What You Should Know About the Rhode Island Lead Law

Childhood Lead Poisoning Screening
Rhode Island children must be screened for blood lead two times, at least 12 months apart, before the age of 36 months.

Lead Hazard Reduction
Lead hazard reduction (LHR) is required in the homes of lead poisoned children and properties classified by HEALTH as having multiple poisonings or as high-risk premises. Lists of these properties are available on HEALTH's website at: http://www.health.ri.gov/find/property/index.php

In addition, LHR may be required by a notice or order from HEALTH, or by a funding agency, such as a HUD-grantee (e.g., RI Housing). Only a lead contractor licensed by HEALTH can do LHR work. Before beginning the work, lead contractors must provide owners and tenants with the EPA pamphlet *Protect your Family from Lead in Your Home* containing the Rhode Island insert, available on HEALTH's website at: http://www.health.ri.gov/materialbyothers/LeadPoisoningProtectYourFamily.pdf

A clearance inspection by a licensed lead inspector which results in a Certification of Lead Free or Lead Safe Status is required at the conclusion of all LHR projects. Lists of licensed lead professionals and a lead certificate search are available on HEALTH's website at: http://www.health.ri.gov/find/environmentallead/firms/

Lead Hazard Control
Lead hazard control (LHC) is required to correct known or presumed environmental lead exposure hazards. Only a lead renovation firm licensed by HEALTH can do LHC work.

Before beginning the work, lead renovation firms must provide owners and tenants with the EPA pamphlet *Renovate Right* containing the Rhode Island insert, available on HEALTH's website at: http://www.health.ri.gov/publications/brochures/RenovateRight.pdf

A clearance inspection by a licensed lead inspector, lead technician, or lead assessor which results in a Certification of Lead Free or Lead Safe Status, Certification of Acceptable Clearance Status, or an HRC Certificate of Conformance is required at the conclusion of all LHC projects. Lists of licensed lead professionals and a lead certificate search are available on HEALTH's website at: http://www.health.ri.gov/find/environmentallead/firms/

Renovation, Repair, and Painting
Renovation, repair, and painting (RRP) activities are not intended to address environmental lead hazards but may incidentally result in the removal of lead paint or the elimination of lead hazards. RRP requirements apply to construction and related work, such as carpentry, plumbing or electrical work, that impact painted surfaces or building components which are known to contain lead or must be presumed to contain lead in pre-1978 buildings.

Only a lead renovation firm licensed by HEALTH may do RRP work in a regulated facility. (HEALTH regulates all residential rental units, residences of children younger than six years of age, and child care facilities.) Before beginning the work, lead renovation firms must provide owners and tenants with the EPA pamphlet *Renovate Right* containing the Rhode Island insert, available on HEALTH's website at:
http://www.health.ri.gov/publications/brochures/RenovateRight.pdf

A clearance inspection by a licensed lead inspector, lead technician, or lead assessor which results in a Certification of Acceptable Clearance Status is required at the conclusion of all interior RRP projects. Lists of licensed lead professionals and a certificate search are available on HEALTH's website at:
http://www.health.ri.gov/find/environmentallead/firms/

Lead Hazard Mitigation
The Lead Hazard Mitigation Law requires landlords to complete a lead hazard awareness seminar and correct lead hazards in most residential rental units. The landlord may do some of the lead work, but a lead renovation firm licensed by HEALTH is required for window replacement or work that is more than "spot removal".

A clearance inspection by a licensed lead inspector or lead technician which results in a Certificate of Conformance is required at the conclusion of the mitigation project. A list of approved seminars and a lead certificate search are available on HRC's website at:
http://www.hrc.ri.gov/misc/lead_mitigation.php

Spot Removal
Both the HRC and HEALTH "spot removal" limits are the same as the EPA de minimus of 6 square feet of lead paint per interior room or 20 square feet of exterior lead paint, provided that no prohibited work methods are used. DEM has no de minimus; Regulation No. 24: *Removal of Lead Based Paint from Exterior Surfaces* always applies to any exterior paint removal.

Prohibited Work Methods
Rhode Island has additional prohibitions for disturbing lead paint. For interior work, HEALTH prohibits the use of chemical strippers that are flammable or contain methylene chloride and mechanical paint removal, except when done as LHR in a vacant dwelling.

For exterior work, DEM prohibits dry scraping or sanding, the use of chemical strippers that are flammable or contain methylene chloride, and uncontained power washing.

Lead Inspections
Lead contractors and renovators are not qualified to test for lead in Rhode Island. (Lead contractors and renovators may presume that lead is present and use lead safe work practices.) Only lead inspectors, lead technicians, and lead assessors licensed by HEALTH can test for lead.

Only lead inspectors can issue Certifications of Lead Free and Lead Safe Status, which require a comprehensive environmental lead inspection and/or an LHR or LHC clearance inspection that includes paint, dust, water, and soil testing.

Only lead inspectors and lead technicians can issue Certificates of Conformance, which require an HRC clearance inspection that includes dust testing.

Lead inspectors, lead technicians, and lead assessors can issue Certifications of Acceptable Clearance Status, which require an RRP clearance inspection that includes dust testing.

Lists of licensed lead professionals and a lead certificate search are available on HEALTH's website at:
http://www.health.ri.gov/find/environmentallead/firms/

Lead Standards
HEALTH's lead standards differ from the federal EPA/HUD standards. Only paint chip sampling by a licensed lead inspector or assessor can determine that painted surfaces or building components in pre-1978 construction do not contain lead. XRF readings less than 1.0 mg/cm^2 or "negative" (no reaction) test kit results are considered inconclusive in Rhode Island.

The following test results for damaged paint are considered hazardous:

- 1.0 mg/cm² or greater by XRF analysis
- "Positive" reaction (pink or red) with sodium rhodizonate test kit
- 600 parts per million (ppm) or greater by laboratory analysis

The following levels of lead in exposed soil are considered hazardous:

- 400 ppm and higher in areas of bare soil
- 1,200 ppm and higher in areas of soil covered by grass, mulch, or stone

Lead Disclosure

In addition to the federal disclosure requirements, property owners must keep copies of all lead inspection reports and records for as long as they own a residential property in Rhode Island. This requirement includes all records and reports received as part of a lead disclosure from previous owners.

In addition, landlords must provide tenants with the HRC *Notice of Deteriorating Conditions* and the name and contact information of the person responsible for maintaining the property. Tenants should notify their landlord of damaged paint using this notice, also available on HRC's website at: http://www.hrc.ri.gov/misc/lead_mitigation.php

Financial Assistance

Grant and loan programs are available to help property owners eliminate lead hazards. A list of resources is available on HRC's website. A Rhode Island personal income tax credit is available for expenses incurred for fixing lead hazards, up to $5,000 per dwelling unit for work resulting in a Certification of Lead Free or Lead Safe Status or up to $1,500 per dwelling unit for work resulting in a Certificate of Conformance. The Residential Lead Abatement Income Tax Credit Form RI-6238 is available at http://www.tax.ri.gov/taxforms/.

For education, advocacy, and parent support, call the Childhood Lead Action Project at (401) 785-1310 or visit www.leadsafekids.org

SELLER'S LEAD DISCLOSURE
Rhode Island Association of REALTORS®

Disclosure of Information about Lead-Based Paint and Lead-Based Hazards required by Federal and Rhode Island law.

Property Address: _____

Unit # (if applicable) _____, **Town/City** _____, **State of Rhode Island, Zip code** _____

Federal Lead Warning Statement

Federal Law: 42 U.S.C. 4852(d) *"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."*

Rhode Island State Disclosure Requirements

Rhode Island State Law: *216-RICR-50-15-3 Section 3.8 of the Rules and Regulations of the R.I. Department of Health and Lead Hazard Mitigation Standards requires the Seller of any interest in residential property on which a residential dwelling was built prior to 1978 to disclose to the Buyer any known information on lead-based paint or lead-based hazards in paint, interior dust, soil, or water, or potential lead-based paint or lead-based hazards and their location(s), or potential location(s). Such information includes (1) any records or reports which are in Seller's possession or reasonably obtainable regarding such hazards or potential exposure to such hazards in the property; (2) a copy of any current lead certificate(s) for the dwelling or dwelling unit and common areas; and (3) a chronological listing of all available lead inspection reports and certificates for the property being sold.*

The Seller shall provide Buyer with an Environmental Protection Agency educational pamphlet entitled "Protect Your Family from Lead in Your Home" containing the insert "What You Should Know About the R.I. Lead Law."

Seller's Disclosure *[Seller(s) complete and initial each section below]*

_____ (a) Presence of lead in paint, interior dust, soil or water and/or lead-based hazards in paint, interior dust, soil, or water: *(check one below)*

☐ Seller discloses that the following known lead-based paint and/or lead-based hazards are present in the housing (explain).

☐ Seller has no knowledge of lead-based paint and/or lead-based hazards in the housing.

_____ (b) Records and reports available to Seller *(check all that apply below)*:

☐ Seller has provided Buyer, the Listing Licensee and Cooperating Licensee, if any, with a copy of the most current lead certificate dated: _____.

☐ Rhode Island law requires Seller to provide, at no charge, copies of all available reports and certificates to which Seller has access within seven (7) days of a request by Buyer.

Seller has access to the following reports and records relating to lead:
(Seller: List in chronological order all available lead inspection reports and certificates for the property being sold.)

Date of document *Type of lead certificate or report:*

Buyer may obtain copies of all such documents by contacting: _____

_____

☐ Seller has no lead certificates, reports or records pertaining to lead-based paint and/or lead-based hazards in the dwelling or dwelling unit and common areas for the property being sold.

Buyer's Acknowledgment *[Buyer(s) initial each section that applies]*

_____ (c) Buyer has received copies of all information listed above.

_____ (d) Buyer has received the pamphlet "Protect Your Family from Lead in Your Home" that includes the R.I. section "What You Should Know About the R.I. Lead Law."

_____ (e) Buyer has *(check one below)*:

☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based hazards; or

☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based hazards.

Agent's Acknowledgment *(initial)*

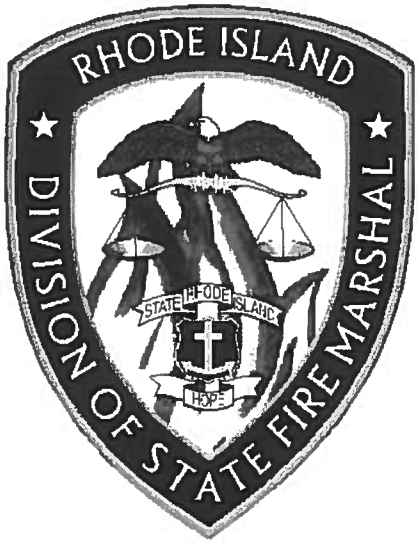
_____ (f) Agent has informed Seller of Seller's obligations under 42 U.S.C. 4852(d) and 216-RICR-50-15-3 Section 3.8 of the Rules and Regulations of the R.I. Department of Health and Lead Hazard Mitigation Standards, and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Buyer	Date	Seller	Date
Buyer	Date	Seller	Date
Buyer	Date	Seller	Date
Buyer	Date	Seller	Date
Cooperating Licensee	Date	Listing Licensee	Date

RHODE ISLAND
DIVISION OF
STATE FIRE MARSHAL



Smoke Alarm and
Carbon Monoxide
Brochure

TIMOTHY P. MCLAUGHLIN
STATE FIRE MARSHAL
560 Jefferson Boulevard
Warwick, RI 02886

Telephone:(401) 889-5555
Fax: (401) 889-5533

ONE & TWO FAMILY DWELLINGS
SMOKE ALARMS

- As of February 20, 2004 all new residential construction requires AC-powered hard-wired, interconnected smoke alarms with battery back up in the following areas:
  Inside each bedroom
  Outside each bedroom area
  On each habitable level including basements
  At the bottom of the basement stairs

- In addition, interconnected heat detector(s) shall be installed in all integral or attached garages in dwelling units permitted or constructed after **February 20, 2004**.

- Wireless detectors shall be allowed as part of an approved system or panel and provided that such system meets all the audible requirements.

- Existing construction permitted prior to **June, 1976** are permitted to maintain the previously required single-station battery-operated smoke alarms. *These detectors shall be located outside the bedroom areas and on each level, including basements.*

- Existing construction permitted after **June, 1976** are required to maintain the previously required AC-powered smoke alarms and they should be hardwired and interconnected. *These detectors shall be located outside the bedroom areas and on each level, including basements.*

- Existing construction permitted after **June, 1992** are required to maintain the previously required AC-powered smoke alarms with battery back-up, and they should be hardwired and interconnected. *These detectors shall be located outside the bedroom areas and on each level, including basements.*

THREE FAMILY DWELLINGS
SMOKE ALARMS

- Three family dwellings shall have AC-powered, interconnected smoke alarms installed in each individual dwelling unit by **July 1, 2009.** *These detectors shall be located outside the bedroom areas and on each level, including basements (if applicable.)*

- As of December 31, 2010 all common areas shall be protected by AC-powered, interconnected smoke alarms with battery back-up. These alarms may be powered from an existing residential or common circuit. These smoke alarms shall be separate from the smoke alarms in each dwelling unit. There shall be one smoke alarm on each level of the common stairway(s), and at the bottom of the basement stairs.

- If there is more than one (1) stairway, all detectors in each stairway shall be interconnected together.

- Wireless detectors shall be allowed as part of an approved system or panel and provided that such system meets all the audible requirements.

- A local, supervised fire alarm system shall be permitted in place of smoke alarms. Each system shall be installed as per code and provide detection in all common areas, pull stations, etc; and occupant notification.

ONE, TWO, AND THREE FAMILY DWELLINGS CARBON MONOXIDE (CO) DETECTORS

- All new residential (including apartments and condominiums) require hard-wired, interconnected CO alarms with battery back up outside the bedroom areas.

- In addition, the local authority having jurisdiction may require additional smoke or CO coverage in rooms or living areas having pull out sofas or other means of sleeping arrangements if in his/her judgment the room may be used for sleeping quarters on a regular or intermittent basis.

- Any dwelling permitted after **January 1, 2002** shall be required to have hardwired CO alarms with battery backup.

- All other existing construction shall be allowed to have battery operated CO alarms or plug in units. Plug in units must be restrained.

- Exception: Dwellings that do not contain any fuel burning appliances, a fireplace or an attached or integrated garage are exempt from CO requirements. If any of these items are introduced later, then detection is required.

Fire Marshal's Web Site
http:\\www.fire-marshal.ri.gov

Fire Safety Code Web Site
http:\\www.fsc.ri.gov

REFERENCES; Rhode Island Uniform Fire Code 1 2003 Edition; Rhode Island Life Safety Code 101 2003 Edition; NFPA 72 2002 Edition; NFPA 720 2003 Edition

PLACEMENT OF SMOKE AND CO ALARMS

- Ceiling mounted: At least 4 inches from any adjoining wall surface
- Wall mounted: Between 4 and 12 inches from the ceiling
- Peaked or sloped ceilings: Within 36 inches of the peak or high side of the slope, but no closer than 4 inches vertically or from an adjoining wall surface.
- Detectors shall not be installed within 36 inches of heating or cooling register, the tip of a ceiling paddle fan, a kitchen door or a bathroom door containing a tub or shower.
- Detectors within a 20 foot horizontal path of a cooking appliance shall be equipped with an alarm-silencing means or be of the photo electric type.
- Where stairs lead to other occupied levels, a smoke alarm or smoke detector shall be located so that smoke rising in the stairway cannot be prevented from reaching the smoke alarm or smoke detector by an intervening door or obstruction.
- For stairways leading up from a basement, smoke alarms or smoke detectors shall be located on the basement ceiling near the entry to the stairs.
- Near the first bedroom door in a hallway closest to the living area.
- Carbon monoxide detectors shall be installed as per manufacturer's recommendations outside each sleeping area.

APARTMENTS/TOWNHOUSES/CONDOMINIUMS

- Each dwelling unit shall comply with all of the requirements of one and two family dwellings for smoke and carbon monoxide alarms.
- In addition, every building meeting this definition having between four and seven units shall be required to have a local fire alarm system that will include detection in all common areas, pull stations, etc; and occupant notification.
- Every building meeting this definition having more than seven units shall be required to have a municipally connected fire alarm system.

Exception:

1) Buildings that have units with suitable fire resistance separation may be exempt from fire alarm system requirements.

2) Buildings that have central heating plants that do not transfer heat via ductwork, and that have suitable separation from the rest of the building, and where dwelling units do not have any other fuel burning appliances, fireplaces or attached or integral garages, then they may be exempt from CO requirements.

Contact your local Fire Marshal
for compliance information

OTHER FACTS
AND RESPONSIBILITIES

- All detectors and devices shall be installed according to manufacturer's recommendations.

- Smoke alarms shall not remain in service longer than 10 years from the date of installation unless otherwise specified by the manufacturer.

- It shall be the responsibility of the owner to maintain in operable condition smoke and carbon monoxide detection systems, installed as required pursuant to this chapter, and the owner shall make operable, within seven (7) days after being notified by certified mail by the occupant and/or enforcement official, any inoperable system.

- The cost of inspection ($30.00) shall be borne by the seller.

- Owners of existing residential properties, previously required to install smoke detectors, shall maintain those detectors in good operating condition.

- The above smoke and carbon monoxide detectors may be installed as either separate or combination units approved by the AHJ.

- The fire department for the community in which the dwelling is located should inspect the smoke and carbon monoxide detector systems of the dwelling within ten (10) days of a request from the owner.

- Once received smoke alarm and CO certificates are good for 120 days.

- It is recommended that you have your inspection scheduled at least 2 weeks before your closing to allow time for any necessary corrections.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

FIRE SAFETY CODE
BOARD OF APPEAL AND REVIEW
1 Regan Court
Varley Building #46
Cranston, RI 02920

Office (401) 462-0940
(401) 222-3473
FAX (401) 462-0941
711 (TTY)

FIRE SAFETY CODE BOARD OF APPEAL & REVIEW
FORMAL INTERPRETATION AND
BLANKET VARIANCE 13-01

Request of the Rhode Island Realtors Association and the State Fire Marshal's Office: What are the current fire code requirements for one and two family home smoke and carbon monoxide inspections under the newly adopted Fire Code effective January 1, 2013 ?

Determination of the Board: The following guidelines shall be utilized in the smoke alarm and carbon monoxide detection inspections of one and two family homes:

Homes built in 1976 or prior:

Smoke Alarms shall be installed outside sleeping areas and on each level of the dwelling unit(s) (including basements).

Smoke Alarms shall be permitted to be battery operated.

Smoke Alarms are not required to be interconnected.

Carbon Monoxide Detectors shall be installed outside sleeping areas.

Carbon Monoxide Detectors shall be permitted to be battery operated.

Carbon Monoxide Detectors are not required to be interconnected.

Homes built on and after January 1, 1977 through December 31, 2001:

Smoke Alarms shall be installed outside sleeping areas and on each level of the dwelling unit(s) (including basements).

Smoke Alarms shall be hard-wired with battery backup.

Smoke Alarms shall be required to be interconnected.

Carbon Monoxide Detectors shall be installed outside sleeping areas.

Carbon Monoxide Detectors shall be permitted to be battery operated.

Carbon Monoxide Detectors are not required to be interconnected.

Homes built on and after January 1, 2002 through February 19, 2004:

Smoke Alarms shall be installed outside sleeping areas and on each level of the dwelling unit(s) (including basements).

Smoke Alarms shall be hard-wired with battery backup.

Smoke Alarms shall be required to be interconnected.

Carbon Monoxide Detectors shall be installed outside sleeping areas.

Carbon Monoxide Detectors shall be hard-wired with battery backup.

Carbon Monoxide Detectors shall be required to be interconnected.

Homes built on and after February 20, 2004 through December 31, 2012:

Smoke Alarms shall be installed inside each bedroom, outside sleeping areas and on each level of the dwelling unit(s) (including basements) (In accordance with NFPA 72 (2002 Edition).

Smoke Alarms shall be hard-wired with battery backup.

Smoke Alarms shall be required to be interconnected.

Carbon Monoxide Detectors shall be installed outside each sleeping area and on each level of the dwelling unit including basements.

Carbon Monoxide Detectors shall be hard-wired with battery backup.

Carbon Monoxide Detectors shall be required to be interconnected.

Homes built on and after January 1, 2013:

Smoke alarms shall be installed in accordance with NFPA 72 (2010 Edition).

Carbon Monoxide Detectors shall be installed in accordance with NFPA 720 (2012 Edition).

Where the above provisions require both smoke alarms and carbon monoxide detections, combination devices shall be permitted and deemed to be acceptable.

Where smoke alarms are required, household fire alarm systems, in accordance with NFPA 72 (2010 Edition), shall be permitted.

Dana Newbrook, Chairman

Thomas B. Coffey, Esq.
Executive Director

Dated: January 15, 2012

CHAPTER 2-1
Agricultural Functions of Department of Environmental Management

Index Of Sections

SECTION 2-1-5

§ 2-1-5. Agricultural institutes - Local associations.

The director of environmental management shall hold one agricultural institute in each county annually, either independently or in connection with any society, association, or other organization devoted to the same general objects, and may hold as many more as he or she deems expedient, and, as far as may be practicable, encourage state and local associations and societies in the interests of agriculture.

History of Section.
(G.L. 1896, ch. 99, § 4; G.L. 1909, ch. 120, § 4; G.L. 1923, ch. 241, § 4; G.L. 1938, ch. 201, § 2; G.L. 1956, § 2-1-5.)

SECTION 2-1-6

§ 2-1-6. Annual report - Publications.

The director of environmental management shall report annually to the general assembly at its January session. Two thousand (2,000) copies of the report shall be printed under the direction of the department of administration. The director shall distribute one copy of the report to each member of the general assembly, one to the city or town clerk of each town in the state for the use of the city or town, one to each public library, and a proper number to the University of Rhode Island, agricultural societies, farmers' clubs and granges in the state, and shall make any exchanges with other like organizations as may be deemed expedient. The director may cause to be printed and distributed from time to time, in pamphlet form, an analysis of commercial fertilizers, and any other information that the interests of agriculture may require.

History of Section.
(G.L. 1896, ch. 99, § 7; G.L. 1909, ch. 120, § 7; G.L. 1923, ch. 241, § 7; G.L. 1938, ch. 201, § 5; impl. am. P.L. 1951, ch. 2686, § 1; impl. am. P.L. 1951, ch. 2727, art. 1, § 2; G.L. 1956, § 2-1-6.)

SECTION 2-1-8

§ 2-1-8. Promotion of Rhode Island grown farm products and Rhode Island seafood.

The director of environmental management shall establish and administer a program to promote the marketing of Rhode Island seafood and farm products grown and produced in Rhode Island for the purpose of encouraging the development of the commercial fishing and agricultural sectors in the state. The director of environmental management shall:

(1) Collect and diffuse timely information relative to the seasonal supply, demand and prevailing prices of seafood and farm products, both at wholesale and retail, the movement of seafood and farm products through commercial channels, and the quantities and conditions of seafood and farm products in dry and cold storage.

(2) Assist and advise in the organization and maintenance of producers' and consumers' cooperative selling and buying associations.

(3) Investigate the cost of distributing seafood and farm products, both at wholesale and retail, and to publish these findings that may be of practical interest to the public.

(4) Furnish advice and assistance to the public with reference to buying of seafood and farm products and other matters relative to seafood and farm products.

(5) Take those lawful measures that may be deemed advisable to prevent waste or uneconomical use of seafood and farm products.

(6) Cooperate with various state and federal agencies having to do with seafood and farm products.

(7) Conduct efforts to promote interaction and business relationships between farmers, fishermen and restaurants, grocery stores, institutional cafeterias and other potential institutional purchasers of Rhode Island seafood and Rhode Island grown farm products, including, but not limited to:

(i) Organizing state-wide or regional events promoting Rhode Island grown or harvested seafood and farm products, where farmers, fishermen, and potential institutional customers are invited to participate. The director shall use his or her best efforts to solicit cooperation and participation from the farm, corporate, retail, wholesale and grocery communities in such advertising, internet-related and event planning efforts.

(8) The director shall report annually to the general assembly having cognizance of matters relating to the environment on issues with respect to efforts undertaken pursuant to the requirements of this section. The director may adopt, in accordance with § 2-1-9, such regulations as deemed necessary to carry out the purposes of this section.

History of Section.
(G.L. 1938, ch. 241, § 34; P.L. 1928, ch. 1181, § 1; G.L. 1938, ch. 209, § 2; impl. am. P.L. 1939, ch. 660, § 160; G.L. 1956, § 2-1-8; P.L. 2012, ch. 37, § 2; P.L. 2012, ch. 38, § 2.)

SECTION 2-1-9

§ 2-1-9. Enforcement of marketing laws.

It is the duty of the director of environmental management to assist in the enforcement of the

provisions of §§ 2-1-8 - 2-1-12, chapter 6 of this title and chapters 17 and 18 of title 21, and the provisions of any rule or regulations promulgated by the director of the department of environmental management to carry out those provisions. The general assembly shall annually appropriate any sum it may deem necessary to pay the salary and expenses of the director of environmental management.

History of Section.
(G.L. 1923, ch. 241, § 36, as enacted by P.L. 1926, ch. 789, § 1; P.L. 1927, ch. 1014, § 4; P.L. 1935, ch. 2250, § 149; G.L. 1938, ch. 209, § 3; impl. am. P.L. 1939, ch. 660, § 160; G.L. 1956, § 2-1-9.)

SECTION 2-1-10

§ 2-1-10. Inspection powers.

(a) For the purpose of conducting inspections, the director of environmental management and the director of health, or any of his or her agents or deputies, have authority to enter, at any reasonable time, any building, storehouse, warehouse, cold-storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are produced, kept, stored, or offered for sale, or to enter upon any farm land for the purpose of inspecting farm products.

(b) The director of the department of environmental management, through the division of agriculture, shall continue to enforce the commercial growers of fruits and vegetables voluntary food safety program developed by the Food and Drug Administration and the United States Department of Agriculture known as Good Agricultural Practices (GAP), and shall enforce the Food Safety Modernization Act as it pertains to commercial growers of fruits and vegetables.

History of Section.
(G.L. 1923, ch. 241, § 37, as enacted by P.L. 1928, ch. 1181, § 2; G.L. 1938, ch. 209, § 4; impl. am. P.L. 1939, ch. 660, § 160; G.L. 1956, § 2-1-10; P.L. 2017, ch. 213, § 1; P.L. 2017, ch. 243, § 1.)

SECTION 2-1-11

§ 2-1-11. Administration of oaths - Subpoena of witnesses and papers.

The director of environmental management and the director of health have the power to administer oaths, summon and examine witnesses and order the production and examination of books, accounts, papers, records and documents in any proceeding within the jurisdiction of these directors. All subpoenas, and orders for the production of books, accounts, papers, records and documents shall be signed and issued by the directors and served as subpoenas in civil cases

in the superior court as now served, and witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as provided for witnesses in civil cases in the superior court. If the person subpoenaed to attend before the directors fails to obey the command of the subpoena without reasonable cause, or if a person in attendance before the directors, without reasonable cause, refuses to be sworn, or to be examined, or to answer a legal and pertinent question, or if any person refuses to produce the books, accounts, papers, records and documents material to the issue, set forth in an order duly served on the person, the directors, as the case may be, may apply to any justice of the superior court for any county, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing the person to show cause before the justice who made the order or any other justice, why the person should not be adjudged in contempt. Upon the return of the order, the justice before whom the matter is brought for a hearing shall examine under oath the person, and the person shall be given an opportunity to be heard, and if the justice determines that the person has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce books, accounts, papers, records and documents, material to the issue, which the person was ordered to bring or produce, the justice may forthwith commit the offender to jail, to remain until the person submits to do the act which the person was required to do, or is discharged according to law.

History of Section.
(G.L.1923, ch. 241, § 38, as enacted by P.L. 1928, ch. 1181, § 2; G.L. 1938, ch. 209, § 5; G.L. 1956, § 2-1-11.)

SECTION 2-1-12

§ 2-1-12 Enforcement of provisions – Prosecutions. – It is the duty of the director of environmental management and the director of health to enforce the provisions of §§ 2-1-8 – 2-1-12 and to prosecute every person, firm or corporation violating the provisions. If in the judgment of the directors any person, firm or corporation has deliberately violated the provisions of §§ 2-1-8 – 2-1-12 or of chapter 6 of this title or chapter 17 or 18 of title 21, the directors shall inform the attorney general who shall prosecute in the manner provided by law. Whenever any prosecution takes place, the director of environmental management and the director of health, or any of his or her agents or deputies, are not required to give surety for the payment of costs.

History of Section.
(G.L. 1923, ch. 241, § 39, as enacted by P.L. 1928, ch. 1181, § 2; G.L. 1938, ch. 209, § 6; G.L. 1956, § 2-1-12.)

SECTION 2-1-18

§ 2-1-18. Declaration of intent.

Whereas it is recognized that freshwater wetlands, buffers, floodplains, and other areas that may be subject to storm flows and flooding as defined in this chapter provide storage and absorption areas for flood waters which reduce flood hazards; and

Whereas all flood plains for all rivers, streams, and other water courses are certain to be overflowed with water periodically in spite of all reasonable efforts to prevent those occurrences; and

Whereas flood waters overflowing into freshwater wetlands, buffers, floodplains, and other areas that may be subject to storm flows and flooding are not only released more slowly downstream, thus reducing the damage they may cause, but flood waters may be absorbed into the ground water supply further reducing the flood hazard and recharging the vital ground water resource; and

Whereas precipitation patterns are known to be changing and Rhode Island has experienced a higher frequency of intense storm events resulting in flooding; and

Whereas freshwater wetlands and buffers are among the most valuable of all wildlife habitats and are high-value recreational areas as well, and wildlife and recreation are widely recognized as essential to the health, welfare, and general well-being of the general populace; and

Whereas it has been established through scientific study that activities conducted in lands adjacent to freshwater wetlands can exert influence on their condition, functions, and values and subsequently these lands should be protected; and

Whereas it has been established through scientific study that maintaining lands adjacent to freshwater wetlands as naturally vegetated buffers protects the functions and values of wetlands and that such buffers in and of themselves perform vital ecological functions; and

Whereas it has been established through scientific study that freshwater wetlands and buffers maintained in a natural condition can provide benefits to water quality through the filtering and uptake of water pollutants, retention of sediment, stabilizing shorelines, and other natural processes; and

Whereas freshwater wetlands, buffers, and floodplains, are increasingly threatened by random and frequently undesirable projects for drainage, excavation, filling, encroachment, or other forms of disturbance or destruction, and that a review of scientific literature indicates that aspects of existing state standards to protect these areas need to be strengthened; and

Whereas the protection of freshwater wetlands, buffers, floodplains, and other areas that may be subject to storm flows and flooding from random, unnecessary, and/r undesirable drainage, excavation, filling, encroachment, or any other form of disturbance or destruction is recognized as being in the best public interest and essential to the health, welfare, and general well-being of the general populace and essential to the protection of property and life during times of flood or other disaster affecting water levels or water supply;

Whereas the lack of uniform standards results in duplication of reviews administered by state and local governments and burdens businesses and property owners who require a predictable regulatory environment to be successful; and

Whereas it is recognized that statewide regulatory standards to protect freshwater wetlands, buffers, and floodplains are in the public interest, important to supporting economic vitality, and necessary to ensure protection is achieved in a consistent manner; and

Therefore, the provisions of the following sections are intended to preserve freshwater wetlands, buffers, and floodplains and regulate the use thereof through the establishment of jurisdictional areas and the regulation of activities consistent with this chapter.

History of Section.
(G.L. 1956, § 2-1-18; P.L. 1971, ch. 213, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-19

§ 2-1-19. Public policy on freshwater wetlands.

It is the public policy of the state to preserve the purity and integrity of the freshwater wetlands, buffers, and floodplains of this state. The health, welfare, and general well-being of the populace and the protection of life and property require that the state restrict the uses of freshwater wetlands, buffers, and floodplains and, in the exercise of the police power, regulate activities in jurisdictional areas and as otherwise provided for hereunder consistent with this chapter.

History of Section.
(G.L. 1956, § 2-1-19; P.L. 1971, ch. 213, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-20

§ 2-1-20. Definitions.

As used in this chapter;

(1) "Area subject to flooding" shall include, but not be limited to, low-lying areas that collect, hold, or meter out storm and flood waters from any of the following: rivers, streams, intermittent streams, or areas subject to storm flowage.

(2) "Area subject to storm flowage" includes drainage swales and channels that lead into, out of, pass through, or connect other freshwater wetlands or coastal wetlands, and that carry flows resulting from storm events, but may remain relatively dry at other times.

(3) "Bog" means a place where standing or slowly running water is near or at the surface during normal growing season and/r where a vegetational community has over fifty percent (50%) of the ground or water surface covered with sphagnum moss (Sphagnum) and/r where the vegetational community is made up of one or more of, but not limited to nor necessarily including all of, the following: blueberries, and cranberry (Vaccinium), leatherleaf (Chamaedaphne calyculata), pitcher plant (Sarracenia purpurea), sundews (Droseraceae), orchids (Orchidaceae), white cedar (Chamaecyparis thyoides), red maple (Acer rubrum), black spruce (Picae mariana), bog aster (Aster nemoralis), larch (Laris laricina), bogrosemary (Andromeda glaucophylla), azaleas (Rhododendron), laurels (Kalmia), sedges (Caryx), and bog cotton (Eriophorum).

(4) "Buffer" means an area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a naturally occurring vegetated area.

(5) "Department" means the department of environmental management (DEM).

(6) "Director" means the director of the department of environmental management or his or her duly authorized agent or agents.

(7) "Floodplain" means that land area adjacent to a river or stream or other body of flowing water which is, on the average, likely to be covered with flood waters resulting from a one-hundred (100) year frequency storm. A "one-hundred (100) year frequency storm" is one that is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to have a one percent (1%) probability of being equaled or exceeded in any given year.

(8) "Freshwater wetlands" includes, but is not limited to, those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support a prevalence of vegetation adapted for life in saturated soil conditions. Freshwater wetlands includes, but is not limited to: marshes, swamps, bogs, emergent, and submergent plant communities, and for the purposes of this chapter, rivers, streams, ponds, and vernal pools.

(9) "Jurisdictional area" means the following lands and waters, as defined herein except as provided for in § 2-1-22(k), that shall be subject to regulation under this chapter:

(i) Freshwater wetlands;

(ii) Buffers;

(iii) Floodplains;

(iv) Areas subject to storm flowage;

(v) Areas subject to flooding; and

(vi) Contiguous areas that extend outward:

(A) Two hundred feet (200') from the edge of a river or stream;

(B) Two hundred feet (200') from the edge of a drinking water supply reservoir; and

(C) One hundred feet (100') from the edge of all other freshwater wetlands.

(10) "Marsh" means a place wholly or partly within the state where a vegetational community exists in standing or running water during the growing season and/r is made up of one or more of, but not limited to nor necessarily including all of, the following plants or groups of plants: hydrophytic reeds (Phragmites), grasses (Cramineae), mannagrasses (Glyceria), cutgrasses (Leersia), pickerelwoods (Pontederiaceae), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typha), water plantains (Alismataceae), bur-reeds (Sparganiazceae), pondweeds (Zosteraceae), frog's bits (Hydrocharitaceae), arums (Araceae), duckweeds (Lemmaceae), water lilies (Nymphaeceae), water-milfoils (Haloragaceae), water-starworts (Callitrichaeceae), bladder-worts (Utricularia), pipeworts (Eriocaulon), sweet gale (Myrica gale), and buttonbush (Cephalanthus occidentalis).

(11) "Near or at the surface" mean within eighteen (18) inches of the surface.

(12) "Pond" means a place natural or man-made, wholly or partly within the state, where open-standing or slowly moving water is present for at least six (6) months a year.

(13) "River" means a body of water designated as a perennial stream by the United States Department of Interior geologic survey on 7.5 minute series topographic maps and that is not a pond as defined in this section.

(14) "Setback" means the minimum distance from the edge of a freshwater wetland at which an approved activity or alteration may take place.

(15) "Stream" means any flowing body of water or watercourse that flows long enough each year to develop and maintain a channel and that may carry groundwater discharge or surface runoff.

(16) "Swamp" means a place, wholly or partly within the state, where ground water is near or at the surface of the ground for a significant part of the growing season or runoff water from surface drainage collects frequently and/r where a vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all of, the following: red maple (Acer rubum), elm (Ulmus americana), black spruce (Picea mariana), white cedar (Chamaecyparis thyoides), ashes (Fraximus), poison sumac (Rhus vernix), larch (Larix laricina), spice bush (Lindera benzoin), alders (Alnus), skunk cabbage (Symplocarpus foetidus), hellebore (Veratrum viride), hemlock (Thuja canadensis), sphagnums (Sphagnum), azaleas (Rhododendron), black alder (Ilex verticillata), coast pepperbush (Clethra alnifolia), marsh marigold (Caltha palustris), blueberries (Vaccinium), buttonbush (Cephalanthus occidentalis), willow (Salicaceae), water willow (Decodon verticillatus), tupelo (Nyssa sylbatica), laurels (Kalmia), swamp white oak (Quercus biscolor), or species indicative of marsh.

(17) "Vernal pool" means a depressional wetland basin that typically goes dry in most years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both size and depth depending upon landscape position and parent materials. Vernal pools usually support one or more of the following obligate indicator species: wood frog (Lithobates sylvaticus), spotted salamander (Ambystoma maculatum), marbled salamander (Ambystoma opacum), and fairy shrimp (Eubranchipus spp.) and typically preclude sustainable populations of predatory fish.

History of Section.
(G.L. 1956, § 2-1-20; P.L. 1971, ch. 213, § 1; P.L. 1974, ch. 197, § 2; P.L. 1979, ch. 20, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-20.1

§ 2-1-20.1. Rules and regulations.

(a) The director is authorized to adopt, modify, or repeal rules and regulations that are in accord with the purposes of §§ 2-1-18 - 2-1-27 and are subject to the administrative procedures act, chapter 35 of title 42, except for those freshwater wetlands located in the vicinity of the coast as set out in chapter 23 of title 46 which shall be regulated by the coastal resources management council consistent with the provisions of chapter 23 of title 46 and §§ 2-1-18 - 2-1-20.1 and 2-1-27.

(b) The director is authorized to establish jurisdictional areas through regulation. The rules and regulations promulgated pursuant to § 2-1-20.1 shall apply within the jurisdictional areas defined in § 2-1-20 and subject to the provisions of § 2-1-22(k) and to activities as provided for in § 2-1-21.

(c) Within eighteen (18) months from enactment of this section, the department and the coastal resources management council shall promulgate standards for freshwater wetland buffers and setbacks into state rules and regulations pursuant to their respective authorities. The department and the coastal resources management council shall collaborate to develop the state standards for freshwater buffers and setbacks that will be incorporated into the programs of both agencies. State regulations designating buffers shall include a procedure that allows a municipality to petition the agency director with jurisdiction to increase the size of the buffer within the designated jurisdictional area protecting one or more freshwater wetland resources.

(d) In developing standards specified in § 2-1-20.1(c), the department and the coastal resources management council shall take into consideration agricultural and plant-based green infrastructure practices and activities, while ensuring protection of the state's natural resources. In setting criteria, the department shall take into account, at a minimum, existing land use, watershed and wetland resource characteristics, and the type of activity including acceptable best management practices. The director shall establish by appointment an advisory work group to facilitate input on the development of criteria for freshwater wetland setbacks and buffers

applicable to agricultural activities and plant-based green infrastructure. The advisory group shall include, at minimum, the following: one representative from the Rhode Island Farm Bureau, one representative of the Rhode Island nursery and landscape association, one representative of the department of environmental management agency agricultural advisory committee, an operator of a small-scale agricultural enterprise, and one professional with expertise in soil and water conservation practices.

History of Section.
(P.L. 1974, ch. 197, § 1; P.L. 1999, ch. 501, § 2; P.L. 2015, ch. 218, § 1; P.L. 2016, ch. 306, § 1; P.L. 2016, ch. 321, § 1.)

SECTION 2-1-20.2

§ 2-1-20.2. Designation of wetlands, buffers, and floodplains.

The director is authorized to determine which areas are to be known as freshwater wetlands, buffers, and floodplains, areas subject to flooding, and areas subject to storm flowage.

History of Section.
(G.L. 1956, § 2-1-20.2; P.L. 1974, ch. 197, § 1; P.L. 1983, ch. 174, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-20.3

§ 2-1-20.3. Inspection - Penalty.

(a) The director is authorized to enter, examine, or survey, at any reasonable time, any places that he or she considers necessary to carry out his or her responsibilities under §§ 2-1-18 - 2-1-24 without a warrant.

(b) Any person who willfully impedes or obstructs an inspection, examination, or survey by the director or the director's agents shall, upon conviction, be punished by a fine not exceeding one hundred dollars ($100), or by imprisonment not exceeding thirty (30) days, or both.

History of Section.
(G.L. 1956, § 2-1-20.3; P.L. 1974, ch. 197, § 1.)

Rhode Island General Laws

Title 2 – Agricultural and Forestry

Chapter 2-1 - Agricultural Functions of Department of Environmental Management

SECTION 2-1-21

§ 2-1-21. Approval of director.

(a)(1) No person, firm, industry, company, corporation, city, town, municipal or state agency, fire district, club, nonprofit agency, or other individual or group may:

(i) Excavate; drain; fill; place trash, garbage, sewage, highway runoff, drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter the character of any freshwater wetland, buffer, or floodplain as defined in § 2-1-20 without first obtaining the approval of the director of the department of environmental management; or

(ii) Undertake any activity within a jurisdictional area, as defined in § 2-1-20, that may alter the character of the freshwater wetland, buffer, or floodplain without first obtaining the approval of the director of the department of environmental management.

(2) Approval will be denied if, in the opinion of the director, granting of approval would not be in the best public interest.

(3) Appeal from a denial may be made to the superior court following the exhaustion of administrative appeals provided through the administrative adjudication division established by chapter 17.7 of title 42.

(4) In the event of any alteration by a city or town of surface water impoundments used for drinking water supply, limited to maintenance within existing boundary perimeters of the impoundment, no approval shall be required; provided that the city or town advises the director at least twenty (20) days prior to commencing the maintenance work. The city or town shall advise the director in writing, describing the location and nature of the work, anticipated times of commencement and completion, and methods to be used to reduce adverse impacts on the freshwater wetland, buffer, or floodplain. The director shall advise the city or town of any concerns with the impact of the proposed maintenance on the freshwater wetland, buffer, floodplain or water quality.

(b) Whenever a landowner is denied approval to alter a freshwater wetland by the director under subsection (a), the landowner may elect to have the state acquire the land involved by petitioning to the superior court. If the court determines that the proposed alteration would not essentially change the natural character of the land; would not be unsuited to the land in the natural state; and would not injure the rights of others, the court shall, upon determining the fair market value of the freshwater wetland, based upon its value as a freshwater wetland, direct the state, if approval was denied by the director, to pay to the landowner the fair market value of the freshwater wetland. If the state declines the acquisition, the landowner may proceed to alter the freshwater wetland as initially requested. Any amount paid by the state shall be paid from any funds in the treasury not otherwise appropriated.

History of Section.
(G.L. 1956, § 2-1-21; P.L. 1971, ch. 213, § 1; P.L. 1974, ch. 197, § 2; P.L. 1981, ch. 17, § 1; P.L. 1983, ch. 9, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-22

§ 2-1-22. Procedure for approval by director - Notice of change of ownership - Recordation of permit.

(a) Application for approval of a project to the director of environmental management shall be made in a form to be prescribed by the director and provided by the director upon request. Prior to the application, a request may be made for preliminary determination as to whether this chapter applies. A preliminary determination shall be made by the director only after an on-site review of the project and the determination shall be made within thirty (30) days of the request. This chapter shall be determined to apply if a significant alteration appears to be contemplated and an application to alter a freshwater wetland, buffer, or floodplain will be required. Within fourteen (14) days after receipt of the completed application accompanied by plans and drawings of the proposed project, the plans and drawings to be prepared by the registered professional engineer to a scale of not less than one inch (1") to one hundred feet (100'), the director shall notify all landowners whose properties are within two hundred feet (200') of the proposed project and the director will also notify the city or town council, the conservation commission, the planning board, the zoning board, and any other individuals and agencies in any city or town within the borders of which the project lies that may have reason, in the opinion of the director, to be concerned with the proposal. The director may also establish a mailing list of all interested persons and agencies who or that may wish to be notified of all applications.

(b) If the director receives any objection to the project within forty-five (45) days of the mailing of the notice of application from his or her office, the objection to be in writing and of a substantive nature, the director shall then schedule a public hearing in an appropriate place as convenient as reasonably possible to the site of the proposed project. The director shall inform by registered mail all objectors of the date, time, place, and subject of the hearing to be held. The director shall further publish notice of the time, place, date, and subject of the hearing in one local newspaper circulated in the area of the project and one statewide newspaper, the notices to appear once per week for at least two (2) consecutive weeks prior to the week during which the hearing is scheduled. The director shall establish a reasonable fee to cover the costs of the investigations, notifications and publications, and hearing and the applicant shall be liable for the fee.

(c) If no public hearing is required, or following a public hearing, the director shall make his or her decision on the application and notify the applicant by registered mail and the applicant's attorney and any other agent or representative of the applicant by mail of this decision within a period of six (6) weeks. If a public hearing was held, any persons who objected, in writing, during the forty-five (45) day period provided for objections shall be notified of the director's decision by first-class mail.

(d) In the event of a decision in favor of granting an application, the director shall issue a permit for the applicant to proceed with the project and shall require the applicant to pay a permit fee of one hundred dollars ($100). The permit may be issued upon any terms and conditions, including time for completion, that the director may require. Permits shall be valid for a period of one year from the date of issue and shall expire at the end of that time unless renewed. A permit may be renewed for up to three (3) additional one-year periods upon application by the original permit holder or a subsequent transferee of the property subject to permit, unless the original permit holder or transferee has failed to abide by the terms and conditions of the original permit or any prior renewal. The director may require new hearings if, in his or her judgment, the original intent of the permit is altered or extended by the renewal application or if the applicant has failed to abide by the terms of the original permit in any way. In addition, in the event a project authorized by a permit was not implemented by the permit holder or transferee because approval of the project by a federal agency, for which application had been timely made, had not been received or a federal agency had stopped the project from proceeding, prior to the expiration of the permit, the permit holder or transferee may apply for a renewal of the permit at any time prior to the tenth (10th) anniversary of the original issuance, and the application shall be deemed to be an insignificant alteration subject to expedited treatment. The request for renewal of a permit shall be made according to any procedures and form that the director may require.

(e) The original permittee or subsequent transferee shall notify the director, in writing, of any change of ownership that occurs while an original or renewal permit is in effect by forwarding a certified copy of the deed of transfer of the property subject to the permit to the director.

(f) A notice of permit and a notice of completion of work subject to permit shall be eligible for recordation under chapter 13 of title 34 and shall be recorded at the expense of the applicant in the land evidence records of the city or town where the property subject to permit is located and any subsequent transferee of the property shall be responsible for complying with the terms and conditions of the permit.

(g) The director shall notify the person requesting a preliminary determination and the person's attorney, agent, and other representative of his or her decision by letter, copies of which shall be sent by mail to the city or town clerk, the zoning board, the planning board, the building official, and the conservation commission in the city or town within which the project lies.

(h) The director shall report to the general assembly on or before February 1 of each calendar year on his or her compliance with the time provisions contained in this chapter.

(i) Normal farming activities shall be considered insignificant alterations and, as normal farming activities, shall be exempted from the provisions of this chapter in accordance with the following procedures:

(1) Normal farming and ranching activities are those carried out by farmers as defined in this title, including plowing, seeding, cultivating, land clearing for routine agriculture purposes, harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes, upland soil and water conservation practices, and maintenance of existing farm drainage structures, existing farm ponds and existing farm roads are permissible at the discretion of

farmers in accordance with best farm management practices which assure that the adverse effects to the flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are minimized and that any adverse effects on the aquatic environment are minimized.

(2) In the case of construction of new farm ponds, construction of new drainage structures, and construction of new farm roads, the division of agriculture shall be notified by the filing of a written application for the proposed construction by the property owner. The application shall include a description of the proposed construction and the date upon which construction is scheduled to begin, which date shall be no earlier than thirty (30) calendar days after the date of the filing of the application. The division of agriculture shall review such applications to determine that they are submitted for agricultural purposes and to ensure that adverse effects to the flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are minimized and that any adverse effects on the aquatic environment are minimized and will not result in a significant alteration to the freshwater wetlands. Pursuant to this review, the division shall notify the applicant, in writing, whether the proposal is an insignificant alteration. This notice shall be issued not later than thirty (30) days after the date that the application was filed with the division. In the event notice is given by the division as required, the application shall be conclusively presumed to be an insignificant alteration. If no notice is given as required, or if an application is approved as an insignificant alteration, the applicant may cause construction to be done in accordance with the application, and neither the applicant, nor the applicant's agents or employees who cause or perform the construction in accordance with the application, shall be liable for any criminal, civil, administrative or other fine, fee, or penalty, including restoration costs for violations alleged to arise from the construction.

(3) The division of agriculture shall, in coordination with the agricultural council's advisory committee, adopt regulations for subdivision (i)(2), and shall determine whether a proposed activity, other than an activity listed in subdivision (i)(1), constitutes a normal farming activity, or involves the best farm management practices. In making such a determination, the division of agriculture shall consider the proposed activity on a case-by-case basis, relative to the characteristics of the particular jurisdictional area in which the activity is proposed, and shall consider whether the activity incorporates best farm management practices and ensures that adverse effects to the flow and circulation patterns and chemical and biological characteristics of freshwater wetlands, buffers, and floodplains are minimized and that any adverse effects on the aquatic environment are minimized in each instance.

(4) Except as otherwise provided for farm road construction, filling of freshwater wetlands conforms to the provisions of this chapter.

(j) For the purposes of this section, a "farmer" is an individual, partnership, or corporation who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the Internal Revenue Service, has a state farm tax number, and has earned ten thousand dollars ($10,000) gross income on farm products in each of the preceding four (4) years.

(k) For the purposes of this section as applicable to normal farming and ranching activities specified in §§ 2-1-22(i)(1) and (i)(2) above, freshwater wetlands shall be defined as: freshwater wetlands, floodplains, areas subject to storm flowage, areas subject to flooding as defined in § 2-

1-20 and the land area within two hundred feet (200') of a flowing body of water having a width of ten feet (10') or more during normal flow; the area of land within one hundred feet (100') of a flowing body of water having a width of less than ten feet (10') during normal flow; and the area of land within fifty feet (50') of a bog, marsh of one acre or greater, swamp of three (3) acres or greater and pond not less than one quarter ($^{1}/_{4}$) acre in extent. These areas shall also serve as the jurisdictional area.

History of Section.
(G.L. 1956, § 2-1-22; P.L. 1971, ch. 213, § 1; P.L. 1974, ch. 197, § 2; P.L. 1977, ch. 116, § 1; P.L. 1979, ch. 20, § 1; P.L. 1980, ch. 216, § 1; P.L. 1981, ch. 390, § 1; P.L. 1982, ch. 124, § 1; P.L. 1988, ch. 415, § 1; P.L. 1996, ch. 428, § 1; P.L. 2004, ch. 595, art. 33, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-23

§ 2-1-23. Violations.

In the event of a violation of § 2-1-21, the director of environmental management has the power to order complete restoration of the freshwater wetland, buffer, floodplain, or other jurisdictional area involved by the person or agent responsible for the violation. If the responsible person or agent does not complete the restoration within a reasonable time following the order of the director of the department of environmental management, the director has the authority to order the work done by an agent of the director's choosing and the person or agent responsible for the original violation is liable for the cost of the restoration. The violator is liable for a fine not exceeding five thousand dollars ($5,000) for each violation, except that if the violator knowingly or recklessly alters a freshwater wetland, buffer, floodplain or other jurisdictional area without a permit or approval from the director; knowingly or recklessly alters a freshwater wetland, buffer, floodplain or other jurisdictional area in violation of the rules or regulations promulgated by the director; or alters a freshwater wetland, buffer, floodplain or other jurisdictional area in violation of a permit issued by the director, then the violator is liable for a fine not exceeding ten thousand dollars ($10,000) for each violation.

History of Section.
(G.L. 1956, § 2-1-23; P.L. 1974, ch. 197, § 2; P.L. 2004, ch. 429, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-24

§ 2-1-24. Notice to cease operation and relief in equity - Penalty.

(a) Whenever any person, firm, industry, company, corporation, city, town, municipal or state agency, fire, district, club, or other individual or group commences any activity set forth in § 2-1-

21 without first having obtained the approval of the director, or violates any rule or regulation of the director, the director has the power by written notice to order the violator to cease and desist immediately and/r restore the freshwater wetlands, buffers, floodplains, or other jurisdictional areas to their original state insofar as possible. Any order or notice to restore freshwater wetlands, buffers, floodplains, or other jurisdictional areas is eligible for recordation under chapter 13 of title 34 and shall be recorded in the land evidence records in the city or town where the property subject to the notice is located and any subsequent transferee of the property is responsible for complying with the requirements of the order or notice. If the violator and/r subsequent transferee is ordered to restore the freshwater wetlands, buffer, floodplain, or other jurisdictional area to the original state, and the violator and/r subsequent transferee does not complete the restoration within a reasonable time following the order of the director, the director has the authority to order the work done by an agent of the director's choosing, and the person, agent, or subsequent transferee is liable for the cost of the restoration. If the violator and/r subsequent transferee does not conform to the director's order, the director may bring prosecution by complaint and warrant and the prosecution shall be made in the district court of the state. The director, without being required to enter into any recognizance or to give surety for cost, may institute the proceedings in the name of the state. It is the duty of the attorney general to conduct the prosecution of all proceedings brought by the director.

(b) The director may obtain relief in equity or by prerogative writ whenever relief is necessary for the proper performance of duties under §§ 2-1-18 - 2-1-27.

(c) Any person who violates an order of the director shall be punished by a fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding thirty (30) days, or by both, and every person is deemed guilty of a separate and distinct offense for each day during which the violation is repeated or continued.

(d) [Deleted by P.L. 2015, ch. 218, § 1].

History of Section.
(P.L. 1971, ch. 213, § 1; P.L. 1974, ch. 197, § 2; P.L. 1976, ch. 89, § 1; P.L. 1977, ch. 116, § 1; P.L. 1980, ch. 406, § 10; P.L. 1988, ch. 231, § 1; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-25

§ 2-1-25. Severability.

If any provision of §§ 2-1-20 - 2-1-28, or of any rule, regulation, or determination made under these sections, or the application of these sections to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of §§ 2-1-20 - 2-1-28, or the rule, regulation, or determination, and the application of those provisions to other persons, agencies, or circumstances, shall not be affected. The invalidity of any section or sections or parts of any section or sections of §§ 2-1-20 - 2-1-28 shall not affect the validity of the remainder of §§ 2-1-

20 - 2-1-28.

History of Section.
(G.L. 1956, § 2-1-25; P.L. 1974, ch. 197, § 5; P.L. 2015, ch. 218, § 1.)

SECTION 2-1-27

§ 2-1-27. Access to information on freshwater wetland applications.

The directors of the department and the coastal resources management council shall establish procedures that will provide municipalities and the public with access to information concerning freshwater wetland permit applications filed with the state. Procedures shall be designed to facilitate municipal input during the permit application review process and shall, to the extent feasible, utilize information technology to automate making information available in a timely manner. Procedures to facilitate local input shall be established and implemented in a manner that avoids introducing delay in issuance of permit decisions.

History of Section.
(P.L. 2015, ch. 218, § 2.)

SECTION 2-1-28

§ 2-1-28. Effect on zoning ordinances.

Local zoning ordinances and regulations that are inconsistent with this chapter shall be amended to conform to the requirements of § 45-24-30.

History of Section.
(P.L. 2015, ch. 218, § 2.)

CHAPTER 23-19.15
The Rhode Island Cesspool Act of 2007

Index Of Sections

The Rhode Island Cesspool Act of 2007

TITLE 23 Health and Safety

CHAPTER 23-19.15

SECTION 23-19.15-1

§ 23-19.15-1. Short title.

This chapter shall be known and may be cited as the "Rhode Island Cesspool Act of 2007."

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1.)

SECTION 23-19.15-2

§ 23-19.15-2. Legislative findings.

The general assembly hereby recognizes and declares that:

(1) There exists a need to abate pollution and threats to public health caused by cesspools.

(2) It is estimated that there are more than twenty-five thousand (25,000) cesspools within the state as of 2013.

(3) Cesspools are a substandard and inadequate means of sewage disposal.

(4) Cesspools contribute directly to groundwater and surface water contamination and environmental impacts will be exacerbated by increased precipitation, storm frequency, and sea level rise.

(5) Wastewater disposed from cesspools contains bacteria, viruses, ammonium, and other pollutants, and may also include phosphates, chlorides, grease, and chemicals used to clean cesspools.

(6) Wastewater disposed from cesspools violates drinking water health standards for certain contaminants.

(7) Wastewater disposed from cesspools can pose significant health threats to people who come into contact with, or consume, contaminated surface waters or groundwaters.

(8) Appropriate treatment of sewage disposed into the ground is essential to the protection of public health and the environment, particularly in relation to Narragansett Bay and the rest of the state's coastal region, and public drinking water resources.

(9) Replacement of cesspools with onsite wastewater treatment systems (OWTS) technology reduces risks to public health and the environment.

(10) In sewered areas, sewer tie-ins offer a readily available, environmentally preferable means of mitigating problems and threats caused by cesspools.

(11) A fund exists to assist homeowners with the costs of removing cesspools and inadequate septic systems and replacing them with an approved OWTS if the community in which the homeowner resides has created a wastewater management district in accordance with chapter 24.5 of title 45.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-3

§ 23-19.15-3. Declaration of purpose.

The purpose of this chapter is to phase out use of cesspools beginning with those located in close proximity to tidal water areas and public drinking water supplies. Additionally, this chapter provides for the connection of properties served by cesspools to available sewer lines and requires the identification and replacement of cesspools on all properties throughout the state that are subject to sale or transfer.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-4

§ 23-19.15-4. Definitions.

For the purposes of this chapter the following terms shall mean:

(1) "Cesspool" means any buried chamber other than an onsite wastewater treatment system (OWTS), including, but not limited to, any metal tank, perforated concrete vault, or covered hollow or excavation, that receives discharges of sanitary sewage from a building for the purpose of collecting solids and discharging liquids to the surrounding soil.

(2) "Department" means the department of environmental management as established in chapter 17.1 of title 42.

(3) "Director" means the director of the department of environmental management or his or her designee.

(4) "Failed cesspool" means a cesspool where one or more of the following conditions exist: (i) The cesspool fails to accept or dispose of sewage, as evidenced by sewage at the ground surface above or adjacent to the cesspool, or in the building served; (ii) The liquid depth in a cesspool is less than six (6) inches from the inlet pipe invert; (iii) Pumping is required more than two (2) times a year; (iv) The cesspool is shown to have contaminated a drinking water well or watercourse; or (v) There is shown to be direct contact between the bottom of the cesspool and the groundwater table.

(5) "Onsite wastewater treatment system" or "OWTS" means any system of piping, tanks, disposal areas, alternative toilets, or other facilities designed to function as a unit to convey, store, treat, and/or dispose of sanitary sewage, by means other than discharge into a public sewer system. A cesspool is not an OWTS.

(6) "System inspector" means a person who is registered as an inspector and capable of properly assessing the condition of an OWTS.

(7) "Transfer" means a transfer of real property except between the following relationships:

(i) Between current spouses;

(ii) Between parents and their children;

(iii) Between full siblings; or

(iv) Where the grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor.

(8) "Wastewater" means human or animal excremental liquid or substance, putrescible animal or vegetable garbage or filth, including, but not limited to, waste discharged from toilets, bath tubs, showers, laundry tubs, washing machines, sinks, and dishwashers.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-5

§ 23-19.15-5. Inspection requirements for cesspools located in close proximity to tidal waters and public drinking supplies.

(a) Unless exempted under subsection 23-19.15-8(a), the owner of property served by a cesspool

in the following areas shall cause an inspection to be performed on said cesspool by a system inspector in accordance with a schedule established by the department, but no later than January 1, 2012:

(1) Which cesspool is within two hundred feet (200') of the inland edge of a shoreline feature bordering a tidal water area [corresponding to the jurisdiction of the RI coastal resources management council];

(2) Which cesspool is within two hundred feet (200') of a public drinking water well; and

(3) Which cesspool is within two hundred feet (200') of a surface drinking water supply, specifically the impoundment from which water is drawn via the intake.

The inspection shall be conducted by a system inspector as defined herein and reported in accordance with procedures required by the department, and the results shall be recorded on forms prescribed by the department.

(b) Pursuant to § 5-20.8-13, every contract for the purchase and sale of real estate that is, or may be, served by a private cesspool shall provide that potential purchasers be permitted a ten-day (10) period, unless the parties mutually agree upon a different period of time, to conduct an inspection of the property's on-site sewage system in accordance with procedures required by the department in subsection (a) of this section before becoming obligated under the contract to purchase.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2008, ch. 475, § 61; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-6

§ 23-19.15-6. Cesspool removal and replacement.

(a) Any cesspool located in close proximity to tidal water areas and public drinking water supplies and required to be abandoned pursuant to this chapter shall be replaced with an approved OWTS, or the building served by the cesspool shall be connected to a public sewer, prior to the applicable deadlines contained in subsection (b) of this section.

(b) Cesspools found to be located within the areas identified in § 23-19.15-5(a) shall cease to be used for sewage disposal and shall be properly abandoned in accordance with the following schedule:

(1) Tier 1. Any cesspool deemed by the department or a system inspector to be failed in accordance with this chapter shall be properly abandoned within one year of discovery unless an immediate public health hazard is identified, in which case the director may require a shorter period of time.

(2) Tier 2. Any cesspool located on a property that has a sewer stub enabling connection to a public sewer shall be properly abandoned, and the building served by the cesspool shall be connected into the sewer system of such premises with such sewer and fill up and destroy any cesspool, privy vault, drain, or other arrangement on such land for the reception of sewage, excluding any Rhode Island department of environmental management OWTS-approved system, prior to January 1, 2014.

(3) Tier 3. Any cesspool within two hundred feet (200') of a public drinking water well, or within two hundred feet (200') of the inland edge of a shoreline feature bordering a tidal water area [corresponding to the jurisdiction of the RI Coastal Resources Management Council], or within two hundred feet (200) of a surface drinking water supply [specifically, the impoundment from which water is drawn via the intake], shall be properly abandoned by January 1, 2014.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2011, ch. 285, § 1; P.L. 2011, ch. 380, § 1; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-7

§ 23-19.15-7. Waiver.

The director may grant a waiver, to the extent necessary, from applicable provisions listed in § 23-19.15-6(b) provided the homeowner demonstrates undue hardship, defined as having an annual income of less than or equal to eighty percent (80%) of the appropriate household size area median income determined by the federal Housing and Urban Development standards for the community within which the cesspool is located, and the cesspool is not a failed system as defined herein. No waiver shall exceed five (5) years from the dates specified in § 23-19.15-6(b). Any waiver granted shall expire upon transfer or sale of the land or easement upon which the cesspool is located.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2011, ch. 285, § 1; P.L. 2011, ch. 380, § 1; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-8

§ 23-19.15-8. Exemption.

(a) The provisions of §§ 23-19.15-5, 23-19.15-6(a) and 23-19.15-12(a) shall not apply to any cesspool located in an area of a community covered by municipal, on-site wastewater management ordinance that requires the risk-based phase out of cesspools on an alternative schedule that meets the purposes of this act.

(b) The provisions of §§ 23-19.15-6(b)(2) and 23-19.15-12 shall not apply to any cesspool located on a property that is properly designated to be sewered no later than six (6) years after the applicable deadlines provided in § 23-19.15-6(b)(3) provided: (1) The sewering project is identified in the city, town, or sewer district's wastewater facilities plan as approved by DEM prior to January 1, 2013; (2) The municipality, acting through its city or town council, states in writing to the director of the department of environmental management by January 1, 2013, that the municipality will complete construction of the sewering project on or before January 1, 2020; and (3) The property owner certifies, in writing, that the dwelling/building will be connected to the sewer system within six (6) months of receipt of the notification to connect to the sewer system and that no increase in the design sewage flow or number of bedrooms in the building will occur until the connection is made.

(c) In addition to subdivision (b)(2) of this section, the municipality must demonstrate by December 31, 2014, that it has bond authorization or some other dedicated financial surety for expansion of sewers to the area of the building served by the cesspool. If the municipality fails to demonstrate such surety, this exemption shall terminate and the cesspool shall be replaced by June 30, 2015.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2008, ch. 475, § 61; P.L. 2011, ch. 285, § 1; P.L. 2011, ch. 380, § 1; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-9

§ 23-19.15-9. Notice to remove and replace cesspools.

(a) The owner of any cesspool who or that has not complied with the requirements pursuant to this chapter shall be in violation of this chapter and subject to enforcement action by the department in accordance with chapters 17.1 and 17.6 of title 42 of the general laws.

(b) Notwithstanding the above provisions, the director may require the abandonment and replacement of any cesspool with an approved OWTS prior to the dates specified in § 23-19.15-6(b) if the cesspool is a large capacity cesspool as defined pursuant to applicable federal regulations governing underground injection control (UIC) facilities.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1; P.L. 2008, ch. 475, § 61; P.L. 2015, ch. 163, § 1; P.L. 2015, ch. 185, § 1.)

SECTION 23-19.15-10

§ 23-19.15-10. Regulations.

The department shall promulgate rules and regulations as may be necessary to implement and carry out the provisions of this chapter.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1.)

SECTION 23-19.15-11

§ 23-19.15-11. Severability and construction.

The provisions of this chapter shall be severable, and if any court declares any phrase, clause, sentence, or provision of this chapter to be invalid, or its applicability to any government, agency, person, or circumstance is declared invalid, the remainder of the chapter and its relevant applicability shall not be affected. The provisions of this chapter shall be liberally construed to give effect to the purposes thereof.

History of Section.
(P.L. 2007, ch. 136, § 1; P.L. 2007, ch. 233, § 1.)

SECTION 23-19.15-12

§ 23-19.15-12. Cesspool removal and replacement requirements at property transfer.

(a) Any cesspool found to be serving a building or use subject to sale or transfer shall be removed and replaced with an OWTS or the building served by the cesspool shall be connected to a public sewer system within twelve (12) months of the date of sale or transfer.

(b) Should the manner of wastewater disposal be unknown, an inspection shall be conducted to determine if a cesspool is present on the property. This inspection shall be done by a system inspector prior to the time of sale or transfer.

(c) Pursuant to § 5-20.8-13, every contract for the purchase and sale of real estate that is or may be served by a private cesspool shall provide that potential purchasers be permitted a ten-day (10) period, unless the parties mutually agree upon a different period of time, to conduct an inspection of the property's onsite sewage system in accordance with procedures required by the department in § 23-19.15-5(a), before becoming obligated under the contract to purchase.

History of Section.
(P.L. 2015, ch. 163, § 2; P.L. 2015, ch. 185, § 2.)

State of Rhode Island - Division of Taxation
Sale of Real Property by Nonresidents
Regulation NRW 91-01

Withholding on Sale of Real Property by Nonresidents

I. GENERAL

A. Effective January 1, 1992, when Rhode Island realty and associated tangible personal property is sold by a nonresident, the buyer must deduct and withhold six percent (6%) of the total amount paid or gain to the seller if the seller is a nonresident individual, estate, partnership or trust and nine percent (9%) of the total amount paid or gain if the seller is a nonresident corporation. The buyer then must pay the amount withheld to the Division of Taxation within three (3) banking days after the date of the recording of the instrument of transfer or within thirty (30) days after date of closing whichever is earlier.

B. Every buyer subject to these provisions is liable for the amount withheld or required to be withheld and the amount shall, until paid, constitute a lien on the property. Said lien shall be subordinate to any mortgage of any lender other than the seller granted in connection with the purchase of the property. Filing and paying the amount of withholding due will automatically discharge the lien under R.I.G.L. 44-30-71.3.

II. DEFINITIONS

A. Nonresident corporation for purposes of this regulation, means a corporation that is neither incorporated in this state nor authorized by the Secretary of State, Board of Bank Incorporation or Insurance Division of the Department of Business Regulation to do business in this state.

B. Nonresident individual means an individual who does not meet the definition of "resident individual" under R.I.G.L. 44-30-5. That section defines "resident individual" as one who is domiciled in this state or as one who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three (183) days of the taxable year, unless the individual is in the Armed Forces of the United States.

If up to and including the closing date of sale an individual is a resident of this state but intends to move to another state immediately after the closing, that individual shall be deemed a resident individual for purposes of 44-30-71.3 only.

C. Nonresident partnership means a partnership which has as any one of its partners, a nonresident individual, estate, trust or corporation.

D. Nonresident estate or trust shall be determined in accordance with the provisions of Title 44, Chapter 30, Section 5.

E. Total amount paid means the net proceeds of the sale actually paid to the nonresident seller including the fair market value of any property transferred to the seller.

F. Net proceeds means the amount actually paid to the seller at the closing, i.e., the total sales price less mortgages and liens and selling expenses such as real estate commissions, attorney's fees, real estate conveyance tax stamps and termite, heating, radon or other inspection fees required of the seller. Only mortgages and liens on the property being sold may be deducted from the sales price.

G. Gain means, in general, the excess of sales price over the seller's cost or other basis as determined in accordance with the Internal Revenue Code sections and applicable Rhode Island tax law and pertaining to the seller and to the seller's tax year in which the sale occurs.

H. Gain method means that special method by which withholding is made for a nonresident seller when the nonresident seller has not only filed an election with the Division of Taxation (RI 71.3 Election form) to have withholding based on gain but also has received a Certificate of Withholding Due (RI 71.3 Certificate) from the Division of Taxation for presentation at the closing. Refer to Compliance provisions below.

I. Tax-exempt organizations. The seller is considered a tax exempt organization if exempt from taxation by Rhode Island charter or by specific authorization as a tax-exempt organization under Internal Revenue Code section 501(c). Nonresident organizations holding IRC 501(c) status but which have unrelated business income tax due for this transaction, are subject to the provisions of R.I.G.L. 44-30-71.3.

III. COMPLIANCE

A. Residency affidavit: The buyer may rely on the seller's determination of residency only if the seller furnishes the buyer with a notarized seller's residency affidavit under penalties of perjury. A recitation of the seller's residency may be contained on the deed. If a deed contains a recitation of residency by the seller, the recording of such deed shall in all instances discharge the lien imposed by subsection 44-30-71.3(c).

If a buyer has actual knowledge that a seller's residency affidavit is false and the buyer fails to withhold the prescribed amount, the buyer is liable for an amount equal to the amount which should have been withheld, together with penalty and interest and a lien shall arise upon the recording of a notice of lien by the Division of Taxation. Provided, however, notice of lien may only be filed if title to said property remains in the name of the buyer.

If, upon examination of title during a subsequent sale of the property, a recital of residency is not found in the deed and the affidavit of residency cannot be obtained from the prior seller, the prospective buyer or examining attorney may petition the tax administrator for a discharge of the lien based upon other indicia of residency or no tax due.

B. Nonresident corporation: If the seller is a nonresident corporation, the buyer is deemed to be in compliance with remittance requirements if the seller provides the buyer with a letter of good standing issued by the tax administrator for the purposes of the sale. If a letter of good standing was provided the buyer should complete the remittance form, indicate the appropriate information on the form and return the form to the Division of Taxation even though no tax is withheld.

C. Partnerships: In the case of a partnership-seller, the buyer may rely on each seller-partner's determination of residency only if each seller-partner furnishes the buyer with a notarized seller's residency affidavit under penalties of perjury. For each nonresident partner, the buyer must withhold and remit for each such partner based on the partner's share. it is assumed that the partners share equally unless otherwise specifically provided. The nonresident partnership-seller must furnish the buyer with the names, addresses and social security or Federal employer identification numbers for each nonresident partner. In the event that all the partners are residents, a single seller's residency affidavit may be filed using the special area provided on that form.

D. Compliance using "gain" method: The buyer must withhold for the nonresident seller using the net proceeds unless, at the closing, the seller provides a Certificate of Withholding Due (RI 71.3 Certificate) at the closing. This certificate allows the buyer to withhold based on the nonresident seller's election of the gain method.

In order to use the gain method, the nonresident seller must first make the election by completing RI Form 71.3 Election and submit the completed form to the Division of Taxation for review at least twenty (20) days prior to the closing date. An approved Certificate of Withholding Due shall be sent to the seller or designee.

Election of gain method is binding upon seller. Failure to make the election at least twenty (20) days prior to the closing will result in withholding based on net proceeds.
In the event of multiple sellers, all sellers must agree and elect the gain method or the net proceeds will be used for remittance.

Election of gain method allows the seller to recognize all the gain in the year of the sale or to allow the seller to recognize the gain on the installment method. Recognition of gain under either method may only be elected by the seller if, for the same transaction and tax year, the seller will be recognizing the gain by the same method for Federal tax purposes.

E. Remittance limited to net proceeds: If the withholding due under the gain method approved by the Division of Taxation on the Certificate of Withholding Due is more than the net proceeds payable to the seller, the buyer need only remit the net proceeds to the Division of Taxation.

F. Information to be submitted for installment sales method of gain election: If the seller elects the installment sale method for 44-71.3 withholding, the installment sale method must also be the method used by the seller for gain recognition for Federal tax purposes. The information which must be supplied as part of the form RI 71-3 Election for the installment sales method must be supplied under penalties of perjury by the seller, the seller's certified public accountant, licensed public accountant or attorney and must include the following:

1. Name, address and number (FEI # or SS#) of each seller; and
2. Description of the property involved (including street address, city/town and plat and lot numbers); and
3. Calculation of gain for the property including the gross sales price of the real estate and related personal property, expenses of sale, the net sales price, the seller's cost or other basis and the resultant gain; and
4. A statement that the seller will be recognizing the gain from the sale of the stated property on the installment method for Federal tax purposes; and
5. An amortization schedule for the term of the installment sale itemizing the amount and timing of each installment payment (monthly, quarterly, etc.), the interest rate (if financed), the term of the installment sale, and the amount of each payment which represents interest (if any), return of basis and gain; and
6. A calculation of the amount of gain which will not be recognized by the seller for the year of the sale to be entered on Line 6 of the RI 71.3 Election form.

Withholding using the installment method must be calculated to include the gain portions of all installments payments to be received for the year of the sale as well as the gain portion of the payment received at the closing.

By election of the installment method the seller agrees to make such estimated payments and to file all appropriate Rhode Island tax returns for years following the year of sale during which any installment payments from this transaction are received.

G. Compliance for special cases: In the event that the sale of the property by a nonresident will not be subject to tax under Sections 121 (One-Time Exclusion - Over 55 Principal Residents); 721 (Tax Free Exchanges - Partnership Interest); 1031 (Like Kind Exchanges); 1033 (Involuntary Conversions), or 1034 (Rollover of Gain on Sale of Principal Residence) of the Internal Revenue Code, the nonresident seller must make the gain election and file the RI Form 71.3 Election even though no withholding need be made. If the seller later fails to comply with the above sections of the Internal Revenue Code, the seller acknowledges obligation to file an original or amended Rhode Island tax return for the year of the sale.

H. Zero withholding: A nonresident real estate withholding remittance form (RI 71.3 Remittance) must be completed for the nonresident and sent to the Division even though the results of the withholding calculation are that no withholding is to be made for the nonresident seller.

IV. MULTIPLE SELLERS

A. No matter how the sellers hold their interests in the property, if there is more than one name on the deed, there are multiple sellers. Thus, forms of ownership such as tenancy by the entirety; tenancy in common and joint tenancy all indicate multiple sellers.

B. The buyer must either obtain seller's residency affidavits from each of the multiple sellers, or for each nonresident seller, withhold and remit for each nonresident seller separately. If sellers are married and will file a joint RI income tax return, they should so indicate on form RI 71.3 Remittance and RI 71.3 Election.

C. Unless otherwise provided, it is assumed that each of the multiple sellers share equally in the net proceeds for the purposes of calculating amounts to be withheld.

D. A partnership must comply and either obtain seller's residency affidavits from each partner or, for each nonresident partner, withhold and remit for such nonresident partner based on the partner's share. It is assumed that the partners share equally unless otherwise specifically provided.

V. COMPUTATION

A. General: In accordance with the above, the buyer must deduct and withhold six percent (6%) of the net proceeds or gain to the seller if the seller is a nonresident individual, estate, partnership or trust and nine percent (9%) of the net proceeds or gain if the seller is a nonresident corporation. If there are multiple sellers, the buyer must compute and withhold for each seller separately.

EXAMPLES:

1. Net Proceeds Method: (a) Joseph Smith and Andrew David (both nonresidents) are selling a summer house in Rhode Island for $175,000, the proceeds to be shared equally, and they have not elected withholding based on gain. At the closing, cash at settlement to the nonresident sellers is $170,000 and the buyer withholds six percent (6%) or $10,200. The buyer then remits to the Division of Taxation using form RI-71.3 Remittance. Since there are multiple sellers, the buyer attaches a schedule listing both nonresidents' names, addresses and social security numbers so that the nonresidents may take proper credit for the amounts withheld when they file their Rhode Island personal income tax returns for the year of the sale.

(b) In the example above, if Joseph was a resident and gave a residency affidavit to the buyer at the closing, the buyer would only withhold and remit $5,100 to the Division of Taxation calculated as 1/2 x $170,000 or $85,000 @6% = $5,100.

2. Gain Method: Martha Martinez (a nonresident) is selling property in Rhode Island and, 20 days before the closing, elects the gain method of withholding by computing the RI 71.3 Election form and sending it to the Division of Taxation. The form, when reviewed by the Division of Taxation lists the following:

Sales Price	$ 200,000
Less Expenses of Sale	21,000
Net Sales Price	$ 179,000
Less Cost/Basis	71,000
GAIN	$ 108,000

Since all of the gain is being taxed in the year of the sale for Federal purposes, the withholding indicated was 6% x $108,000 = $6,480. The Division reviewed the Election, indicated the $6,480 as the amount to be withheld on the RI 71.3 Certificate and returned the certificate to Martha. At the closing, the certificate was presented, $6,480 was withheld and remitted by the buyer using the form RI 71.3 Remittance. The the original copy of the approved certificate of withholding due (RI 71.3 certificate) should be attached to the form RI 71.3 Remittance when filed.

(b) If the property Martha was selling was her residence and if she otherwise qualified and intends to treat the sale under Section 121 of the Internal Revenue Code (one Time Exclusion Over 55 Principal Residence), she would still have to file the election form 20 days before the closing but would complete the election form and use the special types of transactions area on the back. The Division would review the election and, when approved, would send a certificate of withholding due (RI 71.3 certificate) indicating $0 to be withheld at the closing.

3. Installment sales method: (a) High Ridge Properties is a nonresident partnership selling property in Rhode Island. More than twenty (20) days prior to the closing the partnership elects to have the withholding based on gain by completing the RI 71.3 Election form. Additionally, the partnership will be treating the gain from the sale on the installment method for Federal purposes and, therefore, the partnership prepared and furnished a complete installment sale schedule with the Election form. The installment sale schedule showed total gain of $42,000 that 12% of each principal payment in Rhode Island received from the buyer was the gain to be recognized that High Ridge expects to receive $20,000 at the closing and that two (2) payments are to be received in the year of sale. In these two (2) payments, the principal portions total $1,000. The installment sale schedule's calculation then indicated the amount of gain to be recognized in the year of sale to be:

Gain Percentage = 12%
Principal Payment Received during year of sale = $21,000
Gain to be recognized during year of sale = $21,000 x 12%=$2,520 The amount of nonrecognized gain to be entered on Line 6 = $42,000 - $2,520 = $39,480
Thus, the amount to be withheld is 6% x $2,520 = $151.20

High Ridge also sends a calculation of how much withholding is to be made for each nonresident partner. After review, the Division of Taxation returns an approved certificate of withholding due (RI 71.3 Certificate) to the seller for use at the closing. The buyer uses the certificate to

complete the remittance form (RI 71.3 Remittance) and sends the remittance, the approved original of the Certificate of Withholding Due, the check and, since High Ridge is a partnership, a list of High Ridge's nonresident partners' names, addresses, social security or Federal employer identification numbers and withholding so that the partners may take appropriate credit when they file their Rhode Island tax returns.

(b) If all the partners of High Ridge did not agree to the election of the gain method, the net proceeds method would be used.

(c) If the amount to be withheld under the gain/installment sale method is more than the cash settlement at the closing, the remittance is limited to the cash settlement at the closing.

VI. PAYMENT

1. The buyer must remit amounts withheld from the seller or sellers within three (3) banking days after the recording of the instrument of transfer or within thirty (30) days after date of closing whichever is earlier.

2. The buyer must remit to the Rhode Island Division of Taxation using the RI 71.3 Remittance form.

3. In the event of nonpayment or late payment, interest will be computed in accordance with R.I.G.L. 44-1-7 and added to the amount due.

4. Filing and paying the amount of withholding due will automatically discharge the lien under 44-30-71.3. For an acknowledgement of the lien discharge, the buyer should complete the reverse side of the remittance form and provide a pre-addressed envelope. The Division of Taxation will acknowledge the lien discharge and send it to the buyer or designee.

VII. LIABILITY

1. Every buyer subject to withholding is liable for the amounts withheld or required to be withheld. If there is more than one buyer's name on the deed, the buyers are jointly and severally liable for compliance and remittance.

2. If a seller gives the buyer a fraudulent residency affidavit taken in good faith by the buyer the seller remains liable for any tax due resulting from the sale of the property.

3. The closing attorney, lending institution, and real estate agent/broker in a transaction governed by 44-30-71.3 and these regulations is not subject to the withholding and payment provisions.

VIII. DOCUMENT SUBMISSION AND RETENTION

1. Seller's residency affidavit: The buyer should retain the original affidavit with the other records pertaining to the closing and must produce it for the Division of Taxation, if requested. One copy of the affidavit should be given to the seller. The buyer should not send the affidavit to the Division of Taxation. If there are multiple sellers, there should be one affidavit and copies for each nonresident seller.

2. Election to have withholding based on gain: The seller makes this election by completing one RI Form 71-3 Election and submitting the completed form (and any attachments) to the Division of Taxation at least twenty (20) days prior to the closing date. The seller should retain a copy of the election for matching with Certificate of Withholding Due which will be returned by the Division of Taxation.

3. Installment sale schedule: The information which must be supplied as part of the form RI 71.3 Election for the installment sale method must be supplied under penalties of perjury by the

seller, the seller's certified public accountant, licensed public accountant or attorney and must include all the information contained in paragraph III, F.

4. Certificate of withholding due: The Division of Taxation shall review the election (Form RI 71.3 Election) and send the approved Certificate of Withholding Due (Form RI 71.3 Certificate) to the seller or designee. The seller must present the certificate to the buyer at the closing and the buyer, using the certificate, completes the remittance form and attaches the original certificate for submission to the Division of Taxation. The buyer and seller should each retain one copy of the certificate with the documents of the sale.

5. Real estate withholding remittance: The buyer should retain one copy of the remittance form with the other records pertaining to the closing, one copy of the remittance form should be given to the seller and the original is sent to the Rhode Island Division of Taxation with the payment indicated. If the remittance is being made for multiple nonresident sellers, a schedule must be attached giving the names, addresses, Federal employer identification numbers (FEI #) or social security numbers (SS#) and the amount being withheld attributable to each nonresident seller. Copies of the remittance form and supplemental schedule should be provided for each nonresident seller in order that appropriate credit can be taken on the nonresident seller's tax return.

R. GARY CLARK
TAX ADMINISTRATOR

EFFECTIVE DATE: January 1, 1992

FORMS: RI 71.3 Resident Affidavit; RI 71.3 Election; RI 71.3 Certificate; RI 71.3 Remittance; and RI 71.3 Acknowledgement

http://www.tax.ri.gov/regulations/other/nrw91-01.php

CHAPTER 34-36.1
Condominium Law

Index Of Sections

- **§ 34-36.1-3.06. Bylaws.**
- **§ 34-36.1-3.07. Upkeep of condominium.**
- **§ 34-36.1-3.08. Meetings.**
- **§ 34-36.1-3.09. Quorums.**
- **§ 34-36.1-3.10. Voting – Proxies.**
- **§ 34-36.1-3.11. Tort and contract liability.**
- **§ 34-36.1-3.12. Conveyance or encumbrance of common elements.**
- **§ 34-36.1-3.13. Insurance.**
- **§ 34-36.1-3.14. Surplus funds.**
- **§ 34-36.1-3.15. Assessments for common expenses.**
- **§ 34-36.1-3.16. Lien for assessments.**
- **§ 34-36.1-3.17. Other liens affecting the condominium.**
- **§ 34-36.1-3.18. Association records.**
- **§ 34-36.1-3.19. Association as trustee.**
- **§ 34-36.1-3.20. Enforcement of declaration, by-laws and rules.**
- **§ 34-36.1-3.21. Foreclosure of condominium lien.**
- **§ 34-36.1-4.01. Applicability – Waiver.**
- **§ 34-36.1-4.02. Liability for public offering statement requirements.**
- **§ 34-36.1-4.03. Public offering statement – General provisions.**
- **§ 34-36.1-4.04. Public offering statement – Condominiums subject to development rights.**
- **§ 34-36.1-4.05. Public offering statement – Time shares.**
- **§ 34-36.1-4.06. Public offering statement – Condominiums containing conversion buildings.**
- **§ 34-36.1-4.07. Public offering statement – Condominium securities.**
- **§ 34-36.1-4.08. Purchaser's rights to cancel.**
- **§ 34-36.1-4.09. Resale of units.**
- **§ 34-36.1-4.10. Escrow of deposits.**
- **§ 34-36.1-4.11. Release of liens.**
- **§ 34-36.1-4.12. Conversion buildings.**
- **§ 34-36.1-4.13. Express warranties of quality.**
- **§ 34-36.1-4.14. Implied warranties of quality.**
- **§ 34-36.1-4.15. Exclusion or modification of implied warranties of quality.**
- **§ 34-36.1-4.16. Statute of limitations for warranties.**
- **§ 34-36.1-4.17. Effect of violations on rights of action – Attorney's fees.**
- **§ 34-36.1-4.18. Labeling of promotional material.**
- **§ 34-36.1-4.19. Declarant's obligation to complete and restore.**
- **§ 34-36.1-4.20. Substantial completion of units.**