



Dean Bennett <economicdevelopment@hampdenmaine.gov>

Fwd: Hampden - Attn: Brianna Behrens

1 message

Angus Jennings <townmanager@hampdenmaine.gov>

Mon, Feb 1, 2016 at 3:42 PM

To: Dean Bennett <economicdevelopment@hampdenmaine.gov>

This email is intended for inclusion in this week's P&D meeting packet. Thanks.

----- Forwarded message -----

From: **Legal Services Department** <Legal_Services_Department@memun.org>

Date: Wed, Jan 6, 2016 at 11:01 AM

Subject: RE: Hampden - Attn: Brianna Behrens

To: "townmanager@hampdenmaine.gov" <townmanager@hampdenmaine.gov>

Dear Angus,

Below please find the "Dangerous Buildings" Information Packet that I mentioned. Some of the links may require that you have a MMA username and password to access the website. You can contact Ben Thomas bthomas@memun.org to see if you have an account or register for a new one.

Dangerous Buildings

Links to the following documents are provided as examples for informational purposes only. They have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel and tailored to meet the needs of your municipality.

This packet includes the following attachments:

- Title 17 M.R.S.A. §§ 2851-2859 [Use the arrows to move within the sections]
- Title 14 M.R.S.A. § 6321
- Title 30-A M.R.S.A. § 3106
- Rule 4, Maine Rules of Civil Procedure, 2011 edition [scroll down to Rule 4]
- Sample Notice of Hearing
- Sample Findings and Order
- Sample Consent to Removal
- Sample Acknowledgment and Return of Service

Important issues and considerations include:

I. Securing Structures

If a building poses a serious threat to public health and safety, a municipality may secure it pending the abatement proceedings discussed below, and may recover its expenses from the owner (17 M.R.S.A. § 2856). Notice must be served on the owner and all parties-in-interest in accordance with 17 M.R.S.A. § 2851(1), but notice need not be given in advance if prompt action to secure the structure is necessary.

II. Local Process; Alternative Summary Process

State law provides three methods for abating the nuisance and public safety threat posed by a dangerous building. Under the first method, the municipal officers (selectpersons or councilors) may, after notice and hearing, find that a building or structure, or portion thereof, is unsafe and is therefore a nuisance or dangerous and must be disposed of (17 M.R.S.A. § 2851). Notice of the hearing must be served on the owner and upon all parties-in-interest as defined in 14 M.R.S.A. § 6321 (mortgagors, holders of the fee interest, mortgagees, lessees under recorded leases or memoranda of leases, lienors and attaching creditors, all as shown by Registry of Deeds records and documents referred to therein). Published notice is required where the name or address of any owner or co-owner is unknown (17 M.R.S.A. § 2851(2)). The notice must be recorded in the Registry of Deeds by the municipal clerk (17 M.R.S.A. § 2857). After the hearing, the municipal officers may issue an order: "prescribing what disposal must be made of that building or structure" (17 M.R.S.A. § 2851). The order must be accompanied by written "findings." Most often, the order is for abatement of structural defects within a specific period of time or removal of the structure. However, nothing in the statute limits municipal remedies, and it may order a building demolished. Neither the statute nor due process of law requires the municipality to first list the defects and allow a reasonable time for repairs before demolition. *Kirkpatrick v. City of Bangor*, 1999 ME 73, 728 A.2d 1268. The municipal clerk must record the order in the Registry of Deeds and must also serve an attested copy of the order upon the owner and all parties-in-interest (17 M.R.S.A. § 2851(3)). An appeal may be taken to Superior Court from the decision of the municipal officers. If no appeal is filed, the municipal officers may order the building or structure to be repaired or removed (17 M.R.S.A. §§ 2852-2853).

The second method of abatement is an alternative to proceeding before the municipal officers. Instead, a municipality may seek an abatement and/or demolition order directly from Superior Court (17 M.R.S.A. § 2851(4)). After a hearing, the Court may order abatement/demolition and may award costs to the municipality.

The third method of abatement is a "summary" (immediate) process that may be used in cases involving an immediate and serious threat to public health, safety and welfare (17 M.R.S.A. § 2859). To use the summary process, the building inspector (or other official named in the statute) must file a verified complaint with the Superior Court. The court may act "ex parte" to set a hearing date (within 10 days of the filing) and order the owner(s) to appear. Upon hearing, the court may order abatement/removal and may assess costs. There is no appeal from the court's judgment, although the owner may, within 30 days, contest costs and seek damages for wrongful removal if provable.

III. Acknowledgment; Return of Service

On a legal document, an "acknowledgment" attests to the authenticity of a signature and is required in order to record the document at the county Registry of Deeds. A "return of service" evidences that a copy of the document was actually served on a person by someone with authority to do so. All of the suggested forms in this packet should include an acknowledgment for each signature and should be recorded in the Registry of Deeds (17 M.R.S.A. §§ 2851, 2857 and 2858). Any notice or order required to be served on an owner or party-in-interest should also include a return of service (17 M.R.S.A. §§ 2851 and 2856). Service must be made in the same manner as a court summons is served, including by mail, by a sheriff or deputy within the sheriff's county, by another person authorized by law, or by some person specially appointed by the court for

that purpose (Rule 4, M.R.Civ.P., linked above). Please note that while service on an out-of-state property owner may be made in the same manner in which service is made in Maine, the person serving the order on an out-of-state property owner must be one authorized to do so under the laws of the state where service is attempted.

IV. Records

In any proceeding before the municipal officers, a full record of testimony and deliberations should be kept (either a clearly audible tape recording or a written verbatim transcript). Documentary evidence (such as photos and inspection reports) also should be compiled and preserved. This record is essential to sustaining the municipal officers' decision if it is appealed. Proof of expenses (such as time cards and invoices) also will be important if a municipality itself undertakes the abatement and seeks to recover its costs.

V. Special Tax

If municipal expenses of abatement are not paid by the owner(s) within 30 days of demand, these costs may be recovered by assessing a "special tax" against the land (17 M.R.S.A. § 2853). The tax must be included in the "next annual warrant" to the collector and may be collected in the same manner as property taxes (including by automatic lien foreclosure). (See MMA's *Municipal Assessment Manual* for assessment and commitment discussions and related forms.)

VI. Personal Property Located in a Building Declared to be Dangerous

In many cases, there will be items of personal property inside a building that has been declared dangerous using the process outlined above. Before the building may be demolished, the personal property must be addressed. Title 30-A M.R.S.A. § 3106 outlines the statutory procedure that must be followed by the municipality in the event of abandoned personal property.

VII. Additional Concerns

As the discussion above indicates, a determination that a structure is a dangerous building requires careful consideration by the municipal officers and strict compliance with the requirements of State law, including complex notice provisions. A title search is recommended to identify all parties-in-interest entitled to notice of the proceedings. Moreover, demolition of property is a drastic measure that may result in liability for damages for wrongful removal. The municipality should take care to protect the due process rights of the owner or parties-in-interest by providing a meaningful opportunity to be heard and to address municipal concerns. *Kirkpatrick v. City of Bangor*, 1999 ME 73, 728 A.2d 1268; *Michaud v. City of Bangor*, 196 A.2d 106 (Me. 1963); *Bennett v. Town of Poland*, CV-88-64 (Super. Ct, Andro. Cty, Nov. 9, 1988). Therefore, we strongly urge the municipal officers to consult with local counsel before commencing such a proceeding. The municipality may recover the cost of legal advice as part of the "special tax" assessed against the property. (See *City of Brewer v. Michael W. Conners*, 2004 Me. Super. LEXIS 135 (No. CV-03-2, Me. Super. Ct., Pen. Cty., May 28, 2004), in which the Court awarded the City both its costs for demolishing the dangerous buildings and its attorney's fees and costs for bringing the action.)

Finally, and again in consideration of the complexity of the formal procedures outlined above, a municipality should first attempt to resolve the issue of an unsafe building informally by sending a letter by certified mail, return receipt requested, to the property owner setting forth the problem and explaining that unless the problem is resolved to the municipality's satisfaction within a specified number of days, the municipality will commence proceedings to have the building or structure demolished. Municipalities should be aware that any negotiated consent which allows the municipality to demolish property and assess a special tax against

the property must include written consent by all parties-in-interest. Notices of the consent must be recorded in the Registry of Deeds (17 M.R.S.A. § 2858).

VIII. Forms

The MMA Legal Services Department would like to thank Geoff Hole, Esq. for sharing various forms that he developed for use in connection with the Title 17 dangerous building process. Those forms appear as part of this packet either in their original form or with modifications.

This packet is designed to provide general information and is not intended as a substitute for legal advice for specific situations. The statutes and other information herein are only current as of the date of publication.

Last reviewed 7/12

In addition, the Maine Tort Claims Act provides that a municipality is not liable for any claim which results from performing a discretionary function (14 M.R.S.A. § 8104-B(3)) or prosecutorial function (14 M.R.S.A. § 8104-B(4)). This means that it is unlikely that the town will be liable regarding its decision to either enforce local ordinances or take any action under the dangerous buildings statute. That being said, if the building or part of the building were to collapse and enter into the public way, under some circumstances the town could be liable for certain claims. For example, if debris from the building falls into the public way it could be considered a road defect and the town could be held liable for any damages if it is not removed promptly.

I hope this is helpful.

Best,

Breana N. Behrens, Staff Attorney
Legal Services Department

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From: Christine Bragg

Sent: Tuesday, January 05, 2016 11:19 AM
To: Breana Behrens <BBehrens@memun.org>
Subject: Hampden - Attn: Brianna Behrens

From: Angus Jennings [<mailto:townmanager@hampdenmaine.gov>]
Sent: Tuesday, January 05, 2016 11:16 AM
To: Legal Services Department <Legal_Services_Department@memun.org>
Subject: Hampden - Attn: Brianna Behrens

Thank you for your time on the phone. Documentation of the building of concern is in the following meeting packet, beginning on pg. 34 of the PDF:

[January 6 Agenda and Packet](#)

Hope this helps, and thanks again,

Angus

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Angus Jennings
Town Manager

Town of Hampden

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Angus Jennings
Town Manager

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