

**NHOA SPRING WORKSHOP  
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**Legal Process and Review – Bed Bugs, Housing Standards, and More  
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**1. What is a “violation”?**

- RSA 48-A:15 provides that a person who violates the minimum housing standards in RSA 48-A:14 is guilty of a “violation.” What is it?
- Technically, a criminal offense. (Felony, misdemeanor, violation)
- RSA 625:9 – something is a “violation” if a statute says it is, or if fine is below \$1,000, or if local ordinance doesn’t classify something and doesn’t specify penalty.
- Penalties, RSA 651:2: Conditional or unconditional discharge or a fine.
- Fine – Up to \$1,000 per offense (individual or corporation)
- Conditional discharge – including restrictions on travel, association, abode to protect victim or insure public peace, require counselling, restitution to victim or public service.
- Unconditional discharge – no fine or conditions but counts as a conviction.

**2. Bed Bug Legislation**

**A. Landlord-Tenant requirements and remedies (RSA 540 and RSA 540-A)**

- Applies only to residential rental property
- RSA 540-A:3, prohibited acts by landlord and tenant:
  - May not enter without prior tenant consent except for “emergency repairs,” which now include but are not limited to entry to evaluate, formulate a plan or perform emergency remediation of an infestation of rodents or insects, including bed bugs, if entry is made within 72 hours of the time the landlord first receives notice of the infestation.
  - May not willfully fail to investigate a tenant’s report of an infestation of rodents or insects, including bed bugs, within 7 days of receiving notice from the tenant or a municipal health or housing code authority, or fail to take reasonable remediation measures.
  - Tenant may not willfully refuse the landlord access to make emergency repairs, or to evaluate whether bedbugs are present after

the landlord has received notice that bed bugs are present in a unit adjacent to or directly below or above the subject unit, provided landlord gives 48 hours' written notice of the need to enter the premises to evaluate whether bed bugs are present.

- Tenant must comply with reasonable written instructions from landlord or pest control operator to prepare premises for remediation of an infestation of rodents or insects, including bed bugs, if instructions are given to an adult member of the tenant's household at least 72 hours in advance such that tenant has a reasonable opportunity to comply.
  - Landlord may only enter without consent for emergency repairs or with a court order.
  - RSA 540: Landlord/Tenant Actions:
    - Restricted property (4+ residential units), landlord may terminate if tenant willfully fails to prepare the unit for remediation after reasonable written instructions and reasonable time to complete them. RSA 540:2, II(g). Note that this is even less specific about what is "reasonable" and who gets notice than the provision in RSA 540-A.
    - Costs of bed bug remediation – action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for at least 60 days. Landlord pays the cost, and may bill the tenant for the costs of remediation within that tenant's own unit. If tenant doesn't pay, landlord must prove tenant caused it (but court will presume tenant did in certain situations).
- B. Expanded Local Housing Ordinance Authority – RSA 48-A:  
RSA 48-A:11 - Specifically permits governing body of municipalities to enact, in local housing code sections dealing with infestations of insects, provisions directed at the unique problems posed by infestations of bed bugs, provided that such provisions are no less protective of the residents of dwelling units in which bed bug infestations are found than are the provisions dealing with infestations of other kinds of insects.
- C. Addition of bed bugs to minimum standards (RSA 48-A)  
RSA 48-A:14, I-a : minimum standards that apply to rental housing in municipalities without a housing ordinance under RSA 48-A. Landlord may not maintain premises in a condition in which the premises are

infested by bed bugs and the landlord is not conducting a periodic inspection and remediation program. “Remediation” means action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for a period of at least 60 days. Enforcement of local housing standards ordinance generally is through local “public agency” which administers ordinance, with appeal to governing body of municipality, and further petition to Superior Court. (Local ordinance may change this.)

**3. Without any local ordinance under RSA 48-A, what can still be enforced to address bed bugs?**

A. Minimum standards under RSA 48-A:14

- RSA 48-A:15: Where there is no housing standards ordinance in place, a violation of the minimum standards = a “violation” and each day is a separate offense.
- Applies only to residential rental property
- Enforcement requires court action – either Circuit Court/District Division or Superior Court.

B. Nuisance abatement – RSA 147

- NOTE: RSA 48-A:10 states that nothing in RSA 48-A impairs or limits in any way the authority of municipalities to address nuisances. This means nuisance authority remains exactly the same regardless of whether there is or is not a local ordinance addressing bed bugs.
- RSA 147:3 – inspection
- RSA 147:4 etc. – orders to remove/abate nuisances or “other things injurious to the public health,” with procedure to obtain court order and recover costs from owner.
- However, without local regulations, getting the owner to do what you think is best in any particular situation may be more difficult. Easier to have a set standard.

C. Local health regulations – RSA 147

- RSA 147:1, I : Health officer may create regulations for the prevention and removal of nuisances and such other regulations relating to public

health as in his/her judgment the health and safety of the people require.

- Note – RSA 47:17, XIV grants essentially the same authority to cities, and also note that RSA 47:1 grants cities all the powers that towns have.
- These can be adopted more easily than other kinds of regulations
- Enforcement – RSA 147:1, III – violations are “violations” which require District Division or Superior Court action to enforce. Proper court depends on a variety of things – timing, availability of attorney, remedy sought (District Division is \$\$, mostly; Superior Court can issue injunctions and other equitable remedies).

**4. What may make sense to include in local regulations under either RSA 48-A or RSA 147/RSA 47:17?**

Note: Local housing standards ordinance may include a separate fine (in addition to the statutory fine of up to \$1,000 for “violations), and each day of a continuing violation in each sense of the word after notice is given constitutes a separate offense. May want to enforce in Superior Court or in District Division.

- Incorporation of minimum housing standards from RSA 48-A:14 to permit enforcement of landlord’s obligations
- Require reporting of bed bugs to municipal officials (health officer) by any licensed pest control professional who learns of an infestation within the town/city?
- Require licensed pest control professional to perform remediation?
- More stringent remediation requirements (what does “substantially reduce” mean? Is 60 days meaningful?)
- Other?

**5. What legislative changes may be appropriate?**

- Creation of bed bug license? (If full-blown pest control licensing is not necessary)
- Requirement that pest control professionals and/or landlords provide report of bed bugs to municipal officials
- Incorporation of bed bugs specifically into RSA 147 so that health officers can handle it the same as any other nuisance?
- Add enforcement authority for health officers or other municipal official for the violation of landlord's obligation to remediate in RSA 540-A?

**6. Drinking water – new DES guidance on water quality (see handout)**