attorney, Carl W. Potvin, hereby consent to the sale of the real estate located at the above address consistent with the terms of a certain Purchase and Sale Agreement entered into by and between the Estate of Paul Dumont and Craig J. Dupere, effective August 3, 2016.

Dated: 8/24/16

  
Archelleta F. Dumont  
By her attorney, Carl W. Potvin, Esq.  
LAW OFFICE OF CARL W. POTVIN, P.C.  
P. O. Box 1776  
Rochester, NH 03866  
Tel: 603-332-3669

**CONSENT TO SALE**

**In re: 119 Lehner Street, Wolfeboro, New Hampshire**

I, Shawn Dumont, hereby consent to the sale of the real estate located at the above address consistent with the terms of a certain Purchase and Sale Agreement entered into by and between the Estate of Paul Dumont and Craig J. Dupere, effective August 3, 2016.

Dated: 8/17

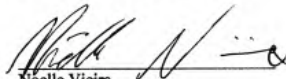
  
Shawn Dumont

**CONSENT TO SALE**

**In re: 119 Lehner Street, Wolfeboro, New Hampshire**

I, Noelle Vieira, hereby consent to the sale of the real estate located at the above address consistent with the terms of a certain Purchase and Sale Agreement entered into by and between the Estate of Paul Dumont and Craig J. Dupere, effective August 3, 2016.

Dated: 8/16/16

  
Noelle Vieira

**CONSENT TO SALE**

**In re: 119 Lehner Street, Wolfeboro, New Hampshire**

I, Piper Dumont, hereby consent to the sale of the real estate located at the above address consistent with the terms of a certain Purchase and Sale Agreement entered into by and between the Estate of Paul Dumont and Craig J. Dupere, effective August 3, 2016.

Dated: 8/15/16

  
Piper Dumont





Claims Scenario #2  
Fractional Title Interest



\$2,835.00

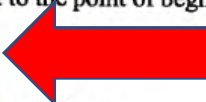
WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That Maria Lambrukos and William Lambrukos, Husband and Wife, of 49 Oakmont Drive, Concord, NH 03301, for consideration paid grant(s) to Patricia Lee Scammell, an unmarried individual, of 3 Grappone Drive, Concord, NH 03302, with WARRANTY COVENANTS:

Beginning at a bound in the Northwesterly line of Washington Street, said bound marking the Southerly corner of land formerly of Chauncey Davis now of Hazel F. Preve and the Easterly corner of the premises herein conveyed;

thence Northwesterly one hundred (100') feet along said Preve land to a bound at land formerly reserved for a street now of Mildred E. Blanchard; thence Southwesterly fifty (50') feet along said Blanchard land to a bound at land of Maurice H. Dupuis and Irene S. Dupuis; thence Southeasterly one hundred (100') feet land along said Dupuis land to a bound in the Northwesterly line of Washington Street; thence Northeasterly fifty (50') feet along the Northwesterly line of said Washington Street to the point of beginning.

One-fourth undivided interest in and to:



A certain tract of land bounded and described as follows:

Beginning at a point one hundred (100) feet from the northwesterly line of Washington Street in Ward 1, (Penacook) in said Concord, said point being on the dividing line between land of Janet Taylor and Hazel Preve (Lots 5 and 6 respectively, as shown on Plan of Land belonging to John Chadwick and filed as Plan 181 in the Merrimack County Registry of Deeds) and proceeding along the extension of said dividing line North 45 degrees West a distance of one hundred thirty-six (136) feet more or less to a pipe set on the bank of the channel formerly known as the Concord Mfg. Co., Outlet; thence turning and running along the northerly back of said channel upstream to land of Maurice H. and Irene Dupuis; thence turning and running northeasterly on a

### CORRECTIVE WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that **MARIA LAMBRUKOS and WILLIAM LAMBRUKOS**, husband and wife, of 49 Oakmont Drive, Concord, NH 03301, for consideration paid, grant to **PATRICIA LEE SCAMMELL**, unmarried of 72 Washington Street, Penacook, NH 03303, with WARRANTY COVENANTS, all their right, title, and interest in and to the following:

Two certain tracts or parcels of land together with the buildings and improvements now or hereafter located thereon, situated on Washington Street in the Village of Penacook, City of Concord, County of Merrimack, and State of New Hampshire, bounded and described as follows:

Beginning at a bound in the Northwesterly line of Washington Street, said bound marking the Southerly corner of land formerly of Chauncey Davis now of Hazel F. Preve and the Easterly corner of the premises herein conveyed;

Meaning and intending to describe and convey the premises described in the deed of Elzear F. Mayo and Ethel M. Mayo to Stanley J. Buczynski and Helen L. Buczynski dated November 15, 1961, recorded with the Merrimack County Registry of Deeds at Book 890, Page 438 (Tract 1), the deed of Donald T. Blanchard, Conservator of Wilfred C. Blanchard, to Stanley J. Buczynski and Helen L. Buczynski dated December 8, 1971, recorded at Book 1130, Page 352 (Tract 2 – ¼ Interest), and the deed of Donald T. Blanchard, Harold E. Blanchard, and Marion B. Kennedy, to Stanley J. Buczynski and Helen L. Buczynski dated November 19, 1961, and recorded at Book 1130, Page 354 (Tract 2 – ¾ Interest). Upon the death of Stanley J. Buczynski, Helen L. Buczynski became the sole owner as the surviving joint tenant. *See* Death Certificate of Stanley J. Buczynski record at Book 3624, 2069. Grantors acquired title through the *Estate of Helen Buczynski*, 6<sup>th</sup> Circuit Court - Probate Division - Concord, 317-2012-ET-00773.

*This Corrective Warranty Deed is being recorded to confirm that the previous deed, dated March 7, 2019 and recorded in Book 3624, Page 1790, was meant to convey one hundred percent of the Grantors' interest in each of the parcels described hereinabove but, by error, only a ¼ interest in the second tract was conveyed. This deed hereby corrects that error and conveys all of the Grantors' interest in each parcel described herein.*

Pursuant to RSA § 78-B:2, V, no transfer tax is due.







# Claims Scenario #3 Lot Line Adjustment





REVISIONS	
DESCRIPTION	BY
DES SET (11/21/08); ADD NOTE 13	SBT

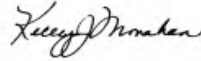


BOUNDA  
 GERALD C  
 CAROLYN I  
 IP  
 P  
 SURV  
 BY SA  
 70 LOST I  
 NORTH  
 TEI



Please return to:  
Tarbell & Brodich Professional Association  
45 Centre Street  
Concord, NH 03301

E # 22002218      02/16/2022 02:12 PM  
Book 4708 Page 170      Page 1 of 3  
Register of Deeds, Grafton County



TT 60.00

CORRECTIVE WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **Gerald G. Dupont, Trustee of the Gerald G. Dupont Revocable Trust** u/d/t dated April 15, 2003, of 55 River Front Drive, Unit 103, Manchester, New Hampshire, 03102, for consideration paid, grants to **Elizabeth Faye Hinkley**, a widow, of 293 Loon Lake Road, Plymouth, NH 03264, with WARRANTY covenants, all right, title and interest in the following:

A certain parcel of land with the buildings and other improvements thereon situate in Plymouth, County of Grafton, State of New Hampshire, shown as the "Kenneth Ritter" parcel on a plan entitled "Survey for Alfred and Lorraine Bisson, Loon Lake, Plymouth, New Hampshire, dated May 1985, recorded in the Grafton County Registry of Deeds as Plan #3621, and being more particularly described as follows:

Beginning at a point on the easterly side of Loon Lake, said point being the northwesterly corner of the parcel herein conveyed; thence

1. North 63° east a distance of 75' more or less to a point; thence
2. South 23° 17' east a distance of 236.07' to a point; thence
3. South 40° 55' west a distance of 149.41' to a point; thence
4. North 36° 09' west a distance of 133.67' to a point; thence

5. North 17° 36' west a distance of 35.26' to a point; thence
6. Southwesterly along land now or formerly of Lakin on the easterly shore of Loon Lake; thence
7. Northerly along the easterly side of Loon Lake to the point of beginning.

Together with "Parcel B" as shown on the plan of land entitled "Boundary Line Adjustment for Gerald G. Dupont, Trustee, and Carolyn M. Gargasz, Trustee," surveyed October 2008 by Sabourn Surveying, Inc., said Plan being recorded at the Grafton County Registry of Deeds as Plan No. 13369.

Containing 0.13 acres, more or less.

Parcel B to be annexed to other land of Grantor as shown on said Plan #13369.

Subject to the following:

1. Subject to all notations, facts, easements and issues as shown on Plan #3621 and Plan #13369 as recorded in said Registry of Deed.
2. Subject to the restrictions and covenants which shall run with the land and be binding that no trailers or mobile homes shall be placed on the premises as set forth in Book 2379, Page 47.
3. Subject to the right of way for ingress and egress to pass by foot and vehicle along the driveway located directly behind the property now or formerly of Frederick J. Zirpalo.
4. Boundary Line Agreement as recorded with said Registry at Book 1464, Page 956.
5. Rights and easements of others in and on Loon Lake abutting or located upon the premises.

THIS IS NOT HOMESTEAD PROPERTY.

*This Corrective Warranty Deed is being recorded to confirm that the Grantor's prior Warranty Deed to Matthew Hinkley and Elizabeth Faye Hinkley, dated August 3, 2018, and recorded in Book 4380, Page 0116, was intended to include the above referenced Parcel B. This deed hereby corrects that error and clarifies that the previous conveyance included all of the Grantor's title and interest in Parcel B. See also Quitclaim Deed of Carolyn M. Gargasz, Trustee of the Carolyn M. Gargasz 2007 Revocable Trust, to Gerald G. Dupont, Trustee of the Gerald G. Dupont Revocable Trust, recorded contemporaneously herewith in the Grafton County Registry of Deeds. Matthew Hinkley died on October 13, 2021, and this conveyance is to Elizabeth Faye Hinkley as*





A wide-angle photograph of a snow-covered mountain range under a clear blue sky. The foreground is filled with numerous dark, snow-dusted rocks. The text is centered over the middle of the image. A bright lens flare is visible in the upper right quadrant of the sky.

# Claims Scenario #4 Property Held in Trust



THIS IS A CONTRACTUAL TRANSFER, BUT NO CONSIDERATION HAS BEEN PAID, THE TRUST HAVING BEEN CREATED AND FUNDED FOR ESTATE PLANNING PURPOSES AS A TESTAMENTARY SUBSTITUTE; REV. 802.02; SUBJECT TO MINIMUM TRANSFER TAX

**CONDOMINIUM UNIT WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that **ROBERT C. HOHMAN** and **JANET G. HOHMAN**, husband and wife, of 34 Autumn Lane, East Kingston, County of Rockingham, State of New Hampshire, for consideration paid, grant to **ROBERT C. HOHMAN** and **JANET G. HOHMAN**, as Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust u/t/a dated June 6, 2013, with an address of 34 Autumn Lane, East Kingston, County of Rockingham, State of New Hampshire, with **WARRANTY COVENANTS**, the following described premises:

A certain condominium unit in the Town of East Kingston, New Hampshire, being **Unit 34** of the Country Hills of East Kingston Condominium, 163 North Road, East Kingston, Rockingham County, New Hampshire, as shown on a plan of land entitled, "Site Plan, Country Hills of East Kingston, "Autumn Lane", Owners: Gary Densen & Jeff Caley, Trustees, East Kingston Nominee Trust, 56 Westville Road, Plaistow, NH 03865" dated 03-26-02, revised through 03-17-03, recorded in Rockingham County Registry of Deeds as Plan #D-30866 (two sheets). Said Unit is conveyed with the benefit of and subject to the Declaration for Country Hills of East Kingston Condominium dated July 31, 2003 and recorded at the Rockingham

2013 JUN 10, AM 11:45

REGISTRY OF DEEDS





DEED

We, Robert C. Hohman and Janet G. Hohman, husband and wife, married to each other of East Kingston, Rockingham County, State of New Hampshire

in consideration of \$345,000.00 paid

Grant to Stephen Cook and Louise Kemball Cook, husband and wife, as Joint Tenants with rights of survivorship

of 34 Autumn Lane East Kingston, Rockingham County, State of New Hampshire

With WARRANTY COVENANTS

Property Address: 46 Ash Drive Kingston, Rockingham County, State of New Hampshire

A certain condominium unit in the Town of East Kingston, County of Rockingham, State of New Hampshire, being Unit 34 of the Country Hills of East Kingston Condominium, 163 North Road, East Kingston, Rockingham County, New Hampshire, as shown on a plan of land entitled, "Site Plan, Country Hills of East Kingston, "Autumn Lane", Owners: Gary Densen & Jeff Caley, Trustees, East Kingston Nominee Trust, 56 Westville Road, Plaistow, NH 03865", dated 3-26-02, revised through 3-17-03, recorded in Rockingham County Registry of Deeds as Plan #D-30866 (two sheets).

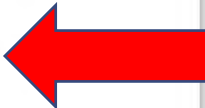
Said Unit is conveyed with the benefit of and subject to the Declaration for Country Hills of East Kingston Condominium dated July 31, 2003 and recorded at the Rockingham County Registry of Deeds at book 4110 page 1538 and the First Amendment to Declaration for Country Hills of East Kingston Condominium recorded at the Rockingham County Registry of Deeds on June 22, 2004 at book 4315 page 2601 and by-laws of Country Hills of East Kingston Condominium dated July 31, 2003 and recorded at the Rockingham County Registry of Deeds at book 4110 page 1571, and all the terms and conditions recited therein.

Said Unit is laid out as shown on the Site Plan numbered D-30866 (2 sheets) recorded in the Rockingham County Registry of Deeds together with the Affidavit and Floor Plans rerecorded in the Rockingham County Registry of Deeds at book 4179 page 2105 and Plan #D-30982, D-30983 and D-30984, and to which were attached the verified statement of a registered land surveyor, in the manner required under New Hampshire RSA 356:B and to which plans reference may be made for a more particular description. Said Unit is also laid out as shown on the As Built Floor Plans recorded in the

033608

2014 SEP -4 PM 12:29

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS



Rockingham County Registry of Deeds as Plan #D-34425, and to which were attached the verified statement of a registered land surveyor in the manner required under New Hampshire RSA 356:B and to which is as built plans reference may be made for a more particular description.

Said Unit is hereby conveyed together with an undivided interest in the common areas and facilities including but not limited to the right to use the private ways depicted on said Site Plan for ingress and egress from Route 108 and the limited common areas and facilities appurtenant to said Unit, as provided in the Declaration of Condominium., together with the right to use same in common with others entitled thereto, and is conveyed subject to the provisions of the Declaration and bylaws and the Rules and Regulations adopted thereunder.

Said Unit is to be used only for those purposes as may be expressly permitted by the Board of Directors in accordance with the provisions of the Declaration and Bylaws. Said Unit is to be used in accordance with the restrictive covenants concerning elderly housing set forth in Section 14(A) of the Declaration and set forth on Exhibit A which is attached hereto and incorporated by reference.

Said Unit is acquired with the benefit of, and subject to, the provisions of New Hampshire RSA 356:B relating to Unit Ownership of Real Property as that statute is written as of the date hereto and as it may, in the future, be amended.

Said Unit is conveyed subject to easements contained in a deed recorded with the Rockingham County Registry of Deeds in book 4768 page 666.

Meaning and intending to convey the property as described in a deed to the Grantors by deed dated February 16, 2007 and recorded with the Rockingham County Registry of Deeds in book 4768 page 666.

The Grantors hereby release all rights of homestead. They further represent there are no other persons entitled to the protection of the Homestead Act in the above referenced property.

Executed as a sealed instrument this 4<sup>th</sup> day of September 2014

Robert C. Hohman  
Robert C. Hohman

Janet G. Hohman  
Janet G. Hohman






TRUSTEE'S CERTIFICATE

We, Robert C. Hohman and Janet G. Hohman, Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust do hereby state under oath as follows:

1. We are the Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust under a declaration of trust dated June 6, 2013.
2. The aforesaid Trust is in full force and effect and has not been amended, modified or revoked. All persons who ever were beneficiaries of the Trust are alive. At no time has Robert C. Hohman and Janet G. Hohman, been the sole beneficiaries of the Trust. The undersigned Trustees has the full power and authority to sell the property as described in paragraph 4.
3. All beneficiaries of the trust are alive, not minors, not a corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint venture, joint stock company, business trust and not-for-profit unincorporated association selling all or substantially all of its assets in Massachusetts, not a personal representative of an estate subject to a requirement to file an estate tax return (Federal and State) and are legally competent.
4. Holders of 100% of the beneficial interest in the aforesaid Trust have authorized and duly directed me to sell the property situated at 34 Autumn Lane East Kingston, New Hampshire 03827 to Stephen Cook and Louise K. Cook for \$345,000.00. Such authorization and direction of the beneficiaries remains in full force and effect as of the date hereof.

Executed as a sealed instrument this 4 day of September 2014

  
Robert C. Hohman  
Robert C. Hohman, Trustee

Janet G. Hohman  
Janet G. Hohman, Trustee

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 4<sup>th</sup> day of September 2014 before me, the undersigned notary public, personally appeared Robert C. Hohman and Janet G. Hohman, Trustees and proved to me through satisfactory evidence of identification, being (check whichever applies) [ ] driver's license or other state or federal governmental document bearing a photographic image, [ ] oath or affirmation of a credible witness known to me who knows the above signatory, or [ ] my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, an acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose,

[Signature]  
Notary Public  
My commission expires



SEP 4 2014

DEEDS

Tarbell & Brodich, PA  
45 Centre Street  
Concord, NH 03301  
603-226-3900

Book: 6439 Page: 2620

E # 22040215 09/19/2022 10:26:36 AM  
Book 6439 Page 2620 Page 1 of 3  
Register of Deeds, Rockingham County

RECORDING SURCHARGE 18.00 2.00

**CORRECTIVE WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that **Robert C. Hohman and Janet G. Hohman, Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust**, w/d/t dated June 6, 2013, of 120 Hampton Circle, Bluffton, South Carolina 29909 (the "Grantors"), for consideration paid, grant to **Denis S. Kemball-Cook**, a/k/a Stephen Cook and Stephen Kemball-Cook, and **Louise Kemball-Cook**, a/k/a Louise Kemball Cook, husband and wife, of 34 Autumn Lane, East Kingston, New Hampshire 03827, as joint tenants with rights of survivorship, with WARRANTY covenants, all right, title and interest in the following:

A certain condominium unit in the Town of East Kingston, County of Rockingham, State of New Hampshire, being Unit 34 of the Country Hills of East Kingston Condominium, 163 North Road, East Kingston, Rockingham County, New Hampshire, as shown on a plan of land entitled, "Site Plan, Country Hills of East Kingston, 'Autumn Lane,' Owners: Gary Densen & Jeff Caley, Trustees, East Kingston Nominee Trust, 56 Westville Road, Plaistow, NH 03865," dated 3-26-02, revised through 3-17-03, recorded in Rockingham County Registry of Deeds as Plan #D-30866 (two sheets).

Said Unit is conveyed with the benefit of and subject to the Declaration for Country Hills of East Kingston Condominium dated July 31, 2003, and recorded at the Rockingham County Registry of Deeds at book 4110, page 1538, and the First Amendment to Declaration for Country Hills of East Kingston Condominium recorded at the Rockingham County Registry of Deeds on June 22, 2004 at book 4315, page 2601, and the By-laws of Country Hills of East Kingston Condominium dated July 31, 2003, and recorded at the Rockingham County Registry of Deeds at book 4110, page 1571, and all the terms and conditions recited therein.

Said Unit is laid out as shown on the Site Plan numbered D-30866 (two sheets) recorded in the Rockingham County Registry of Deeds together with the Affidavit and Floor Plans recorded in the Rockingham County Registry of Deeds at book 4179, page 2105, and Plan #D-30982, #D-30983, and #D-30984, and to which were attached the verified statement of a registered land surveyor, in the manner required under New Hampshire RSA 356-B and to which plans reference

Said Unit is conveyed subject to easements contained in the deed recorded with the Rockingham County Registry of Deeds in book 4768, page 0666.

Meaning and intending to convey the property described in the deed of Robert C. Hohman and Janet G. Hohman to the Grantors, dated June 6, 2013, and recorded in the Rockingham County Registry of Deeds in book 5447, page 2138.

The Grantors hereby release all rights of homestead.

*This Corrective Warranty Deed is being recorded to correct the error in the Grantor clause of the Warranty Deed from Robert C. Hohman and Janet G. Hohman to Stephen Cook and Louise Kemball Cook, dated September 4, 2014, and recorded in the Rockingham County Registry of Deeds in Book 5558, Page 1309, which was executed by the Grantors individually and was also intended to be executed by the Grantors in their capacity as Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust. This deed hereby corrects that error and clarifies that the previous conveyance included all right, title and interest of the Grantors, both individually, and as Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust.*

For further title reference, see Confirmatory Deed from Stephen Cook and Louise Kemball Cook to Stephen Kemball-Cook and Louise Kemball-Cook, dated October 22, 2014 and recorded in the Rockingham County Registry of Deeds at Book 5581, Page 1013.

Pursuant to RSA § 78-B:2, V, no transfer tax is due.

**CERTIFICATE OF TRUSTEE PURSUANT TO RSA 564-A:7, II**

PURSUANT TO RSA 564-A:7, II, the undersigned Trustees, as Trustees under the The Robert C. Hohman and Janet G. Hohman Revocable Trust, created by Robert C. Hohman and Janet G. Hohman as grantors w/d/t dated June 6, 2013, have full and absolute power in said Trust to convey any interest in real estate and improvements thereon held in said Trust and no purchaser or third party shall be bound to inquire whether the Trustees have said power or are properly exercising said power or to see to the application of any Trust asset paid to the Trustees for a conveyance thereof.

EXECUTED this 12 day of September 2022.

Witness

Witness

Robert C. Hohman, Individually and as Trustee of  
The Robert C. Hohman and  
Janet G. Hohman Revocable Trust

Janet G. Hohman, Individually and as Trustee of  
The Robert C. Hohman and  
Janet G. Hohman Revocable Trust

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

The foregoing instrument was acknowledged before me this 12 day of Sept, 2022, by Robert C. Hohman and Janet G. Hohman, Individually and as Trustees of The Robert C. Hohman and Janet G. Hohman Revocable Trust.



Notary Public  
My commission expires: 9-24-2028





# Claims Scenario #5 Undischarged Judgment

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
<http://www.courts.state.nh.us>

Court Name: Rochester District Division  
Case Name: Plaintiff/Petitioner: Galaxy Asset Management, LLC v. Defendant/Respondent: Jessica George  
Case Number: 471-15-CV-00164  
(if known)

AGREEMENT

The parties agree as follows:

1. Judgment entered for the Plaintiff/Petitioner on 3/16/16 in the amount of \$ 7,370.01. The current unpaid balance is \$13,000.88 which includes court costs to date.
2. Defendant/Respondent shall pay \$50<sup>00</sup> per month beginning July 15<sup>th</sup>, 2016 and to continue to be paid on the 15<sup>th</sup> day of each month thereafter until the judgment is paid in full.
3. All payments shall be made payable to and sent to:  
  
Law Offices of Howard Lee Schiff, P.C.  
P.O. Box 280245  
East Hartford, CT 06128-0245  
  
Defendant/Respondent shall write their account number with the above law office on the memo line of the check or money order to assist with proper processing. Such account number is 897404.  
  
(for telephone and auto withdrawal payment options please call law office at 1-800-288-9457 and for on-line payments go to [www.payschiff.com](http://www.payschiff.com))
4. The parties acknowledge and understand that exempt income and assets may not be used in the enforcement of any judgment or agreement for payment.
5. Failure to comply with the terms of this agreement may result in further court proceedings.

6-17-2016  
Date  
Galaxy Asset Management, LLC  
Plaintiff/Petitioner  
Jessica George  
Defendant/Respondent  
Sam O'Neil, Sam Penka, Esq.  
Attorney for Plaintiff/Petitioner  
\_\_\_\_\_  
Attorney for Defendant/Respondent

78 Northwest Road Rd, Milton NH 03851

AGREEMENT APPROVED.  
6/16/16  
Date  
Susan W. Anney, Judge  
NEW HAMPSHIRE  
JUDICIAL BRANCH  
CHIEF CLERK  
Cheryl-Ann Andrews  
Cheryl-Ann Andrews  
CIRCUIT



Catherine A. Berube  
Register of Deeds, Strafford County

THE STATE OF NEW HAMPSHIRE

Strafford, SS

7<sup>th</sup> Circuit Court  
District Division - Rochester

Galaxy Asset Management, LLC

v.

Jessica George

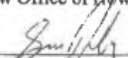
Docket No.: 471-2015-CV-00164

RELEASE AND DISCHARGE OF JUDGMENT LIEN

For good and valuable consideration, the receipt of which is hereby acknowledged, Galaxy Asset Management, LLC, Plaintiff in the above captioned matter, hereby releases and discharges the Judgment Lien recorded at the Strafford County Registry of Deeds at Book 4498, Page 0160, said Judgment having been paid in full.

Galaxy Asset Management, LLC,  
By and through its attorneys,  
Law Office of Howard Lee Schiff, P.C.

Dated: 3-20-2020


  
By: Samuel J. Donlon, Esq. BNH # 20628  
510 Tolland Street  
P.O. Box 280245  
East Hartford, Connecticut 06108

ACKNOWLEDGEMENT

State of New Hampshire  
~~Connecticut~~  
County of Merrimack

On this day, before me, the undersigned officer, personally appeared Samuel J. Donlon, Esq., known to me (or satisfactorily proven) to be the attorney for Galaxy Asset Management, LLC, and being duly authorized to do so, did execute the foregoing instrument for the purposes contained therein, on behalf of said limited liability company.

Dated: 3/20/2020

  
Notary Public - Justice of the Peace  
My Commission Expires: 12/21/21

A wide-angle photograph of a snowy mountain landscape. The foreground and middle ground are covered in a thick layer of white snow. Several evergreen trees, likely spruce or fir, are scattered across the scene, some heavily laden with snow. The background shows a snow-covered ridge or peak under a clear, bright blue sky. The overall scene is serene and wintry.

# Claims Scenario #6 Parcels Not Included in Conveyance







Return to:  
Lionel J. DeGrace  
141 Dawson Avenue  
Manchester NH 03104



FIDUCIARY DEED

KNOW ALL MEN BY THESE PRESENTS: That Denise McNulla, Guardian for Evangeline Gerasi a/k/a Evangelia Gerasi (Probate No. 316-2011-GI-0258P, of 9 Reid Lane, Litchfield, NH 03052, pursuant to the power conferred by the provisions of the guardianship and every other power, for One Hundred Forty-Seven Thousand Five Hundred and 00/100 (\$147,500.00) paid grant(s) to Lionel J. DeGrace, Single, of 236 Old Wellington Road, Manchester NH 03104:

Several tracts or lots of land situated in Manchester, County of Hillsborough and State of New Hampshire, being described as follows:

Tract I:

A certain lot or parcel of land with the buildings thereon, situated in said Manchester, bounded and described as follows to wit:

Beginning at a point on the Easterly line of Dawson Street, being the Southwesterly corner of Lot No. 49 on a plan of lands of Manchester Garden, Sect. No. 1, dated November 12, 1912 and recorded in the Hillsborough County Registry of Deeds as Plan No. 318; thence in a Northeasterly direction along lot Nos. 112, 111, and 110 on a plan of lands of Manchester Home Sites, recorded in the Hillsborough County Registry of Deeds as Plan No. 512, sixty-four (64) feet, more or less, to a point; thence in a Northwesterly direction forming an extension of the Northerly line of said Lot No. 110 forty-five (45) feet, more or less, to the Easterly line of Dawson Street; thence in a Southerly direction along the easterly line of Dawson Street eighty (80) feet, more or less, to the point of beginning.

Tract 2:

A certain tract or parcel of land being a part of Lot 49 situated on Dawson Street, in said Manchester, as shown on said plan of Manchester Garden Sect. No. 1, beginning on the northeasterly corner of Lot No. 109, running northwesterly to Dawson Street; thence southerly on Dawson Street to land of the grantees; thence easterly 45 feet to lot No. 109; thence northeasterly 30 feet along Lot No. 109 to the place of beginning.

Tract 3:

Four lots of land with the buildings thereon situated on Pine Ridge Avenue in said Manchester, being Lot Nos. 109, 110, 111, and 112 as shown on a plan of lands of Manchester Home Sites by Ernest W. Branch, C.E., dated July 7, 1923 and recorded in the Hillsborough County Registry of Deeds as Plan No. 512.

Subject to the following:

Subject to easements, facts, issues and notations as shown on Plan Nos. 318 and 512.

This is not homestead property.

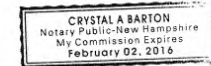
Executed this 8<sup>th</sup> day of July, 2011.

*Denise McNulla*  
Denise McNulla Guardian for  
Evangeline Gerasi a/k/a Evangelia  
Gerasi (Probate No. 316-2011-GI-0258)

State of NH  
County of Hillsborough

Then personally appeared before me on this 8<sup>th</sup> day of July, 2011, the said Denise McNulla, Guardian for Evangeline Gerasi a/k/a Evangelia Gerasi (Probate No. 316-2011-GI-0258) and acknowledged the foregoing to be her voluntary act and deed.

*Crystal A. Barton*  
Notary Public / Justice of the Peace  
Commission Expiration:



Know all Men by these Presents

1421

53

THAT The City of Manchester, a municipal corporation, in the County of Hillsborough and State of New Hampshire, by Josaphat T. Benoit, Mayor, duly authorized by vote of the Board of Aldermen at a regular meeting held on Tuesday, February 1, 1955

for and in consideration of the sum of ONE Dollars  
to it in hand, before the delivery hereof, well and truly paid by

George & Evangeline Gerasi

the receipt whereof it does hereby acknowledge, have remised, released, and forever QUITCLAIMED, and do by these presents remise, release, and forever QUITCLAIM unto the said grantee their heirs and assigns forever all the said City's right, title and interest and to a certain parcel or parcels of land situated at Manchester, N. H., and known as:

Lots 113-114 Pine Ridge Ave.,

Formerly taxed under the name of William F. Robbins

Conveying all interest acquired by said City of Manchester by virtue of a Tax Sale for non-payment of Taxes. Said Tax Sale was legally held in the City Hall of said city on Sept. 15, 1937 and a Tax Collector's deed was legally issued to said City of Manchester, N. H., on Sept. 18, 1939. Said deed being registered in the Hillsborough County Registry office Sept. 18, 1939

Volume 993 Page 299

TO HAVE AND TO HOLD the afore-described premises, with all the privileges and appurtenances there-unto belonging, to them the said grantee their heirs and assigns, to them and their use and behoof forever.

IN WITNESS WHEREOF, Josaphat T. Benoit, Mayor, has hereunto set his hand and the City's seal, this Twenty fourth day of February in the year of our Lord nineteen hundred and Forty-Five

Signed, sealed and delivered in the presence of:

*Madeline A. Glada*

The City of Manchester

By *Josaphat T. Benoit*  
Mayor.

STATE OF NEW HAMPSHIRE

Hillsborough, SS., February 24, 1955

Personally appeared the above named

Josaphat T. Benoit Mayor

and acknowledged the foregoing to be the voluntary act and deed of said City—Before me:

*Madeline A. Glada*  
Notary Public



C31  
TARBELL

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
Northern Judicial District

SUPERIOR COURT

Lionel J. DeGrace

v.

Joanna Cullen, Thomas Moulis,  
Kathleen Moulis, Elaine Theodorides, and unknown heirs of Evangeline Gerasi

Docket No. 216-2017-CV-00284

FINAL DECREE

This Action was commenced by the Plaintiff, Lionel J. DeGrace, pursuant to RSA § 498:5-a seeking to quiet title to the real estate located at the intersection of Pine Ridge Avenue and Dawson Avenue, City of Manchester, County of Hillsborough, State of New Hampshire ("Property"). The Property is shown as Lots 113 and 114 on the plan of land entitled "Manchester Home Sites," dated July 7, 1923, prepared by Ernest W. Branch, C.E., and recorded at the Hillsborough County Registry of Deeds ("HCRD") as Plan No. 512. The Property is also described in reference to the City of Manchester's tax maps as Map 494, Lot 8.

The Property was owned by George Gerasi and Evangeline Gerasi, a married couple, as tenants in common. For title reference, see HCRD Bk 1421, Pg 53. George Gerasi died December 19, 1972, leaving Evangeline Gerasi as his only heir. See HCRD Bk 8847, Pg 2239. George Gerasi and Evangeline Gerasi also owned other real estate adjoining the Property as joint tenants with rights of survivorship. For title reference, see HCRD Bk 1652, Pg 202; Bk 1465, Pg 375; Bk 1465, Pg 376; Bk 1470, 14. As the surviving joint tenant and George Gerasi's sole heir, Evangeline Gerasi conveyed what she believed to be all of her real estate, including the Property, to the Plaintiff, Lionel J. DeGrace, by Fiduciary Deed dated July 8, 2011. For title reference, see HCRD Bk 8331, Pg 2540. Although Evangeline Gerasi intended to convey the Property in the Fiduciary Deed which conveyed her other real estate to the Plaintiff, the description of the Property was inadvertently omitted from the Fiduciary Deed, hence, the Plaintiff commenced

this Action against the known and unknown heirs of Evangeline Gerasi seeking to quiet title to the Property.

All of the known heirs of Evangeline Gerasi, including all of the named Defendants, have conveyed their respective interests in the Property to the Plaintiff, either before or after commencement of this Action. For title reference, see HCRD Bk 8959, Pg 316; Bk 8970, Pg 2827; Bk 8972, Pg 2408; Bk 8973, Pg 1197; and Bk 8976, Pg 2893.

Notice of these proceedings was properly served upon the unknown heirs of Evangeline Gerasi by publication in the *Manchester Union Leader*. The Court appointed a Guardian *Ad Litem* to protect the interests of said Unknown Heirs.

In light of all of the named heirs of Evangeline Gerasi having conveyed their interests in the subject Property to the Plaintiff, and no appearance or objection having been filed by or on behalf of the unknown heirs of Evangeline Gerasi, the Court hereby quiets title to the Property and enters the following Final Decree. The Plaintiff, Lionel J. DeGrace, holds title to the Property in fee simple absolute, free and clear of any interest of the known or unknown heirs of Evangeline Gerasi.

This Final Decree may be recorded at the HCRD.

So Ordered.

Dated:

8/5/17

Justice, Superior Court

Kimberly C. Bennett, R.

A TRUE COPY  
ATTEST:





Questions?

Thank you!





**NAVIGATING THE SLOPES OF  
A COMMERCIAL  
TRANSACTION**

April 10, 2023





# GENERAL OVERVIEW OF CATIC COMMERCIAL



# WHAT WE DO



**Order Title and  
Municipal Information**



**Produce Title  
Commitments, Proformas  
and Endorsements**



**ESCROW SERVICES &  
DISTRIBUTION OF  
FUNDS**



# WHAT WE DON'T DO



**NO DIRECT  
BUSINESS**

**CATIC DOES NOT COMPETE WITH THEIR  
AGENTS**

# 2022 DIRECT BUSINESS FIGURES IN NEW HAMPSHIRE

Company	Direct Operations
Fidelity Family*	\$2,912,614
Stewart Family***	\$1,224,063
First American	\$1,127,308
Old Republic Family**	\$208,912
WFG	\$11,123
Westcor	\$8,605
AmTrust	\$3,114
CATIC	\$0
<b>TOTALS</b>	<b>\$5,495,739</b>
* - Includes National Title Ins. of NY, Chicago, Commonwealth & Fidelity	
** - Includes Old Republic & American Guaranty	
*** - Includes Stewart & Stewart Title of NY	





# GENERAL DIFFERENCES BETWEEN COMMERCIAL TRANSACTION VS. RESIDENTIAL

**CATIC**  
**commercial**   
national **solutions** for agents



# GENERAL DIFFERENCES

## Expenses

TITLE EXAMS AND SURVEY COSTS

## Commercial Forms

COMMERCIAL TRANSACTION HAS MORE PAPERWORK

## Timing of Transaction

TRANSACTIONS CAN TAKE LONGER TO COME TO COMPLETION

## Policy Endorsements

COMMERCIAL POLICY GENERALLY HAS MORE ENDORSEMENTS

## Parties to Transaction

MORE PLAYERS TO THE DEAL

## Closing Statement and Disbursements

NO CD – PARTIES COMPLETE A CLOSING STATEMENT



# OVERVIEW OF COMMERCIAL TRANSACTION

**CATIC**  
**commercial**   
national **solutions** for agents



- LETTER OF INTENT
- PURCHASE AND SALE AGREEMENT
- PAY ATTENTION TO ALL DEADLINES!!!

# DUE DILIGENCE

- Consider what is the goal of the purchase of the property? Is this investment, development or to conduct operations
- Three Types: Physical, Financial and Legal



# Physical Due Diligence

- Building/property condition assessments
- Building/property risk assessments
- Capital expenditure forecasts and cost plans
- Facilities management reviews and risk analyses
- Replacement cost estimates

# Financial Due Diligence

- Investigate the property's cash flow by checking income and expenses
- Use a qualified professional to be part of the audit team

- Title examination
- Survey report
- Analysis of existing permits
- Liens and tax issues

# TITLE COMMITMENT / PROFORMA

**CATIC**  
**commercial**   
national **solutions** for agents



# TITLE EXAMINATION

*Attorney Linda Carter*  
1252 Elm Street  
Worcester, Massachusetts 02468

---

## CERTIFICATE OF TITLE

To: Attorney Harvey Spector  
Spector & Litt, PC  
1073 Riverdale Street  
Worcester, MA 02468

Property: 60 Plantation Drive  
Worcester, MA

I certify that I have examined the records of the **Worcester County Registry of Deeds** and Registry of Probate relative to the above captioned property and find title to be in **Tony J. Stark and Penny C. Stark, as an individuals**, by deed of Bruce Wayne, dated April 18, 2007 and recorded in said Registry of Deeds in **Book 16634, Page 311**.

Said premises are subject to the following:

### **MORTGAGES:**

To: **Bank of Gotham**  
Recorded: 10226-234

Date: September 4, 1985  
Amount: \$205,000.00

To: **MERS as nominee for American Home Mortgage**  
Recorded: 16634-313

Date: 4-18-07  
Amount: \$250,333.00

### **EASEMENTS, RESTRICTIONS, RIGHTS OF WAY, ETC.:**

1. Declaration of Homestead by Tony J. Stark and Penny C. Stark dated April 18, 2007 and recorded in Book 16634, Page 322.
2. Subject to easement rights granted to Western Massachusetts Electric Company and New England Telephone and Telegraph Company by instrument dated October 1, 1945 and recorded in Book 1807, Page 175 and by instrument dated May 18, 1965 and recorded in Book 3112, Page 511.
3. Together with the right to use Plantation Drive and Fenway Drive as shown on the plan recorded in Plan Book 100, Page 128 in common will all others lawfully entitled thereto for all purposes of a public Street as set forth in the deed dated September 12, 1968 and recorded in Book 3366, Page 236.
4. Subject to a Tax Taking in the amount of \$5,321.00 by the City of Worcester for Fiscal 2016 recorded in Book 21121, Page 32.



# Title Commitment – Schedule A

This is the first page of your title commitment. You will see a lot of the information has already been pre-filled in for you.

You need to add the following on this page:

Effective Date – date of your title exam

Policy Type – standard or expanded

Under (b) Loan Policy – Proposed Insured – you will see words “*Successor language*”

Click on that and a box will appear – enter the following: ISAOA/ATIMA and then hit enter.

Schedule A

**ALTA COMMITMENT FOR TITLE INSURANCE**  
**ISSUED BY**  
**C A T I C**®

---

Agent Name: DiSanti Law Offices  
Agent No.: 006593  
Loan ID Number: 1234567  
Agent File Number:

**SCHEDULE A**

1. Commitment Date: [Effective Date](#)
2. Policy to be issued:
  - (a) Owner's Policy Type: [Standard](#)  
Proposed Insured: [Dwayne R. Johnson and Penny C. Stark](#)  
[Address](#)  
[City State Zip Code](#)  
Proposed Policy Amount: [\\$358,000.00](#)
  - (b) Loan Policy Type: [Standard \(Long Form\)](#)  
Proposed Insured: [Tombstone Community Bank](#)  
[Successor Language](#)  
[1500 Main Street](#)  
[Springfield MA 01044](#)  
Proposed Policy Amount: [\\$315,000.00](#)
3. The estate or interest in the Land described or referred to in this Commitment is fee simple .  
[Fee Simple](#)
4. Title to the fee simple estate or interest in the land is at the Commitment Date vested in:  
[Tony J. Stark and Penny C. Stark](#)
5. The land referred to in this Commitment is described as follows:  
60 Plantation Drive Worcester Massachusetts 02468

Countersigned and validated:  
By \_\_\_\_\_  
Authorized Signatory

# Schedule B - Requirements

Next – go to Schedule B (Requirements) – this is the section that must be completed in order to give the lender a clean title. You will need Title Examination and Tax Information.

Go to Edit Schedule B Requirements

Schedule B Requirements

**ALTA COMMITMENT FOR TITLE INSURANCE**  
**ISSUED BY**  
**C A T I C**®

---

**SCHEDULE B, PART I**  
**Requirements**

All of the following Requirements must be met:

1. Payment to or for the account of the grantors or mortgagors of the full consideration for the state or interest to be insured.
2. Payment of all real estate taxes, water and sewer use charges, municipal charges and assessments, and any other matters with interest thereon which a current municipal lien certificate(s) may disclose.
3. Receipt of satisfactory executed Title Insurance Affidavit relative to mechanic's lien and persons in possession.
4. If the property is a condominium unit, record a 6(d) Certificate showing no outstanding condominium charges and assessments against said unit.
5. Payment of the applicable premium for the policy(ies) to be issued.
6. A final title rundown from the Commitment Date to the date and time of recording the Deed and/or Mortgage referred to below.
7. The Company reserves the right to raise any such additional exceptions and/or requirements as it deems necessary upon receipt of the details of the transaction and its review of the closing documents.
8. Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

Edit Schedule B Requirements

# Schedule B - Exceptions

Next – go to Schedule B (Exceptions) – this is the section that must be completed if your title examination has easements, restrictions, variances, etc..

Go to Edit Schedule B Exceptions

## SCHEDULE B, PART II Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I –Requirements are met.
2. Rights or claims of persons in possession, other than the insured, which are not shown by the Public Records.
3. Any easements or claims of easements not shown by the Public Records, boundary line disputes, overlaps, encroachments, title to filled lands (if any) and all other facts which an accurate survey and inspection of the land would disclose and which are not shown by the Public Records. When the policy issued is on a form having a revision date of 6-17-06, this exception also refers to all those matters described in Covered Risk 2(c).
4. Unrecorded mechanics' liens.

### Special Exceptions:

1. IF THE INSURED PREMISES IS A CONDOMINIUM UNIT:
  - A. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, and limitations on title, created by the laws of Massachusetts or set forth in the Master Deed or Declaration of Condominium, in the related By-Laws, in the Declaration of Trust, or Site Plans and Floor Plans as duly recorded in the appropriate land records office and as the same may have been lawfully amended, and in any instrument creating the estate or interest insured by this policy.
  - B. Loss or damage arising as a result of liens for common charges and attorney's fees pursuant to Chapter 400 of the Acts of 1992 (Massachusetts).
2. Real estate taxes, municipal assessments and private association assessments, if any, including liens and assessments, not yet due and payable.

Edit Schedule B Exceptions

# Property Description

Property Description

Edit Property Description

Font Family ▾ Font Sizes ▾ **B** *I* U

**A certain piece or parcel of land in Worcester, Worcester County, Massachusetts, known as 60 Plantation Drive, Worcester, MA, on a Plan entitled "Plan of Land, Plantation Drive, Worcester, Mass. owned by Kent Development, Inc., dated March 20, 1980 drawn by Smith and Associates Surveyors, Inc. and said plan being recorded in the Worcester County Registry of Deeds, Book of Plans 379, Page 55.**

Phrase Codes Save Cancel





## TITLE OBJECTION LETTER

- Detailed letter objecting to any items listed on the Title Commitment that the Seller needs to fix prior to purchase
- Survey matters such as encroachments

# CLOSING STATEMENT

**CATIC**  
**commercial**   
national **solutions** for agents



# Closing Statement



Seller(s):  
 Buyer(s)/  
 Borrower(s):  
 Lender:  
 Property Address:

CATIC File No:  
 Closing Date:

Buyer/Borrower		Fees for File #	Seller	
Debit	Credit		Debit	Credit
		<b>Sales Price/Consideration</b>		
		Contract sales price		
		<b>New Loan</b>		
	\$ -	Loan Amount from Lender		
		<b>Deposits</b>		
	\$ -	Deposit held by CATIC		
		Deposit held by		
		Borrower Deposit with Lender		
		<b>Prorations</b>		
\$ -		RE Tax Proration from 07/01/2021 thru 07/15/2021	\$ -	
		<b>Commissions</b>		
		Listing broker commission to		
\$ -		Mortgage Brokerage Fee to		
		<b>Loan Payoffs</b>		
		Loan Payoff -		
		Loan Payoff -		
		Loan Payoff -		
		<b>New Loan Charges</b>		
		Loan Origination Fee		
		Appraisal Fee		
		Tax Service Fee		
		Environmental Fee		
		Flood Certificate Fee		
		Lenders Counsel Fee to		
		<b>Interest Charges</b>		
		Stub Interest N/A		
		<b>Impounds/Reserves</b>		
		Insurance Reserve		
		Tax Reserve		



# Closing Statement

<u>Title Charges</u>			
\$	700.00	Escrow Fee to CATIC	\$ 700.00
\$	-	Title Search/Abstract Fee to CATIC	
\$	-	Title Update Fee to CATIC	
\$	-	Purchase of MLC	
\$	-	Federal Express Expense to Overnight Mail Expense to	\$ -
<u>Title insurance</u>			
\$	-	Owners Coverage (Liability Amount \$ _____) -	
\$	-	Lenders Coverage (Liability Amount \$ _____,00)	
		Endorsements	
		Processing fees	
		Delivery Fee	
<u>Recording Fees/Transfer Charges CT</u>			
\$	-	Recording fees: Deed	
\$	-	Recording fees: MLC	
\$	-	Recording fees: Cert of Good Stand	\$ -
\$	-	Recording fees: Mortgage	
		Recording fees: Discharge	\$ -
		Tax Stamps	\$ -
			\$ -
<u>Additional Charges</u>			
		Survey Invoice No. to	
		Zoning Invoice No. to	
\$	-	Buyer's Legal Fee:	\$ -
			\$ -
\$	700.00	<b>Totals</b>	\$700.00 \$ -
\$	700.00		\$ 700.00 \$ -
	\$ 700.00	<b>Cash Due From/(To) Buyer</b>	
		<b>Cash Due (From)/To Seller</b>	\$ (700.00)



# CLOSING PROCESS & RECORDING DISCUSSION







# DISBURSEMENT OF FUNDS AND WIRE FRAUD



# COMMON COMMERCIAL ENDORSEMENTS

- 1) Zoning
- 2) Single/Multiple Tax Parcel
- 3) Location
- 4) Commercial Environmental
- 5) Access
- 6) Contiguity
- 7) Covenants, Conditions and Restrictions  
("Comprehensive Endorsement")
- 8) Utility
- 9) Same as Survey
- 10) Pending Disbursement/Construction
- 11) Waiver of Arbitration

# The Future Is Bright

building trust together.



CATIC  
commercial 