

PROCEDURE FOR DETERMINING WHEN THE SUBDIVISION "AMNESTY" EXEMPTION APPLIES TO BUILDINGS OR STRUCTURES WHICH ARE NOT SINGLE FAMILY RESIDENCES ON THEIR OWN INDIVIDUAL LOTS

In Act 46 of the 1999 legislative session, the Legislature first adopted the "amnesty" exemption, 18 V.S.A. §1218(d), for violations of the state subdivision requirements, ie: failure to obtain a state subdivision permit at the time of subdivision or failure to comply with the requirements of a state subdivision permit. This amnesty provision did not distinguish between buildings or structures that were single family residences on their own lots and other types of buildings or structures, for example duplexes, restaurants, etc.. A key portion of the Act that dealt with amnesty was a provision that specified that if there was compliance with the amnesty exemption, the failure to comply with the state subdivision requirements did not adversely affect the marketability of title.

The amnesty exemption was carried forward in Act 133 of the 2002 legislative session. Specifically, section 1974(b) granted amnesty for violations of the state subdivision program to single family residences on their own individual lots. In addition, the language regarding the curative effect of the act from the 1999 legislation was amended to read as follows:

"Sec. 16. Sec. 13 of No. 46 of the Acts of the 1999 Session is amended to read:

Sec. 13. CURATIVE EFFECT OF ACT

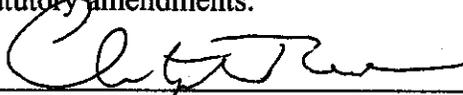
(a) If there is compliance with the conditions of the permit exemptions described in subsection 1218(d) of Title 18 or its successor, subsection 1974(b) of Title 10, the failure to obtain a subdivision permit under section 1218 or a potable water supply and wastewater permit under chapter 64 of Title 10 and the failure to record such permit or comply with the requirements of such permit shall not constitute a violation that adversely affects the marketability of title under 27 V.S.A. chapter 5, subchapter 7.

(b) This section shall retroactively apply to these exempt properties." (emphasis added).

Based on this statutory language, and the clear intent of the legislature to not retroactively cloud the title of property in the state, it is the Agency of Natural Resources' position that the amnesty exemption applies to either properties exempt under 18 V.S.A. §1218(d) or properties exempt under 10 V.S.A. §1974(b). Therefore, buildings or structures other than single family residences on their own individual lots continue to be subject to the amnesty exemption.

This means that buildings or structures that were exempt from the potable water supply and wastewater permit requirements that existed as of January 1, 1999 are exempt from the subdivision permit requirements for acts of subdivision that occurred prior to January 1, 1999, including noncompliance with the provisions of a subdivision permit issued prior to January 1, 1999, so long as they meet the requirements of the amnesty exemption.

This position on the meaning of the statutory language and on the exempt status of certain buildings and structures will continue to remain in effect until it is incorporated into the Wastewater System and Potable Water Supply Rules or superseded by future statutory amendments.



Christopher Recchia, Commissioner
Department of Environmental Conservation

October 24, 2002

Date