

# The Right-to-Know Law, Governmental Meetings, and Covid-19

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March 31, 2020

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## Covid-19 Effects on Gov't

- ▶ Governor declared State of Emergency on March 13, 2020.
- ▶ Governor prohibited gatherings of 10 or more people on March 23, 2020.
- ▶ Governor issued closure of non-essential business and stay at home order on March 26, 2020.
- ▶ CDC & Department of Health & Human Services (DHHS) guidance has been to encourage “social distancing”
  - ▶ “[r]emaining out of crowded public places where close contact with others may occur, such as shopping centers, movie theaters, stadiums, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible.”
- ▶ CDC & DHHS also recommending that those 60 years or older stay home and avoid exposure to public locations as much as possible.
- ▶ Yet, RSA 91-A and the State Constitution require “open meetings.”

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## Covid-19 Effects Cont.

- ▶ Events rapidly unfolding on an international, national, and state scale.
- ▶ We anticipate that there may be future Executive Orders which will impact the functioning of municipal government.
- ▶ We anticipate that the legislature may be addressing some issues which have arisen as municipalities have worked to ensure the safety of their officers, employees, and citizens.
- ▶ NHMA providing updates at: <https://www.nhmunicipal.org/covid-19-resources>
- ▶ Check the State of NH Emergency Order Page: <https://www.governor.nh.gov/news-media/emergency-orders/index.htm>

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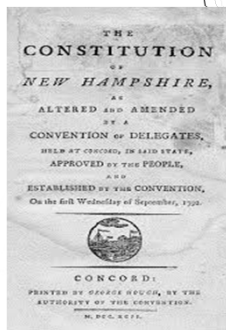
## Overview of How RTK Governs Meetings Content

- I. What is a “meeting”?
- II. What is not a meeting, i.e., a “nonmeeting”?
- III. What are the requirements for holding a proper “meeting”?
- IV. How to hold meetings virtually.

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## The Right-to-Know Law RSA Chapter 91-A

PART I, ARTICLE 8 OF THE NH  
Constitution: Government ...  
should be open, ....



SECTION 1 OF RSA 91-A:

The purpose of this chapter is to ensure both the greatest possible public access to the **actions, discussions and records** of all public bodies, and their accountability to the people.

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### What is a Public Meeting? RSA 91- A:2

Quorum




Public body

Convenes so that they can  
communicate  
contemporaneously

To discuss or act upon a  
something over which the  
public body has supervision,  
control, jurisdiction, or  
advisory power.


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## “Quorum”

-  Majority of membership
-  Can't define as more than majority to circumvent law
-  Another statute may apply

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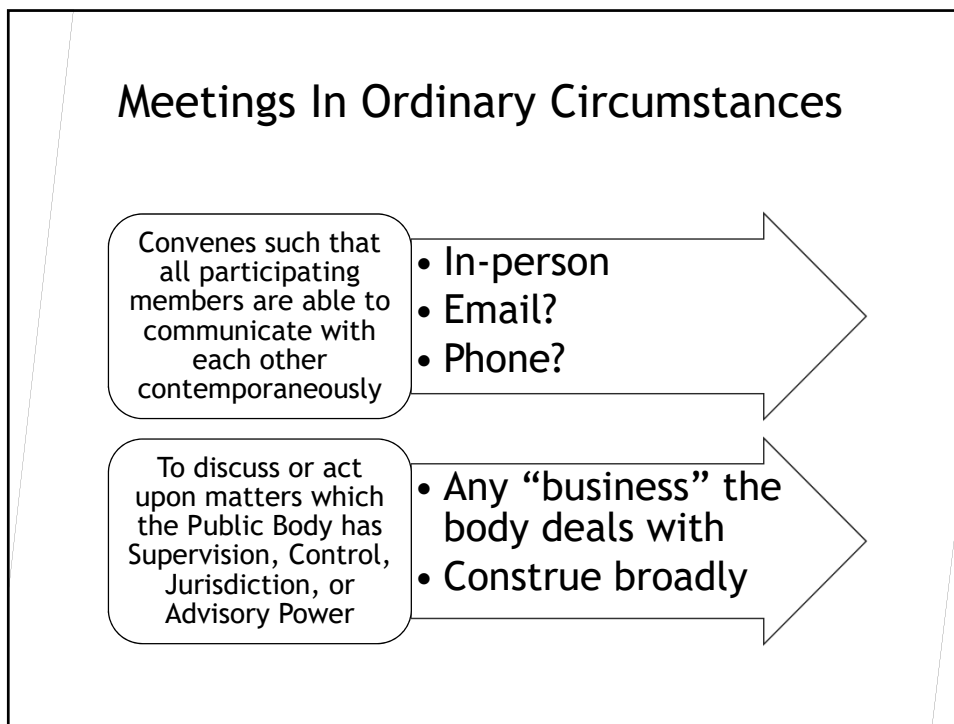
## “Public Body”



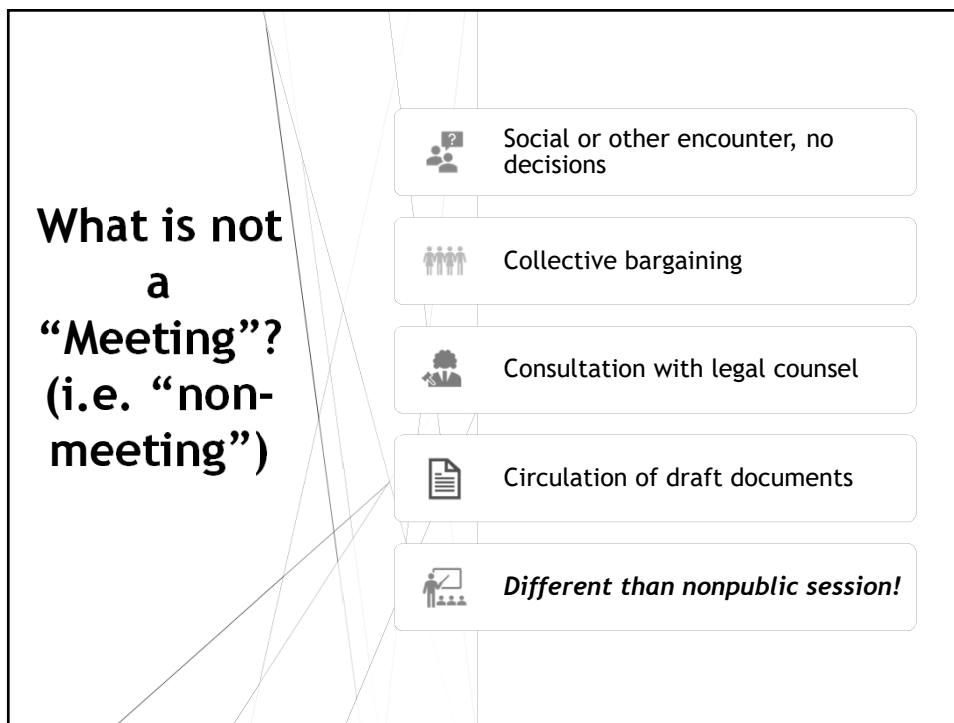
RSA 91-A:1-a, VI:

- Any legislative body, governing body, board, commission, committee of any county, town, municipal corporation, school district, SAU or other political subdivision
- Any committee, subcommittee, advisory committee thereto

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# What are the requirements of a public meeting?

- Public notice
- Open to the public
- Meeting minutes

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# “Posting Requirements”

The corkboard contains the following notes:

- Give Notice 91-A:2
- 24 hours minimum
- Two public places
- More restrictive law?
- Emergency Notice, 91-A:2, II
- Posting Requirements 91-A:2, II-b(b)

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## “Emergency” Notice Requirements

- ▶ “Emergency”: a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body.
- ▶ That presiding officer shall post a notice of the time and place of such meeting as soon as practicable.
- ▶ Further, the presiding officer shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.
- ▶ “Emergency” meetings do not require 24-hour notice posted in 2 public places but should provide as much notice as practical.

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## Ordinary Procedures: Meetings “Open to the Public”

- ▶ “All meetings . . . shall be open to the public.” RSA 91-A:2, II.
- ▶ “Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.”
- ▶ Public’s has right to record, etc.
- ▶ No secret ballot voting
- ▶ Public Comment?

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## Procedures During the Pandemic, Part I



- ▶ Emergency Order #12 waived the provision of RSA 91-A, III(b) requiring that a quorum of a public body be physically present unless immediate action is imperative.
  - ▶ In other words, meetings can be conducted entirely remotely now.
- ▶ Emergency Order #12 does require that any remote meeting have a telephonic connection for the public.
  - ▶ Other technological options are encouraged:
    - ▶ Conference call lines
    - ▶ Streaming services
    - ▶ Etc.
- ▶ Promote available technological options as well as access information in all notices of meeting.
- ▶ Chair should clearly and succinctly explain process at beginning of meeting -
  - ▶ E.g. Public comment period and how that will work.

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### Ordinary Procedures: Remote (Electronic) Meeting Participation RSA 91-A: 2, III

- ❓ Public body *may* allow
- 🕒 Personal attendance “not practical” (in minutes)
- ✓ Quorum *present*
- 🗣️ Everyone can hear and be heard
- 📍 Identify persons present in remote location
- 🗳️ All votes by roll call

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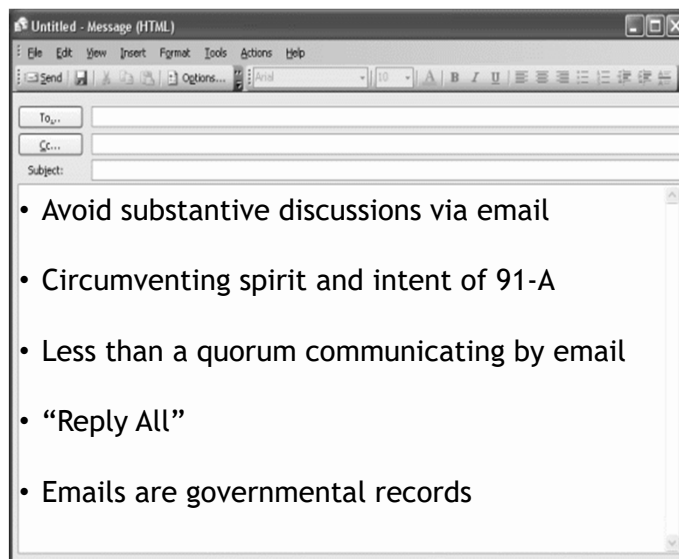


## Procedures During the Pandemic, Part II

- ▶ Boards participating remotely must still:
  - ▶ identify the reason why the in-person attendance of any remote board members is not reasonably practicable in the minutes of the meeting;
  - ▶ identify any persons present in the location where the board member is calling from; and
  - ▶ take all votes by roll call.
- ▶ In addition, there must be a mechanism for the public to alert the public body during the meeting if there are problems with access.
  - ▶ Intended to allow the body to know whether there is an issue with the conference call overall, not an issue with the public just hearing a particular speaker.
- ▶ The meeting must be adjourned if it is determined that the public is unable to access the meeting, e.g. the conference call software stops functioning.


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## “Electronic Communications”




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## Avoid Temptation to Use Inaccessible Technological Options During Pandemic



Remember that fundamental principal of RSA 91-A is to allow the public access.




Text messages, emails, and other electronic means of communication which excludes the public should not take the place of publicly accessible meetings.



As much as possible, government should try to maintain normalcy during this abnormal time.

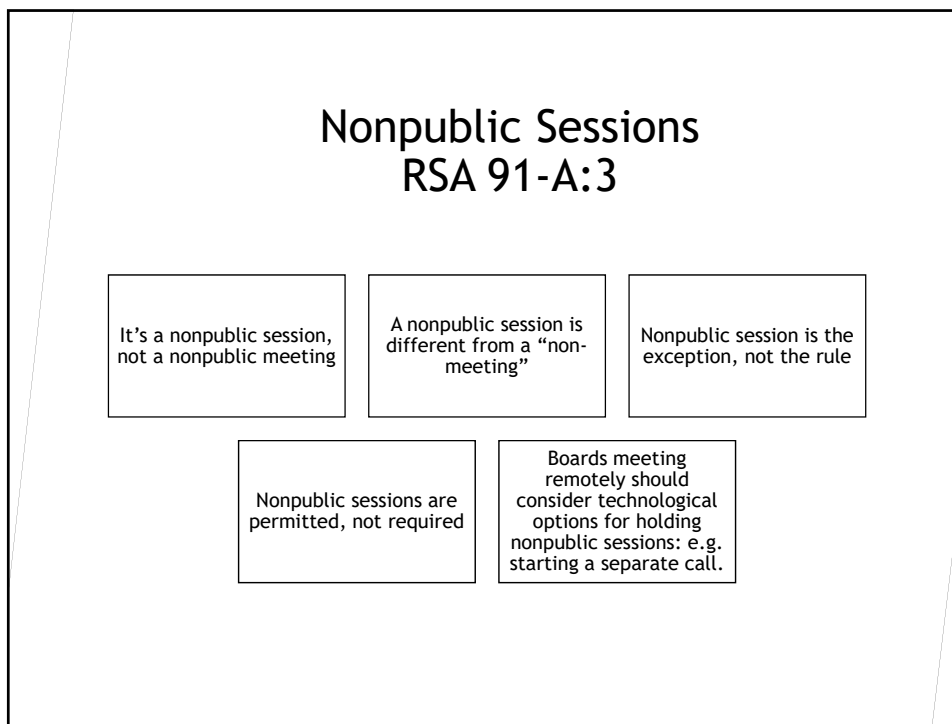
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## Public Meeting Minutes: RSA 91-A:2



- ▶ Minimum required contents:
  - ▶ (1) the names of members, (2) persons appearing before the public bodies, (3) a brief description of the subject matter discussed, (4) state final decisions made, and, (5) state the names of the members who made or seconded each motion shall be recorded in the minutes.
- ▶ Made available within 5 business days
- ▶ Posting requirements-
  - ▶ RSA 91-A:2, II-b(a)
- ▶ If the software used to conduct a remote meeting allows for recording, use it to aid the minute taker, but remember that recordings are not a substitute for written minutes.

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### When May a Public Body Enter Nonpublic Session?\* RSA 91-A:3, II

- Public employee (specific employee)
- Hiring
- Reputation
- Real or personal property
- Lawsuits
- Emergency preparation
- Discuss legal advice
- Discuss student tuition contract

\*Most common, but not complete list

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## Entering Nonpublic Session for Covid-19

- ▶ RSA 91-A:2, II(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.
  - ▶ Conversation must focus on *deliberate act* that is being thwarted.
  - ▶ Basic conversation about Covid-19 does not qualify - Virus will not change its spread based on knowing what the government is planning.
  - ▶ However, news reports have indicated that known infected have purposefully evaded quarantine. Planning for that may qualify.

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## How Does a Public Body Enter Nonpublic Session? RSA 91-A:3, I



Motion to enter nonpublic session must be made and seconded.



Motion must state on its face the specific exemption relied upon.



Vote must be by roll call; simple majority is sufficient. RSA 91-A:3, I(b).

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A slide titled "Minutes of Nonpublic Sessions" with a background of thin, intersecting lines. On the left, the title is written in a large, bold, black font. To the right, there are two rounded rectangular callout boxes. The top box contains the text "Minutes must be kept—same as for public session." The bottom box contains the text "Must “record all actions in such a manner that the vote of each member is ascertained and recorded.”"

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A slide titled "Conducting the Nonpublic Session" with a background of thin, intersecting lines. On the left, the title is written in a large, bold, black font. To the right, there are three callout boxes. The top box contains the text "May make decisions in nonpublic session". The middle box contains the text "Member objecting to violations—note objection. If board persists, objecting member may continue to participate without being subject to penalties. RSA 91-A:2, II-a." The bottom box contains the text "Returning to public session".

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## Disclose or Seal

Minutes must be publicly disclosed within 72 hours unless board determines, by 2/3 vote taken in public session, that:

- Disclosure would have adverse effect on reputation;
- Disclosure would “render the proposed action ineffective”; or
- Discussion in nonpublic session pertained to terrorism.

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## Other Considerations

Include nonpublic session on posted agenda

Timing—beginning or end of meeting?

Attendance by non-members

- If meetings are being conducted with remote participation of board members and public, must plan how to conduct non-public sessions in a manner that preserves their secrecy.

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**Thank You For Attending This Virtual Workshop!**




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**WORKSHOPS**

NHMA is strongly committed to providing our members a continuation of our education and training services during these challenging times. NHMA is fully functional and continues to support our members by using electronic communication and by utilizing teleconferencing tools to facilitate upcoming training events, such as these Virtual Workshops.

We hope you will join us in these virtual workshops and we are appreciative of your support.

*We wish you, and your residents, good health!*

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Due to restrictions on public gatherings, NHMA is shifting from in-person workshops to virtual workshops. This live virtual workshop, similar to a webinar, provides the same content without the need to gather.

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Topics will include the Right-to-Know Law, ethics and conflicts, effective meetings, town governance, municipal roads, budget and finance, and more. Ample time allowed for questions, answers, and discussion.

Attendees will receive a digital copy of NHMA's 2020 edition of the publication, *Knowing the Territory*.

Each program runs 9:00 am - 4:00 pm.

Dates and Locations

Tuesday, April 7  
Tuesday, May 19

**Registration Now Open!**

**Pre-registration is Required. No Registration Fee.**

To register online, please visit [www.nhmunicipal.org](http://www.nhmunicipal.org) and click on the Calendar of Events.

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## Upcoming Virtual Workshop

**Hot Topics in Road Law - A New & Improved Hard Road to Travel Virtual Workshop**

9:00 am - 12:30 pm (pre-registration is required)  
Friday, April 17, 2020

Cost: \$65.00, does not including publication.

*How Does the Select Board grant permission for use and repair of a Class VI Road?*

*What can we do about Postal Service Vehicles causing ruts in road shoulders?*


*What are the rules governing CDL licensing for municipal employees?*

Join NHMA Legal Services Counsel Stephen Buckley and Municipal Services Counsel Natch Greyes for the answers to these questions --- and many more! The attorneys will discuss the designation and management of Class VI roads, including how and when building permits can be issued under RSA 674:41, granting permission for use of Class VI roads by OHRV's and snowmobiles, and allowing abutting property owners to undertake private repairs. This virtual workshop will also cover management of local highway construction, repair and maintenance through the office of an elected or appointed road agent or expert agent, and the requirement of CDL licensing for municipal highway employees. This virtual workshop will also provide a review of the local regulation of highways by the select board including, parking, street numbers, street names, weight limits, mailbox location, as well as driveway regulation by the planning board.

**Online pre-registration required!**  
**Questions? Call 800.852.3358, ext. 3350,**  
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The Academy for Good Governance is a series of six courses created by NHMA and Primex, exclusively for elected governing body members (select board, town council, city council, board of aldermen, school board, and village district commissioners). Courses are taught by experienced attorneys and staff from NHMA, Primex, HealthTrust, and the New Hampshire School Boards Association (NHSBA). Attendees will receive education and training intended to make them more knowledgeable and effective in their governing body roles.

Attendance at the Academy is free and open to governing body members from municipalities and school districts that are members of NHMA and Primex. Space is limited, and registration will open on the NHMA website on April 6<sup>th</sup>. Attendees must attend all six courses to receive a Certificate of Completion. All classes run 5:00 pm – 7:00 pm.

**CREATE NEW CONNECTIONS**

*Questions?*  
Call NHMA's Event Coordinator Ashley Method at 800.852.3358 or email [NHMARegistration@nhmunicipal.org](mailto:NHMARegistration@nhmunicipal.org)

Don't miss this chance to build your skills and connect with fellow municipal officials!  
Find out more: [www.nhmunicipal.org/workshops](http://www.nhmunicipal.org/workshops)

**DATES AND LOCATIONS:**

- Governance & Governing Body Authority**  
Presented by NHMA/NHSBA  
Wednesday, June 3, 2020, NHMA Office
- Financial Responsibility**  
Presented by NHMA  
Wednesday, June 17, 2020, NHMA Office
- Employment Liability Measurement**  
Presented by Primex  
Wednesday, September 16, 2020, Primex Office
- Contracts and General Risk Management**  
Presented by Primex  
Wednesday, September 30, 2020, Primex Office
- Health Care and Affordable Care Act**  
Presented by HealthTrust  
Thursday, October 8, 2020, NHMA Office
- Effective Public Meetings**  
Presented by NHMA/NHSBA  
Wednesday, October 21, 2020, NHMA Office

**WHO CAN ATTEND?**

- Select board members ★
- Town council
- School board members
- City council
- Board of Aldermen
- Village district commissioners ★

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# Upcoming Workshop

**A Guide to Effective Code Enforcement Virtual Workshop**

9:00 am – 12:00 pm  
Friday, May 8, 2019

Cost is \$65, includes supplement to:  
**A Guide to Effective Enforcement: Investigating and Enforcing Code and Land Use Violations**

Building inspectors, code enforcement officers, fire chiefs, health inspectors, and various other municipal officials are responsible for the enforcement of a variety of codes, regulations, and ordinances related to the use of land. These include both local regulations, such as zoning ordinances, site plan and subdivision regulations, health regulations, and the conditions of approval that accompany many land use board approvals, as well as state law, such as the State Building and Fire Code and statutes governing junkyards.

Effectively enforcing these various codes and regulations can pose a challenge to municipalities. Join Attorneys Matt Serge and Christine Filmore from the law firm of Drummond Woodsum, for this half-day virtual workshop which will provide municipal officials with practical guidance on how to navigate the nuanced procedures associated with code enforcement, as well as practical advice in pursuing an enforcement action against non-compliant property owners. Our legal experts will address some of the most difficult issues under the law, including junkyards, dilapidated buildings, and health codes. There will be ample time for questions and answers on all aspects of the law.

Check out NHMA's Guide to Effective Enforcement at [www.nhmunicipal.org](http://www.nhmunicipal.org)

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# Upcoming Trustee Training

**NHMA** **2020 MUNICIPAL TRUSTEE TRAINING**

**BACK BY POPULAR DEMAND!**  
*Terry Knowles, formerly with the New Hampshire Charitable Trusts Division at the Attorney General's Office, is coming out of retirement to explain the duties, responsibilities, and reporting requirements of municipal trustees and how these trustees interact with other municipal officials.*

**TENTATIVE AGENDA**  
**9:00 am - 9:15 am:**  
 Introduction to Charitable Trusts Division  
 Tom Donovan, Director, Attorney Generals Office

**9:15 am - 10:45 am:**  
**A Little Help From My Friends**  
 Terry Knowles, Emeritus Assistant Director

**10:45 am - 11:00 am:** Break

**11:00 am - 12:15 pm:**  
**Governance and Right-to-Know Law**  
 Stephen Buckley and Natch Greyes  
 NH Municipal Association

**12:15 pm - 1:00 pm:** Lunch

**1:00 pm - 2:00 pm:**  
**Breakout sessions with Cemetery Trustee and Trustees of Trust Funds representatives**

**2:00 pm - 2:15 pm:** Break

**2:15 pm - 3:30 pm:**  
 Trust Fund Administration  
 Jamie Dow  
 NH Department of Revenue Administration

**REGISTRATION FEE**  
**\$65 per person**  
*(includes continental breakfast and lunch)*

**WHEN**  
**Wednesday, June 10, 2020**  
**9:00 am—3:30 pm**

**WHERE**  
**NHMA Offices**  
**25 Triangle Park Drive**  
**Concord, NH 03301**

**CONTACT INFO**  
**Ashley Methot**  
**Events Coordinator**  
**25 Triangle Park Drive**  
**Concord, NH 03301**  
**603.230.3340**  
**amethot@nhmunicipal.org**

**FOR ADDITIONAL DETAILS VISIT**  
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**REGISTRATION OPENS**  
**EARLY APRIL 2020**

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